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FROM

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MANILA
2013

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2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. P-05-2065. April 2, 2009]

REPORT ON THE FINANCIAL AUDIT CONDUCTED ON THE BOOKS OF ACCOUNTS OF MR. AGERICO P. BALLES, MTCC-OCC, TACLOBAN CITY

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; CLERKS OF COURT; GROSS DISHONESTY AND GROSS MISCONDUCT; FAILURE TO REMIT FUNDS IN DUE TIME, A CASE OF. —** Undoubtedly, respondent Balles committed the following serious infractions: (1) he did not deposit on time the court's collections; (2) he failed to regularly submit monthly reports to the Court; (3) the reports, when submitted, contained numerous discrepancies between the amounts reported and the amounts appearing in the official receipts, deposit slips or cash books, among others. His belated turnover of cash deposited with him is inexcusable and will not exonerate him from liability. Clerks of Court are presumed to know their duty to immediately deposit with the authorized government depositories the various funds they receive, for they are not supposed to keep funds in their personal possession. Even undue delay in the remittances of the amounts that they collect at the very least constitutes misfeasance. Although respondent Balles had subsequently deposited his cash accountability with respect to the Fiduciary Fund, he was

nevertheless liable for failing to immediately deposit the said collections into the court's funds. His belated remittance will not free him from punishment. Even restitution of the whole amount cannot erase his administrative liability. For, clearly, his failure to deposit the said amount upon collection was prejudicial to the court, which did not earn interest income on the said amount or was not able to otherwise use the said funds unlawfully kept by Balles in his possession. Such conduct raises grave doubts regarding the trustworthiness and integrity of Balles. The failure to remit the funds in due time constitutes gross dishonesty and gross misconduct. It diminishes the faith of the people in the Judiciary. Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service even if committed for the first time.

2. **ID.; ID.; CIVIL SERVICE LAW; GROSS NEGLECT OF DUTY; PUNISHABLE BY DISMISSAL EVEN FOR THE FIRST OFFENSE; CASE AT BAR. —** Under Section 22(a), (b) and (c) of Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, Gross Neglect of Duty, Dishonesty and Grave Misconduct are classified as grave offenses. The penalty for each of these offenses is dismissal even for the first offense. Hence, for the delay in the remittance of cash collections in violation of Supreme Court Circulars No. 5-93 and No. 13-92 and for his failure to keep proper records of all collections and remittances, Balles is found guilty of Gross Neglect of Duty punishable, even for the first offense, by dismissal.

D E C I S I O N

***PER CURIAM*:**

On October 25, 2004, the Financial Audit Team of the Office of the Court Administrator (FAT-OCA) conducted an examination of the books of accounts of the Municipal Trial Court in Cities (MTCC) of Tacloban, Leyte. The examination covered the period from 1 October 1989 to 30 September 2004 during the tenure of Mr. Agerico P. Balles (Balles), the Clerk of Court of the MTCC.

In its Memorandum[1] dated June 15, 2005, the FAT-OCA reported to the then Court Administrator Presbitero J. Velasco, Jr.,[2] the following initial findings: (1) shortage of ₱213,466.87 in the Fiduciary Fund; and (2) cash shortage of ₱12,814.00 and ₱86.00 representing uncollected marriage solemnization fees for the accounts of the JDF and SAJF; (3) unremitted bet money collections which were still in the possession of the City Prosecutor in the total amount of ₱18,031.75; and (4) the need for Balles to explain not only the said shortages but also unidentified withdrawals and deposits appearing in the Land Bank of the Philippines (LBP) passbook and unreported/ unrecorded collections.

On June 29, 2005, the Court Administrator issued a Memorandum[3] to then Chief Justice Hilario Davide, Jr., recommending the following:

1. The report of the team be docketed as a regular administrative complaint against Mr. Agerico P. Balles, Clerk of Court, OCC-Municipal Trial Court in Cities (MTCC), Tacloban City;

2. Mr. Agerico P. Balles, incumbent Clerk of Court, be directed within fifteen (15) days from notice to:

   a. PAY and DEPOSIT the shortage of ₱213,466.87 for the Fiduciary Fund;

   b. PAY and DEPOSIT the shortages of ₱12,814.00 and ₱86.00 representing uncollected marriage solemnization fees as computed for the account of JDF and SAJF;

   c. SUBMIT to the Fiscal Monitoring Division, CMO-OCA:

      c.1 Machine validated deposit slip as proof of remittance in Item 2.a

      c.2. Certified true copy of original receipt issued and machine validated deposit slips as proof or remittance in Item 2.b

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[1] *Rollo,* pp. 57-125, including annexes.

[2] Now an Associate Justice of this Court.

[3] *Rollo,* pp. 1-2.

c.3 The COURT ORDERS, ACKNOWLEDGMENT RECEIPTS, WITHDRAWAL SLIPS of the withdrawn cash bonds as enumerated in Annex "C" of this report amounting to ₱2,729,317.52 otherwise this will form part of his accountabilities; and

c.4 A certified photocopy of LBP Passbook under Savings Account No. 0181-0842 covering the period from June 1, 1994 to August 31, 1995.

d. WITHDRAW the accrued interest (net of tax) amounting to ₱286,989.48 covering the period of March 31, 1994 to September 31, 2004 from Savings Account No. 0181-0842-19 and ₱20,297.27 from Savings Account No. 0941-0370-70 covering the period of December 31, 1998 to March 31, 2004 and issue the corresponding official receipt and transfer to the JDF account, copy furnished the Fiscal Monitoring Division, Court Management Office of the machine validated deposit slips as proof of transfer;

e. COLLECT the unremitted bet money from the possession of the City Public Prosecutor of Tacloban City, amounting to ₱7,594.75;

f. COLLECT the unremitted bet money from the possession of the City Prosecutor of Tacloban City, amounting to ₱10,437.00, and

g. EXPLAIN in writing within fifteen days (15) from notice

g.1 Why he should not be administratively sanctioned for incurring shortages from the Fiduciary Fund amounting to ₱213,466.87.

g.2 For unidentified withdrawals and deposits appearing in the LBP passbook.

g.3 Unreported/unrecorded collections in Fiduciary Fund.

3. Executive Judge Wenceslao B. Vanilla be DIRECTED to monitor the Clerk of Court, Mr. Agerico P. Balles, in the strict compliance of circulars in the proper handling of judiciary funds and adhere strictly to the issuances of the Court to avoid repetition of the offenses committed as enumerated above.

On August 22, 2005, the Court issued a Resolution[4] noting the above-quoted Memorandum and directing Balles to, among others, pay and deposit his shortages and submit his written explanation of the matters involved in the Memorandum.

In his Compliance[5] dated January 19, 2006, Balles explained that the alleged shortage (representing uncollected marriage solemnization fees) was traceable and attributable to MTCC, Branch 2, Tacloban City and not his office. If collected, the same should be remitted to the office of the respondent Clerk of Court, MTCC, Tacloban City. Attached to his compliance was respondent's letter dated December 5, 2005 to a Ms. Hedy B. Saldaña, Clerk IV, Branch 2, MTCC Tacloban City directing the latter to remit the said shortage.

With regard to the shortage in the Fiduciary Fund, Balles claimed that there was no shortage of ₱213,466.87 in the Fiduciary Fund as shown by the Land Bank of the Philippines (LBP) Cash Deposit Slip dated October 25, 2005[6] wherein he deposited the same amount to the account of MTCC, Tacloban City under Account Number 0181 0842 19.

As for the directive for him to submit court orders, acknowledgement receipts, and withdrawal slips pertaining to withdrawn cash bonds, Balles claims to have submitted his records to the OCA in 1998 and that when he tried to retrieve them, he was informed that the records had been submitted to the Commission on Audit. Hence, respondent was under the impression that the matter was duly accounted for.

On June 7, 2006, the Court issued a Resolution[7] referring the instant administrative matter to the OCA.

On October 25, 2006, then Court Administrator Christopher O. Lock issued a Memorandum Report[8] addressed to then Chief

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[4] *Rollo,* pp. 54-56.

[5] *Id.* at 131-137.

[6] Annex "1", *rollo,* p. 138.

[7] *Rollo,* p. 159.

[8] *Id.* at 160-172.

Justice Artemio Panganiban, recommending that Balles be dismissed from the service for gross neglect of duty. To quote the pertinent portions of the Memorandum Report:

> The explanation proffered by Mr. Balles centers largely on accounting for the shortage of court funds as well as providing justifications on how some court funds remained unaccounted for or uncollected. However, what he has not satisfactorily explained is the underlying issue [of] his failure to perform the primordial responsibilities of his office. x x x x x x x x x
>
> Settled is the role of clerks of courts as judicial officers entrusted with the delicate function with regard to collection of legal fees, and are expected to correctly and effectively implement regulations (*Gutierrez v. Quitalig*, 448 Phil. 465, [2003], cited in *Dela Peña v. Sia*, A.M. No. P-06-2167, June 27, 2006). Relating to proper administration of court funds, the Court has issued SC Circular No. 13-92 which commands that all fiduciary collections "*shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized depositary bank.*" In SC Circular No. 5-93, the Landbank is designated as the authorized government depositary.
>
> Mr. Balles failed to heed the aforementioned Court directives. The audit conducted on his books of account reveals that much of what accounts for his accountability of ₱213,446.87, representing shortage in the Fiduciary Fund, are unreported or unrecorded collections. **Aside from failing to issue official receipts for these official transactions. Mr. Balles missed to timely deposit said collections in the authorized depositary bank. At times, only temporary receipts were issued therefore. Such issuance of temporary receipts is prohibited** (2002 Revised Manual for Clerks of Court, p. 400, vol.1). **Also, confiscated bet money** [in] Illegal Gambling cases amounting to ₱18,031.75 **have not been remitted to the JDF Account.** In another instance, **the Statement of Unwithdrawn Fiduciary Fund (as of September 30, 2004) prepared by the Clerk of Court did not tally with the Statement of Unwithdrawn Fiduciary Fund prepared by the audit team**. This results when Mr. Balles excluded from his list the cash bond collections, rental deposits and consignation for cases not yet dismissed or withdrawn. **These constitute neglect of duty because in accounting of funds, *all collections [of the court] are entered daily into their corresponding cashbooks and deposited to the***

proper bank accounts maintained with the Landbank of the Philippines **x x x. (*id*., p. 394). He should not lose sight of the oft-repeated reminder from the Court that clerks of courts should deposit immediately with authorized government depositaries the various funds they have collected because they are not authorized to keep funds in their custody.** The Court stresses, "*the unwarranted failure to fulfill these responsibilities deserves administrative sanction and not even the full payment, as in this case, will exempt the accountable officer from liability*" (*Office of the Court Administrator v. Julian*, February 10, 2005). **His belated deposit of the amount of his accountability does not exonerate him from liability.**

Clearly, Mr. Balles has been remiss in the performance of his administrative responsibilities. One of the non-adjudicative functions of a clerk of court is to withdraw interest earned on deposits, and remit the same to the account of the Judiciary Development Fund (JDF) within two (2) weeks after the end of each quarter (Circular 13-92, March 1, 1992; A.M. No. 99-8-01-SC, September 14, 1999). As reported by the audit team, interest earned from Savings Accounts Nos. 0181-0842-19 and 0941-0370-70 remained unwithdrawn as of September 30, 2004 and therefore, not remitted to the JDF Account. His other lapse in the performance of his duty is his inability to direct the concerned clerks of court within his supervision to timely remit marriage solemnization fees to his office. Moreover, by his indifference to the reported practice of some courts to forego payment of marriage solemnization fees for relatives of some court personnel, he has unwittingly caused the court to lose revenues. He must be re-apprised that *clerks of court, in particular, are chief administrative officers of their respective courts who must show competence, honesty and probity, having been charged with safeguarding the integrity of the court and its proceedings (Gutierrez v. Quitalig, id).*

IN VIEW OF THE FOREGOING, the undersigned respectfully recommends that respondent MR. AGERICO P. BALLES be DISMISSED from the service for gross neglect of duty with forfeiture of all benefits except accrued leave credits, if any, and with prejudice to re-employed (sic) in any government office or instrumentality, including government-owned or controlled corporation. (**emphasis supplied**)

In the meantime, on July 30, 2007, Edwin K. Cabello, Clerk of Court III, Officer-in-Charge (OIC), Office of the Clerk of

Court, MTCC, Tacloban City, sent a letter to Chief Justice Reynato S. Puno, requesting the speedy disposition of the instant administrative case. Cabello was interested in the case because of his claim for representation and transportation allowance (RATA) and expense allowance as Officer-in-Charge or Acting Clerk of Court of the MTCC, Office of the Clerk of Court, Tacloban City, respondent's post. According to Cabello, he had been performing all the functions and duties of Clerk of Court (COC) Balles, and, although he was the one performing all the functions and duties of the COC, it was Balles who was still receiving the RATA for the COC which, to him, was unfair. Hence, he requested to be entitled to the same.

On September 11, 2007, then Court Administrator Lock issued another Memorandum Report[9] to Chief Justice Puno, recommending that Balles be suspended pending the outcome of the present case. He also recommended that the Financial Management Office (FMO), Office of the Court Administrator, be directed to pay Edwin Cabello the RATA pertaining to the COC, MTCC, Tacloban City.

On July 21, 2008, the Court issued a Resolution[10] directing the FMO-OCA to release the RATA pertaining to Cabello. However, in a later Resolution, the Court clarified that Cabello shall be entitled to the Expense Allowance (EA) equivalent to the RATA for the position of Clerk of Court pursuant to the August 4, 2008 Memorandum[11] of now Court Administrator Jose Perez addressed to Chief Justice Puno. Said Memorandum states:

> Since Mr. Cabello is performing the functions and duties of Clerk of Court IV in the Office of the Clerk of Court but he is not receiving the RATA as Mr. Balles is still holding the position of Clerk of Court IV, it is recommended that he be entitled to receive expense allowance which the Court may authorize.

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[9] *Rollo,* pp. 181-185.

[10] *Id.* at 210-211.

[11] *Id.* at 213.

The Ruling of the Court

We agree with the OCA's recommendations regarding Balles' liability.

Supreme Court (SC) Circular Nos. 13-92 and No. 5-93 provide the guidelines for the proper administration of court funds. SC Circular No. 13-92 enumerates the guidelines to be followed in making deposits or withdrawals of all collections from bailbonds, rental deposits and other fiduciary collections. It commands that all fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized depository bank.

We reproduce here the relevant provisions of Supreme Court Circular No. 13-92, dated March 1, 1992, thus:

CIRCULAR NO. *13-92*

To : All Executive Judges and Clerks of Court of the Regional Trial Courts and Shari'a District Courts.

Subject: Court Fiduciary Funds

x x x x x x x x x

x x x The following procedure is, therefore, prescribed in the administration of Court Fiduciary Funds:

Guidelines in Making Deposits:

1) Deposits shall be made under a savings account. Current account can also be maintained provided that it is on automatic transfer of account from savings.

2) **Deposits shall be made in the name of the Court.**

3) The **Clerk of Court** shall be the custodian of the Passbook to be issued by the depository bank and shall advise the Executive Judge of the bank's name, branch and savings/ current account number.

Guidelines in Making Withdrawals

1) Withdrawal slips shall be signed by the Executive Judge and countersigned by the Clerk of Court.

2) In maintaining a current account, withdrawals shall be made by checks. Signatories on the checks shall likewise be the Executive Judge and the Clerk of Court.

All collections from bailbonds, rental deposits and other fiduciary collections **shall be deposited immediately** by the Clerk of Court concerned, **upon receipt thereof, with an authorized government depository bank**.

x x x x x x x x x

(Emphasis ours)

In SC Circular No. 5-93, the Land Bank was designated as the authorized government depository.

These circulars were incorporated into the 2002 Revised Manual for Clerks of Court, which provides for the guidelines for the accounting of court funds. To quote the relevant portions of the said Manual:

2.1.2.2. Procedural Guidelines

x x x x x x x x x

c. Court Fiduciary Funds

c.1. Nature of the fund

All collections from bail bonds, rental deposits and other fiduciary collections **shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof**, **with** an authorized government depository bank, **the Land Bank of the Philippines.**

x x x x x x x x x

2.1.2.3. Accounting of Funds

x x x x x x x x x

b. Official Receipts

b.1. Official receipt issued by the Supreme Court shall be used only for collections that will accrue to the National Government.

x x x x x x x x x

b.3. Official receipts shall be issued in strict numerical sequence. xxx xxx xxx

> **Issuance of temporary receipts is prohibited.** (Emphasis ours)

In the case at bar, Balles evidently did not faithfully comply with the foregoing guidelines issued by this Court. The records show that respondent accepted various cash deposits during his tenure as Clerk of Court and, though he was aware that he should immediately deposit the money to the authorized depository bank, he did not. His own evidence shows that he deposited the money supposedly collected on different dates from 1995 to 2004 (inclusive) only on October 25, 2005 and only after this Court issued a Resolution dated August 22, 2005 for Balles to remit the amount of his shortage in the Fiduciary Fund.[12] As for his other infractions, Balles conveniently puts the blame on the Branch Clerks of Court or the City Prosecutor to avoid responsibility for his unauthorized practices and lapses that contributed to the accumulation of his shortages, representing uncollected marriage solemnization fees and confiscated bet money in illegal gambling cases, that should have been for the account of the JDF and SAJF.

Undoubtedly, respondent Balles committed the following serious infractions: (1) he did not deposit on time the court's collections; (2) he failed to regularly submit monthly reports to the Court; (3) the reports, when submitted, contained numerous discrepancies between the amounts reported and the amounts appearing in the official receipts, deposit slips or cash books, among others.

His belated turnover of cash deposited with him is inexcusable and will not exonerate him from liability. Clerks of Court are presumed to know their duty to immediately deposit with the authorized government depositories the various funds they receive, for they are not supposed to keep funds in their personal possession.[13] Even undue delay in the remittances of the amounts

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[12] *Rollo*, p. 61.

[13] *Maricis A. Alenio, Edison F. Amper, Nestor M. Appari, Lily dela Cruz, and Perigrino M. Macrohon, v. Eladia T. Cunting, Clerk of Court IV, and Marie Gay B. Naranjo, Clerk III, Municipal Trial Court in Cities-Office of the Clerk of Court, Zamboanga City*, A. M. No. P-05-1975, July 26, 2007, 528 SCRA 159, 167.

that they collect at the very least constitutes misfeasance. Although respondent Balles had subsequently deposited his cash accountability with respect to the Fiduciary Fund, he was nevertheless liable for failing to immediately deposit the said collections into the court's funds. His belated remittance will not free him from punishment. Even restitution of the whole amount cannot erase his administrative liability. For, clearly, his failure to deposit the said amount upon collection was prejudicial to the court, which did not earn interest income on the said amount or was not able to otherwise use the said funds unlawfully kept by Balles in his possession.

Such conduct raises grave doubts regarding the trustworthiness and integrity of Balles. The failure to remit the funds in due time constitutes gross dishonesty and gross misconduct. It diminishes the faith of the people in the Judiciary. Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service even if committed for the first time.[14]

Under Section 22(a), (b) and (c) of Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, Gross Neglect of Duty, Dishonesty and Grave Misconduct are classified as grave offenses. The penalty for each of these offenses is dismissal even for the first offense.

Hence, for the delay in the remittance of cash collections in violation of Supreme Court Circulars No. 5-93 and No. 13-92 and for his failure to keep proper records of all collections and remittances, Balles is found guilty of Gross Neglect of Duty punishable, even for the first offense, by dismissal.

WHEREFORE, Agerico P. Balles is hereby found *GUILTY* of gross neglect of duty and is ordered *DISMISSED* from the service. Except for leave credits already earned, his retirement benefits are *FORFEITED*, with prejudice to reemployment in

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[14] *Report on the Financial Audit Conducted on the Books of Accounts of Atty. Raquel G. Kho, Clerk of Court IV, Regional Trial Court, Oras, Eastern Samar*, A.M. No. P-06-2177, June 27, 2006, 493 SCRA 44, 49.

any government agency, including government-owned and controlled corporations. The Civil Service Commission is ordered to cancel his civil service eligibility, if any, in accordance with Section 9, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292.[15]

SO ORDERED.

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

Velasco, Jr., J., no part due to prior action in the Office of the Court Administrator.

Austria-Martinez, J., on official leave.

EN BANC

[G.R. No. 126890. April 2, 2009]

UNITED PLANTERS SUGAR MILLING CO., INC., (UPSUMCO), *petitioner, vs.* **THE HONORABLE COURT OF APPEALS, PHILIPPINE NATIONAL BANK (PNB) and ASSET PRIVATIZATION TRUST (APT), AS TRUSTEE OF THE REPUBLIC OF THE PHILIPPINES,** *respondents.*

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[15] "Section 9, Rule XIV of the Civil Service Rules provides that 'the penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of leave credits and retirement benefits, and the disqualification for re-employment in the government service. Further, it may be imposed without prejudice to criminal or civil liability.'" Cited in *Re: Financial Report on the Audit Conducted in the Municipal Circuit Trial Court, Apalit-San Simon, Pampanga*, A.M. No. 08-1-30-MCTC, April 10, 2008, 551 SCRA 79.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; DOCUMENTARY EVIDENCE; PAROL EVIDENCE RULE; DEFINED; CASE AT BAR. —** The parol evidence rule states that generally, when the terms of an agreement have been reduced into writing, it is considered as containing all the terms agreed upon and there can be no evidence of such terms other than the contents of the written agreement. Assuming that the Deed of Assignment failed to accurately reflect an intent of the parties to retroact the effect of condonation to the date of the foreclosure sale, none of the parties, particularly UPSUMCO, availed of its right to seek the reformation of the instrument to the end that such true intention may be expressed. As there is nothing in the text of Deed of Assignment that clearly gives retroactive effect to the condonation, the parol evidence rule generally bars any other evidence of such terms other than the contents of the written agreement, such as evidence that the said Deed had retroactive effect.

2. **CIVIL LAW; SPECIAL CONTRACTS; SALES; ASSIGNMENT OF CREDITS; PERFECTED ASSIGNMENT OF CREDIT, ESTABLISHED IN CASE AT BAR. —** The RTC was correct in observing that with the take-off loans and the corresponding creation of the bank accounts, there existed a mutual creditor-debtor relationship between PNB and UPSUMCO. Such would allow the set-off or compensation of the latter's outstanding obligations to the former from the latter's bank accounts, congruently with Article 1278 of the Civil Code, and as expressly stipulated in the take-off loan agreements. PNB then assigned all its rights, titles and interests over UPSUMCO to APT. As between UPSUMCO and APT or PNB and APT, there no longer existed the mutual creditor-debtor relationship. The RTC thus concluded that since PNB was no longer a debtor of UPSUMCO, the bank no longer had the right to set-off payments from the bank deposits, and that whatever disbursements made by PNB "should not be considered money or funds taken from or belonging to [UPSUMCO]." It is clear though APT had a right to go after the bank deposits of UPSUMCO, in its capacity as the creditor of the latter. The RTC had claimed that by virtue of PNB's Deed of Assignment, there took place conventional subrogation under the Civil Code, whereby APT as the subrogee

was vested with all the rights of the PNB covered by the deed thereto, either against the debtor or against third persons. But in fact, no conventional subrogation could have taken place herein since such requires "the consent of the original parties and of the third person," and there is no evidence that the consent of debtor UPSUMCO was secured when PNB assigned its rights to APT. Moreover, the assignment by PNB to APT arose by mandate of law and not the volition of the parties. Even if conventional subrogation did not take place, there was still a perfected assignment of credit as between PNB and APT, under Article 1624 of the Civil Code. The assignment of a credit includes all the accessory rights, such as a guaranty, mortgage, pledge or preference. By virtue of the assignment of credit, APT was entitled to pursue the rights and remedies granted to the previous creditor, PNB.

3. ID.; OBLIGATIONS OF CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; COMPENSATION; LEGAL AND CONVENTIONAL COMPENSATION, DISTINGUISHED. — It might seem that APT has no right to set-off payments with UPSUMCO for under Article 1279 (1), it is necessary for compensation that the obligors "be bound principally, and that he be at the same time a principal creditor of the other." There is, concededly, no mutual creditor-debtor relation between APT and UPSUMCO. However, we recognize the concept of conventional compensation, defined as occurring "when the parties agree to compensate their mutual obligations even if some requisite is lacking, such as that provided in Article 1282." It is intended to eliminate or overcome obstacles which prevent *ipso jure* extinguishment of their obligations. Legal compensation takes place by operation of law when all the requisites are present, as opposed to conventional compensation which takes place when the parties agree to compensate their mutual obligations even in the absence of some requisites. The only requisites of conventional compensation are (1) that each of the parties can dispose of the credit he seeks to compensate, and (2) that they agree to the mutual extinguishment of their credits. The right of PNB to set-off payments from UPSUMCO arose out of conventional compensation rather than legal compensation, even though all of the requisites for legal compensation were present as between those two parties. The determinative factor is the mutual agreement between PNB and UPSUMCO to set-off payments. Even without an express

agreement stipulating compensation, PNB and UPSUMCO would have been entitled to set-off of payments, as the legal requisites for compensation under Article 1279 were present. As soon as PNB assigned its credit to APT, the mutual creditor-debtor relation between PNB and UPSUMCO ceased to exist. However, PNB and UPSUMCO had agreed to a conventional compensation, a relationship which does not require the presence of all the requisites under Article 1279. And PNB too had assigned all its rights as creditor to APT, including its rights under conventional compensation. The absence of the mutual creditor-debtor relation between the new creditor APT and UPSUMCO cannot negate the conventional compensation. Accordingly, APT, as the assignee of credit of PNB, had the right to set-off the outstanding obligations of UPSUMCO on the basis of conventional compensation before the condonation took effect on 3 September 1987.

VELASCO, JR., ***J., concurring opinion:***

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; INTERPRETATION OF CONTRACTS; AN AGREEMENT MUST BE CONSTRUED AND ENFORCED ACCORDING TO THE TERMS EMPLOYED. —** Settled is the principle that an agreement must be construed and enforced according to the terms employed and a court has no right to interpret the agreement as meaning something different from what the parties intended as expressed by the language they saw fit to employ. A court is not at liberty to revise, modify, or distort an agreement while professing to construe it, and has no right to make a different contract from that actually entered into by the parties. x x x Courts cannot make for the parties better or more equitable agreements that they themselves have been satisfied to make, or rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or, by construction, relieve one of the parties from terms which s/he voluntarily consented to, or impose on him/her those s/he did not. If the parties to a contract adopt a provision which contravenes no principle of public policy and contains no element of ambiguity, the courts have no right, by a process of interpretation, to relieve one of them from disadvantageous terms which s/he has actually made. Parties may make their own bargains and they should be

held to the terms of their agreement. The courts will not interfere with the party's contractual obligations, as every person is presumed to be capable of managing his own affairs, and whether his bargains are wise or unwise is not ordinarily a legitimate subject of inquiry.

2. **ID.; ID.; ID.; CONTRACT OF CONDONATION, HOW CONSTRUED; CASE AT BAR. —** Article 1378 of the Civil Code provides that when it is absolutely impossible to settle doubts by the rules established in the preceding articles, and the doubts refer to incidental circumstances of a gratuitous contract, the least transmission of rights and interests shall prevail. If the contract is onerous, the doubt shall be settled in favor of the greatest reciprocity of interests. If the doubts are cast upon the principal object of the contract in such a way that it cannot be known what may have been the intention or will of the parties, the contract shall be null and void. Since condonation is essentially an act of generosity on the part of the APT, then the least transmission of rights and interests should be applied. Thus, the condonation of the deficiency amount can only refer to the take-off loans and not to the operational loans which were not even covered by the mortgage.

CARPIO, ***J., dissenting opinion:***

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACT OF CONDONATION AND CONTRACT OF COMPROMISE, DISTINGUISHED. —** Under Article 1270 of the Civil Code, a contract of condonation is **essentially gratuitous** where no equivalent is received for the benefit given. This is not true of the Deed of Assignment. Under that contract, APT agreed to free UPSUMCO from paying "any deficiency amount" after the foreclosure **in exchange** for UPSUMCO's waiver of its right to redeem the foreclosed properties. These mutual concessions gave rise to mutual benefits by allowing APT, on the one hand, to promptly dispose of the foreclosed properties (as it did sell them to Universal Robina Sugar Milling Corporation [URSUMCO] on 29 September 1987, a little over a month after the foreclosure on 27 August 1987) and freeing UPSUMCO, on the other hand, from its obligation to pay the deficiency amount after the foreclosure. The Deed of Assignment is thus a **contract of compromise** under which UPSUMCO

and APT made reciprocal concessions to effect an uncontested extrajudicial foreclosure and avoid the long-drawn litigation which judicial foreclosure entails.

2. **ID.; ID.; ORDINARY COMMERCIAL CONTRACT; THE TERMS THEREOF ARE THE LAW BETWEEN THE PARTIES; CASE AT BAR. —** [W]hat APT and UPSUMCO entered into was an ordinary commercial contract signed after vigorous efforts on PMO's part to obtain UPSUMCO's assent to the deal. In fact, APT merely stepped into the shoes of PNB which extended the commercial loans to UPSUMCO. As such, the terms of the contract are the law between the parties. That a party, after freely entering into a contract, finds on hindsight that the terms are overly generous or one-sided is no reason for the courts to excuse that party, and those bound by it under special circumstances, from fulfilling their obligations. On the contrary, the courts are obliged to give effect to the agreement.

3. **REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; DOCUMENTARY EVIDENCE; PAROL EVIDENCE RULE; EXCEPTIONS. —** An an evidentiary rule on proving the terms of agreements, the Parol Evidence Rule under Section 9, Rule 130 of the Revised Rules on Evidence forbids the introduction of evidence on the terms of the agreement outside of the written contract. This rule was devised to give stability to written agreements and to remove the temptation and possibility of perjury. However, like other rules of procedure, the parol evidence rule is not ironclad but admits of several exceptions. Thus, Section 9, Rule 130 itself provides: "However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading: (a) An intrinsic ambiguity, mistake or imperfection in the written agreement; (b) **The failure of the written agreement to express the true intent and agreement of the parties thereto;** (c) The validity of the written agreement; or (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement."

APPEARANCES OF COUNSEL

Sabig Vinco & Sabig Law Office and *Lentejas Agravante Domingo and Domingo* for petitioner.
Reginald I. Bacolor for Privatization & Management Office.

R E S O L U T I O N

TINGA, *J.*:

In 1987, the Republic of the Philippines lost around 1.5 Billion Pesos after it had waived its right to collect on an outstanding indebtedness from petitioner, by virtue of a so-called "friendly foreclosure agreement" that ultimately was friendly only to petitioner. The efficacy of such waiver is now beyond dispute, but the Court has the opportunity to regretfully mitigate the losses sustained by the government through means no more exotic than insisting upon the interpretation of contracts according to the plain terms expressed therein.

I.

The following statement of facts are drawn from the Decision of the Court of Appeals Tenth Division dated 29 February 1996, as well as from the Separate Opinion to the Resolution of this Court dated 11 July 2007.

Petitioner United Planters Sugar Milling Co. (UPSUMCO) was engaged in the business of milling sugar. In 1974, as UPSUMCO commenced operations, it obtained a set of loans from respondent Philippine National Bank (PNB). These loans, referred herein as the "takeoff loans," were intended to finance the construction of a sugar milling plant. The takeoff loans were embodied in a Credit Agreement dated November 5, 1974, which was thrice restructured through Restructuring Agreements dated 24 June and 10 December 1982, and 9 May 1984.[1] The

[1] See *rollo*, p. 820. In addition, on 14 February 1984, PNB assigned 30% of its credit with UPSUMCO to the Philippine Sugar Corporation (PHILSUCOR), in exchange for sugar bonds. *Id*., at 821-822.

takeoff loans were secured a real estate mortgage over two parcels of land[2] where the milling plant stood and chattel mortgages over the machineries and equipment. As another condition to the takeoff loans, UPSUMCO agreed to "open and/or maintain a deposit account with the [PNB] and the bank is authorized at its option to apply to the payment of any unpaid obligations of the client any/and all monies, securities which may be in its hands on deposit."[3]

Between 1984 to 1987, UPSUMCO contracted another set of loans from PNB, these ones oriented towards financing the operations of the Company. The second set of loans, referred hereinafter as "operational loans," also contained setoff clauses relative to the application of payments from UPSUMCO's bank accounts. They were likewise secured by pledge contracts whereby UPSUMCO assigned to PNB all its sugar produce for PNB to sell and apply the proceeds to satisfy the indebtedness arising from the operational loans.

The rulings of the lower courts, as well as the petition itself, are not clear as to the amount extended by way of takeoff loans by PNB to UPSUMCO. However, the Court of Appeals did enumerate the following transactions consisting of the operational loans, to wit:

(1) Trust Receipts dated August 26, 1987; February 5, 1987; and July 10, 1987;

(2) Deed of Assignment By Way of Payment dated November 16, 1984 (Exh. 3 [PNB]; Exh. 12 [APT]; Record, p. 545);

(3) Two (2) documents of Pledge both dated February 19, 1987;

(4) Sugar Quedans (Exh. 13 to 16; Record, pp. 548 to 551);

(5) Credit Agreements dated February 19, 1987 (Exhs. "2" [PNB] & "4" [APT]; Record, pp. 541-544) and April 29, 1987 (Exh. "11" [APT]; Record, pp. 314-317).

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[2] Covered by Transfer Certificates of Title Nos. T-16701 and T-16700.

[3] *Rollo*, p. 161.

(6) Promissory Notes dated February 20, 1987 (Exh. "17"; Record, p. 573); March 2, 1987 (Exh. "18"; Record, p. 574); March 3, 1987 (Exh. "19"; Record, p. 575); March 27, 1987; (Exh. "20"; Record, p. 576); March 30, 1987 (Exh. "21"; Record, p. 577); April 7, 1987 (Exh. "22"; Record, p. 578); May 22, 1987 (Exh. "23"; Record, p. 579); and July 30, 1987 (Exh. "24"; record p. 580).[4]

On 27 February 1987, through a Deed of Transfer,[5] PNB assigned to the Government its "rights, titles and interests" over UPSUMCO, among several other assets.[6] The Deed of Transfer acknowledged that said assignment was being undertaken "in compliance with Presidential Proclamation No. 50."[7] The Government subsequently transferred these "rights, titles and interests" over UPSUMCO to the respondent Asset and Privatization Trust (APT).[8]

Thereafter, it is alleged that APT and UPSUMCO entered into talks concerning the disposal of UPSUMCO's mortgaged assets. The Decision stated that the parties then agreed to an "uncontested or 'friendly foreclosure' of these mortgaged assets, in exchange for UPSUMCO's waiver of its right of redemption."[9] Soon, a Petition for Extrajudicial Foreclosure Sale dated 28 July 1987 was filed with the *Ex-Officio* Regional Sheriff of Dumaguete City, with PNB identified therein as "Mortgagee" and APT as "Assignee and Transferee of PNB's rights, titles and interests."[10] PNB and APT manifested in the petition their intent to foreclose on the real estate and chattel mortgages which notably were executed to secure the take-off loans. The foreclosure

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[4] *Rollo*, p. 170.

[5] Records, pp. 328-337.

[6] See *id.* at 337.

[7] *Id.* at 328.

[8] *Rollo*, p. 822.

[9] *Id.* at 823.

[10] See Folder of Exhibits Vol. II for the Plaintiff, the document marked as "L".

sale was conducted on 27 August 1987, whereby APT purchased the auctioned properties for ₱450 Million.

Seven (7) days after the foreclosure sale, or on 3 September 1987, UPSUMCO executed a Deed of Assignment[11] wherein it assigned to APT its right to redeem the foreclosed properties, in exchange for or in consideration of APT "condoning any deficiency amount it may be entitled to recover from the Corporation under the Credit Agreement dated November 5, 1974, and the Restructuring Agreements[s] dated June 24 and December 10, 1982, and May 9, 1984, respectively, executed between [UPSUMCO] and PNB…" On even date, the Board of Directors of UPSUMCO agreed to a Board Resolution authorizing Joaquin Montenegro, its President, to enter into the said Deed of Assignment.[12]

Notwithstanding this Deed of Assignment, UPSUMCO later filed a complaint[13] dated 10 March 1989 for sum of money and damages against PNB and APT before the Regional Trial Court (RTC) of Bais City. It was alleged therein that PNB and APT had illegally appropriated funds belonging to UPSUMCO, through the following means: (1) withdrawals made from the bank accounts opened by UPSUMCO beginning 27 August 1987 until 12 February 1990; (2) the application of the proceeds from the sale of the sugar of UPSUMCO beginning 27 August 1987 until 4 December 1987; (3) the payment of the funds of UPSUMCO with PNB for the operating expenses of the sugar mill after 3 September 1987, allegedly upon the instruction of APT with the consent of PNB.

This complaint would be amended one month after it was filed. In the original complaint, it was alleged that "after September 3, 1987, [UPSUMCO] is entitle[d] to all the funds it deposited or being held by PNB in all its branches."[14] The original complaint

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[11] Records, pp. 743-744.

[12] *Id.* at 744.

[13] Records, pp. 18-25.

[14] *Id.* at 21.

also pinpointed 3 September 1987 as the general reckoning date after which the assets of UPSUMCO would be beyond reach of application by APT or PNB. However, petitioners then filed an amended complaint[15] where all citations of "3 September 1987" as a reference point were deleted.[16] It was claimed, this time, in the amended complaint that UPSUMCO was released from its rights and obligations due PNB and APT "after the foreclosure by PNB/APT."[17] Notably, several of the transactions in question had occurred after the foreclosure sale but before the Deed of Assignment, or within the dates 28 August to 3 September 1987.

Both APT and PNB claimed in their respective comments that the extrajudicial foreclosure sale was unconditional and mandatory under Presidential Decree No. 385.[18] They also specifically denied the allegation regarding the execution of the 3 September 1987 Deed of Assignment due to "lack of knowledge or information sufficient to form a belief as to the truth thereof."[19] PNB further submitted that the transfer of the deposits in the name of APT was valid, "since PNB has all the prerogatives over the same after foreclosure on August 27, 1987 and a deficiency claim arose."[20]

APT likewise filed a counterclaim, seeking the recovery of over 1.6 Billion Pesos from UPSUMCO. The amount was apparently determined with the calculation that there was no condonation at all in favor of UPSUMCO, and said sum represented the total amount of indebtedness less the 450 Million Pesos for which the foreclosed properties were sold.

During the course of trial, APT (though not PNB) would eventually admit the existence of the 3 September 1987 Deed

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[15] See "Amended Complaint," Records, pp. 43-50.

[16] *Id*. at 45, 46, 47, 49.

[17] *Id*. at 46.

[18] See *id*. at 102-103, 153.

[19] See *id*. at 103, 153.

[20] *Id*. at 154.

of Assignment.[21] However, APT argued that such Deed could not retroact to 27 August 1987,[22] contrary to the claim of UPSUMCO, citing Section 7, Rule 130 of the Rules of Court.[23]

The action was eventually decided by the RTC in favor of UPSUMCO. The RTC Decision[24] is rooted on the following assumptions:

(1) The obligation of UPSUMCO with PNB under the initial creditor-debtor relation was "novated by the subrogation of creditors, *i.e.,* [APT]."[25]

(2) The bank accounts maintained by UPSUMCO with PNB created a creditor-debtor relation, in addition to the same relation (albeit in reversed identities) between the same parties by reason of the loan agreements. However, whatever right PNB had to set-off the outstanding indebtedness from UPSUMCO's bank accounts ceased the moment PNB assigned its rights to APT on 27 February 1987. Thus, only APT could be considered as the foreclosing creditor.[26]

(3) Assuming there remained any deficiency claim in favor of PNB or APT, the same was condoned by the Deed of Assignment dated 3 September 1987. The RTC considered APT's argument that the Deed of Assignment could not be deemed to retroact to 27 August 1987. It ruled, however, that "[a]s of the date of the foreclosure on August 27, 1987, [UPSUMCO] was a creditor as to its deposits and proceeds of sugar sale with the defendant PNB. Neither [PNB] nor [APT] cannot [*sic*] simply

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[21] *Id.* at 717.

[22] *Id.* at 721-727.

[23] Otherwise known as the parol evidence rule. The provision reads in part: "Evidence of written agreements — when the terms of an agreement have been reduced to writing, it is to be considered as containing all such terms, and, therefore, there can be, between the parties and their successors-in-interest, no evidence of the terms of the agreement other than the contents of the writing."

[24] Penned by Judge Ismael O. Baldado.

[25] Records, p. 749.

[26] See *id.* at 749-751.

appropriate the things of plaintiff. If at all, such deficiency claim did exist and subsist, foreclosing creditor should have initiated proper actions to recover the same."[27]

The RTC ordered thus, as follows:

1. Both defendant Philippine National Bank and Asset Privatization Trust are ordered jointly and severally to pay to plaintiff the following:

a) The sum of FORTY-SIX MILLION NINE HUNDRED EIGHTY-SEVEN THOUSAND FOUR HUNDRED FIFTY-NINE & 49/100 (₱46,987,459.49) PESOS, representing amount transferred by defendant PNB to APT in credit memo dated August 27, 1987 (Exh. "QQQ"), plus twelve percent (12%) interest per annum computed from date of filing of the complaint;

b) The sum of FOURTEEN MILLION THREE HUNDRED SIXTEEN THOUSAND FIVE HUNDRED NINETY-THREE & 29/100 (₱14,316,593.29) PESOS, representing the total swum (sic) of money withdrawn from Savings Account Nos. 5176994, 5188305, 5192639, 5197762, and 5208575 of plaintiff and transferred by defendant PNB to defendant APT as shown in debit memo dated August 27, 1987 (Exh. "WWW-1"), plus twelve percent (12%) interest per annum computed from date of filing of the complaint;

c) The sum of EIGHTEEN MILLION EIGHT HUNDRED NINETY-SIX THOUSAND SEVEN HUNDRED FIFTY-THREE & 63/100 (₱18,896,753.63) PESOS, representing the proceeds of the sale of plaintiff's sugar credited by defendant PNB in favor of defendant APT as shown in credit memo dated August 28, 1987 (Exh. "XX"), plus twelve percent (12%) interest per annum computed from date of filing of the complaint;

d) the sum of THREE MILLION THREE HUNDRED TWENTY-THREE THOUSAND SIX HUNDRED FORTY-SEVEN & 48/100 (₱3,323,647.48) PESOS, representing proceeds of sale of plaintiff's sugar which was credited by defendant PNB to the account of defendant APT as shown by a credit memo dated September 4, 1987 (Exh. "YY"), plus twelve percent (12%) interest per annum computed from date of filing of the complaint;

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[27] *Id.* at 751-752.

e) the sum of FOUR MILLION NINE THOUSAND FOUR HUNDRED THREE & 37/100 (₱4,009,403.37) PESOS, representing the proceeds of sale of plaintiff's sugar credited by defendant PNB in favor of defendant APT as shown by a credit memo dated September 15, 1987 (Exh. "ZZ"), plus twelve percent (12%) interest per annum computed from date of filing of the complaint;

f) the sum of THREE HUNDRED FORTY-SIX THOUSAND FIVE HUNDRED FIRTY (sic) NINE & 83/100 (₱346,559.83) PESOS, representing final differential of the sale of plaintiff's sugar for the year 1985-86 which was credited by defendant PNB in favor or (sic) defendant APT as shown in a credit memo dated December 4, 1987 (Exh. "AAA"), plus twelve percent (12%) interest per annum computed from date of filing of the complaint;

g) the sum of ONE MILLION (₱1,000,000.00) PESOS, representing partial payments to the 6,399.89 piculs of export "A" sugar credited by defendant PNB in favor of defendant APT as shown by a credit memo dated December 8, 1987, plus interest at twelve (12%) percentum per annum computed from date of filing of the complaint (Exh. "BBB").

2). Defendant Philippine National Bank is ordered to pay singly to plaintiff the following:

a) the sum of ELEVEN MILLION EIGHT HUNDRED THIRTY-FOUR THOUSAND FOUR HUNDRED NINETY-EIGHT & 45/100 (₱11,834,498.45) PESOS, corresponding to the payment made by defendant PNB to the Philippine Sugar Corporation as shown in Official Receipt No. 0160 dated September 2, 1987 (Exh. "LLL"), plus interest at twelve percent (12%) per annum computed from date of filing of the compliant (sic);

b) the sum of TWENTY NINE MILLION FIVE HUNDRED SEVENTY-TWO THOUSAND NINE HUNDRED FORTY-SIX & 50/100 (₱29,572,946.50) PESOS, corresponding to payment made by defendant PNB to Philippine Sugar Corporation as shown in Official Receipt No. 0109 dated October 20, 1987 (Exh. "LLL-1"), plus interest at twelve percent (12%) computed from date of filing of the complaint;

c) the sum of THREE HUDRED FIRTY (sic) TWO THOUSAND EIGHT HUNDRED SIXTY-NINE & 28/100 (₱352,869.28) PESOS, corresponding to the credit balance as of November 26, 1986 of plaintiff's Account No. 0120-011088-702 with defendant PNB (Escolta Branch), plus twelve percent (12%) interest per annum computed from date of the filing of the complaint;

d) the sum of THIRTY-FOUR THOUSAND TWENTY-EIGHT % (sic) 29/100 (₱34,028.29) PESOS, representing balance of deposits of Savings Account Nos. 5176994, 5188305, 5192639, 5197762, 5208578 of plaintiff with defendant PNB as of February 13, 1990 plus twelve percent (12%) interest per annum computed from date of filing of the complaint.

3. Defendant Asset Privatization Trust is hereby ordered to pay singly to plaintiff the following:

e) the sum of THREE HUNDRED NINETY-SEVEN THOUSAND NINE HUNDRED SEVENTY-SIX & 11/100 (₱397,976.11) PESOS, representing the total balance of plaintiff's Savings Account No. 1196 with the Rural Bank of Bais, Inc., and transferred to account of defendant APT plus twelve (12%) percent per annum computed from date of filing of the complaint;

f) the sum of FIFTEEN THOUSAND NINE HUNDRED EIGHTY-SEVEN & 77/100 (₱15,987.77) PESOS, representing the total balance of plaintiff's Savings Account No. 3642 with the Rural Bank of Manjuyod, Inc., which was transferred to defendant APT, plus interest at twelve percent (12%) per annum computed from date of filing of the complaint;

g) the sum of FIVE MILLION THREE HUDNRED (sic) FIVE THOUSAND SEVEN HUNDRED FIFTY-SIX & 22/100 (₱5,305,756.22) PESOS, representing the expenses incurred by plaintiff for the maintenance and operations of the sugar central after September 3, 1987, plus interest at twelve (12%) percent annum computed from date of filing of the complaint.

4. Defendant Philippine National Bank and Asset Privatization Trust are hereby ordered to pay jointly and severally to pay attorney's

fees the sum equivalent of twenty (20%) percent of the total sum they are ordered to pay jointly and severally;

5. Defendant Philippine National Bank is hereby ordered to pay singly [*sic*] attorney's fees equivalent to twenty (20%) percent of the total sum it is ordered to pay singly;

6. Defendant Asset Privatization Trust is hereby ordered to pay singly [sic] attorney's fees equivalent to twenty (20%) percent [of] the total sum it is ordered to pay singly;

7. Both defendants Asset Privatization Trust and Philippine National Bank are ordered to pay jointly and severally to the plaintiff exemplary damages in the amount of FIVE HUNDRED THOUSAND (₱500,000.00) PESOS;

8. Both defendants are hereby ordered jointly and severally to pay costs."

Respondents appealed the RTC decision to the Court of Appeals, arguing in main that the trial court erred in failing to hold UPSUMCO liable for the credit agreements not covered by the Deed of Assignment; and for not finding the application of the proceeds in UPSUMCO's bank accounts as in accordance with the loan documents executed by UPSUMCO. In its Decision, the Court of Appeals found that only the "take-off" loans and not the operational loans were condoned by the Deed of Assignment. The appellate court explained that such fact was made plain by the Deed of Assignment itself, which expressly stipulated the particular loan agreements which were covered therein.[28] As such, the Court of Appeals concluded that APT was "entitled to have the funds from UPSUMCO's savings accounts with [PNB] transferred to its own account, to the extent of UPSUMCO's remaining obligations [under the operational loans], less the amount condoned in the Deed of Assignment and the ₱450,000,000.00 proceeds of the foreclosure."[29] At the same time, the Court of Appeals ordered a remand of the case to the RTC for computation of the parties'

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[28] *Rollo*, pp. 169-170.

[29] *Id*. at 175.

remaining outstanding balances. Accordingly, the Court of Appeals disposed of the petition in this manner:

WHEREFORE, the appealed decision is hereby SET ASIDE and judgment is herein rendered declaring that the subject Deed of assignment has NOT condoned all of UPSUMCO's obligations to APT as assignee of PNB.

To determine how much APT is entitled to recover on its counterclaim, it is hereby required to render an accounting before the Regional Trial Court of the total payments made by UPSUMCO on its obligations including the following amounts:

(1) the sum seized from it by APT whether in cash or in kind (from UPSUMCO's bank deposits as well as sugar and molasses proceeds):

(2) the total obligations covered by the following documents:

(a) Credit Agreement dated November 5, 1974 (Exh. "1": Record, p. 528); and

(b)

(c) The Restructuring Agreements dated: (i) June 24, 1982. (ii) December 10, 1982, and (iii) May 9, 1984; and

(3) the ₱450,000,000.00 proceeds of the foreclosure.

Should there be any deficiency due APT after deducting the foregoing amounts from UPSUMCO's total obligation in the amount of ₱2,137,076,433.15, the latter is hereby ordered to pay the same. However, if after such deduction there should be any excess payment, the same should be turned over to UPSUMCO.

The Regional Trial Court is hereby directed to receive APT's accounting and thereafter, to render the necessary order for the proper disposal of this case in accordance with the foregoing findings and disposition.

Costs against appellees.

SO ORDERED.[30]

The Court of Appeals was in turn reversed by this Court in a Decision dated 28 November 2006. The Court then held that

[30] *Rollo*, p. 177.

(1) both "operational loans" and "take-off loans" had been condoned by the Deed of Assignment; and (2) the Deed of Assignment dated 3 September 1987 had retroacted to the date of the foreclosure sale on 28 August 1987. Respondents filed a Motion for Reconsideration, but the Court, by a 3-2 vote, reaffirmed its earlier decision through a Resolution dated 11 July 2007. However, in the 2007 Resolution, the Court acknowledged that only the "take-off loans" had been condoned by the Deed of Assignment. Nonetheless, it was held that respondents had failed to establish that there still remained outstanding obligations due from UPSUMCO with respect to the take-off loans.

Respondents filed a Second Motion for Reconsideration. After due deliberation, the Court *en banc* accepted the referral to it of the Second Motion for Reconsideration.

II.

This much is clear. The Deed of Assignment condoned only the take-off loans, and not the operational loans. The Deed of Assignment in its operative part provides, thus:

> That United Planter[s] Sugar Milling Co., Inc. (the "Corporation") — (pursuant to a resolution passed by its board of Directors on September 3, 1987, and confirmed by the Corporation's stockholders in a stockholders' Meeting held on the same (date), for and in consideration of the Asset Privatization Trust ("APT") **condoning any deficiency amount it may be entitled to recover from the Corporation under the Credit Agreement dated November 5, 1974 and the Restructuring Agreement[s] dated June 24 and December 10, 1982, and May 9, 1984, respectively, executed between the Corporation and the Philippine National Bank ("PNB"),** which financial claims have been assigned to APT, through the National Government, by PNB, **hereby irrevocably sells, assigns and transfer to APT its right to redeem the foreclosed real properties** covered by Transfer Certificates of Title Nos. T-16700 and T-16701.
>
> IN WITNESS WHEREOF, the Corporation has caused this instrument to be executed on its behalf by Mr. Joaquin S. Montenegro, thereunto duly authorized, this 3rd day of September, 1987.[31]

[31] *Supra* note 11. Emphasis supplied.

Whereas, UPSUMCO's Board Resolution of 3 September 1987, authorizing its President Joaquin Montenegro to sign the Deed of Assignment, reads in full:

> RESOLVED, That **in consideration of the Asset Privatization Trust ("APT") condoning any deficiency amount it may be entitled to recover from the Corporation after having foreclosed the real estate and chattel mortgages assigned to APT, through the National Government, by the Philippine National Bank ("PNB"), which mortgages were executed in favor of PNB by the Corporation to secure its obligations under the Credit Agreement dated November 5, 1974 and the Restructuring Agreements dated June 24 and December 10, 1982, and May 9, 1984, respectively, executed by the Corporation and PNB**, the Corporation is hereby authorized to irrevocably sell, assign, and transfer to APT **the Corporation's right to redeem the foreclosed real properties covered by Transfer Certificates of Title Nos. T-16700 and T-16701**;
>
> RESOLVED, Further that Mr. Joaquin S. Montenegro, the President-Director of the Corporation, be and is hereby authorized for and in behalf of the Corporation to make, sign, execute and/or deliver any and all such agreements, undertakings, or other documents, as well as to perform any and all such acts as may be necessary to implement the foregoing resolution;
>
> RESOLVED, FINALLY That all actions taken by Mr. Joaquin S. Montenegro pursuant to the foregoing resolution be, and the same are hereby confirmed and ratified to be binding on this Corporation.[32]

This notwithstanding, the RTC Decision was based on the premise that all of UPSUMCO's loans were condoned in the Deed of Assignment. In contrast, the Court of Appeals acknowledged that only the take-off loans were condoned, and thus ruled that APT was entitled to have the funds from UPSUMCO's accounts transferred to its own account "to the extent of UPSUMCO's remaining obligation, less the amount condoned in the Deed of Assignment and the ₱450,000,000.00 proceeds of the foreclosure."[33]

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[32] *Rollo*, pp. 837-838. Emphasis supplied.

[33] *Id.* at 175.

The challenged acts of respondents all occurred on or after 27 August 1987, the day of the execution sale. UPSUMCO argues that after that date, respondents no longer had the right to collect monies from the PNB bank accounts which UPSUMCO had opened and maintained as collateral for its operational and take-off loans. UPSUMCO is wrong. After 27 August 1987, there were at least two causes for the application of payments from UPSUMCO's PNB accounts. The first was for the repayment of the operational loans, which were never condoned. The second was for the repayment of the take-off loans which APT could obtain until 3 September 1987, the day the condonation took effect.

A.

The error of the Court's earlier rulings, particularly the Resolution dated 11 July 2007, was in assuming that the non-condonation of the operational loans was immaterial to the application of payments made in favor of APT from UPSUMCO's PNB accounts that occurred after 27 August 1987. For as long as there remained outstanding obligations due to APT (as PNB's successor-in-interest), APT would be entitled to apply payments from the bank accounts of PNB. That right had been granted in favor of PNB, whether on account of the take-off loans or the operational loans.

Petitioner filed with the RTC the complaint which alleged that "among the conditions of the 'friendly foreclosure' are: (A) That all the accounts of [United Planters] are condoned, including the JSS notes at the time of the public bidding."[34] It was incumbent on petitioner, not respondents, to prove that particular allegation in its complaint. Was petitioner able to establish that among the conditions of the "friendly foreclosure" was that "all its accounts are condoned"? It did not, as it is now agreed by all that only the take-off loans were condoned.

This point is material, since the 2007 Resolution negated the finding that only the take-off loans were condoned by faulting

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[34] See p. 4, Amended Complaint (RTC records, p. 46).

respondents for failing to establish that there remained outstanding operational loans on which APT could apply payments from UPSUMCO's bank accounts. By the very language of the Deed of Assignment, it was evident that UPSUMCO's allegation in its complaint that all of its accounts were condoned was not proven. Even if neither PNB nor APT had filed an answer, there would have been no basis in fact for the trial court to conclude that all of UPSUMCO's loans were condoned (as the RTC in this case did), or issue reliefs as if all the loans were condoned (as the 2007 Resolution did).

As noted earlier, APT had the right to apply payments from UPSUMCO's bank accounts, by virtue of the terms of the operational loan agreements. Considering that UPSUMCO was spectacularly unable to repay the take-off loans it had earlier transacted, it simply beggars belief to assume that it had fully paid its operational loans. Moreover, APT had the right to obtain payment of the operational loans by simply applying payments from UPSUMCO's bank accounts, without need of filing an action for collection with the courts. The bank accounts were established precisely to afford PNB (and later APT) extrajudicial and legal means to obtain repayment of UPSUMCO's outstanding loans without hassle.

B.

There is no question that the Deed of Assignment condoned the outstanding take-off loans of UPSUMCO due then to APT. The Deed of Assignment was executed on 3 September 1987, as was the UPSUMCO Board Resolution authorizing its President to sign the Deed of Assignment. However, despite the absence of any terms to that effect in the Deed of Assignment, it is UPSUMCO's position that the condonation actually had retroacted to 27 August 1987. The previous rulings of the Court unfortunately upheld that position.

It is easy to see why UPSUMCO would pose such an argument. It appears that between 27 August 1987 and 3 September 1987, APT applied payments from UPSUMCO's bank accounts in the amount of around 80 Million Pesos. UPSUMCO obviously desires the return of the said amount. But again, under the terms

of the loan agreements, APT as successor-in-interest of PNB, had the right to seize any amounts deposited in UPSUMCO's bank accounts as long as UPSUMCO remained indebted under the loan agreements. Since UPSUMCO was released from its take-off loans only on 3 September 1987, as indicated in the Deed of Assignment, then APT's application of payments is perfectly legal.

Hence, UPSUMCO has strained to argue that notwithstanding the absence of any stipulation in any agreement to the effect, the take-off loans were actually condoned as of 27 August 1987. In fact, in its original complaint, UPSUMCO had effectively admitted that any application of payments made between 27 August and 3 September 1987 were valid, when it originally alleged infirmity only as to the post-September 3 payments. The subsequent amendment of the complaint should count in UPSUMCO's favor, yet it does evince that 27 August 1987 as the date of condonation is hardly the instinctive position.

The earlier rulings of the Court were predicated on a finding that there was a "friendly foreclosure" agreement between APT and UPSUMCO, whereby APT agreed to condone all of UPSUMCO's outstanding obligations in exchange for UPSUMCO's waiver of its right to redeem the foreclosed property. However, no such agreement to that effect was ever committed to writing or presented in evidence. The written agreement actually set forth was not as contended by UPSUMCO. For one, not all of the outstanding loans were condoned by APT since the take-off loans were left extant. For another, the agreement itself did not indicate any date of effectivity other than the date of the execution of the agreement, namely 3 September 1987.

It is argued that the use of the word "any" in "any deficiency amount" sufficiently establishes the retroactive nature of the condonation. The argument hardly convinces. The phrase "any deficiency amount" could refer not only to the remaining deficiency amount after the 27 August foreclosure sale, but also to the remaining deficiency amount as of 3 September 1987, when the Deed of Assignment was executed and after APT had exercised its right as creditor to apply payments from

petitioner's PNB accounts. The Deed of Assignment was not cast in intractably precise terms, and both interpretations can certainly be accommodated.

It is in that context that the question of parol evidence comes into play. The parol evidence rule states that generally, when the terms of an agreement have been reduced into writing, it is considered as containing all the terms agreed upon and there can be no evidence of such terms other than the contents of the written agreement.[35] Assuming that the Deed of Assignment failed to accurately reflect an intent of the parties to retroact the effect of condonation to the date of the foreclosure sale, none of the parties, particularly UPSUMCO, availed of its right to seek the reformation of the instrument to the end that such true intention may be expressed.[36] As there is nothing in the text of Deed of Assignment that clearly gives retroactive effect to the condonation, the parol evidence rule generally bars any other evidence of such terms other than the contents of the written agreement, such as evidence that the said Deed had retroactive effect.

It is argued that under Section 9, Rule 130, a party may present evidence to modify, explain or add to the terms of the written agreement if it is put in issue in the pleading, "[t]he failure of the written agreement to express the true intent and the agreement of the parties thereto."

Petitioner did not exactly state in its Amended Complaint that the condonation effected in the Deed of Assignment had retroacted to the date of the foreclosure sale. What petitioner contended in its amended complaint was that the Deed of Assignment "released and discharged plaintiff from any and all obligations due the defendant PNB and defendant APT"; that "after the foreclosure by PNB/APT plaintiff is entitled to all the funds it deposited or being held by PNB in all its branches"; and that "among the conditions of the 'friendly foreclosure'

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[35] See REVISED RULES OF COURT, Rule 130, Sec. 9.

[36] See CIVIL CODE, Art. 1359.

are that all the accounts of the plaintiff are condoned." It remains unclear whether petitioner had indeed alleged in its Amended Complaint that the Deed of Assignment executed on 3 September 1987 had retroactive effect as of the date of the foreclosure sale, or on 27 August 1987. If petitioner were truly mindful to invoke the exception to the parol evidence rule and intent on claiming that the condonation had such retroactive effect, it should have employed more precise language to that effect in their original and amended complaints.

But even assuming that petitioner in the Amended Complaint did put in issue in its pleading that the condonation effected in the Deed of Assignment had retroacted to 27 August 1987, it still was incumbent upon it to establish such claim through evidence. There is simply no evidence that unequivocally establishes such a retroactive effect. Blame is pinned on respondents for supposed failure to object to the presentation of parol evidence during the trial, but it is not pointed out what parol evidence exactly did petitioner present to establish the retroactive effect of the condonation. The only submissions that emanated from petitioner are the bare allegations in the amended complaint. Allegations are evidence. So there was no evidence to be objected to.

It would be unsurprising if in truth, these transfers were undertaken by PNB and APT on 27 and 28 August 1987 in order to alleviate the financial injury they knew would be sustained with the impending execution of the Deed of Assignment, a document designed to make the Government bear the loss sustained by a private corporation. As a result of the consummation of these transactions, the outstanding indebtedness of UPSUMCO would have been reduced even prior to the condonation, and in the end, the losses on paper sustained by the Government were reduced by ₱78 Million, from over ₱2.1 Billion to ₱1.6 Billion. The benefit to the Government was relatively miniscule, but it was benefit nonetheless.

IV.

Let us discuss briefly by what right APT could have applied payments from the bank accounts maintained by UPSUMCO with the PNB, under the operational loans and the take-off

loans. As earlier stated, the credit agreement that established the take-off loans required UPSUMCO to open a deposit account with PNB, from which the bank was entitled to apply to the payment of any unpaid obligations of any monies, securities which may have been deposited under the account.[37] As found by the Court of Appeals, that right to apply payments from UPSUMCO's bank accounts was established by the operational loans as well. The appellate court discussed as follows:

It bears emphasis that plaintiff does not dispute that it incurred the obligations secured by the latter mentioned documents which embody the following stipulations:

(a) Credit Agreement dated February 19, 1987 (Exhs. "2" [PNB] & "4" [APT]: *supra*):

"7. The CLIENTS shall open and/or maintain a deposit account with the BANK, and the BANK shall have the right to apply any amount on deposit with it or with any of its subsidiaries or affiliates to the payment of any amount past due hereunder or under any other credit accommodation granted to the CLIENTS by the BANK, including amounts due for advances made by the BANK for insurance premiums, taxes, fees and other charges."

(b) Deed of Assignment by Way of Payment dated November 16, 1984:

"For and in consideration of the 1984/85 operational loan of THIRTY-NINE MILLION FIVE HUNDRED SIXTY THOUSAND (₱39,560,000.00) pesos and other accommodations heretofore or hereafter granted by the Assignee [PNB], the Assignor [UPSUMCO] has, by way of payment for said loan, and other credit accommodations assigned, transferred and conveyed unto the assignee, its successors and assigns, the following:

"Assignor's expected receivables arising from the sale/disposition of (i) its net share (estimated at 344,640.89 pps) of milled sugar: and (ii) its molasses thereto, both beginning with the 1984/85 Crop year, and every year thereafter, until the assignor's obligations to the Assignee hereunder are paid in full.

[37] *Supra* note 3.

This Assignment is executed as a mode of payment for application of the following obligations of the Assignor with and in favor of the Assignee, *viz*:

> "(a) The payment of all amounts due to the Assignee arising from or in connection with the 1984/85 Milling Operations Loan in the amount of PESOS; THIRTY-NINE MILLION FIVE HUNDRED SIXTY-NINE THOUSAND (₱39,569,000.00);
>
> "(b) All obligations of the Assignor with the Assignee of whatever kind and nature and whether said obligations have been contracted before, during or after the execution of this instrument;
>
> "(c) Interest, fees, penalties, charges and other obligations now due and owing as well as those that may from time to time become due and owing to the Assignee in accordance with the terms and conditions of the covering documents executed by the Assignor in favor of the Assignee."

(c) Promissory Notes dated February 20, 1987 (Exh. "17"; *supra*); March 2, 1987 (Exh. "18"; *supra*); March 3, 1987 (Exh. "19"; *supra*); March 27, 1987 (Exh. "20"; *supra*); March 30, 1987 (Exh. "21"; *supra*); April 7, 1987 (Exh. "22";) (sic) *supra*); May 22, 1987 (Exh. "23"; *supra*); and July 30, 1987 (Exh. "24"; *supra*):

> In the event that this note is not paid at maturity or when the same becomes due under any of the provisions hereof, I/we hereby authorize the Bank at its option and without notice, to apply to the payment of this note, any and all monies, securities and things of value which may be in its hands on deposit; or otherwise belongings (sic) to me/us and for this purpose. I/we hereby, jointly and severally, irrevocably constitute and appoint the BANK to be my/our true Attorney-in-Fact with full power and authority for me/us and in my/our name and behalf and without prior notice, to negotiate, sell and transfer any moneys. Securities and things of value which it may hold, by public or private sale and apply the proceeds thereof to the payment of this note.

(d) Credit agreement dated April 29, 1987 (Exh. 11 CAPT] *supra*):

> (7) The Client (UPSUMCO) shall open and/or maintain a deposit account with the Bank and the Bank shall have the right to apply any amount on deposit with it or with any of its subsidiaries or affiliates to the payment of any amount past

due hereunder or under any other credit accommodations granted to the Clients by the Bank, including amounts due for advances made by the Bank for insurance premiums, taxes, fees and other charges.

8. Whenever the Clients are carried with or indebted to the Bank for more than one account, the Bank shall have the right to apply to any account it chooses, regardless of whether one account is more onerous than the others, any and all payments that shall be made by or shall be received from the Clients or from other sources for and in behalf of the Clients, as well as all monies belonging to the Clients that shall come into possession of the Bank in any manner. This condition shall prevail over all agreements contained in other documents or contracts executed or which may thereafter be executed by the Clients unless expressly waived by the Bank in writing.

(e) Contract of Pledge dated February 19, 1987:

WHEREAS, the pledgor (UPSUMCO) has obtained certain loans and credit accommodations from the Pledgee (PNB), which, including the interest and charges thereon the parties hereto have mutually agreed, should be guaranteed and secured by a pledge of the Pledgor's property/ies hereunder mentioned:

NOW, THEREFORE, for and in consideration of the foregoing premises and mutual conditions hereunder stipulated, the Pledgor hereby binds itself, as follows:

1. To secure the payment by the Pledgor to the Pledgee of the former's obligations to the latter in the initial amount of PHILIPPINE PESOS: NINE MILLION ONLY (₱9,000,000.00) plus interest and charges thereon as well as any extension/ renewal/regrant of any and all accommodations extended by the Pledgee to the Pledgor whether direct or indirect, principal or secondary, of whatever kind and nature whether such obligations have been contracted before, during or after the execution of this pledge, the Pledgor hereby conveys by way of pledge to the Pledgee, its successors and assigns, the following personal property/ies:

"Sugar quedans sufficient to secure payment of above, computed at 80% of their market value but not exceeding the following limits:

> "A" Quedans - ₱400 per picul
> "B" Quedans - ₱240 per picul
> "C" Quedans - ₱120 per picul
> "D" Quedans - ₱120 per picul
>
> of which the Pledgor is the absolute owner free from all liens, provided that availments against the line shall be limited to the actual operational requirements of the mill as certified by the PNB Comptroller. Further, that the Bank is authorized to dispose of the Quedans one month after maturity of the loan.
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> x x x x x x x x x
>
> "6. It is also a condition of this pledge that if the Pledgor shall pay when due the obligations secured hereby and any all other loans or accommodations which the pledgor may owe the pledgee, this Pledge shall automatically become null and void. Otherwise, this Pledge shall remain in full force and effect and the Pledgee shall dispose of the property/ies herein pledged in the manner provided for in Article 2112 of the Civil Code of the Republic of the Philippines.
>
> The provisions quoted above are clear and leave no room for interpretation — the Bank has all the right to apply the proceeds of UPSUMCO's deposits with it and its affiliated banks, as well as the proceeds of the sale of UPSUMCO's sugar and molasses, in satisfaction of UPSUMCO's obligations. This right was never waived by PNB and was subsequently transferred to APR by virtue of the Deed of Transfer executed between them (Exh. MM). Neither did APT ever waive such right. Thus, the same should be considered as valid and binding between it and UPSUMCO.[38]

PNB subsequently assigned its rights as creditor of UPSUMCO to APT. At the time of the challenged transactions, APT was the creditor in main of UPSUMCO. The RTC recognized this, yet concluded that APT as creditor was not entitled to "simply appropriate the things of the plaintiff" following Article 2088[39]

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[38] *Rollo*, pp. 170-175.

[39] "The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void."

of the Civil Code, and assuming that such deficiency claim did exist, "the foreclosing creditor should have initiated proper actions to recover the same."[40] Let us analyze this claim.

The RTC was correct in observing that with the take-off loans and the corresponding creation of the bank accounts, there existed a mutual creditor-debtor relationship between PNB and UPSUMCO. Such would allow the set-off or compensation of the latter's outstanding obligations to the former from the latter's bank accounts, congruently with Article 1278[41] of the Civil Code, and as expressly stipulated in the take-off loan agreements. PNB then assigned all its rights, titles and interests over UPSUMCO to APT. As between UPSUMCO and APT or PNB and APT, there no longer existed the mutual creditor-debtor relationship. The RTC thus concluded that since PNB was no longer a debtor of UPSUMCO, the bank no longer had the right to set-off payments from the bank deposits, and that whatever disbursements made by PNB "should not be considered money or funds taken from or belonging to [UPSUMCO]."[42]

It is clear though APT had a right to go after the bank deposits of UPSUMCO, in its capacity as the creditor of the latter. The RTC had claimed that by virtue of PNB's Deed of Assignment, there took place conventional subrogation under the Civil Code,[43] whereby APT as the subrogee was vested with all the rights of the PNB covered by the deed thereto, either against the debtor or against third persons.[44] But in fact, no conventional subrogation could have taken place herein since such requires "the consent of the original parties and of the third person,"[45] and there is no evidence that the consent of debtor UPSUMCO was secured

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[40] See note 27.

[41] "Compensation shall take place when two persons, in their own right, are creditors and debtors of each other."

[42] Records, p. 751.

[43] See CIVIL CODE, Art. 1291.

[44] See Records, 749. See also CIVIL CODE, Art. 1303.

[45] See CIVIL CODE, Art. 1301.

when PNB assigned its rights to APT. Moreover, the assignment by PNB to APT arose by mandate of law and not the volition of the parties.

Even if conventional subrogation did not take place, there was still a perfected assignment of credit as between PNB and APT, under Article 1624[46] of the Civil Code. The assignment of a credit includes all the accessory rights, such as a guaranty, mortgage, pledge or preference.[47] By virtue of the assignment of credit, APT was entitled to pursue the rights and remedies granted to the previous creditor, PNB.

It might seem that APT has no right to set-off payments with UPSUMCO for under Article 1279 (1), it is necessary for compensation that the obligors "be bound principally, and that he be at the same time a principal creditor of the other."[48] There is, concededly, no mutual creditor-debtor relation between APT and UPSUMCO. However, we recognize the concept of conventional compensation, defined as occurring "when the parties agree to compensate their mutual obligations even if some requisite is lacking, such as that provided in Article 1282."[49] It is intended to eliminate or overcome obstacles which prevent *ipso jure* extinguishment of their obligations.[50] Legal compensation takes place by operation of law when all the requisites are present, as opposed to conventional compensation which takes place when the parties agree to compensate their mutual obligations even in the absence of some requisites.[51] The only requisites of conventional compensation are (1) that each of the parties can

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[46] "An assignment of credits and other incorporeal rights shall be perfected in accordance with the provisions of Article 1475.

[47] CIVIL CODE, Art. 1627.

[48] See Civil Code, Art. 1279.

[49] See A. TOLENTINO, IV *THE CIVIL CODE*, p. 366; citing 2 CASTAN 562. Art. 1282 allows that "the parties may agree upon the compensation of debts which are not yet due," a deviation from the requisite of compensation that "the two debts be due."

[50] *Id*. citing 2-I Ruggiero 229-231.

[51] *Madecor v. Uy*, 415 Phil. 348, 359 (2001).

dispose of the credit he seeks to compensate, and (2) that they agree to the mutual extinguishment of their credits.[52]

The right of PNB to set-off payments from UPSUMCO arose out of conventional compensation rather than legal compensation, even though all of the requisites for legal compensation were present as between those two parties. The determinative factor is the mutual agreement between PNB and UPSUMCO to set-off payments. Even without an express agreement stipulating compensation, PNB and UPSUMCO would have been entitled to set-off of payments, as the legal requisites for compensation under Article 1279 were present.

As soon as PNB assigned its credit to APT, the mutual creditor-debtor relation between PNB and UPSUMCO ceased to exist. However, PNB and UPSUMCO had agreed to a conventional compensation, a relationship which does not require the presence of all the requisites under Article 1279. And PNB too had assigned all its rights as creditor to APT, including its rights under conventional compensation. The absence of the mutual creditor-debtor relation between the new creditor APT and UPSUMCO cannot negate the conventional compensation. Accordingly, APT, as the assignee of credit of PNB, had the right to set-off the outstanding obligations of UPSUMCO on the basis of conventional compensation before the condonation took effect on 3 September 1987.

V.

The conclusions are clear. *First.* Between 27 August to 3 September 1987, APT had the right to apply payments from UPSUMCO's bank accounts maintained with PNB as repayment for the take-off loans and/or the operational loans. Considering that as of 30 June 1987, the total indebtedness of UPSUMCO as to the take-off loans amounted to ₱2,137,076,433.15, and because the foreclosed properties were sold during the execution sale for only 450 Million Pesos, it is safe to conclude that the total amount of ₱80,200,806.41 debited from UPSUMCO's bank

[52] See *CKH Industrial v. CA*, 338 Phil. 837, 853 (1997); citing IV TOLENTINO, *CIVIL CODE OF THE PHILIPPINES*, 1985 ed., p. 368.

accounts from 27 August to 3 September 1987 was very well less than the then outstanding indebtedness for the take-off loans. It was only on 3 September 1987 that the take-off loans were condoned by APT, which lost only on that date too the right to apply payments from UPSUMCO's bank accounts to pay the take-off loans.

Second. After 3 September 1987, APT retained the right to apply payments from the bank accounts of UPSUMCO with PNB to answer for the outstanding indebtedness under the operational loan agreements. It appears that the amount of ₱17,773,185.24 was debited from UPSUMCO's bank accounts after 3 September. At the same time, it remains unclear what were the amounts of outstanding indebtedness under the operational loans at the various points after 3 September 1987 when the bank accounts of UPSUMCO were debited.

The Court of Appeals ordered the remand of the case to the trial court, on the premise that it was unclear how much APT was entitled to recover by way of counterclaim. It is clear that the amount claimed by APT by way of counterclaim — over 1.6 Billion Pesos — is over and beyond what it can possibly be entitled to, since it is clear that the take-off loans were actually condoned as of 3 September 1987. At the same time, APT was still entitled to repayment of UPSUMCO's operational loans. It is not clear to what extent, if at all, the amounts debited from UPSUMCO's bank accounts after 3 September 1987 covered UPSUMCO's outstanding indebtedness under the operational loans. Said amounts could be insufficient, just enough, or over and beyond what UPSUMCO actually owed, in which case the petitioner should be entitled to that excess amount debited after 3 September 1987. Because it is not evident from the voluminous records what was the outstanding balance of the operational loans at the various times post-September 3 UPSUMCO's bank accounts were debited, the remand ordered by the Court of Appeals is ultimately the wisest and fairest recourse.

WHEREFORE, the Second Motion for Reconsiderations are hereby *GRANTED*. The Decision of the Court of Appeals dated 29 February 1996 is hereby *REINSTATED*. No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, Corona, Chico-Nazario, Nachura, Leonardo-de Castro, and *Peralta, JJ.,* concur.

Velasco, Jr., J., with separate concurring opinion.

Carpio, J., see Dissenting Opinion.

Puno, C.J., Quisumbing, Carpio Morales, and *Brion, JJ.*, join the dissent of *J.* Carpio.

CONCURRING OPINION

VELASCO, JR., *J.*:

I concur with the *ponencia* of Justice Dante O. Tinga and submit additional observations.

The controversy centers on the import of the stipulations in the September 3, 1987 Deed of Assignment which reads:

> That United Planter[s] Sugar Milling Co., Inc. (the "Corporation") — (pursuant to a resolution passed by its board of directors on September 3, 1987, and confirmed by the Corporation's stockholders in a stockholders' Meeting held on the same (date), for and in consideration of the Asset Privatization Trust ("APT") condoning any deficiency amount it maybe [sic] entitled to recover from the Corporation under the Credit Agreement dated November 5, 1974 and the Restructuring Agreement[s] dated June 24 and December 10, 1982, and May 9, 1984, respectively, executed between the Corporation and the Philippine National Bank ("PNB"), which financial claims have been assigned to APT, through the National Government, by PNB, hereby irrevocably sells, assigns and transfer to APT its right to redeem the foreclosed real properties covered by Transfer Certificates of Title Nos. T16700 and T-16701.

The November 28, 2006 Decision found that the total mortgage indebtedness of UPSUMCO was PhP 2,137,076,433.15 as of 30 June 1987 based on the admission of the APT in its counterclaim. Deducting the amount of PhP 450 million as winning bid of the APT during the foreclosure sale, then the deficiency obligation of UPSUMCO is ₱1,687,076,433.15. Pursuant to

the September 3, 1987 Deed of Assignment, such deficiency amount is condoned. The Decision considered the deficiency obligation of PhP 1,687,076,433.15 as encompassing both the take-off loans and the operational loans and thus, UPSUMCO is not liable anymore to the APT for any of said loans.

This reasoning has no legal or factual footing nor support for the following reasons:

1. The terms of the Deed of Assignment are plain and unambiguous and hence, there is no room for interpretation.

The agreement unequivocally speaks of "condoning any deficiency amount it maybe [sic] entitled to recover from the Corporation under the Credit Agreement dated November 5, 1974 and the Restructuring Agreement[s] dated June 24 and December 10, 1982, and May 9, 1984, respectively, executed between the Corporation and the Philippine National Bank ("PNB")."

Thus, the condonation strictly applies only to the loan and mortgage documents pertaining to the take-off loans. An important point to remember is that the take-off loans were secured by a real estate mortgage over two parcels of land where UPSUMCO's milling plant stands and by chattel mortgages over machineries and equipment on the parcels of land. Thus, when the APT foreclosed the mortgages on the collaterals, it dealt only with the take-off loans and not the operational loans.

In addition, the Decision admitted that as of June 30, 1987, the PNB placed UPSUMCO's "total mortgage indebtedness" at PhP 2,137,076,433.15 as was indicated in the published notices of foreclosures. This refers to the mortgage indebtedness under the take-off loans and said loans are the only ones condoned by reason of the Deed of Assignment. The liability for the operational loans however remains valid and subsisting.

2. In the case at bench, the November 28, 2006 Decision and July 11, 2007 Resolution varied the meaning attached to the condonation of the deficiency amount subject of the Deed of Assignment which is otherwise clear and definite. A new contract was made for the parties or have been rewritten under the guise of construction. Settled is the principle that an agreement

must be construed and enforced according to the terms employed and a court has no right to interpret the agreement as meaning something different from what the parties intended as expressed by the language they saw fit to employ.

A court is not at liberty to revise, modify, or distort an agreement while professing to construe it, and has no right to make a different contract from that actually entered into by the parties.

One may argue that it is unfair for the APT to still collect the deposits of UPSUMCO with the PNB after the Deed of Assignment has already condoned the deficiency amount arising from the foreclosure. The most equitable implementation, UPSUMCO contends, is to return said amounts to them as the condonation retroacts to the date of foreclosure and not as of the date of Deed of Assignment. This postulation is erroneous. We don't believe so. Courts cannot make for the parties better or more equitable agreements that they themselves have been satisfied to make, or rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or, by construction, relieve one of the parties from terms which s/he voluntarily consented to, or impose on him/her those which s/he did not. If the parties to a contract adopt a provision which contravenes no principle of public policy and contains no element of ambiguity, the courts have no right, by a process of interpretation, to relieve one of them from disadvantageous terms which s/he has actually made. Parties may make their own bargains and they should be held to the terms of their agreement. The courts will not interfere with the party's contractual obligations, as every person is presumed to be capable of managing his own affairs, and whether his bargains are wise or unwise is not ordinarily a legitimate subject of inquiry.

The agreement between the parties is clearly to condone only the deficiency judgment pertaining to the take-off loans.

We lay stress on the phrase "mortgage indebtedness" of PhP 2,137,076,433.15. The assailed November 28, 2006 Decision construed this to mean the total indebtedness of UPSUMCO

covering both take-off and operational loans. This conclusion is incorrect.

The phrase "mortgage indebtedness" can only pertain to the take-off loans as UPSUMCO's properties were mortgaged to specifically cover and guarantee only the take-off loans.

On the other hand, there was no mortgage on any other property of UPSUMCO to cover the operational loans. The credit agreements on the said loans were secured by pledge contracts dated February 19, 1987 and March 30, 1987. The securities for the payment of the operational loans are the milled produce and molasses which the PNB can sell and apply the proceeds thereof to satisfy UPSUMCO's obligation under the operational loans. The facts are clear that **no mortgage** was ever constituted on the other UPSUMCO properties to secure the loan obligations covered by the Deed of Assignment by Way of Payment and the Credit Agreements. Ergo, the foreclosure of the mortgage can only refer to the mortgaged properties of UPSUMCO to secure the take-off loans and cannot in any way refer to the operational loans. Thus, the deficiency amount of PhP 1,687,076,433.15 cannot be construed to embrace even the operational loans. UPSUMCO is supposed to know that after the foreclosure, it still has some funds with the PNB. It is expected to know its sugar produce and its sale by the PNB. It should not have agreed to the Deed of Assignment if it believes it has a legal right to said deposits. It should have explicitly stated in the agreement that said deposits have to be returned to them. Its failure to do so can only mean said deposits were considered payments to the APT.

3. Justice and equity dictate that neither the APT nor PNB should be made liable to UPSUMCO for alleged collectibles. A look at the factual milieu shows that the Deed of Assignment was entered into to bail out the stockholders of UPSUMCO. The directors were released from liability — they were even paid PhP25 million and any deficiency was condoned with respect to the mortgaged loans. The huge amount of PhP 1.6 billion was condoned in exchange for the assignment of the right of redemption. Clearly, this arrangement was intended to benefit

the owners of UPSUMCO who, even if they did not assign their right of redemption, could not have in any way redeemed the mortgaged properties for it did not have the capacity at that time to pay the deficiency amount. The circumstances of the case undeniably show that UPSUMCO has agreed to waive and forfeit any right or claim over its assets or any collectibles. As a matter of fact, UPSUMCO is fully aware of its deposits with the PNB after the foreclosure. Their failure to assert their right during the negotiation for the Deed of Assignment and their failure to incorporate said claim in the documents can only mean waiver on their part.

To construe the Deed of Assignment as basis for the payment by the APT of the amount of around PhP 135 million to UPSUMCO after it has been accorded the most generous accommodation relating to the payment of the take-off loans would result in unfairness and injustice to the government. Let us consider the terms prejudicial to the government: (1) the condonation of PhP 1.6 billion as a deficiency amount from the take-off loans, which APT can legally claim against UPSUMCO; (2) the payment of PhP 25 million to the UPSUMCO when APT is not legally obliged to make the payment; and (3) the release from liability of said officials who are admittedly liable for the loan obligations under the contracts they signed. In spite of all these concessions, the assailed November 28, 2006 Decision still granted another gift to UPSUMCO by making APT pay an additional PhP 135 million when there is no legal basis for the alleged obligation. Courts should not allow a construction that will lead to absurd consequences. The Deed of Assignment must be interpreted to avoid injustice and wrongful and even mischievous results.

4. Article 1378 of the Civil Code provides that when it is absolutely impossible to settle doubts by the rules established in the preceding articles, and the doubts refer to incidental circumstances of a gratuitous contract, the least transmission of rights and interests shall prevail. If the contract is onerous, the doubt shall be settled in favor of the greatest reciprocity of interests.

If the doubts are cast upon the principal object of the contract in such a way that it cannot be known what may have been the intention or will of the parties, the contract shall be null and void.

Since condonation is essentially an act of generosity on the part of the APT, then the least transmission of rights and interests should be applied. Thus, the condonation of the deficiency amount can only refer to the take-off loans and not to the operational loans which were not even covered by the mortgage.

5. The PNB should not be jointly and solidarily liable with the APT considering it will only lead to a multiplicity of suits. The PNB assigned to the APT all its rights, interests, and claims against UPSUMCO pursuant to Proclamation No. 50 by way of a Deed of Transfer, while the government agreed to assume the liabilities of the PNB, thus:

> 2.02. With respect to the Bank's liabilities which are contingent and those liabilities where the Bank's creditors consent to the transfer thereof is not obtained, said liabilities shall remain in the books of the BANK with the GOVERNMENT funding the payment thereof.

Since the APT was subrogated to the place of the PNB, then it should be solely responsible and liable for UPSUMCO's claim. Otherwise, UPSUMCO may collect first from the PNB which in turn will collect from the APT. This will undoubtedly result in multiplicity of suits.

I vote to reconsider and set aside the November 28, 2006 Decision and the July 11, 2007 Resolution in the instant case and affirm the February 29, 1996 Decision of the Court of Appeals.

DISSENTING OPINION

CARPIO, *J.*:

I vote to deny the second motions for reconsideration of respondents Privatization and Management Office (PMO), formerly the Asset Privatization Trust (APT), and Philippine

National Bank (PNB) of the (1) Decision dated 28 November 2006 (Decision) ordering PMO and PNB to solidarily and individually pay sums of money to petitioner United Planters Sugar Milling Company, Inc. (UPSUMCO) and (2) the Resolution dated 11 July 2007 (Resolution) denying with finality PMO's and PNB's first motions for reconsideration.

In their second motions for reconsideration, PMO and PNB pray that the Court set aside the Decision and Resolution. As bases for their prayer, PMO and PNB contend, singly and jointly, that (1) the Deed of Assignment dated 3 September 1987 (Deed of Assignment), which waived UPSUMCO's deficiency liability after the foreclosure, should be invalidated for being grossly disadvantageous to the government and violative of public trust; (2) the Court's resort to evidence *aliunde* in ruling that the Deed of Assignment waived UPSUMCO's deficiency liability violated the Parol Evidence Rule; and (3) it is UPSUMCO, not PMO or APT, which bears the burden of proving that UPSUMCO's obligations under the "operational loans" have been fully paid. PMO and PNB also reiterate the claims raised in their first motions for reconsideration on the retroactive application of the Deed of Assignment and PNB's solidary liability to UPSUMCO.

At the outset, it must be noted that except for the issues on the effectivity of the Deed of Assignment, PNB's solidary liability to UPSUMCO, and UPSUMCO's remaining liability to PNB, all the matters respondents raise in their motions are new issues, brought to this Court's attention for the first time at this very late stage of the appeal. As respondents very well know, this is a highly undesirable practice which prejudices the other party, which has to contend with new theories at each turn, and trifles with the entire appellate proceedings.

Let us now consider the issues raised by the respondents.

(1) Did APT act *ultra vires* in entering into the Deed of Assignment? The Deed of Assignment is a valid contract of compromise freely entered into between APT and UPSUMCO. Although the Court, following the wording of the Deed of

Assignment,[1] had referred to that contract as having "condoned" UPSUMCO's deficiency obligation after the foreclosure, the Deed of Assignment is, strictly speaking, not a contract of condonation. Under Article 1270[2] of the Civil Code, a contract of condonation is **essentially gratuitous** where no equivalent is received for the benefit given.[3] This is not true of the Deed of Assignment. Under that contract, APT agreed to free UPSUMCO from paying "any deficiency amount" after the foreclosure **in exchange** for UPSUMCO's waiver of its right to redeem the foreclosed properties.[4] These mutual concessions gave rise to mutual benefits by allowing APT, on the one hand, to promptly dispose of the foreclosed properties (as it did sell them to Universal Robina Sugar Milling Corporation [URSUMCO] on 29 September 1987, a little over a month after the foreclosure

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[1] The Deed of Assignment reads:

That United Planter[s] Sugar Milling Co., Inc. (the "Corporation") — (pursuant to a resolution passed by its Board of Directors on September 3, 1987, and confirmed by the Corporation's stockholders in a Stockholders' Meeting held on the same date), for and in consideration of the Asset Privatization Trust ("APT") **condoning any deficiency amount** it may be entitled to recover from the Corporation under the Credit Agreement dated November 5, 1974 and the Restructuring Agreements dated June 24 and December 10, 1982, and May 9, 1984, respectively, executed between the Corporation and the Philippine National Bank ("PNB"), which financial claims have been assigned to APT, through the National Government, by PNB, hereby irrevocably **sells, assigns and transfer to APT its right to redeem the foreclosed real properties** covered by Transfer Certificates of Title Nos. T-16700 and T-16701.

IN WITNESS WHEREOF, the Corporation has caused this instrument to be executed on its behalf by Mr. Joaquin S. Montenegro, thereunto duly authorized, this 3rd day of September, 1987. (Emphasis supplied)

[2] The provision reads: "Condonation or remission is essentially gratuitous, and requires the acceptance by the obligor. It may be made expressly or impliedly.

One and the other kind shall be subject to the rules which govern inofficious donations. Express condonation shall, furthermore, comply with the forms of donations."

[3] IV TOLENTINO, *CIVIL CODE OF THE PHILIPPINES* 353 (1987 ed.).

[4] As noted in the Decision and Resolution, APT's waiver of its right to collect UPSUMCO's deficiency obligation was part of the bundle of incentives APT offered to UPSUMCO for the latter's waiver of its right of redemption.

on 27 August 1987) and freeing UPSUMCO, on the other hand, from its obligation to pay the deficiency amount after the foreclosure. The Deed of Assignment is thus a **contract of compromise** under which UPSUMCO and APT made reciprocal concessions to effect an uncontested extrajudicial foreclosure and avoid the long-drawn litigation which judicial foreclosure entails.[5]

Section 12(6) of Proclamation No. 50, creating APT and the Committee on Privatization, cannot be more clear in providing that APT "shall, in the discharge of its responsibilities," have the power to "**compromise and release claims or settle liabilities**," thus:

SECTION 12. Powers. — The Trust shall, in the discharge of its responsibilities, have the following powers:

x x x x x x x x x

(6) To lease or own real and personal property to the extent required or entailed by its functions; to borrow money and incur such liabilities may be reasonably necessary to permit it to carry out the responsibilities imposed upon it under this Proclamation; to receive and collect interest, rent and other income from the corporations and assets held by it and **to exercise in behalf of the National Committee, in respect of such corporations and assets, all rights, powers and privileges of ownership including the ability to compromise and release claims or settle liabilities**, otherwise to do and perform any and all acts that may be necessary proper to carry out the purposes of this Proclamation: Provided, however, that any borrowing by the Trust shall be subject to the prior approval by the majority vote of the members of the Committee[.][6] (Emphasis supplied)

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[5] Article 2028 of the Civil Code provides: "A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced."

[6] Secretary of Justice Serafin R. Cuevas, in an Opinion, interpreted this provision as "clearly confer[ing] upon the APT the authority to enter into an amicable settlement and/or compromise agreement on the legal cases instituted by or filed against it, including the condonation of interest, penalties and other charges. x x x."

This Court already approved a compromise agreement involving APT and other parties to dispose of their shares of stocks in a sequestered corporation.[7]

Although PNB concedes that UPSUMCO's waiver of its redemption right under the Deed of Assignment constitutes a consideration to render that contract not gratuitous, PNB nevertheless considers such consideration "indubitably inadequate," amounting to lack of consideration. PNB calls attention to Section 10, Article III of Proclamation No. 50 which speaks of APT's task to generate "maximum cash recovery for the National Government." Alternatively, PNB contends that "the amount that exceeds the value of the assigned redemption right" should be treated as a donation, subject to the provisions in the Civil Code governing its formalities and execution.

As a compromise agreement, the Deed of Assignment can be annulled when "there is mistake, fraud, violence, intimidation, undue influence, or falsity of documents."[8] As a contract in general, it is void if its cause, object or purpose is "contrary to law, morals, good customs, public order or public policy."[9] Under both categories, nothing in this case justifies annulling the Deed of Assignment or declaring it void.

The records show that APT and UPSUMCO freely negotiated and signed the Deed of Assignment. Contrary to PNB's claim (to which PMO did not join), it was APT which actively sought UPSUMCO's approval of the terms of the uncontested foreclosure.[10] It was APT, not UPSUMCO, which offered the incentives to UPSUMCO to allow APT to sell UPSUMCO's

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[7] See *First Philippine Holdings Corporation v. Sandiganbayan*, G.R. No. 95197, 30 September 1991, 202 SCRA 212.

[8] Article 2038, Civil Code.

[9] Article 1409(1), Civil Code.

[10] PNB's claim that UPSUMCO "seduced" APT to enter into the negotiated foreclosure deal is belied by the following letter, dated 19 August 1987, of APT's Associate Executive Trustee Johnny M. Araneta (who also signed the Deed of Assignment for APT) to UPSUMCO's Vice-President Jose del Prado, Jr. (Exhibit "S"; emphasis supplied):

assets to URSUMCO even before the lapse of the one-year redemption period. At no instance did PNB or APT allege "mistake, fraud, violence, intimidation, undue influence, or falsity of documents." Indeed, until this stage of the proceedings, **20 years after the signing of the Deed of Assignment**, neither PNB nor PMO saw any reason to challenge the validity of that contract for being "grossly disadvantageous to the government and violative of public trust."

Nor is the purpose of the Deed of Assignment "contrary to law, morals, good customs, public order or public policy." Under Proclamation No. 50, APT's **principal purpose** is to "effect or cause to be effected, x x x, the disposition **within the shortest possible period** of assets transferred to the Trust for the purpose" (Section 10, Article III). To fulfill this task, Proclamation No. 50 vested in APT "the **widest latitude of flexibility and autonomy** in its operations, particularly in the areas of x x x asset management and **disposition**" (Section 13, Article III). It was in the exercise of this wide latitude of flexibility, having in mind the prompt disposition of UPSUMCO's foreclosed assets, that APT negotiated with UPSUMCO for the waiver of its right

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Dear Mr. Del Prado:

As we have **previously** pointed out to you and other stockholders of UPSUMCO, we wish to reiterate the benefits of an "uncontested foreclosure."

An "uncontested foreclosure" is sometimes known as a "friendly" foreclosure whereby the creditor and debtors do away with expensive litigation costs. By your agreement to the uncontested foreclosure, the APT is giving you a preference of 5% which would not be present in case of a contested foreclosure. We have also given you the choice, in lieu of the 5% preference, to be given a cash payment equivalent to 5% of the winning bid should you lose out in the bidding. That your JSS will be extinguished will, of course, be of great interest to you and the rest who helped put up the mill. This particular consideration will not be allowed you in case of a judicial foreclosure.

You do realize that had you not agreed to an uncontested foreclosure, the National Government, through APT, would have gone the route of judicial foreclosure to the great inconvenience of all, not to mention the high costs of a contested foreclosure.

Very truly yours,

(Sgd.) Johnny M. Araneta
Associate Executive Trustee

of redemption in exchange for incentives APT freely offered. PNB's reliance on APT's task of generating "maximum cash recovery for the National Government" is misplaced. Section 10, Article III of Proclamation No. 50 itself provides that such goal is to be achieved "within the context" of APT's major purpose of disposing of assigned assets "within the shortest possible period."[11] It must be borne in mind that APT held in trust for disposition **non-performing assets**, like UPSUMCO's foreclosed assets, in government financial and other institutions.

It cannot also be said that the Deed of Assignment would have been rendered invalid under Section 1 of Republic Act No. 7181 (RA 7181), superseding Proclamation No. 50, which restricted APT's disposition of assets "exclusively and strictly for cash." Firstly, RA 7181 cannot be retroactively applied to impair vested rights beyond the period it expressly covered. Section 8 of RA 7181 provides for its retroactive effectivity "back to December 8, 1991."[12] It is too elementary to state that this Court cannot amend this provision to extend RA 7181's effectivity further "back to 27 August 1987," when the Deed of Assignment became effective. Secondly, the Deed of Assignment did not involve any disposition of assets — it was a compromise agreement between a foreclosing creditor (APT) and a mortgagee (UPSUMCO) on matters incidental to the foreclosure. If there is any contract that would have been covered by RA 7181, it was APT's sale of UPSUMCO assets to URSUMCO, which, incidentally, was for cash.

Considering that the Deed of Assignment is a valid compromise agreement and not a contract of condonation, there is no reason to pass upon PNB's claim on the application of the rules on donation to that contract.

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[11] This is not the first time that APT employed innovative ways to dispose of assets transferred to it for prompt disposal. APT had offered to sell shares of stocks under a negotiated price through a "Direct Debt Buyout" settlement scheme (See *Asset Privatization Trust v. Sandiganbayan*, 412 Phil. 879 [2001]).

[12] Sec. 8. This Act shall take effect immediately upon its publication in at least one (1) national newspaper of general circulation. The effectivity of this Act shall retroact and relate back to December 8, 1991.

It cannot be overemphasized that what APT and UPSUMCO entered into was an ordinary commercial contract signed after vigorous efforts on PMO's part to obtain UPSUMCO's assent to the deal. In fact, APT merely stepped into the shoes of PNB which extended the commercial loans to UPSUMCO. As such, the terms of the contract are the law between the parties. That a party, after freely entering into a contract, finds on hindsight that the terms are overly generous or one-sided is no reason for the courts to excuse that party, and those bound by it under special circumstances, from fulfilling their obligations. On the contrary, the courts are obliged to give effect to the agreement. To grant PNB's and PMO's belated prayer to invalidate the Deed of Assignment would be nothing less than to sanction misrepresentation and bad faith. Further, the Deed of Assignment is but a part of the larger agreement between APT and UPSUMCO on the uncontested foreclosure of UPSUMCO's assets. Annulling the Deed of Assignment would have repercussions on the validity of a host of other contracts and incidents such as the foreclosure sale, the payment of the 5% "mark-up" to UPSUMCO, the release from solidary liability of UPSUMCO's directors, and the sale of the UPSUMCO properties to URSUMCO. These are far-reaching and serious implications PNB and PMO seem to have lost sight of in their single-minded pursuit to annul the Deed of Assignment.

(2) The Court did not ignore the Parol Evidence Rule in appreciating evidence aliunde to interpret the Deed of Assignment. As an evidentiary rule on proving the terms of agreements, the Parol Evidence Rule under Section 9, Rule 130 of the Revised Rules on Evidence forbids the introduction of evidence on the terms of the agreement outside of the written contract.[13] This rule was devised to give stability to written agreements and to remove the temptation and possibility of perjury.[14] However, like other rules of procedure, the parol evidence rule is not

[13] Section 9, Rule 130 provides: "*Evidence of written agreements.* — When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement. x x x."

[14] *Tan Tua Sia v. Yu Biao Sontua*, 56 Phil. 711 (1932).

ironclad but admits of several exceptions. Thus, Section 9, Rule 130 itself provides:

> However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:
>
> (a) An intrinsic ambiguity, mistake or imperfection in the written agreement;
> **(b) The failure of the written agreement to express the true intent and agreement of the parties thereto**;
> (c) The validity of the written agreement; or
> (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement. (Emphasis supplied)

In its Amended Complaint before the trial court, UPSUMCO already contended that the Deed of Assignment freed it from paying any deficiency obligation after the foreclosure of its mortgaged assets, as part of the "conditions" of the "friendly foreclosure."[15]

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[15] UPSUMCO alleged in its Amended Complaint (Record, pp. 43-46):

COMMON ALLEGATIONS

1. That Proclamation No. 50 creating the Asset Privatization Trust, APT for short, and the Committee on Privatization, COP for short, was issued by Her Excellency President Corazon C. Aquino on December 8, 1986;

2. That the said Proclamation issued under the Freedom Constitution and in the exercise of the Police Power of the State mandated the APT and COP to take-over and dispose of all non-performing assets held by the government banks, among its functions;

3. That among those declared as non-performing assets was the plaintiff corporation;

4. That to facilitate the take-over of plaintiff's physical assets that were mortgaged to defendant PNB a "friendly foreclosure" was arranged by APT and defendant PNB on all the mortgaged properties of the plaintiff, including the share of Philippine Sugar Corporation, PHILSUCOR for short, on the mortgages where defendant PNB under memorandum of agreement dated February 15, 1984 was constituted trustee to foreclose the said mortgages;

5. That the "friendly foreclosure" was affected only thru the active participation of the defendant APT, COP, PHILSUCOR and the plaintiff who ha[d] little choice;

Thus, to the extent that the Deed of Assignment may give a contrary conclusion, UPSUMCO can present, as it did present, evidence to modify the terms of the agreement and the Court can take cognizance of such evidence. This falls under the exception provided in paragraph (b) of Section 9, Rule 130.

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6. That the notice of extrajudicial foreclosure initiated by the defendant PNB and APT was scheduled by the Office of the Provincial Sheriff of Negros Oriental for sale at public auction on August 27, 1987 after the publication at the Dumaguete Star Informer. A machine copy of the publication is made Annex "A" forming integral part hereof;

7. That plaintiff's assets for public auction were all listed in the above publication;

8. That APT was the highest bidder in that August 27, 1987 public auction sale;

9. That on September 3, 1987, APT issued the Deed of Assignment which reads:

DEED OF ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS:

That United Planters' Sugar Milling Co., Inc., (the "Corporation" pursuant to a resolution passed by its Board of Directors on September 3, 1987, and confirmed by the Corporation's stockholders in a Stockholders' Meeting held on the same date), for and in consideration of the Asset Privatization Trust ("APT") condoning any deficiency amount it may be entitled to recover from the Corporation under the Credit Agreement dated November 5, 1974 and the Restructuring Agreements dated June 24, and December 10, 1982, and May 9, 1984, respectively, executed between the Corporation and the Philippine National Bank ("PNB"), which financial claims have been assigned to APT, through the National Government, by PNB, hereby irrevocably sells, assigns and transfer to APT its right to redeem the foreclosed real properties covered by Transfer Certificates of Title Nos. T-16700 and T-16701.

IN WITNESS WHEREOF, the Corporation has caused this instrument to be executed on its behalf by Mr. Joaquin S. Montenegro, thereunto duly authorized, this 3rd day of September, 1987,

x x x x x x x x x

10. That all other properties, real or personal including deposits in banks and receivables not covered by the mortgages, remain properties of the plaintiff;

FIRST CAUSE OF ACTION

1. All the foregoing allegations are made integral part of the First Cause of Action;

But even if UPSUMCO did not allege in its pleadings that the Deed of Assignment freed it from any liability after the foreclosure, the trial court and this Court are not barred from appreciating UPSUMCO's parol evidence for the simple reason that at no time in the trial of this case did APT or PNB object to the presentation of the same. Parol evidence on an issue not raised in the pleadings must be objected to at the time of their presentation, otherwise the objection is deemed waived.[16] Indeed, just like the issue on the validity of the Deed of Assignment, it is only now, in their second motions for reconsideration, when judgment should have been entered, that APT and PNB saw fit to question the Court's alleged disregard of the evidentiary rule in question.

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2. **That notwithstanding the Deed of Assignment which released and discharged plaintiff from any and all obligations due the defendant PNB and defendant APT** the salaries of mill employees after the foreclosure by PNB/APT in June, 1987 up to the take-over by Universal Robina Sugar Milling Company up to December 1987 or thereabout, were taken from the funds of the plaintiff deposited with defendant PNB by itself and/or the instruction of APT with PNB Comptroller still assigned;

SECOND CAUSE OF ACTION

1. All the common allegations are made integral part of the Second Cause of Action;

2. **That after the foreclosure by PNB/APT plaintiff is entitled to all the funds it deposited or being held by PNB in all its branches**, the amount of which is undetermined, but PNB's records may reveal the correct amount;

3. **That among the conditions of the "friendly foreclosure" are**:

(a) That all the accounts of the plaintiff are condoned, including the JSS notes **at the time of the public bidding**;

(b) The plaintiff waives and/or assigns as it did waive and assign its rights to redeem said properties in favor of APT, by reason of the aforesaid condonation;

(c) That plaintiff shall be entitle[d] to a 5% preference in case it wins the public bidding by APT, or if it losses in the public bidding it shall be entitle (sic) to the above preference in terms of money computed from the amount of the highest bid. In this case ₱500 million, which was the highest bid of Universal Robina Sugar Milling Co., Inc. (URSUMCO) or a ₱25 million preference which APT already paid[.] (Emphasis supplied)

[16] II Regalado, *REMEDIAL LAW COMPENDIUM* 566 (7th ed.)

Besides, the Deed of Assignment itself expressly condoned "any deficiency amount" from the foreclosure sale and the phrase "any deficiency amount" means exactly that — any remaining obligation after the foreclosure. **There is even no need to resort to evidence *aliunde*.**

(3) On the retroactive application of the Deed of Assignment, neither APT nor PNB has presented new arguments to merit the modification of the Court's Decision and Resolution. To reiterate, the Court held in its Resolution of 11 July 2007, thus:

> We affirm our ruling that under the Deed of Assignment dated 3 September 1987, the reckoning date of the deficiency amount is 27 August 2007, right after the foreclosure. True, the Deed of Assignment of UPSUMCO's right to redeem was signed on 3 September 1987 and it is on this date that the right to redeem was transferred to APT. However, the condonation of the deficiency amount necessarily must take effect immediately after the foreclosure because the Deed of Assignment itself speaks of condonation of "any deficiency amount," an amount that is determined right after the foreclosure. None of the respondents have presented good cause to undermine the reasons for our ruling, namely: (1) the condonation of UPSUMCO's deficiency obligation was, as found by the trial court in the PHILSUCOR case, part of the bundle of incentives APT offered UPSUMCO for the latter to agree to the "friendly foreclosure" of its mortgaged assets and (2) **the Deed of Assignment itself stated that APT condoned "any deficiency amount" of UPSUMCO from the take-off loans after the foreclosure on 27 August 1987**.
>
> In a foreclosure, the deficiency is determined by simple arithmetical computation immediately after the foreclosure. The deficiency is the amount not covered by the winning bid price — in this case the deficiency amount is ₱1,687,076,433.00 — which is entirely condoned under the Deed of Assignment. To hold otherwise negates the meaning of "**<u>any</u>** deficiency amount" expressly stated in the Deed of Assignment. (Emphasis in the original)

It must be emphasized that PNB transferred funds to APT in two stages: (1) after the foreclosure on 27 August 1987 but before the signing of the Deed of Assignment on 3 September 1987 in the amount of ₱80,200,806.41 and (2) after the signing of the Deed of Assignment in the amount of ₱17,773,185.24.

PNB and APT hid from UPSUMCO these fund transfers. In fact, UPSUMCO learned of the fund transfers only during the trial when UPSUMCO demanded the production of the balances of its bank accounts with PNB.

(4) It is PNB and APT which bear the burden of proving UPSUMCO's liability under the "operational loans." As stated, UPSUMCO's common cause of action in the trial court was that it was entitled to recover UPSUMCO funds PNB held or transferred to APT after the foreclosure since APT freed it from any deficiency liability. UPSUMCO did not raise the issue of the operational loans because these had nothing to do with the foreclosure. In their Answers to UPSUMCO's complaint, PNB and APT merely raised the defenses of set-off and extinguishment of UPSUMCO's claims, respectively. Thus, in its Answer to UPSUMCO's complaint, PNB (1) claimed that it set-off UPSUMCO funds to pay for APT's deficiency claim arising from the foreclosure and (2) counterclaimed for moral damages and attorney's fees. **PNB did not include in its counterclaim any unpaid obligation of UPSUMCO under the operational loans**. For its part, APT generally averred that UPSUMCO's claims have been "paid, waived, abandoned or otherwise extinguished." Thus, when the trial court, in its Order dated 4 January 1990, allowed UPSUMCO to withdraw its deposits from five of its accounts with PNB amounting to ₱1,950,000,[17]

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[17] In granting the withdrawal, the trial court held (Records, pp. 298-299):

Defendant PNB has not presented any evidence other than the claim of legal compensation to disprove the plaintiff's claim of ownership of the foregoing savings account deposits.

Operations of banks rely on the trust and confidence of depositors more than any ordinary fiduciary relationship. Public interests and public policies are involved.

x x x x x x x x x

Hence, a bank is under obligation to allow [withdrawals] only by the depositor or his duly authorized representative. It becomes liable for wrongful payment to a person who fraudulently obtains possession of the deposit book and forges the signature of the real depositor on the withdrawal slip (or by checks) even if the bank acted in good faith and in the exercise of ordinary care and diligence. x x x

neither PNB nor APT appealed the Order, allowing UPSUMCO to collect this amount.[18]

It was only in their appeal with the Court of Appeals that PNB and APT claimed that the Deed of Assignment did not fully extinguish UPSUMCO's obligations to APT and it was only after this Court rendered its judgment that PNB claimed in its first motion for reconsideration that UPSUMCO remained liable under the "operational loans." As the party asserting these belated claims, it is PNB which bears the burden of proving the same. But as noted by this Court in its Resolution, it was too late for PNB to do so as it had neither raised these matters as part of its counterclaim in the trial court nor adverted to any proof in its appeal with the Court of Appeals or with this Court. Thus, I believe that remanding this case to the trial court, as what the Court of Appeals ordered in its Decision of 28 November 2006, for PMO and PNB to present evidence on UPSUMCO's alleged liability (1) is an exercise in futility; (2) sanctions amendment to pleadings to allow a claim raised only on appeal; and (3) results in the denial of justice in further prolonging this litigation far beyond the nearly 18 years it has been pending with the courts. If, as PNB claims, UPSUMCO remains liable under the "operational loans," **PNB is not without remedy — it can file a collection case against UPSUMCO in the proper court and there seek payment**.

(5) As to PNB's solidary liability, suffice it to say, that after PNB assigned its interest in UPSUMCO to APT on 27 February 1987, PNB ceased to be UPSUMCO's creditor with respect to the take-off loans. However, PNB remained UPSUMCO's depository bank, obliged to hold UPSUMCO funds on UPSUMCO's order. **Thus, when, without UPSUMCO's knowledge, PNB transferred to APT UPSUMCO funds on deposit in several accounts with PNB, ostensibly as payment for obligations due to APT under the take-off loans, PNB became liable to**

Since the extrajudicial foreclosure did not include the bank deposits of the plaintiff, the presumption that the said deposits is exclusively owned by UPSUMCO stands. (Emphasis supplied)

[18] Per Sheriff's Return, dated 15 February 1990 (Records, p. 364).

return these funds to UPSUMCO as undue payments, because APT waived UPSUMCO's deficiency liability and UPSUMCO gave no order for PNB to make the payments.[19] Thus, it is futile for PNB[20] to seek cover behind Proclamation No. 50 and claim that such law "compelled" it to make the payments to APT, following relevant stipulations in the credit agreements.[21]

Accordingly, I vote to **DENY** the Second Motions for Reconsideration.

EN BANC

[G.R. No. 157584. April 2, 2009]

CONGRESSMAN ENRIQUE T. GARCIA of the 2nd District of Bataan, *petitioner, vs.* **THE EXECUTIVE SECRETARY, THE SECRETARY OF THE DEPARTMENT OF ENERGY, CALTEX PHILIPPINES, INC., PETRON CORPORATION, and PILIPINAS SHELL CORPORATION,** *respondents.*

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[19] This is in addition to the Court's finding in the Resolution that PNB violated Article 1279 of the Civil Code when it acted as APT's agent in setting-off UPSUMCO funds.

[20] APT's co-foreclosing creditor representing the interest of Philippine Sugar Corporation.

[21] Contrary to PNB's claim, the credit agreements and promissory notes UPSUMCO executed did not authorize PNB to "negotiate, sell, and transfer any monies and apply the proceeds thereof to the payment of UPSUMCO debts" but merely "to apply any amount on deposit with it or with any of its subsidiaries or affiliates **to the payment of any amount past due hereunder or under any other credit accommodation granted to the CLIENT [ ] by the BANK**, x x x."

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; REQUIREMENTS. —** The power of judicial review is the power of the courts to test the validity of executive and legislative acts for their conformity with the Constitution. Through such power, the judiciary enforces and upholds the supremacy of the Constitution. For a court to exercise this power, certain requirements must first be met, namely: (1) an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.

2. **ID.; ID.; ID.; ID.; ID.; ID.; ACTUAL CONTROVERSY, DEFINED; POLITICAL QUESTIONS, DEFINED. —** An actual case or controversy is one that involves a conflict of legal rights, an assertion of opposite legal claims *susceptible of judicial resolution*; ***the case must not be*** moot or academic or ***based on extra-legal or other similar considerations not cognizable by a court of justice***. Stated otherwise, it is not the mere existence of a conflict or controversy that will authorize the exercise by the courts of its power of review; more importantly, the issue involved must be susceptible of judicial determination. Excluded from these are questions of policy or wisdom, otherwise referred to as political questions: As *Tañada v. Cuenco* puts it, political questions refer "to those questions which, under the Constitution, are 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 government*." Thus, ***if an issue is clearly identified by the text of the Constitution as matters for discretionary action by a particular branch of government or to the people themselves then it is held to be a political question***. In the classic formulation of Justice Brennan in *Baker v. Carr*, "[p]rominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a

coordinate political department; or ***a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion;*** or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on the one question."

3. **ID.; ID.; ID.; NATIONAL ECONOMY AND PATRIMONY; REGULATION OR PROHIBITION OF MONOPOLIES; ELEMENTS. —** Petitioner Garcia's issues fit snugly into the political question mold, as he insists that by adopting a policy of full deregulation through the removal of price controls at a time when an oligopoly still exists, Section 19 of R.A. No. 8479 contravenes the Constitutional directive to regulate or prohibit monopolies under Article XII, Section 19 of the Constitution. This Section states: The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed. Read correctly, this constitutional provision does not declare an outright prohibition of monopolies. It simply allows the State to act "*when public interest so requires*"; even then, no outright prohibition is mandated, as the State may choose to regulate rather than to prohibit. Two elements must concur before a monopoly may be regulated or prohibited: 1. There in fact exists a monopoly or an oligopoly, and 2. Public interest requires its regulation or prohibition. Whether a monopoly exists is a question of fact. On the other hand, the questions of (1) what public interest requires and (2) what the State reaction shall be essentially require the exercise of discretion on the part of the State.

4. **ID.; ID.; ID.; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; WHEN POLITICAL QUESTIONS ARE INVOLVED, THE CONSTITUTION LIMITS THE DETERMINATION AS TO WHETHER THE EXECUTIVE AND THE LEGISLATIVE DEPARTMENT ACTED WITH GRAVE ABUSE OF DISCRETION. —** Recourse to the political question doctrine necessarily raises the underlying doctrine of separation of powers among the three great branches of government that our

Constitution has entrenched. But at the same time that the Constitution mandates this Court to respect acts performed by co-equal departments done within their sphere of competence and authority, it has also allowed us to cross the line of separation on a very limited and specific point — to determine whether the acts of the executive and the legislative departments are null because they were undertaken with grave abuse of discretion. *IBP v. Zamora* teaches us that — When political questions are involved, the Constitution limits the determination as to whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the official whose action is being questioned. x x x **[W]hile this Court has no power to substitute its judgment for that of Congress or of the President, it may look into the question of whether such exercise has been made in grave abuse of discretion.** A showing that plenary power is granted either department of government, may not be an obstacle to judicial inquiry, for the improvident exercise or abuse thereof may give rise to justiciable controversy.

5. **ID.; ID.; ID.; ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION, DEFINED. —** Jurisprudence has defined grave abuse of discretion to mean the capricious or whimsical exercise of judgment that is so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.

6. **ID.; ID.; ID.; ID.; ID.; REQUIREMENTS; *LIS MOTA*; THE COURT WILL NOT PASS UPON A QUESTION OF UNCONSTITUTIONALITY IF THE CASE CAN BE DISPOSED OF ON SOME OTHER GROUNDS. —** *Lis Mota* — the fourth requirement to satisfy before this Court will undertake judicial review — means that the Court will not pass upon a question of unconstitutionality, although properly presented, *if the case can be disposed of on some other ground, such as the application of the statute or the general law*. The petitioner must be able to show that the case cannot be legally resolved unless the constitutional question raised is determined. This requirement is based on the rule that every law has in its favor the presumption of constitutionality; to justify its nullification, there must be a clear and unequivocal

breach of the Constitution, and not one that is doubtful, speculative, or argumentative.

APPEARANCES OF COUNSEL

Platon Martinez Flores San Pedro and Leaño for PETRON.
The Solicitor General for public respondents.

D E C I S I O N

BRION, *J*.:

For the second time, petitioner Enrique T. Garcia, Jr. (*petitioner Garcia*) asks this Court to examine the constitutionality of Section 19 of Republic Act No. 8479 (*R.A. No. 8479*), otherwise known as the Oil Deregulation Law of 1998) through this petition for *certiorari*.[1] He raises once again before us the propriety of implementing full deregulation by removing the system of price controls in the local downstream oil industry — a matter that we have ruled upon in the past.

THE FACTS

After years of imposing significant controls over the downstream oil industry in the Philippines, the government decided in March 1996 to pursue a policy of deregulation by enacting Republic Act No. 8180 (*R.A. No. 8180*) or the "Downstream Oil Industry Deregulation Act of 1996."

R.A. No. 8180, however, met strong opposition, and rightly so, as this Court concluded in its November 5, 1997 decision in *Tatad v. Secretary of Department of Energy*.[2] We struck down the law as invalid because the three key provisions intended to promote free competition were shown to achieve the opposite result; contrary to its intent, R.A. No. 8180's provisions on tariff differential, inventory requirements, and predatory pricing

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[1] Filed under Rule 65 of the Rules of Court.

[2] G.R. Nos. 124360 and 127867, November 5, 1997, 281 SCRA 311.

inhibited fair competition, encouraged monopolistic power, and interfered with the free interaction of market forces. We declared:

R.A. No. 8180 needs provisions to vouchsafe free and fair competition. The need for these vouchsafing provisions cannot be overstated. **Before deregulation**, PETRON, SHELL and CALTEX had no real competitors but did not have a free run of the market because government controls both the pricing and non-pricing aspects of the oil industry. **After deregulation**, PETRON, SHELL and CALTEX remain unthreatened by real competition yet are no longer subject to control by government with respect to their pricing and non-pricing decisions. The aftermath of R.A. No. 8180 is a deregulated market where competition can be corrupted and where market forces can be manipulated by oligopolies.[3]

Notwithstanding the existence of a separability clause among its provisions, we struck down R.A. No. 8180 in its entirety because its offensive provisions permeated the whole law and were the principal tools to carry deregulation into effect.

Congress responded to our Decision in *Tatad* by enacting on February 10, 1998 a new oil deregulation law, R.A. No. 8479. This time, Congress excluded the offensive provisions found in the invalidated law. Nonetheless, petitioner Garcia again sought to declare the new oil deregulation law unconstitutional on the ground that it violated Article XII, Section 19 of the Constitution.[4] He specifically objected to Section 19 of R.A. No. 8479 which, in essence, prescribed the period for removal of price control on gasoline and other finished petroleum products and set the time for the full deregulation of the local downstream oil industry. The assailed provision reads:

SEC. 19. ***Start of Full Deregulation.*** — Full deregulation of the Industry shall start five (5) months following the effectivity of this Act: *Provided, however*, That when the public interest so requires, the President may accelerate the start of full deregulation upon the recommendation of the DOE and the Department of Finance (DOF) when the prices of crude oil and petroleum products in the world

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[3] *Ibid*, pp. 361-362.

[4] *Garcia v. Corona*, G.R No. 132451, December 17, 1999, 321 SCRA 218.

market are declining and the value of the peso in relation to the US dollar is stable, taking into account relevant trends and prospects; *Provided, further,* That the foregoing provision notwithstanding, the five (5)-month Transition Phase shall continue to apply to LPG, regular gasoline and kerosene as socially-sensitive petroleum products and said petroleum products shall be covered by the automatic pricing mechanism during the said period.

Upon the implementation of full deregulation as provided herein, the Transition Phase is deemed terminated and the following laws are repealed:

a) Republic Act No. 6173, as amended;

b) Section 5 of Executive Order No. 172, as amended;

c) Letter of Instruction No. 1431, dated October 15, 1984;

d) Letter of Instruction No. 1441, dated November 20, 1984, as amended;

e) Letter of Instruction No. 1460, dated May 9, 1985;

f) Presidential Decree No. 1889; and

g) Presidential Decree No. 1956, as amended by Executive Order No. 137:

Provided, however, That in case full deregulation is started by the President in the exercise of the authority provided in this Section, the foregoing laws shall continue to be in force and effect with respect to LPG, regular gasoline and kerosene for the rest of the five (5)-month period.

Petitioner Garcia contended that implementing full deregulation and removing price control at a time when the market is still dominated and controlled by an oligopoly[5] would be contrary to public interest, as it would only provide an opportunity for the Big 3 to engage in price-fixing and overpricing. He averred that Section 19 of R.A. No. 8479 is "glaringly pro-oligopoly, anti-competition, and anti-people," and thus asked the Court to declare the provision unconstitutional.

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[5] Referring to the oil companies of Shell, Caltex, and Petron, otherwise known as the Big 3.

On December 17, 1999, in *Garcia v. Corona (1999 Garcia case)*,[6] we denied petitioner Garcia's plea for nullity. We declined to rule on the constitutionality of Section 19 of R.A. No. 8479 as we found the question replete with policy considerations; in the words of Justice Ynares-Santiago, the *ponente* of the *1999 Garcia case*:

It bears reiterating at the outset that the deregulation of the oil industry is a policy determination of the highest order. It is unquestionably a priority program of Government. The Department of Energy Act of 1992 expressly mandates that the development and updating of the existing Philippine energy program "shall include a policy direction towards deregulation of the power and energy industry."

Be that as it may, we are not concerned with whether or not there should be deregulation. This is outside our jurisdiction. The judgment on the issue is a settled matter and only Congress can reverse it.

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Reduced to its basic arguments, it can be seen that the challenge in this petition is not against the legality of deregulation. Petitioner does not expressly challenge deregulation. **The issue, quite simply, is the timeliness or the wisdom of the date when full deregulation should be effective.**

In this regard, what constitutes reasonable time is not for judicial determination. Reasonable time involves the appraisal of a great variety of relevant conditions, political, social and economic. They are not within the appropriate range of evidence in a court of justice. It would be an extravagant extension of judicial authority to assert judicial notice as the basis for the determination. [Emphasis supplied.]

Undaunted, petitioner Garcia is again before us in the present petition for *certiorari* seeking a categorical declaration from this Court of the unconstitutionality of Section 19 of R.A. No. 8479.

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[6] *Supra* note 4; herein petitioner Garcia is the same petitioner in G.R. No. 132451, and therein respondent Executive Secretary Renato Corona is now a member of this Court.

THE PETITION

Petitioner Garcia does not deny that the present petition for *certiorari* raises the same issue of the constitutionality of Section 19 of R.A. No. 8479, which was already the subject of the *1999 Garcia case*. He disagrees, however, with the allegation that the prior rulings of the Court in the two oil deregulation cases[7] amount to *res judicata* that would effectively bar the resolution of the present petition. He reasons that *res judicata* will not apply, as the earlier cases did not completely resolve the controversy and were not decided on the merits. Moreover, he maintains that the present case involves a matter of overarching and overriding importance to the national economy and to the public and cannot be sacrificed for technicalities like *res judicata.*[8]

To further support the present petition, petitioner Garcia invokes the following additional grounds to nullify Section 19 of R.A. No. 8479:

1. Subsequent events after the lifting of price control in 1997 have confirmed the continued existence of the Big 3 oligopoly and its overpricing of finished petroleum products;
2. The unabated overpricing of finished petroleum products by the Big 3 oligopoly is gravely and undeniably detrimental to the public interest;
3. No longer may the bare and blatant constitutionality of the lifting of price control be glossed over through the expediency of legislative wisdom or judgment call in the face of the Big 3 oligopoly's characteristic, definitive, and continued overpricing;
4. To avoid declaring the lifting of price control on finished petroleum products as unconstitutional is to consign to the dead letter dustbin the solemn and explicit constitutional command for the regulation of monopolies/oligopolies.[9]

[7] See *Tatad v. Secretary of DOE, supra* note 2, and *Garcia v. Corona, supra* note 4.

[8] *Rollo*, pp. 430-435.

[9] *Ibid.*, pp. 14-15.

THE COURT'S RULING

We resolve to dismiss the petition.

In asking the Court to declare Section 19 of R.A. No. 8479 as unconstitutional for contravening Section 19, Article XII of the Constitution, petitioner Garcia invokes the exercise by this Court of its power of judicial review, which power is expressly recognized under Section 4(2), Article VIII of the Constitution.[10] The power of judicial review is the power of the courts to test the validity of executive and legislative acts for their conformity with the Constitution.[11] Through such power, the judiciary enforces and upholds the supremacy of the Constitution.[12] For a court to exercise this power, certain requirements must first be met, namely:

(1) an actual case or controversy calling for the exercise of judicial power;

(2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;

(3) the question of constitutionality must be raised at the earliest possible opportunity; and

(4) the issue of constitutionality must be the very *lis mota* of the case.[13]

Actual Case Controversy
Susceptible of Judicial Determination

The petition fails to satisfy the very first of these requirements — the existence of an actual case or controversy calling for the

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[10] The exercise of the power of judicial review by the lower courts is implicitly recognized in Section 5(1) (a) and (b), Article VIII of the Constitution.

[11] A. Nachura, *Outline Reviewer in Political Law* (2006 ed.), p. 13.

[12] H. De Leon, *Philippine Constitutional Law: Principles and Cases* (2004 ed.), p. 473.

[13] *Francisco, Jr. v. House of Representatives*, G.R. No. 160261, November 10, 2003, 415 SCRA 44, citing *Angara v. Electoral Commission*, 63 Phil. 139 (1936).

exercise of judicial power. An actual case or controversy is one that involves a conflict of legal rights, an assertion of opposite legal claims *susceptible of judicial resolution*; ***the case must not be*** moot or academic or ***based on extra-legal or other similar considerations not cognizable by a court of justice.*** Stated otherwise, it is not the mere existence of a conflict or controversy that will authorize the exercise by the courts of its power of review; more importantly, the issue involved must be susceptible of judicial determination. Excluded from these are questions of policy or wisdom, otherwise referred to as political questions:

> As *Tañada v. Cuenco* puts it, political questions refer "to those questions which, under the Constitution, are 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 government*." Thus, ***if an issue is clearly identified by the text of the Constitution as matters for discretionary action by a particular branch of government or to the people themselves then it is held to be a political question***. In the classic formulation of Justice Brennan in *Baker v. Carr*, "[p]rominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or ***a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion;*** or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on the one question."[14] [Emphasis supplied.]

Petitioner Garcia's issues fit snugly into the political question mold, as he insists that by adopting a policy of full deregulation through the removal of price controls at a time when an oligopoly still exists, Section 19 of R.A. No. 8479 contravenes the

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[14] *Integrated Bar of the Philippines v. Zamora*, G.R. No. 141284, August 15, 2000, 338 SCRA 81, citing *Tañada v. Cuenco*, 103 Phil. 1051 and *Baker v. Carr*, 369 U.S. 186.

Constitutional directive to regulate or prohibit monopolies[15] under Article XII, Section 19 of the Constitution. This Section states:

> The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed.

Read correctly, this constitutional provision does not declare an outright prohibition of monopolies. It simply allows the State to act "*when public interest so requires*"; even then, no outright prohibition is mandated, as the State may choose to regulate rather than to prohibit. Two elements must concur before a monopoly may be regulated or prohibited:

1. There in fact exists a monopoly or an oligopoly, and
2. Public interest requires its regulation or prohibition.

Whether a monopoly exists is a question of fact. On the other hand, the questions of (1) what public interest requires and (2) what the State reaction shall be essentially require the exercise of discretion on the part of the State.

Stripped to its core, what petitioner Garcia raises as an issue is the propriety of immediately and fully deregulating the oil industry. Such determination essentially dwells on the soundness or wisdom of the timing and manner of the deregulation Congress wants to implement through R.A. No. 8497. Quite clearly, the issue is not for us to resolve; we cannot rule on when and to what extent deregulation should take place without passing upon the wisdom of the policy of deregulation that Congress has decided upon. To use the words of *Baker v. Carr,*[16] the ruling that petitioner Garcia asks requires *"an initial policy determination of a kind clearly for non-judicial discretion";* the branch of government that was given by the people the full discretionary authority to formulate the policy is the legislative department.

Directly supporting our conclusion that Garcia raises a political question is his proposal to adopt instead a system of partial

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[15] *Rollo*, pp. 29, 445.

[16] Cited in *IBP v.* Zamora, *supra* note 14.

deregulation — a system he presents as more consistent with the Constitutional "dictate." He avers that free market forces (in a fully deregulated environment) cannot prevail for as long as the market itself is dominated by an entrenched oligopoly. In such situation, he claims that prices are not determined by the free play of supply and demand, but instead by the entrenched and dominant oligopoly where overpricing and price-fixing are possible.[17] Thus, before full deregulation can be implemented, he calls for an indefinite period of partial deregulation through imposition of price controls.[18]

Petitioner Garcia's thesis readily reveals the political,[19] hence, non-justiciable, nature of his petition; the choice of undertaking full or partial deregulation is not for this Court to make. By enacting the assailed provision — Section 19 — of R.A. No. 8479, Congress already determined that the problems confronting the local downstream oil industry are better addressed by removing all forms of prior controls and adopting a deregulated system. This intent is expressed in Section 2 of the law:

> Section 2. *Declaration of Policy*. — It shall be the policy of the State to liberalize and deregulate the downstream oil industry in order to ensure a truly competitive market under a regime of fair prices, adequate and continuous supply of environmentally-clean and high-quality petroleum products. To this end, the State shall promote and encourage the entry of new participants in the downstream oil industry, and introduce adequate measures to ensure the attainment of these goals.

In *Tatad*, we declared that the fundamental principle espoused by Section 19, Article XII of the Constitution is competition.[20] Congress, by enacting R.A. No. 8479, determined that this objective is better realized by liberalizing the oil market, instead

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[17] *Rollo*, pp. 439-442, 453.

[18] *Ibid.*, pp. 29, 440.

[19] That is, "pertaining to public policy," as defined in The New International Webster's Dictionary and Thesaurus of the English Language, International Edition (2002 ed.).

[20] *Supra* note 2.

of continuing with a highly regulated system enforced by means of restrictive prior controls. This legislative determination was a lawful exercise of Congress' prerogative and one that this Court must respect and uphold. Regardless of the individual opinions of the Members of this Court, we cannot, acting as a body, question the wisdom of a co-equal department's acts. The courts do not involve themselves with or delve into the policy or wisdom of a statute;[21] it sits, not to review or revise legislative action, but to enforce the legislative will.[22] For the Court to resolve a clearly non-justiciable matter would be to debase the principle of separation of powers that has been tightly woven by the Constitution into our republican system of government.

This same line of reasoning was what we used when we dismissed the first Garcia case. The petitioner correctly noted that this is not a matter of *res judicata* (as the respondents invoked), as the application of the principle of *res judicata* presupposes that there is a final judgment or decree *on the merits* rendered by a court of *competent jurisdiction*. To be exact, we are simply declaring that then, as now, and for the same reasons, we find that there is no justiciable controversy that would justify the grant of the petition.

Grave Abuse of Discretion

Recourse to the political question doctrine necessarily raises the underlying doctrine of separation of powers among the three great branches of government that our Constitution has entrenched. But at the same time that the Constitution mandates this Court to respect acts performed by co-equal departments done within their sphere of competence and authority, it has also allowed us to cross the line of separation on a very limited and specific point — to determine whether the acts of the executive and the

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[21] *Fariñas v. COMELEC*, G.R. No. 147387, December 10, 2003, 417 SCRA 503.

[22] *Demetria v. Alba*, G.R. No. 71977, February 27, 1987, 148 SCRA 208, citing T. M. Cooley, *A Treatise on the Constitutional Limitations*, Vol. 1, 8th ed.

legislative departments are null because they were undertaken with grave abuse of discretion. *IBP v. Zamora* teaches us that —

When political questions are involved, the Constitution limits the determination as to whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the official whose action is being questioned.

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[W]hile this Court has no power to substitute its judgment for that of Congress or of the President, it may look into the question of whether such exercise has been made in grave abuse of discretion. A showing that plenary power is granted either department of government, may not be an obstacle to judicial inquiry, for the improvident exercise or abuse thereof may give rise to justiciable controversy. [23] [Emphasis supplied.]

Jurisprudence has defined grave abuse of discretion to mean the capricious or whimsical exercise of judgment that is so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[24]

Significantly, the pleadings before us fail to disclose any act of the legislature that may be characterized as patently capricious or whimsical. A reading of the congressional deliberations made on R.A. No. 8479 indicates that the measure was thoroughly and carefully considered. Indeed, petitioner Garcia was among the many who interpellated the law's principal author, then Congressman Dante O. Tinga, now a Member of this Court.

We note, too, that petitioner Garcia has not adequately proven at this point that an oligopoly does in fact exist in the form of the Big 3, and that the Big 3 have actually engaged in oligopolistic practices. He merely cites (in his argument against the applicability

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[23] *Supra* note 14.

[24] *Land Bank of the Philippines v. Court of Appeals*, G.R. No. 129368, 25 August 2003, 409 SCRA 455.

of *res judicata*) and relies on the facts and findings stated in the two prior cases on oil deregulation. This calls to mind what former Chief Justice Panganiban said in his Separate Opinion in the *1999 Garcia case*:

> Petitioner merely resurrects and relies heavily on the arguments, the statistics and the proofs he submitted *two* years ago in the first oil deregulation case, *Tatad v. Secretary of the Department of Energy*. **Needless to state, those reasons were taken into consideration in said case, and they indeed helped show the unconstitutionality of RA 8180. But exactly the same old grounds cannot continue to support petitioner's present allegation that the major oil companies — Petron, Shell and Caltex — persist *to this date* in their oligopolistic practices, as a consequence of the *current* Oil Deregulation Law and in violation of the Constitution.** In brief, the legal cause and effect relationship has not been amply shown. [Emphasis supplied.]

This observation is true in the present case as it was true in the 1999 Garcia case; the petitioner has simply omitted the citation of facts, figures and statistics specifically supporting his petition. To prove charges of continued overpricing or price-fixing, he refers to data showing price adjustments of petroleum products for the period covering February 8, 1997 to August 1, 1997. Insofar as R.A. No. 8479 is concerned, however, these data are irrelevant, as they cover a period way before R.A. No. 8479 was enacted.[25]

Petitioner Garcia contends that the identity in the pricing patterns of the Big 3 confirms the existence of an oligopoly and shows that they have colluded to engage in unlawful cartel-like behaviour. His reasoning fails to persuade us. That the oil firms have the same prices and change them at the same rate at the same time are not sufficient evidence to conclude that collusion exists. An independent study on local oil prices explains:

> [W]hen products are highly substitutable with each other (or what economists call "homogeneous products"), then firms will tend to set similar prices, especially when there are many competing sellers.

[25] R.A. No. 8479 was enacted on February 10, 1998.

Otherwise, if one firm tried to set a price significantly higher than the others, it would find itself losing customers to the others.[26]

Even assuming that the Big 3 have indeed colluded in fixing oil prices, this development will not necessarily justify a declaration against the validity and constitutionality of Section 19 of R.A. No. 8479. The remedy against the perceived failure of the Oil Deregulation Law to combat cartelization is not to declare it invalid, but to set in motion its anti-trust safeguards under Sections 11,[27] 12,[28] and 13.[29]

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[26] Report of the SGV-UA&P Independent Study on Oil Prices, May 2008, p. 4.

[27] SECTION 11. *Anti-Trust Safeguards.* — To ensure fair competition and prevent cartels and monopolies in the Industry, the following acts are hereby prohibited:

a) Cartelization which means any agreement, combination or concerted action by refiners, importers and/or dealers, or their representatives, to fix prices, restrict outputs or divide markets, either by products or by areas, or allocate markets, either by products or by areas, in restraint of trade or free competition, including any contractual stipulation which prescribes pricing levels and profit margins;

b) Predatory pricing which means selling or offering to sell any oil product at a price below the seller's or offeror's average variable cost for the purpose of destroying competition, eliminating a competitor or discouraging a potential competitor from entering the market: Provided, however, That pricing below average variable cost in order to match the lower price of the competitor and not for the purpose of destroying competition shall not be deemed predatory pricing. For purposes of this prohibition, "variable cost" as distinguished from "fixed cost", refers to costs such as utilities or raw materials, which vary as the output increases or decreases and "average variable cost" refers to the sum of all variable costs divided by the number of units of outputs.

Any person, including but not limited to the chief operating officer, chief executive officer or chief finance officer of the partnership, corporation or any entity involved, who is found guilty of any of the said prohibited acts shall suffer the penalty of three (3) to seven (7) years imprisonment, and a fine ranging from One million pesos (₱1,000,000.00) to Two million pesos (₱2,000,000.00).

[28] SECTION 12. *Other Prohibited Acts*. — To ensure compliance with the provisions of this Act, the refusal to comply with any of the following shall likewise be prohibited:

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a) submission of any reportorial requirements;

b) use of clean and safe (environment and worker-benign) technologies;

c) any order or instruction of the DOE Secretary issued in the exercise of his enforcement powers under Section 15 of this Act; and

d) registration of any fuel additive with the DOE prior to its use as an additive.

Any person, including but not limited to the chief operating officer or chief executive officer of the partnership, corporation or any entity involved, who is found guilty of any of the said prohibited acts shall suffer the penalty of imprisonment for two (2) years and fine ranging from Two hundred fifty thousand pesos (₱250,000.00) to Five hundred thousand pesos (₱500,000.00).

[29] SECTION 13. *Remedies*. — a) Government Action — Whenever it is determined by the Joint Task Force created under Section 14 (d) of this Act, that there is a threatened, imminent or actual violation of Section 11 of this Act, it shall direct the provincial or city prosecutors having jurisdiction to institute an action to prevent or restrain such violation with the Regional Trial Court of the place where the defendant or any of the defendants reside or has his place of business. Pending hearing of the complaint and before final judgment, the court may at any time issue a temporary restraining order or an order of injunction as shall be deemed just within the premises, under the same conditions and principles as injunctive relief is granted under the Rules of Court.

Whenever it is determined by the Joint Task Force that the Government or any of its instrumentalities or agencies, including government-owned or -controlled corporations, shall suffer loss or damage in its business or property by reason of violation of Section 11 of this Act, such instrumentality, agency or corporation may file an action to recover damages and the costs of suit with the Regional Trial Court which has jurisdiction as provided above.

b) Private Complaint. — Any person or entity shall report any violation of Section 11 of this Act to the Joint Task Force. The Joint Task Force shall investigate such reports in aid of which the DOE Secretary may exercise the powers granted under Section 15 of this Act. The Joint Task Force shall prepare a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public at the discretion of the Joint Task Force. In the event that the Joint Task Force determines that there has been a violation of Section 11 of this Act, the private person or entity shall be entitled to sue for and obtain injunctive relief, as well as damages, in the Regional Trial Court having jurisdiction over any of the parties, under the same conditions and principles as injunctive relief is granted under the Rules of Court.

Lis Mota

Lis Mota — the fourth requirement to satisfy before this Court will undertake judicial review — means that the Court will not pass upon a question of unconstitutionality, although properly presented, *if the case can be disposed of on some other ground, such as the application of the statute or the general law*. The petitioner must be able to show that the case cannot be legally resolved unless the constitutional question raised is determined.[30] This requirement is based on the rule that every law has in its favor the presumption of constitutionality;[31] to justify its nullification, there must be a clear and unequivocal breach of the Constitution, and not one that is doubtful, speculative, or argumentative.

Petitioner Garcia argues against full deregulation implemented through the lifting of price control, as it allows oligopoly, overpricing and price-fixing. R.A. No. 8479, however, does not condone these acts; indeed, Section 11 (a) of the law expressly prohibits and punishes cartelization, which is defined in the same section as "*any agreement, combination or concerted action by refiners, importers and/or dealers*, or their representatives, *to fix prices*, restrict outputs or divide markets, either by products or by areas, or allocate markets, either by products or by areas, in restraint of trade or free competition, including any contractual stipulation which prescribes pricing levels and profit margins." This definition is broad enough to include the alleged acts of overpricing or price-fixing by the Big 3. R.A. No. 8479 has provided, aside from prosecution for cartelization, several other anti-trust mechanisms, including the enlarged scope of the Department of Energy's monitoring power and the creation of a Joint Task Force to immediately act on complaints against unreasonable rise in the price of petroleum products.[32] Petitioner Garcia's failure is that he failed to show

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[30] *People v. Vera*, 65 Phil. 56 (1938).

[31] *Romualdez v. Sandiganbayan*, G.R. No. 152259, July 29, 2004, 435 SCRA 371.

[32] SECTION 14. *Monitoring*. — x x x (d) Any report from any person of an unreasonable rise in the prices of petroleum products shall be immediately

that he resorted to these measures before filing the instant petition. His belief that these oversight mechanisms are unrealistic and insufficient does not permit disregard of these remedies.[33]

CONCLUSION

To summarize, we declare that the issues petitioner Garcia presented to this Court are non-justiciable matters that preclude the Court from exercising its power of judicial review. The immediate implementation of full deregulation of the local downstream oil industry is a policy determination by Congress which this Court cannot overturn without offending the Constitution and the principle of separation of powers. That the law failed in its objectives because its adoption spawned the evils petitioner Garcia alludes to does not warrant its nullification. In the words of Mr. Justice Leonardo A. Quisumbing in the 1999 Garcia case, *"[a] calculus of fear and pessimism x x x does not justify the remedy petitioner seeks: that we overturn a law enacted by Congress and approved by the Chief Executive."*[34]

WHEREFORE, we hereby *DISMISS* the petition. No pronouncements as to costs.

SO ORDERED.

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

Tinga, J., no part. Author and sponsor of challenged law.

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acted upon. For this purpose, the creation of DOE-DOJ Task Force is here by mandated to determine within thirty (30) days the merits of the report and initiate the necessary actions warranted under the circumstance: *Provided*, That nothing herein shall prevent the said task force from investigating and/or filing the necessary complaint with the proper court or agency *motu proprio*. x x x.

[33] *Rollo*, pp. 459-461.

[34] *Concurring Opinion* of Justice Quisumbing in the *1999 Garcia case*, p. 267.

FIRST DIVISION

[G.R. No. 158071. April 2, 2009]

JOSE SANTOS, *petitioner, vs.* **COMMITTEE ON CLAIMS SETTLEMENT and GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS),** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED. —** In *Posadas-Moya and Associates Construction Co., Inc. v. Greenfield Development Corporation, et al.*, the Court distinguished a question of law from one of fact, thus: A **question of law** exists when there is doubt or controversy on what the law is on a certain state of facts. There is a **question of fact** when the doubt or difference arises from the truth or the falsity of the allegations of facts. Explained the Court: "A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation."

2. **ID.; ID.; ID.; A QUESTION OF FACT OR QUESTION OF LAW ALONE OR A MIX QUESTION OF FACT AND LAW MAY BE APPEALED TO THE COURT OF APPEALS VIA RULE 43 OF THE 1997 RULES OF CIVIL PROCEDURE. —** As a general rule, appeals on pure questions of law are brought to this Court since Sec. 5 (2) (e), Art. VIII of the Constitution includes in the enumeration of cases within its jurisdiction "all cases in which only an error or question of law is involved." It should not be overlooked, however, that the same provision vesting jurisdiction in this Court of the cases enumerated therein

is prefaced by the statement that it may "review, revise, reverse, modify, or affirm on appeal or *certiorari as the law or the Rules of Court may provide*," the judgments or final orders of lower courts in the cases therein enumerated. Rule 43 of the 1997 Rules of Civil Procedure constitutes an exception to the aforesaid general rule on appeals. Rule 43 provides for an instance where an appellate review solely on a question of law may be sought in the CA instead of this Court. Undeniably, an appeal to the CA may be taken within the reglementary period to appeal whether the appeal involves questions of fact, law, or mixed questions of fact and law. As such, a **question of fact** or **question of law** *alone* or a **mix question of fact and law** may be appealed to the CA *via* Rule 43. Thus, in *Carpio v. Sulu Resources Development Corporation,* we held: According to Section 3 of Rule 43, "[a]n appeal under this Rule may be taken to the Court of Appeals within the period and in the manner herein provided whether the appeal involves questions of fact, of law, or mixed questions of fact and law." **Hence, appeals from quasi-judicial agencies even only on questions of law may be brought to the CA.**

3. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; THE CONSTRUCTION GIVEN TO A STATUTE BY AN ADMINISTRATIVE AGENCY CHARGED WITH THE INTERPRETATION AND APPLICATION OF THAT STATUTE IS ENTITLED TO GREAT RESPECT AND SHOULD BE ACCORDED GREAT WEIGHT BY THE COURTS. —** It is well settled that the construction given to a statute by an administrative agency charged with the interpretation and application of that statute is entitled to great respect and should be accorded great weight by the courts. In the case at bar, this Court finds that the GSIS' ruling as to which retirement law is applicable to petitioner deserves full faith and credit. Petitioner fails to convince us that there are justifiable reasons to depart from the GSIS' decision in his case.

4. **ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; TERMINATION OF OFFICIAL RELATIONSHIP; RETIREMENT; RETIREMENT BENEFITS; ALL EMPLOYEES OF THE GOVERNMENT ARE COVERED BY PRESIDENTIAL DECREE 1146 UPON ITS EFFECTIVITY; EXCEPTION. —** All employees of the

government are covered by PD 1146 upon its effectivity. Only employees who are in the government service upon the effectivity of the said law who shall have, at the time of retirement, the option to retire under the old law or CA 186 (otherwise known as the Government Service Insurance Act, or the GSIS Charter) are exempt from the coverage of PD 1146. The foregoing applies notwithstanding the rule in Section 44 on non-impairment of benefits that have become vested under the old law. Pursuant to the rule on prospectivity of laws, employees who have previously retired under CA 186 and were reinstated after the effectivity of the new law are already covered by the new law, not because they are deemed new or original employees, but by mere prospective operation of the new law in force at the time they reentered the service.

5. ID.; ID.; ID.; ID.; ID.; ID.; ALL SERVICE CREDITED FOR RETIREMENT, RESIGNATION OR SEPARATION FOR WHICH CORRESPONDING BENEFITS HAVE BEEN AWARDED SHALL BE EXCLUDED IN THE COMPUTATION OF SERVICE IN CASE OF RE-EMPLOYMENT. — Section 10 (b) of P.D. 1146, as amended by R.A. 8291, states: "(b) All service credited for retirement, resignation or separation for which corresponding benefits have been awarded under this Act or other laws **shall be excluded in the computation of service in case of reinstatement** in the service of an employer **and subsequent retirement or separation which is compensable under this Act**." As such, we find nothing objectionable in the following provisions of the GSIS' the Rules and Regulations Implementing R.A. 8291 which provides: "Section 8.6. *Effect of Re-employment*. — When a retiree is re-employed, his/her previous services credited at the time of his/her retirement shall be excluded in the computation of future benefits. In effect, **he/she shall be considered a new entrant**." Additionally, Section 5.2 of the same implementing rules states that *all service credited for retirement, resignation or separation for which corresponding benefits have been awarded shall be excluded in the computation of service in case of re-employment*. As a re-employed member of the government service who is retiring during the effectivity of RA 8291, petitioner cannot have his previous government service with the DAR credited in the computation of his retirement benefit.

Neither can he choose a mode of retirement except that provided under R.A. 8291.

APPEARANCES OF COUNSEL

Delos Reyes Bonifacio Delos Reyes and *De Los Reyes Martinez Irog Braga and Associates* for petitioner.
Chief Legal Counsel (GSIS) for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before us is a petition for review on *certiorari* assailing the Decision[1] dated January 6, 2003, and Resolution[2] dated April 22, 2003 of the Court of Appeals (CA) in CA-G.R. SP No. 65163, entitled "*Jose Santos v. Committee on Claims Settlement and Government Service Insurance System (GSIS).*"

The facts are as follows:

On August 16, 1986, petitioner Jose S. Santos retired from the Department of Agrarian Reform (DAR) pursuant to Republic Act (R.A.) 1616[3] after rendering almost 21 years of service.

On January 2, 1989, petitioner was re-employed in the Office of the Deputy Ombudsman for Luzon.

In 1997, petitioner initiated moves to avail of early retirement under R.A. 660.[4] He requested and received from the Government

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[1] Penned by Associate Justice Eloy R. Bello, Jr. (ret.) and concurred in by Associate Justices Cancio C. Garcia (retired member of this Court) and Sergio L. Pestaño, *rollo,* pp. 34-39.

[2] *Rollo*, p. 41.

[3] An Act Further Amending Section Twelve of Commonwealth Act Numbered One Hundred Eighty-Six, as Amended, by Prescribing Two Other Modes of Retirement and for Other Purposes; Gratuity benefit plus return of contribution.

[4] Pension benefit, that is, 5 year lump sum pension and after 5 years, life time pension.

Service Insurance System (GSIS) Operating Unit a tentative computation of retirement benefits under R.A. 660 amounting to ₱667,937.40. Petitioner formally applied for retirement under R.A. 660 in January 1998.

However, in a Letter[5] dated May 4, 1998, the GSIS Operating Unit informed petitioner that he could no longer retire under R.A. 660 but he could do so under R.A. 8291,[6] under which petitioner is entitled to a reduced benefit of ₱81,557.20. This computation did not consider petitioner's 20.91553 years of service with the DAR prior to his previous retirement.

Petitioner appealed to respondent GSIS Committee on Claims. Unfortunately, respondent affirmed the GSIS Operating Unit's computation under R.A. 8291.

On August 25, 1999, petitioner filed with the GSIS Board of Trustees a complaint against respondent docketed as GSIS Case No. 002-99.

On February 15, 2000, the GSIS Board of Trustees rendered a decision[7] denying petitioner's complaint, thus:

> WHEREFORE, judgment is hereby rendered denying Petitioner Jose S. Santos' Petition to be allowed to retire under the pension plan under RA 660, and modifying the Resolution of the Government Service Insurance System's Committee on Claims Settlement adopted in its Committee Meeting No. 158 held on September 23, 1996, insofar as it limits Petitioner's mode of retirement to that provided in RA 8291. The Operating Unit concerned is ordered to process Petitioner's retirement effective March 21, 2000 under the gratuity retirement of RA 1616 or the pension retirement under RA 8291 after he formally indicates which mode he would like to avail of.
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> SO ORDERED.

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[5] Record, pp. 57-59.

[6] An Act Amending Presidential Decree No. 1146, as amended, Expanding and Increasing the Coverage and Benefit of the Government Service Insurance System, Instituting Reforms therein and for Other Purposes, which took effect on June 24, 1997.

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

In the meantime, on March 20, 2000, petitioner was compulsorily retired for reaching the age of sixty-five.

Petitioner filed a motion for reconsideration of the February 15, 2000 decision of the Board of Trustees. He attached documentary evidence to his motion which showed several retirees who were later on reemployed after their first retirement and were allowed to choose the law under which they can again retire. Thus, like them, he should also be allowed to retire under the law of his choice. The GSIS Board of Trustees denied his motion for reconsideration on March 27, 2001.

Aggrieved, petitioner filed with the CA a petition for review under Rule 43 of the 1997 Rules of Civil Procedure.

On January 6, 2003, the CA rendered the herein challenged decision dismissing the petition for lack of jurisdiction. It ruled as follows:[8]

> This Court is of the belief, however, that the focal issue raised herein, *i.e.*, **whether or not the petitioner can choose to retire under either Republic Act 8291 or Republic Act 660, is a pure question of law**. As such, this Court is not vested with jurisdiction to take cognizance of this case since there is no dispute with respect to the fact that when an appeal raised only pure question of law, **it is only the Supreme Court which has jurisdiction to entertain the same** (Article VIII, Section 5 (2) (e), 1987 Constitution; Rule 45, Rules of Court; see also *Santos, Jr. vs. Court of Appeals*, 152 SCRA [1987]).
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> **As can be seen from both parties['] arguments, the instant case calls for the determination of what the law is on the particular situation of herein petitioner, *i.e.*, whether RA 660 is applicable in his case or only that of RA 8291, or both**. Such question does not call for an examination of the probative value of the evidence presented by the parties because there is no dispute as to the truth or falsity of the facts obtaining in the case.

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

Hence, the procedure adopted by the petitioner in this case is improper. The proper procedure that should have been followed was to file a petition for review on *certiorari* under Rule 45 of the Rules of Court within 15 days from notice of judgment pointing out errors of law that will warrant a reversal or modification of the decision or judgment sought to be reviewed.

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WHEREFORE, **the instant petition is hereby DISMISSED for lack of jurisdiction.** (emphasis ours)

Petitioner filed a motion for reconsideration but the CA denied the same in its Resolution dated April 22, 2003.

Hence, this petition for review on *certiorari* with the following assignment of errors:

1. The Honorable Court of Appeals committed an error of law in holding that CA-G.R. SP No. 65163 entitled *Jose S. Santos vs. Committee on Claims Settlement*, GSIS raises only questions of law, hence the proper remedy for petitioner is a petition for review on *certiorari* under Rule 45;

2. The Honorable Court of Appeals committed an error in not giving due course to the petition as it raises questions of law only; a reading thereof shows that factual issues are raised therein. The said dismissal left unresolved the questions of law and facts raised in CA-G.R. SP No. 65163;

3. The Honorable Court of Appeals erred in not reversing the decision of the GSIS of February 15, 2000, it being contrary to law.

4. The Honorable Court of Appeals erred in dismissing CA-G.R. SP No. 65163, allegedly for lack of jurisdiction.

Petitioner avers that the CA erred in dismissing his petition which raised both questions of law and fact which are well within its jurisdiction pursuant to Rule 43 of the 1997 Rules of Civil Procedure. According to petitioner the petition raised factual issues which necessitated the review of the records of the re-employed retirees who were allowed by the GSIS to retire under

the law of their choice. Petitioner further avers that even if CA-G.R. SP No. 65163 raises only questions of law, the same is still within the jurisdiction of the CA pursuant to Section 31 of Republic Act No. 8291, which provides that appeals from any decision or award by the Board of Trustees shall be governed by Rules 43 and 45 of the 1997 Rules of Civil Procedure.

Respondent, on the other hand, maintains that the proper remedy of petitioner is to file a petition for review under Rule 45 and not under Rule 43, there being only pure questions of law involved in the case. Hence, the CA correctly dismissed the petition before it.

We deal first with the procedural issue raised by petitioner.

Rule 43 of the 1997 Rules of Civil Procedure clearly states:

Section 1. Scope. — **This Rule shall apply to appeals from** judgments or final orders of the Court of Tax Appeals and from **awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions**. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act 6657, **Government Service Insurance System**, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

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Section 3. Where to appeal. — **An appeal under this Rule may be taken to the Court of Appeals** within the period and in the manner herein provided, whether the appeal involves **questions of fact**, **of law**, or **mixed questions of fact and law**. (emphasis ours)

In *Posadas-Moya and Associates Construction Co., Inc. v. Greenfield Development Corporation, et al.*,[9] the Court distinguished a question of law from one of fact, thus:

> A **question of law** exists when there is doubt or controversy on what the law is on a certain state of facts. There is a **question of fact** when the doubt or difference arises from the truth or the falsity of the allegations of facts.
>
> Explained the Court:
>
> "A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation."

Thus, the question on whether petitioner can retire under RA 660 or RA 8291 is undoubtedly a question of law because it centers on what law to apply in his case considering that he has previously retired from the government under a particular statute and that he was re-employed by the government. These facts are admitted and there is no need for an examination of the probative value of the evidence presented.

As a general rule, appeals on pure questions of law are brought to this Court since Sec. 5 (2) (e), Art. VIII of the Constitution includes in the enumeration of cases within its jurisdiction "all cases in which only an error or question of law is involved."[10] It should not be overlooked, however, that the same provision vesting jurisdiction in this Court of the cases enumerated therein is prefaced by the statement that it may "review, revise, reverse,

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[9] G.R. No. 141115, June 10, 2003, 403 SCRA 530, 542.

[10] Regalado, *Remedial Law Compendium*, Volume 1, Seventh Revised Edition, pp. 523-524.

modify, or affirm on appeal or *certiorari as the law or the Rules of Court may provide*," the judgments or final orders of lower courts in the cases therein enumerated.[11] Rule 43 of the 1997 Rules of Civil Procedure constitutes an exception to the aforesaid general rule on appeals. Rule 43 provides for an instance where an appellate review solely on a question of law may be sought in the CA instead of this Court.

Undeniably, an appeal to the CA may be taken within the reglementary period to appeal whether the appeal involves questions of fact, law, or mixed questions of fact and law. As such, a **question of fact** or **question of law** *alone* or a **mix question of fact and law** may be appealed to the CA *via* Rule 43. Thus, in *Carpio v. Sulu Resources Development Corporation,*[12] we held:

> According to Section 3 of Rule 43, "[a]n appeal under this Rule may be taken to the Court of Appeals within the period and in the manner herein provided whether the appeal involves questions of fact, of law, or mixed questions of fact and law." **Hence, appeals from quasi-judicial agencies even only on questions of law may be brought to the CA**. (emphasis ours)

However, a remand of the case to the CA would serve no useful purpose, since the core issue in this case, *i.e.*, under which law petitioner can retire, can already be resolved based on the records of the proceedings before the GSIS. A remand would unnecessarily impose on the parties the concomitant difficulties and expenses of another proceeding where they would have to present the same evidence and arguments again. This clearly runs counter to the Rules of Court, which mandates liberal construction of the Rules to attain just, speedy and inexpensive disposition of any action or proceeding.[13]

We now discuss petitioner's arguments on the merits.

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[11] *Id.*

[12] G.R. No. 148267, August 8, 2002, 387 SCRA 128, 140.

[13] *Morales v. Court of Appeals and Policarpio C. Estrella*, G.R. No. 126196, January 28, 1998, 285 SCRA 337, 347 which discussed Section 2 (now Section 6), Rule 1 of the Rules of Court.

It is well settled that the construction given to a statute by an administrative agency charged with the interpretation and application of that statute is entitled to great respect and should be accorded great weight by the courts.[14] In the case at bar, this Court finds that the GSIS' ruling as to which retirement law is applicable to petitioner deserves full faith and credit. Petitioner fails to convince us that there are justifiable reasons to depart from the GSIS' decision in his case.

As pertinently discussed by the GSIS Board of Trustees, the grant of the right to choose a mode of retirement in Presidential Decree (P.D.) No. 1146 is found in Section 13. It was reproduced in Section 11 (c), Rule IV of the Implementing Rules and Regulations on the Revised GSIS Act of 1977, adopted by the System's Board of Trustees pursuant to Board Resolution 223-78, stating that:

> (c) Employees who were in the government service at the time of the effectivity of Presidential Decree No. 1146 shall, at the time of their retirement, have the option to retire under said Decree or under Commonwealth Act No. 186, as previously amended.

On August 28, 1980, the GSIS Board of Trustees, in Board Resolution No. 583-80, adopted the following amendment to Section 11 (c), Rule IV of the Implementing Rules for PD 1146, upon the recommendation of the Committee on Gray Areas:

> (c) Employees who were in the government service at the time of the effectivity of PD 1146 shall at the time of their retirement have the option to retire under said Decree or under CA 186 as previously amended <u>Provided, that in the event the member is reinstated in the service after having exercised the option to retire under RA 1616 he shall subsequently be retireable under PD 1146 only</u>.

On July 19, 1985, P.D. No. 1981 was promulgated amending Section 13 of PD 1146 as follows:

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[14] *Nestle Philippines, Inc. v. Court of Appeals,* G.R. No. 86738, November 13, 1991, 203 SCRA 505, 510; *Bagatsing v. Committee on Privatization,* G.R. No. 112399, July 14, 1995, 246 SCRA 334.

Sec. 13. *Retirement Option*. — Employees who are in the government service upon the effectivity of this Act shall, at the time of their retirement, have the option to retire under this Act or under Commonwealth Act No. 186, as amended, and their benefits and entitlement thereto shall be determined in accordance with the provisions of the law so opted: **Provided, however, That in the event of re-employment, the employee's subsequent retirement shall be governed by the provisions of this Act**: *Provided further,* That the member may change the mode of his retirement within one year from the date of his retirement in accordance with such rules and regulations as may be prescribed by the System. x x x (emphasis ours)

Clearly, the option to retire is preserved under PD 1146 for those who were in the government service upon its effectivity in view of the rule on non-impairment of benefits. There is an apparent gray area when an employee who was in the government service upon the effectivity of PD 1146 but opted to retire under one of the previous retirement laws. Once reinstated, are they still entitled, upon reinstatement, to exercise the option to again retire under the old law?

The GSIS Board of Trustees, in agreement with the Committee on Claims Settlement concluded that Mr. Santos' right to choose the law under which he would retire and be covered by R.A. 660 is **no longer available to him** because he had already exercised said right when he availed of it during his previous retirement in 1986. In 1986, he chose to forego the benefits of R.A. 660 and retired under R.A. 1616.

When petitioner first retired in 1986, the applicable law to his situation was P.D. 1146 as amended by P.D. 1981. Section 13 of that law (upon which petitioner himself bases his right to choose the law to govern his retirement) expressly states that in the event of re-employment the subsequent retirement shall be governed by P.D. 1146.

Even the Government Corporate Counsel supported such view through its Opinion No. 100, Series of 1981, stating that *in the event the member is reinstated in the service after having*

exercised the option to retire under RA 1616, he shall subsequently be retireable under PD 1146 only.

All employees of the government are covered by PD 1146 upon its effectivity. Only employees who are in the government service upon the effectivity of the said law who shall have, at the time of retirement, the option to retire under the old law or CA 186 (otherwise known as the Government Service Insurance Act, or the GSIS Charter) are exempt from the coverage of PD 1146.

The foregoing applies notwithstanding the rule in Section 44 on non-impairment of benefits that have become vested under the old law. Pursuant to the rule on prospectivity of laws, employees who have previously retired under CA 186 and were reinstated after the effectivity of the new law are already covered by the new law, not because they are deemed new or original employees, but by mere prospective operation of the new law in force at the time they reentered the service.

The same view was shared by the Government Corporate Counsel, in its Opinion No. 154, Series of 1997, dated July 14, 1997, when it ruled that the legislature intended to withhold the availability of retirement option from those who have been re-employed and are retiring for the second time. If the intent was otherwise, then the said proviso should have also expressly stated so and/or said proviso should not have been included at all. It stated, thus:

> One of the purposes for the passage of P.D. 1981 is to clarify the parties to whom the retirement option in Section 13 of P.D. 1146 is available, thus:
>
> > WHEREAS, there have been conflicting interpretations of certain provisions of Presidential Decree No. 1146, particularly as for whether or not elective public officials are covered by the GSIS for the duration of their term of office; whether or not a public officer or employee who is separated for cause or considered resigned automatically forfeits his retirement benefits; and whether or not public officers and employees in the government service at the time Presidential Decree No.

> 1146 took effect have the option of retiring under the said Decree or Commonwealth Act No. 186, as amended:
>
> WHEREAS, conflicting claims for benefits have invariably been filed under the different laws administered by the GSIS, which have oftentimes resulted in unnecessary litigation, delay and inconvenience on the part of the rightful claimants.
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> x x x x x x x x x
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> WHEREAS, it has thus become necessary to amend Presidential Decree No. 1146 to clarify some of its provisions to make it more responsive to the needs of the members of the GSIS and to assure the actuarial solvency of the Funds administered by the GSIS during these times of grave economic crisis affecting the country. (Underscoring ours)

With this legislative purpose in mind, the amendment of Section 13 of P.D. 1981, to include a proviso that in the event of re-employment of a member his subsequent retirement shall be governed by P.D. 1146, shows the clear legislative intent to withhold the availability of retirement option from those who have been re-employed and are retiring for the second time. If the intent was otherwise, then the said proviso should have also expressly stated so and/or said proviso should not have been included at all.

Thus, the last proviso in Section 13 of P.D. 1146, as amended, granting the right to change the mode of retirement within one year, may not be considered as referring to the immediately preceding section, which is the proviso stating that subsequent retirements shall be governed by P.D. 1146. Such interpretation would only render both provisos inconsistent and conflicting with one another and effectively meaningless because even if the first proviso removes the option, the second proviso prescribes the period by which the option may be exercised. It has been held that statutes must be interpreted in such a way as to give a sensible meaning to the language of the statutes and thus avoid non-sensical or absurd results (*People vs. Duque*, 212 SCRA 607; *Automatic Parts and Equipment vs. Lingad*, 30 SCRA 247, as cited in Agpalo, *op. Cit*., pp. 114-115). Thus, a better and more sensible interpretation of Section 13 of P.D. 1146 as amended is that the last proviso refers to the first part of the section which states to whom the option is given. In other words, government employees who are in the service at the time of the effectivity of P.D. 1146 have the option to retire under CA 186

or P.D. 1146 and if said option is exercised, they may change the mode of retirement chosen or opted within one year from date of retirement. Once the retired employees are however re-employed, they shall subsequently retire only under P.D. 1146.

Further, this Court notes that when petitioner formally applied for retirement in 1998 R.A. 8291 which amended P.D. 1146 was already in force and it was indubitably the law applicable to his second retirement. In contrast, the examples of subsequent retirements of re-employed government employees cited by petitioner were all prior to the effectivity of R.A. 8291.

Significantly, Section 3 of R.A. 8291 provides:

SEC. 3. Repealing Clause. — All laws and any other law or parts of law specifically inconsistent herewith are hereby repealed or modified accordingly: *Provided,* That the rights under the existing laws, rules and regulations vested upon or acquired by an employee who is already in the service as of the effectivity of this Act shall remain in force and effect: ***Provided, further,*** **That subsequent to the effectivity of this Act, a new employee or an employee who has previously retired or separated and is reemployed in the service shall be covered by the provisions of this Act.** (emphasis ours)

In addition, Section 10 (b) of P.D. 1146, as amended by R.A. 8291, states:

(b) All service credited for retirement, resignation or separation for which corresponding benefits have been awarded under this Act or other laws **shall be excluded in the computation of service in case of reinstatement** in the service of an employer **and subsequent retirement or separation which is compensable under this Act.**

As such, we find nothing objectionable in the following provisions of the GSIS' the Rules and Regulations Implementing R.A. 8291 which provides:

Section 8.6. *Effect of Re-employment.* — When a retiree is re-employed, his/her previous services credited at the time of his/her retirement shall be excluded in the computation of future benefits.

In effect, **he/she shall be considered a new entrant**. (emphasis ours)

Additionally, Section 5.2 of the same implementing rules states that *all service credited for retirement, resignation or separation for which corresponding benefits have been awarded shall be excluded in the computation of service in case of re-employment*.

As a re-employed member of the government service who is retiring during the effectivity of RA 8291, petitioner cannot have his previous government service with the DAR credited in the computation of his retirement benefit. Neither can he choose a mode of retirement except that provided under R.A. 8291.

All told, even if we find that the CA committed reversible error when it dismissed for lack of jurisdiction the petition filed before it, we see no reason to deviate from the findings of the GSIS. Hence, the instant petition must necessarily fail.

WHEREFORE, the petition is hereby *DENIED*.

SO ORDERED.

Puno, C.J. (Chairperson), Ynares-Santiago,[*] *Carpio,* and *Corona, JJ.,* concur.

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[*] Additional member in lieu of Justice Arturo D. Brion as per Special Order No. 588. Per Special Order No. 570, Justice Arturo D. Brion has been designated as an additional member in view of the retirement of Justice Adolfo S. Azcuna.

EN BANC

[G.R. No. 158885. April 2, 2009]

FORT BONIFACIO DEVELOPMENT CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE, REGIONAL DIRECTOR, REVENUE REGION NO. 8, and CHIEF, ASSESSMENT DIVISION, REVENUE REGION NO. 8, BIR,** *respondents.*

[G.R. No. 170680. April 2, 2009]

FORT BONIFACIO DEVELOPMENT CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE and REVENUE DISTRICT OFFICER, REVENUE DISTRICT NO. 44, TAGUIG and PATEROS, BUREAU OF INTERNAL REVENUE,** *respondents.*

SYLLABUS

1. **TAXATION; REPUBLIC ACT NO. 7716 (THE EXPANDED VALUE-ADDED TAX); COVERAGE —** On its face, there is nothing in Section 105 of the Old NIRC that prohibits the inclusion of real properties, together with the improvements thereon, in the beginning inventory of goods, materials and supplies, based on which inventory the transitional input tax credit is computed. It can be conceded that when it was drafted Section 105 could not have possibly contemplated concerns specific to real properties, as real estate transactions were not originally subject to VAT. At the same time, when transactions on real properties were finally made subject to VAT beginning with Rep. Act No. 7716, no corresponding amendment was adopted as regards Section 105 to provide for a differentiated treatment in the application of the transitional input tax credit with respect to real properties or real estate dealers. It was Section 100 of the Old NIRC, as amended by Rep. Act No. 7716, which made real estate transactions subject to VAT for the first time. Prior to the amendment, Section 100 had imposed the VAT "on every sale, barter or exchange of goods," without however specifying the kind of properties

that fall within or under the generic class "goods" subject to the tax. Rep. Act No. 7716, which significantly is also known as the Expanded Value-Added Tax (EVAT) law, expanded the coverage of the VAT by amending Section 100 of the Old NIRC in several respects, some of which we will enumerate. *First*, it made every sale, barter or exchange of "goods **or properties**" subject to VAT. *Second*, it generally defined "goods or properties" as "all tangible and intangible objects which are capable of pecuniary estimation." *Third*, it included a non-exclusive enumeration of various objects that fall under the class "goods or properties" subject to VAT, including "[r]eal properties held primarily for sale to customers or held for lease in the ordinary course of trade or business."

2. **ID.; ID.; VALUE-ADDED TAX; IMPOSED ON REAL PROPERTIES HELD PRIMARILY FOR SALE TO CUSTOMERS OR HELD FOR LEASE IN THE ORDINARY COURSE OF TRADE OR BUSINESS. —** Rep. Act No. 7716 clarifies that it is the real properties "held primarily for sale to customers or held for lease in the ordinary course of trade or business" that are subject to the VAT, and not when the real estate transactions are engaged in by persons who do not sell or lease properties in the ordinary course of trade or business. It is clear that those regularly engaged in the real estate business are accorded the same treatment as the merchants of other goods or properties available in the market. In the same way that a milliner considers hats as his goods and a rancher considers cattle as his goods, a real estate dealer holds real property, whether or not it contains improvements, as his goods.

3. **ID.; NATIONAL INTERNAL REVENUE CODE; VALUE-ADDED TAX; TRANSITIONAL INPUT TAX CREDITS; WHEN AVAILABLE. —** There is hardly any constricted definition of "transitional" that will limit its possible meaning to the shift from the sales tax regime to the VAT regime. Indeed, it could also allude to the transition one undergoes from not being a VAT-registered person to becoming a VAT-registered person. Such transition does not take place merely by operation of law, E.O. No. 273 or Rep. Act No. 7716 in particular. It could also occur when one decides to start a business. Section 105 states that the transitional input tax credits become available either to (1) a person who becomes liable to VAT; or (2) any person **who elects to be VAT-registered**. The clear language

of the law entitles new trades or businesses to avail of the tax credit once they become VAT-registered. The transitional input tax credit, whether under the Old NIRC or the New NIRC, may be claimed by a newly-VAT registered person such as when a business as it commences operations. If we view the matter from the perspective of a starting entrepreneur, greater clarity emerges on the continued utility of the transitional input tax credit.

4. **ID.; ID.; ID.; ID.; PURPOSE. —** [T]he transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisition of their beginning inventory of goods, materials and supplies. During that period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer. At the very beginning, the VAT-registered taxpayer is obliged to remit a significant portion of the income it derived from its sales as output VAT. The transitional input tax credit mitigates this initial diminution of the taxpayer's income by affording the opportunity to offset the losses incurred through the remittance of the output VAT at a stage when the person is yet unable to credit input VAT payments.

5. **ID.; ID.; ID.; ID.; THE COMMON STANDARD FOR THE APPLICATION THEREOF IS THAT THE TAXPAYER HAS BECOME LIABLE TO THE VALUE-ADDED TAX OR HAS ELECTED TO BE A VALUE-ADDED TAX-REGISTERED PERSON. —** The common standard for the application of the transitional input tax credit, as enacted by E.O. No. 273 and all subsequent tax laws which reinforced or reintegrated the tax credit, is simply that the taxpayer in question has become liable to VAT or has elected to be a VAT-registered person. E.O. No. 273 and the subsequent tax laws are all decidedly neutral and accommodating in ascertaining who should be entitled to the tax credit, and it behooves the CIR and the CTA to adopt a similarly judicious perspective.

6. **ID.; ID.; ID.; ID.; THE BEGINNING INVENTORY OF "GOODS" FORMS PART OF THE VALUATION OF THE TRANSITIONAL INPUT TAX CREDIT; THE TERM "GOODS," DEFINED. —** Under Section 105, the beginning inventory of "goods" forms part of the valuation of the transitional input tax credit. Goods, as commonly understood

in the business sense, refers to the product which the VAT-registered person offers for sale to the public. With respect to real estate dealers, it is the real properties themselves which constitute their "goods." Such real properties are the operating assets of the real estate dealer. Section 4.100-1 of RR No. 7-95 itself includes in its enumeration of "goods or properties" such "real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business." Said definition was taken from the very statutory language of Section 100 of the Old NIRC. By limiting the definition of goods to "improvements" in Section 4.105-1, the BIR not only contravened the definition of "goods" as provided in the Old NIRC, but also the definition which the same revenue regulation itself has provided.

7. **POLITICAL LAW; STATUTES; IN CASE OF CONFLICT BETWEEN A STATUTE AND AN ADMINISTRATIVE ORDER, THE FORMER MUST PREVAIL. —** It is x x x axiomatic that a rule or regulation must bear upon, and be consistent with, the provisions of the enabling statute if such rule or regulation is to be valid. In case of conflict between a statute and an administrative order, the former must prevail. Indeed, the CIR has no power to limit the meaning and coverage of the term "goods" in Section 105 of the Old NIRC absent statutory authority or basis to make and justify such limitation. A contrary conclusion would mean the CIR could very well moot the law or arrogate legislative authority unto himself by retaining sole discretion to provide the definition and scope of the term "goods."

8. **TAXATION; NATIONAL INTERNAL REVENUE CODE; VALUE-ADDED TAX; PRESUMPTIVE INPUT TAX CREDITS; WHEN APPLICABLE. —** Let us clarify the distinction between the presumptive input tax credit and the transitional input tax credit. As with the transitional input tax credit, the presumptive input tax credit is creditable against the output VAT. It necessarily has come into existence in our tax structure only after the introduction of the VAT. x x x E.O. No. 273 provided for a "presumptive input tax credit" as one of the transitory measures in the shift from sales taxes to VAT, but such presumptive input tax credit was never integrated in the NIRC itself. It was only in 1997, or eleven years after the VAT was first introduced, that the presumptive input tax credit

was first incorporated in the NIRC, more particularly in Section 111(B) of the New NIRC. As borne out by the text of the provision, it is plain that the presumptive input tax credit is highly limited in application as it may be claimed only by "persons or firms engaged in the processing of sardines, mackerel and milk, and in manufacturing refined sugar and cooking oil;" and "public works contractors." Clearly, for more than a decade now, the term "presumptive input tax credit" has contemplated a particularly idiosyncratic tax credit far divorced from its original usage in the transitory provisions of E.O. No. 273.

YNARES-SANTIAGO, ***J., concurring opinion:***

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE; VALUE-ADDED TAX; TRANSITIONAL INPUT TAX CREDITS; INTENDED TO APPLY TO A SITUATION WHERE A TAXPAYER, IN THE COURSE OF TRADE OR BUSINESS, TRANSITS FROM A NON-VALUE-ADDED TAX STATUS TO A VALUE-ADDED TAX STATUS. —** [T]he rate of the input tax shall be "8% of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher." If the intent of the law were to limit the input tax to cases where actual VAT was paid, it could have simply said that the tax base shall be the actual value-added tax paid. Instead, the law as framed contemplates a situation where a transitional input tax credit is claimed even if there was no actual payment of VAT in the underlying transaction. In such cases, the tax base used shall be the value of the beginning inventory of goods, materials and supplies. More importantly, the benefits of Section 105 are made available to "a person who becomes liable to value-added tax or any person who elects to be a VAT-registered person." In other words, the provision is made to apply to persons not theretofore subject to VAT. In this manner, the law seeks to alleviate the situation where a taxpayer who becomes liable to value-added tax may not claim the input tax credit available to other taxpayers who are subject to the value-added tax. In other words, Section 105 was not meant to give credit for taxes previously paid, if any, on a taxpayer's inventory, but to mitigate the burden of paying value-added tax when he sells the goods in his inventory in the future without the benefit of an input tax. The transitional input tax credit provided for by the above Section 105, as the name

implies, was intended to apply to a situation where a taxpayer, in the course of trade or business, transits from a non-VAT status to a VAT status. The provision of a transitional input tax credit, even to those whose transactions were not previously subject to VAT, was meant to soften the blow, so to speak, of having to pay the new tax to the full extent of 10% of the gross selling price.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; SHOULD NOT ISSUE A RULE OR REGULATION INCONSISTENT WITH THE LAW ON WHICH IT IS BASED; CASE AT BAR. —** Article 7 of the Civil Code provides that "[a]dministrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution." Simply put, an administrative rule or regulation cannot contravene the law on which it is based. Thus, Rev. Regs. 7-95 cannot distinguish between land and improvements in regard to the computation of the transitional input tax credit which a taxpayer may claim under Section 105. Where the law does not distinguish, courts should not distinguish. Rules and regulations issued by administrative agencies in the implementation of laws they administer shall not in any way modify, or be inconsistent with, explicit provisions of the law. While administrative agencies, such as the Bureau of Internal Revenue, may issue regulations to implement statutes, they are without authority to limit the scope of the statute to less than what it provides, or extend or expand the statute beyond its terms, or in any way modify explicit provisions of the law. Where there is a discrepancy between the basic law and a rule or regulation issued to implement said law, what prevails is the basic law. Rev. Regs. 795 is inconsistent with Section 105 insofar as the definition of the term "goods" is concerned. This is a legislative act beyond the authority of the Commissioner of Internal Revenue and the Secretary of Finance. The rules and regulations that administrative agencies promulgate, which are the product of a delegated legislative power to create new and additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the administrative agency. It is required that the regulation be germane to the objects and purposes of the law, and be not in contradiction to, but in conformity with, the standards prescribed by law. They must conform to and be consistent with the provisions of the enabling

statute in order for such rule or regulation to be valid. Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by an administrative body, as well as with respect to what fields are subject to regulation by it. It 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. In case of conflict between a statute and an administrative order, the former must prevail.

CARPIO, ***J., dissenting opinion:***

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE; VALUE-ADDED TAX; NATURE. —** The VAT is essentially a tax on transactions. It is imposed at every stage of the distribution process on the sale, barter, exchange of goods or property and in the performance of services until it finally reaches the consumer. Since it is a value-added tax, it is levied on the value added to goods and services at every link of the chain of transactions in order to prevent doubly taxing a prior transaction in the subsequent use or sale of the same product. In computing the tax liability, the taxpayer subtracts from the tax due on sales the taxes on his purchases of raw materials. He pays only the difference between the tax on sales (output tax) and the tax on outlays for materials, supplies, services and capital goods (input tax). **As a result, previously paid taxes are allowed as input tax credits deductible from the output VAT liability in subsequent transactions involving the same product**. This is substantially how transitional input tax credit works. The term "transitional" had been placed to distinguish this from an ordinary input tax since essentially this innovative tax credit's function is to pave the smooth transition from the non-VAT to the VAT system.

2. **ID.; ID.; ID.; DEVELOPMENTS. —** The VAT traces its roots from the sales tax and under forms of percentage tax under the old Tax Code. Since 1939, when the turnover tax was replaced by the manufacturer's sales tax, the Tax Code had provided for a single stage value-added tax on original sales by manufacturers, producers and importers computed on the "cost deduction method" and later on the basis of the "tax credit

method." Up until 1987, the system of taxing goods consisted of (1) an *excise tax* on selected articles, (2) *fixed and percentage taxes* on original and subsequent sales, on importations and on milled articles, and (3) *mining taxes* on mineral products. *Services* were subjected to percentage taxes based mainly on gross receipts. Beginning 1 January 1988, the multi-staged value-added tax had been adopted under EO 273. Among the new provisions included were the persons liable, the VAT on sale of goods, and the transitional input tax credit. The BIR released Revenue Regulation No. 5-87, the implementing rules of EO 273, which took effect on the same date. On 5 May 1994, Congress approved RA 7716 or the Expanded Value-Added Tax Law, commonly known as the E-VAT. The new law was enacted in order to extend the scope of the VAT not only to goods but also to properties. In this law, the VAT was expanded to include real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business. The provision pertaining to transitional input tax credit, Section 105, was not touched and remained in effect. x x x On 20 December 1996, Congress approved Republic Act No. 8241 which took effect on 1 January 1997. This tax law amended several provisions of RA 7716 including Section 105, which segregated the definition of input tax credit to transitional and presumptive. To implement this law, the BIR released a new ruling, Revenue Regulation No. 6-97 dated 2 January 1997. The most recent full revision of the NIRC is Republic Act No. 8424 or the Tax Reform Act of 1997, which took effect on 1 January 1998. From the years 2000 to 2004, several other amendments to the VAT law followed and the latest one is Republic Act No. 9337, popularly called the Reformed Value-Added Tax Law or R-VAT for short, which was approved by Congress on 24 May 2005 and which took effect on 1 July 2005. This new law increased the tax base of the VAT from 10% to 12%.

3. **ID.; ID.; ID.; TRANSITIONAL/PRESUMPTIVE INPUT TAX CREDITS; TRANSITIONAL OR PRESUMPTIVE INPUT TAX NECESSARILY REQUIRES A TRANSACTION WHERE A TAX HAD BEEN IMPOSED BY LAW; CASE AT BAR. —** Petitioner is not entitled to a refund or credit of any transitional input tax since the entire Global City land was bought by petitioner from the national government in 1995 under a tax-free sale transaction and without any VAT

component. This means that no previous business tax, whether in the form of sales tax or VAT, was paid by petitioner on its purchase of land from the national government. Simply put, since the national government is outside the operation of the VAT and is tax-exempt, the national government did not pass on any VAT to petitioner as part of the purchase price. x x x In the present case, when the national government sold the Global City land to petitioner in 1995, VAT on real properties was not yet in existence. RA 7716 had not yet been enacted and the sale of real properties was still exempt from VAT. Transitional or presumptive input tax necessarily requires a transaction where a tax had been imposed by law. Without any VAT on land imposed by law at the time, the 8% input tax credit cannot be presumed to have been paid. Thus, petitioner is not entitled to claim input VAT on the purchase of the land against its output VAT liability. Even if the sale transaction by the national government to petitioner happens today with the VAT on real properties already in existence, and petitioner subsequently resells the land, petitioner will still not be entitled to any input tax credit. **The simple reason is that the sale by the national government of government-owned land is not subject to VAT.** Thus, petitioner cannot now claim any input tax credit if it buys the same land today, and resells the same.

4. **ID.; ID.; ID.; ID.; WHEN THE LAW SAYS "TRANSITIONAL INPUT TAX" OR "PRESUMPTIVE INPUT TAX," THE PRESUMPTION IS THAT THERE EXISTS A LAW IMPOSING THE INPUT TAX AND SUCH TAX IS PRESUMED TO HAVE BEEN PAID. —** True, there exists a presumption in Section 105 that tax was paid, whether or not it was actually paid. This can be inferred from the provision that a taxpayer is "allowed input tax on his beginning inventory x x x equivalent to 8% x x x, or the actual value-added tax paid x x x, whichever is higher." **However, such presumption assumes the existence of a law imposing the tax presumed to have been paid. Otherwise, the presumption will have no basis because if no tax has been imposed by law, then there can be no presumption that such a tax has been paid.** If no tax has been imposed by law, whether it be VAT or sales, percentage, excise or privilege taxes, no such tax is legally due and payable, and thus there can be no presumption that any such tax has been paid. **When the law says "transitional input tax" or "presumptive input tax," the presumption is that**

there exists a law imposing the input tax and such tax is presumed to have been paid.

5. **ID.; ID.; ID.; TRANSITIONAL INPUT TAX CREDITS; THE 8% TRANSITIONAL INPUT TAX APPLIES ONLY TO IMPROVEMENTS ON LAND, BUT NOT ON THE LAND ITSELF. —** According to RR 7-95, the basis of the 8% input tax is simply the value of the improvements on the land and not the value of the taxpayer's entire inventory of real properties. This provision finds its basis in Section 105 which provides that input tax is allowed on the taxpayer's "beginning inventory of goods, materials and supplies." Here, the presumptive input tax contemplated by law pertains to the input tax paid for the goods, materials or supplies passed on to the taxpayer by his suppliers, and used to build improvements on the land. Even before real estate dealers like petitioner became subject to VAT under RA 7716, improvements on land were already subject to VAT. However, since the land itself was not subject to VAT or any input tax prior to RA 7716, the land then could not be considered part of the beginning inventory under Section 105. **Thus, the 8% transitional input tax applies only to improvements on land, but not on the land itself.**

APPEARANCES OF COUNSEL

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D E C I S I O N

TINGA, *J.*:

The value-added tax (VAT) system was first introduced in the Philippines on 1 January 1988, with the tax imposable on "any person who, in the course of trade or business, sells, barters or exchanges goods, renders services, or engages in similar transactions and any person who imports goods."[1] The first VAT law is found in Executive Order No. 273 (E.O. 273), which amended several provisions of the then National Internal

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[1] See Sec. 1, E.O. No. 273 (1987).

Revenue Code of 1986 (Old NIRC). E.O. No. 273 likewise accommodated the potential burdens of the shift to the VAT system by allowing newly liable VAT-registered persons to avail of a transitional input tax credit, as provided for in Section 105 of the old NIRC, as amended by E.O. No. 273. Said Section 105 is quoted, thus:

> SEC. 105. *Transitional input tax credits.* — A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory as prescribed by regulations, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to 8% of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax.[2]

There are other measures contained in E.O. No. 273 which were similarly intended to ease the shift to the VAT system. These measures also took the form of "transitional input taxes which can be credited against output tax,"[3] and are found in Section 25 of E.O. No. 273, the section entitled "Transitory Provisions." Said transitory provisions, which were never incorporated in the Old NIRC, read:

> Sec. 25. *Transitory provisions*. (a) All VAT-registered persons shall be allowed transitional input taxes which can be credited against output tax in the same manner as provided in Sections 104 of the National Internal Revenue Code as follows:
>
> 1) The balance of the deferred sales tax credit account as of December 31, 1987 which are accounted for in accordance with regulations prescribed therefor;
>
> 2) A presumptive input tax equivalent to 8% of the value of the inventory as of December 31, 1987 of materials and supplies which are not for sale, the tax on which was not taken up or claimed as deferred sales tax credit; and

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[2] Sec. 105, National Internal Revenue Code of 1986, as amended by E.O. No. 273.

[3] See Sec. 25(a), E.O. No. 273 (1987).

3) A presumptive input tax equivalent to 8% of the value of the inventory as of December 31, 1987 as goods for sale, the tax on which was not taken up or claimed as deferred sales tax credit.

Tax credit prescribed in paragraphs (2) and (3) above shall be allowed only to a VAT-registered person who files an inventory of the goods referred to in said paragraphs as provided in regulations.

(b) Any unused tax credit certificate issued prior to January 1, 1988 for excess tax credits which are applicable against advance sales tax shall be surrendered to, and replaced by the Commissioner with new tax credit certificates which can be used in payment for value-added tax liabilities.

(c) Any person already engaged in business whose gross sales or receipts for a 12-month period from September 1, 1986 to August 1, 1987, exceed the amount of ₱200,000.00, or any person who has been in business for less than 12 months as of August 1, 1987 but expects his gross sales or receipts to exceed ₱200,000 on or before December 31, 1987, shall apply for registration on or before October 29, 1987.[4]

On 1 January 1996, Republic Act (Rep. Act) No. 7716 took effect.[5] It amended provisions of the Old NIRC principally by restructuring the VAT system. It was under Rep. Act No. 7716 that VAT was imposed for the first time on the sale of real properties. This was accomplished by amending Section 100 of the NIRC to include "real properties" among the "goods or properties," the sale, barter or exchange of which is made subject to VAT. The relevant portions of Section 100, as amended by Rep. Act No. 7716, thus read:

Sec. 100. Value-added-tax on sale of goods or properties. —

(a) Rate and base of tax. — There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to 10% of the gross selling price or

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[4] Sec. 25, E.O. No. 273 (1987).

[5] See G.R. No. 158885 *rollo*, p. 215. The law itself was approved on 5 May 1994, but its implementation was delayed following the legal challenges to its constitutionality, which were finally resolved in *Tolentino v. Secretary of Finance*, G.R. No. 115455, 30 October 1995.

gross value in money of the goods, or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

(1) The term 'goods or properties' shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include:

(A) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business; x x x[6]

The provisions of Section 105 of the NIRC, on the transitional input tax credit, had remained intact despite the enactment of Rep. Act No. 7716. Said provisions would however be amended following the passage of the new National Internal Revenue Code of 1997 (New NIRC), also officially known as Rep Act No. 8424. The section on the transitional input tax credit was renumbered from Section 105 of the Old NIRC to Section 111(A) of the New NIRC. The new amendments on the transitional input tax credit are relatively minor, hardly material to the case at bar. They are highlighted below for easy reference:

Section 111. *Transitional/Presumptive Input Tax Credits.* —

(A) *Transitional Input Tax Credits.* — A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory **according to rules and regulations prescribed by the Secretary of finance, upon recommendation of the Commissioner**, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent for eight percent (8%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax.[7] (Emphasis supplied).

Rep. Act No. 8424 also made part of the NIRC, for the first time, the concept of "presumptive input tax credits," with Section 111(b) of the New NIRC providing as follows:

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[6] Sec. 100, National Internal Revenue Code of 1986, as amended by Rep. Act No. 7716.

[7] Sec. 111(a), National Internal Revenue Code of 1997; since amended by Rep. Act No. 9337.

(B) *Presumptive Input Tax Credits.* —

(1) Persons or firms engaged in the processing of sardines, mackerel and milk, and in manufacturing refined sugar and cooking oil, shall be allowed a presumptive input tax, creditable against the output tax, equivalent to one and one-half percent (1 ½%) of the gross value in money of their purchases of primary agricultural products which are used as inputs to their production.

As used in this Subsection, the term 'processing' shall mean pasteurization, canning and activities which through physical or chemical process alter the exterior texture or form or inner substance of a product in such manner as to prepare it for special use to which it could not have been put in its original form or condition.

(2) Public works contractors shall be allowed a presumptive input tax equivalent to one and one-half percent (1½%) of the contract price with respect to government contracts only in lieu of actual input taxes therefrom.[8]

What we have explained above are the statutory antecedents that underlie the present petitions for review. We now turn to the factual antecedents.

I.

Petitioner Fort Bonifacio Development Corporation (FBDC) is engaged in the development and sale of real property. On 8 February 1995, FBDC acquired by way of sale from the national government, a vast tract of land that formerly formed part of the Fort Bonifacio military reservation, located in what is now the Fort Bonifacio Global City (Global City) in Taguig City.[9] Since the sale was consummated prior to the enactment of Rep. Act No. 7716, no VAT was paid thereon. FBDC then proceeded to develop the tract of land, and from October, 1966 onwards it has been selling lots located in the Global City to interested buyers.[10]

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[8] Sec. 111(b), National Internal Revenue Code of 1997. Since amended by Rep. Act No. 9337.

[9] *Rollo* (G.R. No. 158885), p. 215.

[10] *Id.* at 216.

Following the effectivity of Rep. Act No. 7716, real estate transactions such as those regularly engaged in by FBDC have since been made subject to VAT. As the vendor, FBDC from thereon has become obliged to remit to the Bureau of Internal Revenue (BIR) output VAT payments it received from the sale of its properties to the Bureau of Internal Revenue (BIR). FBDC likewise invoked its right to avail of the transitional input tax credit and accordingly submitted an inventory list of real properties it owned, with a total book value of ₱71,227,503,200.00.[11]

On 14 October 1996, FBDC executed in favor of Metro Pacific Corporation two (2) contracts to sell, separately conveying two (2) parcels of land within the Global City in consideration of the purchase prices at ₱1,526,298,949.00 and ₱785,009,018.00, both payable in installments.[12] For the fourth quarter of 1996, FBDC earned a total of ₱3,498,888,713.60 from the sale of its lots, on which the output VAT payable to the BIR was ₱318,080,792.14. In the context of remitting its output VAT payments to the BIR, FBDC paid a total of ₱269,340,469.45 and utilized (a) ₱28,413,783.00 representing a portion of its then total transitional/presumptive input tax credit of ₱5,698,200,256.00, which petitioner allocated for the two (2) lots sold to Metro Pacific; and (b) its regular input tax credit of ₱20,326,539.69 on the purchase of goods and services.[13]

Between July and October 1997, FBDC sent two (2) letters to the BIR requesting appropriate action on whether its use of its presumptive input VAT on its land inventory, to the extent of ₱28,413,783.00 in partial payment of its output VAT for the fourth quarter of 1996, was in order. After investigating the matter, the BIR recommended that the claimed presumptive input tax credit be disallowed.[14] Consequently, the BIR issued to FBDC a Pre-Assessment Notice (PAN) dated 23 December 1997 for deficiency VAT for the 4th quarter of 1996. This was

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[11] *Id.* at 216.

[12] *Id.*

[13] *Id.* at 216.

[14] *Id.* at 217.

followed by a letter of respondent Commissioner of Internal Revenue (CIR),[15] addressed to and received by FBDC on 5 March 1998, disallowing the presumptive input tax credit arising from the land inventory on the basis of Revenue Regulation 7-95 (RR 7-95) and Revenue Memorandum Circular 3-96 (RMC 3-96). Section 4.105-1 of RR 7-95 provided the basis in main for the CIR's opinion, the section reading, thus:

Sec. 4.105-1. *Transitional input tax on beginning inventories*. — Taxpayers who became VAT-registered persons upon effectivity of RA No. 7716 who have exceeded the minimum turnover of ₱500,000.00 or who voluntarily register even if their turnover does not exceed ₱500,000.00 shall be entitled to a presumptive input tax on the inventory on hand as of December 31, 1995 on the following: (a) goods purchased for resale in their present condition; (b) materials purchased for further processing, but which have not yet undergone processing; (c) goods which have been manufactured by the taxpayer; (d) goods in process and supplies, all of which are for sale or for use in the course of the taxpayer's trade or business as a VAT-registered person.

However, in the case of real estate dealers, the basis of the presumptive input tax shall be the improvements, such as buildings, roads, drainage systems, and other similar structures, constructed on or after the effectivity of EO 273 (January 1, 1988).

The transitional input tax shall be 8% of the value of the inventory or actual VAT paid, whichever is higher, which amount may be allowed as tax credit against the output tax of the VAT-registered person.

The CIR likewise cited from the Transitory Provisions of RR 7-95, particularly the following:

(a) Presumptive Input Tax Credits —

x x x x x x x x x

(iii) For real estate dealers, the presumptive input tax of 8% of the book value of improvements on or after January 1, 1988 (the effectivity of E.O. 273) shall be allowed.

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[15] *Rollo*, p. 187, the letter being signed by then Commissioner of Internal Revenue (now Representative Liwayway Vinzons-Chato).

For purposes of sub-paragraphs (i), (ii) and (iii) above, an inventory as of December 31, 1995 of such goods or properties and improvements showing the quantity, description and amount filed with the RDO not later than Janaury 31, 1996.

x x x x x x x x x

Consequently, FBDC received an Assessment Notice in the amount of ₱45,188,708.08, representing deficiency VAT for the 4th quarter of 1996, including surcharge, interest and penalty. After respondent Regional Director denied FBDC's motion for reconsideration/protest, FBDC filed a petition for review with the Court of Tax Appeals (CTA), docketed as C.T.A. Case No. 5665.[16] On 11 August 2000, the CTA rendered a decision affirming the assessment made by the respondents.[17] FBDC assailed the CTA decision through a petition for review filed with the Court of Appeals, docketed as CA-G.R. SP No. 60477. On 15 November 2002, the Court of Appeals rendered a decision affirming the CTA decision, but removing the surcharge, interests and penalties, thus reducing the amount due to ₱28,413,783.00.[18] From said decision, FBDC filed a petition for review with this Court, the first of the two petitions now before us, seeking the reversal of the CTA decision dated 11 August 2000 and a pronouncement that FBDC is entitled to the transitional/ presumptive input tax credit of ₱28,413,783.00. This petition has been docketed as **G.R. No. 158885**.

The second petition, which is docketed as **G.R. No. 170680**, involves the same parties and legal issues, but concerns the

[16] The Regional Director had denied the motion for reconsideration/protest on the ground that FBDC was barred by the statute of limitations from raising the same. The issue of when did the statute of limitations begin to run against FBDC was among the issues raised before the Court of Tax Appeals, which resolved the same in favor of FBDC. Such issue is not before this Court.

[17] Decision penned by Presiding Judge Ernesto D. Acosta, and concurred in by Associate Judge Ramon O. De Veyra. Associate Judge Amancio Q. Saga filed a Dissenting Opinion.

[18] *Rollo*, pp. 402-411. Decision penned by Associate Justice Rodrigo Cosico, concurred in by Associate Justices Rebecca de Guia-Salvador and Regalado Maambong. The Court of Appeals however removed from petitioner's liability, the assessment of surcharge, interests and penalty by the BIR. See *id.* at 411.

claim of FBDC that it is entitled to claim a similar transitional/ presumptive input tax credit, this time for the third quarter of 1997. A brief recital of the anteceding facts underlying this second claim is in order.

For the third quarter of 1997, FBDC derived the total amount of ₱3,591,726,328.11 from its sales and lease of lots, on which the output VAT payable to the BIR was ₱359,172,632.81.[19] Accordingly, FBDC made cash payments totaling ₱347,741,695.74 and utilized its regular input tax credit of ₱19,743,565.73 on purchases of goods and services.[20] On 11 May 1999, FBDC filed with the BIR a claim for refund of the amount of ₱347,741,695.74 which it had paid as VAT for the third quarter of 1997.[21] No action was taken on the refund claim, leading FBDC to file a petition for review with the CTA, docketed as CTA Case No. 5926. Utilizing the same valuation[22] of 8% of the total book value of its beginning inventory of real properties (or ₱71,227,503,200.00) FBDC argued that its input tax credit was more than enough to offset the VAT paid by it for the third quarter of 1997.[23]

On 17 October 2000, the CTA promulgated its decision[24] in CTA Case No. 5926, denying the claim for refund. FBDC then filed a petition for review with the Court of Appeals, docketed as CA-G.R. SP No. 61517. On 3 October 2003, the Court of Appeals rendered a decision[25] affirming the judgment of the CTA. As a result, FBDC filed its second petition, docketed as G.R. No. 170680.

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[19] *Rollo* (G.R. No. 170680), p. 130.

[20] *Id.*

[21] *Id.*

[22] See note 11.

[23] *Rollo* (G.R. No. 170680), p. 131.

[24] Decision penned by Associate Judge Ramon O. De Veyra, and concurred in by Presiding Judge Ernesto D. Acosta. Associate Judge Amancio Q. Saga filed a Dissenting Opinion.

[25] Penned by Associate Justice Noel Tijam, and concurred in by Associate Justices Ruben T. Reyes and Edgardo P. Cruz.

II.

The two petitions were duly consolidated[26] and called for oral argument on 18 April 2006. During the oral arguments, the parties were directed to discuss the following issues:

1. In determining the 10% value-added tax in Section 100 of the [Old NIRC] on the sale of real properties by real estate dealers, is the 8% transitional input tax credit in Section 105 applied only to the improvements on the real property or is it applied on the value of the entire real property?

2. Are Section 4.105.1 and paragraph (a)(III) of the Transitory Provisions of Revenue Regulations No. 7-95 valid in limiting the 8% transitional input tax to the improvements on the real property?

While the two issues are linked, the main issue is evidently whether Section 105 of the Old NIRC may be interpreted in such a way as to restrict its application in the case of real estate dealers only to the improvements on the real property belonging to their beginning inventory, and not the entire real property itself. There would be no controversy before us if the Old NIRC had itself supplied that limitation, yet the law is tellingly silent in that regard. RR 7-95, which imposes such restrictions on real estate dealers, is discordant with the Old NIRC, so it is alleged.

III.

On its face, there is nothing in Section 105 of the Old NIRC that prohibits the inclusion of real properties, together with the improvements thereon, in the beginning inventory of goods, materials and supplies, based on which inventory the transitional input tax credit is computed. It can be conceded that when it was drafted Section 105 could not have possibly contemplated concerns specific to real properties, as real estate transactions were not originally subject to VAT. At the same time, when transactions on real properties were finally made subject to VAT beginning with Rep. Act No. 7716, no corresponding

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[26] Through a Resolution dated 4 April 2006.

amendment was adopted as regards Section 105 to provide for a differentiated treatment in the application of the transitional input tax credit with respect to real properties or real estate dealers.

It was Section 100 of the Old NIRC, as amended by Rep. Act No. 7716, which made real estate transactions subject to VAT for the first time. Prior to the amendment, Section 100 had imposed the VAT "on every sale, barter or exchange of goods," without however specifying the kind of properties that fall within or under the generic class "goods" subject to the tax.

Rep. Act No. 7716, which significantly is also known as the Expanded Value-Added Tax (EVAT) law, expanded the coverage of the VAT by amending Section 100 of the Old NIRC in several respects, some of which we will enumerate. *First*, it made every sale, barter or exchange of "goods **or properties**" subject to VAT.[27] *Second*, it generally defined "goods or properties" as "all tangible and intangible objects which are capable of pecuniary estimation."[28] *Third*, it included a non-exclusive enumeration of various objects that fall under the class "goods or properties" subject to VAT, including "[r]eal properties held primarily for sale to customers or held for lease in the ordinary course of trade or business."[29]

From these amendments to Section 100, is there any differentiated VAT treatment on real properties or real estate dealers that would justify the suggested limitations on the application of the transitional input tax on them? We see none.

Rep. Act No. 7716 clarifies that it is the real properties "held primarily for sale to customers or held for lease in the ordinary course of trade or business" that are subject to the VAT, and not when the real estate transactions are engaged in by persons who do not sell or lease properties in the ordinary course of

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[27] See Sec. 100, National Internal Revenue Code of 1986, as amended by Rep. Act No. 7716.

[28] See Sec. 100(1), National Internal Revenue Code of 1986, as amended by Rep. Act No. 7716.

[29] See Sec. 100(1)(a), National Internal Revenue Code of 1986, as amended by Rep. Act No. 7716, *supra* at 4-5.

trade or business. It is clear that those regularly engaged in the real estate business are accorded the same treatment as the merchants of other goods or properties available in the market. In the same way that a milliner considers hats as his goods and a rancher considers cattle as his goods, a real estate dealer holds real property, whether or not it contains improvements, as his goods.

Had Section 100 itself supplied any differentiation between the treatment of real properties or real estate dealers and the treatment of the transactions involving other commercial goods, then such differing treatment would have constituted the statutory basis for the CIR to engage in such differentiation which said respondent did seek to accomplish in this case through Section 4.105-1 of RR 7-95. Yet the amendments introduced by Rep. Act No. 7716 to Section 100, coupled with the fact that the said law left Section 105 intact, reveal the lack of any legislative intention to make persons or entities in the real estate business subject to a VAT treatment different from those engaged in the sale of other goods or properties or in any other commercial trade or business.

If the plain text of Rep. Act No. 7716 fails to supply any apparent justification for limiting the beginning inventory of real estate dealers only to the improvements on their properties, how then were the CIR and the courts a *quo* able to justify such a view?

IV.

The fact alone that the denial of FBDC's claims is in accord with Section 4.105-1 of RR 7-95 does not, of course, put this inquiry to rest. If Section 4.105-1 is itself incongruent to Rep. Act No. 7716, the incongruence cannot by itself justify the denial of the claims. We need to inquire into the rationale behind Section 4.105-1, as well as the question whether the interpretation of the law embodied therein is validated by the law itself.

The CTA, in its rulings, proceeded from a thesis which is not readily apparent from the texts of the laws we have cited. The transitional input tax credit is conditioned on the prior payment

of sales taxes or the VAT, so the CTA observed. The introduction of the VAT through E.O. No. 273 and its subsequent expansion through Rep. Act No. 7716 subjected various persons to the tax for the very first time, leaving them unable to claim the input tax credit based on their purchases before they became subject to the VAT. Hence, the transitional input tax credit was designed to alleviate that relatively iniquitous loss. Given that rationale, according to the CTA, it would be improper to allow FBDC, which had acquired its properties through a tax-free purchase, to claim the transitional input tax credit. The CTA added that Section 105.4.1 of RR 7-95 is consonant with its perceived rationale behind the transitional input tax credit since the materials used for the construction of improvements would have most likely involved the payment of VAT on their purchase.

Concededly, this theory of the CTA has some sense, extravagantly extrapolated as it is though from the seeming silence on the part of the provisions of the law. Yet ultimately, the theory is woefully limited in perspective.

It is correct, as pointed out by the CTA, that upon the shift from sales taxes to VAT in 1987 newly-VAT registered people would have been prejudiced by the inability to credit against the output VAT their payments by way of sales tax on their existing stocks in trade. Yet that inequity was precisely addressed by a transitory provision in E.O. No. 273 found in Section 25 thereof. The provision authorized VAT-registered persons to invoke a "presumptive input tax equivalent to 8% of the value of the inventory as of December 31, 1987 of materials and supplies which are not for sale, the tax on which was not taken up or claimed as deferred sales tax credit," and a similar presumptive input tax equivalent to 8% of the value of the inventory as of December 31, 1987 of goods for sale, the tax on which was not taken up or claimed as deferred sales tax credit.[30]

Section 25 of E.O. No. 273 perfectly remedies the problem assumed by the CTA as the basis for the introduction of transitional input tax credit in 1987. If the core purpose of the tax credit is

[30] See Sec. 25, E.O. No. 273 (1988).

only, as hinted by the CTA, to allow for some mode of accreditation of previously-paid sales taxes, then Section 25 alone would have sufficed. Yet E.O. No. 273 amended the Old NIRC itself by providing for the transitional input tax credit under Section 105, thereby assuring that the tax credit would endure long after the last goods made subject to sales tax have been consumed.

If indeed the transitional input tax credit is integrally related to previously paid sales taxes, the purported causal link between those two would have been nonetheless extinguished long ago. Yet Congress has reenacted the transitional input tax credit several times; that fact simply belies the absence of any relationship between such tax credit and the long-abolished sales taxes. Obviously then, the purpose behind the transitional input tax credit is not confined to the transition from sales tax to VAT.

There is hardly any constricted definition of "transitional" that will limit its possible meaning to the shift from the sales tax regime to the VAT regime. Indeed, it could also allude to the transition one undergoes from not being a VAT-registered person to becoming a VAT-registered person. Such transition does not take place merely by operation of law, E.O. No. 273 or Rep. Act No. 7716 in particular. It could also occur when one decides to start a business. Section 105 states that the transitional input tax credits become available either to (1) a person who becomes liable to VAT; or (2) any person **who elects to be VAT-registered**. The clear language of the law entitles new trades or businesses to avail of the tax credit once they become VAT-registered. The transitional input tax credit, whether under the Old NIRC or the New NIRC, may be claimed by a newly-VAT registered person such as when a business as it commences operations. If we view the matter from the perspective of a starting entrepreneur, greater clarity emerges on the continued utility of the transitional input tax credit.

Following the theory of the CTA, the new enterprise should be able to claim the transitional input tax credit because it has presumably paid taxes, VAT in particular, in the purchase of the goods, materials and supplies in its beginning inventory.

Consequently, as the CTA held below, if the new enterprise has not paid VAT in its purchases of such goods, materials and supplies, then it should not be able to claim the tax credit. However, it is not always true that the acquisition of such goods, materials and supplies entail the payment of taxes on the part of the new business. In fact, this could occur as a matter of course by virtue of the operation of various provisions of the NIRC, and not only on account of a specially legislated exemption.

Let us cite a few examples drawn from the New NIRC. If the goods or properties are not acquired from a person in the course of trade or business, the transaction would not be subject to VAT under Section 105.[31] The sale would be subject to capital gains taxes under Section 24(D),[32] but since capital gains is a tax on passive income it is the seller, not the buyer, who generally would shoulder the tax.

If the goods or properties are acquired through donation, the acquisition would not be subject to VAT but to donor's tax under Section 98 instead.[33] It is the donor who would be liable to pay the donor's tax,[34] and the donation would be exempt if the donor's total net gifts during the calendar year does not exceed ₱100,000.00.[35]

If the goods or properties are acquired through testate or intestate succession, the transfer would not be subject to VAT but liable instead for estate tax under Title III of the New NIRC.[36] If the net estate does not exceed ₱200,000.00, no estate tax would be assessed.[37]

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[31] See Sec. 105, New NIRC, as amended.

[32] See Sec. 24(D), New NIRC, as amended.

[33] See Sec. 98, New NIRC, as amended.

[34] See Sec. 99, New NIRC, as amended.

[35] *Id.*

[36] See Secs. 84-97, New NIRC, as amended.

[37] See Sec. 84, New NIRC, as amended.

The interpretation proffered by the CTA would exclude goods and properties which are acquired through sale not in the ordinary course of trade or business, donation or through succession, from the beginning inventory on which the transitional input tax credit is based. This prospect all but highlights the ultimate absurdity of the respondents' position. Again, nothing in the Old NIRC (or even the New NIRC) speaks of such a possibility or qualifies the previous payment of VAT or any other taxes on the goods, materials and supplies as a pre-requisite for inclusion in the beginning inventory.

It is apparent that the transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisition of their beginning inventory of goods, materials and supplies. During that period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer. At the very beginning, the VAT-registered taxpayer is obliged to remit a significant portion of the income it derived from its sales as output VAT. The transitional input tax credit mitigates this initial diminution of the taxpayer's income by affording the opportunity to offset the losses incurred through the remittance of the output VAT at a stage when the person is yet unable to credit input VAT payments.

There is another point that weighs against the CTA's interpretation. Under Section 105 of the Old NIRC, the rate of the transitional input tax credit is "8% of the value of such inventory **or** the actual value-added tax paid on such goods, materials and supplies, whichever is higher."[38] If indeed the transitional input tax credit is premised on the previous payment of VAT, then it does not make sense to afford the taxpayer the benefit of such credit based on "8% of the value of such inventory" should the same prove higher than the actual VAT paid. This intent that the CTA alluded to could have been implemented with ease had the legislature shared such intent by providing the actual VAT paid as the sole basis for the rate of the transitional input tax credit.

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[38] See note 2.

The CTA harped on the circumstance that FBDC was excused from paying any tax on the purchase of its properties from the national government, even claiming that to allow the transitional input tax credit is "tantamount to giving an undeserved bonus to real estate dealers similarly situated as [FBDC] which the Government cannot afford to provide." Yet the tax laws in question, and all tax laws in general, are designed to enforce uniform tax treatment to persons or classes of persons who share minimum legislated standards. The common standard for the application of the transitional input tax credit, as enacted by E.O. No. 273 and all subsequent tax laws which reinforced or reintegrated the tax credit, is simply that the taxpayer in question has become liable to VAT or has elected to be a VAT-registered person. E.O. No. 273 and the subsequent tax laws are all decidedly neutral and accommodating in ascertaining who should be entitled to the tax credit, and it behooves the CIR and the CTA to adopt a similarly judicious perspective.

IV.

Given the fatal flaws in the theory offered by the CTA as supposedly underlying the transitional input tax credit, is there any other basis to justify the limitations imposed by the CIR through RR 7-95? We discern nothing more. As seen in our discussion, there is no logic that coheres with either E.O. No. 273 or Rep. Act No. 7716 which supports the restriction imposed on real estate brokers and their ability to claim the transitional input tax credit based on the value of their real properties. In addition, the very idea of excluding the real properties itself from the beginning inventory simply runs counter to what the transitional input tax credit seeks to accomplish for persons engaged in the sale of goods, whether or not such "goods" take the form of real properties or more mundane commodities.

Under Section 105, the beginning inventory of "goods" forms part of the valuation of the transitional input tax credit. Goods, as commonly understood in the business sense, refers to the product which the VAT-registered person offers for sale to the public. With respect to real estate dealers, it is the real properties

themselves which constitute their "goods." Such real properties are the operating assets of the real estate dealer.

Section 4.100-1 of RR No. 7-95 itself includes in its enumeration of "goods or properties" such "real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business." Said definition was taken from the very statutory language of Section 100 of the Old NIRC. By limiting the definition of goods to "improvements" in Section 4.105-1, the BIR not only contravened the definition of "goods" as provided in the Old NIRC, but also the definition which the same revenue regulation itself has provided.

The Court of Tax Appeals claimed that under Section 105 of the Old NIRC the basis for the inventory of goods, materials and supplies upon which the transitional input VAT would be based "shall be left to regulation by the appropriate administrative authority." This is based on the phrase "filing of an inventory as prescribed by regulations" found in Section 105. Nonetheless, Section 105 does include the particular properties to be included in the inventory, namely goods, materials and supplies. It is questionable whether the CIR has the power to actually redefine the concept of "goods," as she did when she excluded real properties from the class of goods which real estate companies in the business of selling real properties may include in their inventory. The authority to prescribe regulations can pertain to more technical matters, such as how to appraise the value of the inventory or what papers need to be filed to properly itemize the contents of such inventory. But such authority cannot go as far as to amend Section 105 itself, which the Commissioner had unfortunately accomplished in this case.

It is of course axiomatic that a rule or regulation must bear upon, and be consistent with, the provisions of the enabling statute if such rule or regulation is to be valid.[39] In case of conflict between a statute and an administrative order, the former

[39] *Lina, Jr. v. Carino*, G.R. No. 100127, 23 April 1993, 221 SCRA 515, 531; *United BF Homeowners Association v. Home Insurance and Guaranty Corp.,* G.R. No. 124783, 14 July 1999, 310 SCRA 304, 316.

must prevail.[40] Indeed, the CIR has no power to limit the meaning and coverage of the term "goods" in Section 105 of the Old NIRC absent statutory authority or basis to make and justify such limitation. A contrary conclusion would mean the CIR could very well moot the law or arrogate legislative authority unto himself by retaining sole discretion to provide the definition and scope of the term "goods."

V.

At this juncture, we turn to some of the points raised in the dissent of the esteemed Justice Antonio T. Carpio.

The dissent adopts the CTA's thesis that the transitional input tax credit applies only when taxes were previously paid on the properties in the beginning inventory. Had the dissenting view won, it would have introduced a new requisite to the application of the transitional input tax credit and required the taxpayer to supply proof that it had previously paid taxes on the acquisition of goods, materials and supplies comprising its beginning inventory. We have sufficiently rebutted this thesis, but the dissent adds a twist to the argument by using the term "presumptive input tax credit" to imply that the transitional input tax credit involves a **presumption** that there was a previous payment of taxes.

Let us clarify the distinction between the presumptive input tax credit and the transitional input tax credit. As with the transitional input tax credit, the presumptive input tax credit is creditable against the output VAT. It necessarily has come into existence in our tax structure only after the introduction of the VAT. As quoted earlier,[41] E.O. No. 273 provided for a "presumptive input tax credit" as one of the transitory measures in the shift from sales taxes to VAT, but such presumptive input tax credit was never integrated in the NIRC itself. It was only in 1997, or eleven years after the VAT was first introduced,

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[40] *Kilusang Mayo Uno Labor Center vs. Garcia, Jr.,* G.R. No. 115381, 239 SCRA 386, 411, 23 December 1994*; Conte v. Commission on Audit,* G.R. No. 116422, 4 November 1996, 126 SCRA 19, 50.

[41] See note 30.

that the presumptive input tax credit was first incorporated in the NIRC, more particularly in Section 111(B) of the New NIRC. As borne out by the text of the provision,[42] it is plain that the presumptive input tax credit is highly limited in application as it may be claimed only by "persons or firms engaged in the processing of sardines, mackerel and milk, and in manufacturing refined sugar and cooking oil";[43] and "public works contractors."[44]

Clearly, for more than a decade now, the term "presumptive input tax credit" has contemplated a particularly idiosyncratic tax credit far divorced from its original usage in the transitory provisions of E.O. No. 273. There is utterly no sense then in latching on to the term as having any significant meaning for the purpose of the cases at bar.

The dissent, in arguing for the effectivity of Section 4.105-1 of RR 7-95, ratiocinates in this manner: (1) Section 4.105-1 finds basis in Section 105 of the Old NIRC, which provides that the input tax is allowed on the "beginning inventory of goods, materials and supplies;" (2) input taxes must have been paid on such goods, materials and supplies; (3) unlike real property itself, the improvements thereon were already subject to VAT even prior to the passage of Rep. Act No. 7716; (4) since no VAT was paid on the real property prior to the passage of Rep. Act No. 7716, it could not form part of the "beginning inventory of goods, materials and supplies."

This chain of premises have already been debunked. It is apparent that the dissent believes that only those "goods, materials and supplies" on which input VAT was paid could form the basis of valuation of the input tax credit. Thus, if the VAT-registered person acquired all the goods, materials and supplies of the beginning inventory through a sale not in the ordinary course of trade or business, or through succession or donation, said person would be unable to receive a transitional input tax credit. Yet even RR 7-95, which imposes the restriction only

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[42] See note 8.

[43] *Id.*

[44] *Id.*

on real estate dealers permits such other persons who obtained their beginning inventory through tax-free means to claim the transitional input tax credit. The dissent thus betrays a view that is even more radical and more misaligned with the language of the law than that expressed by the CIR.

VI.

A final observation. Section 4.105.1 of RR No. 7-95, insofar as it disallows real estate dealers from including the value of their real properties in the beginning inventory of goods, materials and supplies, has in fact already been repealed. The offending provisions were deleted with the enactment of Revenue Regulation No. 6-97 (RR 6-97) dated 2 January 1997, which amended RR 7-95.[45] The repeal of the basis for the present assessments by RR 6-97 only highlights the continuing absurdity of the position of the BIR towards FBDC.

FBDC points out that while the transactions involved in G.R. No. 158885 took place during the effectivity of RR 7-95, the transactions involved in G.R. No. 170680 in fact took place after RR No. 6-97 had taken effect. Indeed, the assessments subject of G.R. No. 170680 were for the third quarter of 1997, or several months after the effectivity of RR 6-97. That fact provides additional reason to sustain FBDC's claim for refund of its 1997 Third Quarter VAT payments. Nevertheless, since the assailed restrictions implemented by RR 7-95 were not sanctioned by law in the first place there is no longer need to dwell on such fact.

WHEREFORE, the petitions are *GRANTED*. The assailed decisions of the Court of Tax Appeals and the Court of Appeals are *REVERSED* and *SET ASIDE*. Respondents are hereby (1) restrained from collecting from petitioner the amount of ₱28,413,783.00 representing the transitional input tax credit due it for the fourth quarter of 1996; and (2) directed to refund to petitioner the amount of ₱347,741,695.74 paid as output

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[45] Such fact was commonly agreed to by the parties in their joint stipulation of facts in CTA Case No. 5665. See *Rollo* (G.R. No. 158885), p. 119.

VAT for the third quarter of 1997 in light of the persisting transitional input tax credit available to petitioner for the said quarter, or to issue a tax credit corresponding to such amount. No pronouncement as to costs.

SO ORDERED.

Corona, Chico-Nazario, Velasco, Jr., Leonardo-de Castro, and *Peralta, JJ.,* concur.

Ynares-Santiago, J., pls. see concurring opinion.

Carpio, J., see dissenting opinion.

Quisumbing, Carpio Morales, and *Brion, JJ.,* join the dissent of *J.* Carpio.

Austria-Martinez, J., the *C.J.* certifies that *J.* Martinez voted for the opinions of *JJ.* Tinga and Santiago.

Puno, C.J., no part due to relationship.

Nachura, J., no part.

CONCURRING OPINION

YNARES-SANTIAGO, *J.*:

After a careful review of the actual effects of the tax measures involved herein, and with due regard to the intent of the framers of the law and the real benefits thereof on the taxpayer, I vote to grant the herein consolidated petitions.

It is an undisputed fact that when petitioner acquired the lands within the Fort Bonifacio military reservation from the national government, the latter did not have to pay any tax, be it sales or value-added. This notwithstanding, my reading of the applicable tax laws is that petitioner may still claim transitional input tax credit.

Prior to January 1, 1996, sales of real properties were not subject to VAT. On the said date, Republic Act No. 7716 took effect amending portions of the National Internal Revenue Code.

It was only then that the value-added tax was imposed on the sale of real properties. Section 100 of the NIRC was amended to read:

"Sec. 100. *Value-added tax on sale of goods or properties. — (a) Rate and base of tax.* — There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

"(1) The term 'goods or properties' shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include:

> "(A) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business; x x x."

As can be seen, any sale that petitioner entered into before the effectivity of RA 7716 was not subject to VAT. Beginning January 1, 1996, petitioner's transactions became subject to VAT in the full amount of 10% of the gross selling price. This imposed an unexpected burden on petitioner, and other real property developers for that matter. Petitioner would not be able to claim creditable input tax since its purchase of the lands from the national government was not subject to VAT. This is not in accord with the spirit and intent of the law as will be demonstrated hereunder.

The amendatory provision of Section 105 of the NIRC, as introduced by RA 7716, states:

"Sec. 105. *Transitional input tax credits.* — A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory as prescribed by regulations, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to 8% of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax."

To reiterate, the rate of the input tax shall be "8% of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher."[1] If the intent of the law were to limit the input tax to cases where actual VAT was paid, it could have simply said that the tax base shall be the actual value-added tax paid. Instead, the law as framed contemplates a situation where a transitional input tax credit is claimed even if there was no actual payment of VAT in the underlying transaction. In such cases, the tax base used shall be the value of the beginning inventory of goods, materials and supplies.

More importantly, the benefits of Section 105 are made available to "a person who becomes liable to value-added tax or any person who elects to be a VAT-registered person." In other words, the provision is made to apply to persons not theretofore subject to VAT. In this manner, the law seeks to alleviate the situation where a taxpayer who becomes liable to value-added tax may not claim the input tax credit available to other taxpayers who are subject to the value-added tax. In other words, Section 105 was not meant to give credit for taxes previously paid, if any, on a taxpayer's inventory, but to mitigate the burden of paying value-added tax when he sells the goods in his inventory in the future without the benefit of an input tax.

The transitional input tax credit provided for by the above Section 105, as the name implies, was intended to apply to a situation where a taxpayer, in the course of trade or business, transits from a non-VAT status to a VAT status. The provision of a transitional input tax credit, even to those whose transactions were not previously subject to VAT, was meant to soften the blow, so to speak, of having to pay the new tax to the full extent of 10% of the gross selling price.

Pertinently, Section 104 of the NIRC, as amended by RA 7716, defines input tax in this wise:

"The term 'input tax' means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business

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[1] Underscoring added.

on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. <u>It shall also include the transitional input tax</u> determined in accordance with Section 135 of this Code."[2]

On the basis of the foregoing considerations, I submit that petitioner may avail of the transitional input tax credit provided by law notwithstanding that its purchase of the lands within Fort Bonifacio from the government was not subject to value-added tax.

I come now to the issue of whether the inventory on which to base the transitional input tax credit includes lands or only the improvements on lands.

Here, a plain reading of the law, specifically the statutory definition of the term "goods," is all that is necessary to see the merit in petitioner's position.

"Sec. 100. *Value-added-tax on sale of goods or properties.* — (a) *Rate and base of tax.* — There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods, or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

"(1) The term 'goods or properties' shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include:

"(A) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business; x x x."

In this connection, petitioner cites the case of *Victorias Milling Company, Inc. vs. Social Security Commission*,[3] where it was held:

"While it is true that terms or words are to be interpreted in accordance with their well-accepted meaning in law, nevertheless,

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[2] Republic Act No. 7716, Sec. 5; emphasis added.

[3] No. L-16704, March 17, 1962, 4 SCRA 627.

when such term or word is specifically defined in a particular law, such interpretation must be adopted in enforcing that particular law, for it can not be gainsaid that a particular phrase or term may have one meaning for one purpose and another meaning for some other purpose."[4]

Hence, petitioner maintains that the term "goods" as used in the above-quoted Section 105 must include "[R]eal properties (not "improvements") held primarily for sale to customers," as defined in Section 100.

On December 9, 1995, the Commissioner of Internal Revenue issued Revenue Regulations No. 7-95. Section 4.105-1 thereof states, in pertinent part:

"Sec. 4.105-1. *Transitional input tax on beginning inventories.* — Taxpayers who became VAT-registered persons upon effectivity of RA No. 7716 who have exceeded the minimum turnover of ₱500,000.00 or who voluntarily register even if their turnover does not exceed ₱500,000.00 shall be entitled to a presumptive input tax on the inventory on hand as of December 31, 1995 on the following: (a) goods purchased for resale in their present condition; (b) materials purchased for further processing, but which have not yet undergone processing; (c) goods which have been manufactured by the taxpayer; (d) goods in process and supplies, all of which are for sale or for use in the course of the taxpayer's trade or business as a VAT-registered person.

"However, in the case of real estate dealers, the basis of the presumptive input tax shall be the improvements, such as buildings, roads, drainage systems, and other similar structures, constructed on or after the effectivity of EO 273 (January 1, 1988).

"The transitional input tax shall be 8% of the value of the inventory or actual VAT paid, whichever is higher, which amount may be allowed as tax credit against the output tax of the VAT-registered person. x x x."

Petitioner assails the validity of the Revenue Regulations insofar as it runs counter to the statutory definition of "goods" discussed above.

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[4] *Id*. at 632-633.

Article 7 of the Civil Code provides that "[a]dministrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution." Simply put, an administrative rule or regulation cannot contravene the law on which it is based. Thus, Rev. Regs. 7-95 cannot distinguish between land and improvements in regard to the computation of the transitional input tax credit which a taxpayer may claim under Section 105. Where the law does not distinguish, courts should not distinguish.[5]

Rules and regulations issued by administrative agencies in the implementation of laws they administer shall not in any way modify, or be inconsistent with, explicit provisions of the law. While administrative agencies, such as the Bureau of Internal Revenue, may issue regulations to implement statutes, they are without authority to limit the scope of the statute to less than what it provides, or extend or expand the statute beyond its terms, or in any way modify explicit provisions of the law.[6] Where there is a discrepancy between the basic law and a rule or regulation issued to implement said law, what prevails is the basic law.[7]

Rev. Regs. 7-95 is inconsistent with Section 105 insofar as the definition of the term "goods" is concerned. This is a legislative act beyond the authority of the Commissioner of Internal Revenue and the Secretary of Finance. The rules and regulations that administrative agencies promulgate, which are the product of a delegated legislative power to create new and additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the administrative agency. It is required that the regulation be germane to the objects and purposes of the law, and be not in

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[5] Agpalo, *Statutory Construction*, 1998 Edition, at 194.

[6] *Republic v. Court of Appeals*, G.R. No. 109193, February 1, 2000, 324 SCRA 237, 241; *Philippine Bank of Communications v. Commissioner of Internal Revenue*, G.R. No. 112024, January 28, 1999, 302 SCRA 241, 252-253.

[7] *People v. Lim*, 108 Phil. 1091 (1960).

contradiction to, but in conformity with, the standards prescribed by law. They must conform to and be consistent with the provisions of the enabling statute in order for such rule or regulation to be valid. Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by an administrative body, as well as with respect to what fields are subject to regulation by it. It 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. In case of conflict between a statute and an administrative order, the former must prevail.[8]

Furthermore, it is significant to note that, on January 1, 1997, Revenue Regulations No. 6-97 was issued by the Commissioner of Internal Revenue. Pertinently, Section 4.105-1 of Rev. Regs. 6-97 is a basic reiteration of the same Section 4.105-1 of Rev. Regs. 7-95, except that the later issuance deleted the following paragraph:

> "However, in the case of real estate dealers, the basis of the presumptive input tax shall be the improvements, such as buildings, roads, drainage systems, and other similar structures, constructed on or after the effectivity of E.O. 273 (January 1, 1988)."

It is clear, therefore, that under Rev. Regs. 6-97, the allowable transitional input tax credit is no longer limited to improvements on real properties. The particular provision of Rev. Regs. 7-95, on which respondent Commissioner as well as the CTA and the CA relied in denying petitioner's claim for transitional input tax credit, has effectively been repealed by Rev. Regs. 6-97. In a sense, the new regulation is now in consonance with Section 100 of the NIRC, insofar as the definition of real properties as goods is concerned.

While the events subject of G.R. No. 158885 took place before the issuance of Rev. Regs. 6-97, this regulation must be

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[8] *Smart Communications, Inc. (SMART) v. National Telecommunications Commission (NTC)*, G.R. No. 151908, August 12, 2003, 408 SCRA 678, 686-687.

given retroactive application, it being beneficial to the taxpayer. This is more in keeping with fairness and equity, which this Court is bound to observe in its decision. Conversely, it is important to note that rulings or circulars promulgated by the Commissioner of Internal Revenue which are prejudicial to taxpayers are not given retroactive effect.[9]

On the other hand, the transactions involved in G.R. No. 170680, occurred within the third quarter of 1997, when Rev. Reg. 6-97 was already in effect.

In sum, petitioner should be allowed to base the computation of its transitional input tax credit on the value of its lands and improvements; and not only on the improvements.

To grant petitioner the full benefits of the transitional input tax credit would not only inure to its own benefit. As petitioner points out in its Memorandum, it will also benefit the general buying public, who will then enjoy lower prices for properties sold within the Global City.

Likewise, it must be borne in mind that petitioner is a partner of government in the implementation of the national policy of converting idle or non-productive government lands into effective instruments of economic development.[10] Moreover, investments in the construction and real estate industry have catalyzed the Philippine economy and put it in high gear. They have created thousands of job opportunities. Petitioner plays an important role in this area.

ACCORDINGLY, I vote to **GRANT** both petitions in these consolidated cases.

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[9] See National Internal Revenue Code, Sec. 246.

[10] Republic Act No. 7227, Preamble.

DISSENTING OPINION

CARPIO, *J.*:

I dissent. The majority inexplicably grants to petitioner a credit for an input value-added tax (VAT) that petitioner never paid and could never have paid. At the time of the sale by the government of the land, there was still no VAT on the sale of land, and the government as seller was, and still is today, not subject to VAT. There is no dispute that if the sale were to take place today, when there is already VAT on the sale of land, the sale transaction would still be VAT-free because the government is not subject to VAT, and hence petitioner as buyer cannot avail of any input VAT since petitioner can never present a VAT receipt. Ironically, the majority allows petitioner an input VAT in a transaction that took place when there was still no VAT on the sale of land, and the government as seller was, as it is still, not subject to VAT.

The Cases

Before the Court are two petitions for review[1] filed by Fort Bonifacio Development Corporation (FBDC).

In G.R. No. 158885, FBDC assails the Decision promulgated on 15 November 2002[2] by the Court of Appeals in CA-G.R. SP No. 60477 which affirmed with modification the 11 August 2000[3] Decision of the Court of Tax Appeals (CTA). The CTA ordered FBDC to pay to the Bureau of Internal Revenue (BIR), for the fourth quarter of 1997, the assessed amount of ₱45,188,708.08 representing disallowed transitional input tax claim, plus 20% delinquency interest per annum from 1 June 1998 until fully paid.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo* (G.R. No. 158885), pp. 402-411. Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Rebecca De Guia-Salvador and Regalado E. Maambong, concurring.

[3] *Id.* at 214-234. Penned by Presiding Judge Ernesto D. Acosta with Associate Judge Ramon O. De Veyra, concurring and Associate Judge Amancio Q. Saga, dissenting.

In G.R. No. 170680, FBDC assails the Decision promulgated on 30 October 2003[4] by the Court of Appeals in CA-G.R. SP No. 61517 which affirmed the 17 October 2000 Decision[5] of the CTA. The CTA denied FBDC's claim for refund of overpaid value-added tax (VAT) amounting to ₱347,741,695.74 covering the third quarter of 1997.

The Antecedent Facts

FBDC is owned to the extent of 45% by the Bases Conversion Development Authority (BCDA)[6] and to the extent of 55% by private domestic corporations. FBDC is engaged in the development and sale of real properties. On 8 February 1995, FBDC acquired from the national government, under a VAT-free sale transaction, the Fort Bonifacio Global City (Global City) located within Fort Bonifacio, Taguig, Metro Manila. The acquisition was done by virtue of Republic Act No. 7227[7] and Executive Order No. 40[8] dated 8 December 1992. FBDC started developing and selling lots in Global City in October 1996.

Meanwhile, on 1 January 1996, Republic Act No. 7716 (RA 7716) took effect. RA 7716 restructured the VAT system by

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[4] *Rollo* (G.R. No. 170680), pp. 316-328. Penned by Associate Justice Noel G. Tijam with Associate Justices Ruben T. Reyes (retired) and Edgardo P. Cruz, concurring.

[5] *Id.* at 127-143. Penned by Associate Judge Ramon O. De Veyra with Presiding Judge Ernesto D. Acosta, concurring and Associate Judge Amancio Q. Saga, dissenting.

[6] BCDA is a wholly-owned government corporation created by Republic Act No. 7227 for the purpose of accelerating the conversion of military reservations into alternative productive uses and raising funds through the sale of portions of said military reservations in order to promote the economic and social development of the country in general.

[7] An Act Accelerating the Conversion of Military Reservations into Other Productive Uses, Creating the Bases Conversion and Development Authority for the Purpose, Providing Funds Therefor and For Other Purposes.

[8] Implementing the provisions of Republic Act No. 7227 Authorizing the Bases Conversion and Development Authority (BCDA) to Raise Funds Through the Sale of Metro Manila Military Camps Transferred to BCDA to Form Part of Its Capitalization and to be used for the Purposes Stated in said Act.

further amending pertinent provisions of the National Internal Revenue Code (NIRC). RA 7716 imposed a VAT, among others, on the sale of real properties, a transaction not previously subject to VAT. Section 2 of RA 7716 further amended Section 100 of the NIRC, as amended, thus:

SEC. 2. Section 100 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

SEC. 100. *Value-added tax on sale of goods or properties.* — (a) *Rate and base of tax.* — There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

(1) The term "good or properties" shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include:

(A) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business;

x x x x x x x x x

The term "gross selling price" means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price.

Pursuant to RA 7716, the sale of parcels of land to FBDC's customers became subject to 10% VAT.

However, Section 105 of the NIRC grants to a person who becomes liable to VAT or who elects to be a VAT-registered person a transitional input tax, as follows:

Sec. 105. Transitional input tax credits. — A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory as prescribed by regulations, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to 8% of the value of such inventory or the actual value-added paid on such goods,

materials and supplies, whichever is higher, which shall be creditable against the output tax.

On 19 September 1996, in order to avail itself of the transitional input tax credit, FBDC submitted to the BIR, Revenue District No. 44, Taguig and Pateros, an inventory of its real properties with a total book value of ₱71,227,503,200 on which it claims a transitional input tax credit of ₱5,698,200,256. FBDC also registered itself as a VAT taxpayer.

G.R. No. 158885

On 14 October 1996, FBDC executed two contracts to sell in favor of Metro Pacific Corporation (Metro Pacific) covering two lots located in Global City. The lots were both payable in installments. For the fourth quarter of 1996, FBDC received ₱3,498,888,713.60 from the sale of the two lots, on which the output VAT payable to the BIR amounted to ₱318,080,792.14.[9] FBDC paid cash to the BIR amounting to ₱269,340,469.45 and utilized (1) ₱28,413,783 out of its total transitional input tax credit of ₱5,698,200,256 (the amount of ₱28,413,783 represents the portion of the total transitional input tax credit allocated by FBDC to the two lots sold to Metro Pacific); and (2) its regular input tax credit of ₱20,326,539.69 on purchases of goods and services.[10]

On 28 July 1997 and 29 October 1997, FBDC submitted to the BIR two letters dated 18 July 1997[11] and 28 October 1997,[12] respectively, informing it of the transaction and computation of its VAT payments and requesting for a ruling on whether its transitional input VAT on the land inventory, amounting to ₱28,413,783, was in order. After investigation of FBDC's VAT return for the fourth quarter of 1996, the BIR recommended the disallowance of the claimed transitional input VAT on land inventory, and the issuance of a notice of assessment for

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[9] *Rollo* (G.R. No. 158885), p. 31.

[10] *Id.*

[11] *Id.* at 184.

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

deficiency VAT equivalent to the disallowed amount. The BIR issued a Pre-Assessment Notice dated 23 December 1997 for deficiency VAT for the fourth quarter of 1996.

On 5 March 1998, FBDC received an undated letter[13] from then BIR Commissioner Liwayway Vinzons-Chato disallowing the presumptive input tax arising from land inventory on the ground that "the basis of the 8% presumptive input tax of real estate dealers shall be limited to the book value of the improvements [made upon the land], in addition to its inventory of supplies and materials for use in its business,"[14] and not on the book value of the actual land in FBDC's inventory. The BIR Commissioner cited Revenue Regulation No. 7-95 (RR 7-95) dated 9 December 1995 and Revenue Memorandum Circular No. 3-96 dated 15 January 1996.[15] Specifically, the BIR Commissioner referred to Section 4.105-1 and the Transitory Provisions of RR 7-95 issued in implementation of the amendments made by RA 7716, as follows:

> Sec. 4.105-1. *Transitional input tax on beginning inventories.* — Taxpayers who became VAT-registered persons upon effectivity of RA No. 7716 who have exceeded the minimum turnover of ₱500,000.00 or who voluntarily register even if their turnover does not exceed ₱500,000.00 shall be entitled to a presumptive input tax on the inventory on hand as of December 31, 1995 on the following: (a) goods purchased for resale in their present condition; (b) materials purchased for further processing, but which have not yet undergone processing; (c) goods which have been manufactured by the taxpayer; (d) goods in process and supplies, all of which are for sale or for use in the course of the taxpayer's trade or business as a VAT-registered person.
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> However, in the case of real estate dealers, the basis of the presumptive input tax shall be the improvements, such as buildings, roads, drainage systems, and other similar structures, constructed on or after the effectivity of EO 273 (January 1, 1988).

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[13] *Id.* at 187.

[14] *Id.* Underscoring in the original.

[15] The contents of RR 7-95 were reiterated in BIR's Revenue Memorandum Circular No. 3-96 dated 15 January 1996 in a question and answer format.

The transitional input tax shall be 8% of the value of the inventory or actual VAT paid, whichever is higher, which amount may be allowed as tax credit against the output tax of the VAT-registered person.

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TRANSITORY PROVISIONS

(a) Presumptive Input Tax Credits —

x x x x x x x x x

(iii) For real estate dealers, the presumptive input tax of 8% of the book value of improvements constructed on or after January 1, 1988 (the effectivity of E.O. 273) shall be allowed.

For purposes of sub-paragraphs (i), (ii) and (iii) above, an inventory as of December 31, 1995 of such goods or properties and improvements showing the quantity, description and amount filed with the RDO not later than January 31, 1996.

The BIR Commissioner directed FBDC to pay VAT equivalent to the disallowed presumptive input tax on land inventory in the amount of ₱28,413,783, including any surcharges, interest and penalties by the Chief, Assessment Division, Revenue Region No. 8, Makati City, subject to audit verification. In a letter dated 11 March 1998,[16] FBDC requested the BIR Commissioner for the computation of the surcharges, interest and penalties and for the issuance of assessment notice to enable it to pursue its remedy under the NIRC.

In a letter dated 4 May 1998,[17] Acting Assistant Chief Pascual M. De Leon of the Assessment Division, Revenue Region 8, Makati City sent FBDC a letter informing it that the total amount due was ₱45,188,708.08. An assessment notice[18] was attached to the letter. In a letter dated 1 July 1998[19] filed on 2 July 1998, FBDC requested for "reconsideration/protest" of the 4 May 1998 letter and the assessment notice. In a letter dated 15

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[16] *Rollo* (G.R. No. 158885), p. 188.

[17] *Id.* at 189.

[18] *Id.* at 190.

[19] *Id.* at 191-204.

July 1998[20] which FBDC received on 10 August 1998, Regional Director Antonio I. Ortega of Revenue Region 8 ruled that FBDC's request for "reconsideration/protest" was barred by the statute of limitations because it was filed more than 30 days from 5 March 1998 when FBDC received the undated letter from the BIR Commissioner disallowing the claim for transitional input tax.

On 11 August 1998, FBDC filed an appeal by *certiorari* before the CTA, docketed as CTA Case No. 5665.

G.R. No. 170680

For the third quarter of 1997, FBDC received from its sale and lease of lots ₱3,591,726,328.11 on which output VAT payable to the BIR amounted to ₱359,172,623.81. FBDC made cash payments amounting to ₱347,741,695.74 and utilized its regular input tax credit of ₱19,743,565.73 on its purchases of goods and services.

On 11 May 1999, FBDC filed with the BIR a claim for tax refund of its output VAT cash payments for the third quarter of 1997, amounting to ₱347,741,695.74. FBDC alleged that the amount was illegally collected because the BIR did not take into account its transitional input tax credit. Earlier, on 8 October 1998, 17 November 1998, and 11 February 1999, FBDC filed claims for refunds amounting to ₱269,340,469.45, ₱359,652,009.47, and ₱486,355,846.78, respectively, representing VAT paid on proceeds received from its sale and lease of lots for the quarters ending on 31 December 1996, 31 March 1997, and 30 June 1997. After deducting ₱269,340,469.45, ₱359,652,009.47, and ₱486,355,846.78 from ₱5,698,200,256 which FBDC claimed as its total transitional input tax credit, the remaining input tax credit still sufficiently covered the amount of ₱347,741,695.74.[21]

The BIR did not act upon FBDC's claim. The two-year prescriptive period for actions to recover illegally collected tax

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[20] *Id.* at 205-207.

[21] *Rollo* (G.R. No. 170680), p. 29.

provided under Section 230 of the NIRC was to expire on 25 August 1999. Thus, on 24 August 1999, FBDC filed a petition for review before the CTA, docketed as CTA Case No. 5926. FBDC alleged that its input credit tax was more than enough to offset the VAT paid for the third quarter of 1997 and as such, it was entitled to a refund or tax credit of ₱347,741,695.74.

The Ruling of the Court of Tax Appeals

G.R. No. 158885

In its 11 August 2000 Decision, the CTA denied the petition for review and ordered FBDC to pay to the BIR the assessed amount of ₱45,188,708.08 plus 20% delinquency interest per annum from 1 June 1998 until fully paid pursuant to Section 249[22] of the NIRC.

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[22] SEC. 249. Interest. —

(A) *In General.* — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) *Deficiency Interest.* — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) *Delinquency Interest.* — In case of failure to pay:

(1) The amount of the tax due on any return to be filed, or

(2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

(D) *Interest on Extended Payment.* — If any person required to pay the tax is qualified and elects to pay the tax on installment under the provisions of this Code, but fails to pay the tax or any installment hereof, or any part of such amount or installment on or before the date prescribed for its payment, or where the Commissioner has authorized an extension of time within which to pay a tax or a deficiency tax or any part thereof, there shall be assessed and collected interest at the rate hereinabove prescribed on the tax or deficiency tax or any part thereof unpaid from the date of notice and demand until it is paid.

The CTA ruled that FBDC's protest was filed on time. The CTA ruled that the undated letter from the BIR Commissioner which FBDC received on 5 March 1998 showed that FBDC's liability was not yet definite and final because it was still subject to audit verification. The CTA ruled that it was the 4 May 1998 letter, with the assessment notice, which constituted the assessment contemplated under Section 228[23] of the NIRC. FBDC

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[23] SEC. 228. Protesting of Assessment. —

When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on exciseable articles has not been paid; or

(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of

received the 4 May 1998 letter on 4 June 1998. Hence, FBDC's request for "reconsideration/protest" filed on 2 July 1998 was timely filed.

The CTA sustained the BIR's application of Section 4.105-1 of RR 7-95 that the basis of the transitional input tax for real estate dealers shall be the improvements constructed on or after the effectivity of Executive Order No. 273 (EO 273). The CTA rejected FBDC's argument that Section 4.105-1 of RR 7-95 is contrary to Sections 100 and 105 of the NIRC. The CTA traced the origin of the transitional input tax credit from the original VAT law, EO 273, until Republic Act No. 8424 or the Tax Reform Act of 1997, which took effect on 1 January 1998. The CTA ruled that the purpose of granting transitional input tax credit was to give recognition to the sales tax component of inventories which would qualify as input tax credit had the goods been acquired during the effectivity of the EO 273. The CTA ruled that RA 7716 amended EO 273 to widen its tax base to include other sale of goods and services not previously subject to VAT. However, RA 7716 did not touch Section 105 of the NIRC on transitional input tax credit, and it remained with the same purpose as when it was introduced by EO 273.

The CTA also ruled that FBDC purchased the lots in Global City from the national government under a VAT-free sale transaction. The CTA noted that in 1995, sale of real properties was still exempt from VAT. Hence, FBDC is precluded from availing of transitional input tax credit.

The dispositive portion of the CTA Decision reads:

> WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby DENIED. Petitioner is ordered to pay the assessed amount of ₱45,188,708.08 to the Respondent Commissioner of Internal Revenue plus 20% delinquency interest per annum from June 1, 1998 until fully paid pursuant to Section 249 of the 1996 Tax Code.
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> SO ORDERED.[24]

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the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

[24] *Rollo* (G.R. No. 158885), p. 233.

FBDC filed a petition for review before the Court of Appeals, docketed as CA-G.R. SP No. 60477.

G.R. No. 170680

In a Decision promulgated on 17 October 2000, the CTA denied FBDC's claim for tax refund. Thus:

WHEREFORE, premises considered, the instant Petition for Review on the refund of the overpaid value-added tax in the amount of ₱347,741,695.74 covering the third quarter of 1997 is hereby DENIED for lack of merit.

SO ORDERED.[25]

The CTA ruled that FBDC is not automatically entitled to the 8% transitional input tax allowed under Section 105 of the NIRC. The CTA stated that FBDC purchased the land at the Global City from the government under a VAT-free sale transaction. The government, which is a tax-exempt entity, did not pass on any VAT or business tax upon FBDC. Thus, the CTA ruled that to allow FBDC 8% transitional input tax to offset its output VAT liability without having paid any previous taxes has the net effect of granting FBDC an outright bonus equivalent to the 10% VAT it may tack on to the goods it would sell to its subsequent purchasers. The CTA also ruled that the inventory under Section 105 of the NIRC is limited to improvements, such as buildings, roads, drainage system and other similar structures constructed on the land because in their construction, the contractors and suppliers have presumably passed on to the owner of the land or the real estate dealer the business tax due thereon. The CTA also ruled that Section 4.105-1 of RR 7-95 is not contrary to Sections 100 and 105 of the NIRC. The CTA also cited its 11 August 2000 Decision in CTA Case No. 5665.

FBDC filed a petition for *certiorari* before the Court of Appeals assailing the 17 October 2000 Decision of the CTA, docketed as CA-G.R. SP No. 61517.

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[25] *Rollo* (G.R. No. 170680), p. 142.

The Ruling of the Court of Appeals

G.R. No. 158885

In a Decision promulgated on 15 November 2002, the Court of Appeals affirmed with modification the CTA's 11 August 2000 Decision.

The Court of Appeals ruled that the regulations embodied in RR 7-95 were a valid exercise of the BIR's delegated rule-making power and were consistent with the letter and spirit of substantive laws establishing the VAT system. The Court of Appeals ruled that RA 7716 amended the government's VAT system instituted under EO 273 and imposed, for the first time, VAT on sale of real properties. A first-time taxpayer who becomes liable for VAT is entitled to a transitional input tax under Section 105 of the NIRC. Section 105 provides that the basis for the inventory of goods, materials and supplies upon which the 8% input VAT will be based shall be left to the regulation by the appropriate administrative authority. The Court of Appeals ruled that the decision of the BIR to use the improvements introduced by the taxpayer upon real properties as the basis for the transitional input tax credit satisfied established constitutional and legal precepts.

However, the Court of Appeals modified the CTA's 11 August 2000 Decision by deleting the imposition of surcharge, interest and penalty upon the assessed amount of additional VAT. Thus:

> WHEREFORE, premises considered, the Decision of the Court of Tax Appeals, is hereby AFFIRMED with the MODIFICATION that the assessment of surcharge, interests and penalty by the BIR upon the principal deficiency amount of value added taxes payable by the petitioner, to be determined by the BIR, is hereby REMOVED from petitioner's liability.
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> SO ORDERED.[26]

FBDC filed a motion for reconsideration of the Court of Appeals' 15 November 2002 Decision. In its 1 July 2003 Resolution,[27] the Court of Appeals denied the motion.

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[26] *Rollo* (G.R. No. 158885), p. 411.

[27] *Id.* at 505-506.

Hence, the petition before this Court.

G.R. No. 170680

In its 30 October 2003 Decision, the Court of Appeals denied FBDC's petition and affirmed the 17 October 2000 CTA Decision. The Court of Appeals again traced the origin of transitional input tax from EO 273 to RA 7716. The Court of Appeals ruled that the grant of transitional input tax presupposes that the VAT taxpayer had previously paid some form of business tax on his inventory of goods. Here, FBDC purchased the land from the national government under a VAT-free transaction. The Court of Appeals sustained the CTA that to allow FBDC to avail of the 8% transitional input tax to offset its output tax liability will have the effect of granting FBDC an outright bonus equivalent to the 10% VAT which it may tack on the purchase price of the lands it would sell to its buyers. The Court of Appeals further ruled that RR 7-95 limiting the transitional input tax to the value of the improvements is a valid implementation of the NIRC.

The dispositive portion of the Court of Appeals' Decision reads:

> WHEREFORE, the instant Petition is DENIED. The assailed Decision of the Court of Tax Appeals dated October 17, 2000 denying petitioner's claim for refund of the value-added tax it paid for the third quarter of 1997 in the amount of ₱347,741,695.74 is hereby AFFIRMED.
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> SO ORDERED.[28]

FBDC filed a motion for reconsideration. In its 12 December 2005 Resolution,[29] the Court of Appeals denied FBDC's motion.

Hence, the petition before this Court.

The Issue

The main issue is whether petitioner is entitled to transitional input tax credit under Section 105 of the NIRC, on its Global

[28] *Rollo* (G.R. No. 170680), p. 327.

[29] *Id.* at 382-390.

City land inventory, which petitioner purchased from the government under a VAT-free transaction in 1995.

Overview of the VAT Law

The VAT is essentially a tax on transactions. It is imposed at every stage of the distribution process on the sale, barter, exchange of goods or property and in the performance of services until it finally reaches the consumer.[30] Since it is a value-added tax, it is levied on the value added to goods and services at every link of the chain of transactions in order to prevent doubly taxing a prior transaction in the subsequent use or sale of the same product.

In computing the tax liability, the taxpayer subtracts from the tax due on sales the taxes on his purchases of raw materials. He pays only the difference between the tax on sales (output tax) and the tax on outlays for materials, supplies, services and capital goods (input tax). **As a result, previously paid taxes are allowed as input tax credits deductible from the output VAT liability in subsequent transactions involving the same product.** This is substantially how transitional input tax credit works. The term "transitional" had been placed to distinguish this from an ordinary input tax since essentially this innovative tax credit's function is to pave the smooth transition from the non-VAT to the VAT system.

The VAT traces its roots from the sales tax and under forms of percentage tax under the old Tax Code. Since 1939, when the turnover tax was replaced by the manufacturer's sales tax, the Tax Code had provided for a single stage value-added tax on original sales by manufacturers, producers and importers computed on the "cost deduction method" and later on the basis of the "tax credit method." Up until 1987, the system of taxing goods consisted of (1) an *excise tax* on selected articles, (2) *fixed and percentage taxes* on original and subsequent sales, on importations and on milled articles, and (3) *mining taxes* on

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[30] *Commissioner of Internal Revenue v. Court of Appeals*, 385 Phil. 875 (2000).

mineral products. *Services* were subjected to percentage taxes based mainly on gross receipts.[31]

Beginning 1 January 1988, the multi-staged value-added tax had been adopted under EO 273. Among the new provisions included were the persons liable,[32] the VAT on sale of goods,[33] and the transitional input tax credit. The BIR released Revenue Regulation No. 5-87, the implementing rules of EO 273, which took effect on the same date.

On 5 May 1994, Congress approved RA 7716 or the Expanded Value-Added Tax Law, commonly known as the E-VAT. The new law was enacted in order to extend the scope of the VAT not only to goods but also to properties. In this law, the VAT was expanded to include real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business.[34] The provision pertaining to transitional input tax credit, Section 105, was not touched and remained in effect.

However, the constitutionality of the E-VAT law was questioned before this Court. In the consolidated cases of *Tolentino v. Secretary of Finance*,[35] we issued a temporary restraining order (TRO) on the implementation of RA 7716. On 25 August 1994, this Court ruled in favor of the tax law's validity. After the

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[31] VITUG, JOSE C. AND ACOSTA, ERNESTO D., *TAX LAW AND JURISPRUDENCE*, 2006 edition, p. 230.

[32] SEC. 99. *Persons liable.* — Any person who, in the course of trade or business, sells, barters or exchanges goods, renders services, or engages in similar transactions and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 100 to 102 of this Code.

[33] SEC. 100. *Value-added tax on sale of goods.* — (a) Rate and base of tax. — There shall be levied, assessed and collected on every sale, barter or exchange of goods, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods sold, bartered or exchanged, such tax to be paid by the seller or transferor x x x.

[34] Section 2 of RA 7716.

[35] G.R. Nos. 115455, 115525, 115543, 115544, 115754, 115781, 115852, 115873, 115931, 25 August 1994, 235 SCRA 630.

denial with finality of the motions for reconsideration assailing the constitutionality of the E-VAT, the TRO was lifted on 30 October 1995.[36]

Following the release of the decision and the lifting of the TRO, the BIR released RR 7-95 dated 9 December 1995 pertaining to the consolidated VAT regulations of RA 7716. Thus, both RA 7716 and RR 7-95 were made effective and implemented only on 1 January 1996. Another BIR-issued directive, Revenue Memorandum Circular No. 3-96 dated 15 January 1996, followed suit. The contents of this memorandum were the same as RR 7-95 although in question and answer form.

On 20 December 1996, Congress approved Republic Act No. 8241 which took effect on 1 January 1997. This tax law amended several provisions of RA 7716 including Section 105, which segregated the definition of input tax credit to transitional and presumptive.[37] To implement this law, the BIR released a new ruling, Revenue Regulation No. 6-97 dated 2 January 1997.

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[36] 319 Phil. 755 (1995).

[37] SEC. 105. *Transitional/Presumptive Input Tax Credits*. —

(a) Transitional input tax credits. — A person who becomes liable to value-added tax or any person who elects to be a VAT registered person shall, subject to the filing of an inventory as prescribed by regulations, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to eight percent (8%) of the value of such inventory or the actual value added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax.

(b) Presumptive input tax credits. —

(1) Persons or firms engaged in the processing of sardines, mackerel, and milk, and in manufacturing refined sugar and cooking oil, shall be allowed a presumptive input tax, creditable against the output tax, equivalent to one and one-half percent (1.5%) of the gross value in money of their purchases of primary agricultural products which are used as inputs to their production.

As used in this paragraph (b), the term 'processing' shall mean pasteurization, canning and activities which through physical or chemical process alter the exterior texture or form or inner substance of a product in such manner as to prepare it for special use to which it could not have been put in its original form or condition.

The most recent full revision of the NIRC is Republic Act No. 8424 or the Tax Reform Act of 1997, which took effect on 1 January 1998. From the years 2000 to 2004, several other amendments[38] to the VAT law followed and the latest one is Republic Act No. 9337, popularly called the Reformed Value-Added Tax Law or R-VAT for short, which was approved by Congress on 24 May 2005 and which took effect on 1 July 2005. This new law increased the tax base of the VAT from 10% to 12%.

Acquisition of the Fort Bonifacio property from the national government under a tax-free transaction

As mentioned earlier, the Global City land was previously part of Fort Bonifacio, a military reservation. Being part of a military reservation, the lands comprising Fort Bonifacio formed part of the public domain. It was only in 1992 when a portion of Fort Bonifacio ceased to be part of the public domain when Congress passed Republic Act No. 9227, classifying the lands as alienable and disposable, and authorizing the President to sell and dispose of a portion of the military reservation, now consisting of the Global City land.[39]

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(2) Public works contractors shall be allowed a presumptive input tax equivalent to one and one-half percent (1.5%) of the contract price with respect to government contracts only in lieu of actual input taxes therefrom.

[38] Republic Act No. 8761, which was approved by Congress on 15 February 2000 and took effect on 1 January 2001; Republic Act No. 9010, approved on 27 February 2001 and retroacted to 1 January 2001; and Republic Act No. 9238, which took effect on 1 January 2004.

[39] The National Government, as the seller of the Global City land, is a tax-exempt entity and such sale had been mandated by RA 9227 or The Bases Conversion and Development Act of 1992, which states:

> Sec. 8. Funding Scheme. — The capital of the Conversion Authority shall come from the sales proceeds and/or transfers of certain Metro Manila military camps, including all lands covered by Proclamation No. 423, series of 1957, commonly known as Fort Bonifacio and Villamor (Nichols) Air Base x x x
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> The President is hereby authorized to sell the above lands, in whole or in part, which are hereby declared alienable and disposable pursuant to the

Petitioner contends that the CA erred in holding that there must have been previous payment of sales tax or VAT by petitioner on its land before it may claim the input tax credit granted by Section 105 of the NIRC.

Petitioner's contention has no merit.

Sections 104 (now Section 110) and 105 (now Section 111) of EO 273, as amended by RA 7716, provide:

SEC. 104. *Tax Credits.* — (a) Creditable input tax. —

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The term 'input tax' means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchases of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 105 of this Code.

SEC. 105. *Transitional input tax credits.* — A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory as prescribed by regulations, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to 8% of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax.

Petitioner is not entitled to a refund or credit of any transitional input tax since the entire Global City land was bought by petitioner from the national government in 1995 under a tax-free sale

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provisions of existing laws and regulations governing sales of government properties: Provided, That no sale or disposition of such lands will be undertaken until a development plan embodying projects for conversion shall be approved by the President in accordance with Paragraph (b), Section 4, of this Act. However, six (6) months after approval of this Act, the President shall authorize the Conversion Authority to dispose of certain areas in Fort Bonifacio and Villamor as the latter so determines. The Conversion Authority shall provide the President a report on any such disposition or plan for disposition within one (1) month from such disposition or preparation of such plan. x x x (Emphasis supplied)

transaction and without any VAT component. This means that no previous business tax, whether in the form of sales tax or VAT, was paid by petitioner on its purchase of land from the national government. Simply put, since the national government is outside the operation of the VAT and is tax-exempt, the national government did not pass on any VAT to petitioner as part of the purchase price.

However, petitioner asserts that the 8% input tax credit provided for in Section 105 is one that is statutorily presumed to have been paid and as a consequence, it need not show that taxes were previously paid on its inventory of land.

Petitioner's assertion also has no merit.

True, there exists a presumption in Section 105 that tax was paid, whether or not it was actually paid. This can be inferred from the provision that a taxpayer is "allowed input tax on his beginning inventory x x x equivalent to 8% x x x, or the actual value-added tax paid x x x, whichever is higher." **However, such presumption assumes the existence of a law imposing the tax presumed to have been paid. Otherwise, the presumption will have no basis because if no tax has been imposed by law, then there can be no presumption that such a tax has been paid.**

If no tax has been imposed by law, whether it be VAT or sales, percentage, excise or privilege taxes, no such tax is legally due and payable, and thus there can be no presumption that any such tax has been paid. **When the law says "transitional input tax" or "presumptive input tax," the presumption is that there exists a law imposing the input tax and such tax is presumed to have been paid.**

In the present case, when the national government sold the Global City land to petitioner in 1995, VAT on real properties was not yet in existence. RA 7716 had not yet been enacted and the sale of real properties was still exempt from VAT. Transitional or presumptive input tax necessarily requires a transaction where a tax had been imposed by law. Without any VAT on land imposed by law at the time, the 8% input tax

credit cannot be presumed to have been paid. Thus, petitioner is not entitled to claim input VAT on the purchase of the land against its output VAT liability.

Even if the sale transaction by the national government to petitioner happens today with the VAT on real properties already in existence, and petitioner subsequently resells the land, petitioner will still not be entitled to any input tax credit. **The simple reason is that the sale by the national government of government-owned land is not subject to VAT.**[40] Thus, petitioner cannot now claim any input tax credit if it buys the same land today, and resells the same.

To illustrate, supposing petitioner buys land from the national government today, constructs a condominium and thereafter sells the units to third parties, will petitioner be subject to VAT? The simple answer is YES. Indisputably, petitioner is now subject to output tax as a real estate dealer liable to VAT. Can petitioner charge any input tax against its output tax liability for the sale? The simple answer is NO. This is because under the present Tax Code, specifically Section 110,[41] the rule is that any input

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[40] Under Section 105 of the present NIRC, the person liable for the payment of value-added tax is "any person who, in the course of trade or business, sells goods or properties." In Section 22 of the same statute, the term "person" is defined as an individual, a trust, estate, or corporation. The national government does not fall under any of the enumerated entities. It is neither an individual or a corporation which comes under the purview of the law.

Neither can it be said that the national government, in selling the Global City land, is engaged in "trade or business." The phrase "in the course of trade or business" as defined in Section 105, means the regular conduct or pursuit of a commercial or an economic activity. In this case, the objective of RA 9227 is to use the proceeds from the sale of portions of Fort Bonifacio to finance military-related activities and provide housing loan assistance. Accordingly, the national government, as the seller with these policies in mind, does not fall under the definition "engaged in the regular conduct or pursuit of an economic activity."

Thus, not being expressly included in the tax law as one liable for value-added tax, the national government is exempt therefrom.

[41] SEC. 110. Tax Credits. —

(A) Creditable Input Tax. —

tax shall be creditable against the output tax only if it is evidenced by a VAT invoice or official receipt. A VAT invoice can be used only for the sale of goods and services that are subject to VAT. Petitioner will not be able to present a VAT invoice since the national government is exempt from VAT. Without the invoice to prove that the transaction had been subjected to VAT, petitioner cannot claim any input tax which may be offset against its output tax. **Thus, if a real estate dealer like petitioner cannot claim an input tax today on its purchase of government land, when VAT on real properties is already in effect, then all the more petitioner cannot claim any input tax for its 1995 purchase of government land when the E-VAT law was still inexistent and petitioner had not yet been subjected to VAT.**

Petitioner further asserts that there is nothing in Section 105 which states that the 8% transitional input tax credit may be based only on the improvements on the land. Petitioner insists that in the sale of real properties, VAT is imposed not only on the "improvements" but also on the land and improvements. Thus, in issuing RR 7-95, particularly Section 4.105-1, the BIR limited the application of Section 105 to the "improvements" on real properties, resulting in unwarranted legislation.

Again, petitioner's assertion has no merit.

Section 4.105-1 of RR 7-95 and its Transitory Provisions relating to transitional input tax on beginning inventories provide:

SEC. 4.105-1. *Transitional input tax on beginning inventories.* —

Taxpayers who became VAT-registered persons upon effectivity of RA No. 7716 who have exceeded the minimum turnover of ₱500,000 or who voluntarily register even if their turnover does not exceed ₱500,000.00 shall be entitled to a presumptive input tax on the inventory on hand as of December 31, 1995 on the following: (a) goods purchased for resale in their present condition; (b) materials

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(1) Any input tax **evidenced by a VAT invoice or official receipt** issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: x x x (Emphasis supplied)

purchased for further processing, but which have not yet undergone processing; (c) goods which have been manufactured by the taxpayer; (d) goods in process and supplies, all of which are for sale or for use in the course of the taxpayer's trade or business as a VAT-registered person.

However, in the case of real estate dealers, the basis of the presumptive input tax shall be the improvements, such as buildings, roads, drainage systems, and other similar structures, constructed on or after the effectivity of E.O. 273 (January 1, 1988).

The transitional input tax shall be 8% of the value of the inventory or actual VAT paid, whichever is higher, which amount may be allowed as tax credit against the output tax of the VAT-registered person.

The value allowed for income tax purposes on inventories shall be the basis for the computation of the 8% excluding goods that are exempt from VAT under Sec. 103. Only VAT-registered persons shall be entitled to presumptive input tax credits.

x x x x x x x x x

TRANSITORY PROVISIONS

(b) Presumptive Input Tax Credits —

x x x x x x x x x

(iii) **For real estate dealers, the presumptive input tax of 8% of the book value of improvements constructed on or after January 1, 1988 (the effectivity of E.O. 273) shall be allowed.**

For purposes of sub-paragraphs (i), (ii) and (iii) above, an inventory as of December 31, 1995 of such goods or properties and improvements showing the quantity, description and amount filed with the RDO not later than January 31, 1996. (Emphasis supplied)

According to RR 7-95, the basis of the 8% input tax is simply the value of the improvements on the land and not the value of the taxpayer's entire inventory of real properties. This provision finds its basis in Section 105 which provides that input tax is allowed on the taxpayer's "beginning inventory of goods, materials and supplies." Here, the presumptive input tax contemplated by

law pertains to the input tax paid for the goods, materials or supplies passed on to the taxpayer by his suppliers, and used to build improvements on the land. Even before real estate dealers like petitioner became subject to VAT under RA 7716, improvements on land were already subject to VAT. However, since the land itself was not subject to VAT or any input tax prior to RA 7716, the land then could not be considered part of the beginning inventory under Section 105. **Thus, the 8% transitional input tax applies only to improvements on land, but not on the land itself.**

In sum, petitioner's cause must fail because petitioner acquired the Global City land from the national government under a tax-free transaction. Consequently, petitioner is not entitled to a refund or credit of any transitional input tax.

Accordingly, I vote to deny the petitions and affirm the 15 November 2002 Decision and 1 July 2003 Resolution of the Court of Appeals in CA-G.R. SP No. 60477 and the 30 October 2003 Decision and 12 December 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 61517.

EN BANC

[G.R. No. 163072. April 2, 2009]

MANILA INTERNATIONAL AIRPORT AUTHORITY, *petitioner, vs.* **CITY OF PASAY, SANGGUNIANG PANGLUNGSOD NG PASAY, CITY MAYOR OF PASAY, CITY TREASURER OF PASAY, and CITY ASSESSOR OF PASAY,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; THE TERMS "GOVERNMENT INSTRUMENTALITY" AND "GOVERNMENT-OWNED OR CONTROLLED CORPORATION," DEFINED. —** The definition of *"instrumentality"* under Section 2(10) of the Introductory Provisions of the Administrative Code of 1987 uses the phrase "includes x x x government-owned or controlled corporations" which means that a government "instrumentality" may or may not be a "government-owned or controlled corporation." Obviously, the term government "instrumentality" is **broader** than the term "government-owned or controlled corporation." Section 2(10) provides: "SEC. 2. *General Terms Defined*. — x x x (10) *Instrumentality* refers to any agency of the national Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations. The term *"government-owned or controlled corporation"* has a separate definition under Section 2(13) of the Introductory Provisions of the Administrative Code of 1987: SEC. 2. *General Terms Defined*. — x x x "(13) *Government-owned or controlled corporation* refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: *Provided*, That government-owned or controlled corporations may further be categorized by the department of Budget, the Civil Service Commission, and the Commission on Audit for the purpose of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations." The fact that two terms have separate definitions means that while a government "instrumentality" may include a "government-owned or controlled corporation," there may be a government "instrumentality" that will not qualify as a "government-owned or controlled corporation."

2. ID.; ID.; ID.; GOVERNMENT INSTRUMENTALITIES; MANILA INTERNATIONAL AIRPORT AUTHORITY; CLASSIFIED AS A GOVERNMENT INSTRUMENTALITY THAT DOES NOT QUALIFY AS A GOVERNMENT-OWNED OR CONTROLLED CORPORATION; EXPLAINED. — A close scrutiny of the definition of "government-owned or controlled corporation" in Section 2(13) will show that MIAA would not fall under such definition. **MIAA is a government "instrumentality" that does not qualify as a "government-owned or controlled corporation."** As explained in the 2006 MIAA case: A government-owned or controlled corporation must be "organized as a stock or non-stock corporation." MIAA is not organized as a stock or non-stock corporation. MIAA is not a stock corporation because it has no capital stock divided into shares. MIAA has no stockholders or voting shares. x x x Section 3 of the Corporation Code defines a stock corporation as one whose "*capital stock is divided into shares and* x x x *authorized to distribute to the holders of such shares dividends* x x x." MIAA has capital but it is not divided into shares of stock. MIAA has no stockholders or voting shares. Hence, MIAA is not a stock corporation. x x x MIAA is also not a non-stock corporation because it has no members. Section 87 of the Corporation Code defines a non-stock corporation as "one where no part of its income is distributable as dividends to its members, trustees or officers." A non-stock corporation must have members. Even if we assume that the Government is considered as the sole member of MIAA, this will not make MIAA a non-stock corporation. Non-stock corporations cannot distribute any part of their income to their members. Section 11 of the MIAA Charter mandates MIAA to remit 20% of its annual gross operating income to the National Treasury. This prevents MIAA from qualifying as a non-stock corporation. Section 88 of the Corporation Code provides that non-stock corporations are "organized for charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civil service, or similar purposes, like trade, industry, agriculture and like chambers." MIAA is not organized for any of these purposes. MIAA, a public utility, is organized to operate an international and domestic airport for public use. Since MIAA is neither a stock nor a non-stock corporation, MIAA does not qualify as a government-owned or controlled corporation. What then is the legal status of MIAA

within the National Government? MIAA is a government instrumentality vested with corporate powers to perform efficiently its governmental functions. MIAA is like any other government instrumentality, the only difference is that MIAA is vested with corporate powers. x x x When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers. Thus, MIAA exercises the governmental powers of eminent domain, police authority and the levying of fees and charges. At the same time, MIAA exercises "all the powers of a corporation under the Corporation Law, insofar as these powers are not inconsistent with the provisions of this Executive Order."

3. **ID.; ID.; ID.; ID.; EXEMPT FROM ANY KIND OF TAX FROM THE LOCAL GOVERNMENTS. —** MIAA is not a government-owned or controlled corporation but a government instrumentality which is exempt from any kind of tax from the local governments. Indeed, the exercise of the taxing power of local government units is subject to the limitations enumerated in Section 133 of the Local Government Code. Under Section 133(o) of the Local Government Code, local government units have no power to tax instrumentalities of the national government like the MIAA. Hence, MIAA is not liable to pay real property tax for the NAIA Pasay properties.

4. **ID.; ID.; LOCAL GOVERNMENT CODE; LOCAL TAXATION; REAL PROPERTY TAX; PROPERTIES OF PUBLIC DOMINION INTENDED FOR PUBLIC USE ARE EXEMPT FROM REAL PROPERTY TAX; EXCEPTION. —** [T]he airport lands and buildings of MIAA are properties of public dominion intended for public use, and as such are exempt from real property tax under Section 234(a) of the Local Government Code. However, under the same provision, if MIAA leases its real property to a taxable person, the specific property leased becomes subject to real property tax. In this case, only those portions of the NAIA Pasay properties which are leased to taxable persons like private parties are subject to real property tax by the City of Pasay.

NACHURA, ***J., separate opinion:***

1. **TAXATION; KINDS OF TAXES; REAL PROPERTY TAX; NATURE. —** Real property tax is a direct tax on the ownership of lands and buildings or other improvements thereon, not specially exempted, and is payable regardless of whether the property is used or not, although the value may vary in accordance with such factor. The tax is usually single or indivisible, although the land and building or improvements erected thereon are assessed separately, except when the land and building or improvements belong to separate owners. The power to levy this tax is vested in local government units (LGUs).

2. **POLITICAL LAW; STATUTES; INTERPRETATION OF; PRESENCE OF A PARTICULAR AND A GENERAL ENACTMENT IN THE SAME STATUTE, HOW CONSTRUED. —** A basic principle in statutory construction decrees that, to discover the general legislative intent, the whole statute, and not only a particular provision thereof, should be considered. Every section, provision or clause in the law must be read and construed in reference to each other in order to arrive at the true intention of the legislature. Notably, Section 133 of the LGC speaks of the general limitations on the taxing power of LGUs. This is reinforced by its inclusion in Title I, Chapter I entitled "General Provisions" on "Local Government Taxation." On the other hand, Section 234, containing the enumeration of the specific exemptions from real property tax, is in Chapter IV entitled "Imposition of Real Property Tax" under Title II on "Real Property Taxation." When read together, Section 234, a specific provision, qualifies Section 133, a general provision. Indeed, whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, will overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply. Otherwise stated, where there are two acts or provisions, one of which is special and particular, and certainly includes the matter in question, and the other general, which, if standing alone, will include the same matter and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act or provision, especially when such general

and special acts or provisions are contemporaneous, as the legislature is not to be presumed to have intended a conflict.

3. **TAXATION; KINDS OF TAXES; REAL PROPERTY TAX; WHILE THE BASIS OF A REAL PROPERTY TAX ASSESSMENT IS ACTUAL USE, THE TAX ITSELF IS DIRECTED TO THE OWNERSHIP OF THE LANDS AND BUILDINGS OR OTHER IMPROVEMENTS THEREON. —** [W]hile the basis of a real property tax assessment is actual use, the tax itself is directed to the ownership of the lands and buildings or other improvements thereon. Public policy considerations dictate that property of the State and of its municipal subdivisions devoted to governmental uses and purposes is generally exempt from taxation although no express provision in the law is made therefor. In the instant case, the legislature specifically provided that real property owned by the Republic of the Philippines or any of its political subdivisions is exempt from real property tax, except, of course, when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person. The principal basis of the exemption is likewise ownership. Indeed, emphasis should be made on the ownership of the property, rather than on the airport Authority being a taxable entity. This strategy makes it unnecessary to determine whether MIAA is an instrumentality or a GOCC, as painstakingly expounded by the *ponente*.

4. **CIVIL LAW; PROPERTY; PROPERTIES OF PUBLIC DOMINION; ENUMERATED. —** The phrase, "property owned by the Republic" in Section 234 [of the LGC], actually refers to those identified as public property in our laws. Following *MIAA*, we go to Articles 420 and 421 of the Civil Code which provide: "Art. 420. The following things are property of public dominion: (1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character; (2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth. Art. 421. All other property of the State, which is not of the character stated in the preceding article, is patrimonial property." From the afore-quoted, we readily deduce that airport properties are of public dominion. The "port" in the enumeration certainly

includes an airport. With its beacons, landing fields, runways, and hangars, an airport is analogous to a harbor with its lights, wharves and docks; the one is the landing place and haven of ships that navigate the water, the other of those that navigate the air. Ample authority further supports the proposition that the term "roads" include runways and landing strips. Airports, therefore, being properties of public dominion, are of the Republic.

5. **POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL TAXATION; REAL PROPERTY TAX; EXEMPTION FROM REAL PROPERTY TAX OF PROPERTIES OF THE REPUBLIC, EXPLAINED. —** [T]he legislative intent to exempt from real property tax the properties of the Republic remains clear. The soil constituting the NAIA airport and the runways cannot be taxed, being properties of public dominion and pertaining to the Republic. This is true even if the title to the said property is in the name of MIAA. Practical ownership, rather than the naked legal title, must control, particularly because, as a matter of practice, the record title may be in the name of a government agency or department rather than in the name of the Republic. In this case, even if MIAA holds the record title over the airport properties, such holding can only be for the benefit of the Republic, especially when we consider that MIAA exercises an essentially public function. Further, where property, the title to which is in the name of the principal, is immune from taxes, it remains immune even if the title is standing in the name of an agent or trustee for such principal. Properties of public dominion are held in trust by the state or the Republic for the people. The national government and the bodies it has created that exercise delegated authority are, pursuant to the general principles of public law, mere agents of the Republic. Here, insofar as it deals with the subject properties, MIAA, a governmental creation exercising delegated powers, is a mere **agent** of the Republic, and the latter, to repeat, is the trustee of the properties for the benefit of all the people. x x x The MIAA Charter further provides that any portion of the airport cannot be disposed of by the Authority through sale or through any other mode unless specifically approved by the President of the Philippines. It is also noted that MIAA's board of directors is practically controlled by the national government, the members thereof being officials of the executive branch.

Likewise, the Authority cannot levy and collect dues, charges, fees or assessments for the use of the airport premises, works, appliances, facilities or concessions, or for any service provided by it, without the approval of several executive departments. These provisions are consistent with an agency relationship. Let it be remembered that one of the principal elements of an agency relationship is the existence of some degree of control by the principal over the conduct and activities of the agent. In this regard, while an agent undertakes to act on behalf of his principal and subject to his control, a trustee as such is not subject to the control of the beneficiary, except that he is under a duty to deal with the trust property for the latter's benefit in accordance with the terms of the trust and can be compelled by the beneficiary to perform his duty.

YNARES-SANTIAGO, ***J., dissenting opinion:***

1. **POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL TAXATION; REAL PROPERTY TAX; LEVIED BY A PROVINCE OR CITY OR MUNICIPALITY WITHIN METRO MANILA ON REAL PROPERTY; EXCEPTION. —** Pursuant to Section 232 of the LGC, a province or city or municipality within the Metropolitan Manila Area is vested with the power to levy an annual *ad valorem* tax on real property such as land, building, machinery, and other improvement not hereafter specifically exempted. Corollarily, Section 234 thereof provides an enumeration of certain properties which are exempt from payment of the real property tax, among which is "real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person."
2. **ID.; ID.; ID.; ID.; ID.; THE AIRPORT AND ALL INSTALLATIONS, FACILITIES AND EQUIPMENT OF THE MANILA INTERNATIONAL AIRPORT AUTHORITY ARE PROPERTIES OF PUBLIC DOMINION AND SHOULD BE EXEMPTED FROM PAYMENT OF REAL PROPERTY TAX; EXCEPTION; CASE AT BAR. —** Regardless of the apparent transfer of title of the said properties to MIAA, I submit that the latter is only holding the properties for the benefit of the Republic in its capacity as agent thereof.

It is to be noted that despite the conveyance of the title to the said properties to the MIAA, however, the latter could not in any way dispose of the same through sale or through any other mode unless specifically approved by the President of the Republic. Even MIAA's borrowing power is dictated upon by the President. Thus, MIAA could raise funds, either from local or international sources, by way of loans, credits or securities, and other borrowing instruments, create pledges, mortgages and other voluntary lines or encumbrances on any of its assets or properties, only after consultation with the Secretary of Finance and with the approval of the President. In addition, MIAA's total outstanding indebtedness could exceed its net worth only upon express authorization by the President. "[E]ven if MIAA holds the record title over the airport properties, such holding can only be for the benefit of the Republic, that MIAA exercises an essentially public function." In sum, the airport and all its installations, facilities and equipment of the MIAA, are properties of public dominion and should thus be exempted from payment of real property tax, except those properties where the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person.

TINGA, ***J., dissenting opinion:***

1. **POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL TAXATION; REAL PROPERTY TAX; LIABILITY FOR REAL PROPERTY TAXES OF GOVERNMENT INSTRUMENTALITIES; EXPLAINED. —** Section 232 [of the Local Government Code] lays down the general rule that provinces, cities or municipalities within Metro Manila may levy an *ad valorem* tax on real property "not hereinafter specifically exempted." Such specific exemptions are enumerated in Section 234, and the only exemption tied to government properties extends to "real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted . . . to a taxable person." Moreover, the final paragraph of Section 234 explains that "[e]xcept as provided herein [in Section 234], any exemption from payment of real property tax previously granted to, or presently enjoyed by all persons, whether natural or juridical, including all government-owned or — controlled corporations are hereby withdrawn upon

the effectivity of this Code." What are the implications of Section 232 in relation to Section 234 as to the liability for real property taxes of government instrumentalities such as MIAA? 1) All persons, whether natural or juridical, including GOCCs are liable for real property taxes. 2) The only exempt properties are those owned by the Republic or any of its political subdivisions. 3) So-called "government corporate entities," so long as they have juridical personality distinct from the Republic of the Philippines or any of its political subdivisions, are liable for real property taxes. 4) After the enactment of the Local Government Code in 1991, Congress remained free to reenact tax exemptions from real property taxes to government instrumentalities, as it did with the Government Service Insurance System in 1997.

2. CIVIL LAW; PROPERTY; PUBLIC DOMINION PROPERTIES; ELUCIDATED IN CASE AT BAR. — One of the most recognizable characteristics of public dominion properties is that they are placed outside the commerce of man and cannot be alienated or leased or otherwise be the subject matter of contracts. The fact is that the MIAA may, by law, alienate, lease or place the airport properties as the subject matter of contracts. x x x There is thus that contradiction where property which ostensibly is classified as part of the public dominion under Article 420 of the Civil Code is nonetheless classified to lie within the commerce of man by virtue of a subsequent law such as the MIAA charter. In order for the Court to classify the MIAA properties as part of public dominion, it will be necessary to invalidate the provisions of the MIAA charter allowing the Authority to lease, sell, create pledges, mortgages and other voluntary liens or encumbrances on any of the airport properties. The provisions of the MIAA charter could not very well be invalidated with the Civil Code as basis, since the MIAA charter and the Civil Code are both statutes, and thus of equal rank in the hierarchy of laws, and more significantly the Civil Code was enacted earlier and therefore could not be the repealing law. If there is a provision in the Constitution that adopted the definition of and limitations on public dominion properties as found in the Civil Code, then the aforequoted provisions from the MIAA charter allowing the Authority to place its properties within the commerce of man may be invalidated. The Constitution however does not do so, confining itself instead to a general statement that "all lands of the public

domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State." Note though that under Article 420, public dominion properties are not necessarily owned by the State, the two subsections thereto referring to (a) properties intended for public use; and (b) those which belong to the State and are intended for some public service or for the development of the national wealth. In *Laurel v. Garcia*, the Court notably acknowledged that "property of public dominion is not owned by the State but pertains to the State." Thus, there is no equivalence between the concept of public dominion under the Civil Code, and of public domain under the Constitution. Accordingly, the framework of public dominion properties is one that is statutory, rather than constitutional in design. That being the case, Congress is able by law to segregate properties which ostensibly are, by their nature, part of the public dominion under Article 420(1) of the Civil Code, and place them within the commerce of man by vesting title thereto in an independent juridical personality such as the MIAA, and authorizing their sale, lease, mortgage and other similar encumbrances. When Congress accomplishes that by law, the properties could no longer be considered as part of the public dominion.

APPEARANCES OF COUNSEL

The Government Corporate Counsel for petitioner.
City Legal Counsel (Pasay City) for respondents.

D E C I S I O N

CARPIO, *J.*:

This is a petition for review on *certiorari*[1] of the Decision[2] dated 30 October 2002 and the Resolution dated 19 March 2004 of the Court of Appeals in CA-G.R. SP No. 67416.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Ruben T. Reyes (now retired Supreme Court Justice) with Associate Justices Remedios Salazar-Fernando and Edgardo F. Sundiam, concurring.

The Facts

Petitioner Manila International Airport Authority (MIAA) operates and administers the Ninoy Aquino International Airport (NAIA) Complex under Executive Order No. 903 (EO 903),[3] otherwise known as the Revised Charter of the Manila International Airport Authority. EO 903 was issued on 21 July 1983 by then President Ferdinand E. Marcos. Under Sections 3[4] and 22[5] of EO 903, approximately 600 hectares of land, including the runways, the airport tower, and other airport buildings, were transferred to MIAA. The NAIA Complex is located along the border between Pasay City and Parañaque City.

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[3] Providing for a Revision of Executive Order No. 778 Creating the Manila International Airport Authority, Transferring Existing Assets of the Manila International Airport to the Authority, and Vesting the Authority with Power to Administer and Operate the Manila International Airport.

[4] Section 3 of EO 903 reads:

SEC. 3. *Creation of the Manila International Airport Authority.* There is hereby established a body corporate to be known as the Manila International Airport Authority which shall be attached to the Ministry of Transportation and Communications. The principal office of the Authority shall be located at the New Manila International Airport. The Authority may establish such offices, branches, agencies or subsidiaries as it may deem proper and necessary; Provided, that any subsidiary that may be organized shall have the prior approval of the President.

The land where the Airport is presently located as well as the surrounding land area of approximately six hundred hectares, are hereby transferred, conveyed and assigned to the ownership and administration of the Authority, subject to existing rights, if any. The Bureau of Lands and other appropriate government agencies shall undertake an actual survey of the area transferred within one year from the promulgation of this Executive Order and the corresponding title to be issued in the name of the Authority. Any portion thereof shall not be disposed through the sale or through any other mode unless specifically approved by the President of the Philippines.

[5] Section 22 of EO 903 reads:

SEC. 22. *Transfer of Existing Facilities and Intangible Assets.* All existing public airport facilities, runways, lands, buildings and other property, movable and immovable, belonging to the Airport, and all assets, powers, rights, interests and privileges belonging to the Bureau of Air Transportation relating to airport works or air operations, including all equipment which are necessary for the operation of crash fire and rescue facilities, are hereby transferred to the Authority.

On 28 August 2001, MIAA received Final Notices of Real Property Tax Delinquency from the City of Pasay for the taxable years 1992 to 2001. MIAA's real property tax delinquency for its real properties located in NAIA Complex, Ninoy Aquino Avenue, Pasay City (NAIA Pasay properties) is tabulated as follows:

TAX DECLARATION	TAXABLE YEAR	TAX DUE	PENALTY	TOTAL
A7-183-08346	1997-2001	243,522,855.00	123,351,728.18	366,874,583.18
A7-183-05224	1992-2001	113,582,466.00	71,159,414.98	184,741,880.98
A7-191-00843	1992-2001	54,454,800.00	34,115,932.20	88,570,732.20
A7-191-00140	1992-2001	1,632,960.00	1,023,049.44	2,656,009.44
A7-191-00139	1992-2001	6,068,448.00	3,801,882.85	9,870,330.85
A7-183-05409	1992-2001	59,129,520.00	37,044,644.28	96,174,164.28
A7-183-05410	1992-2001	20,619,720.00	12,918,254.58	33,537,974.58
A7-183-05413	1992-2001	7,908,240.00	4,954,512.36	12,862,752.36
A7-183-05412	1992-2001	18,441,981.20	11,553,901.13	29,995,882.33
A7-183-05411	1992-2001	109,946,736.00	68,881,630.13	178,828,366.13
A7-183-05245	1992-2001	7,440,000.00	4,661,160.00	12,101,160.00
GRAND TOTAL		₱642,747,726.20	₱373,466,110.13	₱1,016,213,836.33

On 24 August 2001, the City of Pasay, through its City Treasurer, issued notices of levy and warrants of levy for the NAIA Pasay properties. MIAA received the notices and warrants of levy on 28 August 2001. Thereafter, the City Mayor of Pasay threatened to sell at public auction the NAIA Pasay properties if the delinquent real property taxes remain unpaid.

On 29 October 2001, MIAA filed with the Court of Appeals a petition for prohibition and injunction with prayer for preliminary injunction or temporary restraining order. The petition sought to enjoin the City of Pasay from imposing real property taxes on, levying against, and auctioning for public sale the NAIA Pasay properties.

On 30 October 2002, the Court of Appeals dismissed the petition and upheld the power of the City of Pasay to impose and collect realty taxes on the NAIA Pasay properties. MIAA filed a motion for reconsideration, which the Court of Appeals denied. Hence, this petition.

The Court of Appeals' Ruling

The Court of Appeals held that Sections 193 and 234 of Republic Act No. 7160 or the Local Government Code, which took effect on 1 January 1992, withdrew the exemption from payment of real property taxes granted to natural or juridical persons, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under Republic Act No. 6938, non-stock and non-profit hospitals and educational institutions. Since MIAA is a government-owned corporation, it follows that its tax exemption under Section 21 of EO 903 has been withdrawn upon the effectivity of the Local Government Code.

The Issue

The issue raised in this petition is whether the NAIA Pasay properties of MIAA are exempt from real property tax.

The Court's Ruling

The petition is meritorious.

In ruling that MIAA is not exempt from paying real property tax, the Court of Appeals cited Sections 193 and 234 of the Local Government Code which read:

> SECTION 193. *Withdrawal of Tax Exemption Privileges.* — Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.
>
> SECTION 234. *Exemptions from Real Property Tax.* — The following are exempted from payment of the real property tax:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise to a taxable person;

(b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, non-profit or religious cemeteries and all lands, buildings and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

(d) All real property owned by duly registered cooperatives as provided for under R.A. No. 6938; and

(e) Machinery and equipment used for pollution control and environment protection.

Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or controlled corporations are hereby withdrawn upon the effectivity of this Code.

The Court of Appeals held that as a government-owned corporation, MIAA's tax exemption under Section 21 of EO 903 has already been withdrawn upon the effectivity of the Local Government Code in 1992.

In *Manila International Airport Authority v. Court of Appeals*[6] (2006 MIAA case), this Court already resolved the issue of whether the airport lands and buildings of MIAA are exempt from tax under existing laws. The 2006 MIAA case originated from a petition for prohibition and injunction which MIAA filed with the Court of Appeals, seeking to restrain the City of Parañaque from imposing real property tax on, levying against, and auctioning for public sale the airport lands and buildings located in Parañaque City. The only difference between the 2006 MIAA case and this case is that the 2006 MIAA case involved airport lands and buildings located in Parañaque City while this case involved airport lands and buildings located in

[6] G.R. No. 155650, 20 July 2006, 495 SCRA 591.

Pasay City. The 2006 MIAA case and this case raised the same threshold issue: whether the local government can impose real property tax on the airport lands, consisting mostly of the runways, as well as the airport buildings, of MIAA. In the 2006 MIAA case, this Court held:

> To summarize, MIAA is not a government-owned or controlled corporation under Section 2(13) of the Introductory Provisions of the Administrative Code because it is not organized as a stock or non-stock corporation. Neither is MIAA a government-owned or controlled corporation under Section 16, Article XII of the 1987 Constitution because MIAA is not required to meet the test of economic viability. MIAA is a government instrumentality vested with corporate powers and performing essential public services pursuant to Section 2(10) of the Introductory Provisions of the Administrative Code. As a government instrumentality, MIAA is not subject to any kind of tax by local governments under Section 133(o) of the Local Government Code. The exception to the exemption in Section 234(a) does not apply to MIAA because MIAA is not a taxable entity under the Local Government Code. Such exception applies only if the beneficial use of real property owned by the Republic is given to a taxable entity.
>
> *Finally*, the Airport Lands and Buildings of MIAA are properties devoted to public use and thus are properties of public dominion. *Properties of public dominion are owned by the State or the Republic.* Article 420 of the Civil Code provides:
>
>> Art. 420. The following things are *property of public dominion*:
>>
>> (1) Those **intended for public use**, such as roads, canals, rivers, torrents, **ports** and bridges **constructed by the State**, banks, shores, roadsteads, and **others of similar character**;
>>
>> (2) Those which belong to the State, without being for public use, and are **intended for some public service** or for the development of the national wealth.
>
> The term "*ports* x x x *constructed by the State*" includes *airports* and seaports. The Airport Lands and Buildings of MIAA are intended for public use, and at the very least intended for public service. Whether intended for public use or public service, the Airport Lands and Buildings are *properties of public dominion*. As properties of

public dominion, the Airport Lands and Buildings are owned by the Republic and thus exempt from real estate tax under Section 234(a) of the Local Government Code.[7] (Emphasis in the original)

The definition of *"instrumentality"* under Section 2(10) of the Introductory Provisions of the Administrative Code of 1987 uses the phrase "includes x x x government-owned or controlled corporations" which means that a government "instrumentality" may or may not be a "government-owned or controlled corporation." Obviously, the term government "instrumentality" is **broader** than the term "government-owned or controlled corporation." Section 2(10) provides:

SEC. 2. *General Terms Defined.* — x x x

(10) *Instrumentality* refers to any agency of the national Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations.

The term *"government-owned or controlled corporation"* has a separate definition under Section 2(13)[8] of the Introductory Provisions of the Administrative Code of 1987:

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[7] *Id.* at 644-645.

[8] Section 2(13) of the Introductory Provisions of the Administrative Code of 1987 reads:

SEC. 2. *General Terms Defined.*— x x x

(13) *Government-owned or controlled corporation* refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: *Provided*, That government-owned or controlled corporations may further be categorized by the department of Budget, the Civil Service Commission, and the Commission on Audit for the purpose of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.

SEC. 2. *General Terms Defined.* — x x x

(13) *Government-owned or controlled corporation* refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: *Provided*, That government-owned or controlled corporations may further be categorized by the department of Budget, the Civil Service Commission, and the Commission on Audit for the purpose of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.

The fact that two terms have separate definitions means that while a government "instrumentality" may include a "government-owned or controlled corporation," there may be a government "instrumentality" that will not qualify as a "government-owned or controlled corporation."

A close scrutiny of the definition of "government-owned or controlled corporation" in Section 2(13) will show that MIAA would not fall under such definition. **MIAA is a government "instrumentality" that does not qualify as a "government-owned or controlled corporation**." As explained in the 2006 MIAA case:

A government-owned or controlled corporation must be "organized as a stock or non-stock corporation." MIAA is not organized as a stock or non-stock corporation. MIAA is not a stock corporation because it has no capital stock divided into shares. MIAA has no stockholders or voting shares. x x x

Section 3 of the Corporation Code defines a stock corporation as one whose "*capital stock is divided into shares and* x x x *authorized to distribute to the holders of such shares dividends* x x x." MIAA has capital but it is not divided into shares of stock. MIAA has no stockholders or voting shares. Hence, MIAA is not a stock corporation.

x x x x x x x x x

MIAA is also not a non-stock corporation because it has no members. Section 87 of the Corporation Code defines a non-stock corporation as "one where no part of its income is distributable as dividends to its members, trustees or officers." A non-stock corporation must have members. Even if we assume that the Government is considered as the sole member of MIAA, this will not make MIAA a non-stock corporation. Non-stock corporations cannot distribute any part of their income to their members. Section 11 of the MIAA Charter mandates MIAA to remit 20% of its annual gross operating income to the National Treasury. This prevents MIAA from qualifying as a non-stock corporation.

Section 88 of the Corporation Code provides that non-stock corporations are "organized for charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civil service, or similar purposes, like trade, industry, agriculture and like chambers." MIAA is not organized for any of these purposes. MIAA, a public utility, is organized to operate an international and domestic airport for public use.

Since MIAA is neither a stock nor a non-stock corporation, MIAA does not qualify as a government-owned or controlled corporation. What then is the legal status of MIAA within the National Government?

MIAA is a government instrumentality vested with corporate powers to perform efficiently its governmental functions. MIAA is like any other government instrumentality, the only difference is that MIAA is vested with corporate powers. x x x

When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers. Thus, MIAA exercises the governmental powers of eminent domain, police authority and the levying of fees and charges. At the same time, MIAA exercises "all the powers of a corporation under the Corporation Law, insofar as these powers are not inconsistent with the provisions of this Executive Order."[9]

Thus, MIAA is not a government-owned or controlled corporation but a government instrumentality which is exempt

[9] *Supra* note 6 at 615-618.

from any kind of tax from the local governments. Indeed, the exercise of the taxing power of local government units is subject to the limitations enumerated in Section 133 of the Local Government Code.[10] Under Section 133(o)[11] of the Local Government Code, local government units have no power to tax instrumentalities of the national government like the MIAA. Hence, MIAA is not liable to pay real property tax for the NAIA Pasay properties.

Furthermore, the airport lands and buildings of MIAA are properties of public dominion intended for public use, and as such are exempt from real property tax under Section 234(a) of the Local Government Code. However, under the same provision, if MIAA leases its real property to a taxable person, the specific property leased becomes subject to real property tax.[12] In this case, only those portions of the NAIA Pasay properties which are leased to taxable persons like private parties are subject to real property tax by the City of Pasay.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the Decision dated 30 October 2002 and the Resolution dated 19 March 2004 of the Court of Appeals in CA-G.R. SP No. 67416. We *DECLARE* the NAIA Pasay properties of the Manila International Airport Authority *EXEMPT* from real property tax imposed by the City of Pasay. We declare *VOID* all the real property tax assessments, including the final notices of real

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[10] *Philippine Fisheries Development Authority v. Court of Appeals*, G.R. No. 150301, 2 October 2007, 534 SCRA 490.

[11] Section 133(o) of the Local Government Code reads:

SECTION 133. *Common Limitations on the Taxing Powers of the Local Government Units*. — Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and *barangays* shall not extend to the levy of the following:

x x x x x x x x x

(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

[12] *Manila International Airport Authority v. Court of Appeals*, *supra* note 6.

property tax delinquencies, issued by the City of Pasay on the NAIA Pasay properties of the Manila International Airport Authority, except for the portions that the Manila International Airport Authority has leased to private parties.

No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Leonardo-de Castro, Brion, and *Peralta, JJ.,* concur.
Austria-Martinez, J., joins the separate opinion of *J.* Nachura.
Nachura, J., please see separate opinion.
Ynares-Santiago and *Tinga, JJ.,* please see dissenting opinion.

SEPARATE OPINION

NACHURA, *J.*:

Are airport properties subject to real property tax? The question seriously begs for a definitive resolution, in light of our ostensibly contradictory decisions[1] that may have generated no small measure of confusion even among lawyers and magistrates.

Hereunder, I propose a simple, direct and painless approach to arrive at an acceptable answer to the question.

I.

Real property tax is a direct tax on the ownership of lands and buildings or other improvements thereon, not specially exempted, and is payable regardless of whether the property is used or not, although the value may vary in accordance with such factor. The tax is usually single or indivisible, although the land and building or improvements erected thereon are assessed

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[1] *Manila International Airport Authority (MIAA) v. Court of Appeals*, G.R. No. 155650, July 20, 2006, 495 SCRA 591; *Mactan Cebu International Airport Authority (MCIAA) v. Marcos*, 330 Phil. 392 (1996).

separately, except when the land and building or improvements belong to separate owners.[2]

The power to levy this tax is vested in local government units (LGUs). Thus, Republic Act (R.A.) No. 7160, or the Local Government Code (LGC) of 1991,[3] provides:

Under Book II, Title II, Chapter IV-Imposition of Real Property Tax

Section 232. *Power to Levy Real Property Tax.* — **A province or city or a municipality within the Metropolitan Manila Area may levy an annual *ad valorem* tax on real property such as land, building, machinery, and other improvement not hereinafter specifically exempted**.[4]

A significant innovation in the LGC is the withdrawal, subject to some exceptions, of all tax exemption privileges of all natural or juridical persons, including government-owned and controlled corporations (GOCCs), thus:

Under Book II, Title I, Chapter V-Miscellaneous Provisions

Section 193. *Withdrawal of Tax Exemption Privileges.* — **Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code**.[5]

This is where the controversy started. The airport authorities, formerly exempt from paying taxes, are now being obliged to pay real property tax on airport properties.

To challenge the real property tax assessments, the airport authorities invoke two provisions of the LGC— one is stated in Book II, Title I, Chapter I on General Provisions, which reads:

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[2] *Villanueva, et al. v. City of Iloilo*, 135 Phil. 572, 582-583 (1968).

[3] Approved on October 10, 1991 and became effective on January 1, 1992.

[4] Emphasis supplied.

[5] *Id.*

Section 133. *Common Limitations on the Taxing Powers of Local Government Units.* — Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and *barangays* shall not extend to the levy of the following:

(a) Income tax, except when levied on banks and other financial institutions;

(b) Documentary stamp tax;

(c) Taxes on estates, inheritance, gifts, legacies and other acquisitions *mortis causa*, except as otherwise provided herein;

(d) Customs duties, registration fees of vessel and wharfage on wharves, tonnage dues, and all other kinds of customs fees, charges and dues except wharfage on wharves constructed and maintained by the local government unit concerned;

(e) Taxes, fees, and charges and other impositions upon goods carried into or out of, or passing through, the territorial jurisdictions of local government units in the guise of charges for wharfage, tolls for bridges or otherwise, or other taxes, fees, or charges in any form whatsoever upon such goods or merchandise;

(f) Taxes, fees or charges on agricultural and aquatic products when sold by marginal farmers or fishermen;

(g) Taxes on business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively from the date of registration;

(h) Excise taxes on articles enumerated under the National Internal Revenue Code, as amended, and taxes, fees or charges on petroleum products;

(i) Percentage or value-added tax (VAT) on sales, barters or exchanges or similar transactions on goods or services except as otherwise provided herein;

(j) Taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land or water, except as provided in this Code;

(k) Taxes on premiums paid by way of reinsurance or retrocession;

(l) Taxes, fees or charges for the registration of motor vehicles and for the issuance of all kinds of licenses or permits for the driving thereof, except tricycles;

(m) Taxes, fees, or other charges on Philippine products actually exported, except as otherwise provided herein;

(n) Taxes, fees, or charges, on Countryside and *Barangay* Business Enterprises and cooperatives duly registered under R.A. No. 6810 and Republic Act Numbered Sixty-nine hundred thirty-eight (R.A. No. 6938) otherwise known as the "Cooperative Code of the Philippines" respectively; and

(o) **Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units**.[6]

and the other in Book II, Title I, Chapter IV on Imposition of Real Property Tax:

Section 234. *Exemptions from Real Property Tax.* — The following are exempted from payment of the real property tax:

(a) **Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person**;

(b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, nonprofit or religious cemeteries and all lands, buildings, and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

(d) All real property owned by duly registered cooperatives as provided for under R.A. No. 6938; and

(e) Machinery and equipment used for pollution control and environmental protection.

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[6] *Id.*

Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or controlled corporations are hereby withdrawn upon the effectivity of this Code.[7]

In *Mactan Cebu International Airport Authority (MCIAA) v. Marcos*,[8] the Court ruled that Section 133(o) is qualified by Sections 232 and 234. Thus, MCIAA could not seek refuge in Section 133(o), but only in Section 234(a) provided it could establish that the properties were owned by the Republic of the Philippines. The Court ratiocinated, thus:

[R]eading together Sections 133, 232, and 234 of the LGC, we conclude that as a general rule, as laid down in Section 133, the taxing powers of local government units cannot extend to the levy of, *inter alia*, "taxes, fees and charges of any kind on the National Government, its agencies and instrumentalities, and local government units"; however, pursuant to Section 232, provinces, cities, and municipalities in the Metropolitan Manila Area may impose the real property tax except on, *inter alia*, "real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person," as provided in item (a) of the first paragraph of Section 234.

As to tax exemptions or incentives granted to or presently enjoyed by natural or juridical persons, including government-owned and controlled corporations, Section 193 of the LGC prescribes the general rule, *viz.*, they are *withdrawn* upon the effectivity of the LGC, *except* those granted to local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, and unless otherwise provided in the LGC. The latter proviso could refer to Section 234 which enumerates the properties exempt from real property tax. But the last paragraph of Section 234 further qualifies the retention of the exemption insofar as real property taxes are concerned by limiting the retention only to those enumerated therein; all others not included in the enumeration lost the privilege upon the effectivity of the LGC. Moreover, even

[7] *Id.*

[8] *Supra* note 1.

as to real property owned by the Republic of the Philippines or any of its political subdivisions covered by item (a) of the first paragraph of Section 234, the exemption is withdrawn if the beneficial use of such property has been granted to a taxable person for consideration or otherwise.

Since the last paragraph of Section 234 unequivocally withdrew, upon the effectivity of the LGC, exemptions from payment of real property taxes granted to natural or juridical persons, including government-owned or controlled corporations, except as provided in the said section, and the petitioner is, undoubtedly, a government-owned corporation, it necessarily follows that its exemption from such tax granted it in Section 14 of its Charter, R.A. No. 6958, has been withdrawn. Any claim to the contrary can only be justified if the petitioner can seek refuge under any of the exceptions provided in Section 234, but not under Section 133, as it now asserts, since, as shown above, the said section is qualified by Sections 232 and 234.

In short, the petitioner can no longer invoke the general rule in Section 133 that the taxing powers of the local government units cannot extend to the levy of:

(o) taxes, fees or charges of any kind on the National Government, its agencies or instrumentalities, and local government units.[9]

In addition, the Court went on to hold that the properties comprising the Lahug International Airport and the Mactan International Airport are no longer owned by the Republic, the latter having conveyed the same absolutely to MCIAA.

About a decade later, however, the Court ruled in *Manila International Airport Authority (MIAA) v. Court of Appeals*,[10] that the airport properties, this time comprising the Ninoy Aquino International Airport (NAIA), are exempt from real property tax. It justified its ruling by categorizing MIAA as a government instrumentality specifically exempted from paying tax by Section 133(o) of R.A. No. 7160. It further reasoned that the subject properties are properties of public dominion, owned by the Republic, and are only held in trust by MIAA, thus:

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[9] *Id.* at 413-414.

[10] *Supra* note 1.

Under Section 2(10) and (13) of the Introductory Provisions of the Administrative Code, which governs the legal relation and status of government units, agencies and offices within the entire government machinery, MIAA is a government **instrumentality** and not a government-owned or controlled corporation. Under Section 133(o) of the Local Government Code, MIAA as a government **instrumentality** is not a taxable person because it is not subject to "[t]axes, fees or charges of any kind" by local governments. The only exception is when MIAA leases its real property to a "taxable person" as provided in Section 234(a) of the Local Government Code, in which case the specific real property leased becomes subject to real estate tax. Thus, only portions of the Airport Lands and Buildings leased to taxable persons like **private parties** are subject to real estate tax by the City of Parañaque.

Under Article 420 of the Civil Code, the Airport Lands and Buildings of MIAA, being devoted to public use, are properties of **public dominion** and thus owned by the State or the Republic of the Philippines. Article 420 specifically mentions "**ports** x x x constructed by the State," which includes public airports and seaports, as properties of public dominion and owned by the Republic. As properties of public dominion owned by the Republic, there is no doubt whatsoever that the Airport Lands and Buildings are expressly exempt from real estate tax under Section 234(a) of the Local Government Code. This Court has also repeatedly ruled that properties of public dominion are not subject to execution or foreclosure sale.[11]

II.

In this case, we are confronted by the very same issue.

A basic principle in statutory construction decrees that, to discover the general legislative intent, the whole statute, and not only a particular provision thereof, should be considered. Every section, provision or clause in the law must be read and construed in reference to each other in order to arrive at the true intention of the legislature.[12]

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[11] *Id.* at 645-646.

[12] *Municipality of Nueva Era, Ilocos Norte v. Municipality of Marcos, Ilocos Norte*, G.R. No. 169435, February 27, 2008, 547 SCRA 71, 95-96.

Notably, Section 133 of the LGC speaks of the general limitations on the taxing power of LGUs. This is reinforced by its inclusion in Title I, Chapter I entitled "General Provisions" on "Local Government Taxation." On the other hand, Section 234, containing the enumeration of the specific exemptions from real property tax, is in Chapter IV entitled "Imposition of Real Property Tax" under Title II on "Real Property Taxation." When read together, Section 234, a specific provision, qualifies Section 133, a general provision.

Indeed, whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, will overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.[13] Otherwise stated, where there are two acts or provisions, one of which is special and particular, and certainly includes the matter in question, and the other general, which, if standing alone, will include the same matter and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act or provision, especially when such general and special acts or provisions are contemporaneous, as the legislature is not to be presumed to have intended a conflict.[14]

Mactan Cebu therefore adheres to the intendment of the law insofar as it holds that MCIAA cannot seek refuge in Section 133(o); that it can only invoke Section 234(a) so long as it can establish that the properties were owned by the Republic of the Philippines. To repeat, Section 234, which specifies the properties exempted from real property tax, prevails over the general limitations on the taxing power of LGUs stated in Section 133.

Thus, if Section 133(o) is not to be a haven, then, I respectfully submit that it is no longer necessary to dichotomize between a government instrumentality and a GOCC. As stressed by the Court in *Mactan Cebu*, what need only be ascertained is whether

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[13] *Lichauco & Co. v. Apostol and Corpus*, 44 Phil. 138, 146 (1922).

[14] *Id.* at 147.

the airport properties are owned by the Republic if the airport Authority is to be freed from the burden of paying the real property tax. Similarly, in *MIAA*, with the Court's finding that the NAIA lands and buildings are owned by the Republic, the airport Authority does not have to pay real property tax to the City of Parañaque.

III.

As pointed out earlier, *Mactan Cebu* and *MIAA* ostensibly contradict each other. While the first considers airport properties as subject to real property tax, the second exempts the same from this imposition. The conflict, however, is more apparent than real. The divergent conclusions in the two cases proceed from different premises; hence, the resulting contradiction.

To elucidate, in *Mactan Cebu*, the Court focused on the proper interpretation of Sections 133, 232 and 234 of the LGC, and emphasized the nature of the tax exemptions granted by law. *Mactan Cebu* categorized the exemptions as based on the ownership, character and use of the property, thus:

> (a) *Ownership Exemptions*. Exemptions from real property taxes on the basis of *ownership* are real properties owned by: (i) the Republic, (ii) a province, (iii) a city, (iv) a municipality, (v) a *barangay*, and (vi) registered cooperatives.
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> (b) *Character Exemptions*. Exempted from real property taxes on the basis of their character are: (i) charitable institutions, (ii) houses and temples of prayer like churches, parsonages or convents appurtenant thereto, mosques, and (iii) non-profit or religious cemeteries.
>
> (c) *Usage exemptions*. Exempted from real property taxes on the basis of the actual, direct and exclusive *use* to which they are devoted are: (i) all lands, buildings and improvements which are actually directly and exclusively used for religious, charitable or educational purposes; (ii) all machineries and equipment actually, directly and exclusively used by local water districts or by government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power; and

(iii) all machinery and equipment used for pollution control and environmental protection.

To help provide a healthy environment in the midst of the modernization of the country, all machinery and equipment for pollution control and environmental protection may not be taxed by local governments.[15]

For the airport properties to be exempt from real property tax, they must fall within the mentioned categories. Logically, the airport properties can only qualify under the first exemption — by virtue of ownership. But, as already mentioned, the Court, nevertheless, ruled in *Mactan Cebu* that the said properties are no longer owned by the Republic having been conveyed absolutely to the airport Authority, thus:

Section 15 of the petitioner's Charter provides:

Sec. 15. *Transfer of Existing Facilities and Intangible Assets*. — All existing public airport facilities, runways, lands, buildings and other properties, movable or immovable, belonging to or presently administered by the airports, and all assets, powers, rights, interests and privileges relating on airport works or air operations, including all equipment which are necessary for the operations of air navigation, aerodrome control towers, crash, fire, and rescue facilities are hereby transferred to the Authority: Provided, however, that the operations control of all equipment necessary for the operation of radio aids to air navigation, airways communication, the approach control office, and the area control center shall be retained by the Air Transportation Office. No equipment, however, shall be removed by the Air Transportation Office from Mactan without the concurrence of the Authority. The Authority may assist in the maintenance of the Air Transportation Office equipment.

The "airports" referred to are the "Lahug Air Port" in Cebu City and the "Mactan International Airport in the Province of Cebu," which belonged to the Republic of the Philippines, then under the Air Transportation Office (ATO).

It may be reasonable to assume that the term "lands" refer to "lands" in Cebu City then administered by the Lahug Air Port and

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[15] *MCIAA v. Marcos*, *supra* note 1, at 410-411.

includes the parcels of land the respondent City of Cebu seeks to levy on for real property taxes. **This section involves a "transfer" of the "lands," among other things, to the petitioner and not just the transfer of the beneficial use thereof, with the ownership being retained by the Republic of the Philippines**.

This "transfer" is actually an absolute conveyance of the ownership thereof because the petitioner's authorized capital stock consists of, *inter alia*, "the value of such real estate owned and/or administered by the airports." Hence, the petitioner is now the owner of the land in question and the exception in Section 234(c) of the LGC is inapplicable.[16]

In *MIAA*, a different conclusion was reached by the Court on two grounds. It first banked on the general provision limiting the taxing power of LGUs as stated in Section 133(o) of the LGC that, unless otherwise provided in the Code, the exercise of the taxing powers of LGUs shall not extend to the levy of taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and LGUs. The Court took pains in characterizing airport authorities as government instrumentalities, quite obviously, in order to apply the said provision.

After doing so, the Court then shifted its attention and proceeded to focus on the issue of who owns the property to determine whether the case falls within the purview of Section 234(a). Ratiocinating that airport properties are of public dominion which pertain to the state and that the airport Authority is a mere trustee of the Republic, the Court ruled that the said properties are exempt from real property tax, thus:

2. Airport Lands and Buildings of MIAA are Owned by the Republic

a. **Airport Lands and Buildings are of Public Dominion**

The Airport Lands and Buildings of MIAA are property of **public dominion and therefore owned by the State or the Republic of the Philippines**. The Civil Code provides:

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[16] *Id.* at 418-419. (Emphasis supplied, citations omitted.)

x x x x x x x x x

No one can dispute that properties of public dominion mentioned in Article 420 of the Civil Code, like "**roads, canals, rivers, torrents, <u>ports</u> and bridges constructed by the State**," are owned by the State. **The term "ports" includes seaports and airports.** The MIAA Airport Lands and Buildings constitute a "**port**" constructed by the State. Under Article 420 of the Civil Code, the MIAA Airport Lands and Buildings are properties of public dominion and thus owned by the State or the Republic of the Philippines.

The Airport Lands and Buildings are devoted to public use because they are **used by the public for international and domestic travel and transportation**. The fact that the MIAA collects terminal fees and other charges from the public does not remove the character of the Airport Lands and Buildings as properties for public use. The operation by the government of a tollway does not change the character of the road as one for public use. Someone must pay for the maintenance of the road, either the public indirectly through the taxes they pay the government, or only those among the public who actually use the road through the toll fees they pay upon using the road. The tollway system is even a more efficient and equitable manner of taxing the public for the maintenance of public roads.

The charging of fees to the public does not determine the character of the property whether it is of public dominion or not. Article 420 of the Civil Code defines property of public dominion as one "intended for public use." Even if the government collects toll fees, the road is still "intended for public use" if anyone can use the road under the same terms and conditions as the rest of the public. The charging of fees, the limitation on the kind of vehicles that can use the road, the speed restrictions and other conditions for the use of the road do not affect the public character of the road.

The terminal fees MIAA charges to passengers, as well as the landing fees MIAA charges to airlines, constitute the bulk of the income that maintains the operations of MIAA. The collection of such fees does not change the character of MIAA as an airport for public use. Such fees are often termed user's tax. This means taxing those among the public who actually use a public facility instead of taxing all the public including those who never use the particular public facility. A user's tax is more equitable — a principle of taxation mandated in the 1987 Constitution.

The Airport Lands and Buildings of MIAA, which its Charter calls the "principal airport of the Philippines for both international and domestic air traffic," are properties of public dominion because they are intended for public use. **As properties of public dominion, they indisputably belong to the State or the Republic of the Philippines**.

b. **Airport Lands and Buildings are Outside the Commerce of Man**

The Airport Lands and Buildings of MIAA are devoted to public use and thus are properties of public dominion. **As properties of public dominion, the Airport Lands and Buildings are outside the commerce of man**. The Court has ruled repeatedly that properties of public dominion are outside the commerce of man. As early as 1915, this Court already ruled in ***Municipality of Cavite v. Rojas*** that properties devoted to public use are outside the commerce of man, thus:

x x x x x x x x x

Again in ***Espiritu v. Municipal Council***, the Court declared that properties of public dominion are outside the commerce of man:

x x x x x x x x x

The Court has also ruled that property of public dominion, being outside the commerce of man, cannot be the subject of an auction sale.

Properties of public dominion, being for public use, are not subject to levy, encumbrance or disposition through public or private sale. Any encumbrance, levy on execution or auction sale of any property of public dominion is void for being contrary to public policy. Essential public services will stop if properties of public dominion are subject to encumbrances, foreclosures and auction sale. This will happen if the City of Parañaque can foreclose and compel the auction sale of the 600-hectare runway of the MIAA for non-payment of real estate tax.

Before MIAA can encumber the Airport Lands and Buildings, the President must first **withdraw from public use** the Airport Lands and Buildings. Sections 83 and 88 of the Public Land Law or Commonwealth Act No. 141, which "remains to this day the existing general law governing the classification and disposition of lands of the public domain other than timber and mineral lands," provide:

x x x x x x x x x

Thus, unless the President issues a proclamation withdrawing the Airport Lands and Buildings from public use, these properties remain properties of public dominion and are **inalienable**. Since the Airport Lands and Buildings are inalienable in their present status as properties of public dominion, they are not subject to levy on execution or foreclosure sale. As long as the Airport Lands and Buildings are reserved for public use, their ownership remains with the State or the Republic of the Philippines.

The authority of the President to reserve lands of the public domain for public use, and to withdraw such public use, is reiterated in Section 14, Chapter 4, Title I, Book III of the Administrative Code of 1987, which states:

x x x x x x x x x

There is no question, therefore, that unless the Airport Lands and Buildings are withdrawn by law or presidential proclamation from public use, they are properties of public dominion, owned by the Republic and outside the commerce of man.

c. **MIAA is a Mere Trustee of the Republic**

MIAA is merely holding title to the Airport Lands and Buildings in trust for the Republic. Section 48, Chapter 12, Book I of **the Administrative Code allows instrumentalities like MIAA to hold title to real properties owned by the Republic**, thus:

x x x x x x x x x

In MIAA's case, its status as a mere trustee of the Airport Lands and Buildings is clearer because even its executive head cannot sign the deed of conveyance on behalf of the Republic. Only the President of the Republic can sign such deed of conveyance.

d. **Transfer to MIAA was Meant to Implement a Reorganization**

The MIAA Charter, which is a law, transferred to MIAA the title to the Airport Lands and Buildings from the Bureau of Air Transportation of the Department of Transportation and Communications. The MIAA Charter provides:

x x x x x x x x x

The MIAA Charter transferred the Airport Lands and Buildings to MIAA without the Republic receiving cash, promissory notes or even stock since MIAA is not a stock corporation.

The whereas clauses of the MIAA Charter explain the rationale for the transfer of the Airport Lands and Buildings to MIAA, thus:

x x x x x x x x x

The transfer of the Airport Lands and Buildings from the Bureau of Air Transportation to MIAA was not meant to transfer beneficial ownership of these assets from the Republic to MIAA. The purpose was merely to **reorganize a division in the Bureau of Air Transportation into a separate and autonomous body.** The Republic remains the beneficial owner of the Airport Lands and Buildings. MIAA itself is owned solely by the Republic. No party claims any ownership rights over MIAA's assets adverse to the Republic.

The MIAA Charter expressly provides that the Airport Lands and Buildings "**shall not be disposed through sale or through any other mode unless specifically approved by the President of the Philippines**." This only means that the Republic retained the beneficial ownership of the Airport Lands and Buildings because under Article 428 of the Civil Code, only the "owner has the right to x x x dispose of a thing." Since MIAA cannot dispose of the Airport Lands and Buildings, MIAA does not own the Airport Lands and Buildings.

At any time, the President can transfer back to the Republic title to the Airport Lands and Buildings without the Republic paying MIAA any consideration. Under Section 3 of the MIAA Charter, the President is the only one who can authorize the sale or disposition of the Airport Lands and Buildings. This only confirms that the Airport Lands and Buildings belong to the Republic.

e. **Real Property Owned by the Republic is Not Taxable**

Section 234(a) of the Local Government Code exempts from real estate tax any "[r]eal property owned by the Republic of the Philippines." Section 234(a) provides:

x x x x x x x x x

This exemption should be read in relation with Section 133(o) of the same Code, which prohibits local governments from imposing "[t]axes, fees or charges of any kind on the National Government,

its agencies and **instrumentalities** x x x." The real properties owned by the Republic are titled either in the name of the Republic itself or in the name of agencies or instrumentalities of the National Government. The Administrative Code allows real property owned by the Republic to be titled in the name of agencies or instrumentalities of the national government. Such real properties remain owned by the Republic and continue to be exempt from real estate tax.

The Republic may grant the beneficial use of its real property to an agency or instrumentality of the national government. This happens when title of the real property is transferred to an agency or instrumentality even as the Republic remains the owner of the real property. Such arrangement does not result in the loss of the tax exemption. Section 234(a) of the Local Government Code states that real property owned by the Republic loses its tax exemption only if the "beneficial use thereof has been granted, for consideration or otherwise, to a **taxable person**." MIAA, as a government instrumentality, is not a taxable person under Section 133(o) of the Local Government Code. Thus, even if we assume that the Republic has granted to MIAA the beneficial use of the Airport Lands and Buildings, such fact does not make these real properties subject to real estate tax.

However, portions of the Airport Lands and Buildings that MIAA leases to private entities are not exempt from real estate tax. For example, the land area occupied by hangars that MIAA leases to private corporations is subject to real estate tax. In such a case, MIAA has granted the beneficial use of such land area for a consideration to a **taxable person** and therefore such land area is subject to real estate tax. In ***Lung Center of the Philippines v. Quezon City***, the Court ruled:

x x x x x x x x x[17]

In the ultimate, I submit that the two rulings do not really contradict, but, instead, complement each one. ***Mactan Cebu*** **provides the proper rule that, in order to determine whether airport properties are exempt from real property tax, it is Section 234, not Section 133, of the LGC that should be**

[17] *Manila International Airport Authority v. Court of Appeals*, *supra* note 10, at 621-630. (Emphasis supplied, citations omitted.)

determinative of the properties exempt from the said tax. *MIAA* then lays down the correct doctrine that airport properties are of public dominion pertaining to the state, hence, falling within the ambit of Section 234(a) of the LGC.

However, because of the confusion generated by the apparently conflicting decisions, a fine tuning of *Mactan Cebu* and *MIAA* is imperative.

IV.

Parenthetically, while the basis of a real property tax assessment is actual use,[18] the tax itself is directed to the ownership of the lands and buildings or other improvements thereon.[19] Public policy considerations dictate that property of the State and of its municipal subdivisions devoted to governmental uses and purposes is generally exempt from taxation although no express provision in the law is made therefor.[20] In the instant case, the legislature specifically provided that real property owned by the Republic of the Philippines or any of its political subdivisions is exempt from real property tax, except, of course, when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person. The principal basis of the exemption is likewise ownership.[21]

Indeed, emphasis should be made on the ownership of the property, rather than on the airport Authority being a taxable entity. This strategy makes it unnecessary to determine whether MIAA is an instrumentality or a GOCC, as painstakingly expounded by the *ponente*.

Likewise, this approach provides a convenient escape from Justice Tinga's proposition that the MIAA is a taxable entity liable to pay real property taxes, but the airport properties are

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[18] See Sec. 198 of R.A. No. 7160.

[19] *Supra* note 2.

[20] Aban, *Law of Basic Taxation in the Philippines*, 2001 ed., p. 64.

[21] See *Platte Valley Public Power and Irrigation Dist. v. Lincoln County*, 144 Neb. 584, 586; 14 N.W.2d 202, 204 (1944).

exempt from levy on execution to satisfy the tax liability. I fear that this hypothesis may trench on the Constitutional principle of uniformity of taxation,[22] because a tax lawfully levied and assessed against a taxable governmental entity will not be lienable while like assessments against all other taxable entities of the same tax district will be lienable.[23]

The better option, then, is for the Court to concentrate on the nature of the tax as a tax on ownership and to directly apply the pertinent real property tax provisions of the LGC, specifically those dealing with the exemption based on ownership, to the case at bar.

The phrase, "property owned by the Republic" in Section 234, actually refers to those identified as public property in our laws. Following *MIAA*, we go to Articles 420 and 421 of the Civil Code which provide:

Art. 420. The following things are property of public dominion:

(1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;

(2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.

Art. 421. All other property of the State, which is not of the character stated in the preceding article, is patrimonial property.

From the afore-quoted, we readily deduce that airport properties are of public dominion. The "port" in the enumeration certainly includes an airport. With its beacons, landing fields, runways, and hangars, an airport is analogous to a harbor with its lights, wharves and docks; the one is the landing place and haven of ships that navigate the water, the other of those that navigate the air.[24] Ample

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[22] See 1987 CONSTITUTION, Art. VI, Sec. 28(1).

[23] *Borough of Homestead v. Defense Plant Corporation*, 356 Pa. 500, 508; 52 A.2d 581, 586 (1947).

[24] *Hale v. Sullivan*, 146 Colo. 512, 516; 362 P.2d 402, 404 (1961).

authority further supports the proposition that the term "roads" include runways and landing strips.[25] Airports, therefore, being properties of public dominion, are of the Republic.

At this point, I cannot help but air the observation that the legislature may have really intended the phrase "owned by the Republic" in Section 234 to refer to, among others, properties of public dominion. This is because "public dominion" does not carry the idea of ownership. Tolentino, an authority in civil law, explains:

> This article shows that there is a distinction between *dominion* and *ownership*. Private ownership is defined elsewhere in the Code; but the meaning of public dominion is nowhere defined. From the context of various provisions, it is clear that *public dominion* does not carry the idea of ownership; property of public dominion is not owned by the State, but pertains to the State, which as territorial sovereign exercises certain juridical prerogatives over such property. The ownership of such property, which has the special characteristics of a collective ownership for the general use and enjoyment, by virtue of their application to the satisfaction of the collective needs, is in the social group, whether national, provincial, or municipal. Their purpose is not to serve the State as a juridical person, but the citizens; they are intended for the common and public welfare, and so they cannot be the object of appropriation, either by the State or by private persons. The relation of the State to this property arises from the fact that the State is the juridical representative of the social group, and as such it takes care of them, preserves them and regulates their use for the general welfare.[26]

Be that as it may, the legislative intent to exempt from real property tax the properties of the Republic remains clear. The soil constituting the NAIA airport and the runways cannot be taxed, being properties of public dominion and pertaining to the Republic. This is true even if the title to the said property is in the name of MIAA. Practical ownership, rather than the naked legal title, must control, particularly because, as a matter of

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[25] *Id.* at 518.

[26] Tolentino, *Civil Code of the Philippines*, Vol. II, 1983 ed., p. 28; see also *Laurel v. Garcia*, G.R. Nos. 92013 and 92047, July 25, 1990, 187 SCRA 797.

practice, the record title may be in the name of a government agency or department rather than in the name of the Republic.

In this case, even if MIAA holds the record title over the airport properties, such holding can only be for the benefit of the Republic,[27] especially when we consider that MIAA exercises an essentially public function.[28] Further, where property, the title to which is in the name of the principal, is immune from taxes, it remains immune even if the title is standing in the name of an agent or trustee for such principal.[29]

Properties of public dominion are held in trust by the state or the Republic for the people.[30] The national government and the bodies it has created that exercise delegated authority are, pursuant to the general principles of public law, mere agents of the Republic. Here, insofar as it deals with the subject properties, MIAA, a governmental creation exercising delegated powers, is a mere **agent** of the Republic, and the latter, to repeat, is the trustee of the properties for the benefit of all the people.[31]

Our ruling in *MIAA*, therefore, insofar as it holds that the airport Authority is a "trustee of the Republic," may not have been precise. It would have been more sound, legally that is, to consider the relationship between the Republic and the airport Authority as principal and agent, rather than as trustor and trustee.

The history of the subject airport attests to this proposition, thus:

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[27] See *Rohr Aircraft Corporation v. County of San Diego*, 362 U.S. 628, 634-635; 80 S.Ct. 1050, 1054 (1960).

[28] *Hanover v. Town of Morristown*, 4 N.J.Super. 22, 24; 66 A.2d 187, 188 (1949); *People ex rel. Lawless v. City of Quincy*, 395 Ill. 190, 201; 69 N.E.2d 892, 897 (1946); *People ex rel. Curren v. Wood*, 391 Ill. 237, 241; 62 N.E.2d 809, 812 (1945); *Macclintock v. City of Roseburg*, 127 Or. 698, 701; 273 P. 331-332 (1929).

[29] *Pacific Grove-Asilomar Operating Corp. v. Count of Monterey*, 43 Cal.App.3d 675, 684; 117 Cal.Rptr. 874, 880 (1974); *United States Spruce Production Corporation v. Lincoln County*, 285 F. 388, 391 (1922).

[30] See *Kock Wing v. Philippine Railway Co.*, 54 Phil. 438, 444 (1930).

[31] See *United States of America v. Ruby Company*, 588 F.2d 697, 704 (1978).

The country's premier airport was originally a US Air Force Base, which was turned over to the Philippine government in 1948. It started operations as a civil aviation airport with meager facilities, then consisting of the present domestic runway as its sole landing strip, and a small building northwest of this runway as its sole passenger terminal.

The airport's international runway and associated taxiway were built in 1953; followed in 1961 by the construction of a control tower and a terminal building for the exclusive use of international passengers at the southwest intersection of the two runways. These structures formed the key components of an airport system that came to be known as the Manila International Airport (MIA).

Like other national airports, the MIA was first managed and operated by the National Airports Corporation, an agency created on June 5, 1948 by virtue of Republic Act No. 224. This was abolished in 1951 and [in] its stead, the MIA Division was created under the Civil Aeronautics Administration (CAA) of the Department of Commerce and Industry.

On October 19, 1956, the entire CAA, including the MIA Division, was transferred to the Department of Public Works, Transportation and Communications.

In 1979, the CAA was renamed Bureau of Air Transportation following the creation of an exclusive Executive Department for Transportation and Communications.

It is worthwhile to note at this point that while the MIA General Manager then carried the rank of a Division Chief only, it became a matter of policy and practice that he be appointed by no less than the President of the Philippines since the magnitude of its impact on the country's economy has acquired such national importance and recognition.

During the seventies, the Philippine tourism and industry experienced a phenomenal upsurge in the country's manpower exports, resulting in more international flight frequencies to Manila which grew by more than four times.

Executive Order No. 381 promulgated by then President Marcos authorized the development of Manila International Airport to meet the needs of the coming decades.

A feasibility study/airport master plan was drawn up in 1973 by Airways Engineering Corporation, the financing of which was source[d] from a US$29.6 Million loan arranged with the Asian Development Bank (ADB). The detailed Engineering Design of the new MIA Development Project (MIADP) was undertaken by Renardet-Sauti/ Transplan/F.F. Cruz Consultants while the design of the IPT building was prepared by Architect L.V. Locsin and Associates.

In 1974, the final engineering design was adopted by the Philippine Government. This was concurred by the ADB on September 18, 1975 and became known as the "Scheme E-5 Modified Plan." Actual work on the project started in the second quarter of 1978.

On March 4, 1982, EXECUTIVE ORDER NO. 778 was signed into law, abolishing the MIA Division under the BAT and creating in its stead the MANILA INTERNATIONAL AIRPORT AUTHORITY (MIAA), vested with the power to administer and operate the Manila International Airport (MIA).

Though MIAA was envisioned to be autonomous, Letter of Instructions (LOI) No. 1245, signed 31 May 1982, clarified that for purpose of policy integration and program coordination, the MIAA Management shall be under the general supervision but not control of the then Ministry of Transportation and Communications.

On July 21, 1983, Executive Order No. 903 was promulgated, providing that 65% of MIAA's annual gross operating income be reverted to the general fund for the maintenance and operation of other international and domestic airports in the country. It also scaled down the equity contribution of the National Government to MIAA: from PhP 10 billion to PhP 2.5 billion and removed the provision exempting MIAA from the payment of corporate tax.

Another revision in the MIAA Charter followed with the promulgation of Executive Order No. 909, signed September 16, 1983, increasing the membership of the MIAA Board to nine (9) Directors with the inclusion of two other members to be appointed by the Philippine President.

The last amendment to the MIAA Charter was made on July 26, 1987 through Executive Order No. 298 which provided for a more realistic income sharing arrangement between MIAA and the National Government. It provided that instead of the 65% of gross operating income, only 20% of MIAA's gross income, exclusive of income generated from the passenger terminal fees and utility charges, shall

revert to the general fund of the National Treasury. EO 298 also reorganized the MIAA Board and raised the capitalization to its original magnitude of PhP 10 billion.

The post 1986 Revolution period will not be complete without mention of the renaming of MIA to Ninoy Aquino International Airport with the enactment of Republic Act No. 6639 on August 17, 1987. While this legislation renamed the airport complex, the MIA Authority would still retain its corporate name since it did not amend the original or revised charters of MIAA.[32]

The MIAA Charter further provides that any portion of the airport cannot be disposed of by the Authority through sale or through any other mode unless specifically approved by the President of the Philippines.[33] It is also noted that MIAA's board of directors is practically controlled by the national government, the members thereof being officials of the executive

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[32] http://125.60.203.88/miaa/AIRPORT/index.asp (visited Feb. 23, 2009).

[33] Executive Order (E.O.) No. 903, entitled "Providing for a Revision of Executive Order No. 778 Creating the Manila International Airport Authority, Transferring Existing Assets of the Manila International Airport to the Authority, and Vesting the Authority with Power to Administer and Operate the Manila International Airport, issued on July 21, 1983, provides in its Section 3 the following:

Sec. 3. Creation of the Manila International Airport Authority. There is hereby established a body corporate to be known as the Manila International Airport Authority which shall be attached to the Ministry of Transportation and Communications. The principal office of the Authority shall be located at the New Manila International Airport. The Authority may establish such offices, branches, agencies or subsidiaries as it may deem proper and necessary; Provided, That any subsidiary that may be organized shall have the prior approval of the President.

The land where the Airport is presently located as well as the surrounding land area of approximately six hundred hectares, are hereby transferred, conveyed and assigned to the ownership and administration of the Authority, subject to existing rights, if any. The Bureau of Lands and other appropriate government agencies shall undertake an actual survey of the area transferred within one year from the promulgation of this Executive Order and the corresponding title to be issued in the name of the Authority. Any portion thereof shall not be disposed through sale or through any other mode unless specifically approved by the President of the Philippines. (Underscoring ours.)

branch.[34] Likewise, the Authority cannot levy and collect dues, charges, fees or assessments for the use of the airport premises, works, appliances, facilities or concessions, or for any service provided by it, without the approval of several executive departments.[35] These provisions are consistent with an agency relationship. Let it be remembered that one of the principal elements of an agency relationship is the existence of some degree of control by the principal over the conduct and activities of the agent. In this regard, while an agent undertakes to act on behalf of his principal and subject to his control, a trustee as such is not subject to the control of the beneficiary, except that he is under a duty to deal with the trust property for the latter's

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[34] E.O. No. 909, entitled "Amending Section 7 of Executive Order No. 778, Creating the Manila International Airport Authority, by Increasing the Membership in the Board of Directors to Nine Members," issued on September 16, 1983, pertinently provides in its Section 1 the following:

Sec. 1. Section 7 of Executive Order 778, dated 04 March 1982, is hereby amended to read as follows:

> "Sec. 7. Board of Directors. The corporate powers of the Authority shall be exercised by and vested in a Board of NINE (9) members, which shall be composed of a Chairman, a Vice-Chairman and SEVEN (7) members. The Minister of Transportation & Communications shall be the *ex-officio* Chairman of the Board. The General Manager of the Authority shall be the *ex-officio* Vice-Chairman of the Board. The Minister of Finance, the Minister of Tourism, the Presidential Executive Assistant, the Chief of Staff of the Armed Forces of the Philippines, and Commissioner of Immigration & Deportation shall be the *ex-officio* members. TWO OTHER MEMBERS SHALL BE APPOINTED BY THE PRESIDENT UPON THE RECOMMENDATION OF THE BOARD.

x x x x x x x x x."

[35] Sec. 5(k) of E.O. No. 903 provides:

Sec. 5. Functions, Powers, and Duties. The Authority shall have the following functions, powers and duties:

x x x x x x x x x

(k) To levy and collect dues, charges, fees or assessments for the use of the airport premises, works, appliances, facilities or concessions, or for any service provided by the Authority, subject to the approval of the Minister of Transportation and Communications in consultation with the Minister of Finance, and subject further to the provisions of Batas Pambansa Blg. 325 where applicable.

benefit in accordance with the terms of the trust and can be compelled by the beneficiary to perform his duty.[36]

Finally, to consider MIAA as a "trustee of the Republic" will sanction the technical creation of a second trust in which the Republic, which is already a trustee, becomes the second trustor and the airport Authority a second trustee. Although I do not wish to belabor the point, I submit that the validity of such a scenario appears doubtful. Sufficient authority, however, supports the proposition that a trustee can delegate his duties to an agent provided he properly supervises and controls the agent's conduct.[37] In this case, we can rightly say that the Republic, as the trustee of the public dominion airport properties for the benefit of the people, has delegated to MIAA the administration of the said properties subject, as shown above, to the executive department's supervision and control.

In fine, the properties comprising the NAIA being of public dominion which pertain to the State, the same should be exempt from real property tax following Section 234(a) of the LGC.

One last word. Given the foregoing disquisition, I find no necessity for this Court to abandon its ruling in *Mactan*. On the premise that the rationale for exempting airport properties from payment of real estate taxes is ownership thereof by the Republic, the *Mactan* ruling is impeccable in its logic and its conclusion should remain undisturbed. Having harmonized the apparently divergent views, we need no longer fear any fierce disagreements in the future.

I therefore vote to grant the petition.

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[36] 76 Am Jur 2d, Trusts § 13 citing 3 Am Jur 2d, Agency § 2 and Restatement 2d, Trusts § 8, Comment b.

[37] *Walters-Southland Institute v. Walker*, 222 Ark. 857, 861; 263 S.W.2d 83, 84 (1954); see *Welsh v. Griffin*, 179 Cal.App.2d 207, 215; 3 Cal.Rptr. 729, 735 (1960).

DISSENTING OPINION

YNARES-SANTIAGO, *J.*:

Indeed, as pointed out by Justice Antonio T. Carpio, the Court has twice reaffirmed the ruling in *Manila International Airport Authority v. Court of Appeals*[1] in the subsequent cases of *Philippine Fisheries Development Authority v. Court of Appeals*[2] and *Philippine Fisheries Development Authority v. Court of Appeals*.[3] However, upon further study of the issues presented in said cases, I agree with Justice Dante O. Tinga that the *Manila International Airport Authority (MIAA*) ruling was incorrectly rationalized, particularly on the unwieldy characterization of MIAA as a species of a government instrumentality. I submit that the present *ponencia* of Justice Carpio perpetuates the error which I find imperative for the Court to correct.

Nevertheless, unlike Justice Tinga's rationalization, I find that there is no more need to belabor the issue of whether the MIAA is a government-owned or controlled corporation (GOCC) or a government instrumentality in order to resolve the issue of whether the airport properties are subject to real property tax.

Instead, I subscribe to the "simple, direct and painless approach" proposed by Justice Antonio Eduardo B. Nachura that it is imperative to "*fine tune*" the Court's ruling in *Mactan Cebu International Airport Authority v. Marcos*[4] *vis-à-vis* that in *Manila International Airport Authority v. Court of Appeals*;[5] and that what needs only to be ascertained is whether the airport properties are owned by the Republic; and if such, then said properties are exempt from real property tax, by applying Section

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[1] G.R. No. 155650, July 20, 2006, 495 SCRA 591.

[2] G.R. No. 169836, July 31, 2007, 528 SCRA 707.

[3] G.R. No. 151301, October 2, 2007, 534 SCRA 490.

[4] 330 Phil. 392 [1996].

[5] *Supra* note 1.

234 of Republic Act No. 7160 (R.A. No. 7160) or the Local Government Code (LGC).

Pursuant to Section 232 of the LGC, a province or city or municipality within the Metropolitan Manila Area is vested with the power to levy an annual *ad valorem* tax on real property such as land, building, machinery, and other improvement not hereafter specifically exempted. Corollarily, Section 234 thereof provides an enumeration of certain properties which are exempt from payment of the real property tax, among which is "real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person."

Article 420 of the Civil Code enumerates the properties of public dominion, to wit:

> Art. 420: The following things are property of public dominion:
>
> (1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;
>
> (2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.

There is no question that the airport and all its installations, facilities and equipment, are intended for public use and are, thus, properties of public dominion.

Concededly, the Court ruled in *Mactan Cebu International Airport Authority v. Marcos*[6] that:

> The crucial issues then to be addressed are: (a) whether the parcels of land in question belong to the Republic of the Philippines whose beneficial use has been granted to the petitioner, and (b) whether the petitioner is a "taxable persons."
>
> Section 15 of [MCIAA's] Charter provides:
>
> Sec. 15. *Transfer of Existing Facilities and Intangible Assets.* — All existing public airport facilities, runways, lands,

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[6] *Supra* note 4.

buildings and other properties, movable or immovable, belonging to or presently administered by the airports, and all assets, powers, rights, interests and privileges relating on airport works or air operations, including all equipment which are necessary for the operations of air navigation, aerodome control towers, crash, fire, and rescue facilities are hereby transferred to the Authority: Provided, however, that the operations control of all equipment necessary for the operation of radio aids to air navigation, airways communication, the approach control office, and the area control center shall be retained by the Air Transportation Office. No equipment, however, shall be removed by the Air Transportation Office from Mactan without the concurrence of the Authority. The Authority may assist in the maintenance of the Air Transportation Office equipment.

The "airports" referred to are the "Lahug Air Port" in Cebu City and the "Mactan International Airport in the Province of Cebu," which belonged to the Republic of the Philippines, then under the Air Transportation Office (ATO).

It may be reasonable to assume that the term "lands" refer to "lands" in Cebu City then administered by the Lahug Air Port and includes the parcels of land the respondent City of Cebu seeks to levy on for real property taxes. This section involves a "transfer" of the "lands" among other thins (sic), to the petitioner and not just the transfer of the beneficial use thereof, with the ownership being retained by the Republic of the Philippines.

This "transfer" is actually an absolute conveyance of the ownership thereof because the petitioner's authorized capital stock consists of, *inter alia,* "the value of such real estate owned and/or administered by the airports." Hence, the petitioner is now the owner of the land in question and the exception in Section 234© of the LGC is inapplicable.

Meanwhile, Executive Order No. 903[7] or the Revised Charter of the Manila International Airport Authority, provides in Section 3 thereof that —

x x x x x x x x x

The land where the Airport is presently located as well as the surrounding land area of approximately six hundred hectares, are

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[7] July 21, 1983.

hereby transferred, conveyed and assigned to the ownership and administration of the Authority, subject to existing rights, if any. The Bureau of Lands and other appropriate government agencies shall undertake an actual survey of the area transferred within one year from the promulgation of this Executive Order and the corresponding title to be issued in the name of the Authority. Any portion thereof shall not be disposed through sale or through any other mode unless specifically approved by the President of the Philippines.

Regardless of the apparent transfer of title of the said properties to MIAA, I submit that the latter is only holding the properties for the benefit of the Republic in its capacity as agent thereof. It is to be noted that despite the conveyance of the title to the said properties to the MIAA, however, the latter could not in any way dispose of the same through sale or through any other mode unless specifically approved by the President of the Republic.[8] Even MIAA's borrowing power is dictated upon by the President. Thus, MIAA could raise funds, either from local or international sources, by way of loans, credits or securities, and other borrowing instruments, create pledges, mortgages and other voluntary lines or encumbrances on any of its assets or properties, only after consultation with the Secretary of Finance and with the approval of the President. In addition, MIAA's total outstanding indebtedness could exceed its net worth only upon express authorization by the President.[9]

I fully agree with Justice Nachura that "even if MIAA holds the record title over the airport properties, such holding can only be for the benefit of the Republic, that MIAA exercises an essentially public function."

In sum, the airport and all its installations, facilities and equipment of the MIAA, are properties of public dominion and should thus be exempted from payment of real property tax, except those properties where the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person.

ACCORDINGLY, I vote to grant the petition.

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[8] E.O. 903, Sec. 3.

[9] E.O. 903, Sec. 16.

DISSENTING OPINION

TINGA, *J.*:

I maintain my dissent expressed in the 2006 ruling in *MIAA v. City of Parañaque*[1] (the "*Parañaque* case.")

The majority relies on two main points drawn from the 2006 *Parañaque* case in this instance as it rules once again that the MIAA is exempt from realty taxes assessed by the City of Pasay. First, because MIAA is a government instrumentality, it somehow finds itself exempt from the said taxes, supposedly by operation of the Local Government Code. Second, the subject properties are allegedly owned by the Republic of the Philippines, notwithstanding that legal title thereto is in the name of the MIAA, which is a distinct and independent juridical personality from the Republic.

I.

Once again, attempts are drawn to classify MIAA as a government instrumentality, and not as a government-owned or controlled corporation. Such characterization was apparently insisted upon in order to tailor-fit the MIAA to Section 133 of the Local Government Code, which reads:

> *Sec. 133. Common Limitations on the Taxing Powers of Local Government Units.* — **Unless otherwise provided herein**, the exercise of the taxing powers of provinces, cities, municipalities, and *barangays* shall not extend to the levy of the following:
>
> x x x x x x x x x
>
> **15. Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities** and local government units. (emphasis and underscoring supplied).

How was the *Parañaque* case able to define the MIAA as a instrumentality of the National Government? The case propounded that MIAA was not a GOCC:

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[1] G.R. No. 155630, 20 July 2006, 495 SCRA 591.

There is no dispute that a government-owned or controlled corporation is not exempt from real estate tax. However, MIAA is not a government-owned or controlled corporation. Section 2(13) of the Introductory Provisions of the Administrative Code of 1987 defines a government-owned or controlled corporation as follows:

> SEC. 2. General Terms Defined. — . . .
>
> (13) Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: . . . (Emphasis supplied)

A government-owned or controlled corporation must be "organized as a stock or non-stock corporation." MIAA is not organized as a stock or non-stock corporation. MIAA is not a stock corporation because it has no capital stock divided into shares. MIAA has no stockholders or voting shares.

x x x x x x x x x

Clearly, under its Charter, MIAA does not have capital stock that is divided into shares.

Section 3 of the Corporation Code 10 defines a stock corporation as one whose "capital stock is divided into shares and . . . authorized to distribute to the holders of such shares dividends . . ." MIAA has capital but it is not divided into shares of stock. MIAA has no stockholders or voting shares. Hence, MIAA is not a stock corporation.

MIAA is also not a non-stock corporation because it has no members. Section 87 of the Corporation Code defines a non-stock corporation as "one where no part of its income is distributable as dividends to its members, trustees or officers." A non-stock corporation must have members. Even if we assume that the Government is considered as the sole member of MIAA, this will not make MIAA a non-stock corporation. Non-stock corporations cannot distribute any part of their income to their members. Section 11 of the MIAA Charter mandates MIAA to remit 20% of its annual gross operating income to the National Treasury. 11 This prevents MIAA from qualifying as a non-stock corporation.

Section 88 of the Corporation Code provides that non-stock corporations are "organized for charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civil service, or similar purposes, like trade, industry, agriculture and like chambers." MIAA is not organized for any of these purposes. MIAA, a public utility, is organized to operate an international and domestic airport for public use.[2]

This "black or white" categorization of "stock" and "non-stock" corporations utterly disregards the fact that nothing in the Constitution prevents Congress from creating government-owned or controlled corporations in whatever structure it deems necessary. Note that this definitions of "stock" and "non-stock" corporations are taken from the Administrative Code, and not the Constitution. The Administrative Code is a statute, and is thus not superior in hierarchy to any other subsequent statute created by Congress, including the charters for GOCCs.

Since MIAA was presumed not to be a stock or non-stock corporation, the majority in the *Parañaque* case then strived to fit it into a category.

Since MIAA is neither a stock nor a non-stock corporation, MIAA does not qualify as a government-owned or controlled corporation. What then is the legal status of MIAA within the National Government?

MIAA is a government instrumentality vested with corporate powers to perform efficiently its governmental functions. MIAA is like any other government instrumentality, the only difference is that MIAA is vested with corporate powers. Section 2(10) of the Introductory Provisions of the Administrative Code defines a government "instrumentality" as follows:

SEC. 2. General Terms Defined. — . . .

(10) Instrumentality refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. . . (Emphasis supplied)

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[2] *Supra* note 1 at 615-616.

When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers. Thus, MIAA exercises the governmental powers of eminent domain, police authority and the levying of fees and charges. At the same time, MIAA exercises "all the powers of a corporation under the Corporation Law, insofar as these powers are not inconsistent with the provisions of this Executive Order."[3]

Unfortunately, this cited statutory definition of an "instrumentality" is incomplete. Worse, the omitted portion from Section 2(10) completely contradicts the premise of the *ponente* that an instrumentality is mutually exclusive from a GOCC. For the provision reads in full, with the omitted portion highlighted, thus:

(10)*Instrumentality* refers to any agency of the National Government not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. **This term includes regulatory agencies, chartered institutions and government — owned or controlled corporations**.

This previous omission had not escaped the attention of the outside world. For example, lawyer Gregorio Batiller, Jr., has written a paper on the *Parañaque* case entitled "A Tale of Two Airports," which is published on the Internet.[4] He notes therein:

Also of interest was the dissenting opinion of Justice Dante Tinga to the effect that the majority opinion failed to quote in full the definition of "government instrumentality":

> The Majority gives the impression that a government instrumentality is a distinct concept from a government corporation. Most tellingly, the majority selectively cites a

[3] *Supra* note 1 at 617-618.

[4] See http://www.gbdlr.com/articles/pdf/A_TALE_OF_TWO_ AIRPORTS _vol%5B1% 5D.pdf

portion of Section 2(10) of the Administrative Code of 1987, as follows:

> Instrumentality refers to any agency of the National Government not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. x x x (emphasis omitted)"

However, Section 2(10) of the Administrative Code, when read in full, makes an important clarification which the majority does not show. The portions omitted by the majority are highlighted below: x x x

> "(10)Instrumentality refers to any agency of the National Government not integrated within the department framework, vested with special functions or jurisdiction by, law endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions and government — owned or controlled corporations.

So the majority opinion effectively begged the question in finding that the MIAA was not a GOCC but a mere government instrumentality, which is other than a GOCC.[5]

The Office of the President itself was alarmed by the redefinition made by the MIAA case of instrumentalities, causing it on 29 December 2006 to issue Executive Order No. 596 creating the unwieldy category of "Government Instrumentality Vested with Corporate Powers or Government Corporate Entities" just so that it was clear that these newly defined "instrumentalities" or "government corporate entities" still fell within the jurisdiction of the Office of the Government Corporate Counsel. The E.O. reads in part:

EXECUTIVE ORDER NO. 596

DEFINING AND INCLUDING "GOVERNMENT INSTRUMENTRALITY VESTED WITH CORPORATE

[5] *Supra* note 4.

POWERS" OR "GOVERNMENT CORPORATE ENTITIES" UNDER THE JURISDICTION OF THE OFFICE OF THE GOVERNMENT CORPORATE COUNSEL (OGCC) AS PRINCIPAL LAW OFFICE OF GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS (GOCCs) AND FOR OTHER PURPOSES.

WHEREAS, the Office of the Government Corporate Counsel (OGCC), as the principal law office of all Government-Owned or Controlled Corporations (GOCCs), including their subsidiaries, other corporate offsprings and government acquired assets corporations, plays a very significant role in safeguarding the legal interests and providing the legal requirements of all GOCCs;

WHEREAS, there is an imperative need to integrate, strengthen and rationalize the powers and jurisdiction of the OGCC in the light of the Decision of the Supreme Court dated July 20, 2006, in the case of "***Manila International Airport Authority vs. Court of Appeals, City of Parañaque, et al.***" (G.R. No. 155650), where the High Court differentiated "***government corporate entities***" and "***government instrumentalities with corporate powers***" from GOCCs for purposes of the provisions of the Local Government Code on real estate taxes, and other fees and charges imposed by local government units;

WHEREAS, in the interest of an effective administration of justice, the application and definition of the term "GOCCs" need to be further clarified and rationalized to have consistency in referring to the term and to avoid unintended conflicts and/or confusion;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. The Office of the Government Corporate Counsel (OGCC) shall be the principal law office of all GOCCs, except as may otherwise be provided by their respective charter or authorized by the President, their subsidiaries, corporate offsprings, and government acquired asset corporations. The OGCC shall likewise be the principal law of the "***government instrumentality vested with corporate powers***" or "***government corporate entity***," as defined by the Supreme Court in the case of "***MIAA v. Court of Appeals, City of Parañaque, et al.***," *supra*, notable examples of which are: Manila International Airport Authority (MIAA), Mactan International

Airport Authority, the Philippine Ports Authority (PPA), Philippine Deposit Insurance Corporation (PDIC), Metropolitan Water and Sewerage Services (MWSS), Philippine Rice Research Institute (PRRI), Laguna Lake Development Authority (LLDA), Fisheries Development Authority (FDA), Bases Conversion Development Authority (BCDA), Cebu Port Authority (CPA), Cagayan de Oro Port Authority, and San Fernando Port Authority.

SECTION 2. As provided under PD 2029, series of 1986, the term GOCCs is defined as a stock or non-stock corporation, whether performing governmental or proprietary functions, which is directly chartered by a special law or if organized under the general corporation law, is owned or controlled by the government directly, or indirectly, through a parent corporation or subsidiary corporation, to the extent of at least majority of its outstanding capital stock or of its outstanding voting capital stock.

Under Section 2(10) of the Introductory Provisions of the Administrative Code of 1987, a government "instrumentality" refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some, if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter.

SECTION 3. The following corporations are considered GOCCs under the conditions and/or circumstances indicated:

a) A corporation organized under the general corporation law under private ownership at least a majority of the shares of stock of which were conveyed to a government financial institution, whether by foreclosure or otherwise, or a subsidiary corporation of a government corporation organized exclusively to own and manage, or lease, or operate specific assets acquired by a government financial institution in satisfaction of debts incurred therewith and which in any case by enunciated policy of the government is required to be disposed of to private ownership within a specified period of time, shall not be considered a GOCC before such disposition and even if the ownership or control thereof is subsequently transferred to another GOCC;

b) A corporation created by special law which is explicitly intended under that law for ultimate transfer to private ownership under certain specified conditions shall be considered a GOCC, until it is transferred to private ownership;

c) A corporation that is authorized to be established by special law, but which is still required under that law to register with the Securities and Exchange Commission in order to acquire a juridical personality, shall not, on the basis of the special law alone, be considered a GOCC.

x x x x x x x x x

Reading this Executive Order, one cannot help but get the impression that the Republic of the Philippines, ostensibly the victorious party in the *Parañaque* case, felt that the 2006 *ponencia* redefining "instrumentalities" was wrong. Ostensibly, the Office of the Government Corporate Counsel, the winning counsel in the MIAA case, cooperated in the drafting of this E.O. and probably also felt that the redefinition of "instrumentalities" was wrong. I had pointed out in my Dissent to the MIAA case that under the framework propounded in that case, GOCCs such as the Philippine Ports Authority, the Bases Conversion Development Authority, the Philippine Economic Zone Authority, the Light Rail Transit Authority, the Bangko Sentral ng Pilipinas, the National Power Corporation, the Lung Center of the Philippines, and even the Philippine Institute of Traditional and Alternative Health Care have been reclassified as instrumentalities instead of GOCCs.

Notably, GOCCs are mandated by Republic Act No. 7656 to remit 50% of their annual net earnings as cash, stock or property dividends to the National Government. By denying categorization of those above-mentioned corporations as GOCCs, the Court in *MIAA* effectively gave its imprimatur to those entities to withhold remitting 50% of their annual net earnings to the National Government. Hence, the necessity of E.O. No. 596 to undo the destructive effects of the *Parañaque* case on the national coffers.

In a welcome development, the majority now acknowledges the existence of that second clause in Section 2(10) of the Introductory Provisions of the Administrative Code, the clause which made explicit that government instrumentalities include GOCCs. In truth, I had never quite understood this hesitation in plainly saying that GOCCs are instrumentalities. That fact is

really of little consequence in determining whether or not the MIAA or other government instrumentalities or GOCCs are exempt from real property taxes.

As I had consistently explained, the liability of such entities is mandated by Section 232, in relation with Section 234 of the Local Government Code. Section 232 lays down the general rule that provinces, cities or municipalities within Metro Manila may levy an *ad valorem* tax on real property "not hereinafter specifically exempted." Such specific exemptions are enumerated in Section 234, and the only exemption tied to government properties extends to "real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted . . . to a taxable person."[6]

Moreover, the final paragraph of Section 234 explains that "[e]xcept as provided herein [in Section 234], any exemption from payment of real property tax previously granted to, or presently enjoyed by all persons, whether natural or juridical, including all government-owned or –controlled corporations are hereby withdrawn upon the effectivity of this Code."

What are the implications of Section 232 in relation to Section 234 as to the liability for real property taxes of government instrumentalities such as MIAA?

1) All persons, whether natural or juridical, including GOCCs are liable for real property taxes.

2) The only exempt properties are those owned by the Republic or any of its political subdivisions.

3) So-called "government corporate entities," so long as they have juridical personality distinct from the Republic of the Philippines or any of its political subdivisions, are liable for real property taxes.

4) After the enactment of the Local Government Code in 1991, Congress remained free to reenact tax exemptions from

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[6] LOCAL GOVERNMENT CODE, Sec. 234(a).

real property taxes to government instrumentalities, as it did with the Government Service Insurance System in 1997.

It is that simple. The most honest intellectual argument favoring the exemption of the MIAA from real property taxes corresponds with the issue of whether its properties may be deemed as "owned by the Republic or any of its political subdivisions." The matter of whether MIAA is a GOCC or an instrumentality or a "government corporate entity" should in fact be irrelevant. However, the framework established by the *ponente* beginning with the *Parañaque* case has inexplicably and unnecessarily included the question of what is a GOCC? That issue, utterly irrelevant to settling the question of MIAA's tax liability, has caused nothing but distraction and confusion.

It should be remembered that prior to the *Parañaque* case, the prevailing rule on taxation of GOCCs was as enunciated in *Mactan Cebu International Airport v. Hon. Marcos*.[7] That rule was a highly sensible rule that gave due respect to national government prerogatives and the devolution of taxing powers to local governments. Neither did *Mactan Cebu* prevent Congress from enacting legislation exempting selected GOCCs to be exempt from real property taxes.

A significant portion of my Dissenting Opinion in the *Parañaque* case was devoted to explaining *Mactan Cebu*, and criticizing the *ponencia* for implicitly rejecting that doctrine without categorically saying so. In the years since, significant confusion has arisen on whether *Mactan Cebu* and the framework it established in real property taxation of GOCCs and instrumentalities, remains extant. Batiller makes the same point in his paper, expressly asking why "the Supreme Court did not explicitly declare that the Mactan Cebu International Airport case was deemed repealed." He added:

> Inevitably, the refusal of the Supreme Court to clarify whether its Decision in the Mactan Cebu International Airport case is deemed repealed would leave us with an ambiguous situation where two (2) of our major international airports are treated differently tax wise:

[7] 330 Phil. 392 (1996).

one in Cebu which is deemed to be a GOCC subject to real estate taxes and the other in Manila which is not a GOCC and exempt from real estate taxes.

Where lies the substantial difference between the two (2) airports? Your guess is as good as mine.[8]

There are no good reasons why the Court should not reassert the *Mactan Cebu* doctrine. Under that ruling, real properties owned by the Republic of the Philippines or any of its political subdivisions are exempted from the payment of real property taxes, while instrumentalities or GOCCs are generally exempted from local government taxes, save for real property taxes. At the same time, Congress is free should it so desire to exempt particular GOCCs or instrumentalities from real property taxes by enacting legislation for that purpose. This paradigm is eminently more sober than that created by the *Parañaque* case, which attempted to amend the Constitution by elevating as a constitutional principle, the real property tax exemption of all government instrumentalities, most of which also happen to be GOCCs. Considering that the Constitution itself is supremely deferential to the notion of local government rule and the power of local governments to generate revenue through local taxes, the idea that not even the local government code could subject such "instrumentalities" to local taxes is plainly absurd.

II.

I do recognize that the present majority opinion has chosen to lay equal, if not greater emphasis on the premise that the MIAA properties are supposedly of public dominion, and as such are exempt from realty taxes under Section 234(a) of the Local Government Code. Again, I respectfully disagree.

It is Article 420 of the Civil Code which defines what are properties of public dominion. I do not doubt that Article 420 can be interpreted in such a way that airport properties, such as its runways, hangars and the like, can be considered akin to ports or roads, both of which are among those properties considered

[8] *Supra* note 4.

as part of the public dominion under Article 420(1). It may likewise be possible that those properties considered as "property of public dominion" under Article 420 of the Civil Code are also "property owned by the Republic," which under Section 234 of the Local Government Code, are exempt from real property taxes.

The necessary question to ask is whether properties which are similar in character to those enumerated under Article 420(1) may be considered still part of the public dominion if, by virtue of statute, ownership thereof is vested in a GOCC which has independent juridical personality from the Republic of the Philippines. The question becomes even more complex if, as in the case of MIAA, the law itself authorizes such GOCC to sell the properties in question.

One of the most recognizable characteristics of public dominion properties is that they are placed outside the commerce of man and cannot be alienated or leased or otherwise be the subject matter of contracts.[9] The fact is that the MIAA may, by law, alienate, lease or place the airport properties as the subject matter of contracts. The following provisions of the MIAA charter make that clear:

SECTION 5. Functions, Powers, and Duties. — The Authority shall have the following functions, powers and duties:

x x x x x x x x x

(i) **To <u>acquire, purchase, own, administer, lease, mortgage, sell or otherwise dispose</u> of any land, building, airport facility, or property of whatever kind and nature**, whether movable or immovable, or any interest therein;

x x x x x x x x x

SECTION 16. Borrowing Power. — **The Authority may**, after consultation with the Minister of Finance and with the approval of the President of the Philippines, as recommended by the Minister of Transportation and Communications, **raise funds, either from**

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[9] *Villarico v. Sarmiento*, G.R. No. 136438, 11 November 2004, 442 SCRA 110.

local or international sources, by way of loans, credits or securities, and other borrowing instruments, with the power to create pledges, mortgages and other voluntary liens or encumbrances on any of its assets or properties.

There is thus that contradiction where property which ostensibly is classified as part of the public dominion under Article 420 of the Civil Code is nonetheless classified to lie within the commerce of man by virtue of a subsequent law such as the MIAA charter. In order for the Court to classify the MIAA properties as part of public dominion, it will be necessary to invalidate the provisions of the MIAA charter allowing the Authority to lease, sell, create pledges, mortgages and other voluntary liens or encumbrances on any of the airport properties. The provisions of the MIAA charter could not very well be invalidated with the Civil Code as basis, since the MIAA charter and the Civil Code are both statutes, and thus of equal rank in the hierarchy of laws, and more significantly the Civil Code was enacted earlier and therefore could not be the repealing law.

If there is a provision in the Constitution that adopted the definition of and limitations on public dominion properties as found in the Civil Code, then the aforequoted provisions from the MIAA charter allowing the Authority to place its properties within the commerce of man may be invalidated. The Constitution however does not do so, confining itself instead to a general statement that "all lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State." Note though that under Article 420, public dominion properties are not necessarily owned by the State, the two subsections thereto referring to (a) properties intended for public use; and (b) those which belong to the State and are intended for some public service or for the development of the national wealth.[10] In *Laurel v. Garcia*,[11] the Court notably acknowledged that

[10] See CIVIL CODE, Art. 420.

[11] G.R. No. 92013, 25 July 1990, 187 SCRA 797.

"property of public dominion is not owned by the State but pertains to the State." Thus, there is no equivalence between the concept of public dominion under the Civil Code, and of public domain under the Constitution.

Accordingly, the framework of public dominion properties is one that is statutory, rather than constitutional in design. That being the case, Congress is able by law to segregate properties which ostensibly are, by their nature, part of the public dominion under Article 420(1) of the Civil Code, and place them within the commerce of man by vesting title thereto in an independent juridical personality such as the MIAA, and authorizing their sale, lease, mortgage and other similar encumbrances. When Congress accomplishes that by law, the properties could no longer be considered as part of the public dominion.

This point has been recognized by previous jurisprudence which I had cited in my dissent in the *Parañaque* case. For example, in *Philippine Ports Authority v. City of Iloilo*, the Court stated that "properties of public dominion are owned by the general public and cannot be declared to be owned by a public corporation, such as [the Philippine Ports Authority]."[12] I had likewise previously explained:

> The second Public Ports Authority case, penned by Justice Callejo, likewise lays down useful doctrines in this regard. The Court refuted the claim that the properties of the PPA were owned by the Republic of the Philippines, noting that PPA's charter expressly transferred ownership over these properties to the PPA, a situation which similarly obtains with MIAA. The Court even went as far as saying that the fact that the PPA "had not been issued any torrens title over the port and port facilities and appurtenances is of no legal consequence. A torrens title does not, by itself, vest ownership; it is merely an evidence of title over properties. . . . It has never been recognized as a mode of acquiring ownership over real properties."
>
> The Court further added:
>
>> . . . The bare fact that the port and its facilities and appurtenances are accessible to the general public does not exempt it from

[12] G.R. No. 109791, 14 July 2003, 406 SCRA 88.

the payment of real property taxes. It must be stressed that the said port facilities and appurtenances are the petitioner's corporate patrimonial properties, not for public use, and that the operation of the port and its facilities and the administration of its buildings are in the nature of ordinary business. The petitioner is clothed, under P.D. No. 857, with corporate status and corporate powers in the furtherance of its proprietary interests . . . The petitioner is even empowered to invest its funds in such government securities approved by the Board of Directors, and derives its income from rates, charges or fees for the use by vessels of the port premises, appliances or equipment. . . . Clearly then, the petitioner is a profit-earning corporation; hence, its patrimonial properties are subject to tax.

There is no doubt that the properties of the MIAA, as with the PPA, are in a sense, for public use. A similar argument was propounded by the Light Rail Transit Authority in *Light Rail Transit Authority v. Central Board of Assessment*, 118 which was cited in Philippine Ports Authority and deserves renewed emphasis. The Light Rail Transit Authority (LRTA), a body corporate, "provides valuable transportation facilities to the paying public." 119 It claimed that its carriage-ways and terminal stations are immovably attached to government-owned national roads, and to impose real property taxes thereupon would be to impose taxes on public roads. This view did not persuade the Court, whose decision was penned by Justice (now Chief Justice) Panganiban. It was noted:

Though the creation of the LRTA was impelled by public service — to provide mass transportation to alleviate the traffic and transportation situation in Metro Manila — its operation undeniably partakes of ordinary business. Petitioner is clothed with corporate status and corporate powers in the furtherance of its proprietary objectives. Indeed, it operates much like any private corporation engaged in the mass transport industry. Given that it is engaged in a service-oriented commercial endeavor, its carriageways and terminal stations are patrimonial property subject to tax, notwithstanding its claim of being a government-owned or controlled corporation.

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Petitioner argues that it merely operates and maintains the LRT system, and that the actual users of the carriageways and

terminal stations are the commuting public. It adds that the public use character of the LRT is not negated by the fact that revenue is obtained from the latter's operations.

We do not agree. Unlike public roads which are open for use by everyone, the LRT is accessible only to those who pay the required fare. It is thus apparent that petitioner does not exist solely for public service, and that the LRT carriageways and terminal stations are not exclusively for public use. Although petitioner is a public utility, it is nonetheless profit-earning. It actually uses those carriageways and terminal stations in its public utility business and earns money therefrom.

x x x x x x x x x

Even granting that the national government indeed owns the carriageways and terminal stations, the exemption would not apply because their beneficial use has been granted to petitioner, a taxable entity.

There is no substantial distinction between the properties held by the PPA, the LRTA, and the MIAA. These three entities are in the business of operating facilities that promote public transportation.

The majority further asserts that MIAA's properties, being part of the public dominion, are outside the commerce of man. But if this is so, then why does Section 3 of MIAA's charter authorize the President of the Philippines to approve the sale of any of these properties? In fact, why does MIAA's charter in the first place authorize the transfer of these airport properties, assuming that indeed these are beyond the commerce of man?[13]

III.

In the present case, the City of Pasay had issued notices of levy and warrants of levy for the NAIA Pasay properties, leading MIAA to file with the Court of Appeals a petition for prohibition and injunction, seeking to enjoin the City of Pasay from imposing real property taxes, levying against and auctioning for public sale the NAIA Pasay properties.

In the *Parañaque* case, I had expressed that while MIAA was liable for the realty taxes, its properties could not be foreclosed

[13] *Supra* note 1 at 694-696, *J.* Tinga, dissenting.

upon by the local government unit seeking the taxes. I explained then:

> Despite the fact that the City of Parañaque ineluctably has the power to impose real property taxes over the MIAA, there is an equally relevant statutory limitation on this power that must be fully upheld. Section 3 of the MIAA charter states that "[a]ny portion [of the [lands transferred, conveyed and assigned to the ownership and administration of the MIAA] shall not be disposed through sale or through any other mode unless specifically approved by the President of the Philippines."
>
> Nothing in the Local Government Code, even with its wide grant of powers to LGUs, can be deemed as repealing this prohibition under Section 3, even if it effectively forecloses one possible remedy of the LGU in the collection of delinquent real property taxes. While the Local Government Code withdrew all previous local tax exemptions of the MIAA and other natural and juridical persons, it did not similarly withdraw any previously enacted prohibitions on properties owned by GOCCs, agencies or instrumentalities. Moreover, the resulting legal effect, subjecting on one hand the MIAA to local taxes but on the other hand shielding its properties from any form of sale or disposition, is not contradictory or paradoxical, onerous as its effect may be on the LGU. It simply means that the LGU has to find another way to collect the taxes due from MIAA, thus paving the way for a mutually acceptable negotiated solution.

Accordingly, I believe that MIAA is entitled to a writ of prohibition and injunctive relief enjoining the City of Pasay from auctioning for public sale the NAIA Pasay properties. Thus, the Court of Appeals erred when it denied those reliefs to the MIAA.

I **VOTE** to **PARTIALLY GRANT** the petition and to issue the Writ of Prohibition insofar as it would enjoin the City of Pasay from auctioning for public sale the NAIA Pasay properties. In all other respects, I respectfully dissent.

EN BANC

[G.R. Nos. 164368-69. April 2, 2009]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **JOSEPH EJERCITO ESTRADA and THE HONORABLE SPECIAL DIVISION OF THE SANDIGANBAYAN,** *respondents.*

SYLLABUS

1. **CRIMINAL LAW; VIOLATION OF COMMONWEALTH ACT NO. 142, AS AMENDED (THE LAW ON ILLEGAL USE OF *ALIAS*); THE MODE OF VIOLATING THE STATUTE IS THE SAME WHOEVER THE ACCUSED MAY BE; CASE AT BAR. —** Among the many grounds the People invokes to avoid the application of the *Ursua* ruling proceeds from Estrada's position in the government; at the time of the commission of the offense, he was the President of the Republic who is required by law to disclose his true name. We do not find this argument sufficient to justify a distinction between a man on the street, on one hand, and the President of the Republic, on the other, for purposes of applying CA No. 142. In the first place, the law does not make any distinction, expressly or impliedly, that would justify a differential treatment. *CA No. 142 as applied to Estrada, in fact allows him to use his cinema or screen name of Joseph Estrada, which name he has used even when he was already the President of the Philippines. Even the petitioner has acquiesced to the use of the screen name of the accused, as shown by the title of the present petition.* Additionally, any distinction we make based on the People's claim unduly prejudices Estrada; this is proscribed by the Ursua dictum that CA No. 142, as a penal statute, should be construed strictly against the State and in favor of the accused. The mode of violating CA No. 142 is therefore the same whoever the accused may be.

2. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS AND ORDERS; INTERLOCUTORY ORDER; CARRIES NO *RES ADJUDICATA* EFFECTS. —** The People argues that the Sandiganbayan gravely abused its discretion in applying *Ursua* notwithstanding this earlier *final* ruling on its non-applicability

— a ruling that binds the parties in the present case. The People thus claims that the Sandiganbayan erred to the point of gravely abusing its discretion when it resurrected the application of *Ursua*, resulting in the reversal of its earlier *final* ruling. We find no merit in this argument. x x x [T]he cited Sandiganbayan resolution is a mere interlocutory order — a ruling denying a motion to quash — that cannot be given the attributes of finality and immutability that are generally accorded to judgments or orders that finally dispose of the whole, of or particular matters in, a case. The Sandiganbayan resolution is a mere interlocutory order because *its effects would only be provisional in character, and would still require the issuing court to undertake substantial proceedings in order to put the controversy to rest*. It is basic remedial law that an interlocutory order is always under the control of the court and may be modified or rescinded upon sufficient grounds shown at any time before final judgment. *Perez v. Court of Appeals*, albeit a civil case, instructively teaches that an interlocutory order carries no *res adjudicata* effects. Says *Perez*: "The Decision in CA-G.R. No. 10415 having resolved only an interlocutory matter, the principle of *res judicata* cannot be applied in this case. **There can be no *res judicata* where the previous order in question was not an order or judgment determinative of an issue of fact pending before the court but was only an interlocutory order because it required the parties to perform certain acts for final adjudication**."

3. **ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; COMPLAINT OR INFORMATION; THE ALLEGATIONS THEREIN MUST FULLY INFORM THE ACCUSED OF THE CHARGES AGAINST HIM. —** [T]he issue is constitutional in nature – the right of Estrada to be informed of the nature and cause of the accusation against him. Under the provisions of the Rules of Court implementing this constitutional right, a complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense in the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed. As to the cause of accusation, the acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language

and not necessarily in the language used in the statute, **but in terms sufficient to enable a person of common understanding to know the offense charged and the qualifying and aggravating circumstances, and for the court to pronounce judgment**. The date of the commission of the offense need not be precisely stated in the complaint or information except when the precise date is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission. The information *must* at all times *embody the essential elements of the crime charged by setting forth the facts and circumstances that bear on the culpability and liability of the accused so that he can properly prepare for and undertake his defense*. In short, the allegations in the complaint or information, as written, must fully inform or acquaint the accused — the primary reader of and the party directly affected by the complaint or information — of the charge/s laid.

4. **CRIMINAL LAW; VIOLATION OF COMMONWEALTH ACT NO. 142, AS AMENDED (THE LAW ON ILLEGAL USE OF *ALIAS*); REQUIREMENT OF PUBLICITY; THE INTENT TO PUBLICLY USE THE *ALIAS* MUST BE MANIFEST. —** [T]he required publicity in the use of *alias* is more than mere communication to a third person; the use of the *alias*, to be considered public, must be made openly, or in an open manner or place, or to cause it to become generally known. In order to be held liable for a violation of CA No. 142, the user of the *alias* must have held himself out as a person who shall publicly be known under that other name. In other words, *the intent to publicly use the alias must be manifest*.

5. **ID.; ID.; ID.; THE INTENT TO USE THE *ALIAS* PUBLICLY IS NEGATED BY THE PRIVATE NATURE OF ACCUSED'S ACT IN CASE AT BAR. —** We have consistently ruled that bank deposits under R.A. No. 1405 (the Secrecy of Bank Deposits Law) are statutorily protected or recognized zones of privacy. Given the private nature of Estrada's act of signing the documents as "Jose Velarde" related to the opening of the trust account, the People cannot claim that there was already a public use of *alias* when Ocampo and Curato witnessed the signing. We need not even consider here the impact of the obligations imposed by R.A. No.1405 on the bank officers;

what is essentially significant is the privacy situation that is necessarily implied in these kinds of transactions. This statutorily guaranteed privacy and secrecy effectively negate a conclusion that the transaction was done publicly or with the intent to use the *alias* publicly.

6. **POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; BILL OF RIGHTS; PROHIBITION ON THE ENACTMENT AND USE OF *EX POST FACTO* LAWS; APPLICATION OF REPUBLIC ACT NO. 9160 (THE ANTI-MONEY LAUNDERING ACT OF 2001) IN CASE AT BAR, A VIOLATION THEREOF. —** The enactment of R.A. No. 9160 x x x is a significant development only because it clearly manifests that prior to its enactment, numbered accounts or anonymous accounts were permitted banking transactions, whether they be allowed by law or by a mere banking regulation. To be sure, an indictment against Estrada using this relatively recent law cannot be maintained without violating the constitutional prohibition on the enactment and use of *ex post facto* laws.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
R.A.V. Saguisag, Jose Flaminiano, Irene D. Jurado and *Manuel Pamaran* for respondents.

D E C I S I O N

BRION, *J.*:

The People of the Philippines (the *People*) filed this Petition for Review on *Certiorari*[1] to seek the reversal of the Sandiganbayan's Joint Resolution dated July 12, 2004, granting respondent Joseph Ejercito Estrada's (*Estrada*) demurrer to evidence in Crim. Case No. 26565.[2]

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

[2] *People of the Philippines v. Joseph Ejercito Estrada* for the crime of illegal use of *alias*.

THE FACTS

On April 4, 2001, an Information for **plunder** (docketed as **Crim. Case No. 26558**) was filed with the Sandiganbayan against respondent Estrada, among other accused. A separate Information for illegal use of *alias*, docketed as **Crim. Case No. 26565,** was likewise filed against Estrada. The Amended Information in Crim. Case No. 26565 reads:

> That on or about 04 February 2000, or sometime prior or subsequent thereto, in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then President of the Republic of the Philippines, without having been duly authorized, judicially or administratively, taking advantage of his position and committing the offense in relation to office, *i.e.*, in order to CONCEAL THE ill-gotten wealth HE ACQUIRED during his tenure and his true identity as THE President of the Republic of the Philippines, did then and there, willfully, unlawfully and criminally REPRESENT HIMSELF AS 'JOSE VELARDE' IN SEVERAL TRANSACTIONS AND use and employ the SAID *alias* "Jose Velarde" which IS neither his registered name at birth nor his baptismal name, in signing documents with Equitable PCI Bank and/or other corporate entities.
>
> CONTRARY TO LAW.

Crim. Case Nos. 26565 and 26558 were subsequently consolidated for joint trial. Still another Information, this time for **perjury** and docketed as **Crim. Case No. 26905,** was filed with the Sandiganbayan against Estrada. This was later consolidated, too, with Crim. Cases No. 26558 and 26565.

Estrada was subsequently arrested on the basis of a warrant of arrest that the Sandiganbayan issued.

On January 11, 2005, we ordered the creation of a Special Division in the Sandiganbayan to try, hear, and decide the charges of plunder and related cases (illegal use of *alias* and perjury) against respondent Estrada.[3]

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[3] A.M. No. 02-1-07-SC, entitled Re: Request for the Creation of a Special Division to Try the Plunder Case, SB Crim. Case No. 26558, and related cases.

At the trial, the People presented testimonial and documentary evidence to prove the allegations of the Informations for plunder, illegal use of *alias*, and perjury. The People's **evidence for the illegal *alias* charge**, as summarized by the Sandiganbayan, consisted of:

A. The testimonies of Philippine Commercial and Industrial Bank (*PCIB*) officers Clarissa G. Ocampo (*Ocampo*) and Atty. Manuel Curato (*Curato*) who commonly declared that on February 4, 2000, Estrada opened a numbered trust account (*Trust Account C-163*) with PCIB and signed as "Jose Velarde" in the account opening documents; both Ocampo and Curato also testified that Aprodicio Lacquian and Fernando Chua were present on that occasion;

B. (1) The testimony of PCIB-Greenhills Branch Manager Teresa Barcelan, who declared that a certain Baby Ortaliza (*Ortaliza*) transacted several times with her; that Ortaliza deposited several checks in PCIB Savings Account No. 0160-62502-5 under the account name "Jose Velarde" on the following dates (as evidenced by deposit receipts duly marked in evidence):

a. 20 October 1999 (Exh. "MMMMM")

b. 8 November 1999 (Exh. "LLLLL")

c. 22 November 1999 (Exh. "NNNNN")

d. 24 November 1999 (Exh. "OOOOO")

e. 25 November 1999 (Exh. "PPPPP")

f. 20 December 1999 (Exh. "QQQQQ")

g. 21 December 1999 (Exh. "RRRRR")

h. 29 December 1999 (Exh. "SSSSS")

i. 4 January 2000 (Exh. "TTTTT")

j. 10 May 2000 (Exh. "UUUUU")

k. 6 June 2000 (Exh. "VVVVV")

l. 25 July 2000 (Exh. "WWWWW")

(2) Documents duly identified by witnesses showing that Lucena Ortaliza was employed in the Office of the Vice President and, later on, in the Office of the President when Estrada occupied these positions and when deposits were made to the Jose Velarde Savings Account No. 0160-62502-5.

The People filed its Formal Offer of Exhibits in the consolidated cases, which the Sandiganbayan admitted into evidence in a Resolution dated October 13, 2003.[4] The accused separately moved to reconsider the Sandiganbayan Resolution;[5] the People, on the other hand, filed its Consolidated Comment/Opposition to the motions.[6] The Sandiganbayan denied the motions in its Resolution dated November 17, 2003.[7]

After the People rested in all three cases, the defense moved to be allowed to file a demurrer to evidence in these cases.[8] In its Joint Resolution dated March 10, 2004,[9] the Sandiganbayan only granted the defense leave to file demurrers in Crim. Case Nos. 26565 (illegal use of *alias*) and 26905 (perjury).

Estrada filed separate Demurrers to Evidence for Crim. Case Nos. 26565 and 26905.[10] His demurrer to evidence for Crim. Case No. 26565 (illegal use of *alias*) was anchored on the following grounds:[11]

1. Of the thirty-five (35) witnesses presented by the prosecution, only two (2) witnesses, Ms. Clarissa Ocampo and Atty. Manuel Curato, testified that on one occasion (4 February 2000), they saw movant use the name "Jose Velarde;"

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[4] *Rollo*, pp. 1304-1316.

[5] See Sandiganbayan's Resolution dated November 17, 2003, *id.*, p. 1318.

[6] *Ibid.,* p. 1320.

[7] Promulgated on November 18, 2003.

[8] *Rollo*, pp. 1323-1335.

[9] *Id.,* pp. 1337-1348.

[10] Dated March 29, 2004, *id.*, pp. 1349-1377.

[11] See Sandiganbayan's Resolution dated July 09, 2004 (promulgated on July 12, 2004), *id.*, p. 84.

2. The use of numbered accounts and the like was legal and was prohibited only in late 2001 as can be gleaned from Bangko Sentral Circular No. 302, series of 2001, dated 11 October 2001;
3. There is no proof of public and habitual use of *alias* as the documents offered by the prosecution are banking documents which, by their nature, are confidential and cannot be revealed without following proper procedures; and
4. The use of *alias* is absorbed in plunder.

The People opposed the demurrers through a Consolidated Opposition that presented the following arguments:[12]

1. That the use of fictitious names in bank transaction was not expressly prohibited until BSP No. 302 is of no moment considering that as early as Commonwealth Act No. 142, the use of *alias* was already prohibited. Movant is being prosecuted for violation of C.A. No. 142 and not BSP Circular No. 302;
2. Movant's reliance on *Ursua vs. Court of Appeals* (256 SCRA 147 [1996]) is misplaced;
3. Assuming *arguendo* that C.A. No. 142, as amended, requires publication of the *alias* and the habitual use thereof, the prosecution has presented more than sufficient evidence in this regard to convict movant for illegal use of *alias*; and
4. Contrary to the submission of movant, the instant case of illegal use of *alias* is not absorbed in plunder.

Estrada replied to the Consolidated Opposition through a Consolidated Reply Opposition.

THE ASSAILED SANDIGANBAYAN'S RULING

The Sandiganbayan issued on July 12, 2004 the Resolution now assailed in this petition. The salient points of the assailed resolution are:

First — the coverage of Estrada's indictment. The Sandiganbayan found that the only relevant evidence for the

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[12] *Id.,* pp. 1378-1408.

indictment are those relating to what is described in the Information — *i.e.*, the testimonies and documents on the opening of Trust Account C-163 on February 4, 2000. The Sandiganbayan reasoned out that the use of the disjunctive **"or"** between **"on or about 04 February 2000"** and **"sometime prior or subsequent thereto"** means that the act/s allegedly committed on February 4, 2000 could have actually taken place *prior to or subsequent thereto*; the use of the conjunctive was simply the prosecution's procedural tool to guard against any variance between the date stated in the Information and that proved during the trial in a situation in which time was not a material ingredient of the offense; it does not mean and cannot be read as a roving commission that includes acts and/or events **separate and distinct** from those that took place on the single date "on or about 04 February 2000 or sometime prior or subsequent thereto." The Sandiganbayan ruled that the use of the disjunctive "or" prevented it from interpreting the Information any other way.

Second — <u>the People's failure to present evidence that proved Estrada's commission of the offense</u>. The Sandiganbayan found that the People failed to present evidence that Estrada committed the crime punished under Commonwealth Act No. 142, as amended by Republic Act (*R.A.*) No. 6085 (*CA 142*), as interpreted by the Supreme Court in *Ursua v. Court of Appeals.*[13] It ruled that there is an illegal use of *alias* within the context of CA 142 only if the use of the *alias* is **public** and **habitual**. In Estrada's case, the Sandiganbayan noted, the application of the principles was not as simple because of the complications resulting from the nature of the transaction involved — the *alias* was used in connection with the opening of a numbered trust account made during the effectivity of R.A. No. 1405, as amended,[14] and prior to the enactment of Republic R.A. No. 9160.[15]

Estrada did *not* publicly use the *alias* "Jose Velarde":

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[13] G.R. No. 112170, April 10, 1996, 256 SCRA 147.

[14] Otherwise known as the "Secrecy of Bank Deposits Act."

[15] Otherwise known as the "Anti-Money Laundering Act."

a. Estrada's use of the *alias* "Jose Velarde" in his dealings with Dichavez and Ortaliza *after* February 4, 2000 is not relevant in light of the conclusion that the acts imputed to Estrada under the Information were the act/s committed on February 4, 2000 only. Additionally, the phrase, "Estrada did . . . represent himself as 'Jose Velarde' in several transactions," standing alone, violates Estrada's right to be informed of the nature and the cause of the accusation, because it is very general and vague. This phrase is qualified and explained by the succeeding phrase — "and use and employ the said *alias* 'Jose Velarde'" — which "is neither his registered name at birth nor his baptismal name, in signing documents with Equitable PCI Bank and/or other corporate entities." Thus, Estrada's representations before persons other than those mentioned in the Information are immaterial; Ortaliza and Dichavez do not fall within the "Equitable PCI Bank and/or other corporate entities" specified in the Information. Estrada's representations with Ortaliza and Dichavez are not therefore covered by the indictment.

b. The Sandiganbayan rejected the application of the principle in the law of libel that mere communication to a third person is publicity; it reasoned out that the definition of publicity is not limited to the way it is defined under the law on libel; additionally, the application of the libel law definition is onerous to the accused and is precluded by the ruling in *Ursua* that CA No. 142, as a penal statute, should be construed strictly against the State and favorably for the accused. It ruled that the definition under the law on libel, even if it applies, considers a communication to a third person covered by the privileged communication rule to be non-actionable. Estrada's use of the *alias* in front of Ocampo and Curato is one such privileged communication under R.A. No. 1405, as amended. The Sandiganbayan said:

> Movant's act of signing "Jose Velarde" in bank documents being absolutely confidential, the witnessing thereof by bank officers who were likewise sworn to secrecy by the same law cannot be considered as 'public' as to fall within the ambit of CA 142 as amended. On account of the absolute confidentiality of the transaction, it cannot be said that movant intended to be **known** by this name in addition

to his real name. *Confidentiality and secrecy negate publicity. Ursua* instructs:

> Hence, the use of a fictitious name or a different name belonging to another person in a single instance without any sign or indication that the user **intends to be known** by this name in addition to his real name from that day forth does not fall within the prohibition in C.A. No. 142 as amended.

c. The Sandiganbayan further found that the intention not to be publicly known by the name "Jose Velarde" is shown by the nature of a numbered account — a perfectly valid banking transaction *at the time* Trust Account C-163 was opened. The opening, too, of a numbered trust account, the Sandiganbayan further ruled, did not impose on Estrada the obligation to disclose his real identity — the obligation R.A. No. 6713 imposes is to file under oath a statement of assets and liabilities.[16] Reading CA No. 142, R.A. No. 1405 and R.A. No. 6713 together, Estrada had the absolute obligation to disclose his assets including the amount of his bank deposits, but he was under no obligation at all to disclose the other particulars of the bank account (such as the name he used to open it).

Third — <u>the effect of the enactment of R.A. No. 9160</u>.[17] The Sandiganbayan said that the absolute prohibition in R.A. No. 9160 against the use of anonymous accounts, accounts under fictitious names, and all other similar accounts, is a legislative acknowledgment that a gaping hole previously existed in our laws that allowed depositors to hide their true identities. The Sandiganbayan noted that the prohibition was lifted from Bangko Sentral ng Pilipinas (*BSP*) Circular No. 251 dated July 7, 2000 — another confirmation that the opening of a numbered trust account was perfectly legal when it was opened on February 4, 2000.

The Sandiganbayan ruled that the provisions of CA No. 142, as interpreted in *Ursua*, must necessarily be harmonized with

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[16] Otherwise known as then "Code of Conduct and Ethical Standards for Public Officials and Employees."

[17] Otherwise known as the "Anti-Money Laundering Act of 2001."

the provisions of R.A. No.1405 and R.A. No. 9160 under the principle that every statute should be construed in a way that will harmonize it with existing laws. A reasonable scrutiny, the Sandiganbayan said, of all these laws in relation to the present case, led it to conclude that the use of an *alias* within the context of a bank transaction (specifically, the opening of a numbered account made before bank officers) is protected by the secrecy provisions of R.A. No. 1405, and is thus outside the coverage of CA No. 142 until the passage into law of R.A. No. 9160.

THE PETITION

The People filed this petition raising the following issues:

1. Whether the court *a quo* gravely erred and abused its discretion in dismissing Crim. Case No. 26565 and in holding that the use by respondent Joseph Estrada of his *alias* "Jose Velarde" was not public despite the presence of Messrs. Aprodicio Laquian and Fernando Chua on 4 February 2000;

2. Whether the court *a quo* gravely erred and abused its discretion in dismissing Crim. Case No. 26565 and in holding that the use by respondent Joseph Estrada of his *alias* "Jose Velarde" was allowable under banking rules, despite the clear prohibition under Commonwealth Act No. 142;

3. Whether the court *a quo* gravely erred and abused its discretion in dismissing Crim. Case No. 26565 and in applying R.A. No. 1405 as an exception to the illegal use of *alias* punishable under Commonwealth Act No. 142;

4. Whether the alleged harmonization and application made by the court *a quo* of R.A. No.1405 and Commonwealth Act No. 142 were proper;

5. Whether the court *a quo* gravely erred and abused its discretion in limiting the coverage of the amended Information in Crim. Case No. 26565 to the use of the *alias* "Jose Velarde" by respondent Joseph Estrada on February 4, 2000;

6. Whether the court *a quo* gravely erred and abused its discretion in departing from its earlier final finding on the non-applicability of *Ursua v. Court of Appeals* and forcing its application to the instant case.

THE COURT'S RULING

The petition has no merit.

The Law on Illegal Use of Alias and the Ursua Ruling

Sections 1 and 2 of CA No. 142, as amended, read:

> Section 1. Except as a pseudonym solely for literary, cinema, television, radio or other entertainment purposes and in athletic events where the use of pseudonym is a normally accepted practice, no person shall use any name different from the one with which he was registered at birth in the office of the local civil registry or with which he was baptized for the first time, or in case of an alien, with which he was registered in the bureau of immigration upon entry; or such substitute name as may have been authorized by a competent court: Provided, That persons whose births have not been registered in any local civil registry and who have not been baptized, have one year from the approval of this act within which to register their names in the civil registry of their residence. The name shall comprise the patronymic name and one or two surnames.
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> Section 2. Any person desiring to use an *alias* shall apply for authority therefor in proceedings like those legally provided to obtain judicial authority for a change of name and no person shall be allowed to secure such judicial authority for more than one *alias*. The petition for an *alias* shall set forth the person's baptismal and family name and the name recorded in the civil registry, if different, his immigrant's name, if an alien, and his pseudonym, if he has such names other than his original or real name, specifying the reason or reasons for the desired *alias*. The judicial authority for the use of *alias*, the Christian name and the alien immigrant's name shall be recorded in the proper local civil registry, and no person shall use any name or names other than his original or real name unless the same is or are duly recorded in the proper local civil registry.

How this law is violated has been answered by the *Ursua* definition of an *alias* — "*a name or names used by a person or intended to be used by him* ***publicly*** *and* ***habitually*** *usually in business transactions in addition to his real name by which he is registered at birth or baptized the first time or substitute name authorized by a competent authority*." There must be, in the words of *Ursua*, a "*sign or indication that the user intends*

to be known by this name (the *alias*) *in addition to his real name from that day forth* . . . [for the use of *alias* to] *fall within the prohibition contained in C.A. No. 142 as amended*."[18]

Ursua further relates the historical background and rationale that led to the enactment of CA No. 142, as follows:

> The enactment of C.A. No. 142 was made primarily to curb the common practice among the Chinese of adopting scores of different names and *aliases* which created tremendous confusion in the field of trade. Such a practice almost bordered on the crime of using fictitious names which for obvious reasons could not be successfully maintained against the Chinese who, rightly or wrongly, claimed they possessed a thousand and one names. C.A. No. 142 thus penalized the act of using an *alias* name, unless such *alias* was duly authorized by proper judicial proceedings and recorded in the civil register.[19]

Following the doctrine of *stare decisis*,[20] we are guided by the *Ursua* ruling on how the crime punished under CA No. 142

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[18] *Supra* note 13, pp. 155-156.

[19] *Supra* note 12, p. 154.

[20] *Stare decisis et non quieta movere* which means "to adhere to precedents, and not to unsettle things which are established." *Department of Transportation and Communications v. Cruz*, G.R. No. 178256, July 23, 2008, explained the principle as follows:

> The doctrine of *stare decisis* simply means that when the Supreme Court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same; regardless of whether the parties and property are the same. The doctrine of *stare decisis* is based on the legal principle or rule involved and not upon the judgment which results therefrom and in this particular sense *stare decisis* differs from *res judicata* which is based upon the judgment. The doctrine of *stare decisis* is a policy grounded on the necessity for securing certainty and stability of judicial decisions, thus:
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>> Time and again, the Court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere.* Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though

may be committed. Close adherence to this ruling, in other words, is unavoidable in the application of and the determination of criminal liability under CA No. 142.

Among the many grounds the People invokes to avoid the application of the *Ursua* ruling proceeds from Estrada's position in the government; at the time of the commission of the offense, he was the President of the Republic who is required by law to disclose his true name. We do not find this argument sufficient to justify a distinction between a man on the street, on one hand, and the President of the Republic, on the other, for purposes of applying CA No. 142. In the first place, the law does not make any distinction, expressly or impliedly, that would justify a differential treatment. *CA No. 142 as applied to Estrada, in fact allows him to use his cinema or screen name of Joseph Estrada, which name he has used even when he was already the President of the Philippines. Even the petitioner has acquiesced to the use of the screen name of the accused, as shown by the title of the present petition.* Additionally, any distinction we make based on the People's claim unduly prejudices Estrada; this is proscribed by the *Ursua* dictum that CA No. 142, as a penal statute, should be construed strictly against the State and in favor of the accused.[21] The mode of violating CA No. 142 is therefore the same whoever the accused may be.

The People also calls our attention to an earlier Sandiganbayan ruling (Resolution dated February 6, 2002) denying Estrada's motion to quash the Information. This earlier Resolution effectively rejected the application of *Ursua* under the following tenor:

> The use of the term "*alias*" in the Amended Information in itself serves to bring this case outside the ambit of the ruling in the case of *Ursua v. Court of Appeals* (256 SCRA 147 [1996]), on which

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the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.

[21] *Supra* note 13, p. 157.

the accused heavily relies in his motion to quash. The term "*alias*" means "otherwise known as" (Webster Third New International Dictionary, 1993 ed., p. 53). The charge of using an "*alias*" logically implies that another name has been used publicly and habitually. Otherwise, he will not be known by such name. In any case, the amended information adverts to "several transactions" and signing of documents with the Equitable PCI Bank and/or other corporate entities where the above-mentioned *alias* was allegedly employed by the accused.

The facts alleged in the information are distinctly different from facts established in the Ursua case where another name was used by the accused in a single instance without any sign or indication that that [sic] he intended to be known from that day by this name in addition to his real name.[22]

The People argues that the Sandiganbayan gravely abused its discretion in applying *Ursua* notwithstanding this earlier *final* ruling on its non-applicability — a ruling that binds the parties in the present case. The People thus claims that the Sandiganbayan erred to the point of gravely abusing its discretion when it resurrected the application of *Ursua,* resulting in the reversal of its earlier *final* ruling.

We find no merit in this argument for two reasons. *First*, the cited Sandiganbayan resolution is a mere interlocutory order — a ruling denying a motion to quash[23] — that cannot be given the attributes of finality and immutability that are generally accorded to judgments or orders that finally dispose of the whole, of or particular matters in, a case.[24] The Sandiganbayan resolution is a mere interlocutory order because *its effects would only be provisional in character, and would still require the issuing court to undertake substantial proceedings in order to put the controversy to rest*.[25] It is basic remedial law that an interlocutory

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[22] *Rollo*, pp. 1421-1425.

[23] See: *Socrates v. Sandiganbayan*, G.R. Nos. 116259-60, 118896-97, February 20, 1996, 253 SCRA 773, 793.

[24] See: Sections 1 and 2 of Rule 36 of the Rules of Court.

[25] See: *Monterey Foods Corp. v. Eserjose,* G.R. No. 153126, September 11, 2003, 410 SCRA 627, 634-635.

order is always under the control of the court and may be modified or rescinded upon sufficient grounds shown at any time before final judgment.[26] *Perez v. Court of Appeals,*[27] albeit a civil case, instructively teaches that an interlocutory order carries no *res adjudicata* effects. Says *Perez*:

> The Decision in CA-G.R. No. 10415 having resolved only an interlocutory matter, the principle of *res judicata* cannot be applied in this case. **There can be no *res judicata* where the previous order in question was not an order or judgment determinative of an issue of fact pending before the court but was only an interlocutory order because it required the parties to perform certain acts for final adjudication.** In this case, the lifting of the restraining order paved the way for the possession of the fishpond on the part of petitioners and/or their representatives pending the resolution of the main action for injunction. In other words, the main issue of whether or not private respondent may be considered a sublessee or a transferee of the lease entitled to possess the fishpond under the circumstances of the case had yet to be resolved when the restraining order was lifted.[28]

Second, in the earlier motion to quash, the Sandiganbayan solely looked at the allegations of the Information to determine the sufficiency of these allegations and did not consider any evidence *aliunde*. This is far different from the present demurrer to evidence where the Sandiganbayan had a fuller view of the prosecution's case, and was faced with the issue of whether the prosecution's evidence was sufficient to prove the allegations of the Information. Under these differing views, the Sandiganbayan may arrive at a different conclusion on the application of *Ursua*, the leading case in the application of CA 142, and the change in ruling is not *per se* indicative of grave abuse of discretion. That there is no error of law is strengthened by our consideration of the Sandiganbayan ruling on the application of *Ursua*.

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[26] See: *East Asia Traders, Inc. v. Republic of the Philippines,* G.R. No. 152947, July 7, 2004, 433 SCRA 716, 723.

[27] G.R. No. 107737, October 1, 1999, 316 SCRA 43, 56-57.

[28] Bold face supplied; citation omitted.

In an exercise of caution given *Ursua*'s jurisprudential binding effect, the People also argues in its petition that Estrada's case is different from *Ursua*'s for the following reasons: (1) respondent Estrada used and intended to continually use the *alias* "Jose Velarde" in addition to the name "Joseph Estrada"; (2) Estrada's use of the *alias* was not isolated or limited to a single transaction; and (3) the use of the *alias* "Jose Velarde" was designed to cause and did cause "confusion and fraud in business transactions" which the anti-*alias* law and its related statutes seek to prevent. The People also argues that the evidence it presented more than satisfied the requirements of CA No. 142, as amended, and *Ursua*, as it was also shown or established that Estrada's use of the *alias* was public.

In light of our above conclusions and based on the parties' expressed positions, we shall now examine *within the Ursua framework* the assailed Sandiganbayan Resolution granting the demurrer to evidence. The prosecution has the burden of proof to show that the evidence it presented with the Sandiganbayan satisfied the *Ursua* requirements, particularly on the matter of publicity and habituality in the use of an *alias*.

What is the coverage of the indictment?

The People argues that the Sandiganbayan gravely erred and abused its discretion in limiting the coverage of the amended Information in Crim. Case No. 26565 to Estrada's use of the *alias* "Jose Velarde" on February 4, 2000. It posits that there was a main transaction — one that took place on February 4, 2000 — but there were other transactions covered by the phrase "prior to or subsequent thereto; the Information specifically referred to "*several transactions*" . . . "*with Equitable PCI Bank and/or other corporate entities.*" To the People, the restrictive finding — that the phrase "prior to or subsequent thereto" is absorbed by the phrase "on or about 04 February 2000" — drastically amends the succeeding main allegations on the constitutive criminal acts by removing the plurality of both the transactions involved and the documents signed with various entities; there is the undeniable essential relationship between the allegations of the multiplicity of transactions, on

one hand, and the additional antecedent of "prior to or subsequent thereto," on the other. It argues that the Sandiganbayan reduced the phrase "prior to or subsequent thereto" into a useless appendage, providing Estrada with a convenient and totally unwarranted escape route.

The People further argues that the allegation of time is the least exacting in satisfying the constitutional requirement that the accused has to be informed of the accusation against him. Section 6 of Rule 110 of the Revised Rules of Court provides that an allegation of the approximate date of the commission of the offense will suffice, while Section 11 of the same Rule provides that it is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the crime. This liberality allegedly shaped the time-tested rule that when the "time" given in the complaint is not of the essence of the offense, the time of the commission of the offense does not need to be proven as alleged, and that the complaint will be sustained if the proof shows that the offense was committed at any time within the period of the statute of limitations and before the commencement of the action (citing *People v. Bugayong* [299 SCRA 528, 537] that in turn cited *US v. Smith* [3 Phil. 20, 22]). Since allegations of date of the commission of an offense are liberally interpreted, the People posits that the Sandiganbayan gravely abused its discretion in disregarding the additional clause "prior to or subsequent thereto"; under the liberality principle, the allegations of the acts constitutive of the offense finally determine the sufficiency of the allegations of time. The People thus claims that no surprise could have taken place that would prevent Estrada from properly defending himself; the information fully notified him that he was being accused of using the *alias* Jose Velarde in more than just one instance.

We see no merit in these arguments.

At its core, the issue is constitutional in nature — the right of Estrada to be informed of the nature and cause of the accusation against him. Under the provisions of the Rules of Court implementing this constitutional right, a complaint or information

is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense in the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.[29] As to the cause of accusation, the acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute, **but in terms sufficient to enable a person of common understanding to know the offense charged and the qualifying and aggravating circumstances, and for the court to pronounce judgment**.[30] The date of the commission of the offense need not be precisely stated in the complaint or information except when the precise date is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.[31]

The information *must* at all times *embody the essential elements of the crime charged by setting forth the facts and circumstances that bear on the culpability and liability of the accused so that he can properly prepare for and undertake his defense*.[32] In short, the allegations in the complaint or information, as written, must fully inform or acquaint the accused – the primary reader of and the party directly affected by the complaint or information — of the charge/s laid.

The heretofore cited Information states that "***. . . on or about 04 February 2000, or sometime prior or subsequent thereto, in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused [did] . . . willfully, unlawfully and criminally REPRESENT HIMSELF AS 'JOSE VELARDE' IN SEVERAL TRANSACTIONS AND use and employ the SAID alias "Jose Velarde" which IS***

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[29] RULES OF COURT, Section 6, Rule 110.

[30] *Id.,* Section 9.

[31] *Id.,* Section 11.

[32] *People v. Almendral*, G.R. No. 126025, July 6, 2004, 433 SCRA 440, 451.

***neither his registered name at birth nor his baptismal name, in signing documents with Equitable PCI Bank and/or other corporate entities*.**"

We fully agree with the disputed Sandiganbayan's reading of the Information, as this was how the accused might have similarly read and understood the allegations in the Information and, on this basis, prepared his defense. Broken down into its component parts, the allegation of time in the Information plainly states that *(1)* ***ON*** *February 4, 2000; (2)* ***OR*** *before February 4, 2000; (3)* ***OR*** *sometime prior or subsequent to February 4, 2000*, in the City of Manila, Estrada represented himself as "Jose Velarde" in several transactions in signing documents with Equitable PCI Bank and/or other corporate entities.

Under this analysis, the several transactions involving the signing of documents with Equitable PCI Bank and/or other corporate entities all had their reference to February 4, 2000; they were all made *on or about* ***or*** *prior or subsequent to that date*, thus plainly implying that all these transactions took place only on February 4, 2000 or on another single date sometime before or after February 4, 2000. To be sure, the Information could have simply said "on or about February 4, 2000" to capture all the alternative approximate dates, so that the phrase "sometime prior or subsequent thereto" would effectively be a surplusage that has no meaning separately from the "on or about" already expressed. *This consequent uselessness of the "prior or subsequent thereto" phrase cannot be denied, but it is a direct and necessary consequence of the use of the "OR" between the two phrases and the "THERETO" that referred back to February 4, 2000 in the second phrase.* Of course, the reading would have been very different (and would have been clearly in accord with the People's present interpretation) had the Information simply used **"AND"** instead of **"OR"** to separate the phrases; the intent to refer to various transactions occurring on various dates and occasions all proximate to February 4, 2000 could not be disputed. *Unfortunately for the People, the imprecision in the use of "OR" is the reality the case has to live with.* To act contrary to this reality would violate Estrada's right to be informed of the nature and cause of accusation against

him; the multiple transactions on several separate days that the People claims would result in surprise and denial of an opportunity to prepare for Estrada, who has a right to rely on the single day mentioned in the Information.

Separately from the constitutional dimension of the allegation of time in the Information, another issue that the allegation of time and our above conclusion raise relates to what act or acts, constituting a violation of the offense charged, were actually alleged in the Information.

The conclusion we arrived at necessarily impacts on the People's case, as it deals a fatal blow on the People's claim that Estrada *habitually* used the Jose Velarde *alias*. For, to our mind, the repeated use of an *alias* within a single day cannot be deemed "habitual," as it does not amount to a customary practice or use. This reason alone dictates the dismissal of the petition under CA No. 142 and the terms of *Ursua*.

The issues of publicity, numbered accounts, and the application of CA No. 142, R.A. No. 1405, and R.A. No. 9160.

We shall jointly discuss these interrelated issues.

The People claims that even on the assumption that Ocampo and Curato are bank officers sworn to secrecy under the law, the presence of two other persons who are not bank officers — Aprodicio Laquian and Fernando Chua — when Estrada's signed the bank documents as "Jose Velarde" amounted to a "public" use of an *alias* that violates CA No. 142.

On the issue of numbered accounts, the People argues that to premise the validity of Estrada's prosecution for violation of CA No. 142 on a mere banking practice is gravely erroneous, improper, and constitutes grave abuse of discretion; no banking law provision allowing the use of *aliases* in the opening of bank accounts existed; at most, it was allowed by mere convention or industry practice, but not by a statute enacted by the legislature. Additionally, that Estrada's prosecution was supposedly based on BSP Circular No. 302 dated October 11, 2001 is wrong and misleading, as Estrada stands charged with violation of CA No.

142, penalized since 1936, and not with a violation of a mere BSP Circular. That the use of *alias* in bank transactions prior to BSP Circular No. 302 is allowed is inconsequential because as early as CA No. 142, the use of an *alias* (except for certain purposes which do not include banking) was already prohibited. Nothing in CA No. 142 exempted the use of *aliases* in banking transactions, since the law did not distinguish or limit its application; it was therefore grave error for the Sandiganbayan to have done so. Lastly on this point, bank regulations being mere issuances cannot amend, modify or prevail over the effective, subsisting and enforceable provision of CA No. 142.

On the issue of the applicability of R.A. No. 1405 and its relationship with CA No. 142, that since nothing in CA No. 142 excuses the use of an *alias*, the Sandiganbayan gravely abused its discretion when it ruled that R.A. No. 1405 is an exception to CA No. 142's coverage. Harmonization of laws, the People posits, is allowed only if the laws intended to be harmonized refer to the same subject matter, or are at least related with one another. The three laws which the Sandiganbayan tried to harmonize are not remotely related to one another; they each deal with a different subject matter, prohibits a different act, governs a different conduct, and covers a different class of persons,[33] and there was no need to force their application to one another. Harmonization of laws, the People adds, presupposes

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[33] According to the People, CA 142 regulates the use of *aliases* and provides the penalty for violation of its provisions; in Estrada's case, it pertains to and regulates only his acts in using in several instances his *alias* "Jose Velarde;" the crime of illegal use of *alias* starts and stops with Estrada for he alone consummates the crime. The law deals with the use of alias outside the permissible trades and the subsequent conduct of persons who become privy to Estrada's use of the *alias*, or whatever obligation is incumbent upon them, are immaterial to the elements of the crime penalized by CA 142. On the other hand, the People further asserted, RA 1405 relates to the secrecy of bank deposits and governs the conduct and liability of bank officers with respect to information to which they become privy; it does not regulate or govern the conduct of depositors themselves when they open accounts. Finally, RA 9160 refers to the crime of money laundering and the imposable penalty for its commission — the illegal use of *alias* violative of CA 142 is not indispensable in sustaining a violation of the anti-money laundering law and illegal use of *alias* does not necessarily amount to, or necessarily constitute, money laundering.

the existence of conflict or incongruence between or among the provisions of various laws, a situation not obtaining in the present case.

The People posits, too, that R.A. No. 1405 does not apply to trust transactions, such as Trust Account No. C-163, as it applies only to traditional deposits (simple loans). A trust account, according to the People, may not be considered a deposit because it does not create the juridical relation of creditor and debtor; trust and deposit operations are treated separately and are different in legal contemplation; trust operation is separate and distinct from banking and requires a grant of separate authority, and trust funds are not covered by deposit insurance under the Philippine Deposit Insurance Corporation law (R.A. No. 3591, as amended).

The People further argues that the Sandiganbayan's conclusion that the transaction or communication was privileged in nature was erroneous — a congruent interpretation of CA No. 142 and R.A. No. 1405 shows that a person who signs in a public or private transaction a name or *alias*, other than his original name or the *alias* he is authorized to use, shall be held liable for violation of CA No. 142, while the bank employees are bound by the confidentiality of bank transactions except in the circumstances enumerated in R.A. No. 1405. At most, the People argues, the prohibition in R.A. No. 1405 covers bank employees and officers only, and not Estrada; the law does not prohibit Estrada from disclosing and making public his use of an *alias* to other people, including Ocampo and Curato, as he did when he made a public exhibit and use of the *alias* before Messrs. Lacquian and Chua.

Finally, the People argues that the Sandiganbayan ruling that the use of an *alias* before bank officers does not violate CA No. 142 effectively encourages the commission of wrongdoing and the concealment of ill-gotten wealth under pseudonyms; it sustains an anomalous and prejudicial policy that uses the law to silence bank officials and employees from reporting the commission of crimes. The People contends that the law — R.A. No. 1405 — was not intended by the Legislature to be

used as a subterfuge or camouflage for the commission of crimes and cannot be so interpreted; the law can only be interpreted, understood and applied so that right and justice would prevail.

We see no merit in these arguments.

We agree, *albeit* for a different reason, with the Sandiganbayan position that the rule in the law of libel — *that mere communication to a third person is publicity* — does not apply to violations of CA No. 142. Our close reading of *Ursua — particularly, the requirement that there be intention by the user to be culpable and the historical reasons we cited above* — tells us that the required publicity in the use of *alias* is more than mere communication to a third person; the use of the *alias*, to be considered public, must be made openly, or in an open manner or place, or to cause it to become generally known. In order to be held liable for a violation of CA No. 142, the user of the *alias* must have held himself out as a person who shall publicly be known under that other name. In other words, *the intent to publicly use the alias must be manifest.*

To our mind, the presence of Lacquian and Chua when Estrada signed as Jose Velarde and opened Trust Account No. C-163 does not necessarily indicate his intention to be publicly known henceforth as Jose Velarde. In relation to Estrada, Lacquian and Chua were not part of the public who had no access to Estrada's privacy and to the confidential matters that transpired in Malacañan where he sat as President; Lacquian was the Chief of Staff with whom he shared matters of the highest and strictest confidence, while Chua was a lawyer-friend bound by his oath of office and ties of friendship to keep and maintain the privacy and secrecy of his affairs. Thus, Estrada could not be said to have intended his signing as Jose Velarde to be for public consumption by the fact alone that Lacquian and Chua were also inside the room at that time. The same holds true for Estrada's alleged representations with Ortaliza and Dichavez, assuming the evidence for these representations to be admissible. All of Estrada's representations to these people were made in privacy and in secrecy, with no iota of intention of publicity.

The nature, too, of the transaction on which the indictment rests, affords Estrada a reasonable expectation of privacy, as the alleged criminal act related to the opening of a trust account — a transaction that R.A. No. 1405 considers absolutely confidential in nature.[34] We previously rejected, in *Ejercito v. Sandiganbayan,*[35] the People's nitpicking argument on the alleged dichotomy between bank deposits and trust transactions, when we said:

> The contention that trust accounts are not covered by the term "deposits," as used in R.A. 1405, by the mere fact that they do not entail a creditor-debtor relationship between the trustor and the bank, does not lie. An examination of the law shows that the term "deposits" used therein is to be understood broadly and not limited only to accounts which give rise to a creditor-debtor relationship between the depositor and the bank.
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> The policy behind the law is laid down in Section 1:
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> > SECTION 1. It is hereby declared to be the policy of the Government to give encouragement to the people to deposit their money in banking institutions and to discourage private hoarding so that the same may be properly utilized by banks in authorized loans to assist in the economic development of the country. (Underscoring supplied)
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> If the money deposited under an account may be used by bank for authorized loans to third persons, then such account, regardless of whether it creates a creditor-debtor relationship between the depositor and the bank, falls under the category of accounts which the law precisely seeks to protect for the purpose of boosting the economic development of the country.
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> Trust Account No. 858 is, without doubt, one such account. The Trust Agreement between petitioner and Urban Bank provides that the trust account covers "deposit, placement or investment of funds" by Urban Bank for and in behalf of petitioner. The money deposited

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[34] *Ople v. Torres,* G.R. No. 127685, July 23, 1998, 293 SCRA 141, 164, provides the two-part test of a reasonable expectation of privacy as follows: (1) whether by his conduct, the individual has exhibited an expectation of privacy; and (2) whether his expectation is one that society recognizes as reasonable. See also: *People v. Cabalquinto,* G.R. No.167693, September 19, 2006, 502 SCRA 419, 424.

[35] G.R. Nos. 157294-95, November 30, 2006, 509 SCRA 190, 210-211.

under Trust Account No. 858, was, therefore, intended not merely to remain with the bank but to be invested by it elsewhere. To hold that this type of account is not protected by R.A. 1405 would encourage private hoarding of funds that could otherwise be invested by bank in other ventures, contrary to the policy behind the law.

Section 2 of the same law in fact even more clearly shows that the term "deposits" was intended to be understood broadly:

> SECTION 2. **All deposits of whatever nature** with bank or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases **where the money** deposited **or invested** is the subject matter of the litigation. (Emphasis and underscoring supplied)

The phrase "of whatever nature" proscribes any restrictive interpretation of "deposits." Moreover, it is clear from the immediately quoted provision that, generally, the law applies not only to money which is deposited but also to those which are invested. This further shows that the law was not intended to apply only to "deposits" in the strict sense of the word. Otherwise, there would have been no need to add the phrase "or invested."

Clearly, therefore, R.A. 1405 is broad enough to cover Trust Account No. 858.[36]

We have consistently ruled that bank deposits under R.A. No. 1405 (the Secrecy of Bank Deposits Law) are statutorily protected or recognized zones of privacy.[37] Given the private nature of Estrada's act of signing the documents as "Jose Velarde" related to the opening of the trust account, the People cannot claim that there was already a public use of *alias* when Ocampo

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[36] Underscoring in the original.

[37] *Ople v. Torres, supra* note 28, p. 158; see also *Marquez v. Desierto,* G.R. No. 135882, June 27, 2001, 359 SCRA 772, 781, and *Ejercito, supra* note 29.

and Curato witnessed the signing. We need not even consider here the impact of the obligations imposed by R.A. No.1405 on the bank officers; what is essentially significant is the privacy situation that is necessarily implied in these kinds of transactions. This statutorily guaranteed privacy and secrecy effectively negate a conclusion that the transaction was done publicly or with the intent to use the *alias* publicly.

The enactment of R.A. No.9160, on the other hand, is a significant development only because it clearly manifests that prior to its enactment, numbered accounts or anonymous accounts were permitted banking transactions, whether they be allowed by law or by a mere banking regulation. To be sure, an indictment against Estrada using this relatively recent law cannot be maintained without violating the constitutional prohibition on the enactment and use of *ex post facto* laws.[38]

We hasten to add that this holistic application and interpretation of these various laws is not an attempt to harmonize these laws. A finding of commission of the offense punished under CA No.

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[38] Section 22, Article III of the Constitution provides that no *ex post facto law* or bill of attainder shall be enacted. We enumerated in *Lacson v.Executive Secretary,* G.R. No. 128096, January 20, 1999, 301 SCRA 299, 322-323, the forms of *ex post facto* law as any of the following —

(a) **one which makes an act done criminal before the passing of the law and which was innocent when committed, and punishes such action**; or

(b) one which aggravates a crime or makes it greater that when it was committed; or

(c) one which changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed,

(d) one which alters the legal rules of evidence and receives less or different testimony than the law required at the time of the commission of the offense in order to convict the defendant.

(e) Every law which, in relation to the offense or its consequences, alters the situation of a person to his disadvantage.

(f) that which assumes to regulate civil rights and remedies only but in effect imposes a penalty or deprivation of a right which when done was lawful;

(g) deprives a person accused of crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty.

142 must necessarily rest on the evidence of the requisites for culpability, as amplified in *Ursua*. The application of R.A. No. 1405 is significant only because Estrada's use of the *alias* was pursuant to a transaction that the law considers private or, at the very least, where the law guarantees a reasonable expectation of privacy to the parties to the transactions; it is at this point that R.A. No. 1405 tangentially interfaces with an indictment under CA 142. In this light, there is no actual frontal clash between CA No. 142 and R.A. No. 1405 that requires harmonization. Each operates within its own sphere, but must necessarily be read together when these spheres interface with one another. Finally, R.A. No. 9160, as a law of recent vintage in relation to the indictment against Estrada, cannot be a source or an influencing factor in his indictment.

In finding the absence of the requisite publicity, we simply looked at the totality of the circumstances obtaining in Estrada's use of the *alias* "Jose Velarde" *vis-à-vis* the *Ursua* requisites. We do not decide here whether Estrada's use of an *alias* when he occupied the highest executive position in the land was valid and legal; we simply determined, as the Sandiganbayan did, whether he may be made liable for the offense charged based on the evidence the People presented. As with any other accused, his guilt must be based on the evidence and proof beyond reasonable doubt that a finding of criminal liability requires. If the People fails to discharge this burden, as they did fail in this case, the rule of law requires that we so declare. We do so now in this review and accordingly find no reversible error of law in the assailed Sandiganbayan ruling.

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

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Corona, Carpio Morales, Tinga, Velasco, Jr., and *Nachura, JJ.,* concur.

Carpio, J., no part due to inhibition in related cases.

Chico-Nazario, Leonardo-de Castro, and *Peralta, JJ.,* no part.

Austria-Martinez, J., on official leave.

SECOND DIVISION

[G.R. Nos. 170270 & 179411. April 2, 2009]

NEWSOUNDS BROADCASTING NETWORK INC. and CONSOLIDATED BROADCASTING SYSTEM, INC., *petitioners, vs.* **HON. CAESAR G. DY, FELICISIMO G. MEER, BAGNOS MAXIMO, RACMA FERNANDEZ-GARCIA and THE CITY OF CAUAYAN,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; BILL OF RIGHTS; FREEDOM OF SPEECH, EXPRESSION AND THE PRESS; NATURE. —** Free speech and free press may be identified with the liberty to discuss publicly and truthfully any matter of public interest without censorship and punishment. There is to be no previous restraint on the communication of views or subsequent liability whether in libel suits, prosecution for sedition, or action for damages, or contempt proceedings unless there be a clear and present danger of substantive evil that Congress has a right to prevent.
2. **ID.; ID.; ID.; ID.; ID.; PRIOR RESTRAINT; DEFINED. —** Prior restraint refers to official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination. While any system of prior restraint comes to court bearing a heavy burden against its constitutionality, not all prior restraints on speech are invalid.
3. **ID.; ID.; ID.; ID.; ID.; ID.; ANY SYSTEM OF PRIOR RESTRAINTS BEARS A HEAVY PRESUMPTION AGAINST ITS CONSTITUTIONALITY. —** There is a long-standing tradition of special judicial solicitude for free speech, meaning that governmental action directed at expression must satisfy a greater burden of justification than governmental action directed at most other forms of behavior. We had said in *SWS v. COMELEC*: "Because of the preferred status of the constitutional rights of speech, expression, and the press, such a measure is vitiated by a weighty presumption of invalidity. Indeed, 'any system of prior restraints of expression comes

to this Court bearing a heavy presumption against its constitutional validity. . . . The Government 'thus carries a heavy burden of showing justification for the enforcement of such restraint.' There is thus a reversal of the normal presumption of validity that inheres in every legislation."

4. **ID.; ID.; ID.; ID.; ID.; ID.; CONTENT-NEUTRAL REGULATION AND CONTENT-BASED RESTRAINT, DISTINGUISHED. —** [J]urisprudence distinguishes between a **content-neutral** regulation*, i.e.,* merely concerned with the incidents of the speech, or one that merely controls the time, place or manner, and under well defined standards; and a **content-based** restraint or censorship, *i.e.,* the restriction is based on the subject matter of the utterance or speech. Content-based laws are generally treated as more suspect than content-neutral laws because of judicial concern with discrimination in the regulation of expression. Content-neutral regulations of speech or of conduct that may amount to speech, are subject to lesser but still heightened scrutiny.

5. **REMEDIAL LAW; CIVIL PROCEDURE; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; NOTICE AND HEARING; MANDATORY IF PRELIMINARY INJUNCTION SHOULD BE GRANTED BUT NOT IF SUCH PROVISIONAL RELIEF WERE TO BE DENIED. —** Section 5 of Rule 58 prescribes a mandatory hearing and prior notice to the party or person sought to be enjoined **if preliminary injunction should be granted**. It imposes no similar requirement if such provisional relief were to be denied. We in fact agree with the Court of Appeals that "if on the face of the pleadings, the applicant for preliminary injunction is not entitled thereto, courts may outrightly deny the motion without conducting a hearing for the purpose." The Court is disinclined to impose a mandatory hearing requirement on applications for injunction even if on its face, injunctive relief is palpably without merit or impossible to grant. Otherwise, our trial courts will be forced to hear out the sort of litigation-happy attention-deprived miscreants who abuse the judicial processes by filing complaints against real or imaginary persons based on trivial or inexistent slights.

6. **ID.; ID.; ID.; ID.; GUIDELINES ON PROVISIONAL RELIEF IN FREE EXPRESSION CASES. —** The application of the strict scrutiny analysis to petitioners' claims for provisional

relief warrants the inevitable conclusion that the trial court cannot deny provisional relief to the party alleging a *prima facie* case alleging government infringement on the right to free expression without hearing from the infringer the cause why its actions should be sustained provisionally. Such acts of infringement are presumptively unconstitutional, thus the trial court cannot deny provisional relief outright since to do so would lead to the sustention of a presumptively unconstitutional act. It would be necessary for the infringer to appear in court and somehow rebut against the presumption of unconstitutionality for the trial court to deny the injunctive relief sought for in cases where there is a *prima facie* case establishing the infringement of the right to free expression. Those above-stated guidelines, which pertain most particularly to the *ex parte* denial of provisional relief in free expression cases, stand independently of the established requisites for a party to be entitled to such provisional reliefs. With respect to writs of preliminary injunction, the requisite grounds are spelled out in Section 3 of Rule 58 of the Rules of Court.

7. **POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL TAXATION; MUNICIPAL LICENSE; ESSENTIALLY A GOVERNMENT RESTRICTION UPON PRIVATE RIGHTS AND IS VALID ONLY IF BASED UPON AN EXERCISE BY THE MUNICIPALITY OF ITS POLICE OR TAXING POWERS.** — The LGC authorizes local legislative bodies to enact ordinances authorizing the issuance of permits or licenses upon such conditions and for such purposes intended to promote the general welfare of the inhabitants of the LGU. A municipal or city mayor is likewise authorized under the LGC to "issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance." Generally, LGUs have exercised its authority to require permits or licenses from business enterprises operating within its territorial jurisdiction. A municipal license is essentially a governmental restriction upon private rights and is valid only if based upon an exercise by the municipality of its police or taxing powers. The LGC subjects the power of *sanggunians* to enact ordinances requiring licenses or permits within the parameters of Book II of the Code, concerning "Local Taxation and Fiscal Matters." It also necessarily follows that the exercise of this power should

also be consistent with the Constitution as well as the other laws of the land. Nothing in national law exempts media entities that also operate as businesses such as newspapers and broadcast stations such as petitioners from being required to obtain permits or licenses from local governments in the same manner as other businesses are expected to do so. While this may lead to some concern that requiring media entities to secure licenses or permits from local government units infringes on the constitutional right to a free press, we see no concern so long as such requirement has been duly ordained through local legislation and content-neutral in character, *i.e.*, applicable to all other similarly situated businesses. Indeed, there are safeguards within the LGC against the arbitrary or unwarranted exercise of the authority to issue licenses and permits. As earlier noted, the power of *sanggunians* to enact ordinances authorizing the issuance of permits or licenses is subject to the provisions of Book Two of the LGC. The power of the mayor to issue license and permits and suspend or revoke the same must be exercised pursuant to law or ordinance.

8. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; DOCTRINE OF ESTOPPEL; EXPLAINED. —** [D]espite the general rule that the State cannot be put in estoppel by the mistake or errors of its officials or agents, we have also recognized, thus: **"Estoppels against the public are little favored. They should not be invoked except in a rare and unusual circumstances, and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. Nevertheless, the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations . . ., the doctrine of equitable estoppel may be invoked against public authorities as well as against private individuals."** Thus, when there is no convincing evidence to prove irregularity or negligence on the part of the government official whose acts are being disowned other than the bare assertion on the part of the State, we have declined to apply State immunity from estoppel.

9. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; WHEN CONSIDERED AS A PROPER RELIEF. —** *Mandamus* lies as the proper relief whenever a public officer unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law.

10. **CIVIL LAW; DAMAGES; TEMPERATE DAMAGES; GRANTED WHEN THE COURT FINDS THAT SOME PECUNIARY LOSS HAS BEEN SUFFERED BUT ITS AMOUNT CANNOT, FROM THE NATURE OF THE CASE, BE PROVED WITH CERTAINTY. —** Temperate damages avail when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. The existence of pecuniary injury at bar cannot be denied. Petitioners had no way of knowing it when they filed their petition, but the actions of respondents led to the closure of their radio stations from June 2004 until this Court issued a writ of preliminary injunction in January 2006. The lost potential income during that one and a half year of closure can only be presumed as substantial enough. Still, despite that fact, possibly unanticipated when the original amount for claimed temperate damages was calculated, petitioners have maintained before this Court the same amount, ₱8 Million, for temperate damages. The said amount is "reasonable under the circumstances."

11. **ID.; ID.; EXEMPLARY DAMAGES; CAN BE AWARDED WHEN TEMPERATE DAMAGES ARE AVAILABLE; CASE AT BAR. —** Exemplary damages can be awarded herein, since temperate damages are available. Public officers who violate the Constitution they are sworn to uphold embody "a poison of wickedness that may not run through the body politic." Respondents, by purposely denying the commercial character of the property in order to deny petitioners' the exercise of their constitutional rights and their business, manifested bad faith in a wanton, fraudulent, oppressive and malevolent manner. The amount of exemplary damages need not be proved where it is shown that plaintiff is entitled to temperate damages, and the sought for amount of ₱1 Million is more than appropriate.

APPEARANCES OF COUNSEL

Mary Marilyn Hechanova-Santos and *Edgar S. Orro* for petitioners.

City Legal Officer (Cauayan City) for respondent City.

Constante A. Foronda, Jr. for Hon. C.G. Dy, F.G. Meer, B. Maximo, and R. Fernandez-Garcia.

D E C I S I O N

TINGA, *J.*:

Whenever the force of government or any of its political subdivisions bears upon to close down a private broadcasting station, the issue of free speech infringement cannot be minimized, no matter the legal justifications offered for the closure. In many respects, the present petitions offer a textbook example of how the constitutional guarantee of freedom of speech, expression and of the press may be unlawfully compromised. Tragically, the lower courts involved in this case failed to recognize or assert the fundamental dimensions, and it is our duty to reverse, and to affirm the Constitution and the most sacred rights it guarantees.

Before us are two petitions for review involving the same parties, the cases having been consolidated by virtue of the Resolution of this Court dated 16 June 2008.[1] Both petitions emanated from a petition for *mandamus*[2] filed with the Regional Trial Court (RTC) of Cauayan City docketed as Special Civil Action No. Br. 20-171, the petition having been dismissed in a Decision dated 14 September 2004 by the Cauayan City RTC, Branch 20.[3] Consequently, petitioners filed with the Court of Appeals a petition for *certiorari* under Rule 65 and an appeal to the RTC decision. The appellate court ruled against petitioners

[1] *Rollo* (G.R. No. 179411) pp. 1351-1352.

[2] *Id.* at 166-190.

[3] *Id.* at 296-302. Decision penned by Judge Henedino P. Eduarte.

in both instances. The petition in G.R. No. 170270 assails the 27 October 2005 decision of the Court of Appeals in CA-G.R. SP No. 87815,[4] while the petition in G.R. 179411 assails the 30 May 2007 decision of the Court of Appeals in C.A.-G.R. SP No. 88283.[5]

I.

Bombo Radyo Philippines ("Bombo Radyo") operates several radio stations under the AM and FM band throughout the Philippines. These stations are operated by corporations organized and incorporated by Bombo Radyo, particularly petitioners Newsounds Broadcasting Network, Inc. ("Newsounds") and Consolidated Broadcasting System, Inc. ("CBS"). Among the stations run by Newsounds is Bombo Radyo DZNC Cauayan (DZNC), an AM radio broadcast station operating out of Cauayan City, Isabela. CBS, in turn, runs Star FM DWIT Cauayan ("Star FM"), also operating out of Cauayan City, airing on the FM band. The service areas of DZNC and Star FM extend from the province of Isabela to throughout Region II and the Cordillera region.[6]

In 1996, Newsounds commenced relocation of its broadcasting stations, management office and transmitters on property located in Minante 2, Cauayan City, Isabela. The property is owned by CBS Development Corporation (CDC), an affiliate corporation under the Bombo Radyo network which holds title over the properties used by Bombo Radyo stations throughout the country.[7] On 28 June 1996, CDC was issued by the then municipal government of Cauayan a building permit authorizing the construction of a commercial establishment on the property.[8]

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[4] *Id.* at 636-662. Decision penned by Court of Appeals Associate Justice E. Sundiam, concurred in by Associate Justice M. Villarama, Jr. and J. Dimaampao.

[5] Decision penned by Court of Appeals Associate Justice F. Lampas Peralta and concurred in by Associate Justices E. Cruz and N. Pizarro.

[6] *Rollo* (G.R. No. 179411), p. 13.

[7] *Id.*

[8] *Id.* at 90.

On 5 July 1996, the Housing and Land Use Regulatory Board (HLURB) issued a Zoning Decision certifying the property as commercial.[9] That same day, the Office of the Municipal Planning and Development Coordinator (OMPDC) of Cauayan affirmed that the commercial structure to be constructed by CDC conformed to local zoning regulations, noting as well that the location "is classified as a Commercial area."[10] Similar certifications would be issued by OMPDC from 1997 to 2001.[11]

A building was consequently erected on the property, and therefrom, DZNC and Star FM operated as radio stations. Both stations successfully secured all necessary operating documents, including mayor's permits from 1997 to 2001.[12] During that period, CDC paid real property taxes on the property based on the classification of the land as commercial.[13]

All that changed beginning in 2002. On 15 January of that year, petitioners applied for the renewal of the mayor's permit. The following day, the City Assessor's Office in Cauayan City noted on CDC's Declaration of Real Property filed for 2002 confirmed that based on the existing file, CDC's property was classified as "commercial."[14] On 28 January, representatives of petitioners formally requested then City Zoning Administrator-Designate Bagnos Maximo (Maximo) to issue a zoning clearance for the property.[15] Maximo, however, required petitioners to submit "either an approved land conversion papers from the Department of Agrarian Reform (DAR) showing that the property was converted from prime agricultural land to commercial land, or an approved resolution from the *Sangguniang Bayan* or

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[9] *Id.* at 91.

[10] *Id.* at 92.

[11] *Id.* at 93-97.

[12] *Id.* at 98-102.

[13] *Id.* at 103-110.

[14] *Id.* at 103.

[15] *Id.* at 111.

Sangguniang Panglungsod authorizing the re-classification of the property from agricultural to commercial land."[16] Petitioners had never been required to submit such papers before, and from 1996 to 2001, the OMPDC had consistently certified that the property had been classified as commercial.

Due to this refusal by Maximo to issue the zoning clearance, petitioners were unable to secure a mayor's permit. Petitioners filed a petition for *mandamus*[17] with the Regional Trial Court (RTC) of Cauayan City to compel the issuance of the 2002 mayor's permit. The case was raffled to Branch 19 of the Cauayan City RTC. When the RTC of Cauayan denied petitioners' accompanying application for injunctive relief, they filed a special civil action for *certiorari* with the Court of Appeals,[18] but this would be dismissed by the appellate court due to the availability of other speedy remedies with the trial court. In February of 2003, the RTC dismissed the *mandamus* action for being moot and academic.[19]

In the meantime, petitioners sought to obtain from the DAR Region II Office a formal recognition of the conversion of the CDC property from agricultural to commercial. The matter was docketed as Adm. Case No. A-0200A-07B-002. Then DAR Region II Director Abrino L. Aydinan (Director Aydinan) granted the application and issued an Order that stated that "there remains no doubt on the part of this Office of the non-agricultural classification of subject land before the effectivity of Republic Act No. 6657 otherwise known as the Comprehensive Agrarian Reform Law of 1988."[20] Consequently, the DAR Region II Office ordered the formal exclusion of the property from the Comprehensive Agrarian Reform Program, and the waiver of

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

[17] *Supra* note 2. Docketed as Spl. Civil Action No. 19-124 with the Regional Trial Court of Cauayan City, Branch 19.

[18] See *rollo* (G.R. No. 170270), p. 21; Docketed as C.A. G.R. No. 70361.

[19] *Rollo*, p. 22.

[20] *Id.* at 111.

any requirement for formal clearance of the conversion of the subject land from agricultural to non-agricultural use."[21]

On 16 January 2003, petitioners filed their applications for renewal of mayor's permit for the year 2003, attaching therein the DAR Order. Their application was approved. However, on 4 March 2003, respondent Felicisimo Meer, Acting City Administrator of Cauayan City, wrote to petitioners claiming that the DAR Order was spurious or void, as the Regional Center for Land Use Policy Planning and Implementation (RCLUPPI) supposedly reported that it did not have any record of the DAR Order. A series of correspondences followed wherein petitioners defended the authenticity of the DAR Order and the commercial character of the property, while respondent Meer demanded independent proof showing the authenticity of the Aydinan Order. It does not appear though that any action was taken against petitioners by respondents in 2003, and petitioners that year paid realty taxes on the property based on the classification that said property is commercial.[22]

The controversy continued into 2004. In January of that year, petitioners filed their respective applications for their 2004 mayor's permit, again with the DAR Order attached to the same. A zonal clearance was issued in favor of petitioners. Yet in a letter dated 13 January 2004, respondent Meer claimed that no record existed of DAR Adm. Case No. A-0200A-07B-002 with the Office of the Regional Director of the DAR or with the RCLUPPI.[23] As a result, petitioners were informed that there was no basis for the issuance in their favor of the requisite zoning clearance needed for the issuance of the mayor's permit.[24]

Another series of correspondences ensued between Meer and the station manager of DZNC, Charmy Sabigan (Sabigan). Sabigan

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[21] *Id.* at 115.

[22] *Rollo* (G.R. No. 179411), pp. 21-22.

[23] *Rollo*, p. 171.

[24] *Id.*

reiterated the authenticity of the DAR Order and the commercial character of the property, while Meer twice extended the period for application of the mayor's permit, while reminding them of the need to submit the certifications from the DAR or the *Sangguniang Panlalawigan* that the property had been duly converted for commercial use.

The deadline for application for the mayor's permit lapsed on 15 February 2004, despite petitioners' plea for another extension. On 17 February 2004, respondents Meer and Racma Fernandez-Garcia, City Legal Officer of Cauayan City, arrived at the property and closed the radio stations. Petitioners proceeded to file a petition with the Commission on Elections (COMELEC) seeking enforcement of the Omnibus Election Code, which prohibited the closure of radio stations during the then-pendency of the election period. On 23 March 2004, the COMELEC issued an order directing the parties to maintain the status prevailing before 17 February 2004, thus allowing the operation of the radio stations, and petitioners proceeded to operate the stations the following day. Within hours, respondent Mayor Ceasar Dy issued a Closure Order dated 24 March 2004, stating therein that since petitioners did not have the requisite permits before 17 February 2004, the *status quo* meant that the stations were not in fact allowed to operate.[25] Through the intervention of the COMELEC, petitioners were able to resume operation of the stations on 30 March 2004. On 9 May 2004, or two days before the general elections of that year, the COMELEC denied the petition filed by petitioners and set aside the status quo order.[26] However, this Resolution was reconsidered just 9 days later, or on 16 May 2004, and the COMELEC directed the maintenance of the *status quo* until 9 June 2004, the date of the end of the election period.

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[25] *Id.* at 198.

[26] *Id.* at 203-208. Resolution signed by Chairman Benjamin S. Abalos, Sr., and Commissioners Rufino S.B. Javier, Mehol K. Sadain, Resurreccion Z. Borra, Florentino A. Tuason, Jr., and Virgilio O. Garcillano. Commisioner Manuel A. Barcelona dissented.

Petitioners were thus able to continue operations until 10 June 2004, the day when respondents yet again closed the radio stations. This closure proved to be more permanent.

By this time, the instant legal battle over the sought-after mayor's permits had already been well under way. On 15 April 2004, petitioners filed a petition for *mandamus*, docketed as SCA No. 20-171, with the RTC of Cauayan City, Branch 20. The petition was accompanied by an application for the issuance of temporary restraining order and writ of preliminary prohibitory injunction, both provisional reliefs being denied by the RTC through an Order dated 20 April 2004. Respondents duly filed an Answer with Counterclaims on 3 May 2004. Due to the aforementioned closure of the radio stations on 10 June 2004, petitioners filed with the RTC a Motion for the Issuance of a Writ of Preliminary Mandatory Injunction dated 15 June 2004, praying that said writ be issued to allow petitioners to resume operations of the radio stations. No hearing would be conducted on the motion, nor would it be formally ruled on by the RTC.

On 14 September 2004, the RTC rendered a Decision denying the petition for *mandamus*.[27] The RTC upheld all the arguments of the respondents, including their right to deny the sought after mayor's permit unless they were duly satisfied that the subject property has been classified as commercial in nature. The Decision made no reference to the application for a writ of preliminary mandatory injunction. Petitioners filed a motion for reconsideration,[28] citing the trial court's failure to hear and act on the motion for preliminary mandatory injunction as a violation of the right to due process, and disputing the RTC's conclusions with respect to their right to secure the mayor's permit. This motion was denied in an Order dated 1 December 2004.

Petitioners initiated two separate actions with the Court of Appeals following the rulings of the RTC. On 13 December

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[27] *Id.* at 339-348.

[28] *Id.* at 349-379.

2004, they filed a Petition for *Certiorari* under Rule 65, docketed as CA G.R. No. 87815, raffled to the Fourteenth Division.[29] This petition imputed grave abuse of discretion on the part of the RTC for denying their application for preliminary mandatory injunction. On the same day, petitioners also filed a Notice of Appeal with the RTC, this time in connection with the denial of their petition for *mandamus*. This appeal was docketed as CA G.R. SP No. 88283 and raffled to the Eleventh Division.

Petitioners lost both of their cases with the Court of Appeals. On 27 October 2005, the Court of Appeals in CA G.R. No. 87815 dismissed the Petition for *Certiorari*, ruling that the RTC did not commit any grave abuse of discretion in impliedly denying the application for preliminary mandatory injunction. On 30 May 2007, the Court of Appeals in CA-G.R. SP No. 88283 denied the appeal by *certiorari*, affirming the right of the respondents to deny petitioners their mayor's permits. On both occasions, petitioners filed with this Court respective petitions for review under Rule 45 — the instant petitions, now docketed as G.R. Nos. 170270 and 179411.

On 23 January 2006, the Court in G.R. No. 170270 issued a writ of preliminary injunction, "enjoining respondents from implementing the closure order dated March 24, 2005, or otherwise interfering with the operations of Bombo Radyo DZNC Cauayan (NBN) and STAR FM DWIT Cauayan (CBS) in Cauayan City until final orders from this Court."[30] On 21 January 2008, the Court resolved to consolidate G.R. No. 170270 with G.R. No. 179411, which had been initially dismissed outright but was reinstated on even date.[31]

Certiorari lies in both instances.

II.

The fundamental constitutional principle that informs our analysis of both petitions is the freedom of speech, of expression

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[29] *Id.* at 386-449.

[30] *Rollo* (G.R. No. 170270), pp. 677-678.

[31] *Rollo* (G.R. No. 179411), p. 1198.

or the press.[32] Free speech and free press may be identified with the liberty to discuss publicly and truthfully any matter of public interest without censorship and punishment. There is to be no previous restraint on the communication of views or subsequent liability whether in libel suits, prosecution for sedition, or action for damages, or contempt proceedings unless there be a clear and present danger of substantive evil that Congress has a right to prevent.[33]

Petitioners have taken great pains to depict their struggle as a textbook case of denial of the right to free speech and of the press. In their tale, there is undeniable political color. They admit that in 2001, Bombo Radyo "was aggressive in exposing the widespread election irregularities in Isabela that appear to have favored respondent Dy and other members of the Dy political dynasty."[34] Respondent Ceasar Dy is the brother of Faustino Dy, Jr., governor of Isabela from 2001 until he was defeated in his re-election bid in 2004 by Grace Padaca, a former assistant station manager at petitioners' own DZNC Bombo Radyo.[35] A rival AM radio station in Cauayan City, DWDY, is owned and operated by the Dy family.[36] Petitioners likewise direct our attention to a 20 February 2004 article printed in the Philippine Daily Inquirer where Dy is quoted as intending "to file disenfranchisement proceedings against DZNC-AM."[37]

The partisan component of this dispute will no doubt sway many observers towards one opinion or the other, but not us.

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[32] Article 3, Sec. 4.

[33] *Gonzales v. COMELEC*, 137 Phil. 471, 492 (1969).

[34] *Rollo* (G.R. No. 170270), p. 27.

[35] See TJ Burgonio, "*Isabela gov who ended a dynasty wins RM prize,*" Philippine Daily Inquirer (1 August 2008), at http://opinion.inquirer.net/inquireropinion/letterstotheeditor/view /20080801-151950/Isabela-gov-who-ended-a-dynasty-wins-RM-prize.

[36] *Rollo* (G.R. No. 170270), p. 17.

[37] *Rollo* (G.R. No. 179411), p. 142.

The comfort offered by the constitutional shelter of free expression is neutral as to personality, affinity, ideology and popularity. The judges tasked to enforce constitutional order are expected to rule accordingly from the comfort of that neutral shelter.

Still, it cannot be denied that our Constitution has a systemic bias towards free speech. The absolutist tenor of Section 4, Article III testifies to that fact. The individual discomforts to particular people or enterprises engendered by the exercise of the right, for which at times remedies may be due, do not diminish the indispensable nature of free expression to the democratic way of life.

The following undisputed facts bring the issue of free expression to fore. Petitioners are authorized by law to operate radio stations in Cauayan City, and had been doing so for some years undisturbed by local authorities. Beginning in 2002, respondents in their official capacities have taken actions, whatever may be the motive, that have impeded the ability of petitioners to freely broadcast, if not broadcast at all. These actions have ranged from withholding permits to operate to the physical closure of those stations under color of legal authority. While once petitioners were able to broadcast freely, the weight of government has since bore down upon them to silence their voices on the airwaves. An elementary school child with a basic understanding of civics lessons will recognize that free speech animates these cases.

Without taking into account any extenuating circumstances that may favor the respondents, we can identify the bare acts of closing the radio stations or preventing their operations as an act of prior restraint against speech, expression or of the press. Prior restraint refers to official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination.[38] While any system of prior restraint

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[38] *Chavez v. Gonzales*, G.R. No. 168338, 15 February 2008, 545 SCRA 441, 491.

comes to court bearing a heavy burden against its constitutionality,[39] not all prior restraints on speech are invalid.[40]

Nonetheless, there are added legal complexities to these cases which may not be necessarily accessible to the layperson. The actions taken by respondents are colored with legal authority, under the powers of local governments vested in the Local Government Code (LGC), or more generally, the police powers of the State. We do not doubt that Local Government Units (LGU) are capacitated to enact ordinances requiring the obtention of licenses or permits by businesses, a term defined elsewhere in the LGC as "trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit."

And there is the fact that the mode of expression restrained in these cases — broadcast — is not one which petitioners are physically able to accomplish without interacting with the regulatory arm of the government. Expression in media such as print or the Internet is not burdened by such requirements as congressional franchises or administrative licenses which bear upon broadcast media. Broadcast is hampered by its utilization of the finite resources of the electromagnetic spectrum, which long ago necessitated government intervention and administration to allow for the orderly allocation of bandwidth, with broadcasters agreeing in turn to be subjected to regulation. There is no issue herein that calls into question the authority under law of petitioners to engage in broadcasting activity, yet these circumstances are well worth pointing out if only to provide the correct perspective that broadcast media enjoys a somewhat lesser degree of constitutional protection than print media or the Internet.

It emerges then that there exists tension between petitioners' right to free expression, and respondents' authority by law to

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[39] *Social Weather Stations, Inc. v. COMELEC*, 409 Phil. 571, 585 (2001); citing *New York Times v. United States*, 403 U.S. 713, 714, 29 L. Ed. 2d 822, 824 (1971).

[40] *Chavez v. Gonzales*, G.R. No. 168335, 15 February 2008, 545 SCRA 441, 492.

regulate local enterprises. What are the rules of adjudication that govern the judicial resolution of this controversy?

B.

That the acts imputed against respondents constitute a prior restraint on the freedom of expression of respondents who happen to be members of the press is clear enough. There is a long-standing tradition of special judicial solicitude for free speech, meaning that governmental action directed at expression must satisfy a greater burden of justification than governmental action directed at most other forms of behavior.[41] We had said in *SWS v. COMELEC*: "Because of the preferred status of the constitutional rights of speech, expression, and the press, such a measure is vitiated by a weighty presumption of invalidity. Indeed, 'any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity. . . . The Government 'thus carries a heavy burden of showing justification for the enforcement of such restraint.' There is thus a reversal of the normal presumption of validity that inheres in every legislation."[42]

At the same time, jurisprudence distinguishes between a **content-neutral** regulation*, i.e.,* merely concerned with the incidents of the speech, or one that merely controls the time, place or manner, and under well-defined standards; and a **content-based** restraint or censorship, *i.e.,* the restriction is based on the subject matter of the utterance or speech.[43] Content-based laws are generally treated as more suspect than content-neutral laws because of judicial concern with discrimination in the regulation of expression.[44] Content-neutral regulations of speech or of conduct that may amount to speech, are subject to lesser but still heightened scrutiny.[45]

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[41] GUNTHER, *et al*., *CONSTITUTIONAL LAW* (14th ed., 2001), at 964.

[42] *SWS v. COMELEC*, *supra* note 39.

[43] *Chavez v. Gonzales*, G.R. No. 168338, 15 February 2008, 545 SCRA 441, 493.

[44] GUNTHER, *et al.*, *supra* note 44.

[45] *Id.* at 957.

Ostensibly, the act of an LGU requiring a business of proof that the property from which it operates has been zoned for commercial use can be argued, when applied to a radio station, as content-neutral since such a regulation would presumably apply to any other radio station or business enterprise within the LGU.

However, the circumstances of this case dictate that we view the action of the respondents as a content-based restraint. In their petition for *mandamus* filed with the RTC, petitioners make the following relevant allegations:

6.1. With specific reference to DZNC, Newsounds, to this date, is engaged in discussing public issues that include, among others, the conduct of public officials that are detrimental to the constituents of Isabela, including Cauayan City. In view of its wide coverage, DZNC has been a primary medium for the exercise of the people of Isabela of their constitutional right to free speech. Corollarily, DZNC has always been at the forefront of the struggle to maintain and uphold freedom of the press, and the people's corollary right to freedom of speech, expression and petition the government for redress of grievances.

6.2. Newsound's only rival AM station in Cauayan and the rest of Isabela, DWDY, is owned and operated by the family of respondent Dy.[46]

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35. Respondents closure of petitioners' radio stations is clearly tainted with ill motives.

35.1. It must be pointed out that in the 2001 elections, Bombo Radyo was aggressive in exposing the widespread election irregularities in Isabela that appear to have favored respondent Dy and other members of the Dy political dynasty. It is just too coincidental that it was only after the 2001 elections (*i.e.*, 2002) that the Mayor's Office started questioning petitioners' applications for renewal of their mayor's permits.

35.2. In an article found in the Philippine Daily inquirer dated 20 February 2004, respondent Dy was quoted as saying that he will "disenfranchise the radio station." Such statement

[46] *Rollo* (G.R. No. 179411), p. 170.

> manifests and confirms that respondents' denial of petitioners' renewal applications on the ground that the Property is commercial is merely a pretext and that their real agenda is to remove petitioners from Cauayan City and suppress the latter's voice. This is a blatant violation of the petitioners' constitutional right to press freedom.
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> A copy of the newspaper article is attached hereto as Annex "JJ".
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> 35.3. The timing of respondents' closure of petitioners' radio stations is also very telling. The closure comes at a most critical time when the people are set to exercise their right of suffrage. Such timing emphasizes the ill motives of respondents.[47]

In their Answer with Comment[48] to the petition for *mandamus*, respondents admitted that petitioners had made such exposes during the 2001 elections, though they denied the nature and truthfulness of such reports.[49] They conceded that the Philippine Daily Inquirer story reported that "Dy said he planned to file disenfranchisement proceedings against [DZNC]-AM."[50] While respondents assert that there are other AM radio stations in Isabela, they do not specifically refute that station DWDY was owned by the Dy family, or that DZNC and DWDY are the two only stations that operate out of Cauayan.[51]

Prior to 2002, petitioners had not been frustrated in securing the various local government requirements for the operation of their stations. It was only in the beginning of 2002, after the election of respondent Ceasar Dy as mayor of Cauayan, that the local government started to impose these new requirements substantiating the conversion of CDC's property for commercial use. Petitioners admit that during the 2001 elections, Bombo Radyo "was aggressive in exposing the widespread election irregularities in Isabela that appear to have favored Respondent

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[47] *Id.* at 178-179.

[48] *Id.* at 204-239.

[49] *Id.* at 207.

[50] *Id.*

[51] *Id.* at 205.

Dy and other members of the Dy political dynasty."[52] Respondents' efforts to close petitioners' radio station clearly intensified immediately before the May 2004 elections, where a former employee of DZNC Bombo Radyo, Grace Padaca, was mounting a credible and ultimately successful challenge against the incumbent Isabela governor, who happened to be the brother of respondent Dy. It also bears notice that the requirements required of petitioners by the Cauayan City government are frankly beyond the pale and not conventionally adopted by local governments throughout the Philippines.

All those circumstances lead us to believe that the steps employed by respondents to ultimately shut down petitioner's radio station were ultimately content-based. The United States Supreme Court generally treats restriction of the expression of a particular point of view as the paradigm violation of the First Amendment.[53] The facts confronting us now could have easily been drawn up by a constitutional law professor eager to provide a plain example on how free speech may be violated.

The Court is of the position that the actions of the respondents warrant heightened or strict scrutiny from the Court, the test which we have deemed appropriate in assessing content-based restrictions on free speech, as well as for laws dealing with freedom of the mind or restricting the political process, of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection.[54] The immediate implication of the application of the "strict scrutiny" test is that the burden falls upon respondents as agents of government to prove that their actions do not infringe upon petitioners' constitutional rights. As content regulation cannot be done in the absence of any compelling reason,[55] the burden lies with the government to establish such compelling reason to infringe the right to free expression.

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[52] *Id.* at 26.

[53] GUNTHER, *et al.*, *supra* note 44.

[54] See *White Light v. Court of Appeals*, G.R. No. 122846, 20 January 2009.

[55] *Osmeña v. COMELEC*, 351 Phil. 692, 711 (1998).

III.

We first turn to whether the implicit denial of the application for preliminary mandatory injunction by the RTC was in fact attended with grave abuse of discretion. This is the main issue raised in G.R. No. 170270.

To recall, the RTC on 20 April 2004 issued an order denying the prayer for the issuance of a writ of preliminary injunction, claiming that "[t]here is insufficiency of allegation…[t]here is no certainty that after the election period, the respondents will interfere with the operation of the radio stations x x x which are now operating by virtue of the order of the COMELEC."[56] Petitioners filed a motion for reconsideration, which the RTC denied on 13 May 2004. The refusal of the RTC to grant provisional relief gave way to the closure of petitioners' radio stations on 10 June 2004, leading for them to file a motion for the issuance of a writ of preliminary mandatory injunction on 25 June 2004. This motion had not yet been acted upon when on 14 September 2004, the RTC promulgated its decision denying the petition for *mandamus*.

Among the arguments raised by petitioners in their motion for reconsideration before the RTC was against the implied denial of their motion for the issuance of a writ of preliminary mandatory injunction, claiming in particular that such implicit denial violated petitioners' right to due process of law since no hearing was conducted thereupon. However, when the RTC denied the motion for reconsideration in its 1 December 2004 Order, it noted that its implied denial of the motion for a writ of preliminary mandatory injunction was not a ground for reconsideration of its decision.

Petitioners maintain that the RTC acted with grave abuse of discretion when it impliedly denied their motion for the issuance of a writ of preliminary mandatory injunction without any hearing. The Court of Appeals pointed out that under Section 5 of Rule 58 of the 1997 Rules of Civil Procedure, it is the granting of a

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[56] *Rollo* (G.R. No. 179411), p. 191.

writ of preliminary injunction that mandatorily requires a hearing. The interpretation of the appellate court is supported by the language of the rule itself:

> Sec. 5. Preliminary injunction not granted without notice; exception. — No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue *ex parte* a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. x x x

Section 5 of Rule 58 prescribes a mandatory hearing and prior notice to the party or person sought to be enjoined **if preliminary injunction should be granted**. It imposes no similar requirement if such provisional relief were to be denied. We in fact agree with the Court of Appeals that "if on the face of the pleadings, the applicant for preliminary injunction is not entitled thereto, courts may outrightly deny the motion without conducting a hearing for the purpose."[57] The Court is disinclined to impose a mandatory hearing requirement on applications for injunction even if on its face, injunctive relief is palpably without merit or impossible to grant. Otherwise, our trial courts will be forced to hear out the sort of litigation-happy attention-deprived miscreants who abuse the judicial processes by filing complaints against real or imaginary persons based on trivial or inexistent slights.

We do not wish though to dwell on this point, as there is an even more fundamental point to consider. Even as we decline to agree to a general that the denial of an application for injunction requires a prior hearing, we believe in this case that petitioners deserved not only a hearing on their motion, but the very writ itself.

As earlier stated, the burden of presuming valid the actions of respondents sought, fraught as they were with alleged violations

[57] *Rollo* (G.R. No. 170270), p. 120.

on petitioners' constitutional right to expression, fell on respondents themselves. This was true from the very moment the petition for *mandamus* was filed. It was evident from the petition that the threat against petitioners was not wildly imagined, or speculative in any way. **Attached to the petition itself was the Closure Order dated 13 February 2004 issued by respondents against petitioners.**[58] **There was no better evidence to substantiate the claim that petitioners faced the live threat of their closure**. Moreover, respondents in their Answer admitted to issuing the Closure Order.[59]

At the moment the petition was filed, there was no basis for the RTC to assume that there was no actual threat hovering over petitioners for the closure of their radio stations. The trial court should have been cognizant of the constitutional implications of the case, and appreciated that the burden now fell on respondents to defend the constitutionality of their actions. From that mindset, the trial court could not have properly denied provisional relief without any hearing since absent any extenuating defense offered by the respondents, their actions remained presumptively invalid.

Our conclusions hold true not only with respect to the implied denial of the motion for preliminary injunction, but also with the initial denial without hearing on 20 April 2004 of the prayer for a writ of preliminary injunction and temporary restraining order. Admittedly, such initial denial is not the object of these petitions, yet we can observe that such action of the RTC was attended with grave abuse of discretion, the trial court betraying ignorance of the constitutional implications of the petition. With respect to the subsequent "implied denial" of the writ of preliminary mandatory injunction, the grave abuse of discretion on the part of the trial court is even more glaring. **At that point, petitioners' radio stations were not merely under threat of closure, they were already actually closed. Petitioners' constitutional rights were not merely under threat of infringement, they were already definitely infringed.**

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[58] *Rollo* (G.R. No. 179411), p. 210.

[59] *Id.* at 247.

The application of the strict scrutiny analysis to petitioners' claims for provisional relief warrants the inevitable conclusion that the trial court cannot deny provisional relief to the party alleging a *prima facie* case alleging government infringement on the right to free expression without hearing from the infringer the cause why its actions should be sustained provisionally. Such acts of infringement are presumptively unconstitutional, thus the trial court cannot deny provisional relief outright since to do so would lead to the sustention of a presumptively unconstitutional act. It would be necessary for the infringer to appear in court and somehow rebut against the presumption of unconstitutionality for the trial court to deny the injunctive relief sought for in cases where there is a *prima facie* case establishing the infringement of the right to free expression.

Those above-stated guidelines, which pertain most particularly to the *ex parte* denial of provisional relief in free expression cases, stand independently of the established requisites for a party to be entitled to such provisional reliefs. With respect to writs of preliminary injunction, the requisite grounds are spelled out in Section 3 of Rule 58 of the Rules of Court.

It may be pointed out that the application for preliminary mandatory injunction after petitioners' radio stations had been closed was mooted by the RTC decision denying the petition for *mandamus*. Ideally, the RTC should have acted on the motion asking for the issuance of the writ before rendering its decision. Given the circumstances, petitioners were entitled to immediate relief after they filed their motion on 25 June 2004, some two and a half months before the RTC decision was promulgated on 14 September 2004. It is not immediately clear why the motion, which had been set for hearing on 2 July 2004, had not been heard by the RTC, so we have no basis for imputing bad faith on the part of the trial court in purposely delaying the hearing to render it moot with the forthcoming rendition of the decision. Nonetheless, given the gravity of the constitutional question involved, and the fact that the radio stations had already been actually closed, a prudent judge would have strived to hear the motion and act on it accordingly independent of the ultimate decision.

Since the prayer for the issuance of a writ of mandatory injunction in this case was impliedly denied through the decision denying the main action, we have no choice but to presume that the prayer for injunction was denied on the same bases as the denial of the petition for *mandamus* itself. The time has come for us to review such denial, the main issue raised in G.R. No. 179411.

IV.

The perspective from which the parties present the matter for resolution in G.R. No. 179411 is whether the property of CDC had been duly converted or classified for commercial use, with petitioners arguing that it was while respondents claiming that the property remains agricultural in character. This perspective, to our mind, is highly myopic and implicitly assumes that the requirements imposed on petitioners by the Cauayan City government are in fact legitimate.

The LGC authorizes local legislative bodies to enact ordinances authorizing the issuance of permits or licenses upon such conditions and for such purposes intended to promote the general welfare of the inhabitants of the LGU.[60] A municipal or city mayor is likewise authorized under the LGC to "issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance."[61] Generally, LGUs have exercised its authority to require permits or licenses from business enterprises operating within its territorial jurisdiction.

A municipal license is essentially a governmental restriction upon private rights and is valid only if based upon an exercise by the municipality of its police or taxing powers.[62] The LGC

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[60] LOCAL GOVERNMENT CODE (1991), Secs. 447(3) & 458(3).

[61] See note 43.

[62] ANGELES, *RESTATEMENT OF THE LAW ON LOCAL GOVERNMENTS* (2005 ed.), at 124; citing 9 MCQUILLIN, *THE LAW OF MUNICIPAL CORPORATIONS*, § 26.01.10 (3rd ed.); *In re Wan Yin*, 22 F 701; *Father Basil's Lodge, Inc. v. Chicago*, 393 Ill 246, 65 NE2d 805.

subjects the power of *sanggunians* to enact ordinances requiring licenses or permits within the parameters of Book II of the Code, concerning "Local Taxation and Fiscal Matters." It also necessarily follows that the exercise of this power should also be consistent with the Constitution as well as the other laws of the land.

Nothing in national law exempts media entities that also operate as businesses such as newspapers and broadcast stations such as petitioners from being required to obtain permits or licenses from local governments in the same manner as other businesses are expected to do so. While this may lead to some concern that requiring media entities to secure licenses or permits from local government units infringes on the constitutional right to a free press, we see no concern so long as such requirement has been duly ordained through local legislation and content-neutral in character, *i.e.*, applicable to all other similarly situated businesses.

Indeed, there are safeguards within the LGC against the arbitrary or unwarranted exercise of the authority to issue licenses and permits. As earlier noted, the power of *sanggunians* to enact ordinances authorizing the issuance of permits or licenses is subject to the provisions of Book Two of the LGC. The power of the mayor to issue license and permits and suspend or revoke the same must be exercised pursuant to law or ordinance.[63]

In the case of *Cauayan City*, the authority to require a mayor's permit was enacted through Ordinance No. 92-004, enacted in 1993 when Cauayan was still a municipality. We quote therefrom:

> Sec. 3A.01. *Imposition of Fee*. — There shall be imposed and collected an annual fee at the rates provided hereunder for the issuance of Mayor's Permit to every person that shall conduct business, trade or activity within the Municipality of Cauayan.
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> The permit fee is payable for every separate or distinct establishment or place where the business trade or activity is conducted. One line of business or activity does not become exempt

[63] See note 43.

by being conducted with some other business or activity for which the permit fee has been paid.

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Sec. 3A.03. *Application for Mayor's Permit False Statements.* — A written application for a permit to operate a business shall be filed with the Office of the Mayor in three copies. The application form shall set forth the name and address of the applicant, the description or style of business, the place where the business shall be conducted and such other pertinent information or data as may be required.

Upon submission of the application, it shall be the duty of the proper authorities to verify if the other Municipal requirements regarding the operation of the business or activity are complied with. The permit to operate shall be issued only upon such compliance and after the payment of the corresponding taxes and fees as required by this revenue code and other municipal tax ordinances.

Any false statement deliberately made by the applicant shall constitute sufficient ground for denying or revoking the permit issued by the Mayor, and the applicant or licensee may further be prosecuted in accordance with the penalties provided in this article.

A Mayor's Permit shall be refused to any person:

(1) Whose business establishment or undertaking does not conform with zoning regulations and safety, health and other requirements of the Municipality; (2) that has an unsettled tax obligations, debt or other liability to the Municipal Government; and (3) that is disqualified under any provision of law or ordinance to establish, or operate the business for which a permit is being applied.[64]

Petitioners do not challenge the validity of Ordinance No. 92-004. On its face, it operates as a content-neutral regulation that does not impose any special impediment to the exercise of the constitutional right to free expression. Still, it can be seen how under the veil of Ordinance No. 92-004 or any other similarly oriented ordinance, a local government unit such as Cauayan City may attempt to infringe on such constitutional rights.

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[64] *Rollo* (G.R. No. 179411), pp. 300-301.

A local government can quite easily cite any of its regulatory ordinances to impose retaliatory measures against persons who run afoul it, such as a business owned by an opponent of the government, or a crusading newspaper or radio station. While the ill-motives of a local government do not exempt the injured regulatory subject from complying with the municipal laws, such laws themselves do not insulate those ill-motives if they are attended with infringements of constitutional rights, such as due process, equal protection and the right to free expression. Our system of laws especially frown upon violations of the guarantee to free speech, expression and a free press, vital as these are to our democratic regime.

Nothing in Ordinance No. 92-004 requires, as respondents did, that an applicant for a mayor's permit submit "either an approved land conversion papers from the DAR showing that its property was converted from prime agricultural land to commercial land, or an approved resolution from the *Sangguniang Bayan* or *Sangguniang Panglungsod* authorizing the re-classification of the property from agricultural to commercial land."[65] The aforecited provision which details the procedure for applying for a mayor's permit does not require any accompanying documents to the application, much less those sought from petitioners by respondents. Moreover, Ordinance No. 92-004 does not impose on the applicant any burden to establish that the property from where the business was to operate had been duly classified as commercial in nature.

According to respondents, it was only in 2002 that "the more diligent Respondent Bagnos Maximo" discovered "the mistake committed by his predecessor in the issuance of the Petitioners' Zoning Certifications from 1996 to 2001."[66] Assuming that were true, it would perhaps have given cause for the local government in requiring the business so affected to submit additional requirements not required of other applicants related to the classification of its property. Still, there are multitude of

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[65] *Supra* note 16.

[66] *Rollo* (G.R. No. 179411), p. 771.

circumstances that belie the claim that the previous certifications issued by the OMPDC as to the commercial character of CDC's property was incorrect.

On 5 July 1996, the HLURB issued a Zoning Decision that classified the property as Commercial.[67] The HLURB is vested with authority to "review, evaluate and approve or disapprove . . . the zoning component of . . . subdivisions, condominiums or estate development projects including industrial estates, of both the public and private sectors."[68] In exercising such power, the HLURB is required to use Development Plans and Zoning Ordinances of local governments herein.[69] There is no reason to doubt that when the HLURB acknowledged in 1996 that the property in question was commercial, it had consulted the development plans and zoning ordinances of Cauayan.

Assuming that respondents are correct that the property was belatedly revealed as non-commercial, it could only mean that even the HLURB, and not just the local government of Cauayan erred when in 1996 it classified the property as commercial. Or, that between 1996 to 2002, the property somehow was reclassified from commercial to agricultural. There is neither evidence nor suggestion from respondents that the latter circumstance obtained.

Petitioners are also armed with six certifications issued by the OMPDC for the consecutive years 1996 to 2001, all of which certify that the property is "classified as commercial area . . . in conformity with the Land Use Plan of this municipality and does not in any way violate the existing Zoning Ordinance of Cauayan, Isabela."[70] In addition, from 1997 to 2004, petitioners paid real property taxes on the property based on the classification of the property as commercial, without any objections raised

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[67] *Rollo*, p. 91.

[68] See Executive Order No. 648 (1991), Article IV, Sec. 5(b).

[69] *Id.*

[70] *Rollo* (G.R. No. 179411), pp. 92-97.

by respondents.[71] These facts again tend to confirm that contrary to respondents' assertions, the property has long been classified as commercial.

Petitioners persuasively argue that this consistent recognition by the local government of Cauayan of the commercial character of the property constitutes estoppel against respondents from denying that fact before the courts. The lower courts had ruled that "the government of Cauayan City is not bound by estoppel," but petitioners point out our holding in *Republic v. Sandiganbayan*[72] where it was clarified that "this concept is understood to refer to acts and mistakes of its officials especially those which are irregular."[73] Indeed, despite the general rule that the State cannot be put in estoppel by the mistake or errors of its officials or agents, we have also recognized, thus:

Estoppels against the public are little favored. They should not be invoked except in a rare and unusual circumstances, and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. Nevertheless, the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations . . ., the doctrine of equitable estoppel may be invoked against public authorities as well as against private individuals.[74]

Thus, when there is no convincing evidence to prove irregularity or negligence on the part of the government official whose acts are being disowned other than the bare assertion on the part of the State, we have declined to apply State immunity from

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[71] *Id.* at 103-107, 126-127, 140-141.

[72] G.R. No. 108292, 10 September 1993, 226 SCRA 314.

[73] *Id.* at 325-326. See also *Republic v. Court of Appeals*, 361 Phil. 319 (1999); *PCGG v. Sandiganbayan*, 353 Phil. 80 (1998); H. de Leon, *PHILIPPINE CONSTITUTIONAL LAW*, at 781.

[74] *Republic v. Court of Appeals*, *supra* note 76 at 329; citing 31 CJS 675-676.

estoppel.[75] Herein, there is absolutely no evidence other than the bare assertions of the respondents that the Cauayan City government had previously erred when it certified that the property had been zoned for commercial use. One would assume that if respondents were correct, they would have adduced the factual or legal basis for their contention, such as the local government's land use plan or zoning ordinance that would indicate that the property was not commercial. Respondents did not do so, and the absence of any evidence other than bare assertions that the 1996 to 2001 certifications were incorrect lead to the ineluctable conclusion that respondents are estopped from asserting that the previous recognition of the property as commercial was wrong.

The RTC nonetheless asserted that the previous certifications, issued by Deputy Zoning Administrator Romeo N. Perez (Perez), were incorrect as "he had no authority to make the conversion or reclassification of the land from agricultural to commercial."[76] Yet contrary to the premise of the RTC, the certifications issued by Perez did no such thing. Nowhere in the certifications did it state that Perez was exercising the power to reclassify the land from agricultural to commercial. What Perez attested to in those documents was that the property "is classified as Commercial area," "in conformity with the Land Use Plan of this municipality and does not in any way violate the existing Zoning Ordinance of Cauayan, Isabela." What these certifications confirm is that according to the Land Use Plan and existing zoning ordinances of Cauayan, the property in question is commercial.

Compounding its error, the RTC also stated that following Section 65[77] of Rep. Act No. 6657, or the Comprehensive Agrarian

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[75] *PCGG v. Sandiganbayan*, *supra* note 76.

[76] *Rollo* (G.R. No. 179411), p. 302.

[77] "SECTION 65. *Conversion of Lands*. — After the lapse of five (5) years from its award, when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR, upon application of the beneficiary or the landowner, with

Reform Law, "only the DAR, upon proper application . . . can authorize the reclassification or conversion of the use of the land from agricultural to residential, commercial or industrial." The citation is misleading. Section 4 of the same law provides for the scope of the agrarian reform program under the CARL as covering "all public and private agricultural lands, as provided in Proclamation No. 131 and Executive Order No. 229, including other lands of the public domain suitable for agriculture."[78] Section 3(c) defines agricultural lands as "land devoted to agricultural activity as defined in this Act and not classified as mineral, forest, residential, commercial or industrial land."[79] Obviously, if the property had already been classified as commercial land at the time of the enactment of the CARL, it does not fall within the class of agricultural lands which may be subject of conversion under Section 65 of that law. Section 65, as relied upon by the trial court, would have been of relevance only if it had been demonstrated by respondents that the property was still classified as agricultural when the CARL was enacted.

It is worth emphasizing that because the acts complained of the respondents led to the closure of petitioners' radio stations, at the height of election season no less, respondents actions warrant strict scrutiny from the courts, and there can be no presumption that their acts are constitutional or valid. In discharging the burden of establishing the validity of their actions, it is expected that respondents, as a condition *sine qua non*, present the legal basis for their claim that the property was not zoned commercially — the proclaimed reason for the closure of the radio stations. The lower courts should have known better than to have swallowed respondents' unsubstantiated assertion hook, line and sinker.

We can also point out that aside from the evidence we have cited, petitioners' contention that the property had been duly

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due notice to the affected parties, and subject to existing laws, may authorize the reclassification or conversion of the land and its disposition: provided, that the beneficiary shall have fully paid his obligation."

[78] Republic Act No. 6657 (1988), Sec. 4.

[79] Republic Act No. 6657 (1988), Sec. 3(c).

classified for commercial use finds corroboration from the Order dated 14 March 2002 issued by DAR Region II Director Aydinan in Adm. Case No. A-0200A-07B-002. The Order stated, *viz*:

> Official records examined by this Office indicate continued use of subject land for purposes other than agricultural since 1986. Back when Cauayan was still a municipality, the Office of the Planning and Development Coordinator documented subject land under a commercial classification. The Zoning Administrator deputized by the Housing and Land Use Regulatory Board certified in 1998 that subject land's attribution to the Commercial Zone "is in conformity with the Land Use Plan of this municipality and does not in any way violate any existing Zoning Ordinance of Cauayan, Isabela" adding the stipulation that a 15 meter setback from the centerline of the National Road has to be observed.
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> If the area in which subject land is found was already classified non-agricultural even before urban growth saw Cauayan became a city in 2001, assuming its reversion to the agricultural zone now taxes logic. In any case, such a dubious assumption can find no support in any current land use plan for Cauayan approved by the National Economic Development Authority.[80]

Petitioners' citation of this Order has been viciously attacked by respondents, with approval from the lower courts. Yet their challenges are quite off-base, and ultimately irrelevant.

The Order has been characterized by respondents as a forgery, based on a certification issued by the Head of the RCLUPPI Secretariat that his office "has no official record nor case docketed of the petition filed by CBS Development Corporation, represented by Charmy Sabigan and the order issued bearing Docket No. ADM. Case No. A-02200A-07B-002 of the subject case, did not emanate from RCLUPPI which has its own docketing system to applications for conversion/exemption under DOJ Opinion No. 44, Series of 1990."[81] Respondents thus hint at a scenario where petitioners scrambled to create the Order out of nowhere in order to comply with the sought-after requirements. However,

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[80] *Id.* at 113-114.

[81] See CA *rollo* (G.R. No. 170270), p. 234.

an examination of the Order reveals an explanation that attests to the veracity of the Order without denigrating from the truthfulness of the RCLUPPI certification.

The Order notes that the petition had been filed by CDC with the DAR Region II "to, in effect, officially remove from the agrarian reform sub-zone, in particular, and the broad agricultural, in general, Petitioner's land holding embraced by Transfer Certificate of Title No. T-254786 which is located in [B]arangay Minante II of Cauayan City x x x."[82] It goes on to state:

> Herein petition can go through the normal procedure and, after the submission of certain documentary supports that have to be gathered yet from various agencies, should be granted as a matter of course. However, a new dimension has been introduced when the unformalized conversion of the use of subject land from an agricultural to a non-agricultural mode has provided an excuse to some official quarters to disallow existing commercial operation, nay, the broadcast activities of Petitioner and, thus, perhaps threaten an essential freedom in our democratic setting, the liberty of mass media organizations to dispense legitimate information to the public unhampered by any extraneous obstacles. Hence, overarching public interest has made an official declaration of subject landholding's removal from the agricultural zone most urgent and, thus immediate action on the case imperative.
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> To the extent that legitimate social interest are unnecessarily prejudiced otherwise, procedural rules laid down by Government must yield to the living reason and to common sense in the concrete world as long as the underlying principles of effective social-justice administration and good governance are not unduly sacrificed. Thus, it is incumbent upon the Department of Agrarian Reform, or DAR for brevity, to take into account in decision-making with respect to the case at hand more basic principles in order to uphold the cause of conscientious and timely public service.
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> Needless to say, this Office, given the latitude of discretion inherent to it, can simultaneously address the Petition and the procedural concerns collateral to it when subordinate offices tend

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[82] *Rollo* (G.R. No. 179411), p. 112.

to treat such concerns as factors complicating the essential question or questions and view the Petition as one that it is not amenable to ready problem-solving and immediate decision-making. To forestall a cycle of helpless inaction or indecisive actions on the part of the subordinate offices as customarily happens in cases of this nature, this Office shall proceed to treat the petition at hand as a matter of original jurisdiction in line with its order of Assumption of Direct Jurisdiction of 03 December 2001, a prior action taken, in general, by this Office over cases of Land-Tenure Improvement, Failure, Problematic Coverage, Land-Owners' and Special Concerns, Other Potential Flash Points of Agrarian Conflict, and Long-Standing Problems Calling for Discretionary Decision Making.[83]

In so many words, DAR Region II Director Aydinan manifested that he was assuming direct jurisdiction over the petition, to the exclusion of subordinate offices such as that which issued the certification at the behest of the respondents, the RCLUPPI of the DAR Region II Office. Thus, the RCLUPPI could have validly attested that "the subject case did not emanate from the RCLUPPI which has its own docketing system to applications for conversion/exemption under DOJ Opinion No. 44, Series of 1990." One could quibble over whether Director Aydinan had authority to assume direct jurisdiction over CDC's petition to the exclusion of the RCLUPPI, but it would not detract from the apparent fact that the Director of the DAR Region II Office did issue the challenged Order. Assuming that the Order was issued without or in excess of jurisdiction, it does not mean that the Order was forged or spurious, it would mean that the Order is void.

How necessary is it for us to delve into the validity or efficacy of the Aydinan Order? Certainly, any conclusions we draw from the said Order are ultimately irrelevant to the resolution of these petitions. The evidence is compelling enough that the property had already been duly classified for commercial use long before the Aydinan Order was issued. Respondents, who had the burden of proving that they were warranted in ordering the closure of the radio stations, failed to present any evidence to dispute the

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[83] *Id.* at 112-113.

long-standing commercial character of the property. The inevitable conclusion is that respondents very well knew that the property, was commercial in character, yet still proceeded without valid reason and on false pretenses, to refuse to issue the mayor's permit and subsequently close the radio stations. There is circumstantial evidence that these actions were animated by naked political motive, by plain dislike by the Cauayan City powers-that-be of the content of the broadcast emanating in particular from DZNC, which had ties to political opponents of the respondents. Respondents were further estopped from disclaiming the previous consistent recognition by the Cauayan City government that the property was commercially zoned unless they had evidence, which they had none, that the local officials who issued such certifications acted irregularly in doing so.

It is thus evident that respondents had no valid cause at all to even require petitioners to secure "approved land conversion papers from the DAR showing that the property was converted from prime agricultural land to commercial land." That requirement, assuming that it can be demanded by a local government in the context of approving mayor's permits, should only obtain upon clear proof that the property from where the business would operate was classified as agricultural under the LGU's land use plan or zoning ordinances and other relevant laws. No evidence to that effect was presented by the respondents either to the petitioners, or to the courts.

V.

Having established that respondents had violated petitioners' legal and constitutional rights, let us now turn to the appropriate reliefs that should be granted.

At the time petitioners filed their special civil action for *mandamus* on 15 April 2004, their radio stations remained in operation despite an earlier attempt by respondents to close the same, by virtue of an order rendered by the COMELEC. The *mandamus* action sought to compel respondents to immediately issue petitioners' zoning clearances and mayor's permit for 2004. During the pendency of the action for *mandamus*, respondents finally succeeded in closing the radio stations, and it was possible

at that stage for petitioners to have likewise sought the writs of prohibition and/or *certiorari*. Petitioners instead opted to seek for a writ or preliminary mandatory injunction from the trial court, a viable recourse albeit one that remains ancillary to the main action for *mandamus*.

We had previously acknowledged that petitioners are entitled to a writ of preliminary mandatory injunction that would have prevented the closure of the radio stations. In addition, we hold that the writ of *mandamus* lies. *Mandamus* lies as the proper relief whenever a public officer unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law.[84] For the year 2004, petitioners had duly complied with the requirements for the issuance of the same mayor's permit they had obtained without issue in years prior. There was no basis for respondents to have withheld the zoning clearances, and consequently the mayor's permit, thereby depriving petitioners of the right to broadcast as certified by the Constitution and their particular legislative franchise.

We turn to the issue of damages. Petitioners had sought to recover from respondents ₱8 Million in temperate damages, ₱1 Million in exemplary damages, and ₱1 Million in attorney's fees. Given respondents' clear violation of petitioners' constitutional guarantee of free expression, the right to damages from respondents is squarely assured by Article 32 (2) of the Civil Code, which provides:

> Art. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:
>
> x x x x x x x x x
>
> (2) Freedom of speech;

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[84] RULES OF CIVIL PROCEDURE (1997), Rule 65, Sec. 3.

We noted in *Lim v. Ponce de Leon* that "[p]ublic officials in the past have abused their powers on the pretext of justifiable motives or good faith in the performance of their duties . . . [and] the object of [Article 32 of the Civil Code] is to put an end to official abuse by plea of the good faith."[85] The application of Article 32 not only serves as a measure of pecuniary recovery to mitigate the injury to constitutional rights, it likewise serves notice to public officers and employees that any violation on their part of any person's guarantees under the Bill of Rights will meet with final reckoning.

The present prayer for temperate damages is premised on the existence of pecuniary injury to petitioner due to the actions of respondents, the amount of which nevertheless being difficult to prove.[86] Temperate damages avail when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty.[87] The existence of pecuniary injury at bar cannot be denied. Petitioners had no way of knowing it when they filed their petition, but the actions of respondents led to the closure of their radio stations from June 2004 until this Court issued a writ of preliminary injunction in January 2006.[88] The lost potential income during that one and a half year of closure can only be presumed as substantial enough. Still, despite that fact, possibly unanticipated when the original amount for claimed temperate damages was calculated, petitioners have maintained before this Court the same amount, ₱8 Million, for temperate damages. The said amount is "reasonable under the circumstances."[89]

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[85] 160 Phil. 991, 1001 (1975). See also *MHP Garments, Inc., v. Court of Appeals*, G.R. No. 86720, 2 September 1994, 236 SCRA 227, 235.

[86] *Rollo* (G.R. No. 179411), p. 183.

[87] See CIVIL CODE, Art. 2224.

[88] According to an article posted on the official website of Bombo Radyo, DZNC accordingly resumed broadcast on 8 February 2006. See http://www.bomboradyo.com/archive/ new/stationprofile /bombocauayan/index.htm (last visited, 6 March 2009).

[89] See CIVIL CODE, Art. 2225.

Exemplary damages can be awarded herein, since temperate damages are available. Public officers who violate the Constitution they are sworn to uphold embody "a poison of wickedness that may not run through the body politic."[90] Respondents, by purposely denying the commercial character of the property in order to deny petitioners' the exercise of their constitutional rights and their business, manifested bad faith in a wanton, fraudulent, oppressive and malevolent manner.[91] The amount of exemplary damages need not be proved where it is shown that plaintiff is entitled to temperate damages,[92] and the sought for amount of ₱1 Million is more than appropriate. We likewise deem the prayer for ₱1 Million in attorney's fees as suitable under the circumstances.

WHEREFORE, the petitions are *GRANTED*. The assailed decisions of the Court of Appeals and the Regional Trial Court of Cauayan City, Branch 20, are hereby *REVERSED* and *SET ASIDE.*

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Velasco, Jr., and *Peralta,*[*] *JJ.,* concur.

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[90] [Exemplary damages] are an antidote so that the poison of wickedness may not run through the body politic." *Octot v. Ybañez, etc., et al.*, 197 Phil. 76, 82 (1982).

[91] "[The award of exemplary damages] would be allowed only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner." *Octot v. Ybañez, supra* note 87, at 85; citing *Ong Yiu v. CA*, 91 SCRA 223.

[92] *Patricio v. Hon. Leviste*, G.R. No. 51832, 26 April 1989.

[*] Additional member as replacement of Justice Arturo D. Brion who is on official leave per Special Order No. 587.

EN BANC

[G.R. No. 173931. April 2, 2009]

ALICIA D. TAGARO, *petitioner, vs.* **ESTER A. GARCIA, Chairperson of the Commission on Higher Education (CHED), represented by the present chair CARLITO G. PUNO,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; WHEN PRESENT. —** [F]orum shopping exists when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or *certiorari*) in another, or when he institutes two or more actions or proceedings grounded on the same cause, on the gamble that one or the other forum would make a favorable disposition. Not only is it contumacious, it is also an act of malpractice that is proscribed and condemned because it tends to trifle with the courts and abuse existing legal processes. Thus, as a measure of punishment, such act invariably merits the summary dismissal of both actions.

2. **ID.; ID.; ID.; THE DISMISSAL OCCASIONED BY BREACH OF THE ANTI-FORUM SHOPPING RULE DOES NOT PERMEATE THE MERITS OF THE CASE. —** Ordinarily, a dismissal on the ground of forum shopping dispenses with the need to address the other issues raised in the case. But this rule is not hard-and-fast, more so since the dismissal occasioned by breach of the anti-forum shopping rule does not permeate the merits of the case. Where such technical dismissal would otherwise lead to an inequitable result, the appropriate recourse is to resolve the issue concerned on its merit or resort to the principles of equity. After all, rules of procedure should not operate at all times in such a rigid way that would override the ends of substantial justice. Specifically, the rule on forum shopping was cobbled to foster and accelerate the orderly administration of justice and, therefore, should not be interpreted literally in every instance.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; UPGRADING AND RECLASSIFICATION OF POSITIONS, DEFINED. —** Section 4(k), Rule III, of CSC MC No. 40, s.1998 defines "upgrading and reclassification" as the change in position title with the corresponding increase in salary grade. x x x Under the first and second paragraphs of the cited provision, positions are reclassified or upgraded by abolishing or collapsing certain existing positions in the agency. It serves a dual purpose, namely, to attain efficiency and to enable the employee to be adaptable in meeting diverse work assignments. Also, the positions affected are those which the agency itself finds and deems to be insignificant—which apparently contemplates the absorption of the functions of the insignificant positions by the reclassified or upgraded position. Indeed, concerning the agency's exercise of discretion and judgment as to which positions are insignificant and so must be abolished or collapsed, hardly any objection may be posed.

4. **ID.; ID.; ID.; COMPENSATION, ALLOWANCES AND BONUSES RECEIVED IN GOOD FAITH AND UNDER THE HONEST BELIEF THAT THE SAME ARE AUTHORIZED NEED NOT BE REFUNDED. —** In *De Jesus v. Commission on Audit* — where the members of the board of directors of the Catbalogan Water District, petitioners therein, received additional allowances and bonuses, the payment of which turned out later on however to be without legal basis — the Court, principally relying on the fact that the said petitioners accepted the benefits in good faith and under the honest belief that the same was authorized, did not order the refund of the additional compensation they had already received. So, too, in *Civil Liberties Union v. Executive Secretary* and *Blaquera v. Hon. Alcala*, where the Court held that officers who in good faith have discharged the duties pertaining to their office are legally entitled to the compensation attached to the office for the services they actually rendered. In fine, although the present petition must inevitably be dismissed on a technicality that serves as penalty for the pernicious practice of forum shopping, the Court nevertheless cannot countenance the refund of the compensation differential corresponding to petitioner's tenure as HEDF head with the upgraded rank of Director III, since she had actually rendered services in the office with the elevated grade for that period.

APPEARANCES OF COUNSEL

Elmar Jay Martin I. Dejaresco for petitioner.

D E C I S I O N

TINGA, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeks the reversal of the 30 May 2006 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 92487, as well as the 30 July 2006 Resolution[3] which denied reconsideration. The assailed decision reversed Civil Service Commission Resolution Nos. 050801 and 051641 which respectively declared illegal the removal of petitioner Alicia D. Tagaro from the office of Director III at the Higher Education Development Fund Staff, and denied reconsideration.

Undisputed are the following operative facts.

Petitioner Alicia D. Tagaro was appointed on 16 December 1996 as Director II of the Higher Education Development Fund (HEDF) at the Commission on Higher Education (CHED).[4] The appointment[5] was issued by then President Fidel V. Ramos supposedly under the authority of Section 11[6] of Republic Act (R.A.) No. 7722.[7] Later on, CHED Chairman Angel Alcala

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[1] *Rollo*, pp. 3-43.

[2] *Id.* at 47-72. The assailed decision was penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao.

[3] *Id.* at 74.

[4] See Letter of Appointment and the Transmittal thereof respectively dated 16 December 1997 and 6 January 1997 and both signed by then Executive Secretary Ruben D. Torres, *id.* at 78 and 79.

[5] *Id.* at 78.

[6] Note from the Publisher: Footnote text not found in the official copy.

[7] ENTITLED, AN ACT CREATING THE COMMISSION ON HIGHER EDUCATION, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES.

(Alcala) requested the Department of Budget and Management (DBM) to create a Director III position that would serve as the head of the HEDF so that the existing Director II would be the assistant head. The DBM opined that considering the financial accountability and responsibility attached to the position of HEDF head, the existing Director II position may be reclassified and upgraded to Director III.[8]

Thus, on 24 March 1999, Alcala formally requested the DBM for the reclassification of director positions in the CHED as well as the issuance of the corresponding special allotment release order and notice of cash allocation.[9] Acting favorably on the request, the DBM issued a Notice of Organization, Staffing and Compensation Action (NOSCA)[10] which provides that the position classifications and compensation modifications embodied therein "were approved effective not earlier than 1 May 1999."[11] The DBM Personal Services Itemization and Plantilla of Personnel[12] as of 1 May 1999 showed that petitioner's position had already been reclassified to Director III. CHED Executive Director Roger P. Perez (Perez), in a 14 December 1999 Memorandum,[13] then told all the directors concerned to submit the following papers as a condition for the issuance of a new presidential appointment: (a) clearances from the Ombudsman, the National Bureau of Investigation and the Civil Service Commission; (b) copies of the latest income tax returns and statements of assets and liabilities; (c) a certification of lack of any pending administrative case; and (d) an updated CSC Form 212.

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[8] Records, pp. 15-16 and 17-18. The suggestion was given to Alcala by both DBM Undersecretary Irene Daleja, in a letter dated 6 June 1997, and by DBM Secretary Salvador Enriquez, Jr. in a letter dated 11 August 1997.

[9] *Id.* at 19.

[10] *Id.* at 21-28.

[11] *Id.* at 21.

[12] *Id.* at 31. The Personal Services Itemization and Plantilla of Personnel for the fiscal year 1999 shows petitioner's position as Director II – Salary Grade 26. See *id.* at 30.

[13] *Id.* at 32.

Petitioner did not comply with the directive. Nevertheless Perez informed her, via a Notice of Salary Adjustment[14] (NOSA) dated 29 December 1999, that her salary effective 20 August 1999 had already been adjusted to that corresponding to Director III with salary grade 27. On 27 January 2000, however, Perez issued another NOSA expressly superseding the previous one and showing that petitioner's salary adjustment would take effect on 1 May 1999.[15]

On 5 May 2000, respondent Ester A. Garcia (Garcia), who replaced Perez as CHED chairman, sought clarification from the Office of the President whether there was a need for new appointments in favor of the incumbents of the reclassified positions in the CHED.[16] The Office of the Executive Secretary responded in the affirmative.[17]

The controversy started when Garcia issued two separate Memoranda both dated 25 July 2000, one directed to petitioner[18] and the other to the chief of the CHED Human Resource Management Division (CHED-HRMD).[19] The memoranda stated that a new appointment to the reclassified position of Director III was indispensable and that since petitioner had not been issued one, she must then refund not only the salary differential she had already received as Director III between 1 May 1999

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[14] *Id.* at 33. The NOSA provided, "The salary adjustment is subject to review and post-audit by the Department of Budget and Management, to readjustment and refund if found not in order and provided further that the incumbent shall qualify himself/herself to the upgraded position on or before 6 July 2000 by acquiring the appropriate CESO eligibility."

[15] *Id.* at 34.

[16] *Id.* at 35. See CHED Memorandum dated 5 May 2000.

[17] *Id.* at 36. The Letter dated 21 June 2000, signed by Atty. Rowena-Turingan Sanchez acting for the Executive Secretary states, "We wish to inform you that under existing Civil Service Rules and Regulations (MC #40, s. 1998), the issuance of a new appointment is necessary for incumbents of reclassified/upgraded positions."

[18] *Rollo*, pp. 103-104.

[19] *Id.* at 105.

and 31 July 2000 but also the corresponding allowances, bonuses and cash gifts. Petitioner was also advised that beginning 1 August 2000, the CHED-HRMD as directed would roll back her salary to that corresponding to THAT OF Director II until her appointment to the reclassified position shall have been duly issued. In the same memorandum addressed to her, petitioner was once again required to submit the required documents and papers listed in the 14 December 1999 Memorandum;[20] yet again, she did not comply.

On 2 October 2000, petitioner, through her counsel, demanded that her salary be upgraded to that of a Director III effective 1 May 1999 without need of a new appointment; otherwise, she would be constrained to take appropriate legal measures on the matter.[21] On 10 October 2000, Garcia, in a letter informed petitioner that it could not be done simply because a new appointment to the reclassified position was needed as opined by both the Civil Service Commission (CSC) and the Office of the President. [22]

Petitioner was thus constrained to institute with the Regional Trial Court (RTC) of Quezon City a special civil action for *certiorari*, prohibition and *mandamus* with damages (the RTC Petition)[23] claiming that the issuance of a new appointment was no longer necessary; that the CHED had the ministerial duty to implement NOSCA No. 0001999-04-044; that the respondents therein committed grave abuse of discretion when they rolled back her salary to that corresponding to Director II; and that

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[20] *Id.* at 103.

[21] *Id.* at 113.

[22] Records, pp. 13-14.

[23] *Rollo,* pp. 143-146. The case, docketed as Civil Case No. 00-42708, was entitled *Alicia D. Tagaro, plaintiff v. Esther Albano Garcia, Chairperson, Commission on Higher Education; Roger Perez, Executive Director, Commission on Higher Education; and Teresita Baterina, AFS Director, Commission on Higher Education, all in their official and personal capacities, respondents.* It was raffled to the Regional Trial Court of Quezon City, Branch 223, presided by Pairing Judge Emilio L. Leachon, Jr..

she was entitled to the salary, bonuses and allowances attached to the office of Director III.[24]

While the RTC petition was pending, however, the CHED passed Resolution No. 008-2001[25] dated 8 January 2001. This resolution considered the position of Director II in the HEDFS as already abolished and non-existing, and it designated Dr. Manuel D. Punzal (Punzal), then oversight commissioner, to serve as officer-in-charge of the HEDFS until a regular Director III shall have been appointed and qualified considering that by refusing to comply with the requirements for the issuance of an appointment petitioner could then be deemed as no longer interested in the office of Director III. On 29 January 2001, petitioner filed an appeal from the said resolution before the CSC *(the first CSC Appeal)*.

On 12 February 2001, the respondents in the RTC Petition filed a motion to dismiss on the following grounds: that the trial court had no jurisdiction over the case; that petitioner failed to exhaust administrative remedies prior to the filing of the petition; that the petition was not the proper remedy under the circumstances; and that by law there was a need for the issuance of a new appointment to the office of Director III in favor of petitioner.[26]

Petitioner, it appears, had continued reporting for work at the HEDF. Her presence therein allegedly had caused serious difficulties and problems prejudicial to the delivery of public service as she was purportedly exhibiting acts disruptive of the operations of the office. Punzal brought such fact to the attention of Garcia who reacted by issuing a Memorandum Order[27] dated 7 June 2001 which contained a directive principally addressed to Punzal to bar petitioner's entry into the CHED main office and premises.

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[24] Records, p. 7.

[25] *Rollo*, pp. 128-129.

[26] Records, pp. 60-70.69.

[27] *Rollo,* pp. 140-142. The Memorandum Order carried the subject, "Barring Mrs. Alicia D. Tagaro, from Performing Unofficial Functions within CHED Offices and Premises which Disrupt CHED's Delivery of Public Service."

This measure prompted petitioner to file an Urgent Motion for Preliminary Injunction with a Prayer for a Temporary Restraining Order[28] before the same trial court where the RTC petition was pending. The said motion essentially questioned the legality of the issuance of the CHED's 7 June 2001 Memorandum Order.

The trial court, however, dismissed the RTC petition in an Order[29] dated 17 July 2001 based on failure to exhaust administrative remedies. Petitioner then filed a petition for review of the trial court's order of dismissal with the Court of Appeals. The petition, docketed as CA-G.R. SP No. 66446,[30] pointed out that it was error for the trial court to dismiss the petition inasmuch as the issue involved was one purely of law and that the same concerned the patently unlawful acts of the respondents therein which thus removed the case from the rule of exhaustion. While this petition was pending before the Court of Appeals, however, petitioner on 22 August 2001, filed before the CSC a pleading she denominated as "Administrative Appeal" (*the second CSC Appeal*) assailing the same 7 June 2001 Memorandum Order and reiterating the same basic argument raised against the said memorandum order in her Urgent Motion for Preliminary Injunction previously filed with the trial court — *i.e.*, that the same did not have any legal basis. In its 27 February 2003 Decision,[31] the Court of Appeals dismissed the appeal on the finding that petitioner had engaged in forum-shopping by principally questioning the validity of the memorandum order, first, before the trial court and then later, before the CSC. On appeal, this Court upheld the Court of Appeals in its 17 November 2004 Decision in G.R. No. 158568.[32]

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[28] Records, pp. 97-100.

[29] *Supra* note 23.

[30] Under RULES OF COURT, Rule 43.

[31] CA *rollo*, pp. 126-135.

[32] *Rollo,* pp. 159-171; The case was entitled, *Alicia D. Tagaro, petitioner v. Ester A. Garcia, Chairperson, Commission on Higher Education;Roger Perez, Executive Director, Teresita Baterina, AFS Director, Commission*

On 15 June 2005, the CSC, in its Resolution No. 05081 ruled favorably on petitioner's second CSC Appeal. It declared the CHED's 7 June 2001 Memorandum Order to be not in order and directed that petitioner be reinstated to the upgraded position of Director III with backsalaries. Garcia's successor, Carlito S. Puno (Puno), moved for reconsideration but the same was denied in Resolution No. 051641 dated 8 November 2005.[33] In the latter resolution, the CSC went on to state that petitioner could no longer be reinstated to Director III in view of her compulsory retirement from office, but that she must nevertheless be awarded back salaries accruing from the time of her illegal termination until the date of her retirement on 27 June 2005.

An appeal[34] from these two resolutions, docketed as CA-G.R. SP No. 92487, was brought by the CHED to the Court of Appeals. Essentially it challenged the jurisdiction of the CSC over the second CSC Appeal, claiming that petitioner was a presidential appointee and that she was not removed from office, but rather, her previous position had been validly abolished by the CHED. It likewise pointed out that petitioner violated the rule against forum shopping.

Finding merit in the appeal, the Court of Appeals on 30 May 2006 rendered the assailed decision. Petitioner's motion for reconsideration was denied;[35] hence, the present recourse to the Court.

In this petition for review under Rule 45,[36] petitioner insists that the 7 June 2001 Memorandum Order was issued without legal basis, and that her summary removal from office undermined her right to due process as well as her right to security of tenure.

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on Higher Education, all in their official capacities, respondents. See also G.R. No. 158568, 17 November 2004, 442 SCRA 562.

[33] CA *rollo*, pp. 61-67.

[34] *Id.* at 10-47.

[35] *Supra* note 3.

[36] *Rollo,* pp. 3-43.

She also contends that the Court of Appeals erred in ruling that she had engaged in forum shopping.[37]

Interestingly, the CHED, represented by the Office of the Solicitor General, has opted not to justify the issuance of the subject memorandum order. Instead, it argues in its Comment[38] that the question as to whether or not the 7 June 2001 Memorandum Order was issued without legal basis is already moot and academic in view of petitioner's compulsory retirement from government service on 27 June 2005. It also maintains that petitioner committed forum shopping not only during the pendency of the RTC petition, but also during the pendency before the Court of Appeals of the appeal from the order of dismissal issued against the same RTC petition.

The petition should be dismissed.

To begin with, in the earlier *Tagaro v. Garcia,*[39] petitioner was declared guilty of committing forum shopping in seeking remedy, first, before the RTC of Quezon City via her petition principally questioning her non-appointment as Director III at the HEDF; and second, before the CSC through the "Administrative Appeal" she filed during and despite the pendency before the Court of Appeals of her appeal from the order dismissing the RTC petition. This Court held in *Tagaro* that because petitioner had presented related causes and issues before the two forums and had sought the same or substantially the same reliefs, the situation would invite the possibility of two forums issuing conflicting decisions upon the pivotal issue of whether petitioner did need the issuance of a new appointment.[40]

Indeed, forum shopping exists when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or *certiorari*) in another, or when he institutes two or more actions or proceedings grounded on the same cause,

[37] *Id.* at 23, 32.

[38] *Id.* at 22, 202-227.

[39] *Supra* note 32.

[40] *Tagaro v. Garcia*, *supra* note 32 at 571-572.

on the gamble that one or the other forum would make a favorable disposition.[41] Not only is it contumacious, it is also an act of malpractice that is proscribed and condemned because it tends to trifle with the courts and abuse existing legal processes.[42] Thus, as a measure of punishment, such act invariably merits the summary dismissal of both actions.[43] If for this basic and consequential consideration alone, the Court should dismiss the present petition as it did before in G.R. No. 158568.

Ordinarily, a dismissal on the ground of forum shopping dispenses with the need to address the other issues raised in the case. But this rule is not hard-and-fast, more so since the dismissal occasioned by breach of the anti-forum shopping rule does not permeate the merits of the case. Where such technical dismissal would otherwise lead to an inequitable result, the appropriate recourse is to resolve the issue concerned on its merit or resort to the principles of equity. After all, rules of procedure should not operate at all times in such a rigid way that would override the ends of substantial justice. Specifically, the rule on forum shopping was cobbled to foster and accelerate the orderly administration of justice and, therefore, should not be interpreted literally in every instance.[44]

Here, the dismissal of the instant petition in tandem with the dismissal of the petition in G.R. No. 158568 may be interpreted as an implied affirmance, and may precipitate the execution, of the CHED's directive requiring petitioner to refund the entire compensation differential she had received during her tenure as HEDF head with the upgraded position of Director III. On the

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[41] *Municipality of Taguig v. Court of Appeals*, G.R. No. 142619, 13 September 2005, 469 SCRA 588, 594-595; *Rudecon Management Corporation v. Singson*, G.R. No. 150798, 31 March 2005, 454 SCRA 612, 632; *Chemphil Export and Import Corp. v. Court of Appeals*, 321 Phil. 619, 655-656 (1995).

[42] *Municipality of Taguig v. Court of Appeals*, G.R. No. 142619, 13 September 2005,469 SCRA 588, 600; *Ortigas and Company Limited Partnership v. Velasco*, G.R. No. 109645, 25 July 1994, 234 SCRA 455, 500.

[43] *Biñan Steel Corporation v. Court of Appeals*, 439 Phil. 689, 706 (2002).

[44] *Young v. John Keng Seng*, 446 Phil. 823, 836-837 (2003), citing *Loyola v. Court of Appeals*, 245 SCRA 477, June 29, 1995.

other hand, we cannot close our eyes to the fact that petitioner had served as such officer and had in fact discharged the duties of the office in good faith and in the honest belief that she needed no new appointment in order that she may discharge her duties as HEDF head. Indeed, the peculiar factual milieu and equities of this case do debar the implementation of the CHED's order against petitioner. It is not just and proper that petitioner be made to refund the compensation differential she had derived.

On the need to explore the merits despite the existence of forum shopping but without deciding the case on the merits, the ruling in *Prubankers Association v. Prudential Bank & Trust Co*.[45] is in point. There, despite the denial of the petition on a finding of forum shopping, the Court nevertheless took great lengths to at least elaborate on the merits of the case in view of the importance and novelty of the issue submitted for resolution of whether wage distortion had resulted from the implementation of the assailed wage order.

Moreover, the full adjudication of the merits of an appeal is, in our jurisdiction, a matter of judicial policy,[46] and cases materially or substantially similar to the one at bar should invite the Court's attention to the merits if only to preclude the inequity that would result from the outright denial of the appeal.

On this score, at least a structural disquisition on the merits of the petition is in order.[47] That will be done in the course of addressing this basic question: Did the CHED have legitimate authority to order the rollback of petitioner's salary to Director II and the refund of the compensation differential she had received as Director III? Let us look into the circumstances under which the office of Director II previously held by petitioner was reclassified and upgraded to Director III.

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[45] 361 Phil. 744 (1999).

[46] *Garcia v. Philippine Airlines, Inc*., G.R. No. 160798, 8 June 2005, 459 SCRA 768, 782; *Novelty Philippines, Inc. v. Court of Appeals*, 458 Phil. 36, 44 (2003).

[47] See *Young v. John Keng Seng*, 446 Phil. 823 (2003); *Garcia v. Philippine Airlines, Inc*., G.R. No. 160798, 8 June 2005, 459 SCRA 768.

Addressing CHED Chairman Alcala's request for the creation of a Director III position at the HEDF, the DBM replied in the letters dated 6 June 1997 and 11 August 1997, respectively signed by Undersecretary Irene G. Daleja and Secretary Salvador M. Enriquez, Jr. The letters clearly evinced the DBM's intent was to merely reclassify — or more properly, to upgrade — the existing position of Director II to Director III in view of the financial responsibility and accountability attached to the office of HEDF head. Then CHED Chairman Alcala initially sought the creation of a Director III position and the retention at the same time of the Director II position that would concurrently serve as the positions of head and assistant head, respectively, of the HEDF. The DBM, however, expressly denied Alcala's request. Instead, it suggested that the office of HEDF bearing the rank of Director II be upgraded to the status of Director III if it could also serve the purpose of giving more significance to the position of HEDF head.[48]

DBM Undersecretary Daleja, underscoring the practical aspects and the possible effects of having two directors at the HEDF, had in fact stated in her letter that the creation of an additional director post would be inconsistent with the organizational framework of the commission and would make the HEDF as the only staff unit in the CHED that would be manned by two directors serving as head and assistant head. This, she went on, might also encourage the other staff units within the commission to request the creation of an additional director position.[49] Reiterating the same view and considering the limited mandate of the HEDF, Secretary Enriquez, Jr. noted that the staff unit could no longer accommodate another director position, as it would mean the HEDF's elevation to the status of a bureau. Be that as it may, what appears, according to the DBM, to be a more solid justification for the denial of Alcala's request was that the creation of additional key positions in the CHED-HEDF was not only prohibited by the governing appropriation law in

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[48] CA *rollo*, pp. 69-72.

[49] *Id.* at 69.

1997, but it was not also authorized under existing laws or presidential directive.[50]

What becomes unmistakably clear is that the reclassification or upgrading of the position of HEDF head in this case took into consideration, not the incumbent, but rather the position itself. This is all the more evident from the fact that when Alcala's request was finally acted upon, the DBM merely elevated the status of the office of HEDF head from Director II to Director III — with due regard to the significance of the said existing position. Necessarily, the favorable action carried with it the grant of the corresponding salary, benefits and allowances attached to the upgraded/reclassified position. In other words, when petitioner's position as head of the HEDF was upgraded by the DBM from Director II to Director III, no new office came into being, and no Director II office was retained, but instead the post to which petitioner was initially appointed had simply been upgraded by one salary grade through reclassification.

As the events developed, the issue that came to the fore was whether the issuance of a new appointment in favor of petitioner was necessary for her to serve as Director III. On this question, however, the parties come from different legal predicates. In arguing for the indispensability of a new appointment, the CHED, on the one hand, relies on the opinion rendered by the Office of the President,[51] which in turn hinged on Section 4(k), Rule III of CSC Memorandum Circular No. 40, series (s.) of 1998[52] (CSC MC No. 40, s.1998), which requires the issuance of new appointments in favor of the incumbents to the reclassified or upgraded positions in the civil service. The CHED thus believes that because petitioner had not been issued a new appointment to the reclassified/upgraded position on account of her deliberate failure to comply with certain preconditions, the upgraded position of Director III pertaining to the HEDF head was vacated and

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[50] *Id.* at 71-72.

[51] See note 17.

[52] THE REVISED OMNIBUS RULES ON APPOINTMENTS AND PERSONNEL ACTIONS.

that, hence, CHED was within its own power to roll back petitioner's status to Director II and to subsequently bar her entry into the office premises following the supposed abolition of the Director II position and the appointment of an officer-in-charge at the HEDF.

On the other hand, petitioner, who has been consistent in her stance that she needed no new appointment to the reclassified/upgraded position, advances that the controlling law is Section 28, Book V, Title I, Subtitle A, Chapter 5 of the Civil Service Law.[53] It materially states that adjustments in salaries which result from increase in pay levels or upgrading of positions not involving changes in qualification requirements shall not require new appointments. She believes that because this provision is the general law on the matter, it thus should prevail over the memorandum circular.

Section 4(k), Rule III, of CSC MC No. 40, s.1998 defines "upgrading and reclassification" as the change in position title with the corresponding increase in salary grade. It provides as follows:

> Section 4. x x x (k) ***Upgrading/Reclassification*** — refers to the change in position title with the corresponding increase in salary grade. Positions are upgraded in order to attain effectively the functions and duties attached to the position and for the employee to perform an all-around adaptability in meeting diverse work assignments. This requires issuance of appointment.
>
> Upgrading/reclassification usually involves abolition and collapsing of positions which the agency finds insignificant to augment the salaries assigned to the upgraded/reclassified position.
>
> The incumbent of a position in a permanent capacity which has been upgraded/reclassified shall be appointed to the upgraded/reclassified position without change in employment status, irrespective of whether or not he meets the qualification requirements therefor. However, he shall no longer be promoted to the next higher position unless he meets the qualification requirements of the position involved.

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[53] The Civil Service Law is found in Book V of the Revised Administrative Code of 1987.

Under the first and second paragraphs of the cited provision, positions are reclassified or upgraded by abolishing or collapsing certain existing positions in the agency. It serves a dual purpose, namely, to attain efficiency and to enable the employee to be adaptable in meeting diverse work assignments. Also, the positions affected are those which the agency itself finds and deems to be insignificant — which apparently contemplates the absorption of the functions of the insignificant positions by the reclassified or upgraded position. Indeed, concerning the agency's exercise of discretion and judgment as to which positions are insignificant and so must be abolished or collapsed, hardly any objection may be posed.

Petitioner believes that the CHED has taken the first and second paragraphs found in Section 4(k) of the memorandum circular (MC) out of context and, in the process, it seems to have overlooked the import of the last paragraph of the same provision, which essentially directs the automatic appointment of the incumbent of a position in a permanent capacity to the reclassified or upgraded position without any change in employment status, whether or not he or she meets the qualifications therefor.

Petitioner capitalizes on the fact that in 1996, she was appointed in a permanent capacity as head of the HEDF with the rank of Director II; and when the position was upgraded to Director III, she continued to hold the same office in the same permanent capacity. Both the DBM and the CSC[54] acknowledged this fact. The DBM Personal Services Itemization and Plantilla of Personnel for the period before and after the staffing modification shows that petitioner was extended a permanent appointment as head of the HEDF initially, with the position title of "Director II"[55] and, later on, "Director III"[56] following the reclassification. Hypothetically applying Section 4(k) of MC No. 40, s. 1998, petitioner then deserved to be automatically issued an appointment to the position of Director III at the HEDF.

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[54] CA *rollo,* p. 56; See CSC Resolution No. 050801.

[55] Records, p. 29.

[56] *Id.* at 31.

Section 28 of the Civil Service Law, the provision relied on by petitioner, states:

Section 28. *Salary Increase or Adjustment.* — Adjustments in salaries as a result of increase in pay levels or **upgrading of positions which do not involve a change in qualification requirements shall not require new appointments**, except that copies of the salary adjustment notices shall be submitted to the Commission for records purposes [**Emphasis has been supplied].**

This provision suggests that the necessity for the issuance of new appointments to reclassified or upgraded civil service positions depends on whether or not the measure entails changes in qualification attributes of the incumbents. In other words, where the reclassification or upgrading of positions carries with it a change in qualification requirements, then a new appointment must be issued in favor of the incumbent; otherwise, no new appointment is required. Following this precept, the reclassification of director positions in the CHED — particularly the position corresponding to the HEDF head held by petitioner — did not entail, much less so require, any additional or better qualifications which petitioner as incumbent must possess; in fact, no suggestion to the contrary was ever intimated in the correspondence that transpired between then CHED Chairman Alcala and the DBM which culminated in the upgrading of the status of the HEDF head position. Neither is there anything in the records from which it can be inferred that the staffing modification approved by the DBM had increased the responsibilities attached to the affected office or required a different set of qualification standards for the appointee.

At this juncture it is not difficult to see that petitioner has impressive — albeit not necessarily valid — reasons to insist on her automatic appointment to the reclassified position: however, the CHED had reasonable cause to negate that claim as well as to subsequently roll petitioner's salary back to that corresponding to a Director II and bar her entry into premises of the CHED main office. Nevertheless, the Court will refrain from going into great lengths to determine which of the two sides must be sustained, inasmuch as the present petition is

fatally flawed for being violative of the established rule against forum shopping.

This notwithstanding, as earlier stated, it is necessary to take a holistic view of the instant case in order to render an equitable judgment. If we must necessarily reiterate, petitioner's refusal to comply with the CHED's preconditions for the issuance of a new appointment is premised on her casual reliance on Section 28 of the Civil Service Law — which clearly negates any suggestion of bad faith on her part. Indeed, no hint to that effect can be detected under the attendant facts and circumstances of the case. She, in all good faith, discharged the duties attached to the office of HEDF head with the rank of Director III and, again in good faith, received compensation therefore, at least until the controversy arose with the CHED's issuance of the memorandums assailed in this petition and that in G.R. No. 158568.

In *De Jesus v. Commission on Audit*[57] — where the members of the board of directors of the Catbalogan Water District, petitioners therein, received additional allowances and bonuses, the payment of which turned out later on however to be without legal basis — the Court, principally relying on the fact that the said petitioners accepted the benefits in good faith and under the honest belief that the same was authorized, did not order the refund of the additional compensation they had already received. So, too, in *Civil Liberties Union v. Executive Secretary*[58] and *Blaquera v. Hon. Alcala*,[59] where the Court held that officers who in good faith have discharged the duties pertaining to their office are legally entitled to the compensation attached to the office for the services they actually rendered.

In fine, although the present petition must inevitably be dismissed on a technicality that serves as penalty for the pernicious practice of forum shopping, the Court nevertheless cannot countenance the refund of the compensation differential corresponding to

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[57] 451 Phil. 812 (2003).

[58] G.R. No. 83896, 22 February 1991, 194 SCRA 317.

[59] 356 Phil. 678 (1998).

petitioner's tenure as HEDF head with the upgraded rank of Director III, since she had actually rendered services in the office with the elevated grade for that period.[60]

WHEREFORE, the petition is *DENIED* subject only to the qualification that petitioner Alicia D. Tagaro is entitled to keep the salary differential she had received during her tenure as Director III at the CHED-HEDF.

SO ORDERED.

Quisumbing, Ynares-Santiago, Carpio, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, and *Peralta, JJ.,* concur.

Puno, C.J., no part due to relationship.

Austria-Martinez, J., on official leave.

EN BANC

[G.R. No. 174105. April 2, 2009]

REGHIS M. ROMERO II, EDMOND Q. SESE, LEOPOLDO T. SANCHEZ, REGHIS M. ROMERO III, MICHAEL L. ROMERO, NATHANIEL L. ROMERO, and JEROME R. CANLAS, *petitioners, vs.* **SENATOR JINGGOY E. ESTRADA and SENATE COMMITTEE ON LABOR, EMPLOYMENT AND HUMAN RESOURCES DEVELOPMENT,** *respondents.*

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[60] See *Blaquera v. Hon. Alcala*, 356 Phil. 678 (1998); *Gaminde v. Commission on Audit*, 401 Phil. 77 (2000).

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; *SUB JUDICE* RULE; RESTRICTS COMMENTS AND DISCLOSURES PERTAINING TO JUDICIAL PROCEEDINGS TO AVOID PREJUDGING THE ISSUE, INFLUENCING THE COURT, OR OBSTRUCTING THE ADMINISTRATION OF JUSTICE. —** The *sub judice* rule restricts comments and disclosures pertaining to judicial proceedings to avoid prejudging the issue, influencing the court, or obstructing the administration of justice. A violation of the *sub judice* rule may render one liable for indirect contempt under Sec. 3(d), Rule 71 of the Rules of Court. The rationale for the rule adverted to is set out in *Nestle Philippines v. Sanchez*: "[I]t is a traditional conviction of civilized society everywhere that courts and juries, in the decision of issues of fact and law should be immune from every extraneous influence; that facts should be decided upon evidence produced in court; and that the determination of such facts should be uninfluenced by bias, prejudice or sympathies."

2. **ID.; ID.; MOOT AND ACADEMIC CASES; AN ISSUE OR A CASE BECOMES MOOT AND ACADEMIC WHEN IT CEASES TO PRESENT A JUSTICIABLE CONTROVERSY, SO THAT A DETERMINATION OF THE ISSUE WOULD BE WITHOUT PRACTICAL USE AND VALUE. —** An issue or a case becomes moot and academic when it ceases to present a justiciable controversy, so that a determination of the issue would be without practical use and value. In such cases, there is no actual substantial relief to which the petitioner would be entitled and which would be negated by the dismissal of the petition. Courts decline jurisdiction over such cases or dismiss them on the ground of mootness, save in certain exceptional instances, none of which, however, obtains under the premises.

3. **POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; LEGISLATIVE DEPARTMENT; LEGISLATIVE INVESTIGATION IN AID OF LEGISLATION; ON-GOING JUDICIAL PROCEEDINGS DO NOT PRECLUDE CONGRESSIONAL HEARINGS IN AID OF LEGISLATION. —** A legislative investigation in aid of legislation and court proceedings has different purposes. On one hand, courts conduct hearings or like adjudicative procedures to settle, through the

application of a law, actual controversies arising between adverse litigants and involving demandable rights. On the other hand, inquiries in aid of legislation are, *inter alia*, undertaken as tools to enable the legislative body to gather information and, thus, legislate wisely and effectively; and to determine whether there is a need to improve existing laws or enact new or remedial legislation, albeit the inquiry need not result in any potential legislation. On-going judicial proceedings do not preclude congressional hearings in aid of legislation.

4. **ID.; ID.; ID.; ID.; ID.; THE COURT HAS NO AUTHORITY TO PROHIBIT A SENATE COMMITTEE FROM REQUIRING PERSONS TO APPEAR AND TESTIFY BEFORE IT IN CONNECTION WITH AN INQUIRY IN AID OF LEGISLATION IN ACCORDANCE WITH ITS DULY PUBLISHED RULES OF PROCEDURE.** — Suffice it to state that when the Committee issued invitations and subpoenas to petitioners to appear before it in connection with its investigation of the aforementioned investments, it did so pursuant to its authority to conduct inquiries in aid of legislation. This is clearly provided in Art. VI, Sec. 21 of the Constitution. x x x And the Court has no authority to prohibit a Senate committee from requiring persons to appear and testify before it in connection with an inquiry in aid of legislation in accordance with its duly published rules of procedure. *Sabio* emphasizes the importance of the duty of those subpoenaed to appear before the legislature, even if incidentally incriminating questions are expected to be asked: Anent the right against self-incrimination, it must be emphasized that ["this right may be] invoked by the said directors and officers of Philcomsat x x x **only when the incriminating question is being asked, since they have no way of knowing in advance the nature or effect of the questions to be asked of them**." That this right may **possibly** be violated or abused is no ground for denying respondent Senate Committees their power of inquiry. The consolation is that when this power is abused, such issue may be presented before the courts. x x x Let it be stressed at this point that so long as the constitutional rights of witnesses x x x will be respected by respondent Senate Committees, it [is] their duty to cooperate with them in their efforts to obtain the facts needed for intelligent legislative action. **The unremitting obligation of every citizen is to respond to subpoenae, to respect the dignity of the Congress**

and its Committees, and to testify fully with respect to matters within the realm of proper investigation.

5. D.; ID.; ID.; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; THE COURT REFRAINS FROM TOUCHING ON THE ISSUE OF CONSTITUTIONALITY EXCEPT WHEN IT IS UNAVOIDABLE AND IS THE VERY *LIS MOTA* OF THE CONTROVERSY. — As a matter of long and sound practice, the Court refrains from touching on the issue of constitutionality except when it is unavoidable and is the very *lis mota* of the controversy.

APPEARANCES OF COUNSEL

Roberto A. Abad for petitioners.
Senate Legal Counsel for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

At issue once again is Section 21, Article VI of the 1987 Constitution which provides:

> The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

The Case

This is a petition for prohibition with application for temporary restraining order (TRO) and preliminary injunction under Rule 65, assailing the constitutionality of the invitations and other compulsory processes issued by the Senate Committee on Labor, Employment, and Human Resources Development (Committee) in connection with its investigation on the investment of Overseas Workers Welfare Administration (OWWA) funds in the Smokey Mountain project.

The Facts

On August 15, 2006, petitioner Reghis Romero II, as owner of R-II Builders, Inc., received from the Committee an invitation,[1] signed by the Legislative Committee Secretary, which pertinently reads as follows:

Dear Mr. Romero:

Pursuant to P.S. Resolution No. 537, entitled: *"RESOLUTION DIRECTING THE LABOR COMMITTEE TO INVESTIGATE, IN AID OF LEGISLATION, THE LIABILITY FOR PLUNDER OF THE FORMER PRESIDENT RAMOS AND OTHERS, FOR THE ILLEGAL INVESTMENT OF OWWA FUNDS IN THE SMOKEY MOUNTAIN PROJECT, CAUSING A LOSS TO OWWA OF ₱550.86 MILLION*" and *P.S. Resolution No. 543, entitled: "RESOLUTION DIRECTING THE COMMITTEE ON LABOR AND EMPLOYMENT, IN ITS ONGOING INQUIRY IN AID OF LEGISLATION, ON THE ALLEGED OWWA LOSS OF ₱480 MILLION TO FOCUS ON THE CULPABILITY OF THEN PRESIDENT FIDEL RAMOS, THEN OWWA ADMINISTRATOR WILHELM SORIANO, AND R-II BUILDERS OWNER REGHIS ROMERO II,*" x x x the Committee on Labor, Employment and Human Resources Development chaired by Sen. Jinggoy Ejercito Estrada will conduct a public hearing at 1:00 p.m. on the 23rd day of August 2006 at the Sen. G.T. Pecson Room, 2nd floor, Senate of the Philippines, Pasay City.

The inquiry/investigation is specifically intended to aid the Senate in the review and possible amendments to the pertinent provisions of **R.A. 8042, "the Migrant Workers Act**" and to craft a much needed legislation relative to the stated subject matter and purpose of the aforementioned Resolutions.

By virtue of the power vested in Congress by **Section 21, Article VI of 1987 Constitution** regarding **inquiries in aid of legislation,** may we have the privilege of inviting you to the said hearing to shed light on any matter, within your knowledge and competence, covered by the subject matter and purpose of the inquiry. Rest assured that your rights, when properly invoked and not unfounded, will be duly respected. (Emphasis in the original.)

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[1] *Rollo*, p. 39.

In his letter-reply[2] dated August 18, 2006, petitioner Romero II requested to be excused from appearing and testifying before the Committee at its scheduled hearings of the subject matter and purpose of Philippine Senate (PS) Resolution Nos. 537 and 543. He predicated his request on grounds he would later substantially reiterate in this petition for prohibition.

On August 28, 2006, the Committee sent petitioner Romero II a letter informing him that his request, being unmeritorious, was denied.[3] On the same date, invitations were sent to each of the other six petitioners, then members of the Board of Directors of R-II Builders, Inc., requesting them to attend the September 4, 2006 Committee hearing. The following day, Senator Jinggoy Estrada, as Chairperson of the Committee, caused the service of a subpoena *ad testificandum*[4] on petitioner Romero II directing him to appear and testify before the Committee at its hearing on September 4, 2006 relative to the aforesaid Senate resolutions. The Committee later issued separate subpoenas[5] to other petitioners, albeit for a different hearing date.

On August 30, 2006, petitioners filed the instant petition, docketed as G.R. No. 174105, seeking to bar the Committee from continuing with its inquiry and to enjoin it from compelling petitioners to appear before it pursuant to the invitations thus issued.

Failing to secure the desired TRO sought in the petition, petitioner Romero II appeared at the September 4, 2006 Committee investigation.

Two days after, petitioner Romero II filed a Manifestation with Urgent Plea for a TRO[6] alleging, among others, that: (1) he answered questions concerning the investments of OWWA funds in the Smokey Mountain project and how much of

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[2] *Id.* at 41.

[3] *Id.* at 236.

[4] *Id.* at 261.

[5] *Id.* at 280-293.

[6] *Id.* at 264.

OWWA's original investment had already been paid; (2) when Senator Estrada called on Atty. Francisco I. Chavez, as resource person, the latter spoke of the facts and issues he raised with the Court in *Chavez v. National Housing Authority*,[7] none of which were related to the subject of the inquiry; and (3) when Senator Estrada adjourned the investigation, he asked petitioners Romero II and Canlas to return at the resumption of the investigation.

The manifestation was followed by the filing on September 19, 2006 of another urgent motion for a TRO in which petitioners imputed to the Committee the intention to harass them as, except for petitioner Romero II, none of them had even been mentioned in relation to the subject of the investigation.

Meanwhile, respondents, in compliance with our September 5, 2006 Resolution that ordered them to submit a comment on the original plea for a TRO, interposed an opposition,[8] observing that the Senate's motives in calling for an investigation in aid of legislation were a political question. They also averred that the pendency of *Chavez* "is not sufficient ground to divest the respondents of their jurisdiction to conduct an inquiry into the matters alleged in the petition."

In this petition, petitioners in gist claim that: (1) the subject matter of the investigation is *sub judice* owing to the pendency of the *Chavez* petition; (2) since the investigation has been intended to ascertain petitioners' criminal liability for plunder, it is not in aid of legislation; (3) the inquiry compelled them to appear and testify in violation of their rights against self-incrimination; and (4) unless the Court immediately issues a TRO, some or all of petitioners would be in danger of being arrested, detained, and forced to give testimony against their will, before the Court could resolve the issues raised in G.R. No. 164527.

In their Comment dated October 17, 2006,[9] respondents made a distinction between the issues raised in *Chavez* and the subject

[7] G.R. No. 164527, August 15, 2007, 530 SCRA 235.

[8] *Rollo*, pp. 296-322.

[9] *Id.* at 335.

matter of the Senate resolutions, nixing the notion of *sub judice* that petitioners raised at every possible turn. Respondents averred that the subject matter of the investigation focused on the alleged dissipation of OWWA funds and the purpose of the probe was to aid the Senate determine the propriety of amending Republic Act No. 8042 or *The Migrant Workers Act of 1995* and enacting laws to protect OWWA funds in the future. They likewise raised the following main arguments: (1) the proposed resolutions were a proper subject of legislative inquiry; and (2) petitioners' right against self-incrimination was well-protected and could be invoked when incriminating questions were propounded.

On December 28, 2006, petitioners filed their Reply[10] reiterating the arguments stated in their petition, first and foremost of which is: Whether or not the subject matter of the Committee's inquiry is *sub judice*.

The Court's Ruling

The Court resolves to dismiss the instant petition.

The Subject Matter of the Senate Inquiry Is no Longer *Sub Judice*

Petitioners contend that the subject matter of the legislative inquiry is *sub judice* in view of the *Chavez* petition.

The *sub judice* rule restricts comments and disclosures pertaining to judicial proceedings to avoid prejudging the issue, influencing the court, or obstructing the administration of justice. A violation of the *sub judice* rule may render one liable for indirect contempt under Sec. 3(d), Rule 71 of the Rules of Court.[11] The rationale for the rule adverted to is set out in *Nestle Philippines v. Sanchez*:

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[10] *Id*. at 503.

[11] Sec. 3. *Indirect contempt to be punished after charge and hearing*.—After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon x x x and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

x x x x x x x x x

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice.

[I]t is a traditional conviction of civilized society everywhere that courts and juries, in the decision of issues of fact and law should be immune from every extraneous influence; that facts should be decided upon evidence produced in court; and that the determination of such facts should be uninfluenced by bias, prejudice or sympathies.[12]

Chavez, assuming for argument that it involves issues subject of the respondent Committee's assailed investigation, is no longer *sub judice* or "before a court or judge for consideration."[13] For by an *en banc* Resolution dated July 1, 2008, the Court, in G.R. No. 164527, denied with finality the motion of Chavez, as the petitioner in *Chavez*, for reconsideration of the Decision of the Court dated August 15, 2007. In fine, it will not avail petitioners any to invoke the *sub judice* effect of *Chavez* and resist, on that ground, the assailed congressional invitations and subpoenas. The *sub judice* issue has been rendered moot and academic by the supervening issuance of the *en banc* Resolution of July 1, 2008 in G.R. No. 164527. An issue or a case becomes moot and academic when it ceases to present a justiciable controversy, so that a determination of the issue would be without practical use and value. In such cases, there is no actual substantial relief to which the petitioner would be entitled and which would be negated by the dismissal of the petition.[14] Courts decline jurisdiction over such cases or dismiss them on the ground of mootness, save in certain exceptional instances,[15] none of which, however, obtains under the premises.

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[12] G.R. Nos. 75209 & 78791, September 30, 1987, 154 SCRA 542, 546; citing *In Re Stolen*, 216 N.W. 127.

[13] S.H. Gifis, *LAW DICTIONARY* 492 (4th ed., 1996).

[14] *Vda. de Dabao v. Court of Appeals*, G.R. No. 116526, March 23, 2004, 426 SCRA 91, 97.

[15] *David v. Macapagal-Arroyo*, G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 & 171424, May 3, 2006, 489 SCRA 160, 214-215: Courts will decide cases, otherwise moot and academic, if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review.

Thus, there is no more legal obstacle — on the ground of *sub judice*, assuming it is invocable — to the continuation of the Committee's investigation challenged in this proceeding.

At any rate, even assuming hypothetically that *Chavez* is still pending final adjudication by the Court, still, such circumstance would not bar the continuance of the committee investigation. What we said in *Sabio v. Gordon* suggests as much:

> The same directors and officers contend that the Senate is barred from inquiring into the same issues being litigated before the Court of Appeals and the *Sandiganbayan*. Suffice it to state that the Senate Rules of Procedure Governing Inquiries in Aid of Legislation provide that the filing or pendency of any prosecution or administrative action should not stop or abate any inquiry to carry out a legislative purpose.[16]

A legislative investigation in aid of legislation and court proceedings has different purposes. On one hand, courts conduct hearings or like adjudicative procedures to settle, through the application of a law, actual controversies arising between adverse litigants and involving demandable rights. On the other hand, inquiries in aid of legislation are, *inter alia*, undertaken as tools to enable the legislative body to gather information and, thus, legislate wisely and effectively;[17] and to determine whether there is a need to improve existing laws or enact new or remedial legislation,[18] albeit the inquiry need not result in any potential legislation. On-going judicial proceedings do not preclude congressional hearings in aid of legislation. *Standard Chartered Bank (Philippine Branch) v. Senate Committee on Banks, Financial Institutions and Currencies* (*Standard Chartered Bank*) provides the following reason:

> [T]he mere filing of a criminal or an administrative complaint before a court or quasi-judicial body should not automatically bar

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[16] G.R. Nos. 174340, 174318 & 174177, October 17, 2006, 504 SCRA 704, 739.

[17] *Arnault v. Nazareno*, 87 Phil. 29 (1950).

[18] *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, G.R. No. 180643, March 25, 2008, 549 SCRA 77, 168; citing W. Keefe & M. Ogul, *THE AMERICAN LEGISLATIVE PROCESS: CONGRESS AND THE STATES* 20-23 (4th ed., 1977).

the conduct of legislative investigation. Otherwise, it would be extremely easy to subvert any intended inquiry by Congress through the convenient ploy of instituting a criminal or an administrative complaint. Surely, the exercise of sovereign legislative authority, of which the power of legislative inquiry is an essential component, cannot be made subordinate to a criminal or administrative investigation.

As succinctly stated in x x x *Arnault v. Nazareno* ––

> [T]he power of inquiry –– with process to enforce it –– is an essential and appropriate auxiliary to the legislative function. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information –– which is not infrequently true –– recourse must be had to others who possess it.[19]

While *Sabio* and *Standard Chartered Bank* advert only to pending criminal and administrative cases before lower courts as not posing a bar to the continuation of a legislative inquiry, there is no rhyme or reason that these cases' doctrinal pronouncement and their rationale cannot be extended to appealed cases and special civil actions awaiting final disposition before this Court.

The foregoing consideration is not all. The denial of the instant recourse is still indicated for another compelling reason. As may be noted, PS Resolution Nos. 537 and 543 were passed in 2006 and the letter-invitations and subpoenas directing the petitioners to appear and testify in connection with the twin resolutions were sent out in the month of August 2006 or in the past Congress. On the postulate that the Senate of each Congress acts separately and independently of the Senate before and after it, the aforesaid invitations and subpoenas are considered *functos oficio* and the related legislative inquiry conducted is, for all intents and purposes, terminated. In this regard, the Court draws attention to its pronouncements embodied in its Resolution of September 4, 2008 in G.R. No. 180643 entitled *Neri v. Senate*

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[19] G.R. No. 167173, December 27, 2007, 541 SCRA 456, 471-472.

Committee on Accountability of Public Officers and Investigations:

Certainly, x x x the Senate as an institution is "continuing," as it is not dissolved as an entity with each national election or change in the composition of its members. However, in the conduct of its day-to-day business, the Senate of each Congress acts separately and independently of the Senate before it. The Rules of the Senate itself confirms this when it states:

x x x x x x x x x

SEC. 123. Unfinished business at the end of the session shall be taken up at the next session in the same status.

All pending matters and proceedings shall terminate upon the expiration of one (1) Congress, but may be taken by the succeeding Congress as if present[ed] for the first time.

Undeniably from the foregoing, **all pending matters and proceedings, *i.e.*,** unpassed bills and **even legislative investigations, of the Senate of a particular Congress are considered terminated** upon **the expiration of that Congress** and it is merely **optional on the Senate of the succeeding Congress to take up such unfinished matters,** not in the same status, but **as if presented for the first time**. The logic and practicality of such rule is readily apparent considering that the Senate of the succeeding Congress (which will typically have a different composition as that of the previous Congress) should not be bound by the acts and deliberations of the Senate of which they had no part. x x x (Emphasis added.)

Following the lessons of *Neri*, as reiterated in *Garcillano v. The House of Representatives Committees on Public Information, Public Order and Safety, et al.*,[20] it can very well be stated that the termination of the assailed investigations has veritably mooted the instant petition. This disposition becomes all the more impeccable, considering that the Senate of the present Congress has not, per available records, opted to take up anew, as an unfinished matter, its inquiry into the investment of OWWA funds in the Smokey Mountain project.

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[20] G.R. Nos. 170338 & 179275, December 23, 2008.

With the foregoing disquisition, the Court need not belabor the other issues raised in this recourse. Suffice it to state that when the Committee issued invitations and subpoenas to petitioners to appear before it in connection with its investigation of the aforementioned investments, it did so pursuant to its authority to conduct inquiries in aid of legislation. This is clearly provided in Art. VI, Sec. 21 of the Constitution, which was quoted at the outset. And the Court has no authority to prohibit a Senate committee from requiring persons to appear and testify before it in connection with an inquiry in aid of legislation in accordance with its duly published rules of procedure.[21] *Sabio* emphasizes the importance of the duty of those subpoenaed to appear before the legislature, even if incidentally incriminating questions are expected to be asked:

> Anent the right against self-incrimination, it must be emphasized that ["this right may be] invoked by the said directors and officers of Philcomsat x x x **only when the incriminating question is being asked, since they have no way of knowing in advance the nature or effect of the questions to be asked of them**." That this right may **possibly** be violated or abused is no ground for denying respondent Senate Committees their power of inquiry. The consolation is that when this power is abused, such issue may be presented before the courts.
>
> x x x x x x x x x
>
> Let it be stressed at this point that so long as the constitutional rights of witnesses x x x will be respected by respondent Senate Committees, it [is] their duty to cooperate with them in their efforts to obtain the facts needed for intelligent legislative action. **The unremitting obligation of every citizen is to respond to subpoenae, to respect the dignity of the Congress and its Committees, and to testify fully with respect to matters within the realm of proper investigation.**[22] (Emphasis supplied.)

As a matter of long and sound practice, the Court refrains from touching on the issue of constitutionality except when it

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[21] *The Senate Blue Ribbon Committee v. Majaducon*, G.R. Nos. 136760 & 138378, July 29, 2003, 407 SCRA 356, 362-363.

[22] *Supra* note 16, at 739-740; citing Cruz, *CONSTITUTIONAL LAW* 307 (2003).

is unavoidable and is the very *lis mota*[23] of the controversy. So it must be here. Indeed, the matter of the constitutionality of the assailed Committee invitations and subpoenas issued *vis-à-vis* the investigation conducted pursuant to PS Resolution Nos. 537 and 543 has ceased to be a justiciable controversy, having been rendered moot and academic by supervening events heretofore indicated. In short, there is no more investigation to be continued by virtue of said resolutions; there is no more investigation the constitutionality of which is subject to a challenge.

WHEREFORE, the petition is *DENIED*.

No pronouncement as to costs.

SO ORDERED.

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

EN BANC

[G.R. No. 179255. April 2, 2009]

NATIONAL TRANSMISSION CORPORATION, *petitioner, vs.* **VENUSTO D. HAMOY, JR.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE; POSITIONS IN THE CIVIL SERVICE, ENUMERATED. — The Administrative Code specifies the positions in the Civil Service as follows: "Section 8. *Classes of positions in the Career Service*. — (1) Classes of positions

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[23] The beginning of an action or suit.

in the career service appointment to which requires examinations shall be grouped into three major levels as follows: (a) The first level shall include clerical, trades, crafts and custodial service positions which involve non-professional or sub-professional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies; (b) The second level shall include professional, technical, and scientific positions which involve professional, technical or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief levels; and (c) The third level shall cover positions in the Career Executive Service." Positions in the CES under the Administrative Code include those of Undersecretary, Assistant Secretary, Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President. Simply put, third-level positions in the Civil Service are only those belonging to the Career Executive Service, or those appointed by the President of the Philippines. This was the same ruling handed down by the Court in *Office of the Ombudsman v. Civil Service Commission*, wherein the Court declared that the CES covers presidential appointees only.

2. **ID.; ID.; CIVIL SERVICE COMMISSION; REVISED RULES ON REASSIGNMENT; REASSIGNMENT OF EMPLOYEES WITH STATION-SPECIFIC PLACE OF WORK INDICATED IN THEIR RESPECTIVE APPOINTMENTS CANNOT EXCEED ONE YEAR; CASE AT BAR. —** It is not disputed that an appointment is considered station-specific when the particular office or station where the position is located is specifically indicated on the face of the letter of appointment (Form No. 33). In this case, the letter of appointment itself makes specific reference to a Board Resolution, by virtue of which respondent was appointed as Vice President for VisMin Operations and Maintenance, thereby rendering the Board Resolution an integral part of the letter of appointment. x x x Having been appointed to a station-specific position, whatever reassignment may be extended to respondent cannot exceed one year. x x x Respondent's movement from the Office of the Vice-President Vis-Min Operations & Management in January of 2004 to the Office of the President and CEO in

Diliman, Quezon City to handle Special Projects on 16 February 2004 was a reassignment, as he was moved from one department to another within the same agency. Necessarily therefore, such movement should last only until 16 February 2005, or one year thereafter. However, respondent was designated additional duties on 16 February 2005, which further extended his stay in the Diliman office. When respondent was designated as OIC of the PSRG, his reassignment was extended once more. In addition, the reassignments were made without his consent, nay, despite his objections. These personnel movements are clear violations of the Revised Rules.

3. **ID.; ID.; ID.; CIVIL SERVICE RULES; REASSIGNMENT AND DETAIL, DISTINGUISHED. —** A reassignment is a movement of an employee from one organizational unit to another in the same department or agency which does not involve a reduction in rank, status or salary and does not require the issuance of an appointment. A detail, on the other hand, is a movement from one agency to another.

APPEARANCES OF COUNSEL

The Government Corporate Counsel for petitioner.
Geoffrey D. Andawi for respondent.

D E C I S I O N

TINGA, *J.*:

This treats of the petition for review of the decision[1] and resolution[2] of the Court of Appeals dated 30 May 2007 and 7 August 2007, respectively, in CA-G.R. SP No. 96837 entitled, *Venusto D. Hamoy, Jr. v. National Transmission Corporation & Civil Service Commission*, ordering the immediate return of Venusto Hamoy, Jr. to his original position as Vice-President for VisMin Operations & Maintenance.

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[1] *Rollo,* pp. 51-73; Penned by Associate Justice Arturo G. Tayag, with the concurrence of Associate Justice Martin S. Villarama, Jr. and Associate Justice Hakim S. Abdulwahid.

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

The antecedents follow.

The National Transmission Corporation (petitioner), through Resolution No. TC 2003-007[3] dated 5 February 2003, appointed Venusto D. Hamoy, Jr. (respondent) as Vice President under Item No. 700010-CY2003 VisMin Operations & Maintenance. Accordingly, petitioner's President and CEO Alan Ortiz (Ortiz) issued on 1 March 2003 Civil Service Commission (CSC) Form No. 33 which states that respondent has been appointed "(VICE-PRESIDENT JG-18) VICE-PRESIDENT SG-28 with PERMANENT (status) at the National Transmission Corporation."[4] Respondent assumed his duties on 1 March 2003.

On 19 January 2004, Ortiz issued Office Order No. 2004-173 detailing respondent to petitioner's Power Center-Diliman, "under the Office of the President and CEO, to handle Special Projects."[5] Office Order No. 2004-173 was later amended by Office Order No. 2004-1229[6] under which Ortiz assigned respondent additional duties of providing "over-all supervision, monitoring and control of all activities related to the sale of petitioner's sub-transmission assets and placed under his supervision certain personnel of the Sub-Transmission Divestment Department.

In a memorandum dated 24 January 2005 from petitioner's Human Resources Department, respondent was notified of the impending expiration of the temporary appointment of some of petitioner's key officials and the fact that he was being considered for one of the positions to be vacated.[7] Yet on 15 February 2005, Office Order No. 2005-0256 was issued designating respondent as Officer-In-Charge (OIC) of the Power Systems Reliability Group (PSRG), concurrent with his duties as Vice President for Special Projects.[8]

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[3] *Id.* at 77-78.

[4] *Id.* at 79.

[5] *Id.* at 81.

[6] *Id.* at 82.

[7] *Id.* at 426.

[8] *Id.* at 84.

On 16 February 2005, respondent wrote Ortiz, asking that he be returned to his original assignment as Vice President of VisMin Operations & Maintenance. He reasoned that his detail under Office Orders No. 2004-173 and No. 2004-1229 already exceeded one (1) year, and that his designation under Office Order No. 2005-0256 violated Section 2 of CSC Memorandum Circular No. 21, s. 2002 because he did not give his consent thereto.[9] However, on the same date, Office Order No. 2005-0284 was issued superseding Office Order No. 2004-173 and amending Office Order No. 2005-0256, the latter order stating that respondent was designated as OIC of the Power Systems Reliability Group (PSRG).[10] Respondent was thus constrained to write another letter to Ortiz, requesting reconsideration of Office Order No. 2005-0284 and reiterating the reasons he cited in his previous letter.[11]

On 1 March 2005, Ortiz issued a memorandum informing respondent that his detail to the President's Office was no longer in effect and, in view of the vacancy created by the expiration of the temporary appointment of the Vice President of the PSRG, respondent was designated as its OIC. He further stated that the matter of reassignment would be formally raised at the Board meeting and, should the Board confirm it, a corresponding Office Order would be issued reassigning respondent as head of the PSRG.[12] On 27 April 2005, the Board issued Resolution No. TC 2005-018,[13] approving and confirming respondent's reassignment to PSRG, and announcing the opening of selection for the position of Vice President for VisMin Operations & Maintenance.

Respondent appealed to the CSC, praying for the annulment of Resolution No. TC 2005-018 and Office Order No. 2005-0284 on the ground that the reassignment violated his security of tenure.[14]

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

[10] *Id.* at 83.

[11] *Id.* at 87-88.

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

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

[14] *Id.* at 95-97.

In Resolution No. 061030 dated 8 June 2006,[15] the CSC denied respondent's appeal. It found that respondent failed to show that his reassignment was tainted with abuse of discretion. According to the CSC, the position to which respondent was appointed was classified as a third-level position, which was not station-specific, and thus he could be reassigned or transferred from one organizational unit to another within the same agency, without violating his right to security of tenure.[16] Moreover, the CSC ruled that his detail did not exceed the one-year period, as it was superseded initially by his reassignment; and that his designation and reassignment had both been done to meet the needs of the company, without making him suffer reduction in salary status and rank. Respondent sought reconsideration of the decision, but his motion was denied by the CSC through Resolution No. 061840 promulgated on 16 October 2006.[17]

Respondent brought the matter to the Court of Appeals (CA) which disagreed with the findings of the CSC. Citing the Administrative Code,[18] *Home Insurance Guaranty Corporation v. Civil Service Commission,*[19] and *Office of the Ombudsman v. Civil Service Commission*,[20] the Court of Appeals held that only presidential appointees belong to the third-level or career executive service. Thus, respondent, having been appointed by petitioner's president and not the President of the Philippines, occupies a second- level position only.[21] The appellate court also ruled that respondent's position was station-specific, despite the absence of a place of assignment in CSC Form No. 33, since the said form specifically referred to petitioner's Board Resolution No. TC 2003-2007, which indicated that his

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[15] *Id.* at 150-178.

[16] *Id.*

[17] *Id.* at 199-207.

[18] Executive Order No. 292 (1987), Book V, Title I (Subtitle A), Chapter 2.

[19] G.R. No. 95450, 19 March 1993, 220 SCRA 148.

[20] G.R. No. 159940, 16 February 2002.

[21] *Rollo*, pp. 60-63.

appointment is to the position of Vice President under "Item No. 700010-VisMin Operations & Maintenance." The position of respondent being station-specific, his reassignment could not exceed one (1) year per Memorandum Circular No. 2.[22]

The Court of Appeals also discussed the various personnel movements effected on respondent. Thus, when he reported to his new assignment as "Vice President of Special Projects" per Office Order No. 2004-173, as amended by Office Order No. 2004-1229, such movement was a reassignment and not a mere detail, since there was a movement from one organizational unit to another within the same department or agency; that is, from his station at the office of the Vice President VisMin Operations & Maintenance to the Office of the President and CEO. Respondent remained in his place of reassignment beyond 16 February 2005 because he was designated additional duties, virtually extending his reassignment beyond the one-year period. The third personnel movement on 16 February 2005, as OIC of the PSRG, was also a nullity because it extended further his original reassignment, and worse, the appointment was made despite respondent's vigorous objection, said the Court of Appeals.[23] Finally, it concluded that while respondent's position, rank and salary had remained unchanged throughout the said movements, he suffered much financial deprivation, considering that he had to spend for his own travel expenses to Cebu City to be with his family.[24]

Petitioner filed a motion for reconsideration, but its motion was denied on 7 August 2007 for lack of merit.[25]

Before this Court, petitioner imputes the following errors to the Court of Appeals, thus:

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[22] CIVIL SERVICE COMMISSION, Memorandum Circular No. 2 (MC No. 2), which provides rules on appointment and other personnel actions, and covers employees appointed to first and second level position in the career and non-career service, provides a one (1) year restriction on reassignment outside the geographical location if without the consent of the employee.

[23] *Rollo*, p. 69.

[24] *Id.* at 70-71.

[25] *Supra* note 2.

a. in classifying the position held by Hamoy, Jr. as TransCo Vice President as a mere second level and not a third level position;

b. in declaring that presidential appointment is a requirement for a position to be classified as belonging to the third level thus disregarding the clear provisions of CSC Memorandum Circular No. 21, series of 1994 and prevailing jurisprudence;

c. in holding that Hamoy, Jr. was appointed to a station-specific position;

d. in classifying the first movement of Hamoy from his original assignment in the VisMin Operations and Maintenance to the office of the president as a "reassignment" and not a "detail";

e. in declaring that Hamoy's reassignment was not made in accordance with civil service laws, rules, and regulations.[26]

On the other hand, respondent maintains that he was appointed to a second-level position and, thus, he is not under the Career Executive Service (CES). He adds that he was, in fact, appointed to a station-specific position. Moreover, he claims that his reassignments were made in violation of the rules and constitute constructive dismissal.[27]

The petition has no merit.

In arguing that respondent belongs to the CES, petitioner invokes Memorandum Circular No. 21, which reads in part:

1. Positions covered by the Career Executive Service

(a) x x x

(b) In addition to the above identified positions and other positions of the same category which had been previously classified and included in the CES, all other third level positions of equivalent category in all branches and instrumentalities of the national government, including government owned and controlled corporations with original

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[26] *Id.* at 13-14.

[27] *Id.* at 396-423; Comment dated 3 October 2007.

charters are embraced within the Career Executive Service provided that they meet the following criteria:

1. the position is a career position;
2. the position is above division chief level;
3. the duties and responsibilities of the position require the performance of executive and managerial functions.

Petitioner also cites *Caringal v. Philippine Charity Sweepstakes Office (PCSO)*[28] and *Erasmo v. Home Insurance Guaranty Corporation*[29] to show that a presidential appointment is not required before a position in a government corporation is classified as included in the CES. [30] We are not convinced.

The Administrative Code specifies the positions in the Civil Service as follows:

Section 8. *Classes of positions in the Career Service*. — (1) Classes of positions in the career service appointment to which requires examinations shall be grouped into three major levels as follows:

(a) The first level shall include clerical, trades, crafts and custodial service positions which involve non-professional or sub-professional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies;
(b) The second level shall include professional, technical, and scientific positions which involve professional, technical or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief levels; and
(c) The third level shall cover positions in the Career Executive Service.[31]

Positions in the CES under the Administrative Code include those of Undersecretary, Assistant Secretary, Bureau Director,

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[28] G.R. No. 161942, 13 October 2005, 472 SCRA 577.

[29] 436 Phil. 689 (2002).

[30] *Rollo*, pp. 19-22.

[31] Executive Order No. 292 (1987), Book V, Title 1 (Subtitle A), Chapter 2, Sec. 8.

Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President.[32] Simply put, third-level positions in the Civil Service are only those belonging to the Career Executive Service, or those appointed by the President of the Philippines. This was the same ruling handed down by the Court in *Office of the Ombudsman v. Civil Service Commission*,[33] wherein the Court declared that the CES covers presidential appointees only.

In the said case, the CSC disapproved the Office of the Ombudsman's (OMB's) request for approval of the proposed qualification standards for the Director II position in the Central Administrative Service and Finance Management Service. The OMB proposed that said position required "Career Service Professional/Relevant Eligibility for Second Level position." According to the CSC, the Director II position belonged to third-level eligibility and is thus covered by the Career Executive Service. Settling the issue, this Court ruled thus:

> Thus, the CES covers presidential appointees only. As this Court ruled in *Office of the Ombudsman v. CSC*:
>
> > "From the above-quoted provision of the Administrative Code, **persons occupying positions in the CES are presidential appointees**. x x x" (emphasis supplied)
>
> Under the Constitution, the Ombudsman is the appointing authority for all officials and employees of the Office of the Ombudsman, except the Deputy Ombudsmen. Thus, a person occupying the Position of Director II in the Central Administrative Service or Finance and Management Service of the Office of the Ombudsman is appointed by the Ombudsman, not by the President. As such, he is neither embraced in the CES nor does he need to possess CES eligibility.[34]

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[32] Executive Order No. 292 (1987), Book V, Title I (Subtitle A), Chapter 2, Sec. 7(3).

[33] G.R. No. 162215, 30 July 2007, 528 SCRA 535.

[34] *Office of the Ombudsman v. Civil Service Commission*, G.R. No. 162215, 30 July 2007, 528 SCRA 535, 542.

Respondent was appointed Vice-President of VisMin Operations & Maintenance by Transco President and CEO Alan Ortiz, and not by the President of the Republic. On this basis alone, respondent cannot be considered as part of the CES.

Caringal and *Erasmo* cited by petitioner are not in point. There, the Court ruled that appointees to CES positions who do not possess the required CES eligibility do not enjoy security of tenure. More importantly, far from holding that presidential appointment is not required of a position to be included in the CES, we learn from *Caringal* that the appointment by the President completes the attainment of the CES rank, thus:

Appointment to CES Rank

Upon conferment of a CES eligibility and compliance with the other requirements prescribed by the Board, an incumbent of a CES position may qualify for appointment to a CES rank. Appointment to a CES rank is made by the President upon the recommendation of the Board. This process completes the official's membership in the CES and most importantly, confers on him security of tenure in the CES.

To classify other positions not included in the above enumeration as covered by the CES and require appointees thereto to acquire CES or CSE eligibility before acquiring security of tenure will lead to unconstitutional and unlawful consequences. It will result either in (1) vesting the appointing power for non- CES positions in the President, in violation of the Constitution; or (2) including in the CES a position not held by presidential appointee, contrary to the Administrative Code.[35]

Interestingly, on 9 April 2008, CSC Acting Chairman Cesar D. Buenaflor issued Office Memorandum No. 27, s. 2008, which states in part:

For years, the Commission has promulgated several policies and issuances identifying positions in the Career Service above Division Chief Level performing executive and managerial functions as belonging to the Third Level covered by the Career Executive Service

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[35] *Carignal v. Philippine Charity Sweepstakes Office, supra* note 28 at 584, citing the Rules and Regulations of the CES Board.

(CES) and those outside the CES, thus, requiring third level eligibility for purposes of permanent appointment and security of tenure.

However, the issue as to whether a particular position belongs to the Third Level has been settled by jurisprudence enshrined in *Home Insurance and Guaranty Corporation v. Civil Service Commission*, G.R. No. 95450 dated March 19, 1993 and *Office of the Ombudsman (OMB) v. Civil Service Commission*; G.R. No. 162215 dated July 30, 2007, where the Honorable Supreme Court ruled citing the provision of Section 7(3) Chapter 2, Title I-A, Book V of Administrative Code of 1987, that the Third Level shall cover positions in the Career Executive Service (CES). Positions in the Career Executive Service consists of Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board (CESB), all of whom are appointed by the President. To classify other positions not included in the above enumeration as covered by the CES and require appointees thereto to acquire CES or CSE eligibility before acquiring security of tenure will lead to unconstitutional and unlawful consequences. It will result either: in (1) vesting the appointing power for non-CES positions in the President, in violation of the Constitution; or, (2) including in the CES a position not held by presidential appointee, contrary to the Administrative Code.

x x x x x x x x x

While the above-cited ruling of the Supreme Court refer to particular positions in the OMB and HIGC, it is clear, however, that the intention was to make the doctrine enunciated therein applicable to similar and comparable positions in the bureaucracy. **To reiterate, the Third Level covers only the positions in the CES as enumerated in the Administrative Code of 1987 and those identified by the CESB as of equivalent rank, all of whom are appointed by the President of the Philippines. Consequently, the doctrine enshrined in these Supreme Court decisions has *ipso facto* nullified all resolutions, qualification standards, pronouncements and/or issuances of the Commission insofar as the requirement if third level eligibility to non-CES positions is concerned.**

In view thereof, OM No. 6, series of 2008 and all other issuances of the Commission inconsistent with the afore-stated

law and jurisprudence are likewise deemed repealed, superseded and abandoned. x x x[36] (Emphasis supplied)

Thus, petitioner can no longer invoke Section 1(b) of Memorandum Circular (MC) No. 21, it being inconsistent with the afore-quoted Office Memorandum and thus deemed repealed by no less than the CSC itself.

Having settled the nature of respondent's position, we now determine the validity of respondent's reassignment from Vice President for VisMin Operations & Maintenance to Vice President of Special Projects under Office Order No. 2004-173, as amended by Office Order No. 2004-1229.

The Revised Rules on Reassignment[37] provides in part:

Sec. 6. x x x. Reassignment shall be governed by the following rules:

1. These rules shall apply only to employees appointed to first and second level positions in the career and non-career services. Reassignment of third level appointees is governed by the provisions of Presidential Decree No. 1.

2. Personnel movements involving transfer or detail should not be confused with reassignment since they are governed by separate rules.

3. Reassignment of employees with station-specific place of work indicated in their respective appointments shall be allowed only for a maximum period of one (1) year. **An appointment is considered station-specific when the particular office or station where the position is located is specifically indicated on the face of the appointment paper.** Station-specific appointment does not refer to a specified plantilla item number since it is used for purposes of identifying the particular position to be filled or occupied by the employee.

4. If appointment is not station-specific, the one-year maximum shall not apply. Thus, reassignment of employees whose appointments do not specifically indicate the particular office or place of work

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[36] Civil Service Commission Office Memorandum No. 27 (2008).

[37] REVISED RULES ON REASSIGNMENT, CIVIL SERVICE COMMISSION RESOLUTION NO. 04-1458, dated 23 December 2004.

has no definite period unless otherwise revoked or recalled by the Head of Agency, the Civil Service Commission or a competent court.

5. If an appointment is not station-specific, reassignment to an organizational unit within the same building or from one building to another or contiguous to each other in one work area or compound is allowed. Organizational unit refers to sections, divisions, and departments within an organization.

6. Reassignment outside geographical location if with consent shall have no limit. However, if it is without consent, reassignment shall be for one (1) year only. Reassignment outside of geographical location may be from one Regional Office (RO) to another RO or from the RO to the Central Office (CO) and vice-versa.

7. Reassignment is presumed to be regular and made in the interest of public service unless proven otherwise or if it constitutes constructive dismissal x x x

a) Reassignment of an employee to perform duties and responsibilities inconsistent with the duties and responsibilities of his/her position such as from a position of dignity to a more servile or menial job;

b) Reassignment to an office not in the existing organizational structure;

c) Reassignment to an existing office but the employee is not given any definite duties and responsibilities;

d) Reassignment that will cause significant financial dislocation or will cause difficulty or hardship on the part of the employee because of geographical location; and

e) Reassignment that is done indiscriminately or whimsically because the law is not intended as a convenient shield for the appointing/disciplining authority to harass or oppress a subordinate on the pretext of advancing and promoting public interest.[38] [Emphasis supplied)

Petitioner claims that respondent was not appointed to a station-specific position because his appointment paper, CS Form

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[38] CIVIL SERVICE COMMISSION RESOLUTION NO. 04-1458 (2004), Sec. 6.

No. 33, does not indicate any specific work station.[39] This being the case, he is entitled to security of tenure with respect only to the position of Vice President, and he may be reassigned from his original assignment in the VisMin Operations & Maintenance to his new assignment in the Power Systems Reliability Group.[40] On the other hand, the Court of Appeals, relying on Board Resolution No. TC 2003-2007, which indicated that respondent's appointment was to the position of Vice President under "Item No. 700010-VisMin Operations and Maintenance," held that his appointment was station-specific.[41]

We do not agree with petitioner. It is not disputed that an appointment is considered station-specific when the particular office or station where the position is located is specifically indicated on the face of the letter of appointment (Form No. 33). In this case, the letter of appointment itself makes specific reference to a Board Resolution, by virtue of which respondent was appointed as Vice President for VisMin Operations and Maintenance, thereby rendering the Board Resolution an integral part of the letter of appointment. The letter of appointment states:

Republika ng Pilipinas
NATIONAL TRANSMISSION CORPORATION
Diliman, Lungsod ng Quezon

MR. VENUSTO D. HAMOY, JR.
National Transmission Corporation
Diliman, Quezon City

MR. HAMOY:

Kayo ay nahirang na (VICE PRESIDENT JG-18) (VICE PRESIDENT SG-28) *na may katayuang* PERMANENT *sa Pambansang Korporasyon sa Transmisyon sa pasahod na* EIGHT HUNDRED FIFTY-SIX THOUSAND THREE HUNDRED TWENTY PESOS (₱856,320) *piso. Ito ay magkakabisa sa petsa ng pagganap ng tungkulin subalit di aaga sa petsa ng pagpirma ng puno ng tanggapan o* appointing authority.

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[39] *Rollo*, pp. 21-22.

[40] *Id.* at 23.

[41] *Id.* at 67.

Ang appointment na ito ay **REEMPLOYMENT PURSUANT TO TRANSCO BOARD RES. NO. 2003-07 DATED 2/5/03** ***bilang kapalit ni N/A na N/A at ayon sa Plantilya*** **Item Blg. 7000010 CY2003,** ***Pahina*** **______.**[42] (Emphasis supplied)

Sumasainyo,

ALAN T. ORTIZ, Ph.D.
President & CEO
Puno ng Tanggapan

MAR 01 2003
Petsa ng Pagpirma

The pertinent portions of Board Resolution No. TC 2003-007 read, thus:

RESOLUTION NO. TC 2003-007

x x x x x x x x x

WHEREAS, after careful evaluation and deliberation of the qualifications of the applicants consistent with the Board's Guidelines, **the following executives are hereby appointed as follows:**

a) x x x

x x x x x x x x x

j). **Item No. 700010-VisMin Operations &Maintenance- Mr. Venusto D. Hamoy, Jr.**

APPROVED AND CONFIRMED, February 5, 2003.[43] (Emphasis supplied)

In other words, it is clear from the filled-up Form No. 33 or the letter of appointment that the appointment was issued pursuant to Board Resolution No. TC 2003-007. The appointment paper's explicit reference to the Board Resolution, which in turn cited "Item No. 700010-VisMin Operations & Maintenance," indicated that respondent's work station was the VisMin Operations & Maintenance. As "VisMin" stands for the Visayas-Mindanao, the Vice-President for VisMin Operations, who is respondent,

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[42] *Id.* at 79.

[43] *Id.* at 77-78.

necessarily has to hold office in Cebu where petitioner has offices for its Visayas-Mindanao Operations.

Having been appointed to a station-specific position, whatever reassignment may be extended to respondent cannot exceed one year.

A reassignment is a movement of an employee from one organizational unit to another in the same department or agency which does not involve a reduction in rank, status or salary and does not require the issuance of an appointment. A detail, on the other hand, is a movement from one agency to another.[44] Respondent's movement from the Office of the Vice-President Vis-Min Operations & Management in January of 2004 to the Office of the President and CEO in Diliman, Quezon City to handle Special Projects on 16 February 2004 was a reassignment, as he was moved from one department to another within the same agency. Necessarily therefore, such movement should last only until 16 February 2005, or one year thereafter. However, respondent was designated additional duties on 16 February 2005, which further extended his stay in the Diliman office. When respondent was designated as OIC of the PSRG, his reassignment was extended once more. In addition, the reassignments were made without his consent, nay, despite his objections. These personnel movements are clear violations of the Revised Rules.

All told, the Court finds no reason to overturn the Decision of the Court of Appeals.

WHEREFORE, the petition is *DENIED*. The decision and resolution of the Court of Appeals dated 30 May 2007 and 7 August 2007, respectively, are *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

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

Chico-Nazario and *Brion, JJ.,* on leave.

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[44] Executive Order No. 292 (1987), Book V. Title I, Subtitle A, Chapter V, Section 26(6) and (7).

EN BANC

[G.R. No. 180046. April 2, 2009]

REVIEW CENTER ASSOCIATION OF THE PHILIPPINES, *petitioner, vs.* **EXECUTIVE SECRETARY EDUARDO ERMITA and COMMISSION ON HIGHER EDUCATION represented by its Chairman ROMULO L. NERI,** *respondents.*

CPA REVIEW SCHOOL OF THE PHILIPPINES, INC. (CPAR), PROFESSIONAL REVIEW AND TRAINING CENTER, INC. (PRTC), ReSA REVIEW SCHOOL, INC. (ReSA), CRC-ACE REVIEW SCHOOL, INC. (CRC-ACE), *petitioners-intervenors.*

PIMSAT COLLEGES, *respondent-intervenor.*

SYLLABUS

1. **REMEDIAL LAW; COURTS; RULE ON JUDICIAL HIERARCHY; ELUCIDATED. —** This Court's original jurisdiction to issue a writ of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus*, and injunction is not exclusive but is concurrent with the Regional Trial Courts and the Court of Appeals in certain cases. The Court has explained: "This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard of that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is [an] established policy. It is a policy necessary to prevent inordinate demands upon the Court's

time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket." The Court has further explained: "The propensity of litigants and lawyers to disregard the hierarchy of courts in our judicial system by seeking relief directly from this Court must be put to a halt for two reasons: (1) it would be an imposition upon the precious time of this Court; and (2) it would cause an inevitable and resultant delay, intended or otherwise, in the adjudication of cases, which in some instances had to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as better equipped to resolve the issues because this Court is not a trier of facts." The rule, however, is not absolute, as when exceptional and compelling circumstances justify the exercise of this Court of its primary jurisdiction.

2. **POLITICAL LAW; STATUTES; STATUTORY CONSTRUCTION; "PLAIN MEANING" OR *VERBA LEGIS* RULE; PROVIDES THAT IF THE STATUTE IS CLEAR, PLAIN, AND FREE FROM AMBIGUITY, IT MUST BE GIVEN ITS LITERAL MEANING AND APPLIED WITHOUT INTERPRETATION. —** Neither RA 7722 nor CHED Order No. 3, series of 1994 (Implementing Rules of RA 7722) defines an institution of higher learning or a program of higher learning. "Higher education," however, is defined as "education beyond the secondary level" or "education provided by a college or university." Under the "plain meaning" or *verba legis* rule in statutory construction, if the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without interpretation. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by use of such words as are found in the statute. Hence, the term "higher education" should be taken in its ordinary sense and should be read and interpreted together with the phrase "degree-granting programs in all post-secondary educational institutions, public and private." Higher education should be taken to mean tertiary education or that which grants a degree after its completion. x x x HEIs refer to degree-granting institutions, or those offering tertiary degree or post-secondary programs. In fact, Republic Act No. 8292 or the Higher Education Modernization Act of 1997 covers chartered state universities and colleges. State universities and colleges primarily offer degree courses and programs.

3. ID.; ID.; REPUBLIC ACT 7722 (AN ACT CREATING THE COMMISSION ON HIGHER EDUCATION, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES); COMMISSION ON HIGHER EDUCATION; HAS JURISDICTION OVER INSTITUTIONS OF HIGHER LEARNING; REVIEW CENTER, NOT AN INSTITUTION OF HIGHER LEARNING. — The scopes of EO 566 and the RIRR clearly expand the CHED's coverage under RA 7722. The CHED's coverage under RA 7722 is limited to **public and private institutions of higher education and degree-granting programs in all public and private post-secondary educational institutions**. EO 566 directed the CHED to formulate a framework for the regulation of review centers and similar entities. The definition of a review center under EO 566 shows that it refers to one which offers "**a program or course of study that is intended to refresh and enhance the knowledge or competencies and skills of reviewees obtained in the formal school setting in preparation for the licensure examinations**" given by the PRC. It also covers the operation or conduct of review classes or courses provided by individuals whether for a fee or not in preparation for the licensure examination given by the PRC. A review center is not an institution of higher learning as contemplated by RA 7722. It does not offer a degree-granting program that would put it under the jurisdiction of the CHED. A review course is only intended to "refresh and enhance the knowledge or competencies and skills of reviewees." A reviewee is not even required to enroll in a review center or to take a review course prior to taking an examination given by the PRC. Even if a reviewee enrolls in a review center, attendance in a review course is not mandatory. The reviewee is not required to attend each review class. He is not required to take or pass an examination, and neither is he given a grade. He is also not required to submit any thesis or dissertion. Thus, programs given by review centers could not be considered "programs x x x of higher learning" that would put them under the jurisdiction of the CHED. Further, the "similar entities" in EO 566 cover centers providing "review or tutorial services" in areas not covered by licensure examinations given by the PRC, which include, although not limited to, college entrance examinations, Civil Services examinations, and tutorial services. These review and tutorial services hardly qualify as programs of higher learning.

4. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; RESIDUAL POWERS OF THE PRESIDENT; THE EXERCISE THEREOF REQUIRES LEGISLATION; CASE AT BAR. — Section 20, Title 1 of Book III of EO 292 speaks of other powers vested in the President under the law. The exercise of the President's residual powers under this provision requires legislation, as the provision clearly states that the exercise of the President's other powers and functions has to be "**provided for under the law**." There is no law granting the President the power to amend the functions of the CHED. The President may not amend RA 7722 through an Executive Order without a prior legislation granting her such power. The President has no inherent or delegated legislative power to amend the functions of the CHED under RA 7722. Legislative power is the authority to make laws and to alter or repeal them, and this power is vested with the Congress under Section 1, Article VI of the 1987 Constitution which states: "Section 1. The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum."

5. ID.; CONSTITUTIONAL LAW; INHERENT POWERS OF THE STATE; POLICE POWER; PRIMARILY RESTS WITH THE LEGISLATURE ALTHOUGH IT MAY BE EXERCISED BY THE PRESIDENT AND ADMINISTRATIVE BOARDS BY VIRTUE OF A VALID DELEGATION. — Police power to prescribe regulations to promote the health, morals, education, good order or safety, and the general welfare of the people flows from the recognition that *salus populi est suprema lex* — the welfare of the people is the supreme law. Police power primarily rests with the legislature although it may be exercised by the President and administrative boards by virtue of a valid delegation.

6. ID.; STATUTES; REPUBLIC ACT 8981 (THE PHILIPPINE REGULATION COMMISSION MODERNIZATION ACT OF 2000); PHILIPPINE REGULATION COMMISSION; HAS NO POWER TO REGULATE REVIEW CENTERS. — [A] principal mandate of the PRC is to preserve the integrity of licensure examinations. The PRC has the power to adopt measures to preserve the integrity and inviolability of licensure examinations. However, this power should properly be

interpreted to refer to the conduct of the **examinations**. The enumeration of PRC's powers under Section 7(e) [of RA 8981] includes among others, the fixing of dates and places of the examinations and the appointment of supervisors and watchers. The power to preserve the integrity and inviolability of licensure examinations should be read together with these functions. **These powers of the PRC have nothing to do at all with the regulation of review centers**. The PRC has the power to investigate any of the members of the Professional Regulatory Boards (PRB) for "commission of any irregularities in the licensure examinations which taint or impugn the integrity and authenticity of the results of the said examinations." This is an administrative power which the PRC exercises over members of the PRB. However, this power has nothing to do with the regulation of review centers. The PRC has the power to bar PRB members from conducting review classes in review centers. **However, to interpret this power to extend to the power to regulate review centers is clearly an unwarranted interpretation of RA 8981**. The PRC may prohibit the members of the PRB from conducting review classes at review centers because the PRC has administrative supervision over the members of the PRB. However, such power does not extend to the regulation of review centers. Section 7(y) of RA 8981 giving the PRC the power to perform "such other functions and duties as may be necessary to carry out the provisions" of RA 8981 does not extend to the regulation of review centers. **There is absolutely nothing in RA 8981 that mentions regulation by the PRC of review centers**.

BRION, *J., separate concurring opinion*:

1. **POLITICAL LAW; STATUTES; REPUBLIC ACT 8981 (THE PHILIPPINE REGULATION COMMISSION MODERNIZATION ACT OF 2000); PHILIPPINE REGULATION COMMISSION; HAS THE REQUISITE AUTHORITY UNDER THE LAW TO REGULATE THE ESTABLISHMENT AND OPERATION OF REVIEW CENTERS. —**The law dealing with leakage and manipulation of licensure examinations is Republic Act No. 8981 (the *PRC Law*). Section 5 of this law defines the PRC's primary mandate, which is *to establish and maintain a high standard of admission to the practice of all professions and* ***at all times***

ensure and safeguard the integrity of all licensure examinations. Some of the PRC's powers, functions and responsibilities [are enumerated] under Section 7 of the law. x x x Complementing these mandates are the penal provisions giving teeth to the PRC's regulatory powers. Section 15 of the PRC Law provides: "**Section 15.** *Penalties for Manipulation and Other Corrupt Practices in the Conduct of Professional Examinations*. — (*a*) Any person who manipulates or rigs licensure examination results, secretly informs or makes known licensure examination questions prior to the conduct of the examination or tampers with the grades in professional licensure examinations shall, upon conviction, be punished by imprisonment of not less than six (6) years and one (1) day to not more than twelve (12) years or a fine of not less than Fifty thousand pesos (₱50,000.00) to not more than One hundred thousand pesos (₱100,000.00) or both such imprisonment and fine at the discretion of the court." Another critical power under Section 17 of the law is the authority to promulgate the necessary rules and regulations needed to implement its provisions. "**Section 17.** *Implementing rules and Regulations.* Within ninety (90) days after the approval of this Act, the Professional Regulation Commission, together with the representatives of the various Professional Regulatory Boards and accredited professional organizations, the DBM, and the CHED shall prepare and promulgate the necessary rules and regulations needed to implement the provisions of this Act." To be valid, this authority must be exercised on the basis of a *policy* that the law wishes to enforce and of *sufficient standards* that mark the limits of the legislature's delegation of authority. The completeness of this delegation is evidenced by the PRC Law's policy statement which provides: "**Section 2**. *Statement of Policy.* The State recognizes the important role of professionals in nation-building and, towards this end, promotes the sustained development of a sustained reservoir of professionals **whose competence has been determined by honest and credible licensure examinations** and whose standards of professional service and practice are internationally recognized and considered world-class brought by the regulatory measures, programs and activities that foster professional growth and advancement." Read together with the grant of powers and functions under Section 5 (particularly the statement that — "*the Commission shall establish and maintain a high*

standard of admission to the practice of all professions and at all times ensure and safeguard the integrity of all licensure examinations"), both policy and standards are therefore present as required by law and jurisprudence.

2. ID.; CONSTITUTIONAL LAW; CONSTITUTION; EXECUTIVE DEPARTMENT; THE PRESIDENT; POWER OF CONTROL, DEFINED. — The President, as Chief Executive, has the power of control over all the executive departments, bureaus, and offices. The power of control refers to the power of an officer to alter, modify, nullify, or set aside what a subordinate officer has done in the performance of his duties, and to substitute the judgment of the former for that of the latter. Under this power, the President may directly exercise a power statutorily given to any of his subordinates, as what happened in the old case of *Araneta v. Gatmaitan*, where President Ramon Magsaysay himself directly exercised the authority granted by Congress to the Secretary of Agriculture and Natural Resources to promulgate rules and regulations concerning trawl fishing. We similarly ruled in *Bermudez v. Torres* when we said that the President, being the head of the Executive Department, can very well disregard or do away with the action of the departments, bureaus or offices even in the exercise of discretionary authority; in so opting, he cannot be said to be acting beyond the scope of his authority. The statutory support for this authority is provided under Section 31 (2), Chapter 10, Title III, Book III of Executive Order No. 292, otherwise known as the Administrative Code of 1987 (*EO 292*) x x x.

3. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; RULE-MAKING POWER; SUB-DELEGATION OF DELEGATED POWER; WHAT HAS ONCE BEEN DELEGATED BY CONGRESS CAN NO LONGER BE FURTHER DELEGATED BY THE ORIGINAL DELEGATE TO ANOTHER; CASE AT BAR. — The President's direct exercise of the power of subordinate legislation is done *via* the issuance of an executive or administrative order, defined under Section 2, Chapter 2, Book III of EO 292, as an ordinance issued by the President providing for rules of a general or permanent character in the implementation or execution of constitutional or statutory powers. The valid grant of the authority to issue subordinate legislation to the PRC and the exercise

of this power by the President as the head of the executive department of government, however, do not extend to the authority of the President to take control of the PRC's powers under the PRC Law, and to assign these to another agency within the executive branch. Effectively, this was what happened in the present case; the President, through EO 566, took control of the PRC's authority to issue subordinate legislation to regulate review centers, and transferred this power to the CHED. This is an illegal sub-delegation of delegated power. What has once been delegated by Congress can no longer be further delegated by the original delegate to another, expressed in the Latin maxim — *potestas delegata non delegare potest.* When the PRC Law granted the power of subordinate legislation to the PRC, the mandate was given to this agency (and under the control powers of the President, to the President by necessary implication) as the original delegate; the faithful fulfillment of this mandate is a duty that the PRC itself, as the delegate, must perform using its own judgment and not the intervening mind of another.

4. **ID.; CONSTITUTIONAL LAW; CONSTITUTION; EXECUTIVE DEPARTMENT; THE PRESIDENT; POWER OF CONTROL; REORGANIZATION POWERS OF THE PRESIDENT; TRANSFER OF FUNCTIONS, WHEN ALLOWED. —** EO 566 placed entities subject to the jurisdiction of a particular agency (in this case, the PRC) under the jurisdiction of another (the CHED). As the x x x reorganization powers of the President show, the statutorily-allowed transfer of functions refers to those from the Office of the President to the departments and agencies, or from the departments and agencies to the Office of the President. This proceeds from the power of control the Constitution grants to the President. No *general* statutory nor constitutional authority exists, however, allowing the President to transfer the functions of one department or agency to another. The reason for this is obvious — the jurisdiction of a particular department or agency is provided for by law and this jurisdiction may not be modified, reduced or increased, *via* a mere executive order except to the extent that the law allows. Thus, only the President, based on her constitutionally-provided control powers, can assume the functions of any of the departments or agencies under the Executive Department. Even then, the President cannot transfer these functions to another agency without transgressing the legislative prerogatives

of Congress. This conclusion necessarily impacts on the validity of the CHED's issuance of the RIRR and other instruments which must similarly be invalid since they sprang from an invalid and impermissible sub-delegation of power.

APPEARANCES OF COUNSEL

Jose Ventura Aspiras for petitioner.
The Solicitor General for respondents.
R.C. Cabrera Law Office for PIMSAT Colleges.
Nicanor B. Padilla, Jr. and *Manuel U. Malvar* for petitioners-intervenors.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for prohibition and *mandamus* assailing Executive Order No. 566 (EO 566)[1] and Commission on Higher Education (CHED) Memorandum Order No. 30, series of 2007 (RIRR).[2]

The Antecedent Facts

On 11 and 12 June 2006, the Professional Regulation Commission (PRC) conducted the Nursing Board Examinations nationwide. In June 2006, licensure applicants wrote the PRC to report that handwritten copies of two sets of examinations were circulated during the examination period among the examinees reviewing at the R.A. Gapuz Review Center and Inress Review Center. George Cordero, Inress Review Center's President, was

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[1] *Rollo*, pp. 35-37. Directing the Commission on Higher Education to Regulate the Establishment and Operation of Review Centers and Similar Entities. Signed on 8 September 2006.

[2] *Id.* at 38-55. Revised Implementing Rules and Regulations Governing The Establishment and Operation of Review Centers And Similar Entities In The Philippines Pursuant To Executive Order No. 566. Approved on 7 May 2007.

then the incumbent President of the Philippine Nurses Association. The examinees were provided with a list of 500 questions and answers in two of the examinations' five subjects, particularly Tests III (Psychiatric Nursing) and V (Medical-Surgical Nursing). The PRC later admitted the leakage and traced it to two Board of Nursing members.[3] On 19 June 2006, the PRC released the results of the Nursing Board Examinations. On 18 August 2006, the Court of Appeals restrained the PRC from proceeding with the oath-taking of the successful examinees set on 22 August 2006.

Consequently, President Gloria Macapagal-Arroyo (President Arroyo) replaced all the members of the PRC's Board of Nursing. President Arroyo also ordered the examinees to re-take the Nursing Board Examinations.

On 8 September 2006, President Arroyo issued EO 566 which authorized the CHED to supervise the establishment and operation of all review centers and similar entities in the Philippines.

On 3 November 2006, the CHED, through its then Chairman Carlito S. Puno (Chairman Puno), approved CHED Memorandum Order No. 49, series of 2006 (IRR).[4]

In a letter dated 24 November 2006,[5] the Review Center Association of the Philippines (petitioner), an organization of independent review centers, asked the CHED to "amend, if not withdraw" the IRR arguing, among other things, that giving permits to operate a review center to Higher Education Institutions (HEIs) or consortia of HEIs and professional organizations will effectively abolish independent review centers.

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[3] Virginia Madeja and Anesia Dionisio were eventually charged with violation of Republic Act No. 8981 (An Act Modernizing the Professional Regulation Commission) and Republic Act No. 3019 (The Anti-Graft and Corrupt Practices Act).

[4] *Rollo*, pp. 105-121. CMO 49, s. 2006 is otherwise known as the Implementing Rules and Regulations Governing the Establishment and Operation of Review Centers and Similar Entities in the Philippines.

[5] *Id.* at 75-77.

In a letter dated 3 January 2007,[6] Chairman Puno wrote petitioner, through its President Jose Antonio Fudolig (Fudolig), that to suspend the implementation of the IRR would be inconsistent with the mandate of EO 566. Chairman Puno wrote that the IRR was presented to the stakeholders during a consultation process prior to its finalization and publication on 13 November 2006. Chairman Puno also wrote that petitioner's comments and suggestions would be considered in the event of revisions to the IRR.

In view of petitioner's continuing request to suspend and re-evaluate the IRR, Chairman Puno, in a letter dated 9 February 2007,[7] invited petitioner's representatives to a dialogue on 14 March 2007. In accordance with what was agreed upon during the dialogue, petitioner submitted to the CHED its position paper on the IRR. Petitioner also requested the CHED to confirm in writing Chairman Puno's statements during the dialogue, particularly on lowering of the registration fee from ₱400,000 to ₱20,000 and the requirement for reviewers to have five years' teaching experience instead of five years' administrative experience. Petitioner likewise requested for a categorical answer to their request for the suspension of the IRR. The CHED did not reply to the letter.

On 7 May 2007, the CHED approved the RIRR. On 22 August 2007, petitioner filed before the CHED a Petition to Clarify/ Amend Revised Implementing Rules and Regulations[8] praying for a ruling:

1. Amending the RIRR by excluding independent review centers from the coverage of the CHED;

2. Clarifying the meaning of the requirement for existing review centers to tie-up or be integrated with HEIs, consortium or HEIs and PRC-recognized professional associations with recognized programs, or in the alternative, to convert into schools; and

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[6] *Id.* at 79.

[7] *Id.* at 80.

[8] *Id.* at 58-69.

3. Revising the rules to make it conform with Republic Act No. 7722 (RA 7722)[9] limiting the CHED's coverage to public and private institutions of higher education as well as degree-granting programs in post-secondary educational institutions.

On 8 October 2007, the CHED issued Resolution No. 718-2007[10] referring petitioner's request to exclude independent review centers from CHED's supervision and regulation to the Office of the President as the matter requires the amendment of EO 566. In a letter dated 17 October 2007,[11] then CHED Chairman Romulo L. Neri (Chairman Neri) wrote petitioner regarding its petition to be excluded from the coverage of the CHED in the RIRR. Chairman Neri stated:

> While it may be true that regulation of review centers is not one of the mandates of CHED under Republic Act 7722, however, on September 8, 2006, Her Excellency, President Gloria Macapagal-Arroyo, issued Executive Order No. 566 directing the Commission on Higher Education to regulate the establishment and operation of review centers and similar entities in the entire country.
>
> With the issuance of the aforesaid Executive Order, the CHED now is the agency that is mandated to regulate the establishment and operation of all review centers as provided for under Section 4 of the Executive Order which provides that ***"No review center or similar entities shall be established and/or operate review classes without the favorable expressed indorsement of the CHED and without the issuance of the necessary permits or authorizations to conduct review classes. x x x"***
>
> **To exclude the operation of independent review centers from the coverage of CHED would clearly contradict the intention of the said Executive Order No. 566.**
>
> Considering that the requests requires the amendment of Executive Order No. 566, the Commission, during its 305th Commission Meeting, resolved that the said request be directly referred to the Office of the President for appropriate action.

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9 An Act Creating the Commission on Higher Education, Appropriating Funds Therefor and For Other Purposes.

10 *Rollo*, p. 180.

11 *Id.* at 181-182.

As to the request to clarify what is meant by tie-up/be integrated with an HEI, as required under the Revised Implementing Rules and Regulations, tie-up/be integrated simply means, to be in partner with an HEI.[12] (Boldfacing and underscoring in the original)

On 26 October 2007, petitioner filed a petition for Prohibition and *Mandamus* before this Court praying for the annulment of the RIRR, the declaration of EO 566 as invalid and unconstitutional, and the prohibition against CHED from implementing the RIRR.

Dr. Freddie T. Bernal, Director III, Officer-In-Charge, Office of the Director IV of CHED, sent a letter[13] to the President of Northcap Review Center, Inc., a member of petitioner, that it had until 27 November 2007 to comply with the RIRR.

On 15 February 2008,[14] PIMSAT Colleges (respondent-intervenor) filed a Motion For Leave to Intervene and To Admit Comment-in-Intervention and a Comment-in-Intervention praying for the dismissal of the petition. Respondent-intervenor alleges that the Office of the President and the CHED did not commit any act of grave abuse of discretion in issuing EO 566 and the RIRR. Respondent-intervenor alleges that the requirements of the RIRR are reasonable, doable, and are not designed to deprive existing review centers of their review business. The Court granted the Motion for Leave to Intervene and to Admit Comment-in-Intervention in its 11 March 2008 Resolution.[15]

On 23 April 2008, a Motion for Leave of Court for Intervention In Support of the Petition and a Petition In Intervention were filed by CPA Review School of the Philippines, Inc. (CPAR), Professional Review and Training Center, Inc. (PRTC), ReSA Review School, Inc. (ReSA), CRC-ACE Review School, Inc. (CRC-ACE), all independent CPA review centers operating in Manila (collectively, petitioners-intervenors). Petitioners-intervenors pray for the declaration of EO 566 and the RIRR

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[12] *Id.* at 181-182.

[13] *Id.* at 92.

[14] Not 14 February 2008 as stated in the 11 March 2008 Resolution.

[15] *Rollo*, p. 184.

as invalid on the ground that both constitute an unconstitutional exercise of legislative power. The Court granted the intervention in its 29 April 2008 Resolution.[16]

On 21 May 2008, the CHED issued CHED Memorandum Order No. 21, Series of 2008 (CMO 21, s. 2008)[17] extending the deadline for six months from 27 May 2008 for all existing independent review centers to tie-up or be integrated with HEIs in accordance with the RIRR.

In its 25 November 2008 Resolution, this Court resolved to require the parties to observe the status quo prevailing before the issuance of EO 566, the RIRR, and CMO 21, s. 2008.

<u>The Assailed Executive Order and the RIRR</u>

Executive Order No. 566 states in full:

EXECUTIVE ORDER NO. 566

DIRECTING THE COMMISSION ON HIGHER EDUCATION TO REGULATE THE ESTABLISHMENT AND OPERATION OF REVIEW CENTERS AND SIMILAR ENTITIES

WHEREAS, the State is mandated to protect the right of all citizens to quality education at all levels and shall take appropriate steps to make education accessible to all, pursuant to Section 1, Article XIV of the 1987 Constitution;

WHEREAS, the State has the obligation to ensure and promote quality education through the proper supervision and regulation of the licensure examinations given through the various Boards of Examiners under the Professional Regulation Commission;

WHEREAS, the lack of regulatory framework for the establishment and operation of review centers and similar entities, as shown in recent events, have adverse consequences and affect public interest and welfare;

WHEREAS, the overriding necessity to protect the public against substandard review centers and unethical practices committed by some review centers demand that a regulatory framework for the

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[16] *Id.* at 230.

[17] *Id.* at 257.

establishment and operation of review centers and similar entities be immediately instituted;

WHEREAS, Republic Act No. 7722, otherwise known as the Higher Education Act of 1994, created the Commission on Higher Education, which is best equipped to carry out the provisions pertaining to the regulation of the establishment and operation of review centers and similar entities.

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, the President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. Establishment of a System of Regulation for Review Centers and Similar Entities. The Commission on Higher Education (CHED), in consultation with other concerned government agencies, is hereby directed to formulate a framework for the regulation of review centers and similar entities, including but not limited to the development and institutionalization of policies, standards, guidelines for the establishment, operation and accreditation of review centers and similar entities; maintenance of a mechanism to monitor the adequacy, transparency and propriety of their operations; and reporting mechanisms to review performance and ethical practice.

SEC. 2. Coordination and Support. The Professional Regulation Commission (PRC), Technical Skills Development Authority (TESDA), Securities and Exchange Commission (SEC), the various Boards of Examiners under the PRC, as well as other concerned non-government organizations life (sic) professional societies, and various government agencies, such as the Department of Justice (DOJ), National Bureau of Investigation (NBI), Office of the Solicitor General (OSG), and others that may be tapped later, shall provide the necessary assistance and technical support to the CHED in the successful operationalization of the System of Regulation envisioned by this Executive Order.

SEC. 3. Permanent Office and Staff. To ensure the effective implementation of the System of Regulation, the CHED shall organize a permanent office under its supervision to be headed by an official with the rank of Director and to be composed of highly competent individuals with expertise in educational assessment, evaluation and testing; policies and standards development, monitoring, legal and enforcement; and statistics as well as curriculum and instructional materials development. The CHED shall submit the staffing pattern

and budgetary requirements to the Department of Budget and Management (DBM) for approval.

SEC. 4. Indorsement Requirement. No review center or similar entities shall be established and/or operate review classes without the favorable expressed indorsement of the CHED and without the issuance of the necessary permits or authorizations to conduct review classes. After due consultation with the stakeholders, the concerned review centers and similar entities shall be given a reasonable period, at the discretion of the CHED, to comply with the policies and standards, within a period not exceeding three (3) years, after due publication of this Executive Order. The CHED shall see to it that the System of Regulation including the implementing mechanisms, policies, guidelines and other necessary procedures and documentation for the effective implementation of the System, are completed within sixty days (60) upon effectivity of this Executive Order.

SEC. 5. Funding. The initial amount necessary for the development and implementation of the System of Regulation shall be sourced from the CHED Higher Education Development Fund (HEDF), subject to the usual government accounting and auditing practices, or from any applicable funding source identified by the DBM. For the succeeding fiscal year, such amounts as may be necessary for the budgetary requirement of implementing the System of Regulation and the provisions of this Executive Order shall be provided for in the annual General Appropriations Act in the budget of the CHED. Whenever necessary, the CHED may tap its Development Funds as supplemental source of funding for the effective implementation of the regulatory system. In this connection, the CHED is hereby authorized to create special accounts in the HEDF exclusively for the purpose of implementing the provisions of this Executive Order.

SEC. 6. Review and Reporting. The CHED shall provide for the periodic review performance of review centers and similar entities and shall make a report to the Office of the President of the results of such review, evaluation and monitoring.

SEC. 7. Separability. Any portion or provision of this Executive Order that may be declared unconstitutional shall not have the effect of nullifying other provisions hereof, as long as such remaining provisions can still subsist and be given effect in their entirely (sic).

SEC. 8. Repeal. All rules and regulations, other issuances or parts thereof, which are inconsistent with this Executive Order, are hereby repealed or modified accordingly.

SEC. 9. Effectivity. This Executive Order shall take effect immediately upon its publication in a national newspaper of general circulation.

DONE in the City of Manila, this 8th day of September, in the year of Our Lord, Two Thousand and Six.

(Sgd.) Gloria Macapagal-Arroyo

By the President:

(Sgd.) Eduardo R. Ermita
Executive Secretary

The pertinent provisions of the RIRR affecting independent review centers are as follows:

Rule VII
IMPLEMENTING GUIDELINES AND PROCEDURES

Section 1. Authority to Establish and Operate — Only CHED recognized, accredited and reputable HEIs may be authorized to establish and operate review center/course by the CHED upon full compliance with the conditions and requirements provided herein and in other pertinent laws, rules and regulations. In addition, a consortium or consortia of qualified schools and/or entities may establish and operate review centers or conduct review classes upon compliance with the provisions of these Rules.

Rule XIV
TRANSITORY PROVISIONS

Section 1. Review centers that are existing upon the approval of Executive Order No. 566 shall be given a grace period of up to one (1) year, to tie-up/be integrated with existing HEIs[,] consortium of HEIs and PRC recognized Professional Associations with recognized programs under the conditions set forth in this Order and upon mutually acceptable covenants by the contracting parties. In the alternative, they may convert as a school and apply for the course covered by the review subject to rules and regulations of the CHED and the SEC with respect to the establishment of schools. In the meantime, no permit shall be issued if there is non-compliance

with these conditions or non-compliance with the requirements set forth in these rules.

Section 2. Only after full compliance with the requirements shall a Permit be given by the CHED to review centers contemplated under this Rule.

Section 3. Failure of existing review centers to fully comply with the above shall bar them from existing as review centers and they shall be deemed as operating illegally as such. In addition, appropriate administrative and legal proceedings shall be commence[d] against the erring entities that continue to operate and appropriate sanctions shall be imposed after due process.

The Issues

The issues raised in this case are the following:

1. Whether EO 566 is an unconstitutional exercise by the Executive of legislative power as it expands the CHED's jurisdiction; and

2. Whether the RIRR is an invalid exercise of the Executive's rule-making power.

The Ruling of this Court

The petition has merit.

Violation of Judicial Hierarchy

The Office of the Solicitor General (OSG) prays for the dismissal of the petition. Among other grounds, the OSG alleges that petitioner violated the rule on judicial hierarchy in filing the petition directly with this Court.

This Court's original jurisdiction to issue a writ of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus*, and injunction is not exclusive but is concurrent with the Regional Trial Courts and the Court of Appeals in certain cases.[18] The Court has explained:

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[18] *LPBS Commercial, Inc. v. Amila*, G.R. No. 147443, 11 February 2008, 544 SCRA 199.

> This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard of that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is [an] established policy. It is a policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket.[19]

The Court has further explained:

> The propensity of litigants and lawyers to disregard the hierarchy of courts in our judicial system by seeking relief directly from this Court must be put to a halt for two reasons: (1) it would be an imposition upon the precious time of this Court; and (2) it would cause an inevitable and resultant delay, intended or otherwise, in the adjudication of cases, which in some instances had to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as better equipped to resolve the issues because this Court is not a trier of facts.[20]

The rule, however, is not absolute, as when exceptional and compelling circumstances justify the exercise of this Court of its primary jurisdiction. In this case, petitioner alleges that EO 566 expands the coverage of RA 7722 and in doing so, the Executive Department usurps the legislative powers of Congress.

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[19] *Liga ng mga Barangay National v. City Mayor of Manila,* 465 Phil. 529, 542-543 (2004), citing *People v. Cuaresma*, G.R. No. 67787, 18 April 1989, 172 SCRA 415.

[20] *LPBS Commercial, Inc. v. Amila*, *supra* note 18 at 205, citing *Santiago v. Vasquez*, G.R. Nos. 99289-90, 27 January 1993, 217 SCRA 633.

The issue in this case is not only the validity of the RIRR. Otherwise, the proper remedy of petitioner and petitioners-intervenors would have been an ordinary action for the nullification of the RIRR before the Regional Trial Court.[21] The alleged violation of the Constitution by the Executive Department when it issued EO 566 justifies the exercise by the Court of its primary jurisdiction over the case. The Court is not precluded from brushing aside technicalities and taking cognizance of an action due to its importance to the public and in keeping with its duty to determine whether the other branches of the Government have kept themselves within the limits of the Constitution.[22]

OSG's Technical Objections

The OSG alleges that the petition should be dismissed because the verification and certification of non-forum shopping were signed only by Fudolig without the express authority of any board resolution or power of attorney. However, the records show that Fudolig was authorized under Board Resolution No. 3, series of 2007[23] to file a petition before this Court on behalf of petitioner and to execute any and all documents necessary to implement the resolution.

The OSG also alleges that the petition should be dismissed for violation of the 2004 Rules on Notarial Practice because Fudolig only presented his community tax certificate as competent proof of identity before the notary public. The Court would have required Fudolig to comply with the 2004 Rules on Notarial Practice except that Fudolig already presented his Philippine passport before the notary public when petitioner submitted its reply to the OSG's comment.

EO 566 Expands the Coverage of RA 7722

The OSG alleges that Section 3 of RA 7722 should be read in conjunction with Section 8, enumerating the CHED's powers

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[21] *Holy Spirit Homeowners Association, Inc. v. Defensor*, G.R. No. 163980, 3 August 2006, 497 SCRA 581.

[22] *Executive Secretary v. Southwing Heavy Industries, Inc.*, G.R. No. 164171, 20 February 2006, 482 SCRA 673.

[23] *Rollo*, p. 104.

and functions. In particular, the OSG alleges that the CHED has the power under paragraphs (e) and (n) of Section 8 to:

(e) monitor and evaluate the performance of programs and institutions of higher learning for appropriate incentives as well as the imposition of sanctions such as, but not limited to, diminution or withdrawal of subsidy, recommendation on the downgrading or withdrawal of accreditation, program termination or school closure;

(n) promulgate such rules and regulations and exercise such other powers and functions as may be necessary to carry out effectively the purpose and objectives of this Act[.]

The OSG justifies its stand by claiming that the term "programs x x x of higher learning" is broad enough to include programs offered by review centers.

We do not agree.

Section 3 of RA 7722 provides:

Sec. 3. *Creation of Commission on Higher Education.* — In pursuance of the abovementioned policies, the Commission on Higher Education is hereby created, hereinafter referred to as the Commission.

The Commission shall be independent and separate from the Department of Education, Culture and Sports (DECS), and attached to the Office of the President for administrative purposes only. **Its coverage shall be both public and private institutions of higher education as well as degree-granting programs in all post-secondary educational institutions, public and private**. (Emphasis supplied)

Neither RA 7722 nor CHED Order No. 3, series of 1994 (Implementing Rules of RA 7722)[24] defines an institution of higher learning or a program of higher learning.

"Higher education," however, is defined as "education beyond the secondary level"[25] or "education provided by a college or university."[26] Under the "plain meaning" or *verba legis* rule in

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[24] Rules and Regulations Implementing RA 7722, as amended.

[25] *WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY*, 1986 ed., p. 1068.

[26] *Id.*

statutory construction, if the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without interpretation.[27] The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by use of such words as are found in the statute.[28] Hence, the term "higher education" should be taken in its ordinary sense and should be read and interpreted together with the phrase "degree-granting programs in all post-secondary educational institutions, public and private." Higher education should be taken to mean tertiary education or that which grants a degree after its completion.

Further, Articles 6 and 7 of the Implementing Rules provide:

Article 6. Scope of Application. — The coverage of the Commission shall be both public and private institutions of higher education as well as **degree granting programs** in all post-secondary educational institutions, public and private.

These Rules shall apply to all public and private educational institutions offering **tertiary degree programs**.

The establishment, conversion, or elevation of **degree-granting institutions** shall be within the responsibility of the Commission.

Article 7. Jurisdiction. — Jurisdiction over institutions of higher learning primarily offering **tertiary degree programs** shall belong to the Commission. (Emphasis supplied)

Clearly, HEIs refer to degree-granting institutions, or those offering tertiary degree or post-secondary programs. In fact, Republic Act No. 8292 or the Higher Education Modernization Act of 1997 covers chartered state universities and colleges. State universities and colleges primarily offer degree courses and programs.

Sections 1 and 8, Rule IV of the RIRR define a review center and similar entities as follows:

Section 1. REVIEW CENTER. — refers to a center operated and owned by a duly authorized entity pursuant to these Rules intending

[27] *Republic v. Lacap*, G.R. No. 158253, 2 March 2007, 517 SCRA 255.

[28] *Id.*

to offer to the public and/or to specialized groups whether for a fee or for free a program or course of study that is intended to refresh and enhance the knowledge and competencies and skills of reviewees obtained in the formal school setting in preparation for the licensure examinations given by the Professional Regulations Commission (PRC). The term review center as understood in these rules shall also embrace the operation or conduct of review classes or courses provided by individuals whether for a fee or not in preparation for the licensure examinations given by the Professional Regulations Commission.

x x x x x x x x x

Section 8. SIMILAR ENTITIES — the term refer to other review centers providing review or tutorial services in areas not covered by licensure examinations given by the Professional Regulations Commission including but not limited to college entrance examinations, Civil Service examinations, tutorial services in specific fields like English, Mathematics and the like.

The same Rule defines a review course as follows:

3. REVIEW COURSE — refers to the set of non-degree instructional program of study and/or instructional materials/module, offered by a school with a recognized course/program requiring licensure examination, that are intended merely to refresh and enhance the knowledge or competencies and skills of reviewees.

The scopes of EO 566 and the RIRR clearly expand the CHED's coverage under RA 7722. The CHED's coverage under RA 7722 is limited to **public and private institutions of higher education and degree-granting programs in all public and private post-secondary educational institutions**. EO 566 directed the CHED to formulate a framework for the regulation of review centers and similar entities.

The definition of a review center under EO 566 shows that it refers to one which offers "**a program or course of study that is intended to refresh and enhance the knowledge or competencies and skills of reviewees obtained in the formal school setting in preparation for the licensure examinations**" given by the PRC. It also covers the operation or conduct of review classes or courses provided by individuals whether for

a fee or not in preparation for the licensure examinations given by the PRC.

A review center is not an institution of higher learning as contemplated by RA 7722. It does not offer a degree-granting program that would put it under the jurisdiction of the CHED. A review course is only intended to "refresh and enhance the knowledge or competencies and skills of reviewees." A reviewee is not even required to enroll in a review center or to take a review course prior to taking an examination given by the PRC. Even if a reviewee enrolls in a review center, attendance in a review course is not mandatory. The reviewee is not required to attend each review class. He is not required to take or pass an examination, and neither is he given a grade. He is also not required to submit any thesis or dissertation. Thus, programs given by review centers could not be considered "programs x x x of higher learning" that would put them under the jurisdiction of the CHED.

Further, the "similar entities" in EO 566 cover centers providing "review or tutorial services" in areas not covered by licensure examinations given by the PRC, which include, although not limited to, college entrance examinations, Civil Services examinations, and tutorial services. These review and tutorial services hardly qualify as programs of higher learning.

Usurpation of Legislative Power

The OSG argues that President Arroyo was merely exercising her executive power to ensure that the laws are faithfully executed. The OSG further argues that President Arroyo was exercising her residual powers under Executive Order No. 292 (EO 292),[29] particularly Section 20, Title I of Book III, thus:

> Section 20. *Residual Powers.* — Unless Congress provides otherwise, **the President shall exercise such other powers and functions vested in the President which are provided for under the laws** and which are not specifically enumerated above, or which are not delegated by the President in accordance with law. (Emphasis supplied)

[29] The Administrative Code of 1987.

Section 20, Title I of Book III of EO 292 speaks of other powers vested in the President under the law.[30] The exercise of the President's residual powers under this provision requires legislation,[31] as the provision clearly states that the exercise of the President's other powers and functions has to be "**provided for under the law**." There is no law granting the President the power to amend the functions of the CHED. The President may not amend RA 7722 through an Executive Order without a prior legislation granting her such power.

The President has no inherent or delegated legislative power to amend the functions of the CHED under RA 7722. Legislative power is the authority to make laws and to alter or repeal them,[32] and this power is vested with the Congress under Section 1, Article VI of the 1987 Constitution which states:

> Section 1. The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.

In *Ople v. Torres*,[33] the Court declared void, as a usurpation of legislative power, Administrative Order No. 308 (AO 308) issued by the President to create a national identification system. AO 308 mandates the adoption of a national identification system even in the absence of an enabling legislation. The Court distinguished between Legislative and Executive powers, as follows:

> The line that delineates Legislative and Executive power is not indistinct. *Legislative power* is "the authority, under the Constitution, to make laws, and to alter and repeal them." The Constitution, as the will of the people in their original, sovereign and unlimited capacity, has vested this power in the Congress of the Philippines. The grant of legislative power to Congress is broad, general and

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[30] See *Larin v. Executive Secretary,* 345 Phil. 962 (1997).

[31] See *Kilusang Mayo Uno v. Director-General, National Economic Development Authority*, G.R. No. 167798, 19 April 2006, 487 SCRA 623.

[32] *Id.*

[33] 354 Phil. 948 (1998).

comprehensive. The legislative body possesses plenary power for all purposes of civil government. Any power, deemed to be legislative by usage and tradition, is necessarily possessed by Congress, unless the Constitution has lodged it elsewhere. In fine, except as limited by the Constitution, either expressly or impliedly, legislative power embraces all subjects and extends to matters of general concern or common interest.

While Congress is vested with the power to enact laws, *the President executes the law*s. The executive power is vested in the President. It is generally defined as the power to enforce and administer laws. It is the power of carrying the laws into practical operation and enforcing their due observance.

As head of the Executive Department, the President is the Chief Executive. He represents the government as a whole and sees to it that all laws are enforced by the officials and employees of his department. He has control over the executive department, bureaus and offices. This means that he has the authority to assume directly the functions of the executive department, bureau and office, or interfere with the discretion of its officials. Corollary to the power of control, the President also has the duty of supervising the enforcement of laws for the maintenance of general peace and public order. Thus, he is granted *administrative power* over bureaus and offices under his control to enable him to discharge his duties effectively.

Administrative power is concerned with the work of applying policies and enforcing orders as determined by proper governmental organs. It enables the President to fix a uniform standard of administrative efficiency and check the official conduct of his agents. To this end, he can issue administrative orders, rules and regulations.

x x x. An administrative order is:

> "Sec. 3. Administrative Orders. — Acts of the President which relate to particular aspects of governmental operation in pursuance of his duties as administrative head shall be promulgated in administrative orders."

An administrative order is an ordinance issued by the President which relates to specific aspects in the administrative operation of government. *It must be in harmony with the law and should be*

for the sole purpose of implementing the law and carrying out the legislative policy. x x x.[34]

Just like AO 308 in *Ople v. Torres*, EO 566 in this case is not supported by any enabling law. The Court further stated in *Ople*:

> x x x. As well stated by Fisher: "*x x x Many regulations however, bear directly on the public. It is here that administrative legislation must be restricted in its scope and application. Regulations are not supposed to be a substitute for the general policy-making that Congress enacts in the form of a public law. Although administrative regulations are entitled to respect, the authority to prescribe rules and regulations is not an independent source of power to make laws.*"[35]

Since EO 566 is an invalid exercise of legislative power, the RIRR is also an invalid exercise of the CHED's quasi-legislative power.

Administrative agencies exercise their quasi-legislative or rule-making power through the promulgation of rules and regulations.[36] The CHED may only exercise its rule-making power within the confines of its jurisdiction under RA 7722. The RIRR covers review centers and similar entities which are neither institutions of higher education nor institutions offering degree-granting programs.

Exercise of Police Power

Police power to prescribe regulations to promote the health, morals, education, good order or safety, and the general welfare of the people flows from the recognition that *salus populi est suprema lex* — the welfare of the people is the supreme law.[37] Police power primarily rests with the legislature although it may

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[34] *Id.* at 966-968.

[35] *Id.* at 970.

[36] *Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission*, G.R. No. 144322, 6 February 2007, 514 SCRA 346.

[37] *Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*, G.R. No. 170656, 15 August 2007, 530 SCRA 341.

be exercised by the President and administrative boards by virtue of a valid delegation.[38] Here, no delegation of police power exists under RA 7722 authorizing the President to regulate the operations of non-degree granting review centers.

Republic Act No. 8981 is Not the Appropriate Law

It is argued that the President of the Philippines has adequate powers under the law to regulate review centers and this could have been done under an existing validly delegated authority, and that the appropriate law is Republic Act No. 8981[39] (RA 8981). Under Section 5 of RA 8981, the PRC is mandated to "establish and maintain a high standard of admission to the practice of all professions and at all times ensure and safeguard the integrity of all licensure examinations." Section 7 of RA 8981 further states that the PRC shall adopt "measures to preserve the integrity and inviolability of licensure examinations."

There is no doubt that a principal mandate of the PRC is to preserve the integrity of licensure examinations. The PRC has the power to adopt measures to preserve the integrity and inviolability of licensure examinations. However, this power should properly be interpreted to refer to the conduct of the **examinations**. The enumeration of PRC's powers under Section 7(e) includes among others, the fixing of dates and places of the examinations and the appointment of supervisors and watchers. The power to preserve the integrity and inviolability of licensure examinations should be read together with these functions. **These powers of the PRC have nothing to do at all with the regulation of review centers**.

The PRC has the power to investigate any of the members of the Professional Regulatory Boards (PRB) for "commission of any irregularities in the licensure examinations which taint or impugn the integrity and authenticity of the results of the said examinations."[40] This is an administrative power which the PRC

[38] *Id.*

[39] Otherwise known as the Philippine Regulation Commission Modernization Act of 2000.

[40] Section 7(s).

exercises over members of the PRB. However, this power has nothing to do with the regulation of review centers. The PRC has the power to bar PRB members from conducting review classes in review centers. **However, to interpret this power to extend to the power to regulate review centers is clearly an unwarranted interpretation of RA 8981**. The PRC may prohibit the members of the PRB from conducting review classes at review centers because the PRC has administrative supervision over the members of the PRB. However, such power does not extend to the regulation of review centers.

Section 7(y) of RA 8981 giving the PRC the power to perform "such other functions and duties as may be necessary to carry out the provisions" of RA 8981 does not extend to the regulation of review centers. **There is absolutely nothing in RA 8981 that mentions regulation by the PRC of review centers**.

The Court cannot likewise interpret the fact that RA 8981 penalizes "any person who manipulates or rigs licensure examination results, secretly informs or makes known licensure examination questions prior to the conduct of the examination or tampers with the grades in the professional licensure examinations"[41] as a grant of power to regulate review centers. The provision simply provides for the penalties for manipulation and other corrupt practices in the conduct of the professional examinations.

The assailed EO 566 seeks to regulate not only review centers but also "similar entities." The questioned CHED RIRR defines "similar entities" as referring to "other review centers providing review or tutorial services in areas not covered by licensure examinations given by the PRC including but not limited to college entrance examinations, Civil Service examinations, tutorial services in specific fields like English, Mathematics and the like."[42] The PRC has no mandate to supervise review centers that give courses or lectures intended to prepare examinees for

[41] Section 15.

[42] Section 8, RIRR.

licensure examinations given by the PRC. It is like the Court regulating bar review centers just because the Court conducts the bar examinations. **Similarly, the PRC has no mandate to regulate similar entities whose reviewees will not even take any licensure examination given by the PRC**.

WHEREFORE, we *GRANT* the petition and the petition-in-intervention. We *DECLARE* Executive Order No. 566 and Commission on Higher Education Memorandum Order No. 30, series of 2007 *VOID* for being unconstitutional.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Austria-Martinez, Carpio Morales, Tinga, Chico-Nazario, and *Peralta, JJ.,* concur.

Corona, Velasco, Jr., Nachura, and *Leonardo-de Castro, JJ.,* join the concurring opinion of Justice Brion.

Brion, J., with separate concurring opinion.

SEPARATE CONCURRING OPINION

BRION, *J*.:

I **concur with the *ponencia*** that EO 566 and the instruments derived from this EO should be declared invalid. At the same time, **I maintain that the President of the Philippines has adequate powers under the law to regulate review centers.** EO 566 is invalid as a regulatory measure over review centers because an executive order of this tenor cannot be issued under R.A. 7722 (*The Higher Education Act of 1994*). The appropriate existing law to regulate review centers is R.A. 8981, otherwise known as *The PRC Modernization Act of 2000*.

A holistic reading of R.A. 8981 shows that it attempts to provide the blue print for a credible and effective Philippine licensure examination system and process. Under this law, the Professional Regulation Commission (an entity under the Executive Department together with the Commission on Higher Education) was given — among other powers related with its primary mandate *to establish and maintain a high standard of admission to the*

practice of all professions and ***at all times ensure and safeguard the integrity of all licensure examinations*** **—** the full authority to promulgate rules and regulation to implement its mandate. To be sure, R.A.8981 does not narrowly or restrictively concern itself with the conduct of actual examinations alone as the *ponencia* discussed; it covers and relates as well to the various integral and/or institutional components of the licensure examination process or system.

I find it unfortunate that R.A. 7722 was made the basis for the regulation of review centers, when R.A. 8981 could have provided opportunities, *appropriate to the PRC*, to achieve the same end. This is unfortunate under the circumstances since the invalidity of using R.A. 7722 as the legal basis, without saying more on what can be a viable alternative, can leave a major player in the Philippine licensure examination process immune, even for a time, from regulation. It is for this compelling reason that I have tackled in this Separate Concurring Opinion the alternative and (while not fully determinative of the issue of the validity of EO 566) the related issues of: (1) whether the business of review centers can be the subject of regulation; (2) if so, on what legal basis; and (3) again, if so, which governmental authority has been vested with jurisdiction by law.

The Background Facts

The Office of the Solicitor General (*OSG*) objects to the filing of the present petition directly with this Court, based on the principle of hierarchy of courts. The principle, as a rule, can be invoked where no compelling reason exists for a direct resort to this Court.[1] However, a compelling reason does exist as the *ponencia* properly noted. Likewise, there are no major issues of fact that are essentially for the trial or lower courts to handle as triers of facts;[2] hence, direct resort to this Court is

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[1] See: *Rubenito, et al. v. Lagata, et al.,* G.R. No. 140959, December 21, 2004, 447 SCRA 417.

[2] *Far East Bank & Trust Company v. Court of Appeals,* G.R. No. 123569, April 1, 1996, 256 SCRA 15; *Antiporda, Jr. v. Sandiganbayan,* G.R. No. 116941, May 31, 2001, 358 SCRA 335.

justified. In this regard, at the petitioners' urging and based on the implicit stance of all other parties to take judicial notice of the background facts,[3] I am providing a fuller account of the background of the case based on parallel official developments, all of them related to the root of the present issue — the nursing exam scandal of 2006. This background — albeit footnoted because they do not all directly affect the present case — may lead to a fuller appreciation of the case and the view I am putting forward, and is offered in the spirit of George Santayana's advice to remember the past to avoid being condemned to its repetition.[4]

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[3] *Rollo*, p. 4.

[4] On June 11-12, 2006, the Professional Regulations Commission (*PRC*), in coordination with the Board of Nursing (*BON*), administered the Philippine Nurse Licensure Examination covering five (5) nursing subjects. After computing the grades of the examinees pursuant to the established rule under the Philippine Nursing Act of 2002 (R.A. 9173, specifically, Sections 14 & 15 thereof) giving equal weight to all the examinable subjects, 41.24% of the total number of examinees passed, including 1,186 examinees who were purportedly "borderline cases."

Allegations of leakage in two (2) tests — Tests III and IV — however plagued the licensure examination. This prompted the PRC to constitute a committee to investigate the reported leakage. **The PRC investigating body found that leakages occurred in Tests III and V; 20 of the 100 questions in Test III and 90 of the 100 questions in Test V were found to have been leaked to the examinees by certain nursing review centers days prior to the scheduled exam**. The investigating body recommended, among others, the filing of criminal charges against the examiners — BON members Madeja (for Test III) and Dionisio (for Test V). The National Bureau of Investigation (*NBI*) conducted a parallel investigation; the Senate, on the other hand, conducted a legislative inquiry on the leakage controversy.

The PRC approved the report of the investigating body. To address the leakage problem, the PRC approved Resolution No. 31 (*Resolution 31*) of the BON that: (1) invalidated 20 of the 100 questions in Test III, while ruling that the remaining 80 questions are sufficient to measure the examinees' competency for the subject covered by Test III; and (2) ordered the re-computation of the grades in Test V under a statistical treatment to tone down the upward pull of the leakage. As a result of the re-computation, the original passing rate of 41.24% rose to 42.42%; the 1,186 previously "borderline cases" became flunkers; while 1,687 examinees who flunked under the original computation became passers as "borderline cases."

Various groups, concerned about the integrity and reputation of the professional nursing examination, expressed their opposition against the manner

the PRC addressed the leakage and asked the PRC to reconsider Resolution 31. The PRC nevertheless scheduled and started administering the oaths for the 17,821 purportedly successful examinees; some were even issued licenses.

To prevent the PRC from further administering the oaths and issuing professional licenses to the purported successful examinees, Rene Luis M. Tadle, Earl Francis R. Sumile, and Michael Angelo S. Brant (all from the University of Santo Tomas; hereinafter "*Tadle, et al.*") filed on August 16, 2006 with the Court of Appeals (*CA*) a **petition for prohibition** (docketed CA-G.R. SP NO. 95709) asking the appellate court to enjoin the implementation of Resolution 31 and the oath-taking of the declared passers. Tadle, *et al.* anchored their petition on the ground that the PRC and the BON reneged on their ministerial duty under the law to compute the grades of examinees based on the actual results from each of the five test subjects; that based on the combined application of Sections 14 and 15 of the Philippine Nursing ACT of 2002, the PRC and the BON has the duty to compute the scores of the examinees based on the actual results of the tests for the five areas; the PRC and the BON however based the ratings of examinees for Test V not on the result of an actual, true, and honest examination in Test V. To the petitioners, "*the PRC – BON changed the rules of computing the ratings for passing examinees, in a manner of speaking, after the game has been played.*" The importance also of the subject area covered by Test V was allegedly disregarded when it was given a weight lesser than the others. As additional ground, the petitioners drew a distinction between the 2003 bar examination controversy and the nursing leakage issue.

Tadle, *et al.* asked the appellate court to issue a temporary restraining order (*TRO*) and a preliminary injunction. The appellate court issued on August 18, 2006 a TRO directing the PRC and the BON to CEASE and DESIST from enforcing Resolution 31 and from proceeding with the oath-taking scheduled on August 22, 2006 of those who purportedly passed the June x x x examinations for nursing licensure.

The case drew several interventions — both for and against the petition for prohibition. The Presidential Task Force on National Licensure Examination (NCLEX) for Nurses in the Philippines (the *Task Force*) joined the petition and additionally asked for a writ of *certiorari* to: annul Resolution 31; invalidate Tests III and V and conduct a new examination for these subjects; nullify the declaration of the passing examinees for lack of basis; and nullify and set aside the oath administered or caused to be administered by the PRC on supposed passing examinees. Various groups of examinees who alleged to have honestly passed the exam, on the other hand, filed their respective motions for intervention to oppose the petition for prohibition.

The case followed its usual course — the filing of comments, hearings on the merits, and the filing of the parties' memoranda. During the pendency of the case, the President promulgated Executive Order No. 565 (*EO 565*) which transferred the oversight functions of the Office of the President over the

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PRC to the Department of Labor and Employment (*DOLE*) by attaching the PRC to the DOLE for general direction and coordination (This was later superseded by Executive Order No. 565-A defining the extent of the DOLE's authority over the PRC). **At almost the same time, the President promulgated Executive Order No. 566 (*EO 566*) — whose constitutionality is now assailed in the present petition — directing the Commission on Higher Education (*CHED*) to regulate the establishment and operation of review centers and similar entities.** Under Section 1 of EO 566, the CHED, in consultation with other concerned government agencies, was directed to formulate a framework for the regulation of review centers and similar entities, including but not limited to the development and institutionalization of policies, standards, and guidelines for the establishment, operation, and accreditation of review centers and similar entities; maintenance of a mechanism to monitor the adequacy, transparency, and propriety of their operations; and reporting mechanisms to review performance and ethical practice. Under the EO 566, too, no review center or similar entity shall be established and/or operate review classes without the favorable expressed indorsement of the CHED and without the issuance of the necessary permits or authorizations to conduct review classes.

The President at almost the same time undertook a total overhaul of the BON's membership.

In the meantime, the NBI concluded its investigation and found, among others, that the leakage occurred only in Manila and Baguio and that the leakage of the test questions was perpetrated by the Gapuz, Inress, and Royal Pentagon Review Centers through the final coaching sessions these centers conducted two days prior to the scheduled exam.

The CA rendered its decision in CA-G.R. SP NO. 95709 on October 13, 2006. Its dispositive portion reads:

> WHEREFORE, the petition is **GRANTED**. Declaring Resolution No. 31, Series of 2006 as **null** and **void**, a **Writ of Prohibition** is hereby issued permanently enjoining the respondents from implementing said resolution. Granting further the incidental reliefs required under the premises, the respondents are hereby directed:
>
> 1) To conduct a selective retaking in Tests III and V among the 1,687 examinees whose names were merely added to the unaltered list of 41.24% of successful examinees;
> 2) To restore the names of the 1,186 successful examinees and include them again in the list of 41.24% who actually passed the June 11 and 12, 2006 Nursing Licensure Examination; and
> 3) To cause the oath taking and issuance of licenses to all of the 41.24% successful examinees as herein reconstituted.
>
> This disquisition is **without prejudice to respondents' and the executive branch's revoking the licenses issued to examinees** who

may eventually be identified as among those who attended the final coaching sessions at **Gapuz, Inress and Pentagon** review centers.

SO ORDERED.

The CA thus annulled Resolution 31 for having been issued with grave abuse of discretion; **to the appellate court, the effect of the leakage was insignificant so that the resolution should not have been in the first place issued. The CA at the same time prohibited the implementation of Resolution 31**. It added that the applicable rule on computation should be the pre-Resolution 31 formulae, and on this basis and as incidental relief, ordered the PRC to cause the oath-taking and issuance of licenses to all of the 41.24% successful examinees. It likewise found no basis for a wholesale retake of Tests III and V of the licensure examination. Finally, the appellate court, taking into account the findings of the NBI, ruled that the licenses of those who attended the final coaching sessions at Gapuz, Inress, and Pentagon review centers may be revoked by the PRC, BON or the executive branch.

On October 16 2006, t**he petitioners filed a motion for reconsideration of the appellate court's October 13 Decision**. A DOLE-initiated attempt at conciliation failed. At the conciliation hearing, however, CA Justice Vicente Veloso verbally indicated that execution of the CA decision can take place and that the PRC may be held in contempt of court for not administering the oaths to the successful examinees. Thus, the next day — October 27, 2006 — the PRC started administering the oaths and issuing the license to those who passed as defined by the CA decision.

Tadle, *et al*. filed a petition for *certiorari* with the Supreme Court assailing: (1) the act of the CA in allegedly "*improperly allowing its ponente to compel the PRC and the BON into letting the supposedly successful examinees take their oaths and their licenses although the decision in their favor has not yet become final*"; and (2) the CA's October 13, 2006 decision. The petition for *certiorari*, however, was dismissed by the Court on a technicality. The Court thereafter denied with finality the Tadle, *et al.'s* motion for reconsideration of the dismissal of their SC petition.

On November 3, 2006, **the CHED issued MEMORANDUM ORDER No. 49, Series of 2006 (*CMO 49*)**. Under Rule 7.2 of CMO 49, an applicant for authority to establish and operate a review center must either be: (a) schools, colleges or universities established/created by the State, or by operation of law, or private HEIs granted recognition by the CHED; or (b) Consortium/consortia of qualified HEIs and PRC-recognized Professional Association. Under Rule 15 of CMO 49, existing review centers are given a grace period of one (1) year to tie-up/be integrated with existing HEIs, consortium of HEIs and PRC-recognized Professional Association or convert as a school and apply for the course covered by the review. Otherwise, no permit — as required by CMO 49 — for operation and establishment will ever be given them and this will bar them from existing as review centers, and be deemed as operating illegally as such. The CHED revised CMO 49 when it issued CMO 30, Series of 2007, on May 7, 2007 (the *RIRR*).

The President Has Legal Basis to Regulate, but under *R.A. 8981*, not R.A. 7722

I hold the view that the President has sufficient legal basis to regulate review centers and could have done so under an existing validly delegated authority. This authority, however, is not based on the charter of the CHED, R.A. 7722; hence, the issuance of EO 566 on the basis of R.A. 7722 was an illegal act of subordinate legislation undertaken without statutory basis.

It was at this point that the petitioner association of independent review centers came to us, *via* the present petition, to assail the constitutionality of the EO 566 and the RIRR.

Meanwhile, the conclusion of the legal battle did not write *finis* to the hurdles the June 2006 nursing board examinees had to surpass. On February 14, 2007, the Commission on Graduate of Foreign Nursing Schools (*CGFNS*) of the United States of America issued a press release/statement essentially saying that the Philippine nurses sworn in as licensed nurses in the Philippines following their passing the compromised licensure exam of June 2006 shall not be eligible for *VisaScreen* Certificate (a requirement in order that a Philippine nurse may engage in her profession in the United States of America). The CGFNS noted in its statement though that the June 2006 passers may overcome this bar and qualify for a *Visa Screen* Certificate by taking the equivalent of Tests 3 and 5 on a future licensing examination administered by Philippine regulatory authorities and obtaining a passing score; and, in this connection, it urged the Philippine authorities to provide an opportunity for re-take of tests without surrender of license.

The President reacted by promulgating Executive Order No. 609 (*EO 609*) on March 12, 2007. Under EO 609, the June 2006 nursing board passers were given — to enhance their employability — the option of *voluntarily* retaking the equivalent of Tests III and V of the nurse licensure examination, *without* the risk of revocation of their professional licenses. The government assistance given to those who shall opt to voluntarily retake Tests III and V are as follows: (1) the PRC was directed to waive the collection of the usual examination fees; and (2) the designation throughout the country of special review centers to be conducted by centers of excellence in nursing or nursing schools with high passing rates where the voluntary retakers may avail themselves of free nursing board review.

The CHED extended the 1-year grace period provided under the RIRR for the existing review centers' compliance for six (6) months under CMO 55, Series of 2007, issued on November 19, 2007. Subsequently, the CHED — under CMO 21, Series of 2008 — extended the deadline for another six (6) months. We issued a Resolution requiring the parties to observe the *status quo* prevailing before the issuance of EO 566, the RIRR and CMO 21, s. 2008.

The law dealing with leakage and manipulation of licensure examinations is Republic Act No. 8981 (the *PRC Law*).[5] Section 5 of this law defines the PRC's primary mandate, which is *to establish and maintain a high standard of admission to the practice of all professions and* ***at all times ensure and safeguard the integrity of all licensure examinations***. Some of the PRC's powers, functions and responsibilities under Section 7 of the law include:

Section 7. *Powers, Functions and Responsibilities of the Commission*. — The powers, functions, and responsibilities of the Commission are as follows:

x x x x x x x x x

(*d*) To administer and conduct the licensure examinations of the various regulatory boards in accordance with the rules and regulations promulgated by the Commission; determine and fix the places and dates of examinations; use publicly or privately-owned buildings and facilities for examination purposes; conduct more than one (1) licensure examination: *Provided*, That, when there are two (2) or more examinations given in a year, at least one (1) examination shall be held on weekdays (Monday to Friday): *Provided, further*, That, if only one (1) examination is given in a year, this shall be held only on weekdays: *Provided, finally*, That, the Commission is also authorized to require the completion of a refresher course where the examinee has failed to pass three (3) times, except as otherwise provided by law; approve the results of examinations and the release of the same; **adopt measures to preserve the integrity and inviolability of licensure examinations**; appoint supervisors and room watchers from among the employees of the government and/ or private individuals with baccalaureate degrees, who have been trained by the Commission for the purpose and who shall be entitled to a reasonable daily allowance for every examination day actually attended, to be determined and fixed by the Commission; publish the list of successful examinees; provide schools, colleges and universities, public and private, offering courses for licensure

[5] An Act Modernizing the Professional Regulation Commission, Repealing for the Purpose Presidential Decree Number Two Hundred and Twenty-Three, entitled "Creating the Professional Regulation Commission, and Prescribing its Powers and Functions," and for Other Purposes.

examinations, with copies of sample test questions on examinations recently conducted by the Commission and copies of the syllabi or terms of specifications of subjects for licensure examinations; and impose the penalty of suspension or prohibition from taking licensure examinations to any examinee charged and found guilty of violating the rules and regulations governing the conduct of licensure examinations promulgated by the Commission;

x x x x x x x x x

(*s*) **To investigate *motu proprio* or upon the filing of a verified complaint, any member of the Professional Regulatory Boards for neglect of duty, incompetence, unprofessional, unethical, immoral or dishonorable conduct, commission of irregularities in the licensure examinations which taint or impugn the integrity and authenticity of the results of the said examinations and, if found guilty, to revoke or suspend their certificates of registration and professional licenses/identification cards and to recommend to the President of the Philippines their suspension or removal from office as the case may be**;

x x x x x x x x x

(*y*) **To perform such other functions and duties as may be necessary to carry out the provisions of this Act, the various professional regulatory laws, decrees, executive orders and other administrative issuance**

Complementing these mandates are the penal provisions giving teeth to the PRC's regulatory powers. Section 15 of the PRC Law provides:

Section 15. *Penalties for Manipulation and Other Corrupt Practices in the Conduct of Professional Examinations.* —

(*a*) Any person who manipulates or rigs licensure examination results, secretly informs or makes known licensure examination questions prior to the conduct of the examination or tampers with the grades in professional licensure examinations shall, upon conviction, be punished by imprisonment of not less than six (6) years and one (1) day to not more than twelve (12) years or a fine of not less than Fifty thousand pesos (₱50,000.00) to not more than One hundred thousand pesos (₱100,000.00) or both such imprisonment and fine at the discretion of the court.

Another critical power under Section 17 of the law is the authority to promulgate the necessary rules and regulations needed to implement its provisions.

Section 17. *Implementing Rules and Regulations.* Within ninety (90) days after the approval of this Act, the Professional Regulation Commission, together with the representatives of the various Professional Regulatory Boards and accredited professional organizations, the DBM, and the CHED shall prepare and promulgate the necessary rules and regulations needed to implement the provisions of this Act.

To be valid, this authority must be exercised on the basis of a *policy* that the law wishes to enforce and of *sufficient standards* that mark the limits of the legislature's delegation of authority. The completeness of this delegation is evidenced by the PRC Law's policy statement which provides:

Section 2. *Statement of Policy.* The State recognizes the important role of professionals in nation-building and, towards this end, promotes the sustained development of a sustained reservoir of professionals ***whose competence has been determined by honest and credible licensure examinations*** and whose standards of professional service and practice are internationally recognized and considered world-class brought by the regulatory measures, programs and activities that foster professional growth and advancement.

Read together with the grant of powers and functions under Section 5 (particularly the statement that — *"the Commission shall establish and maintain a high standard of admission to the practice of all professions and at all times ensure and safeguard the integrity of all licensure examinations"*), both policy and standards are therefore present as required by law and jurisprudence.[6]

Whether review centers can be the legitimate subjects of PRC regulation, given the above-described experience with the nursing board examination leakage and the terms of the PRC

[6] See: *Tatad v. Secretary of the Department of Energy,* G.R. No. 124360, November 5, 1997, 281 SCRA 330, on the tests for a valid delegation of legislative powers.

Law, is not a hard question to answer. Review centers, because of the role they have assumed and the reliance on them by examinees, have become active participants in the licensure examination process, and their involvement can neither be downplayed nor ignored. Board examinees now undergo review preparatory to licensure examinations as a matter of accepted practice, and pay considerable sums to avail themselves of the services review centers offer. These services include the provision of review materials; lectures on examination methods; practice examinations to simulate the actual exam environment; and final coaching just before the actual examination date. To some exam candidates, these services have become security blankets that, whether true or not, boost their confidence come examination time. Not the least of the considerations, of course, is that the review center industry has now become a billion-peso industry with sufficient means and resources for the corrupt elements of the industry to subvert the integrity and reputation of the licensure examinations. PRC experiences in the last few years attest to this reality.[7] Thus, the integrity and effectiveness of review centers are now basic considerations in ensuring an honest and credible licensure examination system. In these lights, the regulation of review centers is a must for the PRC, given its duty to adopt measures that will preserve the integrity and inviolability of licensure examinations.

Thus, unlike the CHED, the PRC has the requisite authority or mandate under the PRC Modernization Law to regulate the establishment and operation of review centers.

<u>Can the President transfer the power of regulation granted the PRC to CHED?</u>

This question essentially arises under the premise that review centers fall under the PRC's mandate so that there is no gap in the law, and the President, in the exercise of her power of control, can regulate review centers. Can this presidential authority be now cited as basis to argue for the validity of EO 566?

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[7] The PRC acted on the anomalies that allegedly marred the following licensure examinations for: Physicians (February 1993), Marine Deck Officers (June 2002), Teachers (August 2004), and Civil Engineers (November 2007).

The short and quick answer is no, because the disputed EO does not even invoke the PRC Law as its legal basis. Nor can the EO be revived by simply re-issuing it, citing the PRC Law and the authority of the President of the Philippines to issue regulations. **To regulate review centers under the PRC law, another EO — appropriate to the PRC and its structure under the PRC law — will have to be prepared and issued.**

The President, as Chief Executive, has the power of control over all the executive departments, bureaus, and offices.[8] The power of control refers to the power of an officer to alter, modify, nullify, or set aside what a subordinate officer has done in the performance of his duties, and to substitute the judgment of the former for that of the latter.[9] Under this power, the President may directly exercise a power statutorily given to any of his subordinates, as what happened in the old case of *Araneta v. Gatmaitan*,[10] where President Ramon Magsaysay himself directly exercised the authority granted by Congress to the Secretary of Agriculture and Natural Resources to promulgate rules and regulations concerning trawl fishing. We similarly ruled in *Bermudez v. Torres* when we said that the President, being the head of the Executive Department, can very well disregard or do away with the action of the departments, bureaus or offices even in the exercise of discretionary authority; in so opting, he cannot be said to be acting beyond the scope of his authority.[11]

The statutory support for this authority is provided under Section 31 (2), Chapter 10, Title III, Book III of Executive Order No. 292, otherwise known as the Administrative Code of 1987 (*EO 292*), which states:

Sec. 31. *Continuing Authority of the President to Reorganize his Office.* — The President, subject to the policy in the Executive

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[8] CONSTITUTION, Article VII, Section 17.

[9] See *Ang-Angco v. Castillo*, G.R. No. L-17169, November 30, 1963, 9 SCRA 619, citing *Hebron v. Reyes*, 104 Phil. 175 (1958).

[10] 101 Phil. 328 (1957).

[11] G.R. No. 131429, August 4, 1999, 311 SCRA 733.

Office and in order to achieve simplicity, economy and efficiency, shall have continuing authority to reorganize the administrative structure of the Office of the President. For this purpose, he may take any of the following actions:

(1) Restructure the internal organization of the Office of the President Proper, including the immediate Offices, the Presidential Special Assistants/Advisers System and the Common staff Support System, by abolishing, consolidating or merging units thereof or transferring functions from one unit to another;

(2) Transfer any function under the Office of the President to any other Department or Agency as well as transfer functions to the Office of the President from other Departments and Agencies; and

(3) Transfer any agency under the Office of the President to any other department or agency as well as transfer agencies to the Office of the President from other departments or agencies.

The President's direct exercise of the power of subordinate legislation is done *via* the issuance of an executive or administrative order, defined under Section 2, Chapter 2, Book III of EO 292, as an ordinance issued by the President providing for rules of a general or permanent character in the implementation or execution of constitutional or statutory powers.

The valid grant of the authority to issue subordinate legislation to the PRC and the exercise of this power by the President as the head of the executive department of government, however, do not extend to the authority of the President to take control of the PRC's powers under the PRC Law, and to assign these to another agency within the executive branch.

Effectively, this was what happened in the present case; the President, through EO 566, took control of the PRC's authority to issue subordinate legislation to regulate review centers, and transferred this power to the CHED. This is an illegal sub-delegation of delegated power. What has once been delegated by Congress can no longer be further delegated by the original delegate to another, expressed in the Latin maxim — *potestas*

delegata non delegare potest.[12] When the PRC Law granted the power of subordinate legislation to the PRC, the mandate was given to this agency (and under the control powers of the President, to the President by necessary implication) as the original delegate; the faithful fulfillment of this mandate is a duty that the PRC itself, as the delegate, must perform using its own judgment and not the intervening mind of another.[13]

Additionally, EO 566 placed entities subject to the jurisdiction of a particular agency (in this case, the PRC) under the jurisdiction of another (the CHED). As the cited reorganization powers of the President show, the statutorily-allowed transfer of functions refers to those from the Office of the President to the departments and agencies, or from the departments and agencies to the Office of the President. This proceeds from the power of control the Constitution grants to the President. No *general* statutory nor constitutional authority exists, however, allowing the President to transfer the functions of one department or agency to another. The reason for this is obvious — the jurisdiction of a particular department or agency is provided for by law and this jurisdiction may not be modified, reduced or increased, *via* a mere executive order except to the extent that the law allows. Thus, only the President, based on her constitutionally-provided control powers, can assume the functions of any of the departments or agencies under the Executive Department. Even then, the President cannot transfer these functions to another agency without transgressing the legislative prerogatives of Congress. This conclusion necessarily impacts on the validity of the CHED's issuance of the RIRR and other instruments which must similarly be invalid since they sprang from an invalid and impermissible sub-delegation of power.

I therefore vote to invalidate EO 566 and the issuances arising from this EO.

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[12] *United States v. Barrias*, 11 Phil. 327 (1908).

[13] See Cruz, *Philippine Political Law* (2002), p. 91.

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[G.R. No. 181295. April 2, 2009]

HARLIN CASTILLO ABAYON, *petitioner, vs.* **COMMISSION ON ELECTIONS and RAUL A. DAZA,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE; ELECTION PROTEST; TEN-DAY PERIOD FOR FILING; NOT SUSPENDED BY THE MERE FILING OF A PETITION DENOMINATED AS A PRE-PROCLAMATION CASE OR ONE SEEKING THE ANNULMENT OF PROCLAMATION. —** Jurisprudence makes it clear that the mere filing of a petition denominated as a pre-proclamation case or one seeking the annulment of a proclamation will not suspend the ten-day period for filing an election protest. It is required that the issues raised in such a petition be restricted to those that may be properly included therein. The Court pronounced in *Dagloc*, and quoted in *Villamor v. Commission on Elections*, that: "Not all actions seeking the annulment of proclamation suspend the running of the period for filing an election protest or a petition for *quo warranto*. For it is **not the relief** prayed for which distinguishes actions under [Section] 248 from an election protest or *quo warranto* proceedings, **but the grounds** on which they are based."

2. **ID.; ID.; ID.; PRE-PROCLAMATION CONTROVERSY; GROUNDS. —** The grounds that must support a pre-proclamation controversy are limited by the Omnibus Election Code to the following: "Section 243. Issues that may be raised in pre-proclamation controversy. — The following shall be proper issues that may be raised in a pre-proclamation controversy: (a) Illegal composition or proceedings of the board of convassers; (b) The convassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235 and 236 of this Code; (c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and (d) When substitute or

fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates." The enumeration is restrictive and exclusive. Thus, in the absence of any clear showing or proof that the election returns canvassed are incomplete or contain material defects; appear to have been tampered with, falsified or prepared under duress; and/or contain discrepancies in the votes credited to any candidate, which would affect the result of the election, a petition cannot be properly considered as a pre-proclamation controversy.

3. **ID.; ID.; ID.; ID.; NATURE AND PURPOSE. —** The purpose of a pre-proclamation controversy is to ascertain the winner or winners in the election on the basis of the election returns duly authenticated by the board of inspectors and admitted by the board of canvassers. It is well-entrenched rule that the Board of Canvassers and the COMELEC are not to look beyond or behind electoral returns. A pre-proclamation controversy is summary in nature. It is the policy of the election law that pre-proclamation controversies be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible. There is no room for the presentation of evidence *aliunde,* the inspection of voluminous documents, and for meticulous technical examination. That is why such questions as those involving the appreciation of votes and the conduct of the compaign and balloting, which require more deliberate and necessarily longer consideration, are left for examination in the corresponding election protest.

4. **ID.; ID.; REPUBLIC ACT 7166 (THE SYNCRONIZED ELECTIONS AND ELECTORAL REFORMS LAW OF 1991); SECTION 20 THEREOF APPLIES ONLY TO VALID PRE-PROCLAMATION CONTESTS. —** [T]he procedure under Section 20 of Republic Act No. 7166 applies only to valid pre-proclamation contests. x x x It bears to point out that under Section 20(a) of Republic Act No. 7166, election returns may be contested on any of the grounds recognized under Article XX, and Sections 234, 235, and 236 of the Omnibus Election Code. Sections 234, 235, and 236 of the Omnibus Election Code are the very same grounds for a pre-proclamation controversy recognized under Section 243(b) of the Omnibus Election Code, which reads: "The canvassed election returns are incomplete, contain material defects, appear

tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235 and 236." On the other hand, Article XX entitled "Pre-Proclamation Controversies" is unequivocal about the kind of petition discussed therein. Section 20 (i) of Republic Act No. 7166 is part of the procedure undergone by a valid pre-proclamation contest.

5. **ID.; ID.; OMNIBUS ELECTION CODE; ELECTION PROTEST; TEN-DAY PERIOD FOR FILING; CAN ONLY BE SUSPENDED UPON THE FILING OF A PRE-PROCLAMATION CASE BASED ON ANY OF THE GROUNDS ENUMERATED UNDER SECTION 243 OF THE CODE. —** It is clear from *Villamor* and *Dagloc* that, as provided under Section 248 of the Omnibus Election Code, the period within which an election protest must be filed could only be suspended upon the filing of a pre-proclamation case based on any of the grounds enumerated under Section 243 of the same Code. Petitions based upon grounds other than those so identified under Section 243, even if they seek to annul the proclamation, will not suspend the period for filing the election protest. Section 248 of the Omnibus Election Code, allowing a pre-proclamation case to suspend the period for filing the election protest, was clearly intended to afford the protestant the opportunity to avail himself of a remedy to its fullest extent; in other words, to have his pre-proclamation case resolved, without the pressure of having to abandon it in order to avail himself of other remedies. It protects the right of the protestant to still file later on an election protest on grounds that he could not raise in, or only became apparent after his filing of, a pre-proclamation case. Section 248 is not to be used as a justification for the irresponsible filing of petitions, which on their face are contrary to the provisions of election laws and regulations, and which only serve to delay the filing of proper remedies and clog the dockets of the COMELEC and the courts.

6. **ID.; ID.; ID.; ID.; ID.; THE RULE PRESCRIBING THE TEN-DAY PERIOD FOR THE FILING OF AN ELECTION PROTEST IS MANDATORY AND JURISDICTIONAL. —** [T]he rule prescribing the ten-day period for the filing of an election protest is mandatory and jurisdictional; and the filing of an election protest beyond the period deprives the court of jurisdiction over the protest. Violation of this rule should not

be taken lightly, nor should it be brushed aside as a mere procedural lapse that can be overlooked. This is not a mere technicality but an essential requirement, the non-compliance with which would oust the court of jurisdiction over the case.

7. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION, DEFINED. —** In a special civil action for *certiorari,* the burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Grave abuse of discretion means a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.

NACHURA, *J., dissenting opinion*:

1. **POLITICAL LAW; ELECTION LAWS; REPUBLIC ACT 7166 (THE SYNCRONIZED ELECTIONS AND ELECTORAL REFORM LAW OF 1991); PROCEDURE IN DISPOSITION OF CONTESTED ELECTION RETURNS; BEFORE A BOARD OF CANVASSERS COULD VALIDLY PROCLAIM A CANDIDATE AS WINNER, WHEN ELECTION RETURNS ARE CONTESTED, IT MUST FIRST BE AUTHORIZED BY THE COMELEC; CASE AT BAR. —** On May 20, 2007, when Daza was proclaimed as Governor by the Provincial Board of Canvassers of Northern Samar, Abayon had already filed the day before, or on May 19, 2007, his petition in SPC No. 07-037, entitled, *"In the Matter of the Petition to Exclude the Certificates of Canvass (COC) of the Municipalities of Capul, Rosario and Bobon — All in the Province of Northern Samar, Which Were Prepared Under Duress, Threats and Intimidation."* On the face of the petition, even by its caption alone, Abayon had filed a pre-proclamation contest, raising an issue compliant with Section 243 of the Omnibus Election Code (OEC), namely that the certificates of canvass for the municipalities mentioned "were prepared under duress, threats and intimidation," clearly within the ambit of paragraph (c) of Section 243. Accordingly, Section 20, R.A. No. 7166, specifically paragraph (i) thereof, which provides: *Section 20. Procedure in Disposition of Contested Election Returns.* — x x x **(i) The board of canvassers shall not proclaim any candidate or winner unless authorized by the Commission after the latter has**

ruled on the objection brought to it on appeal by the losing party. Any proclamation made in violation hereof shall be void *ab initio*, unless the contested returns will not adversely affect the results of the election, should have taken effect automatically. The COMELEC did not grant the provincial board of canvassers of Northern Samar any authority to proclaim Daza; the board did so on its own volition. In proclaiming Daza without COMELEC authority after a pre-proclamation petition had already been filed, the provincial board of canvassers acted in violation of the procedure prescribed in Section 20 of R.A. No. 7166. Perforce, by express provision of law, the proclamation of Daza was void *ab initio.* As we ruled in *Utto v. Commission on Elections*, **Section 20(i) of R.A. No. 7166 is mandatory and requires strict observance.** To repeat, before a board of canvassers could validly proclaim a candidate as winner, when election returns are contested, it must first be authorized by the COMELEC. x x x Significantly, with Daza's proclamation being null and void by operation of the law, the ten-day period (for filing an election protest) did not commence to run on the date of the proclamation, as there would have been no proclamation to speak of in the first place.

2. **ID.; ID.; OMNIBUS ELECTION CODE; PRE-PROCLAMATION CONTROVERSIES; THE NULLITY OF PREMATURE PROCLAMATION SHOULD NOT BE MADE TO REST ON THE OUTCOME OF THE PRE-PROCLAMATION CONTROVERSY. —** The nullity of the premature proclamation should not be made to rest on the outcome of the pre-proclamation controversy. A contrary view would subvert the underlying policy consideration for the institution of the pre-proclamation contest as an efficacious and speedy remedy. It should be remembered that the statutory provisions on pre-proclamation controversies were legislated in order to prevent the nefarious practice known as "grab-the-proclamation, prolong-the-protest." The salutary legislative objective would be negated if the precipitate proclamation is allowed to stand, made to await the resolution of the pre-proclamation contest.

3. **ID.; ID.; ID.; ID.; EFFECT OF FILING A PETITION TO ANNUL OR TO SUSPEND THE PROCLAMATION; EXPLAINED. —** On May 21, 2007, the day following Daza's proclamation, Abayon filed with the COMELEC a petition, docketed as SPC No. 07-070, denominated, *"In the Matter of the Petition to*

Declare the Proclamation of Private Respondent as Winning Candidate for the Position of Governor of Northern Samar Null and Void." When Abayon filed that petition with the COMELEC, Section 248 of the Omnibus Election Code, which provides: *Section 248. Effect of filing petition to annul or to suspend proclamation.* — The filing with the Commission of a petition to annul or suspend the proclamation of any candidate **shall suspend the running of the period within which to file an election protest or *quo warranto* petition.** automatically came into force and effect. The period to file an election protest would only commence to run after the petition to annul the proclamation had been finally resolved by the COMELEC, or in certain instances, by this Court. This is so because the language of Section 248 is direct, positive and mandatory. It brooks no exception. The Court emphasized this resultant operation of Section 248 on the ten-day prescriptive period for the filing of election protest in *Manahan v. Bernardo*, *Roquero v. Commission on Elections*, and, recently, in *Tan v. Commission on Elections*, in which it was further explained thus: As may be noted, the aforequoted Section 248 contemplates two (2) points of reference, that is, pre- and post-proclamation, under which either of the petitions referred to therein is filed. Before the proclamation, what ought to be filed is a petition to "suspend" or stop an impending proclamation. After the proclamation, an adverse party should file a petition to "annul" or undo a proclamation made. **Pre-proclamation controversies partake of the nature of petitions to suspend.** The purpose for allowing pre-proclamation controversies, the filing of which is covered by the aforequoted Section 248 of the Omnibus Election Code, is to nip in the bud the occurrence of what, in election practice, is referred to as "grab the proclamation and prolong the protest" situation. Correlating the petitions mentioned in Section 248 with the 10-day period set forth in the succeeding Section 250, **a petition to suspend tolls the 10-day period for filing an election protest from running, while a petition to annul interrupts the running of the period.** In other words, **in a Section 248 petition to suspend where the 10-day period did not start to run at all, the filing of a Section 250 election contest after the tenth (10th) day from proclamation is not late. On the other hand, in a Section 248 petition to annul, the party seeking**

annulment must file the petition before the expiration of the 10-day period.

4. **ID.; ID.; ID.; ID.; EXCLUSIVE ORIGINAL JURISDICTION OVER PRE-PROCLAMATION CASES IS VESTED IN THE COMELEC. —** Exclusive original jurisdiction over pre-proclamation cases is vested in the COMELEC. This Court may only exercise *certiorari* jurisdiction over COMELEC decisions, orders or rulings in these cases. Since no petition for *certiorari* has been filed with this Court in connection with SPC Nos. 07-037 and 07-070, we are without competence to rule on the petitions in these cases.

5. **ID.; ID.; ELECTION CONTEST; NATURE. —** An election contest, unlike an ordinary action, is imbued with public interest, involving as it does not only the adjudication of the private interests of rival candidates but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate. Neither it is fair nor just to keep in office for an uncertain period one whose right to it is under suspicion. Imperative indeed is that his claim be immediately cleared, not only for the benefit of the winner but for the sake of public interest, which can only be achieved by brushing aside technicalities of procedure.

APPEARANCES OF COUNSEL

George Erwin Garcia for petitioner.
The Solicitor General for public respondent.
Amancio O. Ballicud, Reyzandro A. Unay and *Teodoro M. Jumamil* for private respondent.

D E C I S I O N

CHICO-NAZARIO, *J*.:

This is a Petition for *Certiorari* and Prohibition under Rule 65 of the Revised Rules of Court seeking to set aside the Resolution[1]

[1] *Per Curiam*, with Acting Chairman Ressureccion Z. Borra, Commissioners Florentino A. Tuason, Jr., Romeo A. Brawner, Rene V. Sarmiento, Nicodemo T. Ferrer and Moslemen T. Macarambon, concurring. *Rollo*, pp. 50-56.

dated 28 January 2008 of the Commission on Elections (COMELEC) *en banc* in EPC No. 2007-62, which affirmed the Order dated 8 October 2007 of the COMELEC First Division[2] dismissing the election protest of petitioner Harlin Castillo Abayon (Abayon) for having been filed out of time.

Abayon and respondent Raul Daza (Daza) were candidates for the Office of Governor of the Province of Nothern Samar during the 14 May 2007 elections.[3]

On 19 May 2007, Abayon filed a pre-proclamation protest before the Provincial Board of Canvassers (PBoC) of Northern Samar, docketed as **SPC No. 07-037**, entitled, "IN THE MATTER OF THE PETITION TO EXCLUDE THE CERTIFICATE[S] OF CANVASS (COC) OF THE MUNICIPALITIES OF CAPUL, ROSARIO AND BOBON—ALL IN THE PROVINCE OF NORTHERN SAMAR WHICH WERE PREPARED UNDER DURESS, THREATS AND INTIMIDATION."[4]

On 20 May 2007, Daza was proclaimed as the winning candidate having garnered a total of 101,819 votes against Abayon's 98,351 votes, winning by a margin of 3,468 votes.[5]

On 21 May 2007, Abayon filed with the COMELEC **SPC NO. 07-069**, entitled, "PETITION TO EXCLUDE CERTIFICATE OF CANVAS (COC) OF MUNICIPALITY OF CATUBIG, NORTHERN SAMAR WHICH WAS PREPARED UNDER DURESS, THREATS, COERCION OR INTIMIDATION."[6]

On the same day, Abayon filed with the COMELEC two other petitions, "IN THE MATTER OF PETITION TO DECLARE THE PROCLAMATION OF PRIVATE RESPONDENT [Daza] AS WINNING CANDIDATE FOR THE POSITION OF

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[2] Penned by Presiding Commissioner Resurreccion Z. Borra with Commissioner Romeo A. Brawner, concurring; *rollo,* pp. 30-36.

[3] *Rollo,* p. 30.

[4] *Id.* at 6 and 85-86.

[5] *Id.* at 5-6.

[6] *Id.* at 6 and 86.

GOVERNOR OF NORTHERN SAMAR NULL AND VOID," docketed as **SPC No. 07-070**, and "IN THE MATTER OF THE PETITION FOR DECLARATION OF FAILURE OF ELECTIONS IN THE MUNICIPALITIES OF CAPUL, ROSARIO AND BOBON, ALL OF NORTHERN SAMAR," docketed as **SPA No. 07-460**.[7]

On 24 May 2007, Abayon filed with the COMELEC a fifth petition, "IN THE MATTER OF THE PETITION TO DECLARE FAILURE OF ELECTION IN THE MUNICIPALITY OF CATUBIG, NORTHERN SAMAR, AND FOR THE HOLDING OF SPECIAL ELECTIONS THEREOF," docketed as **SPC No. 07-484**.[8]

On 29 June 2007, Abayon filed with the COMELEC a Petition of Protest, docketed as **EPC No. 2007-62**, contesting the election and proclamation of Daza as Governor of Northern Samar.[9]

Of Abayon's numerous petitions, three were denied or dismissed. **SPC No. 07-069**, Abayon's petition to exclude from canvass the COC of Catubig, Northern Samar, was denied by the COMELEC Second Division in a Resolution dated 2 July 2007.[10] **SPC No. 07-484**, Abayon's petition for the declaration of a failure of election in the Municipality of Catubig, Northern Samar, and for the holding of special elections therein, was dismissed by the COMELEC *en banc* in a Resolution dated 9 July 2007.[11] **SPA No. 07-460**, Abayon's petition for the declaration of failure of elections in the Municipalities of Capul, Rosario and Bobon, in Northern Samar, was also dismissed by the COMELEC *en banc* in a Resolution dated 29 January 2008.[12]

Abayon was similarly unsuccessful in **EPC No. 2007-62**, his Petition of Protest. On 8 October 2007, the COMELEC First

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[7] *Id.* at 6 and 86-87.

[8] *Id.* at 6 and 87.

[9] *Id.* at 6-7 and 88.

[10] *Id.* at 7 and 88.

[11] *Id.* at 87.

[12] *Id.*

Division issued its Order[13] dismissing Abayon's election protest for having been filed out of time. Under Section 250 of the Omnibus Election Code,[14] an election protest should be filed within 10 days from the date of the proclamation of the results of the election. Since Daza was proclaimed on **20 May 2007**, Abayon had only until **30 May 2007** to file his election protest. However, he filed his election protest only on **29 June 2007**. The COMELEC referred to the case of *Villamor v. COMELEC*,[15] when it declared that in order for a petition for annulment of proclamation to suspend the period for filing of election protest, it should be based on a valid pre-proclamation issue. In applying this ruling, it decreed that the pendency of SPC No. 07-070, Abayon's petition for annulment of Daza's proclamation, did not toll the running of the ten-day period for filing an election protest. SPC No. 07-070 was based on SPC No. 07-037, Abayon's earlier petition for the exclusion from canvass of the COCs from the Municipalities of Capul, Rosario and Bobon, Northern Samar, since they were prepared under duress, threats, and coercion or intimidation, grounds which do not involve proper pre-proclamation issues. The COMELEC, thus, decreed in its Order dated 8 October 2007 that:

WHEREFORE, premises considered, the instant election protest is hereby DISMISSED for having been filed out of time.[16]

On 10 October 2007, Abayon filed before the COMELEC *en banc* a Motion for Reconsideration[17] of the Order dated 8

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[13] *Id.* at 30-36.

[14] Section 250 of the Omnibus Election Code states that:

Section 250. *Election contests for Batasang Pambansa, regional, provincial and city offices.* — A sworn petition contesting election of any Member of the *Batasang Pambansa* or any regional, provincial and city official shall be filed with the Commission by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after the proclamation of the results of the election.

[15] G.R. No. 169865, 21 July 2006, 496 SCRA 334.

[16] *Rollo*, p. 35.

[17] *Id.* at 37-49.

October 2007 of the COMELEC First Division in EPC No. 2007-62.

The COMELEC *en banc* denied Abayon's Motion for Reconsideration in a Resolution[18] dated 28 January 2008. It affirmed that the election protest in EPC No. 2007-62 was belatedly filed. The COMELEC *en banc* maintained that SPC No. 07-037 seeking the exclusion from canvass of the COCs from three municipalities of Northern Samar was based on grounds that were not proper for a pre-proclamation controversy. SPC No. 07-037 lacked merit and could not have rendered Daza's proclamation void. Consequently, SPC No. 07-070 — in which Abayon challenged Daza's proclamation on the basis that it was made counting the votes in the COCs sought to be excluded in SPC No. 07-037 — was without merit. The suspension of the ten-day period for filing an election protest was intended to ensure that the losing candidate who filed a pre-proclamation case retains the right to avail himself of an election protest. This rationale presupposes that there is a valid pre-proclamation controversy; otherwise, such rationale would be defeated if the ten-day suspension period is applied to a pre-proclamation contest so manifestly baseless that it cannot prosper. The COMELEC then ruled that:

> WHEREFORE, premises considered, the Commission RESOLVES, as it hereby RESOLVED, to DENY the instant Motion for Reconsideration. The Resolution of the Commission (First Division) ordering the dismissal of the case for having been filed out of time is hereby AFFIRMED.[19]

On 5 February 2003, Abayon sought remedy from this Court *via* the present Petition for *Certiorari* and Prohibition under Rule 65 of the Revised Rules of Court, on the basis of the following arguments:

I

VILLAMOR VS. COMELEC APPLIES ONLY TO THE SPECIFIC INSTANCE WHERE THE BASIS FOR THE ANNULMENT OF

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[18] *Id.* at 50-60.

[19] *Id.* at 55.

PROCLAMATION IS BY ITS VERY NATURE COULD NOT BE A GROUND FOR THE ANNULMENT OF PROCLAMATION, LIKE THE ILLEGAL COMPOSITION OF THE BOARD;

II

VILLAMOR VS. COMELEC IS AN EXCEPTION TO THE GENERAL RULE THAT (sic) UNDER SECTION 248 OF THE OMNIBUS ELECTION CODE; HENCE IT SHOULD BE CONSTRUED STRICTLY; AND

III

THE PROTEST IS SUFFICIENT IN FORM AND SUBSTANCE; HENCE, THE PUBLIC INTEREST INVOLVED IN DETERMINING THE TRUE WINNER IN THE ELECTION SHOULD BE PARAMOUNT OVER THE TECHNICAL OBJECTIONS.[20]

The Court identifies the two main issues in this case to be as follows: (1) whether the mere filing of a pre-proclamation case, regardless of the issues raised therein, suspends the ten-day period for the filing of an election protest; and (2) if the answer to the first issue is in the negative, whether the election protest which is untimely filed may still be considered by the COMELEC.

Section 250 of the Omnibus Election Code fixes the period within which to file an election contest for provincial offices at ten days after the proclamation of the election results, to wit:

Section 250. *Election contests for Batasang Pambansa, regional, provincial and city offices.* — A sworn petition contesting the election of any Member of the Batasang Pambansa or any regional, provincial and city official shall be filed with the Commission by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after the proclamation of the results of the election.

However, this ten-day period may be suspended, as Section 248 of the Omnibus Election Law provides:

Section 248. *Effect of filing petition to annul or to suspend the proclamation.*— The filing with the Commission of a petition to

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[20] *Id.* at 213-214.

annul or to suspend the proclamation of any candidate shall suspend the running of the period within which to file an election protest or *quo warranto* proceedings.

In *Dagloc v. Commission on Elections*,[21] this Court clarified that the **"petition to annul or to suspend the proclamation,"** which Section 248 refers to, and which suspends the running of the period within which to file the election protest or *quo warranto* proceedings, must be **a pre-proclamation controversy**. The Court, thus, decreed in the same case that a petition for the declaration of failure of election was not a pre-proclamation controversy and, therefore, did not suspend the running of the reglementary period within which to file an election protest or *quo warranto* proceedings.

In this case, it is worthy to reiterate that on **20 May 2007**, Daza was already proclaimed the winning candidate for the Office of Governor of the Province of Northern Samar in the 14 May 2007 elections. Abayon had until **30 May 2007** to file his election protest. Yet, he filed EPC No. 2007-62, his Petition of Protest only on **29 June 2007**, or almost 40 days after Daza's proclamation.

The Court scrutinized the petitions filed by Abayon in the present case to determine if any of them suspended the ten-day period for the filing of an election protest.

SPA No. 07-460 and **SPA No. 07-484**, which are petitions for the declaration of failure of elections in the Municipalities of Capul, Rosario, Bolon, and Catubig, Northern Samar, cannot suspend the ten-day period for filing an election protest, per the ruling of the Court in *Dagloc*. Abayon also readily admits that **SPC No. 07-069**, a petition for the exclusion from canvass of the COC from the Municipality of Catubig, had been previously resolved and denied by the COMELEC.[22]

Abayon, however, maintains that **SPC No. 07-037**, a petition for the exclusion from canvass of the COCs from the Municipalities

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[21] *Dagloc v. Commission on Elections*, 378 Phil. 906, 912-917 (1999).

[22] *Rollo*, p. 212.

of Capul, Rosario, and Bobon, Northern Samar; and **SPC No. 07-070**, a petition to annul the proclamation of Daza, both effectively suspended the running of the period to file **EPC No. 2007-62**, his election protest. As regards particularly SPC No. 07-037, Abayon asserts that it is a pre-proclamation case.

Abayon's position is untenable.

Jurisprudence makes it clear that the mere filing of a petition denominated as a pre-proclamation case or one seeking the annulment of a proclamation will not suspend the ten-day period for filing an election protest. It is required that the issues raised in such a petition be restricted to those that may be properly included therein.

The Court pronounced in *Dagloc,*[23] and quoted in *Villamor v. Commission on Elections*,[24] that:

> Not all actions seeking the annulment of proclamation suspend the running of the period for filing an election protest or a petition for *quo warranto*. For it is **not the relief** prayed for which distinguishes actions under [Section] 248 from an election protest or *quo warranto* proceedings, **but the grounds** on which they are based. (Emphasis ours.)

The grounds that must support a pre-proclamation controversy are limited by the Omnibus Election Code to the following:

> Section 243. Issues that may be raised in pre-proclamation controversy.—The following shall be proper issues that may be raised in a pre-proclamation controversy:
>
> (a) Illegal composition or proceedings of the board of canvassers;
>
> (b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235 and 236 of this Code;
>
> (c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and

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[23] *Supra* note 21.

[24] *Supra* note 15 at 340.

(d) When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.

The enumeration is restrictive and exclusive. Thus, in the absence of any clear showing or proof that the election returns canvassed are incomplete or contain material defects; appear to have been tampered with, falsified or prepared under duress; and/or contain discrepancies in the votes credited to any candidate, which would affect the result of the election, a petition cannot be properly considered as a pre-proclamation controversy.[25]

The purpose of a pre-proclamation controversy is to ascertain the winner or winners in the election on the basis of the election returns duly authenticated by the board of inspectors and admitted by the board of canvassers. It is a well-entrenched rule that the Board of Canvassers and the COMELEC are not to look beyond or behind electoral returns. A pre-proclamation controversy is summary in nature. It is the policy of the election law that pre-proclamation controversies be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible. There is no room for the presentation of evidence *aliunde*, the inspection of voluminous documents, and for meticulous technical examination. That is why such questions as those involving the appreciation of votes and the conduct of the campaign and balloting, which require more deliberate and necessarily longer consideration, are left for examination in the corresponding election protest.[26]

The COMELEC First Division herein found, and Abayon never disputed before the COMELEC or this Court, that **SPC No. 07-037**, his petition for exclusion from canvass of the COCs from three municipalities in Northern Samar, was based on the grounds quoted hereunder:

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[25] *Sanchez v. Commission on Elections*, G.R. Nos. 78461, 79146 and 79212, 12 August 1987, 153 SCRA 67, 75.

[26] *Abella v. Larrazabal*, G.R. Nos. 87721-30 and 88004, 21 December 1989, 180 SCRA 509, 516-517; *Chu v. Commission on Elections*, 377 Phil. 509, 515-518 (1999).

[T]he petition for annulment of proclamation was based on an unresolved petition for exclusion from the canvass of three certificates of canvass on the ground that they were allegedly prepared under duress, threats, coercion or intimidation as shown by the following circumstances:

1. a voter was forcibly taken by members of the Philippine Army;
2. a political leader was killed;
3. threats which prevented the holding of campaign sorties or rallies;
4. vote buying; threats and intimidation on voters;
5. alleged missing certificate of canvass; and
6. a wife of a BEI member was seen going in and out of the polling precinct under suspicious circumstances.[27]

None of the aforementioned circumstances fall under the enumeration of issues that may be raised in a pre-proclamation controversy. Abayon acknowledges that SPC No. 07-037 does not involve the illegal composition of the board of canvassers.[28] Not any of these circumstances involves defects or irregularities apparent from the physical examination of the election returns. The alleged abduction of a voter, the killing of a political leader, the threats which prevented the holding of the campaign sorties, and the intimidation of voters, are acts of terrorism which are properly the subject of an election protest, but not of a pre-proclamation controversy. Precisely, in *Dipatuan v. Commission on Elections*,[29] the Court held that massive vote-buying, like the allegation of bribery evidenced by the suspicious presence of the wife of a Board of Election Inspectors (BEI) member, was a proper ground for an election protest, but not for a pre-proclamation controversy.

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[27] *Rollo*, pp. 34-35.

[28] *Sanchez v. Commission on Elections*, *supra* note 25 at 75.

[29] *Dipatuan v. Commission on Elections*, G.R. No. 86117, 7 May 1990, 185 SCRA 86, 92-94.

Since SPC No. 07-037 did not qualify as a pre-proclamation controversy, it could not have suspended the ten-day statutory period for the filing of an election protest.

Bereft of any legal basis, **SPC No. 07-070**, Abayon's petition to annul the proclamation of Daza, likewise, could not have suspended the period for the filing of an election protest. In SPC No. 07-070, Abayon questioned the validity of "the proclamation of [Daza] despite the pendency of a pre-proclamation controversy, SPC No. 07-037, which questioned the inclusion of three municipal **certificates of canvass**."[30] Abayon posited that Daza's proclamation was void under Section 20(i) of Republic Act No. 7166, hereunder reproduced:

Section 20. Procedure in Disposition of Contested Election Returns.

x x x x x x x x x

(i) The board of canvassers shall not proclaim any candidate as winner unless authorized by the Commission after the latter has ruled on the object brought to it on appeal by the losing party. Any proclamation made in violation hereof shall be void *ab initio*, unless the contested returns will not adversely affect the results of the election.

To begin with, as this Court already ruled herein, SPC No. 07-037 was not a pre-proclamation case that should defer the proclamation of Daza during its pendency.

More importantly, the procedure under Section 20 of Republic Act No. 7166 applies only to valid pre-proclamation contests. The first part of Section 20, particularly paragraph (a), actually states that:

Section 20. Procedure in Disposition of Contested Election Returns.

a) Any candidate, political party or coalition of political parties contesting the inclusion or exclusion in the canvass of any election returns on any of the grounds authorized **under Article XX or**

[30] *Rollo*, p. 215.

Sections 234, 235 and 236 of Article XIX of the Omnibus Election Code shall submit their oral objection to the chairman of the board of canvassers at the time the questioned return is presented for inclusion in the canvass. Such objection shall be recorded in the minutes of the canvass. [Emphasis ours.]

It bears to point out that under Section 20(a) of Republic Act No. 7166, election returns may be contested on any of the grounds recognized under Article XX, and Sections 234, 235, and 236 of the Omnibus Election Code. Sections 234, 235, and 236 of the Omnibus Election Code are the very same grounds for a pre-proclamation controversy recognized under Section 243(b) of the Omnibus Election Code, which reads: "The canvassed election returns are incomplete, contain material defects, appear tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235 and 236." On the other hand, Article XX entitled "Pre-Proclamation Controversies" is unequivocal about the kind of petition discussed therein. Section 20 (i) of Republic Act No. 7166 is part of the procedure undergone by a valid pre-proclamation contest. Hence, Abayon cannot seek the annulment of Daza's proclamation, where no valid pre-proclamation contest was filed.

SPC No. 07-070 sought the annulment of Daza's proclamation and was necessarily filed after the said proclamation. Clearly it is not a pre-proclamation case. Moreover, it is based on a legally implausible ground — the COMELEC's failure to resolve SPC No. 07-037. Under Section 16 of Republic Act No. 7166,[31]

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[31] Section 16. *Pre-proclamation Cases Involving Provincial, City and Municipal Offices*. Pre-proclamation cases involving provincial, city and municipal offices shall be allowed and shall be governed by Sections 17, 18, 19, 20, 21 and 22 hereof. **All pre-proclamation cases pending before the Commission shall be deemed terminated** at the beginning of the term of the office involved and the rulings of the boards of canvassers concerned shall be deemed affirmed, **without prejudice to the filing of a regular election protest** by the aggrieved party**.** However, **proceedings may continue** when on the basis of the evidence thus far presented, the Commission determined that the **petition appears meritorious** and accordingly issues an **order** for the proceeding to continue or when an **appropriate order** has been issued by the Supreme Court in a petition for *certiorari*. (Emphasis supplied.)

pre-proclamation cases which are unresolved at the beginning of the term of the winning candidate are automatically terminated. The COMELEC is not obligated to resolve each and every pre-proclamation case. Since SPC No. 07-070 is apparently not a pre-proclamation contest and it is based on a legal argument which contradicts the law, this Court cannot possibly accord it the effect of suspending the statutory period for the filing of an election protest.

To reiterate, the circumstances pointed out by Abayon in SPC No. 07-037 are proper grounds for an election protest, not a pre-proclamation controversy. In fact, had Abayon timely filed an election protest, bearing the same allegations and raising identical issues, it would have been given due course. Instead, Abayon repeatedly insisted on pursuing remedies which were not available to him given, the circumstances alleged in his petitions.

Abayon's assertion that *Villamor v. Commission on Elections*[32] should not be applied to his case, because of the difference in the factual backgrounds of the two cases, is unconvincing. In *Villamor*, the petition to annul the proclamation was based on the purported illegal composition of the municipal board of canvassers, a fact that could have constituted a pre-proclamation controversy. However, since the petition therein was belatedly filed, after the proclamation of the winning candidate, the Court ruled that it still could not suspend the period for filing an election protest. Even the factual background in *Dagloc* is not on all fours with the present case, for it involved a petition for the declaration of failure of elections, which was adjudged not to be a pre-proclamation case. In the case presently before this Court, Abayon argues that the period for filing his election protest was suspended by his previous filing of SPC No. 07-037, a petition to exclude from canvass the COCs from three municipalities of Northern Samar; and SPC No. 07-070, a petition to annul Daza's proclamation.

Despite the aforementioned differences between the facts of *Villamor* and *Dagloc vis-à-vis* the case at bar, the Court finds

[32] *Supra* note 15.

the same to be actually irrelevant, and should not detract this Court from applying the wisdom of its ruling in its two decided cases to the one at bar. It is clear from *Villamor* and *Dagloc* that, as provided under Section 248 of the Omnibus Election Code, the period within which an election protest must be filed could only be suspended upon the filing of a pre-proclamation case based on any of the grounds enumerated under Section 243 of the same Code. Petitions based upon grounds other than those so identified under Section 243, even if they seek to annul the proclamation, will not suspend the period for filing the election protest.

Section 248 of the Omnibus Election Code, allowing a pre-proclamation case to suspend the period for filing the election protest, was clearly intended to afford the protestant the opportunity to avail himself of a remedy to its fullest extent; in other words, to have his pre-proclamation case resolved, without the pressure of having to abandon it in order to avail himself of other remedies. It protects the right of the protestant to still file later on an election protest on grounds that he could not raise in, or only became apparent after his filing of, a pre-proclamation case. Section 248 is not to be used as a justification for the irresponsible filing of petitions, which on their face are contrary to the provisions of election laws and regulations, and which only serve to delay the filing of proper remedies and clog the dockets of the COMELEC and the courts.

The processes of the adjudication of election disputes should not be abused. By their very nature and given the public interest involved in the determination of the results of an election, the controversies arising from the canvass must be resolved speedily; otherwise, the will of the electorate would be frustrated. And the delay brought about by the means resorted to by petitioner is precisely the very evil sought to be prevented by election laws and the relevant jurisprudence.[33]

It bears enucleation that the rule prescribing the ten-day period for the filing of an election protest is mandatory and jurisdictional;

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[33] *Baltazar v. Commission on Elections*, 403 Phil. 444, 453-454 (2001).

and the filing of an election protest beyond the period deprives the court of jurisdiction over the protest. Violation of this rule should not be taken lightly, nor should it be brushed aside as a mere procedural lapse that can be overlooked. This is not a mere technicality but an essential requirement, the non-compliance with which would oust the court of jurisdiction over the case.[34]

The cases cited by Abayon in support of his present Petition are not in point. *Saquilayan v. Commission on Elections*[35] does not involve delay in filing an election protest, but rather the wrongful manner in which the allegations were made in the protest. Respondent therein filed an election protest, which failed to specifically mention the precincts where widespread election fraud and irregularities supposedly occurred, as well as where and how these occurrences took place. The Court, nevertheless, allowed the election protest to proceed, taking into account the then recent case *Miguel v. Commission on Elections*,[36] which was also invoked by Abayon. Respondent in *Miguel* **filed a timely election protest**, wherein he made general allegations of fraud and irregularities in the conduct of the electoral exercise. Petitioner therein insisted that a "preliminary hearing" on the particulars of the alleged fraud and irregularities must be conducted before the ballots were opened. The Court ruled in favor of the respondent and held that the opening of the ballot boxes would ascertain, with the least amount of protracted delay, the veracity of fraud and irregularities.

While there is merit in allowing an election protest to proceed in order to ascertain the allegations of massive fraud and irregularities which tend to defeat the electorate's will, one must also keep sight of jurisdictional requirements such as the period within which to file the protest. Otherwise, election disputes would drag on, and the political stability which the election rules seek to preserve will be vulnerable to challenges even beyond a reasonable period of time. In this case, Abayon failed

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[34] *Roquero v. Commission on Elections*, 351 Phil. 1079, 1086 (1998); *Robes v. Commission on Elections,* 208 Phil. 179, 187 (1983).

[35] 462 Phil. 383 (2003).

[36] 390 Phil. 478 (2000).

to give this Court a justification for the delay in filing his election protest, apart from his reliance on the argument that the manifestly invalid pre-proclamation case he filed suspended the period for the filing of his election protest.

In a special civil action for *certiorari*, the burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Grave abuse of discretion means a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.[37] In the present case, the COMELEC did not gravely abuse its discretion. Rather, it decided the matter in accordance with the prevailing laws and jurisprudence. The conclusion of the COMELEC on a matter decided within its competence is entitled to utmost respect.[38]

WHEREFORE, the instant appeal is *DISMISSED*. The Resolution dated 28 January 2008 of the COMELEC *en banc*, affirming the Resolution dated 8 October 2007 of the COMELEC Second Division, is *AFFIRMED*. The election protest filed by Abayon is *DISMISSED* for having been filed out of time. Costs against petitioner.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Carpio Morales, Velasco, Jr., Leonardo-de Castro, and *Peralta, JJ.,* concur.

Nachura, J., see dissenting opinion.

Corona, Tinga, and *Brion, JJ.,* concur with *J*. Nachura's dissent.

Austria-Martinez, J., on official leave.

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[37] *Suliguin v. Commission on Elections*, G.R. No. 166046, 23 March 2006, 485 SCRA 219, 233.

[38] *Ocate v. Commission on Elections*, G.R. No. 170522, 20 November 2006, 507 SCRA 426, 437; *Laodenio v. Commission on Elections*, 342 Phil. 676, 688 (1997).

DISSENTING OPINION

NACHURA, *J*.:

With due respect, I am constrained to register my dissent because I earnestly believe that the *ponencia* would validate serious statutory and procedural errors committed by the Commission on Elections (COMELEC).

Factual and Procedural Antecedents

To appreciate the full panoply of events that gave rise to this controversy, it is necessary to recall the following undisputed relevant facts and proceedings:

After the May 14, 2007 elections for Provincial Governor in Northern Samar in which Harlin Castillo Abayon (Abayon) and Raul A. Daza (Daza) were candidates, the former filed five (5) petitions, namely:

1. On May 19, 2007, a petition docketed as **SPC No. 07-037,** denominated *"In the Matter of the Petition to Exclude the Certificate of Canvass (COC) of the Municipalities of Capul, Rosario and Bobon — All in the Province of Northern Samar which Were Prepared Under Duress, Threats and Intimidation";*

2. On May 21, 2007, three (3) petitions, as follows:

   a) **SPC No. 07-069,** entitled *"Petition to Exclude Certificate of Canvass (COC) of Municipality of Catubig, Northern Samar, which was Prepared Under Duress, Threats, Coercion or Intimidation";*

   b) **SPC No. 07-070,** captioned *"In the Matter of the Petition To Declare the Proclamation of Private Respondent as Winning Candidate for the Position of Governor of Northern Samar Null and Void"* **(because on May 20, 2007, without any action having been taken on SPC No. 07-037, the Provincial Board of Canvassers proclaimed Daza as the winner in the gubernatorial race**);

c) **SPA No. 07-460,** designated *"In the Matter of the Petition for Declaration of Failure of Elections In the Municipalities of Capul, Rosario and Bobon, all of Northern Samar";*

3. On May 24, 2007, the fifth petition docketed as **SPC No. 07-484,** entitled *"In the Matter of the Petition To Declare Failure of Election in the Municipality of Catubig, Northern Samar, and for the Holding of Special Elections Thereof."*

No action was taken by the COMELEC on all the petitions until June 28, 2007, when it issued **Omnibus Resolution No. 8212** that dismissed all pending pre-proclamation cases, except those included in the list attached to the resolution. This was promulgated pursuant to Section 16 of Republic Act (R.A.) No. 7166 which reads:

> Section 16. *Pre-proclamation Cases Involving Provincial, City and Municipal Offices.* Pre-proclamation cases involving provincial, city and municipal offices shall be allowed and shall be governed by Sections 17, 18, 19, 20, 21 and 22 hereof. **All pre-proclamation cases pending before the Commission shall be deemed terminated at the beginning of the term of office involved and the rulings of the boards of canvassers concerned shall be deemed affirmed, without prejudice to the filing of a regular election protest.** However, proceedings may continue when on the basis of the evidence thus far presented, the Commission determines that the petition appears meritorious and accordingly issues an order for the proceeding to continue or when an appropriate order has been issued by the Supreme Court in a petition for *certiorari*. (Emphasis supplied.)

Parenthetically, it is curious that, despite the fact that the Abayon petitions were not in the list of cases that would remain active beyond June 30, 2007, the COMELEC Second Division, in an Order dated July 2, 2007, acted on, and denied SPC No. 07-069; while the COMELEC *En Banc*, in an Order dated July 9, 2007, denied SPC No. 07-484. Both cases were resolved by the COMELEC beyond June 28, 2007, even if SPC No. 07-069 was presumably a pre-proclamation case that was terminated by virtue of Omnibus Resolution No. 8212.

On **June 29, 2007**, Abayon filed his Election Protest, docketed as **EPC No. 2007-62**. This was dismissed by the COMELEC First Division in an Order dated October 8, 2007, on the ground that it was filed out of time — the same having been filed beyond the prescribed ten-day period from Daza's proclamation. The COMELEC First Division ratiocinated that the filing by Abayon of his pre-proclamation petitions did not interrupt the running of the ten-day period, because the petitions did not raise valid pre-proclamation issues.

On October 10, 2007, Abayon filed a Motion for Reconsideration which the COMELEC *En Banc* denied in a Resolution dated January 28, 2008, premised on the very same reasons as those tendered by the First Division. Thus, the instant petition.

The Reasons for the Dissent

The majority would uphold the action of the COMELEC (First Division and *En Banc*) dismissing Abayon's Election Protest. To my mind, the fault of the *ponencia* lies in its having oversimplified the main issue in the controversy, asking only "whether this Court should allow a pre-proclamation case which is patently without merit to interrupt the period for filing an election protest." By engaging simply in a general and superficial inquiry, limited to this rhetorical issue, the majority may have been induced to close its eyes to grave lapses committed by the COMELEC, lapses which translate to transgressions of election law and jurisprudence.

Let me now enumerate and explain the particular reasons for my dissent.

1. The proclamation of Daza as elected Governor on May 20, 2007 violated Section 20 of R.A. No. 7166.

On May 20, 2007, when Daza was proclaimed as Governor by the Provincial Board of Canvassers of Northern Samar, Abayon had already filed the day before, or on May 19, 2007, his petition in SPC No. 07-037, entitled, *"In the Matter of the Petition to Exclude the Certificates of Canvass (COC) of the Municipalities of Capul, Rosario and Bobon — All in the Province of Northern*

Samar, Which Were Prepared Under Duress, Threats and Intimidation."

On the face of the petition, even by its caption alone, Abayon had filed a pre-proclamation contest, raising an issue compliant with Section 243[1] of the Omnibus Election Code (OEC), namely that the certificates of canvass for the municipalities mentioned "were prepared under duress, threats and intimidation," clearly within the ambit of paragraph (c) of Section 243. Accordingly, Section 20, R.A. No. 7166, specifically paragraph (i) thereof, which provides:

Section 20. Procedure in Disposition of Contested Election Returns. —

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(i) The board of canvassers shall not proclaim any candidate or winner unless authorized by the Commission after the latter has ruled on the objection brought to it on appeal by the losing party. Any proclamation made in violation hereof shall be void *ab initio,* unless the contested returns will not adversely affect the results of the election. (Emphasis supplied.)

should have taken effect automatically.

The COMELEC did not grant the provincial board of canvassers of Northern Samar any authority to proclaim Daza; the board

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[1] Section 243 of the OEC reads in full:

"SEC. 243. *Issues that may be raised in pre-proclamation controversy* — The following shall be proper issues that may be raised in a pre-proclamation controversy:

"(a) Illegal composition or proceeding of the board of canvassers;

"(b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235, and 236 of this Code;

"(c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and

"(d) When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates."

did so on its own volition. In proclaiming Daza without COMELEC authority after a pre-proclamation petition had already been filed, the provincial board of canvassers acted in violation of the procedure prescribed in Section 20 of R.A. No. 7166. Perforce, by express provision of law, the proclamation of Daza was void *ab initio.*[2] As we ruled in *Utto v. Commission on Elections*,[3] **Section 20(i) of R.A. No. 7166 is mandatory and requires strict observance**. To repeat, before a board of canvassers could validly proclaim a candidate as winner, when election returns are contested, it must first be authorized by the COMELEC.

It may be argued — as, in fact, the entire hypothesis of the COMELEC ruling is anchored on this argument — that the pre-proclamation petition of Abayon did not raise valid pre-proclamation issues and, therefore, Section 20 of R.A. No. 7166, would not apply. The fallacy of this argument is immediately evident. The argument would, in effect, place the cart before the horse.

It should be stressed that when Daza was proclaimed, there was already a pending petition characterized as a pre-proclamation contest, alleging that certificates of canvass (COCs) from three municipalities were prepared under duress, threat and intimidation. As of that moment, and for over a month thereafter, there was no COMELEC resolution on the merits of the petition. (In fact, no independent resolution of the case was ever made by the COMELEC, as will be discussed below.) Absent a definitive ruling by the COMELEC, the pre-proclamation contest subsisted. At that point, there arose a situation falling squarely within the coverage, and calling for the immediate application, of Section 20(i) of R.A. No. 7166.

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[2] *Jamil v. Commission on Elections*, 347 Phil. 630, 649-650 (1997). While this case applied Section 245 of the OEC, which was already repealed by R.A. No. 7166, the doctrine which prohibits the Board of Canvassers from proclaiming a candidate as winner when returns are contested, unless authorized by the COMELEC, is still a good law. This is precisely because Section 20(i) of R.A. No. 7166 enunciates the same rule as Section 245 of the OEC.

[3] 426 Phil. 225, 240-241 (2002).

The nullity of the premature proclamation should not be made to rest on the outcome of the pre-proclamation controversy. A contrary view would subvert the underlying policy consideration for the institution of the pre-proclamation contest as an efficacious and speedy remedy. It should be remembered that the statutory provisions on pre-proclamation controversies were legislated in order to prevent the nefarious practice known as "grab-the-proclamation, prolong-the-protest." The salutary legislative objective would be negated if the precipitate proclamation is allowed to stand, made to await the resolution of the pre-proclamation contest.

Significantly, with Daza's proclamation being null and void by operation of the law, the ten-day period (for filing an election protest) did not commence to run on the date of the proclamation, as there would have been no proclamation to speak of in the first place.

2. Abayon's filing of the petition in SPC No. 07-070 effectively suspended the running of the period to file an election protest.

On May 21, 2007, the day following Daza's proclamation, Abayon filed with the COMELEC a petition, docketed as SPC No. 07-070, denominated, *"In the Matter of the Petition to Declare the Proclamation of Private Respondent as Winning Candidate for the Position of Governor of Northern Samar Null and Void."*

When Abayon filed that petition with the COMELEC, Section 248 of the Omnibus Election Code, which provides:

> *Section 248. Effect of filing petition to annul or to suspend proclamation.* — The filing with the Commission of a petition to annul or suspend the proclamation of any candidate **shall suspend the running of the period within which to file an election protest or *quo warranto* petition.** (Emphasis supplied.)

automatically came into force and effect. The period to file an election protest would only commence to run after the petition to annul the proclamation had been finally resolved by the

COMELEC, or in certain instances, by this Court. This is so because the language of Section 248 is direct, positive and mandatory. It brooks no exception. The Court emphasized this resultant operation of Section 248 on the ten-day prescriptive period for the filing of election protest in *Manahan v. Bernardo*,[4] *Roquero v. Commission on Elections*,[5] and, recently, in *Tan v. Commission on Elections*,[6] in which it was further explained thus:

> As may be noted, the aforequoted Section 248 contemplates two (2) points of reference, that is, pre- and post-proclamation, under which either of the petitions referred to therein is filed. Before the proclamation, what ought to be filed is a petition to "suspend" or stop an impending proclamation. After the proclamation, an adverse party should file a petition to "annul" or undo a proclamation made. **Pre-proclamation controversies partake of the nature of petitions to suspend**. The purpose for allowing pre-proclamation controversies, the filing of which is covered by the aforequoted Section 248 of the Omnibus Election Code, is to nip in the bud the occurrence of what, in election practice, is referred to as "grab the proclamation and prolong the protest" situation.
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> Correlating the petitions mentioned in Section 248 with the 10-day period set forth in the succeeding Section 250, **a petition to suspend tolls the 10-day period for filing an election protest from running, while a petition to annul interrupts the running of the period**. In other words, **in a Section 248 petition to suspend where the 10-day period did not start to run at all, the filing of a Section 250 election contest after the tenth (10th) day from proclamation is not late. On the other hand, in a Section 248 petition to annul, the party seeking annulment must file the petition before the expiration of the 10-day period**.[7]

It should be noted here that SPC No. 07-070, the petition to annul, was not independently resolved by the COMELEC. By inference, however, it may be acknowledged that the case was deemed decided when COMELEC issued **Omnibus Resolution**

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[4] 347 Phil. 782, 788-789 (1997).

[5] 351 Phil. 1079, 1086 (1998).

[6] G.R. Nos. 166143-47 and 166891, November 20, 2006, 507 SCRA 352, 384.

[7] Emphasis supplied.

No. 8212 on June 28, 2007, dismissing all pending pre-proclamation cases except those covered by an appropriate order of the COMELEC or this Court. As aforesaid, the said omnibus resolution was promulgated pursuant to Section 16 of R.A. No. 7166.

Given the factual setting of this case, and applying Section 248 of the Omnibus Election Code and Section 16 of R.A. No. 7166, the ineluctable conclusion is that the Election Protest, EPC No. 2007-62, filed by Abayon on June 29, 2007, was not filed out of time. For emphasis, let me reiterate the following facts that support this conclusion:

a) On May 21, 2007, one day after Daza's proclamation, Abayon filed SPC No. 07-070, seeking to annul the Daza proclamation. By the express mandate of Section 248 of the Omnibus Election Code, the filing of that petition suspended the running of the period to file an election protest.

b) Because it was not in the list of active cases that would survive the beginning of the term of office involved, SPC No. 07-070 was dismissed and deemed terminated by COMELEC Omnibus Resolution No. 8212, dated June 28, 2007. Since Section 16 of R.A. No. 7166, explicitly states that the dismissal or termination of such case(s) is **"without prejudice to the filing of a regular election protest,"** it is obvious that the period within which to file an election protest would commence to run only on June 28, 2007, the date when the case was dismissed or deemed terminated.

c) Abayon filed his Election Protest on June 29, 2007, the day following the promulgation of Omnibus Resolution No. 8212. Unmistakably, it was filed within the prescribed ten-day period which commenced to run only on June 28, 2007.

In *Peñaflorida v. Commission on Elections,*[8] this Court explained the rationale for Section 16 of R.A. No. 7166, and warned against the indiscriminate filing of pre-proclamation cases that could unduly delay proclamation and prejudice winning

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[8] 346 Phil. 924, 930 (1997).

candidates. Thus, the Court justified the dismissal or termination of pending pre-proclamation cases upon the beginning of the term of the contested office, even through an Omnibus Resolution that did not particularly designate the cases affected thereby.

Under the Local Government Code, the term of office of elective provincial officials begins at noon of June 30 following the election. Admittedly, by virtue of Section 16 of R.A. No. 7166, it was proper for the COMELEC, on June 28, 2007 — two days before the beginning of the term of office of elective local officials — to issue Omnibus Resolution No. 8212 terminating all pending pre-proclamation cases (except those in the list of cases which remained active beyond June 30, 2007). This is precisely because the filing of the pre-proclamation cases suspended the proclamation of candidates, following Section 20(i) of R.A. No. 7166, and, unless the several pre-proclamation controversies were terminated, the result would be that many offices would have no incumbents.[9] Noteworthy is that Omnibus Resolution No. 8212 provides that "x x x all the rulings of boards of canvassers concerned are deemed affirmed. Such boards of canvassers are directed to reconvene forthwith, continue their respective canvass and proclaim the winning candidates accordingly, if the proceedings were suspended by virtue of pending pre-proclamation cases."

It, therefore, stands to reason that the Abayon petitions in SPC No. 07-037 and SPC No. 07-070 were dismissed only on July 28, 2007 when the Omnibus Resolution was promulgated, since the COMELEC did not make any independent resolution of these cases.

Inasmuch as Section 16 of R.A. No. 7166, is the statutory authority for the Omnibus Resolution which effected the dismissal *en masse* of pending pre-proclamation cases — and the Abayon petitions were lumped up in this mass of cases — then Section 16 should be implemented to the fullest. Accordingly, Abayon cannot be denied the benefit of the same Section 16, which provides that the termination of the cases is ***"without prejudice***

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[9] *Peñaflorida v. Commission on Elections*, *id.*

to the filing of a regular election protest." The law was worded as such precisely because the legislature was aware that the filing of a pre-proclamation case would effectively suspend the proclamation and the institution of election protest.

To rule that Abayon cannot avail of this recourse (ostensibly on the ground that his petitions did not raise valid pre-proclamation issues, when the COMELEC did not say as much in its Omnibus Resolution), would be to countenance selective law enforcement. It would deprive Abayon of his constitutional right to equal protection of the laws.

The statutory provisions cited above notwithstanding, the *ponencia* echoes the COMELEC's reliance in *Dagloc v. COMELEC*[10] and *Villamor v. COMELEC,*[11] in which this Court held that not all so-called pre-proclamation petitions will work to suspend the ten-day period for the filing of an election protest. These cases are cited, even as the COMELEC itself confesses that the facts in *Dagloc* and *Villamor* "are not on all fours to (sic) the instant controversy."[12]

Indeed, *Dagloc* is inapplicable, because the petition filed therein was a petition to declare failure of election, not a pre-proclamation contest. Neither can *Villamor* validly serve as precedent, because in that case, the petition to annul proclamation was premised on the illegal composition and proceedings of the board of canvassers. Unlike in the present case, there were no election returns or certificates of canvass to examine for their authenticity and due execution. And Section 20 of R.A. No. 7166, precisely governs the situations contemplated in Section 243 (b), (c) and (d) of the OEC, which relate to the preparation, transmission, receipt, custody and appreciation of election returns.[13]

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[10] 378 Phil. 906 (1999).

[11] G.R. No. 169865, July 21, 2006, 496 SCRA 334.

[12] *Rollo*, p. 52.

[13] Section 241 of the OEC.

3. This Court cannot rule on the validity of the Abayon petitions in SPC No. 07-037 and SPC No. 07-070.

To repeat, SPC No. 07-037 and SPC No. 07-070 were not decided by the COMELEC in an independent or separate resolution. The cases were lumped up with other pre-proclamation cases, and resolved *en masse* through Omnibus Resolution No. 8212. Surprisingly, in its Order dated October 8, 2007, in EPC No. 2007-62 (the Election Protest), the COMELEC's First Division discussed the merits of SPC No. 07-037, and concluded that the allegations therein were not proper issues to be raised in a pre-proclamation contest. This conclusion was then used as the basis to dismiss EPC No. 2007-62, on the premise that since SPC No. 07-037 did not raise valid pre-proclamation issues, it did not suspend the running of the ten-day period within which to file an election protest.

I am not aware of any legal or procedural rule that would justify the COMELEC First Division's action in deciding the merits of SPC No. 07-037 in its Order in EPC No. 2007-62, considering that the two were separate and independent cases, were never consolidated, and were anchored on different causes of action.

Now, the *ponencia* validates this dubious legerdemain, and compounding the procedural mix-up, this Court is made to rule on the merits of SPC Nos. 07-037 and 07-070. I feel compelled to express serious reservations about this course of action.

Exclusive original jurisdiction over pre-proclamation cases is vested in the COMELEC.[14] This Court may only exercise *certiorari* jurisdiction over COMELEC decisions, orders or rulings in these cases.[15] Since no petition for *certiorari* has been filed with this Court in connection with SPC Nos. 07-037 and 07-070, we are without competence to rule on the petitions in these cases.

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[14] Section 242 of the OEC.

[15] 1987 Constitution, Article IX-A, Section 7.

4. Questions regarding the election of a provincial governor should not be resolved by resort to technicalities.

In the instant case, it is noteworthy that Daza, in his original answer to the Election Protest, also filed a counter-protest against Abayon. Obviously, each camp charges the other of irregularities in the election.

The greater public interest, in keeping with our democratic tradition, would best be served by a no-nonsense determination of the true will of the people of Northern Samar. This can be accomplished only by remanding the case to the COMELEC so that it may appropriately hear and decide the protest and counter-protest.

On a more practical note, such a remand will not inflict any real damage to Daza who shall, for the duration of the proceedings, continue to hold office as Provincial Governor. Indeed, it will serve him in good stead, as the full resolution of the election protest would clear any cloud of doubt over the legitimacy of his election.

The case should not therefore hang in the balance of technical rules of procedure. An election contest, unlike an ordinary action, is imbued with public interest, involving as it does not only the adjudication of the private interests of rival candidates but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate. Neither it is fair nor just to keep in office for an uncertain period one whose right to it is under suspicion. Imperative indeed is that his claim be immediately cleared, not only for the benefit of the winner but for the sake of public interest, which can only be achieved by brushing aside technicalities of procedure.[16]

In light of all the foregoing, I vote to grant the petition.

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[16] *Barroso v. Ampig*, 385 Phil. 237, 249 (2000).

EN BANC

[A.C. No. 8051. April 7, 2009]

EDERLINDA K. MANZANO, *complainant, vs.* **ATTY. SANTIAGO C. SORIANO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; AS AN OFFICER OF THE COURT, A LAWYER HAS THE DUTY TO OBEY, RESPECT AND UPHOLD THE LAW AND LEGAL PROCESS BY NOT ENGAGING IN UNLAWFUL, DISHONEST, IMMORAL, OR DECEITFUL CONDUCT. — Time and again, the Court has reminded lawyers that, as an officer of the court, theirs is the duty to obey, respect, and uphold the law and legal processes by not engaging in unlawful, dishonest, immoral, or deceitful conduct. An immoral or deceitful conduct necessarily involves moral turpitude. Needless to stress, the commission of any of these unlawful acts, which amounts too to a violation of the attorney's oath, is a ground for suspension or disbarment of lawyers.

2. ID.; NOTARIES PUBLIC; IMPORTANCE OF NOTARIZATION; ELUCIDATED. — The act of notarizing without the necessary commission is not merely a simple enterprise to be trivialized. So much so that one who stamps a notarial seal and signs a document as a notary public without being so authorized may be haled to court not only for malpractice but also for falsification. *Zoreta v. Simpliciano* elucidated on the importance of notarization and the Court's inclination to whack with a heavy disciplinary stick those who would dare circumvent the Notarial Law: "x x x [N]otarization is not an empty, meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. The protection of that interest necessarily requires that those not qualified or authorized to act must be prevented from imposing upon the public, the courts and the administrative offices in general. It must be underscored that the notarization by a notary public converts a private document into a public document making that document admissible in evidence without further proof of authenticity.

A notarial document is by law entitled to full faith and credit upon its face. For this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties. The requirements for the issuance of a commission as notary public must not be treated as a mere casual formality. The Court has characterized a lawyer's act of notarizing documents without the commission therefore as "reprehensible, constituting as it does not only malpractice but also x x x the crime of falsification of public documents." x x x x x x [P]erforming a notarial without such commission is a violation of the lawyer's oath to obey the laws, more specifically the Notarial Law. Then, too, by making it appear that he is duly commissioned when he is not, he is, for all intents and purposes, indulging in deliberate falsehood, which the lawyer's oath similarly proscribes. x x x"

3. **ID.; ATTORNEYS; THE MORAL STANDARDS OF THE LEGAL PROFESSION EXPECT LAWYERS TO ACT WITH THE HIGHEST DEGREE OF PROFESSIONALISM, DECENCY, AND NOBILITY IN THE COURSE OF THEIR PRACTICE. —** A lawyer, by taking the lawyer's oath, becomes a guardian of the law and an indispensable instrument for the orderly administration of justice. As such, he is expected to have a mega-dose of social conscience with the end in view of making a meaningful difference and with a little less of self-interest. Indeed, the moral standards of the legal profession expect lawyers to act with the highest degree of professionalism, decency, and nobility in the course of their practice of law.

4. **ID.; ID.; DISBARMENT; IMPOSED IN CASE AT BAR. —** [O]nly in a clear case of misconduct that seriously affects the standing and character of the lawyer as officer of the court and as a member of the bar will disbarment be imposed as a penalty. Judging from his past actions, respondent has become a liability to the legal profession. His act of notarizing a sham deed of sale where he is named as a vendor is reprehensible. He cannot be trusted any longer with the sacred duty and responsibility to protect the interest of any prospective client and pursue the ends of justice. His continued practice of law will likely subvert justice, bring further dishonor to the bar, and lessen the respect and the trust reposed by the public in the integrity of the legal society.

APPEARANCES OF COUNSEL

Roger A. Lunar for complainant.

D E C I S I O N

***PER CURIAM*:**

The law profession is not a trade or a business venture.[1] The practice of law — and membership in the bar for that matter — is a high personal privilege burdened with conditions[2] and is limited to citizens who show and continue to show the qualifications and character traits required by law for the conferment of such privilege.[3] In accordance, therefore, with its constitutional mandate to regulate the legal profession and its authority to discipline its erring members, it behooves the Court to keep an ever watchful eye on, among others, unscrupulous lawyers with a penchant for hoodwinking, at every turn, their trusting clients; and, in general, on those whose misconduct tends to blemish the purity of the legal profession. And if need be, the Court shall remove from the ranks those unable to adhere to the rigid standards of morality and integrity required by the ethics of the legal profession. So it must be in this disciplinary proceeding.

The records of the case disclose the following:

In a verified complaint for disbarment dated March 23, 2006, with enclosures, filed with the Integrated Bar of the Philippines (IBP), complainant Ederlinda K. Manzano charged respondent Atty. Santiago C. Soriano with dishonesty (misappropriation) and misrepresentation and/or usurping the authority of a notary

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[1] *People v. Daban*, No. L-31429, January 31, 1972, 43 SCRA 185, 186; *Director of Religious Affairs v. Bayot*, 74 Phil. 579 (1944).

[2] *Adez Realty, Incorporated v. Court of Appeals*, G.R. No. 100643, December 12, 1995, 251 SCRA 201, 205; citing *Zaldivar v. Sandiganbayan*, G.R. Nos. 79690-707 & 80578, April 7, 1993, 221 SCRA 132.

[3] *Bongalonta v. Castillo*, CBD Case No. 176, January 20, 1995, 240 SCRA 310, 313.

public. The case was docketed as Commission on Bar Discipline (CBD) Case No. 06-1702.

According to complainant, she engaged respondent's services to commence and pursue collection cases from individuals dealing with her construction supply/hardware business. As part of the agreement, respondent was allowed the free use of an office space in the Manzano Complex building in Nabua, Camarines Sur. After a time, complainant noticed that not a single successful collection was ever made, albeit respondent kept on asking for money to cover incidental expenses. Later on, complainant discovered that respondent had succeeded in convincing one of her debtors, Abelino G. Barela, to sell to him, for PhP 65,000, a piece of land and the house standing on it. The condition of the sale was that, out of the proceeds, respondent should deliver PhP 50,000 personally to complainant to fully cover Barela's indebtedness. As complainant would later claim, the PhP 50,000 was never turned over to her.

In the light of this unsettling development, complainant severed her client-attorney relationship with respondent and evicted him from his office-space at the Manzano Complex. She, together with Barela, later charged respondent with *estafa*.

Complainant also allegedly discovered further that respondent had for a time been acting as a notary public for and in the province of Camarines Sur without the necessary notarial commission.

In his answer,[4] respondent merely entered a general denial of the inculpatory allegations in the complaint, focusing his sights more on the dismissal of the *estafa* case that complainant and Barela had earlier filed against him. He alleged that the filing of the instant administrative case was complainant's way of getting back at him for his having charged her and her husband and son with grave coercion.

In the mandatory conference/hearing scheduled on July 6, 2006 and later reset to August 10, 2006, respondent, despite

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[4] *Rollo*, pp. 19-20.

due notice, failed to appear, although he would later submit, albeit belatedly, a conference brief. And despite being accorded, with a warning, several extensions within which to file a position paper, no such paper came from respondent, prompting the IBP CBD to declare him as having waived his right to participate in the proceedings.

In his *Report and Recommendation* dated March 31, 2008, Investigating Commissioner Pedro A. Magpayo, Jr. found respondent guilty of grave misconduct (misappropriating the funds belonging to his client) and malpractice, and recommended his disbarment.

On May 22, 2008, the IBP Board of Governors passed Resolution No. XVIII-2008-237,[5] approving Commissioner Magpayo's report and recommendation with modification insofar as the recommended penalty was concerned, thus:

> *RESOLVED* to *ADOPT* and *APPROVE*, as it is hereby unanimously *ADOPTED* and *APPROVED*, **with modification**, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and for violation of Canon 1 of the Code of Professional Responsibility, continued violation of the Rule on Notarial Practice, and for failure to comply with his duties as a member of the Bar in good standing by his failure to pay his membership dues since year 2003 up to the present, Atty. Santiago C. Soriano is hereby **SUSPENDED INDEFINITELY** from the practice of law.

The findings of the CBD, as approved by the IBP Board of Governors, on the guilt of respondent, first, for misappropriating his client's money he held in trust and his attempt to hide his fraudulent act, are well supported by the evidence on record and, therefore, commend themselves for concurrence. As aptly observed by the CBD, respondent perverted his position, as complainant's lawyer, and his legal expertise by convincing debtor Barela to sell and transfer to him the latter's house for

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[5] *Id.* at 134.

PhP 65,000 with the understanding that respondent would remit the PhP 50,000 to complainant to offset Barela's debt. Instead of remitting the PhP 50,000 to complainant, respondent, however, misappropriated this amount for his benefit without so much as informing complainant. In net effect, respondent duped both complainant and Barela. And in a vain bid to cover up his grave misdeed, respondent, via a deed of sale dated August 27, 1996 (Exhibit "F"), made it appear that he acquired the aforesaid property from Barela's mother, Eusebia, for PhP 10,000. On its face, however, the deed had respondent as house/lot buyer and, at the same time, as the notarizing officer, although he was without an appointment as notary public at that time.

As a result of his dishonest but crude maneuvers, respondent was charged by both complainant and Barela with *estafa*, which, contrary to what he wanted to impress on the CBD in his answer, eventually led to the filing of an amended information (Exhibit "B") for that crime with the Regional Trial Court, Branch 37 in Iriga City.[6]

Respondent's acts immediately adverted to are reflective of his gross and wanton disregard of the Code of Professional Responsibility, more specifically its Canon 16, which provides that "a lawyer shall hold in trust all money and property collected or received for or from the client."

Time and again, the Court has reminded lawyers that, as an officer of the court, theirs is the duty to obey, respect, and uphold the law and legal processes by not engaging in unlawful, dishonest, immoral, or deceitful conduct.[7] An immoral or deceitful conduct necessarily involves moral turpitude.[8] Needless to stress, the commission of any of these unlawful acts, which amounts too to a violation of the attorney's oath, is a ground for suspension or disbarment of lawyers.[9]

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[6] *Id.* at 5. Crim. Case No. Ir-7550.

[7] CODE OF PROFESSIONAL RESPONSIBILITY, Rule 1.01.

[8] *In re Basa*, 41 Phil. 275, 276 (1920).

[9] RULES OF COURT, Rule 138, Sec. 27.

Definitely not lost on the Court with respect to this case is the IBP's documented report about the respondent having been once the subject of an administrative complaint in CBD Case No. 05-1514 lodged by Andrea Balce Celaje, in which the Investigating Commissioner found respondent liable for misapplying the money of his client.[10]

The Court agrees too with the other inculpatory finding of malpractice on the part of respondent consisting of exercising the powers of a notary public without having the appropriate commission. The evidence on record shows that the respondent held himself up and acted as notary public for the province of Camarines Sur for Calendar Years 1996, 2005, 2006, and 2007, as evidenced by several documents he notarized for the period, although he was without the proper commission during those times.[11] Among these documents listed in the Commission's report and borne out by the records are: (1) Exhibit "H", Affidavit of Loss of Madelina Ayuman; (2) Exhibit "H-1", Affidavit of Heirship for Insurance Benefit; (3) Exhibit "I", Joint Affidavit of Grace Pastoral and Daisy Lomame; (4) Exhibit "I-1", Affidavit of Supplemental Information of Diwane Julianes-Sarmiento; and (5) Exhibit "I-2", Affidavit of Guardianship of Consuelo Alina.

The act of notarizing without the necessary commission is not merely a simple enterprise to be trivialized. So much so that one who stamps a notarial seal and signs a document as a notary public without being so authorized may be haled to court not only for malpractice but also for falsification. *Zoreta v. Simpliciano* elucidated on the importance of notarization and the Court's inclination to whack with a heavy disciplinary stick those who would dare circumvent the Notarial Law:

> x x x [N]otarization is not an empty, meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. The

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[10] *Rollo*, p. 141. See Exhibit "L", CBD Order Submitting the Case for Decision, *rollo*, p. 82.

[11] *Id.* at 17. Per Certification of the Office of the Clerk of Court of Camarines Sur (Annex "J") that respondent was a commissioned notary public in the years 1997 and 1998.

protection of that interest necessarily requires that those not qualified or authorized to act must be prevented from imposing upon the public, the courts and the administrative offices in general. It must be underscored that the notarization by a notary public converts a private document into a public document making that document admissible in evidence without further proof of authenticity. A notarial document is by law entitled to full faith and credit upon its face. For this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties.

The requirements for the issuance of a commission as notary public must not be treated as a mere casual formality. The Court has characterized a lawyer's act of notarizing documents without the commission therefore as "reprehensible, constituting as it does not only malpractice but also x x x the crime of falsification of public documents." x x x

x x x [P]erforming a notarial without such commission is a violation of the lawyer's oath to obey the laws, more specifically the Notarial Law. Then, too, by making it appear that he is duly commissioned when he is not, he is, for all intents and purposes, indulging in deliberate falsehood, which the lawyer's oath similarly proscribes.[12] x x x

In a four-year stretch, perhaps even longer, respondent, without commission, presented himself falsely as a notary public. But the worst uncovered cut of all occurred in 1996, when respondent authenticated a purported conveying deed, one he doubtless prepared, in which he himself was the transferee of the lot. Respondent, by his conduct, created an impression of dishonesty, fraud, or deceit, not only in his dealings with a client but also with the public,[13] obviously oblivious to the fact that among an attorney's duties is to aid in the administration of justice.[14] We, thus, see respondent as an attorney who, both in appearance and action, was deceitful.

A lawyer, by taking the lawyer's oath, becomes a guardian of the law and an indispensable instrument for the orderly

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[12] A.C. No. 6492, November 18, 2004, 443 SCRA 1, 9-11; citations omitted.

[13] *Bray v. Squires (Tex App Houston [1st Dist])*, 702 SW2d 266.

[14] *Chapman v. Pacific Tel. & Tel. Co.*, (CA9 Cal) 613 F2d 193, 63 ALR Fed 869; *Langen v. Borkowski*, 188 Wis 277, 206 NW 181, 43 ALR 622.

administration of justice. As such, he is expected to have a mega-dose of social conscience with the end in view of making a meaningful difference and with a little less of self-interest.

Indeed, the moral standards of the legal profession expect lawyers to act with the highest degree of professionalism, decency, and nobility in the course of their practice of law. Respondent has not paid heed to this lofty ideal. His guilt for the acts complained of which constitute dishonesty, grave misconduct and/or serious malpractice, not to mention his delinquency in the payment of his annual IBP dues since the year 2003, is indisputable. But the Court has not detected the slightest indication of remorse on his part. In what we in fact perceive to be a display of hubris, respondent hardly felt it necessary to defend himself in the disbarment proceedings before the IBP. The Court shall, therefore, impose the fitting sanction called for under the premises.

As between the penalty recommendation of the IBP Board of Governors and that of the Investigating Commissioner, we find that of the latter to be more appropriate. We take this course of action, fully aware that only in a clear case of misconduct that seriously affects the standing and character of the lawyer as officer of the court and as a member of the bar will disbarment be imposed as a penalty.[15] Judging from his past actions, respondent has become a liability to the legal profession. His act of notarizing a sham deed of sale where he is named as a vendor is reprehensible. He cannot be trusted any longer with the sacred duty and responsibility to protect the interest of any prospective client and pursue the ends of justice. His continued practice of law will likely subvert justice, bring further dishonor to the bar, and lessen the respect and the trust reposed by the public in the integrity of the legal society.[16]

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[15] *Pangasinan Electric Cooperative I (PANELCO I) v. Montemayor*, A.C. No. 5739, September 12, 2007, 533 SCRA 1, 9; *Bellosillo v. Board of Governors of the Integrated Bar of the Philippines*, G.R. No. 126980, March 31, 2006, 486 SCRA 152, 164.

[16] *Pangasinan Electric Cooperative I (PANELCO I)*, *supra* at 10.

WHEREFORE, the premises of this case considered, respondent Atty. Santiago C. Soriano is *DISBARRED* from the practice of law. Let his name be stricken off the Roll of Attorneys. This Decision is immediately executory.

Let all the courts, through the Office of the Court Administrator, as well as the IBP and the Office of the Bar Confidant, be notified of this Decision and be it duly recorded in the personal file of respondent.

SO ORDERED.

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

Chico-Nazario and *Brion, JJ.,* on leave.

SECOND DIVISION

[A.M. No. MTJ-06-1651. April 7, 2009]
(Formerly OCA IPI No. 04-1576-MTJ)

PROSECUTOR ROBERT M. VISBAL, *complainant, vs.* **JUDGE WENCESLAO B. VANILLA, MTCC-BR. 2, TACLOBAN CITY,** *respondent.*

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; EXPLAINED; CASE AT BAR. —** We agree with the OCA's findings that respondent judge showed gross ignorance of the law when he archived Criminal Case No. 2000-08-00-01 immediately after the warrant of arrest was issued against the accused. He violated Administrative Circular No. 7-A-92, which allows the archiving of a criminal case if, after the issuance

of the warrant of arrest, the accused remains at large for six (6) months from delivery of the warrant to the proper peace officer. Everyone, especially a judge, is presumed to know the law; when the law is sufficiently basic or elementary, not to be aware of it constitutes gross ignorance of the law. However, for full liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only found to be erroneous; more importantly, it must be established that he was motivated by bad faith, dishonesty, hatred or some other similar motive.

2. **ID.; ID.; MUST BE THE EMBODIMENT OF COMPETENCE, INTEGRITY AND INDEPENDENCE. —** Under Canon 1.01 of the Code of Judicial Conduct, a judge must be "the embodiment of competence, integrity and independence." A judge is called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules; it is imperative that he be conversant with basic legal principles and be aware of well-settled authoritative doctrines. He owes to the public and to this Court the duty to be proficient in the law. He is expected to keep abreast of laws and prevailing jurisprudence. Judges must not only render just, correct, and impartial decisions, resolutions, and orders, but must do so in a manner free of any suspicion as to their fairness, impartiality, and integrity, for good judges are men who have mastery of the principles of law and who discharge their duties in accordance with law.

3. **ID.; ID.; GROSS IGNORANCE OF THE LAW; PENALTY; CASE AT BAR. —** Under Section 8 of A.M. No. 01-8-10-SC amending Rule 140 of the Rules of Court on the Discipline of Justices and Judges, which took effect on October 1, 2001, gross ignorance of the law is classified as a serious charge punishable by either dismissal from service, suspension of more than one year or a fine of more than ₱20,000.00 but not exceeding ₱40,000.00. In this case, considering that no malice or bad faith has been established and that this is the respondent judge's first administrative offense, we deem it just and reasonable to impose upon him a fine of ₱10,000.00.

D E C I S I O N

BRION, *J*.:

For resolution is the present administrative matter involving Prosecutor Robert M. Visbal (*complainant*) of Tacloban City and Judge Wenceslao B. Vanilla (*respondent*) of the Municipal Trial Court in Cities (*MTCC*), Branch 2, Tacloban City.

The Factual Background

The case arose from the letter the complainant sent to then Court Administrator Presbitero J. Velasco, Jr., charging the respondent with grave misconduct and gross ignorance of the law for ordering Criminal Case No. 2000-08-OD-01 (entitled "*People of the Philippines v. Rodelio Abayon y Benter,*" herein referred to as *"criminal case"*) archived.[1] The complainant in this criminal case is with the Leyte Provincial Prosecution Office.

The complainant alleged that at the time the respondent judge ordered the criminal case archived, the witnesses for the Prosecution were able, ready, and willing to testify, with due notice to the accused after he had been arrainged.[2] The first witness, the complainant himself, had already testified.[3] He maintained that the respondent's act seriously violated Paragraph 2, Sections 14 and 16 Article III of the Constitution and Section 2, Rule 119 of the Revised Rules on Criminal Procedure. Attached to the complaint were: (1) Order of Arraignment dated January 28, 2003 setting the case for pre-trial on April 3, 2003;[4] (2) Certificate of Arraignment;[5] (3) Transcript of stenographic notes (*TSN)*;[6] and (4) Order dated October 9, 2003 to archive the case.

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[1] Dated April 1, 2004, *rollo*, pp. 1-3.

[2] *Id.,* p. 4; Annex "A", Complaint.

[3] *Id.,* pp. 7-8; Annex "C-1", (TSN), Complaint.

[4] *Id.,* p. 4; Annex "A", Complaint.

[5] *Id.,* p. 5; Annex "B", Complaint.

[6] *Id.*, p. 6; Annex "C", Complaint.

The Office of the Court Administrator (*OCA*) referred the complaint to the respondent and required him to comment on the complaint within ten (10) days from receipt of the indorsement.[7]

The respondent submitted his comment by way of a letter dated June 19, 2004.[8] He explained that: in an order dated June 23, 2003,[9] the court reset the hearing to August 27, 2003 on motion of the public prosecutor because of the absence of the second witness and of the accused himself; at the hearing on August 27, 2003, the return of the subpoena served on the accused showed that he had not been properly notified; the prosecution did not present another witness or inform the court of its desire to summon other witnesses; upon motion of the prosecution, the case was reset to October 9, 2003 and another subpoena was sent to the accused;[10] at the hearing on October 9, 2003, the return of the subpoena indicated that the accused changed address without informing the court; this time the court issued a warrant for the arrest of the accused for his failure to appear; thus, "*there was no setting of the hearing in the meantime, for it was not known when the accused would be arrested and, for practical purposes, he ordered that the case be archived to be revived upon the arrest of the accused*."[11]

In a Resolution dated August 9, 2006, we required the parties to manifest, within 10 days from notice, if they were willing to submit the present administrative matter for resolution based on the pleadings. The complainant complied with a manifestation dated September 13, 2006. The respondent, on his part, explained on May 31, 2007, that he failed to comply because he did not receive a copy of the August 9, 2006 Resolution of the Court. The explanation was prompted by a subsequent Resolution from

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[7] *Id.*, p. 24; 1st Indorsement dated May 25, 2004.

[8] *Id.*, pp. 25-27.

[9] *Id.*, p. 28; respondent's Letter/Comment, Annex "1".

[10] *Id.*, p. 29; respondent's Letter/Comment, Annex "2".

[11] *Id.*, par. 2.

the Court dated March 21, 2007, directing the respondent to show cause why he should not be held in contempt of court for his failure to comply with the Resolution of August 9, 2006.

The OCA Report and Recommendation

In a memorandum dated May 8, 2006, the OCA submitted its report/recommendation on the present administrative matter. The salient portion of the report/recommendation states:[12]

> Respondent's order archiving the case is patently erroneous. Administrative Circular No. 7-A-92 provides that a criminal case can be archived if after the issuance of the warrant of arrest, the accused remains at large for six (6) months from delivery of the warrant to the proper peace officer. However, the court may *motu proprio* or upon motion of any party, archive a criminal case when proceedings therein are ordered suspended for an indefinite period because of the following reasons:
>
> a. the accused appears to be suffering from an unsound mental condition which effectively renders him unable to fully understand the charge against him and to plead intelligently, or to undergo trial, and he has to be committed to a mental hospital;
>
> b. a valid prejudicial question in a civil action is invoked during the pendency of the criminal case unless the civil and criminal cases are consolidated;
>
> c. an interlocutory order or incident in the criminal case is elevated to and is pending resolution/decision for an indefinite period before a higher court which has issued a temporary restraining or a writ of preliminary injunction; and
>
> d. when the accused has jumped bail before arraignment and cannot be arrested by his bondsman.
>
> The Order of October 9, 2003 directing the case to be archived was issued on the same day respondent ordered the issuance of the warrant of arrest in violation of the 6-month period required under the Circular. Neither does the case fall under the circumstances where the court may archive the case *motu proprio*.

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[12] *Id.*, pp. 37-40.

Respondent should have proceeded with the trial pursuant to Article III, Section 14 (2) of the Constitution which authorizes trials *in absentia* provided the following requisites are present: (a) that accused has been arraigned; (b) that he has been notified; and (c) that his failure to appear is unjustified.

All the requisites are present in the case. Accused was arraigned on January 28, 2003. He is deemed to have received notice of the hearings considering that he has not notified the court of a change in address. The inability of the court to notify him did not prevent it from continuing with the trial because accused has waived his right to present evidence and to confront and cross-examine the witnesses who testify against him. (*People vs. Salas*, 143 SCRA 163, 167, *People vs. Nazareno*, 160 SCRA 1, 6-7). Thus, the Supreme Court in *People vs. Tabag* emphatically ruled:

> x x x It is obvious that the trial court forgot our rulings in *Salas* and *Nazareno*. We thus take this opportunity to admonish trial judges to abandon any cavalier stance against accused who escaped after arraignment, thereby allowing the latter to make a mockery of our laws and the judicial process. Judges must always keep in mind *Salas* and *Nazareno* and apply without hesitation the principles therein laid down, otherwise they would court disciplinary action.

In fine, respondent violated basic law and procedure. Not to know it or to act as if he does not know it constitutes gross ignorance of the law which is punishable by a fine or suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or a fine of more than ₱20,000.00 but not exceeding ₱40,000.00. Considering that this is the first offense of respondent, a fine of ₱21,000.00 is commensurate.

We agree with the OCA's findings that respondent judge showed gross ignorance of the law when he archived Criminal Case No. 2000-08-00-01 immediately after the warrant of arrest was issued against the accused. He violated Administrative Circular No. 7-A-92, which allows the archiving of a criminal case if, after the issuance of the warrant of arrest, the accused remains at large for six (6) months from delivery of the warrant to the proper peace officer. Everyone, especially a judge, is presumed to know the law; when the law is sufficiently basic or elementary,

not to be aware of it constitutes gross ignorance of the law.[13] However, for full liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only found to be erroneous; more importantly, it must be established that he was motivated by bad faith, dishonesty, hatred or some other similar motive.[14]

Under Canon 1.01 of the Code of Judicial Conduct, a judge must be "the embodiment of competence, integrity and independence." A judge is called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules; it is imperative that he be conversant with basic legal principles and be aware of well-settled authoritative doctrines.[15] He owes to the public and to this Court the duty to be proficient in the law. He is expected to keep abreast of laws and prevailing jurisprudence. Judges must not only render just, correct, and impartial decisions, resolutions, and orders, but must do so in a manner free of any suspicion as to their fairness, impartiality, and integrity, for good judges are men who have mastery of the principles of law and who discharge their duties in accordance with law.[16]

Under Section 8 of A.M. No. 01-8-10-SC amending Rule 140 of the Rules of Court on the Discipline of Justices and Judges, which took effect on October 1, 2001, gross ignorance of the law is classified as a serious charge punishable by either dismissal from service, suspension of more than one year or a fine of more than ₱20,000.00 but not exceeding ₱40,000.00. In this case, considering that no malice or bad faith has been established and that this is the respondent judge's first administrative

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[13] *Bellena v. Perello*, A.M. No. RTJ-04-1846, January 31, 2005, 450 SCRA 122; *Ruiz v. Beldia, Jr.*, A.M. RTJ-02-1731, Feb. 16, 2005, 451 SCRA 402.

[14] *Tan v. Adre*, A.M. No. RTJ-05-1898, January 31, 2005, 450 SCRA 145; *Sesbreño v. Aglugub*, A.M. MTJ-05-1581, Feb. 28, 2005, 452 SCRA 365.

[15] *Ruiz v. Beldia, supra* note 2.

[16] *Coronado v. Judge Eddie R. Roxas, et al.* and *Capisin v. Judge R. Roxas, et al.*, A.M. No. RTJ-07-2047 and A.M. No. RTJ-07-2048, July 3, 2007, 526 SCRA 280.

offense, we deem it just and reasonable to impose upon him a fine of ₱10,000.00.

WHEREFORE, premises considered, we hereby *FINE* Judge *WENCESLAO B. VANILLA*, MTCC, Branch 2, Tacloban City, *TEN THOUSAND PESOS (₱10,000.00)*, with the *STERN WARNING* that the commission of the same or similar offense shall be dealt with more severely.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. P-08-2523. April 7, 2009]
(Formerly OCA-I.P.I. No. 08-2872-P)

ATTY. MARLYDS L. ESTARDO-TEODORO, *complainant, vs.* **CARLOS S. SEGISMUNDO,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; THE QUANTUM OF PROOF NECESSARY FOR A FINDING OF GUILT IN ADMINISTRATIVE DISCIPLINARY CASES.** — In administrative disciplinary cases, the complainant has the burden of proving by substantial evidence, the allegations in her complaint. The quantum of proof necessary for a finding of guilt is substantial evidence defined as evidence that a reasonable mind may accept as adequate to support a conclusion.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE RULES; TAKING AND APPROVAL OF LEAVES; A LEAVE MUST BE DULY APPROVED BY THE AUTHORIZED**

OFFICER. — Under Civil Service Rules, the taking and the approval of leaves of absence follow a formal process, *viz.*, a leave must be duly approved by the authorized officer. This is true even for sick leaves (in order that an official or employee may not be considered absent without an approved leave), although a subsequent filing of an application for sick leave after the sick employee has reported for work is allowed, as sickness may suddenly occur and may not be reasonably predicted.

3. **ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHALL AT ALL TIMES PERFORM OFFICIAL DUTIES PROPERLY AND WITH DILIGENCE. —** Section 1, Canon IV of the Code of Conduct for Court Personnel requires that all [c]ourt personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours. The evidence on record clearly established the respondent's violation of this provision when he committed repeated violations of reasonable office rules and regulations.

4. **ID.; ID.; ID.; DISHONESTY; DEFINED. —** [U]nalleged in the complaint but underlying the money order and false representation incidents is the matter of the respondent's dishonesty. We have defined dishonesty as the "*(d)isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray*." We find that the respondent in this case has demonstrated a propensity to fabricate lies to explain away his infractions. x x x Dishonesty is a malevolent act that has no place in the judiciary. The Court had repeatedly held that everyone in the judiciary, from the presiding judge to the clerk, must always be beyond reproach; they carry this heavy burden to ensure that the institution we save — the judiciary — is always kept above suspicion.

5. **ID.; ID.; ID.; DISHONESTY AND VIOLATION OF REASONABLE OFFICE RULES, PENALTY; PRESENCE OF MITIGATING CIRCUMSTANCES, CONSIDERED IN THE IMPOSITION OF THE PROPER PENALTY. —** As a grave offense, dishonesty warrants the most severe penalty of

dismissal from the service upon the commission of even the first offense. On the other hand, violation of reasonable office rules and regulations for the third time also merits the most severe penalty of dismissal from the service. The presence of mitigating factors may however affect the imposition of the correct penalty, as we have in fact refrained from imposing the actual penalties in past several administrative cases. The compassion granted in those cases is not without legal basis, as Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, grants the disciplining authority and the discretion to consider mitigating circumstances in the imposition of the proper penalty. Factors such as the respondent's length of service in the judiciary, the respondent's acknowledgment of his or her infractions and feeling of remorse, and family circumstances, among other things, have had varying significance in the Court's determination of the imposable penalty.

D E C I S I O N

BRION, *J*.:

This resolves the administrative case — initiated through a Complaint-Memorandum dated June 21, 2007 filed by Atty. Marlyds L. Estardo-Teodoro[1] (*complainant*) with the Office of the Court Administrator-Legal Office (*OCA*) — against Mr. Carlos S. Segismundo[2] (*respondent*) for dishonesty, violations of reasonable office rules and regulations, and the Code of Conduct for Court Personnel.

The ANTECEDENTS

The complaint-memorandum cites the following incidents:

A. The Respondent's Encashment of a Postal Money Order

It appears that the standing office procedure in the Regional Trial Court (*RTC*) of San Fernando City for the implementation

[1] Acting Clerk of Court, Office of the Clerk of Court, Regional Trial Court, San Fernando City, Pampanga.

[2] Process Server, *id.*

of all summons, orders, executions and other processes accompanied by money orders from other RTCs and MTCs, is to indorse these processes to the Clerk of Court/OIC-Clerk of Court for recording; money orders must be signed by the latter prior to encashment.

Despite this standing procedure, the respondent appears to have encashed a postal money order without the requisite endorsement. When confronted by Atty. Jose Elmer Y. Teodoro, Officer in Charge of the Office of the Clerk of Court, the respondent claimed that he did so based on the endorsement of Ms. Florenda S. Ordoñez (*Ms. Ordoñez*), Administrative Officer I of the Office of the Clerk of Court. Upon learning of the respondent's representation with Atty. Teodoro, Ms. Ordoñez issued a Memorandum dated November 11, 2005 directing the respondent to explain the incident.[3] The memorandum states:

It has been our procedure that all summons, orders, executions and other proceedings coming from other RTCs and MTCs accompanied by money orders to be implemented in our office must be indorsed to the Clerk of Court/OIC-Clerk of Court for notification. Money orders must be signed by our Clerk of Court/OIC-Clerk of Court before encashment.

However, it has come to my knowledge that **you told the OIC-Clerk of Court that a certain money order** (re: Civil Case No. 05-56366) **was endorsed by me for encashment when the truth was I did not do so**, aside from the fact that I do not have such authority. Your actuation may constitute misconduct which is penalized by suspension to dismissal from service.

x x x x x x x x x

In his Answer/Explanation[4] the respondent said that:

1) Undersigned has to admit that he has knowledge of the office policy as stated in the 1st paragraph of the memorandum;

2) Undersigned also admits the contents of the 2nd paragraph of said memorandum.

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[3] Annex "G", Complaint-Memorandum; emphasis supplied.

[4] Annex "G-1", *id.;* emphasis supplied.

x x x x x x x x x

Without much ado, the undersigned hereby **ADMITS having made a clear violation of the office policy** as explained in the 1st paragraph of the memorandum to him and also **OWNS UP to what was explained in paragraph two** of the same memorandum.

Undersigned pleads no contest to the charge/accusation against him with the honest belief that what he did was not to commit so grave a wrong but it was only his honest desire to expedite matters relative to the service of the processes, which had bearing in Civil Case No. 05-56366.

In his Supplement to the Answer/Explanation dated November 18, 2005,[5] the respondent admitted that the money order was endorsed and encashed in his own name, thus:

In compliance therewith, the undersigned **hereby DECLARES that the postal money order was encashed and endorsed in his own name**. This was made possible after the undersigned had inquired from the post office concerned personnel if he could endorse it with his own name and he was given the go signal. So, to expedite the service of the processes to be served, undersigned took the initiative to sign the postal money order.

B. The Respondent's Act of Leaving the Office During Official Hours without Permission

Without asking permission from his superiors, the respondent left the court premises during official hours on February 9, 2007, prompting Ms. Ordoñez to issue Memorandum No. 03-2007 dated February 12, 2007[6] requiring the respondent to explain the incident. In his letter-explanation dated February 13, 2007, the respondent clarified that on or about 2:00 in the afternoon of February 9, 2007, he had stomach pain subsequently coupled with loose bowel movement; he hurriedly left the office for home without asking permission from his immediate supervisor since he could no longer control his bowel movement and that he has already soiled his pants.[7]

[5] Annex "G-2", *id.;* emphasis supplied.

[6] Annex "F", *id.;* emphasis supplied.

[7] Annex "F-1", *id.*

Via Memorandum No. 05-07, Ordoñez gave the respondent a stern warning that a repetition of the infraction would be dealt with more severely.

C. The May 9, 2007 Incident

The complainant alleged in her Complaint-Memorandum that on May 9, 2007, respondent went to the Metropolitan Trial Court (*MTC*), Branch 15, Manila to obtain a copy of the summons in Civil Case No. 183183 (*summons*) without securing either a travel order or a directive from her to do so, in violation of the Memorandum dated June 6, 2005[8] (*the Memorandum on Travel Orders*).[9] This office memorandum requires all court personnel to secure the written approval of the Clerk of Court or OIC-Clerk of Court on travel orders.

In relation with this incident, the complainant issued Memorandum No. 13-2007 dated June 5, 2007, requiring the respondent to explain his actions, specifically, that of providing false information on the status of the summons and purported violation of office rules and regulations.[10]

The complainant noted in her memorandum that the respondent made her believe that Clerk of Court Abelardo T. Pongyan

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[8] Annex "E", *id.*

[9] Issued by the then OIC Clerk of Court, Atty. Jose Elmer Y. Teodoro, and noted by Executive Judge Adelaida Ala Medina. The Memorandum states:

> All personnel are directed to secure the initials of the Administrative Officer or, in her absence, that of the next ranking personnel in the office before Travel Orders, application for bail, periodic reports (monthly, quarterly, semi-annually, *etc.*). certifications, and other similar documents are brought to the undersigned, if required, for his signature and approval.
>
> This is necessitated by the need to constantly monitor as well as to verify the flow and veracity of documents coming out from the office, and to maximize personnel efficiency brought about by outside office premises official business.
>
> Also, all Travel Orders must be prepared at least two (2) days before the stated date of implementation and submitted to the undersigned not later that at the close of office hours of every Tuesdays and Thursdays. This two-day allowance period does not cover travel orders for deposits/ withdrawals and other similar bank transactions.

[10] Annex "A", Complaint-Memorandum.

(*Clerk of Court Pongyan*), of MTC, Branch 15, Manila informed the respondent that the summons would be mailed to the RTC as soon as possible; in truth, per Clerk of Court Pongyan's Manifestation dated May 17, 2007, the respondent appeared in the MTC, Manila, and acknowledged receipt of the summons. The complainant noted, too, that the respondent notified her on May 23, 2007 that Clerk of Court Pongyan personally delivered to him a copy of the summons at the Office of the Clerk of Court of the RTC, San Fernando City, after office hours; upon verification with Clerk of Court Pongyan, the complainant was told that no one from their office travelled all the way from Manila to Pampanga to deliver the summons. On the same date, the complainant claimed that she had been informed by Deputy Sheriff Redentor Villanueva that the respondent already visited the residence of the summoned defendants in Civil Case No. 183183 in Matamo, Arayat, Pampanga, without any travel order or instructions from complainant, in violation of the Memorandum on Travel Orders.

The complainant further noted that when she confronted the respondent about the incident, the respondent replied that he failed to inform the former because he had so many things on his mind, and that a copy of the summons was personally delivered to the respondent by the driver of the plaintiff's counsel in Civil Case No. 183183.

On June 7, 2007, the respondent submitted his written Explanation[11] stating that his actions were done purely out of inadvertence and without intent to gain. He averred that when asked about the summons, it dwelt on his mind that a different summons was referred to. He explained that he made it appear that the summons was delivered to him personally by the driver of plaintiff's counsel because he feared that a greater sanction would be imposed upon him if he would insist that he forgot to inform the complainant that the summons had been with him since May 9, 2007. He further explained that due to workload and personal problems, he failed to report to the complainant

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[11] Annex "B", *id.*

that he had already visited the defendants' place in Civil Case No. 183183 for service of the summons.

Still in relation with the May 9, 2007 incident, the complainant again issued on June 8, 2007 a Memorandum directing the respondent to explain why he failed to punch out his time card in the afternoon of May 9, 2007.[12] In his response-letter dated June 12, 2007,[13] the respondent countered that he failed to punch out his time card on the aforementioned date because it was already late when he returned to Pampanga from the MTC, Branch 15, Manila; at any rate, he stated that he was more than willing to claim a half-day leave for that day.

Action on the Complaint-Memorandum and the OCA Recommendation

Acting on the complaint-memorandum, Executive Judge Adelaida Ala Medina of the RTC, Branch 45, San Fernando City, directed the respondent to file his verified answer. The respondent filed his Verified Answer[14] as directed, reiterating his previous explanations to the various memoranda issued by the complainant. He echoed that his actions were due to pure inadvertence and lapse of judgment, and that he did not intend to gain from any of his actions. He also asked the Court to consider his long (33 years) service to the judiciary.

On August 31, 2007, then Court Administrator Christopher O. Lock directed the respondent to file his comment. In his Comment dated October 5, 2007,[15] the respondent asked the Court Administrator to consider his explanations on the various memoranda previously issued against him as his comment to the complaint-memorandum. He reiterated his excuse of inadvertence and lack of intent to gain. He claimed that no malice can be inferred from his transgressions and that he had no intent of making a mockery of the office rules and regulations. He likewise claimed that he had no intention to commit so grave

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[12] Annex "C", *id.*

[13] Annex "D", *id.*

[14] Consisting of three (3) pages attached to the Record of the Present Case.

[15] Single Page Comment attached to the Record of the present case.

a wrong. He asked for forgiveness and implored the Court to take into account his thirty-three (33) years in government service.

On July 2, 2008, the OCA, through then Court Administrator Zenaida N. Elepaño, submitted a report and recommendation.[16] The OCA recommended that: (1) the case be re-docketed as a regular administrative matter; and (2) respondent be found liable for repeated Violations of Reasonable Office Rules and Regulations and the Code of Conduct for Court Personnel, and be suspended without pay for one (1) month, and warned that a repetition of the same or similar acts in the future shall be dealt with more severely. The OCA said that *respondent's admission that he committed the acts complained of, albeit inadvertently and without intent to gain, does not in any way exculpate him from administrative sanction; the mere general denial of the respondent is unavailing on the face of the categorical assertions of the complainant.* The OCA noted with significance that the respondent was duly warned by his superiors for every infraction committed, but still failed to change his ways.

On August 13, 2008, this Court issued a Resolution re-docketing the case as a regular administrative matter and requiring the parties to manifest whether they are willing to submit the matter for resolution on the basis of the pleadings filed and the records submitted, within ten (10) days from notice. On October 13, 2008, both parties submitted their respective Manifestations of their willingness to submit the matter for resolution on the basis of the pleadings filed and the records already submitted.

THE COURT'S RULING

We agree with the finding of the OCA that the respondent is guilty of repeated violations of reasonable office rules and regulations and the Code of Conduct for Court Personnel. We, however, additionally find the respondent guilty of dishonesty.

In administrative disciplinary cases, the complainant has the burden of proving by substantial evidence, the allegations in

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[16] OCA IPI No. 08-2872-P.

her complaint.[17] The quantum of proof necessary for a finding of guilt is substantial evidence defined as evidence that a reasonable mind may accept as adequate to support a conclusion. The complainant had successfully discharged this burden as our evaluation of the facts of the case and the pleadings submitted by the parties below will show.

The respondent never denied, and in fact admitted, that he violated standing office procedure on the encashment of money orders. The respondent's proffered excuse — that he endorsed and encashed the money order upon permission from a post office personnel in order to expedite the service of processes — does not exonerate him from liability given that he was fully aware of the standing office policy or procedure. As he was aware of the policy whose validity and lawfulness he never contested, his first instinctive reaction should be to abide by it. The policy was precisely put in place to properly account for money orders; the respondent should not therefore be allowed to simply brush it aside on mere expediency.

Also, that the respondent left the office on official hours without permission from his superiors on February 9, 2007 is clearly established by the records of the present case. The respondent though justified his act, claiming that he had stomach pain and loose bowel movement and had already soiled his pants at the time (2 P.M.) he hurriedly left the court premises.

We closely looked at the surrounding circumstances of this incident and find the respondent's act to be unjustified. The respondent timed in at 12:03 in the afternoon of February 9, 2007. If he is to be believed, *i.e.*, that he had stomach pain and loose bowel movement on or about 2:00 p.m., it is highly doubtful — under the circumstances — that he could not have had the remotest chance to ask permission from or inform his immediate supervisor of his condition and ultimately, his intention to go home. Instead, what we can reasonably infer from this situation is that the respondent really intended to leave the office without

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[17] *Ebero v. Camposano*, A.M. No. P-04-1792, March 12, 2004, 425 SCRA 420, 425.

asking permission; this can easily be deduced, too, from the respondent's statement in his letter-explanation that he thought it "implied that he had a half-day leave."

We cannot agree with the respondent's theory that a half-day leave is implied from an employee's unceremonious act of leaving his post or station. Under Civil Service Rules, the taking and the approval of leaves of absence follow a formal process, *viz.*, a leave must be duly approved by the authorized officer.[18] This is true even for sick leaves (in order that an official or employee may not be considered absent without an approved leave), although a subsequent filing of an application for sick leave after the sick employee has reported for work is allowed, as sickness may suddenly occur and may not be reasonably predicted. As respondent's stomachache and loose bowel movement occurred at a time when he was already in the office, we cannot find any justification for his unceremonious departure. The respondent could have easily left word, a message perhaps, to his superior that he would be taking the rest of the day off because of his affliction (or file a leave right there and then), or he could have subsequently filed an application for a half day sick leave as required by Civil Service Rules. For reasons only he knows, he never did any of these. His theory of implied half-day leave is therefore a mere afterthought to cover up his infraction.

As in the office standing procedure on the encashment of postal money orders, the respondent never contested the validity of the Memorandum on Travel Orders and, rightly so, as this Memorandum appears to us to be reasonable. Also, as the respondent never denied the complainant's allegation that he did not secure permission for his Manila trip, we find it established that he violated the reasonable office rule and regulation on travel orders when he went to the MTC, Branch 15, Manila on May 9, 2007 to procure the summons in Civil Case No. 183183. This holds true for his initial visit of the residence of defendants in this civil case.

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[18] Omnibus Rules on Leave, Civil Service Memorandum Circular No. 40, series of 1998; See: Sections 50-54 of the Omnibus Rules.

To justify his act, the respondent alluded to heavy workload and personal problems. These reasons are insufficient; they are, at best unacceptable lame excuses when considered with the reasonable expectations and demands of professionalism in the public service.[19]

That the respondent purportedly committed all these acts inadvertently and without intent to gain will not also exculpate him from appropriate administrative sanctions, as these do not negate the now duly proven misfeasance he committed in office.

Section 1, Canon IV of the Code of Conduct for Court Personnel[20] requires that all [c]ourt personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours. The evidence on record clearly established the respondent's violation of this provision when he committed repeated violations of reasonable office rules and regulations.

Additionally, unalleged in the complaint but underlying the money order and false representation incidents is the matter of the respondent's dishonesty. We have defined dishonesty as the "*(d)isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray*."[21] We find that the respondent in this case has demonstrated a propensity to fabricate lies to explain away his infractions.

First, with respect to the encashment of the money order, the respondent categorically admitted that he told the OIC-Clerk

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[19] See: Republic Act No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees.

[20] A.M. No. 03-06-13-SC, June 1, 2004.

[21] *In Re Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I, and Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division,* A.M. No. 2001-7-SC & No. 2001-8-SC, July 22, 2005, 464 SCRA 1,13, citing *Office of the Court Administrator v. Ibay*, 393 SCRA 212 (2002).

of Court that the money order was endorsed by Ms. Ordoñez for encashment, when in truth, she did not do so. Why he would also give this excuse despite knowledge of Ms. Ordoñez' lack of authority to endorse the postal money order escapes us. Significantly, the respondent made this false statement to the OIC-Clerk of Court after he had violated office rules and regulation by endorsing and encashing the money order in his own name.

Second, the respondent gave the complainant false information on the status of the summons in Civil Case No. 183183. The respondent admitted that he made it appear on May 23, 2007 that the summons was delivered to him by counsel for plaintiff's driver on that date, when in fact, the summons had been with him already since May 9, 2007 — the very same date when he went to the MTC Branch 15, Manila. He nevertheless justified, as stated above, his action because of fear of greater sanctions if he would insist on his forgetfulness.

Instead of exonerating him, the respondent's justifications only serve to highlight his mendacious nature. Worse, this Court cannot accept as justification, much less sanction, the respondent's resort to fabrications of falsehood to cover up his misdeeds under the pretext of fear of a greater sanction.

In sum, the respondent's conduct clearly shows lack of forthrightness and straightforwardness in his dealings with his superiors amounting to dishonesty. Dishonesty is a malevolent act that has no place in the judiciary.[22] The Court had repeatedly held that everyone in the judiciary, from the presiding judge to the clerk, must always be beyond reproach; they carry this heavy burden to ensure that the institution we save — the judiciary — is always kept above suspicion.

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[22] *In Re Irregularities in the Use of Logbook and Daily Time Records by Clerk of Court Raquel D.J. Razon, Cash Clerk Joel M. Magtuloy and Utility Worker Tiburcio O. Morales, MTC-OCC, Guagua, Pampanga,* A.M. No. P-06-2243, September 26, 2006, 503 SCRA 52, 61, citing *Cabanata v. Molina,* 421 Phil. 664, 674 (2001); *Lacurom v. Magbanua,* 443 Phil. 711, 718 (2003), citing *Pizzaro v. Villegas,* 398 Phil. 837, 838 (2000).

This conclusion necessarily leads us to the imposition of the correct penalty. Section 22, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292,[23] as amended by CSC Memorandum Circular No. 19, series of 1999,[24] provides:

> The following are grave offenses with corresponding penalties:
>
> (a) Dishonesty
>
> ***1st Offense – Dismissal*** [Emphasis supplied]
>
> x x x x x x x x x
>
> The following are light offenses with their corresponding penalties:
>
> x x x x x x x x x
>
> (c) Violation of reasonable office rules and regulations
>
> 1st Offense – Reprimand
> 2nd Offense – Suspension 1-30 days
> ***3rd Offense – Dismissal*** [Emphasis supplied]

As a grave offense, dishonesty warrants the most severe penalty of dismissal from the service upon the commission of even the first offense.[25] On the other hand, violation of reasonable office rules and regulations for the third time also merits the most severe penalty of dismissal from the service.

The presence of mitigating factors may however affect the imposition of the correct penalty, as we have in fact refrained from imposing the actual penalties in past several administrative cases.[26] The compassion granted in those cases is not without

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[23] The Administrative Code of 1987.

[24] Revised Uniform Rules on Administrative Cases In the Civil Service.

[25] *Supra* note 22.

[26] *Id.*, p. 62. See also *In Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I, and Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division, supra* note 4; *Geocadin v. Hon. Remigio Peña,* 195 Phil. 344 (1981); *In Re: Delayed Remittance of Collections of Teresita Lydia Odtuhan,* 445 Phil. 220 (2003); *Sarenas-Ochagabia v. Atty. Balmes Ocampos,* A.C. No. 4401, January 29, 2004,

legal basis, as Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, grants the disciplining authority and the discretion to consider mitigating circumstances in the imposition of the proper penalty.[27] Factors such as the respondent's length of service in the judiciary, the respondent's acknowledgment of his or her infractions and feeling of remorse, and family circumstances, among other things, have had varying significance in the Court's determination of the imposable penalty.[28]

In *In Re: Irregularities in the Use of Logbook and Daily Time Records by Clerk of Court Raquel D.J. Razon, Cash Clerk Joel M. Magtuloy and Utility Worker Tiburcio O. Morales, MTC-OCC, Guagua Pampanga*,[29] Utility Worker Tiburcio O. Morales (Mr. Morales) and Cash Clerk Joel M. Magtuloy (Mr. Magtuloy) who were found guilty of dishonesty together with the Branch Clerk of Court, Raquel D.J. Razon (Mrs. Razon); the former for accommodating Mrs. Razon, and the latter for actually punching following the request of Mr. Morales to log-in and log-out Mrs. Razon's timecard were merely imposed a penalty of a stern warning that a repetition of the same or similar act shall be dealt with a more severe sanction from the Court. The Court ruled that as to the respondents Mr. Morales and Mr. Magtuloy, the case being their first administrative offense in their 37 years and 9 years, respectively, in government service, a stern warning will suffice.

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421 SCRA 286; *In Re: Misappropriation of the Judiciary Fund Collections by Ms. Juliet C. Banag,* A.M. No. P-02-1641, January 20, 2004, 420 SCRA 150; *In Re: Imposition of Corresponding Penalties For Habitual Tardiness Committed During the First and Second Semester of 2002 by the Following Employees of this Court: Gerardo H. Alumbro, et al.,* A.M. No. 00-06-09-SC, March 16, 2004, 425 SCRA 509.

[27] *Re: Failure of Jose Dante E. Guerrero To Register His Time In and Out In the Chronolog Time Recorder Machine On Several Dates,* A.M. No. 2005-07-SC, April 19, 2006 ,487 SCRA 352, 367.

[28] *Supra* note 22 citing *Re: Employees Incurring Habitual Tardiness in the First Semester of 2005,* 494 SCRA 422 (2006).

[29] *Id.*

We significantly note that the present administrative case is the respondent's first in his thirty-three (33) years of government service. We note, too, that the respondent readily acknowledged his offense and expressed contrition. Taken together, all these show that the extreme penalty or prejudice of dismissal for his dishonesty is inappropriate; a stern warning, as imposed in the cited logbook case, will suffice. With regard to the respondent's repeated violations of reasonable office rules and regulations and Code of Conduct for Court Personnel at varying dates although consolidated in the present administrative case, we similarly consider the same mitigating circumstances and also the fact that his employment with the judiciary is his only means of livelihood. Accordingly and for humanitarian reasons, we impose upon the respondent, not the extreme penalty of dismissal, but six (6) months suspension without pay.

WHEREFORE, we find the respondent Carlos S. Segismundo *GUILTY* of dishonesty and of repeated violations of reasonable office rules and regulation and Code of Conduct for Court Personnel. We hereby impose on him the penalty of *SUSPENSION* for six (6) months without pay and *STERNLY WARNED* that a repetition of these acts shall be dealt with more severely.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. P-09-2622. April 7, 2009]
(A.M. OCA IPI No. 08-2814-P)

DOROTHY FE MAH-AREVALO, *complainant, vs.* **ELMER P. MAPE, Legal Researcher III, Regional Trial Court, Branch 17, Palompon, Leyte,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; CODE OF CONDUCT FOR COURT PERSONNEL; CONFIDENTIALITY RULE, NOT VIOLATED IN CASE AT BAR; CONFIDENTIAL INFORMATION, DEFINED. — [T]he information the complainant disclosed does not qualify as confidential information, as the term is defined under Section I, Canon II of the Code of Conduct for Court Personnel; *Confidential information means "information not yet made a matter of public record relating to pending cases, as well as information not yet made public concerning the work of any justice or judge relating to pending cases, including notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations, and similar papers."* As the records indicate, the decision adverted to has already become final; in fact, a certificate of finality has already been issued, and an entry of judgment had already been made. Even if the documents were to be considered as classified, the complainant still cannot be held liable for unauthorized disclosure of classified information under the Revised Uniform Rules on Administrative Cases in the Civil Service, Rule IV, Section 52, B(23) which provides: "Disclosing or misusing confidential or classified information officially known to him by reason of his office and not made available to the public, to further his private interests or give undue advantage to anyone, or to prejudice the public interests." We do not see from the records any indication that the complainant made the disclosure "*to further (his) private interests or give undue advantage to anyone, or to prejudice the public interests*." The Office of the Solicitor General, too, to which the copies were sent,

represented a party to the case and, hence, has the right to access these records. At best, the complainant was only guilty of releasing information without observance of the internal procedures of the court, and for undertaking the dissemination of the copies of the documents disclosed without being the staff member authorized to do so. These infractions may have been the reasons for Judge Mantua's strong reaction to the release of documents by the complainant. To be sure, the complainant's action must be discouraged. We cannot accept, however, that her act was grave or contemptuous, and that it should be classified as a less grave offense under Rule IV, Section 52, B(23) of the Revised Uniform Rules on Administrative Cases in the Civil Service. The complainant's lapse should merit only the warning that a repetition of the same or a similar offense in the future shall not go unpunished.

D E C I S I O N

BRION, *J*.:

We resolve the present administrative matter, which involves charges and countercharges between two members of the staff of the Regional Trial Court (*RTC*), Branch 17, Palompon, Leyte.

The Factual Background

In a letter to the Office of the Court Administrator (*OCA*) dated January 8, 2006, Dorothy Fe Mah-Arevalo (*complainant*), Court Stenographer III of the RTC, Branch 17, Palompon, Leyte, accused Elmer P. Mape (*respondent*), Legal Researcher III of the same court, of gross ignorance of the law and incompetence relative to Special Proceeding Case No. 0239-PN, entitled *Maria Mae Tordillo v. Nah Kok Sun*.[1] The complainant faulted the respondent for issuing an entry of judgment and a certificate of finality certifying that the decision in Special Proceeding Case No. 0239-PN became final and executory on the very same day the decision was rendered. For this reason, the complainant prayed that the permanent appointment of respondent as Legal Researcher III be denied.

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[1] *Rollo*, pp. 27-30.

Additionally, the complainant objected (through her letter of December 6, 2006)[2] to the change of status of the respondent's appointment from probationary to permanent on the following grounds:

1. Falsification of daily time record (*DTR*) — the respondent made it appear in his DTR that he was present on October 30, 2006, when he was actually in Cebu City on that day.

2. Grave threats — On November 7, 2006 at around 3:30 in the afternoon, the respondent threatened to kill the complainant and her family, taking out his .45 caliber gun and pointing it upwards. The incident happened in the place of Ms. Asuncion (*Shioney*) Codilla-Sabondo at San Francisco St., Palompon, Leyte.

3. Grave misconduct — the respondent is always seen in court with a .45 caliber gun, creating fear among the court employees.

The OCA referred the December 6, 2006 letter of complaint[3] to the respondent and required him to comment within ten (10) days from receipt of the indorsement.[4] The respondent submitted his comment on July 25, 2007, disputing the charges against him.[5] At the same time, he accused the complainant of dishonesty and malversation of court funds. He claimed that the complainant's grievances against him stemmed from his discovery of the shortage she incurred in the collection of Judiciary Development Fund and Special Allowance for the Judiciary for September 2006.

In a Report dated April 22, 2008, the OCA recommended that the charge against respondent and the countercharge against complainant be referred to Executive Judge Celso L. Mantua, RTC, Palompon, Leyte for investigation, report and recommendation to the Court.[6]

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[2] *Id.*, pp. 8-9.

[3] *Id.*

[4] *Rollo*, p. 35, 1st Indorsement, January 25, 2007.

[5] *Id.*, pp. 37-43.

[6] *Id.*, pp. 1-4.

On June 23, 2005, the Second Division of this Court issued a Resolution referring the matter to Judge Mantua for investigation, report and recommendation within ninety (90) days from receipt of the record.[7]

The Investigation Report

On February 11, 2009, Judge Mantua submitted his Report and Recommendation, together with the complete records of the case.[8] The findings of Judge Mantua may be summarized as follows:

On the Charges

1. On the charge of falsification of daily time record, Judge Mantua noted that the complainant submitted copies of the respondent's DTR for October 2006[9] showing the time-in and time-out entries on October 30, 2006, when he was supposed to be in Cebu City. The respondent admitted that he was in Cebu City on that day, visiting the grave of his father. He explained that he was on leave for the day, thereby making it impossible for him to be in the office; he surmised that somebody with an ill motive had punched in his DTR for the day; he inadvertently overlooked the entry for October 30, 2006, when he signed his DTR because "*it was hard to notice in view of the lack of supply of ribbon for the bundy clock.*" He presented his application for leave which he filed on October 18, 2006. This application was duly approved and signed by Judge Mantua. The judge found that the application for leave of absence "*had negated any suspicion of malice on the part of respondent*."

2. On the charges of grave threats and grave misconduct against the respondent, Judge Mantua also found no evidence that respondent committed the acts attributed to him by the complainant. The Judge noted that the complainant's

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[7] *Id.*, p. 64.

[8] Dated January 5, 2009; *id.*, pp. 89-91.

[9] *Id.*, pp. 7-8.

allegations were not corroborated by any witness to the incident she had narrated.

3. On the charges of gross ignorance of the law and incompetence, Judge Mantua likewise found no reason to hold the respondent liable. Judge Mantua declared that the immediate issuance by the respondent of the entry of judgment and certificate of finality in SP Case No. 0239-PN was completely proper; the decision of the court (*RTC, Br. 17, Palompon, Leyte*) itself ruled that the case was governed by the Summary Judicial Proceedings in the Family Code; and that pursuant to Article 247 of the Code, the judgment in the case was immediately final and executory, aside from the fact that the court also ordered the entry of the judgment in the Book of Entry of Judgment. Judge Mantua recommends the dismissal of all the charges against the respondent for lack of merit.

On the Countercharges

On the respondent's countercharge, Judge Mantua opined that complainant's unauthorized act must be discouraged, as he found it violative of the rule on the confidentiality of court documents under Sections 1 to 3, Canon II of the Code of Conduct for Court Personnel. The judge found the complainant's act of furnishing court documents to an adverse party (the Office of the Solicitor General) grave and contemptuous, and recommended that the complainant be suspended from the service for six (6) months.

Judge Mantua found no sufficient evidence to hold the complainant liable for malversation of court funds.

The Court's Ruling

We support and adopt Judge Mantua's recommendations, except for the recommendation to penalize the complainant under Sections 1 to 3, Canon II of the Code of Conduct for Court Personnel.

On the charge of falsification of DTR, Judge Mantua concluded that there was no such falsification, the incident having been

the product of inadvertence. We find the conclusion to be supported by the records of the case. *First*, the respondent was in Cebu on October 30 as he claimed, and returned to Palompon, Leyte only in the evening of the same day[10] as Passenger No. 23 on board the *M/V Tagbilaran Ferry* operated by Roly Shipping Lines, Inc.[11] If he was in Cebu on October 30, he could not have punched in his DTR on that day. Somebody else did. *Second*, he signed the DTR for the month of October without noticing the October 30 entry because it was difficult to see; it was almost illegible.[12] We find this explanation reasonable. *Third*, the respondent filed on October 18, 2006, a leave of absence for October 30, 2006, and Judge Mantua himself approved it.

We, likewise, concur with Judge Mantua's finding that there was no evidence other than complainant's bare allegation, showing that the respondent committed the imputed acts of grave threats and grave misconduct.

Finally, we find no error in the investigating judge's conclusion that no basis exists to hold the respondent liable for gross ignorance of the law in immediately issuing an entry of judgment and certificate of finality in Sp. Proc. Case No. 0239-PN. As the record shows, RTC, Branch 17, Palompon, Leyte, declared that the petition was governed by the Summary Judicial Proceedings under the Family Code, whose Article 247 recognizes that judgment in the case is immediately final and executory;[13] the court also ordered that the judgment immediately be entered in the Book of Entry of Judgment.[14]

On the countercharge against complainant, Judge Mantua found insufficient evidence to support the charge of malversation against

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[10] *Rollo*, p. 11, Passenger Boarding Report Form B2, date/time/month/ year entry of 302200 # Oct. '06.

[11] *Id.*, p. 17, Passenger List No. 23.

[12] *Id*., pp. 7-8, DTR for October 2006.

[13] Art. 247 – The judgment of the Court shall be immediately final and executory.

[14] *Republic of the Philippines v. Gloria Bermudez-Lorino*, G.R. No. 060258, January 19, 2005, 449 SCRA 57.

her, but found her liable for violation of the confidentiality rule under Canon II, Sections 1, 2 and 3 of the Code of Conduct for Court Personnel. The violation occurred, according to the Judge, when the complainant, not being a party to SP Proc. Case No. 0239-PN, or one authorized to do so, secured copies of the decision, entry of judgment, and certificate of finality, and furnished these copies to the Office of the Solicitor General.

We do not agree with the investigating judge's findings and recommendations on this point. In the first place, the information the complainant disclosed does not qualify as confidential information, as the term is defined under Section I, Canon II of the Code of Conduct for Court Personnel;[15] *Confidential information means "information not yet made a matter of public record relating to pending cases, as well as information not yet made public concerning the work of any justice or judge relating to pending cases, including notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations, and similar papers."* As the records indicate, the decision adverted to has already become final; in fact, a certificate of finality has already been issued, and an entry of judgment had already been made.

Even if the documents were to be considered as classified, the complainant still cannot be held liable for unauthorized disclosure of classified information under the Revised Uniform Rules on Administrative Cases in the Civil Service, Rule IV, Section 52, B(23) which provides:[16]

> Disclosing or misusing confidential or classified information officially known to him by reason of his office and not made available to the public, to further his private interests or give undue advantage to anyone, or to prejudice the public interests.

We do not see from the records any indication that the complainant made the disclosure "*to further (his) private interests or give*

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[15] A.M. No. 03-06-13-SC, promulgated April 27, 2004.

[16] MC No. 19 s. 1999, issued by Chairman Corazon Alma de Leon , Civil Service Commission, which took effect on September 27, 1999.

undue advantage to anyone, or to prejudice the public interests." The Office of the Solicitor General, too, to which the copies were sent, represented a party to the case and, hence, has the right to access these records.

At best, the complainant was only guilty of releasing information without observance of the internal procedures of the court, and for undertaking the dissemination of the copies of the documents disclosed without being the staff member authorized to do so. These infractions may have been the reasons for Judge Mantua's strong reaction to the release of documents by the complainant. To be sure, the complainant's action must be discouraged. We cannot accept, however, that her act was grave or contemptuous, and that it should be classified as a less grave offense under Rule IV, Section 52, B(23) of the Revised Uniform Rules on Administrative Cases in the Civil Service. The complainant's lapse should merit only the warning that a repetition of the same or a similar offense in the future shall not go unpunished.

WHEREFORE, premises considered, the complaint against ELMER P. MAPE, Legal Researcher III, RTC, Branch 17, Palompon, Leyte, is hereby *DISMISSED* for lack of merit. MS. DOROTHY FE MAH-AREVALO, Court Stenographer III of the same Court is *ADMONISHED* for her non-observance of internal rules of the court, with the *WARNING* that any similar act shall not go unpunished.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. RTJ-07-2058. April 7, 2009]
(Formerly OCA IPI No. 06-2422-RTJ)

DOLORES S. BAGO, *complainant, vs.* **JUDGE ERNESTO P. PAGAYATAN, REGIONAL TRIAL COURT, BRANCH 46, SAN JOSE, OCCIDENTAL MINDORO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; COMPLAINT OR INFORMATION; ONCE A COMPLAINT OR INFORMATION IS FILED BEFORE THE TRIAL COURT, ANY DISPOSITION OF THE CASE RESTS ON THE SOUND DISCRETION OF THE SAID COURT. — In *Crespo v. Mogul*, the Court laid down the rule that once a complaint or information is filed before the trial court, any disposition of the case, as its dismissal or the conviction or acquittal of the accused, rests on the sound discretion of the said court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already before the trial court, the fiscal cannot impose his opinion on the trial court. The trial court is the best and sole judge of what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the trial court which has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation. This Court likewise held that once a case has been filed with the trial court, it is that court, no longer the prosecution, which has full control of the case, so much so that the Information may not be dismissed without its approval. Significantly, once a motion to dismiss or withdraw the Information is filed, the court may grant or deny it, in the faithful exercise of judicial discretion. In doing so, the trial judge must himself be convinced that there was indeed no sufficient

evidence against the accused, and this conclusion can be arrived at only after an assessment of the evidence in the possession of the prosecution. What was imperatively required was the trial judge's own assessment of such evidence, it not being sufficient for the valid and proper exercise of judicial discretion merely to accept the prosecution's word for its supposed insufficiency. Also significant is *Marcelo v. Court of Appeals,* in which this Court ruled that although it is more prudent to wait for a final resolution of a motion for review or reinvestigation from the Secretary of Justice before acting on a motion to dismiss or a motion to withdraw an Information, a trial court, nonetheless, should make its own study and evaluation of said motion and not rely merely on the awaited action of the Secretary. The trial court has the option to grant or deny the motion to dismiss the case filed by the fiscal, whether before or after the arraignment of the accused, and whether after reinvestigation or upon instructions of the Secretary who reviewed the records of the investigation, provided that such grant or denial is made from its own assessment and evaluation of the merits of the motion. Once a motion to dismiss or withdraw the information is filed, the trial judge may grant or deny it, not out of subservience to the Secretary of Justice, but in faithful exercise of judicial prerogative. Indeed, it bears stressing that the trial court is not bound to adopt the resolution of the Secretary of Justice since it is mandated to independently evaluate or assess the merits of the case and it may either agree or disagree with the recommendation of the Secretary of Justice. Reliance alone on the resolution of the Secretary of Justice would be an abdication of the trial court's duty and jurisdiction to determine a *prima facie* case. The trial court may make an independent assessment of the merits of the case based on the affidavits and counter-affidavits, documents, or evidence appended to the Information; the records of the public prosecutor which the court may order the latter to produce before it; or any evidence already adduced before the court by the accused at the time the motion is filed by the public prosecutor.

2. **JUDICIAL ETHICS; JUDGES; THE DEFENSE THAT JUDGES CANNOT BE HELD TO ACCOUNT FOR ERRONEOUS JUDGMENTS RENDERED IN GOOD FAITH DOES NOT APPLY WHERE THE ISSUES AND APPLICABLE LEGAL PRINCIPLES ARE SIMPLE AND BASIC. —** Admittedly,

judges cannot be held to account for erroneous judgments rendered in good faith. However, this defense has been all too frequently cited to the point of staleness. In truth, good faith in situations of infallible discretion inheres only within the parameters of tolerable judgment and does not apply where the issues are so simple and the applicable legal principle evident and basic as to be beyond permissible margins of error. Indeed, while a judge may not always be subjected to disciplinary action for every erroneous order or decision he renders, that relative immunity is not a license to be negligent or abusive and arbitrary in performing his adjudicatory prerogatives.

3. **ID.; ID.; MUST BE CONVERSANT WITH THE LAW AND BASIC LEGAL PRINCIPLES. —** Competence is a mark of a good judge. When a judge displays an utter lack of familiarity with the rules, he erodes the public's confidence in the competence of our courts. It is highly imperative that judges be conversant with the law and basic legal principles. As a judge, Judge Pagayatan must have the basic rules at the palm of his hands, as he is expected to maintain professional competence at all times. Indeed, a judge is called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules. He must be conversant with basic legal principles and well-settled doctrines. He should strive for excellence and seek the truth with passion. The failure to observe the basic laws and rules is not only inexcusable, but renders him susceptible to administrative sanction for gross ignorance of the law from which no one is excused, and surely not a judge. A judge owes it to himself and his office to know by heart basic legal principles and to harness his legal know-how correctly and justly. When a judge displays utter unfamiliarity with the law and the rules, he erodes the confidence of the public in the courts. Ignorance of the law by a judge can easily be the mainspring of injustice. As an advocate of justice and a visible representation of the law, a judge is expected to be proficient in the interpretation of our laws. When the law is so elementary, not to know it constitutes gross ignorance of the law. Ignorance of the law, which everyone is bound to know, excuses no one — not even judges. *Ignorantia juris quod quisque scire tenetur non excusat.*

4. **ID.; ID.; GROSS IGNORANCE OF THE LAW; PENALTY. —** Gross ignorance of the law or procedure is classified as a

serious charge under Rule 140, Section 8 of the Rules of Court, as amended by A.M. No. 01-8-10 SC; and penalized under Section 11 of the same Rule as follows: "SEC. 11. *Sanctions*. — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed: 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 (3) but not exceeding six (6) months; or 3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00." Guided by the previous rulings of this Court in *Gamas v. Oco* and *Sule v. Biteng,* a fine of ₱20,000.00 is justified in the case at bar.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

The instant administrative complaint[1] was filed before this Court by complainant Dolores S. Bago (Bago) charging Judge Ernesto P. Pagayatan (Judge Pagayatan) of the Regional Trial Court (RTC), Branch 46, of San Jose, Occidental Mindoro, with Grave Abuse of Discretion, Misconduct, Inefficiency, and Gross Ignorance of the Law, relative to Criminal Case No. R-4295 for Murder, entitled, *"People of the Philippines v. Orlando Gonzales, et al*."

The antecedent facts which gave rise to the instant administrative complaint are recounted below:

On May 7, 1995, at around 9:00 in the evening, Mayor Guillermo Salas of Bulalacao, Oriental Mindoro, who was then running for reelection, was shot to death in front of the house of his rival candidate, Nestor Gonzales, in Barangay Campaanan, Bulalacao, Oriental Mindoro.

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[1] *Rollo*, pp. 2-3.

On May 19, 1995, a criminal complaint was filed before the Assistant Provincial Prosecutor's Office, by the Chief Investigator Rizaldy Herrera Garcia, 4th CIC Regional Office Camp Vicente Lim, Calamba, Laguna. Those accused for Murder were Rodel Gonzales, Orlando Gonzales, Robert Gonzales, Josefino Gonzales, Roderick Gonzales, Bernardo Merlin @ Ato and Avelino Rondael.

On August 1, 1995, the complaint was withdrawn by Antonio Salas, the brother of the victim from the Assistant Provincial Prosecutor's Office for lack of action on the case. Immediately thereafter, the complaint was filed before the Municipal Circuit Trial Court (MCTC), Mansalay, Bulalacao, Oriental Mindoro. After conducting the required preliminary investigation, the court [MCTC] found that probable cause exists against all the accused, hence a warrant of arrest was issued for their apprehension.

Records of the case were then transmitted to the Office of the Provincial Prosecutor. Accused, through counsel, filed a Motion for Reinvestigation with the Provincial Prosecutor's Office. After re-investigation, the Assistant Provincial Prosecutor affirmed the finding of the Municipal Circuit Trial Court and recommended the filing of Information for Murder against all the accused. Meanwhile, all the accused were arrested.

However, the recommendation of the Assistant Provincial Prosecutor was reversed by the Provincial Prosecutor in a resolution dated January 26, 1996 and instead he filed an Information for Murder against accused Rodel Gonzales and Orlando Gonzales only and excluded therefrom the other five co-accused.

Not satisfied with the said resolution, private complainant [Guillermo Salas Jr.] filed a petition for review with the Department of Justice.

On October 1, 1996, the Secretary of Justice modified the questioned resolution by affirming the dismissal of the complaint as against Avelino Rondael and directing the Provincial Prosecutor to amend, with leave of court, the information for murder in Criminal Case No. R-724, now pending before Branch 43, Regional Trial Court of Oriental Mindoro, by including respondents Dr. Robert Gonzales, Josefino Gonzales, Roderick Gonzales and Bernardo Merlin as accused.

On March 24, 1997, the Secretary of Justice reversed his resolution of October 1, 1996 by ordering the withdrawal of the names of Dr.

Robert Gonzales, Josefino Gonzales, Roderick Gonzales and Bernardo Merlin as accused in Crim. Case No. R-724.

Disappointed, Mayor Gemma Salas, the daughter of the deceased, appealed the resolution of the Secretary of Justice to the Office of the President. Said Office acting through the then Executive Secretary Alexander P. Aguirre, in a Decision dated February 6, 1998, ordered the re-inclusion of the accused Roberto S. Gonzales, Josefino Gonzales, Roderick Gonzales, and Bernardo Merlin, in the information. Moreover, the Supreme Court acting on the petition filed by Mayor Salas for a change of venue, ordered the transfer of the instant case from Regional Trial Court, Branch 43, Roxas, Oriental Mindoro, to Regional Trial Court, Branch 46, San Jose, Occidental Mindoro, docketed as Criminal Cases Nos. R-4295, R-4296 and R-4297, for Murder, illegal possession of firearms and ammunitions, and violation of COMELEC Resolution No. 2755.

A Motion for Reconsideration of said Decision dated February 6, 1998 of the Executive Secretary was filed by the herein private respondents.

Meanwhile, trial of the three criminal cases was conducted by the Regional Trial Court Branch 46, of San Jose, Occidental Mindoro, and terminated on October 26, 1999.

Two months thereafter, after both parties submitted their respective Memoranda in the case, a "Motion to Admit Third Amended Information" was filed by Assistant Regional Prosecutor, Gerardo B. Iligan, but this time, with the dropping of the names of the accused, Roberto S. Gonzales, Josefino Gonzales, [and] Roderick Gonzales, from the information. Said Motion was based on the resolution issued by then Executive Secretary Ronaldo B. Zamora, dated 1 December 1999, which resolved the motion for reconsideration of the decision dated 6 February 1998 in favor of private respondents.[2]

On 27 January 2000, Judge Pagayatan issued an Order admitting the Third Amended Information for Murder in Criminal Case No. R-4295 and allowed the withdrawal of the names of the accused Roberto S. Gonzales, Josefino Gonzales, and Roderick Gonzales therefrom. The dispositive portion of said Order reads:

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[2] *Id.* at 6-8.

WHEREFORE, the third Amended Information is hereby admitted. Consequently, the charge against accused Dr. Roberto Gonzales, Josefino Gonzales, and Roderick Gonzales are forthwith withdrawn. Accused Roderick Gonzales who was arrested recently and detained at the Provincial Jail, is ordered released immediately, unless he is being held for some other offense x x x.[3]

Aggrieved by the foregoing Order, Antonio Salas, brother of the victim Guillermo Salas, filed a Petition for *Certiorari* and Prohibition before the Court of Appeals, docketed as CA-G.R. SP No. 58959, alleging that Judge Pagayatan committed grave abuse of discretion in issuing the Order dated 27 January 2000.

The Court of Appeals rendered a Decision[4] in CA-G.R. SP No. 58959 on 26 June 2001, with the following *fallo*:

Wherefore, premises considered the Court GRANTS the Petition for *Certiorari* and Prohibition. The assailed order dated January 27, 2000 is hereby set aside and annulled. Respondent Judge is ordered to decide Criminal Cases R-4295, R-4296 and R-4297 posthaste.[5]

On 2 January 2006, Bago[6] filed the present administrative complaint against Judge Pagayatan, for Grave Abuse of Discretion,

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[3] *Id.* at 4.

[4] *Id.* at 31-38.

[5] *Id.* at 57.

[6] Records did not mention her relation to deceased Guillermo Salas.

However, Section 1, Rule 140 of the Rules of Court (as amended by A.M. No. 01-8-10-SC, which took effect on 1 October 2001) provides that:

Section 1. *How instituted*. — Proceedings for the discipline of Judges of regular and special courts and Justices of the Court of Appeals and the Sandiganbayan may be instituted *motu proprio* by the Supreme Court or upon a verified complaint, supported by affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations, or upon an anonymous complaint, supported by public records of indubitable integrity. The complaint shall be in writing and shall state clearly and concisely the acts and omissions constituting violations of standards of conduct prescribed for Judges by law, the Rules of Court, or the Code of Judicial Conduct.

A careful perusal of the above-cited provision shows that the complainant need not be the person allegedly aggrieved by the actuations of a court officer

Misconduct, Inefficiency, and Gross Ignorance of the Law. Bago asserted that the 26 June 2001 Decision of the Court of Appeals in CA-G.R. S.P. No. 58959 revealed that Judge Pagayatan acted with grave abuse of discretion and committed serious misconduct and inefficiency in issuing the Order dated 27 January 2000 in Criminal Case No. R-4295.

In his Comment[7] dated 9 March 2006, Judge Pagayatan vehemently denied the allegations in Bago's administrative complaint. Judge Pagayatan averred that upon the finality of the 26 June 2001 Decision of the Court of Appeals in CA-G.R. SP No. 58959, granting the issuance of the writs of *certiorari* and prohibition against his 27 January 2000 Order in Criminal Case No. R-4295, he immediately issued an order for the arrest of some of the accused who were still at large. However, before he could conclude the trial in Criminal Case No. R-4295, a motion for his inhibition was filed against him by the private complainant Guillermo Salas, Jr. To avoid any suspicion that he was biased, Judge Pagayatan issued an Order dated 25 March 2002 inhibiting himself from further hearing Criminal Case No. R-4295. Thus, the said criminal case was re-raffled to the RTC, Branch 45, of San Jose, Occidental Mindoro, presided by Judge Jose S. Jacinto, Jr. (Judge Jacinto), who continued the trial. On 25 March 2005, Judge Jacinto rendered his Decision in Criminal Case No. R-4295, finding only the accused Rodel Gonzales guilty of the crime of Homicide, and acquitting all the rest.

Judge Pagayatan maintained that the records were bereft of any showing that he had an interest, personal or otherwise, in Criminal Case No. R-4295. There was no showing of bad faith, malice, corrupt motive or improper consideration on his part.

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or employee or someone related thereto. The rule does not mention that the complainant must be the aggrieved party or his relative so as to initiate the prosecution of an administrative case. As correctly observed by the OCA, the above-quoted rule allows the filing by even an anonymous complainant as the rule merely requires that it should be supported by public records of indubitable integrity. (*Balayon, Jr. v. Judge Dinopol*, A.M. No. RTJ-06-1969, 15 June 2006, 490 SCRA 547, 552-553.)

[7] *Rollo*, pp. 90-91.

On the contrary, he had in his favor the presumption of regularity and good faith in the performance of official functions. Granting that he did err in admitting the Third Amended Information, it was but an error of procedure and judgment for which he could not be held administratively liable absent any showing of his bad faith. Judge Pagayatan further claimed that he was deprived of the opportunity to prove his fairness and neutrality when private complainant Guillermo Salas, Jr. moved for his inhibition from Criminal Case No. R-4295.

In her Reply[8] of 22 March 2006, Bago pointed out that her administrative complaint arose out of Judge Pagayatan's 27 January 2000 Order in Criminal Case No. R-4295 admitting the Third Amended Information, which excluded therefrom several of the accused, on the flimsy reason that the supervision and control of the case rested on the prosecution, thus, contravening the ruling in *Crespo v. Mogul.*[9] Judge Pagayatan still issued the Order dated 27 January 2000 even though the parties in Criminal Case No. R-4295 had already filed their respective memoranda and submitted the case for resolution by the court.

Bago argued that the Special Eleventh Division of the Court of Appeals, then headed by now Supreme Court Justice Presbitero J. Velasco, Jr., already declared that Judge Pagayatan acted contrary to the rules. If Antonio Salas did not file the Petition for *Certiorari* against Judge Pagayatan, the other accused would have enjoyed their freedom *via* a shortcut. A careful consideration of the 25 March 2005 Decision of the RTC, Branch 46, in Criminal Case No. R-4295 for Murder, Criminal Case No. R-4296 for Illegal Possession of Firearms and Ammunitions, and Criminal Case No. R-4297 for violation of Commission on Elections Resolution No. 2735, would reveal how Judge Pagayatan handled Criminal Case No. R-4295, as well as the political maneuverings the case went through.

Bago contended that although bad faith might not be immediately obvious, it could be presumed when Judge Pagayatan

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[8] *Id.* at 90-91.

[9] 235 Phil. 465 (1987).

acted with grave abuse of discretion, totally disregarding or ignoring elementary procedural and/or substantive rules.

Finally, Bago requested that an audit be conducted on the RTC presided by Judge Pagayatan to determine whether he could really enjoy the presumption of regularity in the performance of his official functions insofar as the present administrative charges against him were concerned.

On 18 May 2007, the Office of the Court Administrator (OCA) submitted its Report,[10] with the following recommendation —

> RECOMMENDATION: Respectfully submitted to the Honorable Court our recommendation that:
>
> 1. the instant complaint be RE-DOCKETED as a regular administrative matter;
>
> 2. respondent Judge be FINED in the amount of TWENTY THOUSAND PESOS (₱20,000.00) for gross ignorance of the law with a STERN WARNING that commission of the same act would be dealt with more severely.[11]

On 16 July 2007, the Court required[12] the parties to manifest within 10 days from notice if they were willing to submit the matter for resolution based on the pleadings filed. Bago submitted such a manifestation[13] on 10 September 2007; while Judge Pagayatan failed to file any despite notice sent to and received by him. Resultantly, the matter was submitted for decision based on the pleadings filed.

The Court agrees in the OCA recommendation.

The complaint against Judge Pagayatan centers on his admitting the Third Amended Information in Criminal Case No. R-4295 which dropped several accused from the case. Bago posits that the Decision dated 26 June 2001 of the Court of Appeals in CA-G.R. SP No. 58959 clearly establishes that Judge Pagayatan

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

[11] *Rollo*, p. 98.

[12] *Id.* at 99.

[13] *Id.* at 101.

committed grave abuse of discretion, misconduct, inefficiency, and gross ignorance of the law.

In *Crespo v. Mogul*,[14] the Court laid down the rule that once a complaint or information is filed before the trial court, any disposition of the case, as its dismissal or the conviction or acquittal of the accused, rests on the sound discretion of the said court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already before the trial court, the fiscal cannot impose his opinion on the trial court. The trial court is the best and sole judge of what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the trial court which has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.[15]

This Court likewise held that once a case has been filed with the trial court, it is that court, no longer the prosecution, which has full control of the case, so much so that the Information may not be dismissed without its approval. Significantly, once a motion to dismiss or withdraw the Information is filed, the court may grant or deny it, in the faithful exercise of judicial discretion. In doing so, the trial judge must himself be convinced that there was indeed no sufficient evidence against the accused, and this conclusion can be arrived at only after an assessment of the evidence in the possession of the prosecution. What was imperatively required was the trial judge's own assessment of such evidence, it not being sufficient for the valid and proper exercise of judicial discretion merely to accept the prosecution's word for its supposed insufficiency.[16]

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[14] *Supra* note 9.

[15] *Martinez v. Court of Appeals*, G.R. No. 112387, 13 October 1994, 237 SCRA 575, 584.

[16] *Odin Security Agency, Inc. v. Sandiganbayan*, 417 Phil. 673, 679-680 (2001); *Baltazar v. People,* G.R. No. 174016, 28 July 2008, 560 SCRA 278.

Also significant is *Marcelo v. Court of Appeals,*[17] in which this Court ruled that although it is more prudent to wait for a final resolution of a motion for review or reinvestigation from the Secretary of Justice before acting on a motion to dismiss or a motion to withdraw an Information, a trial court, nonetheless, should make its own study and evaluation of said motion and not rely merely on the awaited action of the Secretary. The trial court has the option to grant or deny the motion to dismiss the case filed by the fiscal, whether before or after the arraignment of the accused, and whether after reinvestigation or upon instructions of the Secretary who reviewed the records of the investigation, provided that such grant or denial is made from its own assessment and evaluation of the merits of the motion.

Once a motion to dismiss or withdraw the information is filed, the trial judge may grant or deny it, not out of subservience to the Secretary of Justice, but in faithful exercise of judicial prerogative.[18] Indeed, it bears stressing that the trial court is not bound to adopt the resolution of the Secretary of Justice since it is mandated to independently evaluate or assess the merits of the case and it may either agree or disagree with the recommendation of the Secretary of Justice. Reliance alone on the resolution of the Secretary of Justice would be an abdication of the trial court's duty and jurisdiction to determine a *prima facie* case.[19]

The trial court may make an independent assessment of the merits of the case based on the affidavits and counter-affidavits, documents, or evidence appended to the Information; the records of the public prosecutor which the court may order the latter to produce before it; or any evidence already adduced before the court by the accused at the time the motion is filed by the public prosecutor.[20]

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[17] G.R. No. 106695, 4 August 1994, 235 SCRA 39.

[18] *Roberts, Jr. v. Court of Appeals*, 324 Phil. 568, 598 (1996).

[19] *Solar Team Entertainment, Inc. v. Judge How*, 393 Phil. 172, 185-186 (2000).

[20] *Santos v. Orda, Jr.*, G.R. No. 158236, 1 September 2004, 437 SCRA 504, 515.

In this case, Judge Pagayatan failed to make an independent assessment of the merits of Criminal Case No. R-4295 for Murder, making no reference to or taking no consideration of the evidence on record or in the possession of the public prosecutor. In granting the motion of the public prosecutor to file a Third Amended Information (which excluded several of the accused from the case and, in effect, dropped or withdrew the criminal charges against them), Judge Pagayatan relied solely on the directive of Chief State Prosecutor Jovencito R. Zuño to the Office of the Regional State Prosecutor. This is evident from his Order[21] dated 27 January 2000, wherein Judge Pagayatan himself stated:

> It appearing from the record of this case that it was the Chief State Prosecutor Jovencito R. Zuno himself who directed the Office of the Regional State Prosecutor to file the amended information to exclude the names of the accused Dr. Roberto Gonzales, Josefino Gonzales and Roderick Gonzales, and considering that it is the Chief State Prosecutor who has direct control and supervision over prosecution of criminal cases, the court resolves to grant the motion.

Judge Pagayatan clearly failed to comply with his mandate and to discharge his duty to judiciously and independently rule upon the Motion to Admit Third Amended Information. He obviously lost sight of the fact that Criminal Case No. R-4295 was already filed before his court and was under his control; and he was not bound by the actuations or resolutions of the prosecution, or even by the directive coming from the Chief Prosecutor himself. He had the discretion to grant or deny the prosecution's motion based on his personal and independent evaluation or assessment of the evidence before him.

Verily, the Court of Appeals, in its Decision dated 26 June 2001 in CA-G.R. SP No. 58959, pronounced that Judge Pagayatan indeed committed grave abuse of discretion in issuing the Order dated 27 January 2000 in Criminal Case No. R-4295 and, accordingly, annulled the same. A relevant portion of said Decision reads:

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[21] *Rollo*, p. 4.

In the case at bar, respondent Judge has already acquired jurisdiction over the persons of private respondents. Even if the Executive Secretary ordered the public prosecutor to exclude private respondents from the information, the respondent Judge had to personally evaluate and consider the evidence on hand and the merits of the case and exercise his own discretion in determining whether or not the exclusion of private respondents is proper. In the case at bar, respondent Judge did not exercise his discretion required of a magistrate who has jurisdiction over the accused in criminal cases but merely accepted the motion of the regional state prosecutor hook, line, and sinker and on its face value. This is patent from the assailed resolution when he reasoned out that the motion is granted "considering that it is the Chief State Prosecutor who has direct control and supervision over prosecution of criminal cases." This is contrary to the plain import of the *Crespo vs. Mogul* ruling that such a motion to dismiss the case against an accused which in this case was disguised as a Motion For Third Amendment of Information "should be addressed for the consideration of the Court." Moreover, "the Court in the exercise of discretion may grant the motion or deny it." A perfunctory reading of the assailed Order easily reveals that no substantial justification is embodied therein to support the grant of the exclusion and which unequivocally demonstrates the fact that respondent Judge did not make his own personal independent evaluation of the merits of the case. Since respondent Judge did not exercise his discretion in resolving the motion for amendment of information, and simply allowed the opinion of the prosecutor to be imposed upon himself in resolving the motion, then such act certainly constitutes grave abuse of discretion.[22]

By merely echoing the directive of Chief State Prosecutor Zuño, Judge Pagayatan abdicated his duty as a judge of a court of law, allowing his court to be subjugated to an administrative agency. Also, in failing to make a personal and independent determination of the propriety of dropping the charges against several of the accused in Criminal Case No. R-4295, and depending entirely on Chief State Prosecutor Zuño's finding, Judge Pagayatan relinquished the discretion he was obliged to exercise under the circumstances, thus, violating the decree of this Court in *Crespo v. Mogul*. In effect, it was the prosecution, through the Office

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[22] *Id.* at 21-22.

of the Chief State Prosecutor, which decided what to do with the accused in Criminal Case No. R-4295 and the RTC was reduced to a mere rubber-stamping body.

Admittedly, judges cannot be held to account for erroneous judgments rendered in good faith. However, this defense has been all too frequently cited to the point of staleness. In truth, good faith in situations of infallible discretion inheres only within the parameters of tolerable judgment and does not apply where the issues are so simple and the applicable legal principle evident and basic as to be beyond permissible margins of error.[23] Indeed, while a judge may not always be subjected to disciplinary action for every erroneous order or decision he renders, that relative immunity is not a license to be negligent or abusive and arbitrary in performing his adjudicatory prerogatives.[24]

Judge Pagayatan failed to conform to the high standards set under Canon 1 of the Code of Judicial Conduct, which requires a judge to uphold the integrity and independence of the judiciary by adhering to the following mandates:

> Rule 1.01 — A judge should be the embodiment of competence, integrity, and independence.
>
> Rule 3.01 — A judge shall x x x maintain professional competence.

Competence is a mark of a good judge. When a judge displays an utter lack of familiarity with the rules, he erodes the public's confidence in the competence of our courts.[25] It is highly imperative that judges be conversant with the law and basic legal principles.[26]

As a judge, Judge Pagayatan must have the basic rules at the palm of his hands, as he is expected to maintain professional competence at all times.[27] Indeed, a judge is called upon to

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[23] *Poso v. Mijares*, 436 Phil. 295, 314 (2002).

[24] *De Guzman, Jr. v. Sison*, 407 Phil. 351, 365 (2001).

[25] *Fr. Guillen v. Judge Cañon*, 424 Phil. 81, 88 (2002).

[26] *Borja-Manzano v. Sanchez,* 406 Phil. 434, 440 (2001).

[27] *Cruz v. Yaneza*, 363 Phil. 629, 649 (1999).

exhibit more than just a cursory acquaintance with statutes and procedural rules. He must be conversant with basic legal principles and well-settled doctrines. He should strive for excellence and seek the truth with passion.[28] The failure to observe the basic laws and rules is not only inexcusable, but renders him susceptible to administrative sanction for gross ignorance of the law from which no one is excused, and surely not a judge.[29]

A judge owes it to himself and his office to know by heart basic legal principles and to harness his legal know-how correctly and justly. When a judge displays utter unfamiliarity with the law and the rules, he erodes the confidence of the public in the courts. Ignorance of the law by a judge can easily be the mainspring of injustice. As an advocate of justice and a visible representation of the law, a judge is expected to be proficient in the interpretation of our laws. When the law is so elementary, not to know it constitutes gross ignorance of the law. Ignorance of the law, which everyone is bound to know, excuses no one — not even judges. *Ignorantia juris quod quisque scire tenetur non excusat.*[30] As the Court held in *Monterola v. Judge Caoibes, Jr.*[31]:

> Observance of the law, which respondent ought to know, is required of every judge. When the law is sufficiently basic, a judge owes it to his office to simply apply it; anything les (sic) than that is either deliberate disregard thereof or gross ignorance of the law. It is a continuing pressing responsibility of judges to keep abreast with the law and changes therein. Ignorance of the law, which everyone is bound to know, excuses no one — not even judges — from compliance therewith x x x. Canon 4 of the Canons of Judicial Ethics requires that the judge should be studious of the principles of law. Canon 18 mandates that he should administer his office with due regard to the integrity of the system of the law itself, remembering

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[28] *Office of the Court Administrator v. Judge Sardido*, 449 Phil. 619, 631 (2003).

[29] *Bueno v. Judge Dimangadap,* A.M. No. MTJ-02-1462, 10 August 2004, 436 SCRA 25, 31.

[30] *Español v. Mupas*, A.M. No. MTJ-01-1348, 11 November 2004, 442 SCRA 13, 44-45.

[31] 429 Phil. 59, 66-67 (2000).

that he is not a depository of arbitrary power, but a judge under the sanction of law. Indeed, it has been said that when the inefficiency springs from a failure to consider a basic and elementary rule, a law or principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and the title he holds or is to vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority. x x x.

Ignorantia legis non excusat remains a valid *dictum*. When an officer of the court such as Judge Pagayatan, who is supposed to know the law, displays such ignorance, then he must be called to account.[32]

Clearly then, Judge Pagayatan displayed gross ignorance of the law when he abandoned his duty to personally and independently evaluate the prosecution's motion to admit the third amended Information, which excluded several accused therefrom, and relied entirely on the directive of Chief State Prosecutor Zuño ordering such an amendment. Verily, Judge Pagayatan's actions patently indicate his insufficient grasp of the law.

Gross ignorance of the law or procedure is classified as a serious charge under Rule 140, Section 8 of the Rules of Court, as amended by A.M. No. 01-8-10 SC; and penalized under Section 11 of the same Rule as follows:

SEC. 11. *Sanctions*. — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

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 (3) but not exceeding six (6) months; or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

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[32] *Obrero v. Acidera*, A.M. No. P-08-2442, 28 March 2008, 550 SCRA 53, 59.

Guided by the previous rulings of this Court in *Gamas v. Oco*[33] and *Sule v. Biteng,*[34] a fine of ₱20,000.00 is justified in the case at bar.

Records show that Judge Pagayatan availed himself of optional retirement which became effective on 7 July 2008, and his retirement benefits were withheld pending the outcome of the instant administrative complaint, and the other administrative cases against him such as A.M. No. RTJ-07-2089 for Gross Ignorance of the Law, Knowingly Rendering Unjust Judgment, Republic Act No. 3019 and Violation of Code of Judicial Conduct and OCA IPI No. 07-2698-RTJ for Gross Ignorance of the Law, Grave Abuse of Authority, Misconduct, Conduct Prejudicial to the Proper Administration of Justice.

WHEREFORE, respondent Judge Pagayatan is found *GUILTY* of Ignorance of the Law for which he is *FINED* the amount of Twenty Thousand Pesos (₱20,000.00), to be deducted from his retirement benefits.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio Morales,[*] *Nachura,* and *Peralta, JJ.,* concur.

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[33] 469 Phil. 633 (2004). In this case, respondent Judge was found guilty of gross ignorance of the law for failure to comply with the requirements of Section 1(a) of Rule 116 of the Revised Rules of Criminal Procedure, by failing to furnish complainants therein a copy of the information with the list of the witnesses and was meted a fine of ₱20,000.00.

[34] 313 Phil. 398 (1995). In this case, respondent Judge was found guilty of gross ignorance of the law when he granted bail solely on account of the voluntary surrender of the accused and was meted a fine of ₱20,000.00.

[*] Per Special Order No. 602, dated 20 March 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Conchita Carpio Morales to replace Associate Justice Ma. Alicia Austria-Martinez, who is on official leave.

SECOND DIVISION

[G.R. No. 130088. April 7, 2009]

TALA REALTY SERVICES CORPORATION, ADD INTERNATIONAL SERVICES, INC., PEDRO AGUIRRE, REMEDIOS DUPASQUIER, ELIZABETH PALMA, PILAR ONGKING, DOLLY LIM, and RUBENCITO DEL MUNDO, *petitioners, vs.* **THE HON. COURT OF APPEALS and BANCO FILIPINO SAVINGS AND MORTGAGE BANK,** *respondents.*

[G.R. No. 131469. April 7, 2009]

TALA REALTY SERVICES CORPORATION, ADD INTERNATIONAL SERVICES, INC., PEDRO AGUIRRE, REMEDIOS DUPASQUIER, ELIZABETH PALMA, PILAR ONGKING, DOLLY LIM, and RUBENCITO DEL MUNDO, *petitioners, vs.* **HON. ALICIA B. GONZALES-DECANO, in her capacity as Presiding Judge, Regional Trial Court of Pangasinan, Branch 48 and BANCO FILIPINO SAVINGS AND MORTGAGE BANK,** *respondents.*

[G.R. No. 155171. April 7, 2009]

NANCY L. TY, *petitioner, vs.* **HON. WENCESLAO E. IBABAO, Presiding Judge of the Regional Trial Court of Davao City, Branch 33 and BANCO FILIPINO SAVINGS AND MORTGAGE BANK,** *respondents.*

[G.R. No. 155201. April 7, 2009]

TALA REALTY SERVICES, INC., PEDRO AGUIRRE, REMEDIOS A. DUPASQUIER, DOLLY LIM, RUBENCITO DEL MUNDO and ELIZABETH PALMA, *petitioners, vs.* **BANCO FILIPINO SAVINGS AND MORTGAGE BANK,** *respondent.*

[G.R. No. 166608. April 7, 2009]

TALA REALTY SERVICES CORP., INC., PEDRO B. AGUIRRE, REMEDIOS A. DUPASQUIERE, DOLLY LIM, RUBENCITO M. DEL MUNDO and ELIZABETH H. PALMA, *petitioners, vs.* **BANCO FILIPINO SAVINGS AND MORTGAGE BANK,** *respondent.*

SYLLABUS

REMEDIAL LAW; JUDGMENTS; DOCTRINE OF *STARE DECISIS*; PROVIDES THAT ONCE A COURT HAS LAID DOWN A PRINCIPLE OF LAW AS APPLICABLE TO A CERTAIN STATE OF FACTS, IT WILL ADHERE TO THAT PRINCIPLE AND APPLY IT TO ALL FUTURE CASES WHERE THE FACTS ARE SUBSTANTIALLY THE SAME; CASE AT BAR. — In *Tala Realty Services Corporation v. Banco Filipino Savings and Mortgage Bank*, this Court, by Decision dated November 22, 2002, ruling on one of several ejectment cases filed by Tala Realty against Banco Filipino arising from the same trust agreement in the reconveyance cases subject of the present petitions, held that the trust agreement is void and cannot thus be enforced. The relevant portion of the Court's ruling in said case reads: "The Bank alleges that the sale and twenty-year lease of the disputed property were part of a larger implied trust 'warehousing agreement.' Concomitant with this Court's factual finding that the 20-year contract governs the relations between the parties, we find the Bank's allegation of circumstances surrounding its execution worthy of credence; the Bank and Tala entered into contracts of sale and lease back of the disputed property and created an implied trust 'warehousing agreement' for the reconveyance of the property. In the eyes of the law, however, this implied trust is inexistent and void for being contrary to law. x x x An implied trust could not have been formed between the Bank and Tala as this Court has held that 'where the purchase is made in violation of an existing statute and in evasion of its express provision, no trust can result in favor of the party who is guilty of the fraud.' x x x [T]he bank cannot use the defense of nor seek enforcement of its alleged implied trust with Tala since its purpose was contrary to law. As admitted by the Bank,

it 'warehoused' its branch site holdings to Tala to enable it to pursue its expansion program and purchase new branch sites including its main branch in Makati, and at the same time avoid the real property holdings limit under Sections 25(a) and 34 of the General Banking Act which it had already reached. x x x Clearly, the Bank was well aware of the limitations on its real estate holdings under the General Banking Act and that its 'warehousing agreement' with Tala was a scheme to circumvent the limitation. Thus, the Bank opted not to put the agreement in writing and call a spade a spade, but instead phrased its right to reconveyance of the subject property at any time as a 'first preference to buy' at the 'same transfer price.' This agreement which the Bank claims to be an implied trust is contrary to law. Thus, while we find the sale and lease of the subject property genuine and binding upon the parties, we cannot enforce the implied trust even assuming the parties intended to create it. In the words of the Court in the *Ramos case*, 'the courts will not assist the payor in achieving his improper purpose by enforcing a resultant trust for him in accordance with the 'clean hands' doctrine.' **The Bank cannot thus demand reconveyance of the property based on its alleged implied trust relationship with Tala.** x x x The Bank and Tala are *in pari delicto*, thus, no affirmative relief should be given to one against the other. The Bank should not be allowed to dispute the sale of its lands to Tala nor should Tala be allowed to further collect rent from the Bank. The clean hands doctrine will not allow the creation nor the use of a juridical relation such as a trust to subvert, directly or indirectly, the law. Neither the Bank nor Tala came to court with clean hands; neither will obtain relief from the court as the one who seeks equity and justice must come to court with clean hands. x x x" Under the doctrine of *stare decisis*, once a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same. This Court's ruling quoted in the immediately preceding paragraph on the nullity of the trust agreement which Banco Filipino seeks to enforce thus applies to the present petitions.

APPEARANCES OF COUNSEL

Gancayco Balasbas & Associates Law Offices for petitioners.
Morales Rojas & Risos-Vidal for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

From 1995-1996, Banco Filipino Savings and Mortgage Bank (Banco Filipino) which is a respondent in these five consolidated cases, filed before 17 Regional Trial Courts (RTC) nationwide 17 complaints for reconveyance of different properties against petitioners Tala Realty Services Corporation (Tala Realty), Nancy L. Ty (Nancy), Pedro B. Aguirre, Remedios A. Dupasquier (Remedios), Pilar D. Ongking (Pilar), Elizabeth H. Palma (Elizabeth), Dolly W. Lim (Dolly), Rubencito M. Del Mundo (del Mundo), Add International Services, Inc. (Add International), and Cynthia E. Messina (Cynthia).

Banco Filipino's complaints commonly alleged that in 1979, expansion of its operations required the purchase of real properties for the purpose of acquiring sites for more branches; that as Sections 25(a) and 34 of the General Banking Act[1] limit a bank's allowable investments in real estate to 50% of its capital assets,[2] its board of directors decided to warehouse some of its existing properties and branch sites. Thus, Nancy, a major stockholder and director, persuaded Pedro Aguirre and his brother Tomas Aguirre, both major stockholders of Banco Filipino, to organize and incorporate Tala Realty to hold and purchase real properties in trust for Banco Filipino; that after the transfer of Banco Filipino properties to Tala Realty, the Aguirres' sister Remedios prodded her brother Tomas to, as he did, endorse to her his shares in Tala Realty and registered them in the name of her controlled corporation, Add International.

Thus, Nancy, Remedios, and Pedro Aguirre controlled Tala Realty, with Nancy exercising control through her nominees Pilar, Cynthia, and Dolly, while Remedios exercised control through Add International and her nominee Elizabeth. Pedro Aguirre exercised control through his own nominees, the latest being Tala Realty's president, del Mundo.

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[1] Republic Act No. 337.

[2] Section 51 of the General Banking Law of 2000 contains a similar provision.

In implementation of their trust agreement, Banco Filipino sold to Tala Realty some of its properties. Tala Realty simultaneously leased to Banco Filipino the properties for 20 years, renewable for another 20 years at the option of Banco Filipino with a right of first refusal in the event Tala Realty decided to sell them.

In August 1992, Tala Realty repudiated the trust, claimed the titles for itself, and demanded payment of rentals, deposits, and goodwill, with a threat to eject Banco Filipino.

Thus arose Banco Filipino's 17 complaints for reconveyance against Tala Realty, docketed and raffled to the branches of the courts to which they were filed, *viz*:

Case No.	Regional Trial Court (RTC)
Civil Case No. 95-127	Branch 57, Lucena
Civil Case No. 22493	Branch 28, Iloilo
Civil Case No. 545-M-95	Branch 84, Batangas City
Civil Case No. U-6026	Branch 48, Urdaneta, Pangasinan
Civil Case No. 4992	Branch 66, La Union
Civil Case No. 3036	Branch 13, Cotabato
Civil Case No. Q-95-24830	Branch 91, Quezon City
Civil Case No. 2506-MN	Branch 72, Malabon, Metro Manila
Civil Case No. 95-230	Branch 274, Parañaque
Civil Case No. 95-170-MK	Branch 272, Marikina
Civil Case No. 95-75212	Branch 45, Manila
Civil Case No. 95-75213	Branch 46, Manila
Civil Case No. 95-75214	Branch 47, Manila
Civil Case No. 23,821-95	Branch 33, Davao City
Civil Case No. 96-0036	Branch 255, Las Piñas
Civil Case No. 2176-AF	Branch 86, Cabanatuan City

Petitioners filed motions to dismiss all the complaints on the grounds of forum shopping, lack of cause of action, and *pari delicto*.[3]

The present petitions (G.R. Nos. 130088, 131469, 166608, 155201, 155171) originated from Civil Case Nos. 2176-AF (the Cabanatuan City case), U-6026 (the Urdaneta case), 95-127 (the Lucena case), and 23, 821-95 (the Davao City case).

G.R. No. 130088

In the Cabanatuan City case, the RTC granted petitioners' Motion to Dismiss[4] by Order of August 20, 1996. Banco Filipino filed a Motion for Reconsideration, which was denied,[5] drawing it to file a Petition for *Certiorari* and *Mandamus*[6] before the Court of Appeals which docketed it as CA-G.R. SP No. 43344.

By Resolution[7] of February 14, 1997, the Court of Appeals, finding CA-G.R. SP No. 43344 sufficient in form and substance, gave due course to it and ordered petitioners to file their Answer within ten days from notice.

Petitioners filed a motion to recall the appellate court's February 14, 1997 Resolution giving due course to the petition,[8] arguing as follows:

> Upon [Banco Filipino's] own admission, x x x its instant petition is a plea for the annulment of a lower court order granting a motion to dismiss. At the same time, [Banco Filipino] admits to have received the said order "on 17 January 1997," or, to be precise, twenty one (21) days prior to the institution of its instant petition with this Court (assuming the same to have been filed on its given date, Febraury 2, 1997).

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[3] *Vide rollo* (G.R. No. 130088), pp. 104-121; *rollo* (G.R. No. 131469), pp. 47-62; *rollo*, (G.R. No. 155201), pp. 459-474.

[4] *Rollo* (G.R. No. 130088), pp. 186-187.

[5] *Id.* at 188-190.

[6] *Id.* at 191-212.

[7] *Id.* at 27.

[8] *Id.* at 214-223.

On the foregoing considerations alone, therefore, the mandatory, legal duty of this Court is to deny, not to grant, due course to this special civil action. x x x

x x x x x x x x x

In the case on hand, [Banco Filipino] itself alleges that it received a copy of the Order dismissing its complaint on 23 August 1996,. Against this Order, it then filed on 7 September 1996 (the last day for perfecting an appeal therefrom) a motion for reconsideration which herein Respondent Judge denied on 13 January 1997. Petitioner received a copy of this Order denying its above motion 17 January 1997. Petitioner thus had only one or the following day, 18 July 1997, to file its mandatory "notice of appeal." Thereafter, beyond 18 January 1997, the said Order lapsed into finality. It was no longer legally appeallable.[9] (Underscoring in the original)

And petitioners brought to the attention of the Court of Appeals the pendency of G.R. No. 12711 before this Court, questioning the denial of their motion to dismiss in Civil Case No. 545-M-95 (the Batangas case), contending as follows:

[Banco Filipino] tenders one and only one issue in its instant petition, to wit: Did or did not Respondent Judge gravely abuse his discretion when he dismissed its complaint with him under Civil Case No. 2176-AF as violative of the Supreme Court's Administrative Circular on "forum shopping?"

The instant petition was filed with this Court on 07 February 1997. On this date, exactly the same issue above raised was already before the Supreme Court for ruling and/or judicial determination. Two weeks earlier, on 20 July 1997 to be exact, herein Private Respondents filed with the said Tribunal under G.R. No. 12711 a special civil action for *certiorari* and prohibition that precisely and specifically prayed for the condemnation of [Banco Filipino's] complaint with the Cabanatuan RTC, Branch 86, under Civil Case No. 2176-AF, (the very complaint involved in this petition, together with fifteen (15) other like suits, as "forum shopping." x x x[10]

x x x x x x x x x

[9] *Id.* at 215-218.

[10] *Id.* at 219.

[Banco Filipino] received its service copy of the above petition on 25 January 1997. On 7 February 1997 when it filed with this Court the instant petition, said Petitioner was thus already on full and official notice of the said petition with the Supreme Court under G.R. No. 127611. Entirely apart then from the undeniable fact that the instant petition thus likewise breaches the Supreme Court's circular against "forum shopping," there is the matter of [Banco Filipino's] criminal perjury in this case of attesting under oath that "no other action or proceeding is pending in any other court, tribunal or agency" x x x "involving the same issues" as those tendered in the instant petition.[11]

The Court of Appeals denied the Motion to Recall by Resolution of June 17, 1997, declaring that its February 14, 1997 Resolution stands but the Answer should be submitted within ten days from notice. Hence, the first above-captioned petition for *certiorari*, and prohibition (G.R. No. 130088)[12] raising the following arguments:

Respondent Court issued its two assailed Resolutions in knowing disregard of the prior jurisdiction much earlier assumed by this Court over the matters subject of its said Resolutions.[13]

x x x x x x x x x

In undisguised disdain and defiance of This Court's doctrinal instructions, Respondent Court substituted *certiorari* for a lost appeal.[14]

x x x x x x x x x

Respondent Court's determination that [Banco Filipino's] subject petition was "sufficient [in form] and substance" was in fact a mere cover of its whimsical prejudgment of the said petition as meritorious.[15]

x x x x x x x x x

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[11] *Id.* at 221.

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

[13] *Id.* at 13.

[14] *Id.* at 14.

[15] *Id.* at 16.

Respondent Court issued its two Resolutions subject of this petition knowing that it was effectively undoing, or at least putting to ridicule and disrepute an earlier judgment of its co-equal Division of the Court of Appeals.[16]

In its Comment,[17] Banco Filipino argued that *certiorari* is not the appropriate remedy.[18]

G.R. No. 131469

In the Urdaneta case, the RTC denied petitioners' Motion to Dismiss by Order of March 13, 1996, finding that the questions presented therein are not indubitable, hence, holding in abeyance its resolution thereon until after the trial of the case.[19] Petitioners' Motion for Reconsideration was denied.[20]

In the meantime, as the 1997 Rules of Civil Procedure were promulgated, effective July 1, 1997, petitioners filed a motion[21] urging the RTC to resolve the issues raised in the Motion to Dismiss, citing Rule 16, Section 3 of 1997 Rules of Civil Procedure which provides that "The court shall not defer the resolution of the motion for the reason that the ground relied upon is not indubitable." The RTC denied the motion, the orders denying the Motion to Dismiss and the Motion for Reconsideration having already become final and, in any event, petitioners had already filed their Answers.[22] Petitioners filed a Motion for Reconsideration of the denial of their Motion for Reconsideration, contending that as the orders were interlocutory, they could not have gained finality. The motion was denied.[23] Hence, the second above-captioned petition for *certiorari*, prohibition, and *mandamus* (G.R. No. 131469), contending that:

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[16] *Id.* at 17.

[17] *Id.* at 342-358.

[18] *Id.* at 347-350.

[19] *Rollo* (G.R. No. 131469), p. 66.

[20] *Id.* at 77.

[21] *Id.* at 78-84.

[22] *Id.* at 26-27.

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

RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION IN ISSUING THE ASSAILED ORDERS AS THEY ARE FOUNDED ON RESPONDENT COURT'S AVOIDANCE OR EVASION OF A MANDATORY OBLIGATION FRESHLY LEGISLATED BY NO LESS THAN THIS COURT, AND ARE THEREFORE, VOID[;]

RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO A LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONERS' MOTION ON THE GROUND THAT INTERLOCUTORY ORDERS ATTAIN FINALITY.[24]

G.R. No. 166608

In the Lucena case, the RTC denied petitioners' Motion to Dismiss as well as their Motion to Resolve Pending Motions with Supplemental Motion to Dismiss.[25] Petitioners' subsequent Motion for Reconsideration was denied, prompting them to file a petition for *certiorari* before the Court of Appeals, docketed as CA G.R. SP No. 73558.[26]

In the meantime or on November 22, 2002, this Court, in *Tala Realty Services Corporation v. Banco Filipino Savings and Mortgage Bank* originating from an ejectment case filed by Tala Realty against Banco Filipino concerning properties in Malolos, Bulacan, found that the trust agreement between Banco Filipino and Tala Realty is contrary to law, and as both parties are *in pari delicto*, no affirmative relief should be given to one against the other.[27]

By Decision[28] of June 29, 2004, the Court of Appeals dismissed CA G.R. SP No. 73558 on the ground that there was no forum shopping. Petitioners' Motion for Reconsideration having been denied, they filed the fifth petition for review (G.R. No. 166608),[29] alleging that the Court of Appeals erred when it

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[24] *Id.* at 11.

[25] *Rollo* (G.R. No. 166608), pp. 442-449.

[26] *Id.* at 452-486.

[27] G.R. No. 137533, November 22, 2002, 392 SCRA 506, 537-540.

[28] *Rollo* (G.R. No. 166608), pp. 71-82.

[29] *Id.* at 15-69.

A.

x x x FAILED TO APPLY THE CATEGORICAL AND BINDING PRONOUNCEMENT BY THIS HONORABLE COURT IN G.R. No. 137533, ARTICULATED IN ITS *EN BANC* DECISION DATED 22 NOVEMBER 2002, TO THE CASE AT BENCH, IN WANTON DISREGARD OF THE SECOND ASPECT OF *RES JUDICATA, I.E.*, CONCLUSIVENESS OF JUDGMENT.

B.

x x x VIOLATED THE PRINCIPLE OF ADHERENCE TO JUDICIAL PRECEDENTS WHEN IT FAILED TO APPLY TO THE CASE AT BENCH THE DEFINITIVE AND BINDING *DECISION* BY NO LESS THAN THIS HONORABLE COURT, SITTING *EN BANC*, IN G.R. NO. 137533.

C.

x x x WANTONLY DISREGARDED THE PROSCRIPTION AGAINST FORUM-SHOPPING AND SPLITTING A SINGLE CAUSE OF ACTION RESULTING EITHER TO *RES JUDICATA* OR *LITIS PENDENTIA* AS THEY FIND APPLICABLE AGAINST THE RECONVEYANCE COMPLAINT SUBJECT OF THE INSTANT PETITION *VIS A VIS* THE SIXTEEN [16] OTHER RECONVEYANCE COMPLAINTS OF RESPONDENT BANCO FILIPINO.[30]

G.R. Nos. 155201 and 155171

By Resolution[31] of June 6, 1996, the RTC in the Davao City case disposed of petitioners' motion to dismiss, as well as other motions, as follows:

WHEREFORE, in view of all the foregoing, the Court hereby:

1. GRANTS the motion to dismiss filed by the defendant Nancy L. Ty and the other defendants, namely: Pedro B. Aguirre, Remedios A. Dupasquier, Pilar D. Ongking, Elizabeth H. Palma, Dolly W. Lim, Rubencito M. Del Mundo, and Add International Services, Inc., and accordingly, the complaint as against them is ordered DISMISSED;

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

[31] *Rollo* (G.R. No. 155201), pp. 522-528.

2. DENIES the motion to dismiss as far as defendant Tala Realty is concerned. Accordingly, defendant Tala Realty is directed to file its responsive pleading within fifteen (15) days from receipt of this Order; and

3. DENIES the motion for reconsideration of the Order dropping defendant Cynthia Mesina as party defendant. (Underscoring supplied)

SO ORDERED.[32]

Both Banco Filipino and Tala Realty filed Motions for Partial Reconsideration. Tala Realty raised the issue of forum shopping as a result of a derivative suit filed with the Securities and Exchange Commission (SEC) by Banco Filipino's minority stockholders "to recover its properties/branches, also proceeds of sales of some properties, funds and receivables which have been 'warehoused' and all put under trust in the name of defendant Tala, as well as for damages against all defendants xxx who criminally, unlawfully, and immorally covet ownership of properties and misappropriate funds/receivables pertaining and belonging to and owned by Banco Filipino."[33] (Underscoring in the original)

Subsequently, in an October 4, 1996 Resolution,[34] the RTC set aside its June 6, 1996 Resolution and dismissed the Davao City case.

Banco Filipino thereupon filed a Petition for *Certiorari* and *Mandamus* before the Court of Appeals, docketed as CA-G.R. SP No. 42301. Nancy filed her own Comment thereto in addition to that of herein petitioners.[35]

By Decision[36] of March 26, 2002, the Court of Appeals reversed and set aside the RTC October 4, 1996 Resolution, reinstated

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[32] *Id.* at 528.

[33] Records (Civil Case No. 23,821-95), p. 706.

[34] *Rollo* (G.R. No. 155201), pp. 552-557.

[35] *Rollo* (G.R. No. 155171), pp. 184-204.

[36] Penned by Court of Appeals Associate Justice Buenaventura J. Guerrero, with the concurrences of Associate Justices Rodrigo V. Cosico and Eliezer R. De Los Santos, *Rollo* (G.R. No. 155201), pp. 66-89.

the Davao case, and ordered the RTC to proceed with the case to its conclusion.

Petitioners filed a motion for reconsideration, with Nancy filing her own in addition thereto.[37] Their Motion for Reconsideration having been denied,[38] petitioners, except Nancy, filed the fourth above-captioned petition,[39] faulting the Court of Appeals

I

x x x IN GIVING DUE COURSE TO THIS SPECIAL CIVIL ACTION FOR *CERTIORARI* UNDER RULE 65 WHEN THE PETITIONER SHOULD HAVE FILED AN ORDINARY APPEAL UNDER RULE 45 OF THE SAME RULES OF CIVIL PROCEDURE.

II

x x x IN NOT FINDING THAT THE ALLEGATIONS IN THE COMPLAINT FOR RECOVERY DID NOT CONSTITUTE ULTIMATE FACTS.

III

x x x IN THE APPLICATION OF THE RULE ON PIERCING THE CORPORATE VEIL IN THE CASE AT BAR.

IV

x x x IN NOT FINDING THAT THE RESPONDENT IS GUILTY OF SPLITTING ITS CAUSE OF ACTION WHEN IT INSTITUTED THE VARIOUS COMPLAINTS FOR RECOVERY IN DIFFERENT PARTS OF THE COUNTRY WHICH CAUSE OF ACTION IS PREDICATED UPON THE ALLEGED VIOLATION OF A SINGLE TRUST/ WAREHOUSING AGREEMENT.

V

x x x IN FINDING THAT THE RESPONDENT DID NOT ENGAGE IN FORUM-SHOPPING IN FILING THE SEVENTEEN (17) COMPLAINTS FOR RECOVERY AND MORESO SINCE THE SEC

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[37] *Rollo* (G.R. No. 155717), pp. 135-183; *rollo* (G.R. No. 155201), pp. 88-116.

[38] *Id.* at 160.

[39] *Rollo* (G.R. No. 155201), pp. 11-64.

CASE FOR RECOVERY WAS STILL PENDING RECONSIDERATION AT THE TIME.[40]

Nancy filed her own petition before this Court, the third-above captioned petition (G.R. No. 155171),[41] assigning the following errors:

I

THE ORIGINAL ACTION OF *CERTIORARI* AND *MANDAMUS* IS NOT THE PROPER REMEDY TO QUESTION AN ORDER DISMISSING A COMPLAINT.

II

NO WAREHOUSING AGREEMENT BETWEEN BANCO FILIPINO AND TALA WAS REFLECTED OR COULD BE DEDUCED FROM THE 17 APRIL 1979 MINUTES OF THE BOARD MEETING. MOREOVER, THE EXISTENCE OF THIS ALLEGED WAREHOUSING AGREEMENT WAS DISPUTED BY PETITIONER.

III

THE COURT OF APPEALS ERRED IN REINSTATING THE COMPLAINT WHICH FAILED TO STATE A CAUSE OF ACTION AS AGAINST PETITIONER.

IV

THE COURT OF APPEALS ERRED IN RULING OUT THE CHALLENGE ON BANCO FILIPINO'S FORUM SHOPPING AND OF ITS SPLITTING OF ITS CAUSE OF ACTION CONSIDERING THAT:

A. THE ALLEGATIONS IN ALL ITS SEVENTEEN (17) COMPLAINTS PLEAD A VIOLATION OF THE SAME SINGLE TRUST AGREEMENT AND CONSTITUTE ONLY ONE CAUSE OF ACTION.

B. THE EXECUTION OF VARIOUS DEEDS OF CONVEYANCE DID NOT GIVE RISE TO VARIOUS TRUST AGREEMENTS BUT WAS, AS ALLEGED IN ALL THE SEVENTEEN (17) COMPLAINTS OF BANCO FILIPINO,

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[40] *Id.* at 14-15.

[41] *Rollo* (G.R. No. 155171), pp. 9-66.

MERELY IN IMPLEMENTATION OF THE SINGLE TRUST AGREEMENT.

C. ALL SEVENTEEN (17) COMPLAINTS FILED BY BANCO FILIPINO REQUIRE THE PRESENTATION OF ESSENTIALLY THE SAME, IF NOT IDENTICAL, EVIDENCE IN ORDER TO ESTABLISH THE EXISTENCE OF THE PURPORTED TRUST RELATIONSHIP BETWEEN BANCO FILIPINO AND TALA UPON WHICH THE FORMER RELIES ON RECONVEYANCE OF THE PROPERTIES.

D. BY SPLITTING A CAUSE OF ACTION, BANCO FILIPINO HAS VIOLATED THE RULE AGAINST FORUM SHOPPING.

V

BANCO FILIPINO WAS LIKEWISE GUILTY OF DELIBERATE AND WILLFUL FORUM SHOPPING IN HAVING FILED THIS CIVIL CASE BEFORE THE COURT *A QUO* DURING THE PENDENCY OF THE DERIVATIVE SUIT FILED BY ITS MINORITY STOCKHOLDERS BEFORE THE SECURITIES AND EXCHANGE COMMISSION AND EXPRESSLY SUPPORTED BY IT.

VI

BANCO FILIPINO'S CLAIM HAS CLEARLY PRESCRIBED.

VII

THE PETTION (sic) BEFORE THE COURT OF APPEALS IS FATALLY DEFECTIVE FOR FAILURE TO ATTACH PROOF THAT THE PURPORTED REPRESENTATIVE OF BANCO FILIPINO HAS LEGAL CAPACITY TO EXECUTE THE AFFIDAVIT AND CERTIFICATION ON NON-FORUM SHOPPING ATTACHED THERETO. FOR THE SAME REASON, EQUALLY DEFECTIVE IS THE COMPLAINT BEFORE THE COURT *A QUO*.[42]

By Resolution of June 18, 2008, this Court consolidated the five petitions.[43]

Respecting G.R. No. 130088, the Court finds that *certiorari* is not the appropriate remedy. One of the conditions for *certiorari*

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

[43] *Rollo* (G.R. No. 130088), p. 506.

to lie is that "there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law."[44] Petitioners in G.R. No. 130088 could have filed their answer in CA-G.R. S.P. No. 43344 after the Court of Appeals ordered them to file the same within ten days from notice.

Likewise, *certiorari* does not lie in G.R. No. 131469, as petitioners had the remedy of proceeding with the trial of the case on the merits.

NEVERTHELESS, in view of the merits of petitioners' Motions to Dismiss filed before the respective trial courts, the Court relaxes the application of procedural rules and passes upon their merits.[45]

In *Tala Realty Services Corporation v. Banco Filipino Savings and Mortgage Bank*,[46] this Court, by Decision dated November 22, 2002, ruling on one of several ejectment cases filed by Tala Realty against Banco Filipino arising from the same trust agreement in the reconveyance cases subject of the present petitions, held that the trust agreement is void and cannot thus be enforced. The relevant portion of the Court's ruling in said case reads:

> The Bank alleges that the sale and twenty-year lease of the disputed property were part of a larger implied trust "warehousing agreement." Concomitant with this Court's factual finding that the 20-year contract governs the relations between the parties, we find the Bank's allegation of circumstances surrounding its execution worthy of credence; the Bank and Tala entered into contracts of sale and lease back of the disputed property and created an implied trust "warehousing agreement" for the reconveyance of the property. In the eyes of the law, however, this implied trust is inexistent and void for being contrary to law.[47]

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[44] Rule 65, Section 1, RULES OF COURT.

[45] Vide *Springfield Development Corporation, Inc. v. Presiding Judge, RTC, Misamis Oriental, Br. 40, Cagayan de Oro City*, G.R. No. 142628, February 6, 2007, 514 SCRA 326, 345.

[46] G.R. No. 137533, November 22, 2002, 392 SCRA 506.

[47] *Id.* at 533 (citation omitted).

x x x x x x x x x

An implied trust could not have been formed between the Bank and Tala as this Court has held that "where the purchase is made in violation of an existing statute and in evasion of its express provision, no trust can result in favor of the party who is guilty of the fraud."[48]

x x x x x x x x x

x x x [T]he bank cannot use the defense of nor seek enforcement of its alleged implied trust with Tala since its purpose was contrary to law. As admitted by the Bank, it "warehoused" its branch site holdings to Tala to enable it to pursue its expansion program and purchase new branch sites including its main branch in Makati, and at the same time avoid the real property holdings limit under Sections 25(a) and 34 of the General Banking Act which it had already reached. x x x

Clearly, the Bank was well aware of the limitations on its real estate holdings under the General Banking Act and that its "warehousing agreement" with Tala was a scheme to circumvent the limitation. Thus, the Bank opted not to put the agreement in writing and call a spade a spade, but instead phrased its right to reconveyance of the subject property at any time as a "first preference to buy" at the "same transfer price." This agreement which the Bank claims to be an implied trust is contrary to law. Thus, while we find the sale and lease of the subject property genuine and binding upon the parties, we cannot enforce the implied trust even assuming the parties intended to create it. In the words of the Court in the *Ramos case*, "the courts will not assist the payor in achieving his improper purpose by enforcing a resultant trust for him in accordance with the 'clean hands' doctrine." <u>**The Bank cannot thus demand reconveyance of the property based on its alleged implied trust relationship with Tala**</u>.[49]

x x x x x x x x x

<u>The Bank and Tala are *in pari delicto*, thus, no affirmative relief should be given to one against the other</u>. The Bank should not be allowed to dispute the sale of its lands to Tala nor should Tala be allowed to further collect rent from the Bank. The clean hands

[48] *Id.* at 535 (citation omitted).

[49] *Id.* at 536-537 (citations omitted).

doctrine will not allow the creation nor the use of a juridical relation such as a trust to subvert, directly or indirectly, the law. Neither the Bank nor Tala came to court with clean hands; neither will obtain relief from the court as the one who seeks equity and justice must come to court with clean hands. x x x[50] (Emphasis and underscoring supplied)

Under the doctrine of *stare decisis*, once a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same.[51] This Court's ruling quoted in the immediately preceding paragraph on the nullity of the trust agreement which Banco Filipino seeks to enforce thus applies to the present petitions.

WHEREFORE, the petitions are *GRANTED*. The Court of Appeals Resolutions dated February 14, 1997 and June 17, 1997 in CA-G.R. SP No. 43344 are *SET ASIDE.* The March 13, 1996 Order of Branch 48 of the Regional Trial Court of Urdaneta is *SET ASIDE.* The June 29, 2004 Resolution of the Court of Appeals in C.A. SP G.R. No. 73558 is *SET ASIDE*. Civil Case No. 2176-AF before Branch 86 of the Regional Trial Court of Cabanatuan City, Civil Case No. U-6026 before Branch 48 of the Regional Trial Court of Urdaneta, Civil Case No. 95-127 before Branch No. 57 of the Regional Trial Court of Lucena, and Civil Case No. 23, 821-95 before Branch 33 of the Regional Trial Court of Davao City are *DISMISSED.*

SO ORDERED.

Quisumbing (Chairperson), Tinga, Velasco, Jr., and *Peralta,*[*] *JJ.,* concur.

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[50] *Id.* at 539-540 (citations omitted).

[51] *Banco Filipino Savings and Mortgage Bank v. Tala Realty Corporation*, G.R. No. 142672, September 27, 2006, 503 SCRA 442, 450.

[*] Additional member per Special Order No. 587 dated March 16, 2009 in lieu of Justice Arturo D. Brion who is on sick leave.

THIRD DIVISION

[G.R. No. 145867. April 7, 2009]

ESTATE OF SOLEDAD MANANTAN, herein represented by GILBERT MANANTAN, *petitioner, vs.* **ANICETO SOMERA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; NATURE. —** Unlawful detainer is a summary action for the recovery of possession of real property. This action may be filed by a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession by virtue of any contract, express or implied. In unlawful detainer cases, the possession of the defendant was originally legal, as his possession was permitted by the plaintiff on account of an express or implied contract between them. However, defendant's possession became illegal when the plaintiff demanded that defendant vacate the subject property due to the expiration or termination of the right to possess under their contract, and defendant refused to heed such demand.

2. **ID.; ID.; ID.; MUST BE INSTITUTED BEFORE THE PROPER MUNICIPAL TRIAL COURT OR METROPOLITAN TRIAL COURT WITHIN ONE YEAR FROM UNLAWFUL WITHHOLDING OF POSSESSION. —** A case for unlawful detainer must be instituted before the proper municipal trial court or metropolitan trial court within one year from unlawful withholding of possession. Such one year period should be counted from the date of plaintiff's last demand on defendant to vacate the real property, because only upon the lapse of that period does the possession become unlawful.

3. **ID.; ID.; ID.; IN ORDER THAT A MUNICIPAL TRIAL COURT OR METROPOLITAN TRIAL COURT MAY ACQUIRE JURISDICTION IN AN ACTION FOR UNLAWFUL DETAINER, IT IS ESSENTIAL THAT THE COMPLAINT SPECIFICALLY ALLEGE THE FACTS CONSTITUTIVE**

OF UNLAWFUL DETAINER. — Well-settled is the rule that the jurisdiction of the court, as well as the nature of the action, are determined by the allegations in the complaint. To vest the court with the jurisdiction to effect the ejectment of an occupant from the land in an action for unlawful detainer, it is necessary that the complaint should embody such a statement of facts clearly showing attributes of unlawful detainer cases, as this proceeding is summary in nature. The complaint must show on its face enough ground to give the court jurisdiction without resort to parol testimony. Thus, in order that a municipal trial court or metropolitan trial court may acquire jurisdiction in an action for unlawful detainer, it is essential that the complaint specifically allege the facts constitutive of unlawful detainer. The jurisdictional facts must appear on the face of the complaint. When the complaint fails to aver facts constitutive of unlawful detainer, an action for unlawful detainer is not a proper remedy and, thus, the municipal trial court or metropolitan trial court has no jurisdiction over the case.

4. **REMEDIAL LAW; ACTIONS; *ACCION PUBLICIANA* AND *ACCION REIVINDICATORIA,* DISTINGUISHED. —** *Accion publiciana* is the plenary action to recover the right of possession, which should be brought before the proper **regional trial court** when dispossession has lasted for more than one year. It is an ordinary civil proceeding to determine the better right of possession of realty independently of title. In other words, if at the time of the filing of the complaint, more than one year has lapsed since defendant unlawfully withheld possession from plaintiff, the action will not be for illegal detainer, but an *accion publiciana*. *Accion reivindicatoria*, meanwhile, is an action to recover ownership, as well as possession, which should also be brought before the proper **regional trial court** in an ordinary civil proceeding.

APPEARANCES OF COUNSEL

Ariel Aloysius P. Ingalla for respondent.

DECISION

CHICO-NAZARIO, *J.*:

Before Us is a Petition[1] for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to reverse the Decision[2] dated 10 May 2000 and Resolution[3] dated 18 October 2000 of the Court of Appeals in CA-G.R. SP No. 55891.

The facts gathered from the records are as follows:

On 10 March 1998, Soledad Manantan filed with the Municipal Trial Court in Cities (MTCC), Baguio City, Branch 1, a Complaint for ejectment and damages against respondent Aniceto Somera and a certain Presentacion Tavera (Tavera),[4] docketed as Civil Case No. 10467.

Manantan alleged in her Complaint that she was the owner of a 214-square meter parcel of land located in Fairview Subdivision, Baguio City (subject property), as evidenced by Transfer Certificate of Title No. 54672, issued in her name by the Registry of Deeds of Baguio City. After causing a relocation survey of the subject property, she discovered that respondent and Tavera occupied certain portions thereof [disputed portions]. Manantan advised respondent and Tavera to vacate the disputed portions as soon as she would decide to sell the subject property to an interested buyer. Later, a prospective buyer approached Manantan about the subject property. However, upon learning that respondent and Tavera occupied some portions of the subject property, the prospective buyer decided not to proceed with the sale until after respondent and Tavera vacated the same. Manantan repeatedly requested respondent and Tavera to abandon

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[1] *Rollo,* pp. 10-25.

[2] Penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Romeo J. Callejo Sr. (retired member of this Court) and Renato C. Dacudao, concurring; *rollo*, pp. 29-33.

[3] *Id.* at 27.

[4] *Id.* at 48-51.

the disputed portions of the subject property, but the two refused. Hence, Manantan hired the services of a lawyer who immediately sent a formal letter of demand to respondent and Tavera requesting them to leave the disputed portions. Respondent and Tavera, however, ignored the demand letter. Manantan submitted the matter before the *barangay* justice system of Fairview Subdivision, Baguio City, but the parties failed to reach a settlement. Upon issuance by the *barangay* secretary of a Certificate to File Action, Manantan instituted Civil Case No. 10467.

In her Complaint in Civil Case No. 10467, Manantan prayed that respondent, Tavera, and all persons claiming rights under them, be ordered to vacate the portions of the subject property they were occupying; that respondent and Tavera be directed to pay her ₱600.00 and ₱400.00, respectively, every month, as reasonable compensation for the use and occupation of the disputed portions of the subject property, computed from the filing of the Complaint until possession of the said portions has been restored to her; that respondent and Tavera be instructed to pay her ₱30,000.00 as actual damages, ₱20,000.00 as attorney's fees, litigation expenses, and costs of suit.[5]

Respondent and Tavera filed a Joint Answer to Manantan's Complaint in Civil Case No. 10467. In their Joint Answer, respondent and Tavera averred that the MTCC had no jurisdiction over Civil Case No. 10467, because it was neither an action for forcible entry nor for unlawful detainer. The Complaint did not allege that Manantan was deprived of possession of the disputed portions by force, intimidation, threat, strategy, or stealth, which would make a case for forcible entry. It also did not state that respondent and Tavera withheld possession of the disputed portions from Manantan after expiration or termination of the right to hold possession of the same by virtue of an express or implied contract, which would build a case for unlawful detainer. Respondent and Tavera argued that even if there was dispossession, it was evident from the face of the Complaint that it was not committed through any of the means enumerated

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[5] *Id.*

under Rule 70 of the Rules of Court and, thus, forcible entry or unlawful detainer could not be the proper remedy for Manantan.[6]

Respondent claimed in the Joint Answer that he and his family had been using one of the disputed portions of the subject property as driveway since the latter part of 1970. The said portion was the only means by which he and his family could gain access to their residence. He even caused the improvement and cementing of the same a long time ago. Tavera also explained in the Joint Answer that she had been utilizing the other disputed portion of the subject property as an access road to her residence. Her tenement, which consisted of concrete and permanent structures, bore witness to the fact that her occupancy of the portion in dispute was continuous and uninterrupted.[7]

Respondent and Tavera additionally asseverated in their Joint Answer that it would be unjust to prohibit them from using the disputed portions which serve as their only means of ingress or egress to or from their respective residences from or to the main road. Their use of said portions had been recognized by the Bayot family, Manantan's predecessors-in-interest. It was only in 1997, after Manantan bought the subject property from the Bayot family, that Manantan started to claim ownership even of the portions they had been using. Respondent and Tavera contended that they could not just relinquish their right to the disputed portions and yield to Manantan's demand, considering that the latter's claim was based merely on a relocation survey. "[J]ust to buy peace of mind and maintain cordial relations" with Mananatan, respondent and Tavera alleged that they "walked the proverbial mile and show[ed] their interest to pay" Manantan the equivalent amount of the disputed portions, but Manantan ignored their proposal and insisted that they buy the whole of the subject property.

Respondent and Tavera alternatively argued in their Joint Answer that in case Manantan would be declared as the lawful owner of the subject property, the MTCC should not disregard

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[6] *Id.* at 52-56.

[7] *Id.*

the fact that they were "builders in good faith." As builders in good faith, they should be allowed to pay a reasonable price for the portions of the subject property on which their driveway/access road, and other improvements were situated.

At the end of their Joint Answer, respondent and Tavera asked the MTCC to dismiss Manantan's Complaint; or in case their driveway/access road and other improvements were found to be encroaching on Manantan's property, to declare them builders in good faith who should be allowed to purchase the portions on which their driveway/access road and other improvements were located and to award them their counterclaims for moral damages and ₱35,000.00 attorney's fees.[8]

After submission of the parties' respective position papers and other pleadings, the MTCC rendered a Decision[9] in Civil Case No. 10467 on 21 May 1999, favoring Manantan. The MTCC ruled that it had jurisdiction over the case and that respondent and Tavera were not builders in good faith. It ordered respondent and Tavera to pay Manantan the amount of ₱600.00 and ₱400.00, respectively, per month, as reasonable compensation for the use and occupancy of the disputed portions of the subject property, counted from the date of the filing of the Complaint up to the time respondent and Tavera would actually vacate the same. It further ordered respondent and Tavera to jointly and severally pay Manantan the amount of ₱20,000.00 as attorney's fees and litigation expenses.

Respondent and Tavera appealed the MTCC Decision before the Regional Trial Court (RTC), Baguio City, Branch 5. Their appeal was docketed as Civil Case No. 4435-R. On 29 October 1999, the RTC promulgated its Decision[10] affirming *in toto* the appealed MTCC Decision. Only respondent elevated the case to the Court of Appeals since Tavera opted not to appeal anymore.

Respondent's appeal before the Court of Appeals was docketed as CA-G.R. SP No. 55891. During its pendency, Manantan

[8] *Id.*

[9] Records, pp. 127-131.

[10] *Id.* at 190-196.

died on 20 January 2000.[11] Almost four months later, on 10 May 2000, the Court of Appeals rendered its Decision setting aside the Decisions of both the RTC and the MTCC and dismissing Manantan's Complaint in Civil Case No. 10467. The appellate court held that Manantan's Complaint before the MTCC failed to allege facts constitutive of forcible entry or unlawful detainer. The allegations in the Complaint merely presented a controversy arising from a boundary dispute, in which case, the appropriate remedy available to Manantan should have been the plenary action for recovery of possession within the jurisdiction of the RTC. Consequently, the Court of Appeals concluded that the MTCC had no jurisdiction over the Complaint in Civil Case No. 10467.[12]

The *fallo* of the Court of Appeals Decision reads:

WHEREFORE, prescinding from the foregoing disquisition, the petition for review is hereby GIVEN DUE COURSE. The assailed Decision dated October 29, 1999 which was rendered by Branch 5 of the Regional Trial Court of Baguio City, in ***Civil Case No. 4435-R***, affirming ***in toto*** the other assailed Decision dated May 21, 1999 rendered by the First Branch of the Municipal Trial Court in Cities of Baguio City in ***Civil Case No. 10467***, entitled ***"SOLEDAD MANANTAN v. ANICETO SOMERA and PRESENTACION TAVERA, and all persons claiming rights under them***," are hereby both REVERSED AND SET ASIDE and another one entered DISMISSING said ***Civil Case No. 10467***.

Accordingly, let a writ of injunction issue permanently enjoining public respondent Judge Antonio M. Esteves and all persons acting in his behalf or orders to cease and desist from further enforcing the assailed decisions.

Manantan's counsel filed a Motion for Reconsideration[13] of the afore-mentioned Decision of the Court of Appeals but it was denied by the same court in the Resolution dated 18 October 2000.

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[11] *Rollo*, p. 10.

[12] *Id.* at 33.

[13] CA *rollo*, pp. 219-226.

Hence, herein petitioner, Gilbert Manantan, representing the Estate of the late Soledad Manantan, filed the instant Petition for Review[14] before us raising the following issues:

I.

WHETHER OR NOT THE MUNICIPAL TRIAL COURT IN CITIES, BAGUIO CITY, BRANCH 1, HAD THE JURISDICTION OVER THE ACTION - EJECTMENT AND DAMAGES ENTITLED "*SOLEDAD MANANTAN, PLAINTIFF, V. ANICETA SOMERA AND PRESENTACION TAVERA, AND ALL PERSONS CLAIMING RIGHTS UNDER THEM, DEFENDANTS*;

II.

WHETHER A PORTION OF PETITIONER'S LAND ENCROACHED BY RESPONDENT CAN BE RECOVERED THROUGH AN ACTION [FOR] EJECTMENT.

In the main, petitioner argues that the Complaint is in the nature of an action for unlawful detainer over which the MTCC had jurisdiction.[15]

An action for forcible entry or unlawful detainer is governed by Rule 70 of the Rules of Court, Section 1 of which provides:

SECTION 1. *Who may institute proceedings, and when.* – Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other **person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such** unlawful deprivation or **withholding of possession, bring an action in the proper Municipal Trial Court** against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs. (Emphasis ours.)

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[14] *Rollo,* p. 14.

[15] *Id.* at 14-18.

Unlawful detainer is a summary action for the recovery of possession of real property.[16] This action may be filed by a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession by virtue of any contract, express or implied.[17]

In unlawful detainer cases, the possession of the defendant was originally legal, as his possession was permitted by the plaintiff on account of an express or implied contract between them. However, defendant's possession became illegal when the plaintiff demanded that defendant vacate the subject property due to the expiration or termination of the right to possess under their contract, and defendant refused to heed such demand.[18]

A case for unlawful detainer must be instituted before the proper municipal trial court or metropolitan trial court within one year from unlawful withholding of possession. Such one year period should be counted from the date of plaintiff's last demand on defendant to vacate the real property, because only upon the lapse of that period does the possession become unlawful.[19]

Well-settled is the rule that the jurisdiction of the court, as well as the nature of the action, are determined by the allegations in the complaint.[20] To vest the court with the jurisdiction to effect the ejectment of an occupant from the land in an action for unlawful detainer, it is necessary that the complaint should

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[16] *Valdez, Jr. v. Court of Appeals*, G.R. No. 132424, 4 May 2006, 489 SCRA 369, 377-378.

[17] Section 1, Rule 70 of the Revised Rules of Court.

[18] *Valdez, Jr. v. Court of Appeals*, *supra* note 16 at 378; *Sarmiento v. Court of Appeals*, G.R. No. 116192, 16 November 1995, 250 SCRA 108, 114; *Espiritu v. Court of Appeals*, 368 Phil. 669, 674-675 (1999).

[19] *Sarmiento v. Court of Appeals*, *id.* at 115; *Lopez v. David, Jr.*, G.R. No. 152145, 30 March 2004, 426 SCRA 535, 542; *Varona v. Court of Appeals*, G.R. No. 124148, 20 May 2004, 428 SCRA 577, 583-584.

[20] *Sarmiento v. Court of Appeals, id.* at 114; *Espiritu v. Court of Appeals*, *supra* note 18 at 675; *Lopez v. David, Jr.*, *id.* at 540.

embody such a statement of facts clearly showing attributes of unlawful detainer cases, as this proceeding is summary in nature.[21] The complaint must show on its face enough ground to give the court jurisdiction without resort to parol testimony.[22]

Thus, in order that a municipal trial court or metropolitan trial court may acquire jurisdiction in an action for unlawful detainer, it is essential that the complaint specifically allege the facts constitutive of unlawful detainer.[23] The jurisdictional facts must appear on the face of the complaint. When the complaint fails to aver facts constitutive of unlawful detainer, an action for unlawful detainer is not a proper remedy and, thus, the municipal trial court or metropolitan trial court has no jurisdiction over the case.[24]

The pertinent allegations in Manantan's Complaint before the MTCC are faithfully reproduced below:

> 3. That [Manantan] is the owner in fee simple of that parcel of land, situated in Res. Section "K," Baguio City, with an area of 214 square meters, designated as Lot 7, Pcs-CAR-000062, and which may be more particularly described in and evidenced by Transfer Certificate of Title No. T-54672 of the Registry of Deeds for the City of Baguio;
>
> 4. That when she caused the relocation survey of her said property above-mentioned, she discovered that the [herein respondent and Tavera] had occupied portions thereof, by reason of which she called their attention with a request that they vacate their respective areas as soon as she would have need of the same, or when she decides to sell the same to any interested buyer;
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> 5. That only recently, she wanted to sell her property above-mentioned to an interested buyer, but that upon knowing of the

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[21] *Valdez, Jr. v. Court of Appeals, supra* note 16 at 378; *Sarmiento v. Court of Appeals, id.* at 116; *Lopez v. Davide, Jr., id.* at 542.

[22] *Id.*

[23] *Sarona v. Villegas*, 131 Phil. 365, 373 (1968); *Munoz v. Court of Appeals*, G.R. No. 102693, 23 September 1992, 214 SCRA 216, 223-224.

[24] *Valdez, Jr. v. Court of Appeals, supra* note 16 at 379; *Sarmiento v. Court of Appeals, supra* note 18 at 117.

[respondent and Tavera's] encroachments, the prospective buyer decided not to proceed with the sale until after the property shall have been first vacated by the [respondent and Tavera];

6. That she asked the [respondent and Tavera] to vacate her property, but that they refused to do so, and that after making more demands which were all ignored by the [respondent and Tavera], [Manantan] was forced to consult her lawyer, who immediately wrote them a final formal demand to vacate her land, but to no avail;

7. That [Manantan] also brought her problem to the attention of the *Barangay* Captain of Fairview Subdivision *Barangay*, by way of a letter, dated January 21 1998, copy of which is attached hereto and made part hereof as Annex "A," the same being self-explanatory;

8. That despite efforts at the *Barangay* level of justice, no amicable settlement or compromise agreement was arrived at, as may be evidenced by a Certification to File Action, dated February 8, 1998, signed and issued by the Pangkat Secretary Shirley Pagkangan and duly attested by the Pangkat Chairman Rogelio Laygo, copy of which is hereto attached and made part hereof as Annex "B".[25]

Noticeably, the Complaint does not allege facts showing compliance with the **prescribed one year period** to file an action for unlawful detainer. It does not state the material dates that would have established that it was filed within one year from the date of Manantan's last demand upon respondent to vacate the disputed portion of land. Such allegations are jurisdictional and crucial, because if the complaint was filed beyond the prescribed one year period, then it cannot properly qualify as an action for unlawful detainer over which the MTCC can exercise jurisdiction. It may be an *accion publiciana* or *accion reivindicatoria*.

Accion publiciana is the plenary action to recover the right of possession, which should be brought before the proper **regional trial court** when dispossession has lasted for more than one year. It is an ordinary civil proceeding to determine the better right of possession of realty independently of title. In other words, if at the time of the filing of the complaint, more than one year has lapsed since defendant unlawfully withheld possession

[25] Records, pp. 1-2.

from plaintiff, the action will not be for illegal detainer, but an *accion publiciana*. *Accion reivindicatoria*, meanwhile, is an action to recover ownership, as well as possession, which should also be brought before the proper **regional trial court** in an ordinary civil proceeding.[26]

Further, it appears from the allegations in the Complaint that the respondent was already in possession of the disputed portion at the time Manantan bought the subject property from the Bayot family, and it was only after the conduct of a relocation survey, which supposedly showed that respondent was encroaching on the subject property, did Manantan begin asserting her claim of ownership over the portion occupied and used by respondent. Clearly, respondent's possession of the disputed portion was **not pursuant to any contract, express or implied**, with Manantan, and, resultantly, respondent's right of possession over the disputed portion is **not subject to expiration or termination**. At no point can it be said that respondent's possession of the disputed portion ceased to be legal and became an unlawful withholding of the property from Manantan.[27]

Since the Complaint in Civil Case No. 10467 failed to satisfy on its face the jurisdictional requirements for an action for unlawful detainer, the Court of Appeals was correct in holding that the MTCC had no jurisdiction over the said Complaint and should have dismissed the same. There is no possible argument around the lack of jurisdiction of MTCC over Civil Case No. 10467. In *Laresma v. Abellana*,[28] the Court pronounced:

> It is axiomatic that the nature of an action and the jurisdiction of a tribunal are determined by the material allegations of the complaint and the law at the time the action was commenced. Jurisdiction of the tribunal over the subject matter or nature of an action is conferred only by law and not by the consent or waiver upon a court which,

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[26] *Valdez, Jr. v. Court of Appeals, supra* note 16 at 376-377; *Sarmiento v. Court of Appeals, supra* note 18 at 117; *Lopez v. David, Jr.*, *supra* note 19 at 543.

[27] *Dela Paz v. Panis*, 315 Phil. 238, 245-246 (1995).

[28] G.R. No. 140973, 11 November 2004, 442 SCRA 156, 169.

otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, it may dismiss the same *ex mero motu* or *motu proprio*. A decision of the court without jurisdiction is null and void; hence, it could never logically become final and executory. Such a judgment may be attacked directly or collaterally.

Petitioner raises a second issue before us: whether petitioner Estate of the late Soledad Manantan can recover the portion of the subject property by an action for ejectment.[29] It bears to stress that Manantan's Complaint is dismissed herein for its defects, *i.e.*, its failure to allege vital facts in an action for unlawful detainer over which the MTCC has jurisdiction. Since Civil Case No. 10467 is already dismissible upon this ground, it is no longer necessary to discuss whether petitioner availed itself of the proper remedy to recover the disputed portion of land from respondent. Resolving the second issue shall be a mere surplusage and *obiter dictum*. If petitioner seeks an answer to said issue as reference for its future action, suffice it to say that we do not render advisory opinions. The determination of the remedy to avail itself of must be done by petitioner with the guidance of its counsel, they being fully cognizant of the facts giving rise to the controversy and the evidence on hand.

WHEREFORE, the Decision dated 10 May 2000 and Resolution dated 18 October 2000 of the Court of Appeals in CA-G.R. SP No. 55891 are hereby *AFFIRMED in toto*. No cost.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio Morales,[*] *Nachura,* and *Peralta, JJ.,* concur.

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[29] The two forms of ejectment suit are actions for forcible entry and actions for unlawful detainer. (See *Habagat Grill v. DMC-Urban Property Developer, Inc.*, G.R. No. 155110, 31 March 2005, 454 SCRA 653, 670-671.)

[*] Per Special Order No. 602, dated 20 March 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Conchita Carpio Morales to replace Associate Justice Ma. Alicia Austria-Martinez, who is on official leave.

SECOND DIVISION

[G.R. No. 149221. April 7, 2009]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **MARCELINO BANATAO, ROSA BANATAO, VICTORINA B. CADANGAN, AVELINO BANATAO, ROSALINDA B. GUMABAY, EDNA B. CALUCAG, CATALINA BANATAO, ABDON BANATAO, GELACIO BANATAO, CONSTANCIO BANATAO, DOMINGO BANATAO, RICHARD BANATAO, ARNOLD BANATAO, SALVACION BANATAO, LANIE BANATAO, VIVIAN BANATAO, ALVIN BANATAO, ROLAND BANATAO, FE SACQUING, MAXIMO SACQUING, POMPEO BANTAO, ANNIE MALUPENG, BONG MALUPENG, EDILBERTO BANGAYAN, EVANGELINE BANGAYAN, ELPIDIO BANGAYAN, MARLIN PAMITTAN, LOIDA PAMITTAN, VICENTE PAMITTAN, MICHAEL PAMITTAN, EDGARDO PAMITTAN, LORINA BANATAO, ASSISTED BY HUSBAND WILLY BANATAO, MARAVITA BANATAO, PAULINA BANATAO ASSISTED BY HUSBAND DOMINGO CUNTAPAY, JULIETA BANATAO, ROSITA PAMITTAN ASSISTED BY HUSBAND SALVADOR BANATO, and ELENA BANATAO,** *plaintiffs-respondents,* **and MARCIANO CARAG, EUGENIO SORIANO, MARIA CAUILAN, PEDRO SORIANO, PAZ TACACAY, BENJAMIN TACACAY, FAUSTA AGUSTIN, MILAGAROS B. CARAG,** *defendants-respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; A COURT JUDGMENT MADE SOLELY ON THE BASIS OF A COMPROMISE AGREEMENT BINDS ONLY THE PARTIES TO THE COMPROMISE. —** It is basic in law that a compromise agreement, as a contract, is binding only upon

the parties to the compromise, and not upon non-parties. This is the doctrine of relativity of contracts. Consistent with this principle, a judgment based entirely on a compromise agreement is binding only on the parties to the compromise the court approved, and not upon the parties who did not take part in the compromise agreement and in the proceedings leading to its submission and approval by the court. Otherwise stated, a court judgment made solely on the basis of a compromise agreement binds only the parties to the compromise, and cannot bind a party litigant who did not take part in the compromise agreement. In the case of *Castañeda v. Heirs of Maramba*, we held that: "Judgment based on a compromise affects only participating litigants — A partial decision, stemming from an amicable settlement among two of several parties to an action, binds only the parties so participating in the settlement. **This decision never becomes final with respect to the parties who did not take part in the settlement confirmed by the partial decision aforesaid**." Following *Castañeda,* the judgment on compromise rendered by the trial court in this case, and later affirmed by the appellate court, is final with respect only to the plaintiffs-respondents and defendants-respondents, but not with respect to the PNB. Hence, the trial court's judgment on compromise which settles the issue of ownership over the properties in question is but a partial decision that does not completely decide the case and cannot bind the PNB.

2. **CIVIL LAW; PUBLIC LAND ACT (C.A. NO. 141); HOMESTEAD PATENTS; PROSCRIPTION AGAINST THE ALIENATION OR ENCUMBRANCE OF HOMESTEAD PATENTS WITHIN FIVE YEARS FROM ISSUE; RATIONALE. —** We conclude from our own examination of x x x [the] OCTs that the mortgages cannot but be **void *ab initio***. On the faces of all the OCTs —secured through homestead patents — are inscribed the following words that echo the mandatory provisions of law: TO HAVE AND TO HOLD the said tract of land with the appurtenances thereunto x x x subject to the provisions of Sections 118, 121, 122 and 124 of Commonwealth Act No. 141, as amended, which provide that except in favor of the Government or any of its branches, units or institutions, **THE LAND HEREBY ACQUIRED SHALL BE INALIENABLE AND SHALL NOT BE SUBJECT TO [E]NCUMBRANCE FOR A PERIOD OF FIVE (5) YEARS NEXT FOLLOWING THE DATE OF THIS PATENT**, and

shall not be liable for the satisfaction of any debt contracted prior to the expiration of that period; x x x. This inscription reproduces Section 118 of the Public Land Act, as amended, which contains a proscription against the alienation or encumbrance of homestead patents within five years from issue. The rationale for the prohibition, reiterated in a line of cases, first laid down in *Pascua v. Talens* states that "x x x homestead laws were designed to distribute disposable agricultural lots of the State to land-destitute citizens for their home and cultivation. Pursuant to such benevolent intention the State prohibits the sale or encumbrance of the homestead (Section 116, now Section 118) within five years after the grant of the patent. x x x. It aims to preserve and keep in the family of the homesteader that portion of public land which the State had gratuitously given to him."

3. **ID.; ID.; ID.; ID.; ONE WHO CONTRACTS WITH A HOMESTEAD PATENTEE IS CHARGED WITH KNOWLEDGE OF THE LAW'S PROSCRIPTIVE PROVISION THAT MUST NECESSARILY BE READ INTO THE TERMS OF ANY AGREEMENT INVOLVING THE HOMESTEAD; CASE AT BAR. —** PNB cannot claim that it is a mortgagee in good faith. The proscription against alienation or encumbrance is unmistakable even on a cursory reading of the OCTs. Thus, one who contracts with a homestead patentee is charged with knowledge of the law's proscriptive provision that must necessarily be read into the terms of any agreement involving the homestead. Under the circumstances, the PNB simply failed to observe the diligence required in the handling of its transactions and thus made the fatal error of approving the loans secured by mortgages of properties that cannot, in the first place, be mortgaged.

APPEARANCES OF COUNSEL

Chief Legal Counsel (PNB) for petitioner.
Jose T. Antonio for respondents.

DECISION

BRION, *J.*:

This petition for review on *certiorari*[1] brings into focus: (1) the effect of a compromise agreement entered into by *some, but not all,* of the parties to a litigation, and its effect on the non-participating litigants; and (2) the prohibition against the encumbrance, within the same periods prescribed by law, of lands granted under homestead patent.

The facts as culled from the records are outlined below.

On November 16, 1962, Banatao, *et al.* (*plaintiffs-respondents*) initiated an action docketed as Civil Case No. 1600 against Marciano Carag (one of the *defendants-respondents*) before the Regional Trial Court (*RTC*), Branch IV, Tuguegarao, Cagayan.[2] The action was for the recovery of real property (*disputed property*) situated at Malabac, Iguig, Cagayan. The disputed property was a new land formation on the banks of the Cagayan River — an accretion to Lot 3192 of the Iguig Cadastre — that the plaintiffs-respondents claimed as the owners of the adjoining Lot 3192. The defendants-respondents, on the other hand, were the occupants of the disputed property.

The records show that while the case was pending, the defendants-respondents (particularly the spouses Pedro Soriano and Paz Tagacay, the spouses Eugenio Soriano and Maria Cauilan, the spouses Benjamin Tagacay and Fausta Agustin, and Milagros B. Carag — wife of Marciano Carag) were able to secure homestead patents evidenced by Original Certificates of Title (*OCT*s) issued in their names, denominated as OCT Nos. 24800, 24801, 25217, and 25802, respectively.[3] **The OCTs were issued in 1965 and 1966**, and all bear the proviso that, in accordance with the Public Land Act, the patented homestead shall neither

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

[2] Records, Vol. I, pp. 1-4.

[3] Under Commonwealth Act No. 141 or CA No. 141, effective November 7, 1936.

be alienated nor encumbered for five (5) years from the date of the issuance of the patent.[4]

Armed with their OCTs, the defendants-respondents separately applied for loans with the Philippine National Bank (*PNB or the bank*) secured by real estate mortgages on their respective titled portions of the disputed property. The bank approved the mortgages, relying solely on the OCTs which, at the time, did not contain any notice of *lis pendens* or annotation of liens and encumbrances. **The PNB mortgages were annotated on the defendants-respondents' respective OCTs also in the years 1965 and 1966.**[5]

On February 22, 1968, the trial court decided the case in favor of the plaintiffs-respondents and against defendant-respondent Carag, and ordered the return of the disputed property to the plaintiffs-respondents.[6] Carag appealed the trial court decision to the Court of Appeals (*CA*).

While the appeal was pending, the appellate court discovered that the disputed property had been subject of homestead patents issued in the names of defendants-respondents Carag, *et al.* Hence, in its Resolution dated April 16, 1969, the Special Fourth Division of the CA set aside the February 22, 1968 decision of the RTC and ordered the remand of the records to the trial court for further proceedings.[7] The appellate court likewise ordered the necessary amendment of the complaint to implead the defendants-respondents who were deemed indispensable parties to the case.

The plaintiffs-respondents filed on October 14, 1970 the required amended complaint, impleading as party defendants Eugenio Soriano, Maria Cauilan, Pedro Soriano, Paz Tagacay, Benjamin Tagacay, Fausta Agustin, and Milagros B. Carag, as

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[4] CA No. 141, Section 118.

[5] Exhibits "8", "9", "10", and "11", Record of Exhibits, pp. 55-57, 58-59, 60-62, and 63-64, respectively.

[6] Records, Vol. I, pp. 180-202.

[7] *Id.*, Vol II, pp. 238-240.

well as the bank.[8] The plaintiffs-respondents also added two (2) additional causes of action, or a total of three (3) causes of action, namely: (1) recovery of real property; (2) cancellation of the OCTs; and (3) annulment of real estate mortgage. The bank was made a party to the case in view of the suit for annulment of mortgage.

The records disclose that on March 29, 1973, while the case was pending before the trial court, the bank extrajudicially foreclosed the property covered by OCT No. 24800 issued to the spouses Pedro Soriano and Paz Tagacay. The bank was declared the highest bidder in the ensuing public auction. The spouses Soriano failed to redeem the foreclosed property, resulting in the consolidation of title in the bank's name; hence, the issuance on October 3, 1985 of TCT No. T-65664 in the name of the bank.[9]

On February 28, 1991, the plaintiffs-respondents and the defendants-respondents entered into a compromise agreement whereby ownership of virtually the northern half of the disputed property was ceded to the plaintiffs-respondents, while the remaining southern half was given to the defendants-respondents.[10] In the same compromise agreement, the defendants-respondents acknowledged their indebtedness to petitioner PNB and bound themselves to pay their respective obligations to the bank, including the interests accruing thereon. Petitioner PNB, however, was not a party to the compromise agreement which reads:

COMPROMISE AGREEMENT[11]

Plaintiffs and defendants, by counsels, enter into and submit the following compromise agreement:

x x x x x x x x x

(b) That the defendant, PEDRO SORIANO, acknowledges the plaintiffs as the lawful owners of the NORTHERN PORTION

[8] *Id*., pp. 246-255.

[9] Memorandum of PNB, *rollo*, p.101.

[10] Records, Vol. IV, pp. 877-878.

[11] *Ibid*.

of the land covered by Original Certificate of Title No. P-24800, with an area of 85,348 square meters more or less and is more particularly described in the technical description hereto attached as Annex "A" and forming part hereof;

(c) That the defendant, BENJAMIN TAGACAY, acknowledges the plaintiffs to be the owners of the NORTHERN PORTION of the land covered by Original Certificate of Title No. P-25217, with an area of 98,790 square meters more or less and is more particularly described in the technical description hereto attached as Annex "B" and forming part hereof;

(d) That the defendant, MILAGROS B. CARAG, acknowledges the plaintiffs to be the owners of the NORTHERN PORTION of the land covered by Original Certificate of Title No. P-24802, with an area of 58,378 square meters more or less and is more particularly described in the technical description attached hereto as Annex "C" and forming part hereof;

(e) That the defendant Pedro Soriano acknowledges indebtedness to the Philippine National Bank and binds himself to pay his loan together with the interest and other charges;

(f) That the defendant Benjamin Tagacay acknowledges indebtedness to the Philippine National Bank and binds himself to pay his loan together with the interest and other charges;

(g) That the defendant Milagros B. Carag acknowledges indebtedness to the Philippine National Bank and binds himself to pay his loan together with the interest and other charges;

(h) That the private defendants acknowledge the plaintiffs to be the owners and possessors of the motherland otherwise known as Lot 3192 and the area ceded to the plaintiffs by the private defendants;

(i) That the parties hereto submit the foregoing compromise agreement as basis for the decision in the above-entitled case by the Honorable Court.

Tuguegarao, Cagayan, December 26, 1990.

On March 15, 1991, the trial court rendered its decision, approving and adopting *in toto* the compromise agreement, and

ordering the participating parties to strictly comply with its terms.[12] The bank moved for reconsideration of the trial court's decision and for the setting aside of the compromise agreement. The trial court denied the motion in its Resolution of February 7, 1992, thus, compelled the bank to elevate the case to the CA.[13]

The appellate court dismissed the appeal in its decision of March 30, 2001, ruling that the bank is not an indispensable party to the compromise agreement that only settles the actions for: (1) recovery of property; and (2) cancellation of OCTs.[14] On the third cause of action for annulment of mortgage, the court held the bank is only a **necessary party** and "the issue could be dealt with in a separate and distinct action." The appellate court in the same decision proceeded to strike down the mortgages as void because the mortgagors (defendants-respondents), not being the absolute owners of the disputed parcels of land as agreed upon in the compromise agreement, did not have the right to constitute a mortgage on these properties.

The PNB sought reconsideration of the dismissal of its appeal, but the appellate court denied its motion in a Resolution dated July 27, 2001;[15] hence, this petition for review on *certiorari*.

The PNB raises the following legal issue:

WHETHER THE COMPROMISE AGREEMENT ENTERED INTO BY AND BETWEEN THE HEREIN PLAINTIFFS-RESPONDENTS AND DEFENDANTS-RESPONDENTS AND APPROVED BY THE TRIAL COURT LEGALLY BINDS PETITIONER PNB WHICH IS NOT A PARTY THERETO AND CONSTITUTES SUFFICIENT LEGAL BASIS TO NULLIFY PNB'S MORTGAGE LIEN ON THE REALTY IN QUESTION.

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[12] Records, Vol. IV, pp. 879-880.

[13] *Id.*, pp. 906-909, penned by Associate Justice Andres B. Reyes, Jr., with Associate Justice B.A. Adefuin-De la Cruz (retired) and Associate Justice Josefina Guevarra-Salonga, concurring.

[14] *Rollo*, pp. 26-37.

[15] *Id.*, p. 40.

In attacking the compromise agreement between the plaintiffs-respondents and the defendants-respondents, the PNB argues that it is an indispensable, not merely a necessary, party to all three causes of action, namely, for (1) recovery of real property; (2) cancellation of the OCTs; and (3) annulment of mortgages. Arguing that the causes of action are closely intertwined and intimately related, and that the compromise was entered into precisely to put an end to the case, the PNB submits that its consent to the compromise agreement is necessary to secure a final and complete determination of the claims and defenses of all the parties to the case.

The PNB further argues that when the appellate court approved *in toto* the trial court's judgment on the compromise agreement, it failed to consider that the bank was a mortgagee in good faith. The bank claims good faith on the position that the OCTs presented to it were all clean on their faces at the time the mortgages were applied for; that there were no notices of *lis pendens* or any annotation of liens or encumbrances on all of them; and that it had no knowledge, actual or constructive, of facts or circumstances to warrant further inquiry into the titles of the defendants-respondents.

THE COURT'S RULING

We resolve to dismiss the petition for the reasons discussed below.

The compromise agreement disposed of the first two causes of action filed by plaintiffs-respondents Banatao, *et al*. against defendants-respondents Carag, *et al.*, namely, the actions for (1) recovery of real property; and (2) cancellation of the OCTs, thereby settling the question of ownership between them. The trial court approved the compromise agreement *in toto*. The appellate court, in turn, upheld the trial court, but it proceeded to discuss on the third cause of action (for annulment of mortgage), concluding that the mortgages were void because the mortgagors were **not the absolute owners** of the mortgaged properties. In the words of the appellate court:

The main cause of action here is the "Recovery of Realty and Reconveyance," the "Annulment of Mortgage" is only an ancillary cause of action. In the decision approving the compromise agreement it disposes and finally determined the "Recovery of Realty and Reconveyance."

The moment ownership of the disputed real property was clearly proven to be that of the [plaintiffs-respondents], the question of the validity of the mortgage made by the [defendants-respondents] with [petitioner PNB] could easily be determined.

x x x x x x x x x

The [defendants-respondents], **not being the absolute owners** and not having been authorized to mortgage the subject real property, **could not validly mortgage the said real property with [petitioner PNB]**. However, we are not unmindful of the [defendants-respondents'] liability to [the bank]. **But such issue could be dealt with in a separate and distinct action. [**Emphasis supplied.]

With the above ruling, the bank who was not a party to the agreement was therefore affected; it was a mortgagee of a part of the disputed property, and had in fact foreclosed the portion covered by OCT No. 24800.

It is basic in law that a compromise agreement, as a contract, is binding only upon the parties to the compromise, and not upon non-parties. This is the doctrine of relativity of contracts. Consistent with this principle, a judgment based entirely on a compromise agreement is binding only on the parties to the compromise the court approved, and not upon the parties who did not take part in the compromise agreement and in the proceedings leading to its submission and approval by the court. Otherwise stated, a court judgment made solely on the basis of a compromise agreement binds only the parties to the compromise, and cannot bind a party litigant who did not take part in the compromise agreement. In the case of *Castañeda v. Heirs of Maramba*,[16] we held that:

Judgment based on a compromise affects only participating litigants — A partial decision, stemming from an amicable settlement among

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[16] G.R. No. L-25569, December 28, 1971, 42 SCRA 634.

two of several parties to an action, binds only the parties so participating in the settlement. **This decision never becomes final with respect to the parties who did not take part in the settlement confirmed by the partial decision aforesaid**. [Emphasis supplied.]

Following *Castañeda,* the judgment on compromise rendered by the trial court in this case, and later affirmed by the appellate court, is final with respect only to the plaintiffs-respondents and defendants-respondents, but not with respect to the PNB. Hence, the trial court's judgment on compromise which settles the issue of ownership over the properties in question is but a partial decision that does not completely decide the case and cannot bind the PNB.

In its assailed decision, the CA, while recognizing the liability of the defendants-respondents to the PNB, declared that the mortgagors, not being the absolute owners of the mortgaged properties as agreed upon in the compromise agreement, do not have the right to constitute the mortgage. This conclusion is legally incorrect as the CA capitalized on the **ownership issue** settled between the plaintiffs-respondents and the defendants-respondents in invalidating the PNB mortgages, without hearing the side of the PNB as mortgagee, and later, co-owner of the disputed property. As discussed above, the compromise agreement cannot bind the bank, a non-party to the agreement; necessarily, the ownership issue which was settled by the compromise agreement cannot be made applicable to the bank without hearing it.

Our own review of the records of the case shows that the appellate court was not without basis to properly dispose of all the causes of action, including the annulment of mortgage issue, had it fully scrutinized the records of the case. A glaring fact that escaped the scrutiny of both the trial and appellate courts, and which would have led them to the quick and correct disposition of the annulment issue (and of the entire case, given the compromise agreement), is the proviso against alienation or encumbrance of lands granted by homestead patent — a fact plainly evident upon a facial examination of the OCTs involved.

We conclude from our own examination of these OCTs that the mortgages cannot but be **void *ab initio***. On the faces of all

the OCTs—secured through homestead patents—are inscribed the following words that echo the mandatory provisions of law:

> TO HAVE AND TO HOLD the said tract of land with the appurtenances thereunto x x x subject to the provisions of Sections 118, 121, 122 and 124 of Commonwealth Act No. 141, as amended, which provide that except in favor of the Government or any of its branches, units or institutions, **THE LAND HEREBY ACQUIRED SHALL BE INALIENABLE AND SHALL NOT BE SUBJECT TO [E]NCUMBRANCE FOR A PERIOD OF FIVE (5) YEARS NEXT FOLLOWING THE DATE OF THIS PATENT**, and shall not be liable for the satisfaction of any debt contracted prior to the expiration of that period; x x x.[17] [Emphasis supplied.]

This inscription reproduces Section 118[18] of the Public Land Act,[19] as amended, which contains a proscription against the alienation or encumbrance of homestead patents within five years from issue. The rationale for the prohibition, reiterated in a line of cases, first laid down in *Pascua v. Talens*[20] states that "x x x homestead laws were designed to distribute disposable agricultural lots of the State to land-destitute citizens for their home and cultivation. Pursuant to such benevolent intention the State prohibits the sale or encumbrance of the homestead

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[17] Exhibits "8", "9", "10" and "11", Record of Exhibits, pp. 55-57, 58-59, 60-62, and 63-64, respectively.

[18] SECTION 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. [Emphasis supplied.]

[19] *Supra* note 3.

[20] 80 Phil. 792 (1948).

(Section 116, now Section 118) within five years after the grant of the patent. x x x. It aims to preserve and keep in the family of the homesteader that portion of public land which the State had gratuitously given to him."

In the present case, the annotation of the mortgage liens **occurred only months after the date of the issuance of the homestead patents**. The pertinent facts as seen on the faces of the OCTs are illustrated below:

OCT No.	Mortgagors	Date of Homestead Patent	Date of Annotation/ Inscription of Mortgage	Period from Date of Patent[21]
P-24800	Pedro Soriano/ Paz Tagacay	28 Apr 1965	17 Sep 1965	**5 Months**
P-24801	Eugenio Soriano/ Maria Cauilan	28 Apr 1965	27 Oct 1965	**6 Months**
P-24802	Milagros B. Carag/ Marciano Carag	8 Apr 1965	13 Oct 1965	**6 Months**
P-25217	Benjamin Tagacay/ Fausta Agustin	15 Feb 1966	25 Mar 1966	**1 Month**

This situation is similar to that of *Republic v. Heirs of Alejaga, Sr.*[22] where the respondent obtained a loan of ₱100,000.00 in 1981 from the PNB, secured by a real estate mortgage on the patented land. The 1981 encumbrance was contracted two years from date of issuance of the patent in 1979, for which reason the Court cited a violation of Section 118 of the Public Land Act which proscribes the alienation or encumbrance of the patented land within five years from the date of the patent, and which proscription clearly appears as a proviso in the OCT issued in the name of the respondent in the case. Consequently, the PNB mortgage was declared void.

[21] Approximation in months, from date of entry of homestead patent to date of annotation of the mortgage.

[22] G.R. No. 146030, December 3, 2002, 393 SCRA 361.

The present case deserves exactly the same treatment, and the PNB cannot claim that it is a mortgagee in good faith. The proscription against alienation or encumbrance is unmistakable even on a cursory reading of the OCTs. Thus, one who contracts with a homestead patentee is charged with knowledge of the law's proscriptive provision that must necessarily be read into the terms of any agreement involving the homestead. Under the circumstances, the PNB simply failed to observe the diligence required in the handling of its transactions and thus made the fatal error of approving the loans secured by mortgages of properties that cannot, in the first place, be mortgaged.

Both the defendants-respondents and the bank are to be faulted for the invalidity of the mortgages. We cannot, however, apply the doctrine of *pari delicto* in accordance with the ruling that the doctrine does not apply when the contract is prohibited by law.[23] A saving factor for the bank under the situation is that a mortgage is merely an accessory agreement and does not affect the principal contract of loan. The mortgages, while void, can still be considered as instruments evidencing the indebtedness of defendants-respondents to the PNB in a proper case for the collection of the defendants-respondents' loans.

Our conclusion on the nullity of mortgage issue renders it unnecessary to decide the question of whether the compromise agreement between the plaintiffs-respondents and the defendants-respondents should be set aside for its effect on the bank. With the mortgages invalidated, the PNB no longer has any interest that the compromise agreement can affect. In the absence of any other reason to impugn the lower court decisions approving the compromise agreement, we affirm the approval of the compromise agreement and the disposition of the case on the basis of compromise. Given our ruling on the invalidity of the mortgages, a remand of this issue is no longer necessary. The parties' liabilities to PNB on the loans they obtained are not issues before us for disposition, and are for the parties to act upon as matters outside the coverage of this case.

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[23] *Philippine National Bank v. De los Reyes*, G.R. Nos. L-46898-99, November 28, 1989, 179 SCRA 619.

WHEREFORE, we hereby *DECLARE* the mortgages constituted on OCT Nos. 24800, 24801, 25217 and 25802 *VOID* and, for this reason, we *DISMISS* the petition. We *AFFIRM* the approval of the compromise agreement by the Court of Appeals and the disposition of the case on the basis of compromise. The order to remand the case to the Regional Trial Court, Branch IV, Tuguegarao, Cagayan, for further proceedings is therefore *REVERSED*.

Costs against petitioner PNB.

SO ORDERED.

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

EN BANC

[G.R. No. 152048. April 7, 2009]

FELIX B. PEREZ and AMANTE G. DORIA, *petitioners, vs.* **PHILIPPINE TELEGRAPH AND TELEPHONE COMPANY and JOSE LUIS SANTIAGO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; LOSS OF CONFIDENCE; SHOULD BE ADEQUATELY PROVEN BY SUBSTANTIAL EVIDENCE. — Willful breach by the employee of the trust reposed in him by his employer or duly authorized representative is a just cause for termination. However, in *General Bank and Trust Co. v. CA,* we said: "[L]oss of confidence should not be simulated. It should not be used as a subterfuge for causes which are improper, illegal or unjustified. Loss of confidence may not be arbitrarily asserted

in the face of overwhelming evidence to the contrary. It must be genuine, not a mere afterthought to justify an earlier action taken in bad faith." The burden of proof rests on the employer to establish that the dismissal is for cause in view of the security of tenure that employees enjoy under the Constitution and the Labor Code. The employer's evidence must clearly and convincingly show the facts on which the loss of confidence in the employee may be fairly made to rest. It must be adequately proven by substantial evidence.

2. **ID.; ID.; ID.; TWO WRITTEN NOTICES, MANDATORY TO MEET THE REQUIREMENTS OF DUE PROCESS. —** To meet the requirements of due process in the dismissal of an employee, an employer must furnish the worker with two written notices: (1) a written notice specifying the grounds for termination and giving to said employee a reasonable opportunity to explain his side and (2) another written notice indicating that, upon due consideration of all circumstances, grounds have been established to justify the employer's decision to dismiss the employee.

3. **POLITICAL LAW; STATUTES; INTERPRETATION OF; IN CASE OF CONFLICT, THE LAW PREVAILS OVER THE ADMINISTRATIVE REGULATIONS IMPLEMENTING IT. —** [I]n case of conflict, the law prevails over the administrative regulations implementing it. The authority to promulgate implementing rules proceeds from the law itself. To be valid, a rule or regulation must conform to and be consistent with the provisions of the enabling statute. As such, it cannot amend the law either by abridging or expanding its scope.

4. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; THE DUE PROCESS REQUIREMENT IN CASES OF TERMINATION OF EMPLOYMENT DOES NOT REQUIRE AN ACTUAL OR FORMAL HEARING; EXPLAINED. —** Article 277(b) of the Labor Code provides that, in cases of termination for a just cause, an employee must be given "ample opportunity to be heard and to defend himself." Thus, the opportunity to be heard afforded by law to the employee is qualified by the word "ample" which ordinarily means "considerably more than adequate or sufficient." In this regard, the phrase "ample opportunity to be heard" can be reasonably interpreted as extensive enough to cover actual hearing or conference. To

this extent, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code is in conformity with Article 277(b). Nonetheless, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code should not be taken to mean that holding an actual hearing or conference is a condition *sine qua non* for compliance with the due process requirement in termination of employment. The test for the fair procedure guaranteed under Article 277(b) cannot be whether there has been a formal pretermination confrontation between the employer and the employee. The "ample opportunity to be heard" standard is neither synonymous nor similar to a formal hearing. To confine the employee's right to be heard to a solitary form narrows down that right. It deprives him of other equally effective forms of adducing evidence in his defense. Certainly, such an exclusivist and absolutist interpretation is overly restrictive. *The "very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation."* The standard for the hearing requirement, ample opportunity, is couched in general language revealing the legislative intent to give some degree of flexibility or adaptability to meet the peculiarities of a given situation. To confine it to a single rigid proceeding such as a formal hearing will defeat its spirit. Significantly, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code itself provides that the so-called standards of due process outlined therein shall be observed *"substantially,"* not strictly. This is a recognition that *while a formal hearing or conference is ideal, it is not an absolute, mandatory or exclusive avenue of due process.* An employee's right to be heard in termination cases under Article 277(b) as implemented by Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code should be interpreted in broad strokes. It is satisfied not only by a formal face to face confrontation but by any meaningful opportunity to controvert the charges against him and to submit evidence in support thereof. A hearing means that a party should be given a chance to adduce his evidence to support his side of the case and that the evidence should be taken into account in the adjudication of the controversy. *"To be heard" does not mean verbal argumentation alone inasmuch as one may be heard just as effectively through written explanations, submissions or pleadings.* Therefore, while the phrase "ample opportunity to be heard" may in fact include an actual hearing,

it is not limited to a formal hearing only. In other words, the existence of an actual, formal "trial-type" hearing, although preferred, is not absolutely necessary to satisfy the employee's right to be heard. This Court has consistently ruled that the due process requirement in cases of termination of employment does not require an actual or formal hearing.

5. **ID.; ID.; ID.; GUIDING PRINCIPLES IN CONNECTION WITH THE HEARING REQUIREMENT IN DISMISSAL CASES. —** [T]he following are the guiding principles in connection with the hearing requirement in dismissal cases: (a) "ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way. (b) a formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it. (c) the "ample opportunity to be heard" standard in the Labor Code prevails over the "hearing or conference" requirement in the implementing rules and regulations.

6. **ID.; ID.; OMNIBUS RULES IMPLEMENTING THE LABOR CODE; TERMINATION OF EMPLOYMENT; SUSPENSION OF EMPLOYEE FOR JUST CAUSE; AN EMPLOYEE MAY BE VALIDLY SUSPENDED BY THE EMPLOYER FOR A PERIOD OF THIRTY DAYS. —** An employee may be validly suspended by the employer for just cause provided by law. Such suspension shall only be for a period of 30 days, after which the employee shall either be reinstated or paid his wages during the extended period.

7. **ID.; ID.; TERMINATION OF EMPLOYMENT; DISMISSAL WITHOUT JUST OR AUTHORIZED CAUSE AND WITHOUT DUE PROCESS; EFFECT; CASE AT BAR. —** Where the dismissal was without just or authorized cause and there was no due process, Article 279 of the Labor Code, as amended, mandates that the employee is entitled to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement. In this case, however, reinstatement is no longer possible because of

the length of time that has passed from the date of the incident to final resolution. Fourteen years have transpired from the time petitioners were wrongfully dismissed. To order reinstatement at this juncture will no longer serve any prudent or practical purpose.

BRION, *J., concurring opinion:*

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; TWO WRITTEN NOTICES, REQUIRED BEFORE TERMINATION OF EMPLOYMENT CAN BE EFFECTED. — [T]he employer must furnish the worker to be dismissed with two written notices before termination of employment can be effected: a ***first written notice*** that informs the worker of the particular acts or omissions for which his or her dismissal is sought, and ***a second written notice*** which informs the worker of the employer's decision to dismiss him. ***Between these two notices, the worker must be afforded ample opportunity to be heard*** x x x.

2. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; BILL OF RIGHTS; DUE PROCESS; PROCEDURAL DUE PROCESS; EXPLAINED. — In a long line of cases starting with *Banco Espanol v. Palanca*, the requirements of procedural due process in judicial proceedings have been defined. In these proceedings, the quantum of evidence that the prosecution must meet in criminal cases is proof beyond reasonable doubt, while in civil cases the standard has been described as "preponderance of evidence." The requirements of procedural due process in administrative proceedings have been similarly defined in the early case of *Ang Tibay v. CIR.* The proof required in these proceedings is the lower standard of "substantial evidence." The quantum of evidence required in these proceedings impacts on their hearing requirements. While both judicial and administrative proceedings require a hearing and the opportunity to be heard, they differ with respect to the hearing required before a decision can be made. In criminal cases where a constitutional presumption of innocence exists, procedural judicial due process requires that judgment be rendered upon lawful hearing where factual issues are tested through direct and cross-examination of witnesses to arrive at proof beyond reasonable doubt. In civil cases, evidentiary hearing are likewise

a must to establish the required preponderance of evidence. Administrative due process, on the other hand, requires that the decision be rendered on the evidence presented at the hearing, *or at least contained in the record and disclosed to the parties concerned.* Thus, substantial reasons justify the variance in the hearing requirements for these proceedings.

3. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; PROCEDURAL DUE PROCESS UNDER THE CODE REQUIRES NOTICE AND AMPLE OPPORTUNITY TO BE HEARD. —** Separately from the requirement of due process when State action is involved, the Constitution also guarantees **security of tenure to labor**, which the Labor Code implements by requiring that there be a just or authorized cause before an employer can terminate the services of a worker. *This is the equivalent of and what would have satisfied* ***substantive due process*** *had a State action been involved.* The equivalent of ***procedural due process*** is detailed under Article 277 of the Labor Code, heretofore quoted, which requires notice and ample opportunity to be heard, both of which are fleshed out in the Implementing Rules of Book VI and in Rule XXIII of Department Order No. 9, Series of 1997, of the Department of Labor. *Thus, from the concept of due process being a limitation on state action, the concept has been applied by statute in implementing the guarantee of security of tenure in the private sector.* In *Serrano v. NLRC,* we had the occasion to draw the fine distinction between constitutional due process that applies to governmental action, and the due process requirement imposed by a statute as a limitation on the exercise of private power. Noting the distinctions between constitutional due process and the statutory duty imposed by the Labor Code, the Court thus decided in *Agabon v. NLRC* to treat the effects of failure to comply differently.

4. **ID.; ID.; ID.; ID.; ACTUAL HEARING, NOT AN ABSOLUTE NECESSITY. —** That an actual hearing in every case is not intended by the Labor Code in dismissal situations is supported by its express wording that only requires an "ample opportunity to be heard," not the "hearing or conference" that its implementing rules require. The "ample opportunity" required to be provided by the employer is similar in character to the process required in administrative proceedings where x x x an

actual hearing is not an absolute necessity. To be sure, it cannot refer to, or be compared with, the requirements of a judicial proceeding whose strict demands necessarily require a formal hearing. "Judicial declarations are rich to the effect that the essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side. A formal or trial type hearing is not at all time and in all circumstances essential to due process, the requirements of which are satisfied where the parties are afforded fair and reasonable opportunity to explain their side in the controversy."

5. **ID.; ID.; ID.; ID.; WHETHER AN ACTUAL HEARING WOULD BE REQUIRED SHOULD DEPEND ON THE CIRCUMSTANCES OF EACH CASE IN A PRIVATE SECTOR DISMISSAL SITUATION.** — Judicial and quasi-judicial processes are undertaken by the state, while the dismissal action the Labor Code regulates is undertaken by a private sector employer. A distinction between these actors ought to be recognized and given a proper valuation in considering the processes required from each. Due process in the private realm does not address an all-powerful State clothed with police power and the powers of taxation and eminent domain; it merely addresses a private sector-employer who, constitutionally, shares the same responsibility with the worker for industrial peace, and who is also entitled to reasonable returns on investments and to expansion and growth. Proportionality with the power sought to be limited dictates that due process in its *flexible signification* be applied to a private sector dismissal situation, ensuring only that there is fairness at all times so that the constitutional guarantee of security of tenure is not defeated. Thus, the required processes in a private sector dismissal situation should, *at the most*, be equivalent to those required in administrative proceedings; whether an actual hearing would be required should depend on the circumstances of each case.

VELASCO, JR., ***J., separate concurring and dissenting opinion:***

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; ARTICLE 277 (B) THEREOF; CONSTRUED.** — Art. 277 (b) of the Labor Code x x x states that employees are to be given "ample" opportunity to be heard and defend themselves.

However, the word "ample" is vague and not defined in the said provision. Since the meaning of this word is unclear, then it should be given a liberal construction to favor labor. "Ample" means "considerably more than adequate or sufficient." Ample opportunity can be construed to be broad enough to encompass an actual hearing or conference. To be sure, opportunity to be heard does not exclude an actual or formal hearing since such requirement would grant more than sufficient chance for an employee to be heard and adduce evidence. In this sense, I believe there is no discrepancy between Art. 277 and the Implementing Rule in question.

2. **ID.; ID.; ID.; REQUISITE HEARING; CAPTURED IN THE PHRASE "AMPLE OPPORTUNITY TO BE HEARD AND TO DEFEND HIMSELF WITH THE ASSISTANCE OF HIS REPRESENTATIVE IF HE SO DESIRES." —** The *ponencia* seems to underscore the absence of any mention of an "actual hearing" in Art. 277(b). It is conceded that there is no explicit mention of an actual hearing or conference in said legal provision. x x x [T]he requisite hearing is captured in the phrase "ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires." Even if the phrase "actual hearing" is not specified in Art. 277(b), the same thing is true with respect to the second written notice informing the employee of the employer's decision which is likewise unclear in said provision. Thus, the fact that Art. 277(b) does not expressly mention actual hearing in Art. 277(b) does not bar the Secretary of Labor from issuing a rule (Sec. 2[d][ii], Rule I, Implementing Rules of Book VI of the Labor Code) implementing the provision that what really is meant is an actual hearing or conference. It should be noted that the Secretary of Labor also issued a rule on the need for a second written notice on the decision rendered in the illegal dismissal proceedings despite the silence of Art. 277(b) on the need for a written notice of the employer's decision.

3. **ID.; ID.; TERMINATION OF EMPLOYMENT; NECESSITY OF HEARING PRIOR TO TERMINATION; SIGNIFICANCE. —** Removing the right of employees to a hearing prior to termination would deprive them the opportunity to adduce their evidence. Notice can be taken of the limited opportunity given to the employees by the directive in the first written notice that embodies the charges. More often than not, the directive

is only for the employees to explain their side without affording them the right to present evidence. Furthermore, a hearing gives employees the chance to hire the services of counsel whose presence is beneficial to employees during hearings because the counsel knows the intricacies of the law and the strategies to defend the client — something with which a lay person is most assuredly not familiar. A mere first notice is not sufficient enough for employees to assemble evidence for their defense. Most often, the first notice merely serves as or is limited to a general notice whch cites the company rules that were allegedly violated by the employees without explaining in detail the facts and circumstances pertinent to the charges and without attaching the pieces of evidence supporting the same. Lastly, the holding of an actual hearing will prevent the railroading of dismissal of employees as the employers are obliged to present convincing evidence to support the charges. All in all, the advantages far outweigh the disadvantages in holding an actual hearing. x x x The indispensability of a hearing is advantageous to both the employer and the employee because they are given the opportunity to settle the dispute or resort to the use of alternative dispute resolution to deflect the filing of cases with the NLRC and later the courts. It is important that a hearing is prescribed by the law since this is the best time that the possibility of a compromise agreement or a settlement can be exhaustively discussed and entered into. During this hearing, the relations of the parties may not be that strained and, therefore, they are more likely receptive to a compromise. Once dismissal is ordered by the employer, the deteriorated relationship renders the possibility of an amicable settlement almost nil. Thus, a hearing can help the parties come up with a settlement that will benefit them and encourage an out-of-court settlement which would be less expensive, creating a "win-win" situation for them. Of course the compromise agreement, as a product of the settlement, should be subscribed and sworn to before the labor official or arbiter.

4. **ID.; ID.; SOCIAL LEGISLATIONS, SUCH AS THE LABOR CODE, SHOULD BE LIBERALLY CONSTRUED. —** [A] liberal interpretation of Art. 277(b) of the Labor Code would be in keeping with Art. XIII of the Constitution which dictates the promotion of social justice and ordains full protection to labor. The basic tenet of social justice is that "those who have

less in life must have more in law." Social justice commands the protection by the State of the needy and the less fortunate members of society. This command becomes all the more firm in labor cases where security of tenure is also an issue. x x x Between an employer and an employee, the latter is oftentimes on the losing or inferior position. Without the mandatory requirement of a hearing, employees may be unjustly terminated from their work, effectively losing their means of livelihood. The right of persons to their work is considered a property right which is well within the meaning of the constitutional guarantee. Depriving employees their job without due process essentially amounts to a deprivation of property without due process. We have applied social justice even to cases of just dismissal to grant equitable relief to laborers who were validly dismissed. We also termed social justice as "compassionate" justice. Thus, the State should always show compassion and afford protection to those who are in most need — the laborers. Knowing that poverty and gross inequality are among the major problems of our country, then laws and procedures which have the aim of alleviating those problems should be liberally construed and interpreted in favor of the underprivileged. Thus, social legislations, such as the Labor Code, should be liberally construed to attain its laudable objectives.

APPEARANCES OF COUNSEL

Domingo G. Foronda for petitioners.
Melchor Ella Ancheta Law Firm for respondents.

D E C I S I O N

CORONA, *J.*:

Petitioners Felix B. Perez and Amante G. Doria were employed by respondent Philippine Telegraph and Telephone Company (PT&T) as shipping clerk and supervisor, respectively, in PT&T's Shipping Section, Materials Management Group.

Acting on an alleged unsigned letter regarding anomalous transactions at the Shipping Section, respondents formed a special audit team to investigate the matter. It was discovered that the

Shipping Section jacked up the value of the freight costs for goods shipped and that the duplicates of the shipping documents allegedly showed traces of tampering, alteration and superimposition.

On September 3, 1993, petitioners were placed on preventive suspension for 30 days for their alleged involvement in the anomaly.[1] Their suspension was extended for 15 days twice: first on October 3, 1993[2] and second on October 18, 1993.[3]

On October 29, 1993, a memorandum with the following tenor was issued by respondents:

> In line with the recommendation of the AVP-Audit as presented in his report of October 15, 1993 (copy attached) and the subsequent filing of criminal charges against the parties mentioned therein, [Mr. Felix Perez and Mr. Amante Doria are] *hereby dismissed from the service having falsified company documents*.[4] (emphasis supplied)

On November 9, 1993, petitioners filed a complaint for illegal suspension and illegal dismissal.[5] They alleged that they were dismissed on November 8, 1993, the date they received the above-mentioned memorandum.

The labor arbiter found that the 30-day extension of petitioners' suspension and their subsequent dismissal were both illegal. He ordered respondents to pay petitioners their salaries during their 30-day illegal suspension, as well as to reinstate them with backwages and 13th month pay.

The National Labor Relations Commission (NLRC) reversed the decision of the labor arbiter. It ruled that petitioners were dismissed for just cause, that they were accorded due process

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[1] Records, pp. 70-71.

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

[3] *Id.*, pp. 74-75.

[4] *Id.*, p. 76.

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

and that they were illegally suspended for only 15 days (without stating the reason for the reduction of the period of petitioners' illegal suspension).[6]

Petitioners appealed to the Court of Appeals (CA). In its January 29, 2002 decision,[7] the CA affirmed the NLRC decision insofar as petitioners' illegal suspension for 15 days and dismissal for just cause were concerned. However, it found that petitioners were dismissed without due process.

Petitioners now seek a reversal of the CA decision. They contend that there was no just cause for their dismissal, that they were not accorded due process and that they were illegally suspended for 30 days.

We rule in favor of petitioners.

RESPONDENTS FAILED TO PROVE JUST CAUSE AND TO OBSERVE DUE PROCESS

The CA, in upholding the NLRC's decision, reasoned that there was sufficient basis for respondents to lose their confidence in petitioners[8] for allegedly tampering with the shipping documents. Respondents emphasized the importance of a shipping order or request, as it was the basis of their liability to a cargo forwarder.[9]

We disagree.

Without undermining the importance of a shipping order or request, we find respondents' evidence insufficient to clearly and convincingly establish the facts from which the loss of

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[6] Decision penned by Commissioner Ireneo B. Bernardo, and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Joaquin A. Tanodra.

[7] Decision of the Court of Appeals, penned by Associate Justice (now retired Associate Justice of the Supreme Court) Ruben T. Reyes, and concurred in by Associate Justices Renato C. Dacudao and Mariano C. del Castillo of the Ninth Division of the Court of Appeals.

[8] *Rollo*, p. 34.

[9] Records, p. 107.

confidence resulted.[10] Other than their bare allegations and the fact that such documents came into petitioners' hands at some point, respondents should have provided evidence of petitioners' functions, the extent of their duties, the procedure in the handling and approval of shipping requests and the fact that no personnel other than petitioners were involved. There was, therefore, a patent paucity of proof connecting petitioners to the alleged tampering of shipping documents.

The alterations on the shipping documents could not reasonably be attributed to petitioners because it was never proven that petitioners alone had control of or access to these documents. Unless duly proved or sufficiently substantiated otherwise, impartial tribunals should not rely only on the statement of the employer that it has lost confidence in its employee.[11]

Willful breach by the employee of the trust reposed in him by his employer or duly authorized representative is a just cause for termination.[12] However, in *General Bank and Trust Co. v. CA,*[13] we said:

> [L]oss of confidence should not be simulated. It should not be used as a subterfuge for causes which are improper, illegal or unjustified. Loss of confidence may not be arbitrarily asserted in the face of overwhelming evidence to the contrary. It must be genuine, not a mere afterthought to justify an earlier action taken in bad faith.

The burden of proof rests on the employer to establish that the dismissal is for cause in view of the security of tenure that employees enjoy under the Constitution and the Labor Code. The employer's evidence must clearly and convincingly show the facts on which the loss of confidence in the employee may

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[10] *Commercial Motors Corporation v. Commissioners, et al.,* G.R. No. 14762, 10 December 1990, 192 SCRA 191, 197.

[11] *Santos v. NLRC,* G.R. No. 76991, October 28, 1988, 166 SCRA 759, 765; *De Leon v. NLRC,* G.R. No. 52056, October 30, 1980, 100 SCRA 691, 700.

[12] LABOR CODE, Book VI, Title 1, Art. 282 (c).

[13] G.R. No. L-42724, 9 April 1985, 135 SCRA 569, 578.

be fairly made to rest.[14] It must be adequately proven by substantial evidence.[15] Respondents failed to discharge this burden.

Respondents' illegal act of dismissing petitioners was aggravated by their failure to observe due process. To meet the requirements of due process in the dismissal of an employee, an employer must furnish the worker with two written notices: (1) a written notice specifying the grounds for termination and giving to said employee a reasonable opportunity to explain his side and (2) another written notice indicating that, upon due consideration of all circumstances, grounds have been established to justify the employer's decision to dismiss the employee.[16]

Petitioners were neither apprised of the charges against them nor given a chance to defend themselves. They were simply and arbitrarily separated from work and served notices of termination in total disregard of their rights to due process and security of tenure. The labor arbiter and the CA correctly found that respondents failed to comply with the two-notice requirement for terminating employees.

Petitioners likewise contended that due process was not observed in the absence of a *hearing* in which they could have explained their side and refuted the evidence against them.

There is no need for a hearing or conference. We note a marked difference in the standards of due process to be followed as prescribed in the Labor Code and its implementing rules. The Labor Code, on one hand, provides that an employer must provide the employee *ample opportunity to be heard and to defend himself* with the assistance of his representative if he so desires:

ART. 277. *Miscellaneous provisions.* — x x x

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[14] *Imperial Textile Mills, Inc. v. NLRC*, G.R. No. 101527, 19 January 1993, 217 SCRA 237, 244-245.

[15] *Starlite Plastic Industrial Corp. v. NLRC*, G.R. No. 78491, 16 March 1989, 171 SCRA 315, 324.

[16] Omnibus Rules Implementing the Labor Code, Book VI, Rule 1, Sec. 2 (a) and (c).

(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. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. (emphasis supplied)

The omnibus rules implementing the Labor Code, on the other hand, *require a hearing and conference* during which the employee concerned is given the opportunity to respond to the charge, present his evidence or rebut the evidence presented against him:[17]

Section 2. *Security of Tenure*. — x x x

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

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

(ii) **A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him.**

(iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances,

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[17] Section 2(d), Rule I, Implementing Rules of Book VI of the Labor Code.

grounds have been established to justify his termination. (emphasis supplied)

Which one should be followed? Is a hearing (or conference) mandatory in cases involving the dismissal of an employee? Can the apparent conflict between the law and its IRR be reconciled?

At the outset, we reaffirm the time-honored doctrine that, in case of conflict, the law prevails over the administrative regulations implementing it.[18] The authority to promulgate implementing rules proceeds from the law itself. To be valid, a rule or regulation must conform to and be consistent with the provisions of the enabling statute.[19] As such, it cannot amend the law either by abridging or expanding its scope.[20]

Article 277(b) of the Labor Code provides that, in cases of termination for a just cause, an employee must be given "ample opportunity to be heard and to defend himself." Thus, the opportunity to be heard afforded by law to the employee is qualified by the word "ample" which ordinarily means "considerably more than adequate or sufficient."[21] In this regard, the phrase "ample opportunity to be heard" can be reasonably interpreted as extensive enough to cover actual hearing or conference. To this extent, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code is in conformity with Article 277(b).

Nonetheless, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code should not be taken to mean that holding an actual hearing or conference is a condition *sine*

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[18] See *Conte v. Palma*, 332 Phil. 20 (1996) citing *Kilusang Mayo Uno Labor Center v. Garcia, Jr.*, G.R. No. 115381, 23 December 1994, 239 SCRA 386.

[19] *Id.* citing *Lina Jr. v. Cariño*, G.R. No. 100127, 23 April 1993, 221 SCRA 515.

[20] Implementing rules and regulations may not enlarge, alter or restrict the provisions of the law they seek to implement; they cannot engraft additional requirements not contemplated by the legislature (*Pilipinas Kao, Inc. v. Court of Appeals*, 423 Phil. 834 [2001]).

[21] WEBSTER'S *THIRD NEW COLLEGIATE INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED*, p. 74, 1993 edition.

qua non for compliance with the due process requirement in termination of employment. The test for the fair procedure guaranteed under Article 277(b) cannot be whether there has been a formal pretermination confrontation between the employer and the employee. The "ample opportunity to be heard" standard is neither synonymous nor similar to a formal hearing. To confine the employee's right to be heard to a solitary form narrows down that right. It deprives him of other equally effective forms of adducing evidence in his defense. Certainly, such an exclusivist and absolutist interpretation is overly restrictive. *The "very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation."*[22]

The standard for the hearing requirement, ample opportunity, is couched in general language revealing the legislative intent to give some degree of flexibility or adaptability to meet the peculiarities of a given situation. To confine it to a single rigid proceeding such as a formal hearing will defeat its spirit.

Significantly, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code itself provides that the so-called standards of due process outlined therein shall be observed *"substantially,"* not strictly. This is a recognition that *while a formal hearing or conference is ideal, it is not an absolute, mandatory or exclusive avenue of due process.*

An employee's right to be heard in termination cases under Article 277(b) as implemented by Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code should be interpreted in broad strokes. It is satisfied not only by a formal face to face confrontation but by any meaningful opportunity to controvert the charges against him and to submit evidence in support thereof.

A hearing means that a party should be given a chance to adduce his evidence to support his side of the case and that the evidence should be taken into account in the adjudication of the controversy.[23]

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[22] *Cafeteria Workers v. McElroy*, 367 U.S. 886 (1961).

[23] *Gonzales v. Commission on Elections*, G.R. No. 52789, 19 December 1980, 101 SCRA 752.

"To be heard" does not mean verbal argumentation alone inasmuch as one may be heard just as effectively through written explanations, submissions or pleadings.[24] Therefore, while the phrase "ample opportunity to be heard" may in fact include an actual hearing, it is not limited to a formal hearing only. In other words, the existence of an actual, formal "trial-type" hearing, although preferred, is not absolutely necessary to satisfy the employee's right to be heard.

This Court has consistently ruled that the due process requirement in cases of termination of employment does not require an actual or formal hearing. Thus, we categorically declared in *Skipper's United Pacific, Inc. v. Maguad*:[25]

The Labor Code does not, of course, require a formal or trial type proceeding before an erring employee may be dismissed. (emphasis supplied)

In *Autobus Workers' Union v. NLRC*,[26] we ruled:

The twin requirements of notice and hearing constitute the essential elements of due process. Due process of law simply means giving opportunity to be heard before judgment is rendered. In fact, **there is no violation of due process even if no hearing was conducted, where the party was given a chance to explain his side of the controversy**. What is frowned upon is the denial of the opportunity to be heard.

In the landmark case on administrative due process, *Ang Tibay v. Court of Industrial Relations* (69 Phil. 635 [1940]), this Court laid down seven cardinal primary rights:

> (1) The first of these rights is **the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof.** x x x (2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal *must consider* the evidence presented. x x x

[24] *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 168498, 16 June 2006, 491 SCRA 213.

[25] G.R. No. 166363, 15 August 2006, 498 SCRA 639.

[26] 353 Phil. 419 (1998).

x x x x x x x x x

A formal trial-type hearing is not even essential to due process. It is enough that the parties are given a fair and reasonable opportunity to explain their respective sides of the controversy and to present supporting evidence on which a fair decision can be based. This type of hearing is not even mandatory in cases of complaints lodged before the Labor Arbiter. (emphasis supplied)

In *Solid Development Corporation Workers Association v. Solid Development Corporation*,[27] we had the occasion to state:

[W]ell-settled is the dictum that the twin requirements of notice and hearing constitute the essential elements of due process in the dismissal of employees. It is a cardinal rule in our jurisdiction that the employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. **The requirement of a hearing, on the other hand, is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.**

In separate infraction reports, petitioners were both apprised of the particular acts or omissions constituting the charges against them. They were also required to submit their written explanation within 12 hours from receipt of the reports. Yet, neither of them complied. Had they found the 12-hour period too short, they should have requested for an extension of time. Further, notices of termination were also sent to them informing them of the basis of their dismissal. In fine, petitioners were given due process before they were dismissed. **Even if no hearing was conducted, the requirement of due process had been met** since they were accorded a chance to explain their side of the controversy. (emphasis supplied)

Our holding in *National Semiconductor HK Distribution, Ltd. v. NLRC*[28] is of similar import:

That the investigations conducted by petitioner may not be considered *formal* or *recorded* hearings or investigations is

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[27] G.R. No. 165995, 14 August 2007, 530 SCRA 132.

[28] 353 Phil. 551 (1998).

immaterial. A formal or trial type hearing is not at all times and in all instances essential to due process, the requirements of which are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy. It is deemed sufficient for the employer to follow the natural sequence of notice, hearing and judgment.

The above rulings are a clear recognition that the employer may provide an employee with ample opportunity to be heard and defend himself with the assistance of a representative or counsel in ways other than a formal hearing. The employee can be fully afforded a chance to respond to the charges against him, adduce his evidence or rebut the evidence against him through a wide array of methods, verbal or written.

After receiving the first notice apprising him of the charges against him, the employee may submit a written explanation (which may be in the form of a letter, memorandum, affidavit or position paper) and offer evidence in support thereof, like relevant company records (such as his 201 file and daily time records) and the sworn statements of his witnesses. For this purpose, he may prepare his explanation personally or with the assistance of a representative or counsel. He may also ask the employer to provide him copy of records material to his defense. His written explanation may also include a request that a formal hearing or conference be held. In such a case, the conduct of a formal hearing or conference becomes mandatory, just as it is where there exist substantial evidentiary disputes[29] or where company rules or practice requires an actual hearing as part of employment pretermination procedure. To this extent, we refine the decisions we have rendered so far on this point of law.

This interpretation of Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code reasonably implements the "ample opportunity to be heard" standard under Article 277(b) of the Labor Code without unduly restricting the language of the law or excessively burdening the employer. This not

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[29] See *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985) (Brennan J., concurring in part and dissenting in part) citing *Arnett v. Kennedy*, 416 U.S. 134 (1974) (Marshall, *J.*, dissenting).

only respects the power vested in the Secretary of Labor and Employment to promulgate rules and regulations that will lay down the guidelines for the implementation of Article 277(b). More importantly, this is faithful to the mandate of Article 4 of the Labor Code that "[a]ll doubts in the implementation and interpretation of the provisions of [the Labor Code], including its implementing rules and regulations shall be resolved in favor of labor."

In sum, the following are the guiding principles in connection with the hearing requirement in dismissal cases:

(a) "ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way.

(b) a formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it.

(c) the "ample opportunity to be heard" standard in the Labor Code prevails over the "hearing or conference" requirement in the implementing rules and regulations.

PETITIONERS WERE ILLEGALLY SUSPENDED FOR 30 DAYS

An employee may be validly suspended by the employer for just cause provided by law. Such suspension shall only be for a period of 30 days, after which the employee shall either be reinstated or paid his wages during the extended period.[30]

In this case, petitioners contended that they were not paid during the two 15-day extensions, or a total of 30 days, of their preventive suspension. Respondents failed to adduce evidence to the contrary. Thus, we uphold the ruling of the labor arbiter on this point.

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[30] Omnibus Rules Implementing the Labor Code, Book V, Rule XXIII, Sec. 9, as amended by Department of Labor and Employment Order No. 9 (1997).

Where the dismissal was without just or authorized cause and there was no due process, Article 279 of the Labor Code, as amended, mandates that the employee is entitled to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement.[31] In this case, however, reinstatement is no longer possible because of the length of time that has passed from the date of the incident to final resolution.[32] Fourteen years have transpired from the time petitioners were wrongfully dismissed. To order reinstatement at this juncture will no longer serve any prudent or practical purpose.[33]

WHEREFORE, the petition is hereby *GRANTED*. The decision of the Court of Appeals dated January 29, 2002 in CA-G.R. SP No. 50536 finding that petitioners Felix B. Perez and Amante G. Doria were not illegally dismissed but were not accorded due process and were illegally suspended for 15 days, is *SET ASIDE*. The decision of the labor arbiter dated December 27, 1995 in NLRC NCR CN. 11-06930-93 is hereby *AFFIRMED* with the *MODIFICATION* that petitioners should be paid their separation pay in lieu of reinstatement.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Carpio Morales, Tinga, Chico-Nazario, Nachura, Leonardo-de Castro, and *Peralta, JJ.,* concur.

Austria-Martinez,[*] *J.,* certifies that *J.* Martinez voted for the *ponencia* of *J.* Corona.

Brion, J., with concurring opinion.

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[31] *Agabon v. NLRC*, G.R. No. 158693, 17 November 2004, 442 SCRA 573, 610.

[32] *Panday v. NLRC*, G.R. No. 67664, 20 May 1992, 209 SCRA 122, 126-127.

[33] *Sealand Service, Inc. v. NLRC*, G.R. No. 90500, 5 October 1990, 190 SCRA 347, 355.

[*] On official leave.

Velasco, Jr., J., Pls. see separate concurring and dissenting opinion.

CONCURRING OPINION

BRION, *J.*:

I fully concur with the *ponencia* of my esteemed colleague, Associate Justice Renato C. Corona. I add these views on the specific issue of whether actual hearing is a mandatory requirement in a termination of employment situation.

The petitioners' position that *a formal hearing* should be an *absolute requirement* whose absence signifies the non-observance of procedural due process is an unduly strict view and is not at all what procedural due process requires. This is not the intent behind the Labor Code whose pertinent provision reads:

ART. 277.

x x x x x x x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just or authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, ***the employer shall furnish the workers 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 defend himself with the assistance of his representative if he so desires*** in accordance with company rules and regulations promulgated pursuant to the guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer.

The Secretary of Labor and Employment may suspend the effects of the termination pending resolution of the dispute in the event of *prima facie* finding by the appropriate official of the Department of Labor and Employment before whom such dispute is pending that

the termination may cause a serious labor dispute or is in implementation of a mass layoff. (as amended by Republic Act No. 6715)

Historical Roots

At its most basic, procedural due process is about *fairness* in the mode of procedure to be followed. It is not a novel concept, but one that traces its roots in the common law principle of natural justice.

Natural justice connotes the requirement that administrative tribunals, when reaching a decision, must do so with procedural fairness. If they err, the superior courts will step in to quash the decision by *certiorari* or prevent the error by a writ of prohibition.[1] The requirement was initially applied in a purely judicial context, but was subsequently extended to executive regulatory fact-finding, as the administrative powers of the English justices of the peace were transferred to administrative bodies that were required to adopt some of the procedures reminiscent of those used in a courtroom. Natural justice was comprised of two main sub-rules: *audi alteram partem*[2] — that a person must know the case against him and be given an opportunity to answer it; and *nemo judex in sua cause debe esse*[3] — the rule against bias. Still much later, the natural justice principle gave rise to the *duty to be fair* to cover governmental decisions which cannot be characterized as judicial or quasi-judicial in nature.[4]

While the *audi alteram partem* rule provided for the right to be notified of the case against him, the right to bring evidence, and to make argument — whether in the traditional judicial or the administrative setting — common law maintained a distinction between the two settings. "An administrative tribunal had a

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[1] See: Jones, D.P. and De Villars A., *Principles of Administrative Law* (1985 ed.), pp. 148-149.

[2] Literally, "let the other side be heard."

[3] "No one can be the judge in his own cause."

[4] *Supra* note 1, pp. 157-160, citing *Ridge v. Baldwin*, [1963] 2 All E.R. 66 (H.L.)

duty to act in good faith and to listen fairly to both sides, *but not to treat the question as if it were a trial*. There would be no need to examine under oath, nor even to examine witnesses at all. Any other procedure could be utilized which would obtain the information required, as long as the parties had an opportunity to know and to contradict anything which might be prejudicial to their case."[5]

In the U.S., the due process clause of the U.S. Constitution[6] provides the guarantee for procedural due process, and has used a *general balancing formula* to identify the procedural guarantees appropriate to a particular context.[7] In *Mathews v. Eldridge,*[8] Justice Powell articulated this approach when he said:

> In recent years this Court increasingly has had occasion to consider the extent to which due process requires an evidentiary hearing prior to the deprivation of some type of property interest even if such hearing is provided thereafter. ***In only one case, Goldberg v. Kelly, has the Court ruled that a hearing closely approximating a judicial trial is necessary.*** *In other cases requiring some type of pretermination hearing as a matter of constitutional right, the Court has spoken sparingly about the requisite procedures. [Our] decisions underscore the truism that "[d]ue process, unlike some legal rules, is not a technical conception with a fixed content, unrelated to time, place and circumstances. [Due process] is flexible and calls for such procedural protections as the particular situation demands."* Accordingly, the resolution of the issue whether the administrative procedures provided here are constitutionally sufficient requires analysis of the governmental and private interests that are affected. More precisely, our prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural

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[5] *Supra* note 1, p. 200.

[6] UNITED STATES Constitution, 14th Amendment.

[7] See: Gunther, *Constitutional Law*, (11th ed.), pp. 583-585.

[8] 425 U.S. 319 (1976).

safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Thus, the U.S. approach is to calibrate the procedural processes to be observed in administrative cases based on specifically defined parameters.

Significantly in the U.S., the same common law root that gave rise to the concept of natural justice and the duty to be fair, branched out into the *doctrine of fair procedure* applicable to specific *private sector actors* due to their overwhelming economic power within certain fields (*e.g.*, professional associations, unions, hospitals, and insurance companies). The doctrine requires notice and hearing,[9] but to an extent slightly less than procedural due process; thus, when an association has clearly given a person the benefit of far more procedural protections than he would have been entitled to from a government entity, he has received the benefit of fair procedure and has no cause of action for the mildly adverse action that resulted.[10]

Philippine Due Process Requirement

Article III, Section 1 of the Philippine Constitution contains the constitutional guarantee against denial of due process,[11] and is a direct transplant from an American root — the Bill of Rights of the American Constitution.[12] As in the U.S., our jurisprudence has distinguished between the constitutional guarantee of due process that applies to state action, and the statutory due process guarantee under the Labor Code that applies to private employers.[13] The Labor Code provision, quoted above, is implemented under the Rules Implementing the Labor Code which provides that —

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[9] See: *Potvin v. Metropolitan Life Insurance Co.*, 22 Cal. 4th 1060 (2000).

[10] *Dougherty v. Haag*, 165 Cal. App. 4th 315 (2008).

[11] No person shall be denied the right to life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

[12] *Supra* note 6.

[13] *Serrano v. NLRC*, G.R. No. 117040, January 27, 2000, 323 SCRA 44; *Agabon v. NLRC*, G.R. No. 158693, Nov. 17, 2004, 442 SCRA 573.

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

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

(ii) A hearing or conference during which the employee concerned, with the assistance of counsel, if he so desires, is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(iii) 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.

For termination of employment as defined in Article 283 of the Labor Code, the requirement of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment at least thirty days before effectivity of the termination, specifying the ground or grounds for termination.

If the termination is brought about by the completion of a contract or phase thereof, or by failure of an employee to meet the standards of the employer in the case of probationary employment, it shall be sufficient that a written notice is served the employee within a reasonable time from the effective date of termination.[14]

Jurisprudence has expounded on the guarantee and its implementation by reiterating that the employer must furnish the worker to be dismissed with two written notices before termination of employment can be effected: a ***first written notice*** that informs the worker of the particular acts or omissions for which his or her dismissal is sought, and ***a second written notice*** which informs the worker of the employer's decision to dismiss him.[15]

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[14] Implementing Rules of Book VI of the Labor Code, Rule 1, Section 2, as amended by Department Order No. 10, series of 1997.

[15] *Tiu v. NLRC*, G.R. No. 83433, November 12, 1992, 215 SCRA 540; see also: *Serrano* and *Agabon* cases, *supra* note 13.

Between these two notices, the worker must be afforded ample opportunity to be heard in the manner the ponencia has very ably discussed.

The Confusion and Submission

Apparently, confusion has resulted in construing what ***"ample opportunity to be heard"*** requires because the implementing rules of the Labor Code themselves require that there be an ***actual hearing*** despite the clear text of the Labor Code that only requires ample opportunity to be heard.

I submit that *in the absence of a clear legislative intent* that what is intended is an actual hearing, the Court cannot construe the statutory procedural due process guaranty as an absolute requirement for an actual hearing in the way that at least two cases, namely *King of Kings of Transport, Inc. v. Mamac*[16] and *R.B. Michael Press v. Galit*[17] now require.

a. Historical Reason.

Procedural due process cannot be read completely dissociated from its roots. While the concept of procedural fairness that it embodies originated as a requirement in judicial proceedings, the concept has been extended to procedures that were not strictly judicial as regulatory fact-finding was devolved and delegated to administrative tribunals. The devolution was driven by need; it was beyond the capability of the courts to attend to the ever-increasing demands of regulation as society became increasingly complex. As discussed above, a trial-type procedure is not an absolute necessity in administrative due process. *In fact, in the U.S., not every administrative decision-making requires a hearing.*[18] As the U.S. Supreme Court stated in the *Mathews* ruling we quoted above: "[d]ue process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances. *[Due process] is*

[16] G.R. No. 166208, June 29, 2007, 526 SCRA 116.

[17] G.R. No. 153510, February 13, 2008, 545 SCRA 23.

[18] *Supra* note 7.

flexible and calls for such procedural protections as the particular situation demands."[19] [Italics supplied]

b. <u>Philippine Procedural Due Process Developments</u>.

Our Constitution does not expressly define the principles that embody due process, as it is a concept intended to counterbalance a flexible power of state – police power. Early on, jurisprudence has recognized distinctions between procedural due process in judicial proceedings and in administrative proceedings.

In a long line of cases starting with *Banco Espanol v. Palanca,*[20] the requirements of procedural due process in judicial proceedings have been defined.[21] In these proceedings, the quantum of evidence that the prosecution must meet in criminal cases is proof beyond reasonable doubt,[22] while in civil cases the standard has been described as "preponderance of evidence."[23] The requirements of procedural due process in administrative

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[19] *Supra* note 8.

[20] 37 Phil. 921 (1918).

[21] The requirements of due process in judicial proceedings are as follows: 1) an impartial court or tribunal clothed with judicial power to hear and determine the matter before it; 2) jurisdiction lawfully acquired over the person of the defendant and over the property which is the subject matter of the proceeding; 3) an opportunity to be heard afforded to the defendant; and 4) judgment rendered upon lawful hearing.

[22] *People v. Berroya,* G.R. No. 122487, December 12, 1997, 283 SCRA 111.

[23] *Supreme Transliner, Incorporated v. Court of Appeals,* G.R. No. 125356, November 21, 2001*,* 370 SCRA 41.

[24] 69 Phil. 635 (1940); the observance of due process in administrative proceedings requires the following: (1) the right to a hearing, which includes the right of the party interested to present his own case and submit evidence in support thereof; (2) the tribunal must consider the evidence presented; (3) the decision must be supported by evidence; (4) the evidence must be substantial; (5) the decision must be rendered on the evidence present at the hearing, or at least contained in the record and disclosed to the parties affected; (6) the administrative body or any of its judges must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate; and (7) the administrative body should, in all controversial questions, render its decision in such a manner that the parties

proceedings have been similarly defined in the early case of *Ang Tibay v. CIR.*[24] The proof required in these proceedings is the lower standard of "substantial evidence."[25]

The quantum of evidence required in these proceedings impacts on their hearing requirements. While both judicial and administrative proceedings require a hearing and the opportunity to be heard, they differ with respect to the hearing required before a decision can be made. In criminal cases where a constitutional presumption of innocence exists, procedural judicial due process requires that judgment be rendered upon lawful hearing where factual issues are tested through direct and cross-examination of witnesses to arrive at proof beyond reasonable doubt. In civil cases, evidentiary hearings are likewise a must to establish the required preponderance of evidence.[26] Administrative due process, on the other hand, requires that the decision be rendered on the evidence presented at the hearing, *or at least contained in the record and disclosed to the parties concerned*.[27] Thus, substantial reasons justify the variance in the hearing requirements for these proceedings.

c. Due Process in the Private Employment Setting.

Separately from the requirement of due process when State action is involved, the Constitution also guarantees **security of tenure to labor,**[28] which the Labor Code implements by requiring

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to the proceeding can know the various issues involved, and the reasons for the decisions rendered.

[25] Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. See *Domasig v. National Labor Relations Commission*, G.R. No. 118101, September 16, 1996, 261 SCRA 779.

[26] See *People v. Dapitan*, G.R. No. 90625, May 23, 1991, 197 SCRA 378, citing *People v. Castillo,* 76 Phil. 72 (1946); *Banco Español de Filipino v. Palanca*, *supra* at note 20; *Macabingkil v. Yatco*, 21 SCRA 150 (1967); *Apurillo v. Garciano,* 28 SCRA 1054 (1969); *Shell Company of the Philippines, Ltd. v. Enage*, 49 SCRA 416 (1973); *Lorenzana v. Cayetano*, 68 SCRA 485 (1975).

[27] *Cuenca v. Atas,* G.R. No. 146214, October 5, 2007, 535 SCRA 48; *Alliance of Democratic Free Labor Organization v. Laguesma*, G.R. No. 108625, March 11, 1996, 254 SCRA 565.

[28] CONSTITUTION, Article XIII, Section 3, par. 2.

that there be a just or authorized cause before an employer can terminate the services of a worker.[29] *This is the equivalent of and what would have satisfied **substantive due process** had a State action been involved.* The equivalent of ***procedural due process*** is detailed under Article 277 of the Labor Code, heretofore quoted, which requires notice and ample opportunity to be heard, both of which are fleshed out in the Implementing Rules of Book VI and in Rule XXIII of Department Order No. 9, Series of 1997, of the Department of Labor.

Thus, from the concept of due process being a limitation on state action, the concept has been applied by statute in implementing the guarantee of security of tenure in the private sector. In *Serrano v. NLRC*,[30] we had the occasion to draw the fine distinction between constitutional due process that applies to governmental action, and the due process requirement imposed by a statute as a limitation on the exercise of private power. Noting the distinctions between constitutional due process and the statutory duty imposed by the Labor Code, the Court thus decided in *Agabon v. NLRC*[31] to treat the effects of failure to comply differently.

d. No Actual Hearing Requirement in the Labor Code.

That an actual hearing in every case is not intended by the Labor Code in dismissal situations is supported by its express wording that only requires an "ample opportunity to be heard," not the "hearing or conference" that its implementing rules require.

The "ample opportunity" required to be provided by the employer is similar in character to the process required in administrative proceedings where, as explained above, an actual hearing is not an absolute necessity. To be sure, it cannot refer to, or be compared with, the requirements of a judicial proceeding whose strict demands necessarily require a formal hearing.

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[29] LABOR CODE, Article 279.

[30] *Supra* note 13.

[31] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

"Judicial declarations are rich to the effect that the essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side. A formal or trial type hearing is not at all times and in all circumstances essential to due process, the requirements of which are satisfied where the parties are afforded fair and reasonable opportunity to explain their side in the controversy."[32] In *Arboleda v. NLRC*,[33] we held that:

> The requirement of notice and hearing in termination cases does not connote full adversarial proceedings as elucidated in numerous cases decided by this Court. Actual adversarial proceedings become necessary only for clarification or when there is a need to propound searching questions to witnesses who give vague testimonies. This is a procedural right that the employee must ask for since it is not an inherent right, and summary proceedings may be conducted thereon.

To the same effect is the following statement of Mr. Chief Justice Reynato S. Puno, albeit in a dissenting opinion, in *Agabon*: *"[t]his is not to hold that a trial-type proceeding is required to be conducted by employers. Hearings before the employers prior to the dismissal are in the nature of and akin to administrative due process which is free from the rigidity of certain procedural requirements,"* citing Mr. Justice Laurel's dictum in the landmark *Ang Tibay v. Court of Industrial Relations*. We have even held in *China Banking Corporation v. Borromeo*[34] that no formal administrative investigation is necessary in the process of dismissing an employee where the employee expressly admitted his infraction. All that is needed is to inform the employee of the findings of management.

The identity of the actor should not also be lost on us in considering the "ample opportunity" requirement. Judicial and quasi-judicial processes are undertaken by the state, while the dismissal action the Labor Code regulates is undertaken by a private sector employer. A distinction between these actors ought

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[32] *Neeco III v. NLRC*, G.R. No. 157603, June 23, 2005, 461 SCRA 169.

[33] G.R. No. 119503, February 11, 1999, 303 SCRA 38.

[34] G.R. No. 156515, October 19, 2004, 440 SCRA 621.

to be recognized and given a proper valuation in considering the processes required from each. Due process in the private realm does not address an all-powerful State clothed with police power and the powers of taxation and eminent domain; it merely addresses a private sector-employer who, constitutionally, shares the same responsibility with the worker for industrial peace, and who is also entitled to reasonable returns on investments and to expansion and growth.[35] Proportionality with the power sought to be limited dictates that due process in its *flexible signification* be applied to a private sector dismissal situation, ensuring only that there is fairness at all times so that the constitutional guarantee of security of tenure is not defeated. Thus, the required processes in a private sector dismissal situation should, *at the most*, be equivalent to those required in administrative proceedings; whether an actual hearing would be required should depend on the circumstances of each case.

Last but not the least, reasonableness and practicality dictate against an actual hearing requirement *in every case of dismissal.* There are simply too many variables to consider in the private sector dismissal situation — ranging from the circumstances of the employer, those of the employee, the presence of a union, and the attendant circumstances of the dismissal itself — so that a hard and fast actual hearing requirement may already be unreasonable for being way beyond what the statutory procedural due process requirement demands. Such a requirement can also substantially tie-up management operations and defeat the efficiency, growth and the profits that management and employees mutually need.

To recapitulate, the "ample opportunity to be heard" the Labor Code expressly requires does not mean an actual hearing in every dismissal action by the employer; whether an actual hearing would be required depends on the circumstances of each case as each particular situation demands. Thus, the identical rulings

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[35] CONSTITUTION, Article XIII, Section 3, pars. 3 and 4.

[36] *Supra* note 16.

[37] *Supra* note 17.

in *King of Kings of Transport, Inc. vs. Mamac*[36] and *R.B. Michael Press vs. Galit*[37] that an actual hearing is a mandatory requirement in employee dismissal should now be read with our present ruling in mind. The Department of Labor and Employment should as well be on notice that this ruling is the legally correct interpretation of Rule I, Section (2)(d)(ii) of Book VI of the Rules to Implement the Labor Code.

SEPARATE CONCURRING AND DISSENTING OPINION

VELASCO, JR., *J.*:

I concur in my esteemed colleague's well-written *ponencia*, except in one issue, to which I hereby register my dissent.

In gist, the facts as contained in the *ponencia* show that Felix B. Perez and Amante G. Doria were dismissed by the Philippine Telegraph and Telephone Company without a hearing or conference for a series of allegedly anomalous transactions.

The only issue covered by my dissent is, are Perez and Doria entitled to a hearing or conference as mandated by Section 2(b), Rule XXIII, Implementing Rules of Book V of the Labor Code?

The *ponencia* resolved this in the negative and held that Sec. 2(b), Rule XXIII, Implementing Rules of Book V,[1] by requiring a hearing, went beyond the terms and provisions of the Labor Code, particularly Article 277(b) thereof that merely requires the employer to provide employees with ample opportunity to be heard and to defend themselves with the assistance of their representatives if they so desire. The *ponencia*, however, conceded that a formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it or when similar circumstances justify. I submit that

[1] Now only Sec. 2(d)(ii), Rule I, Implementing Rules of Book VI of the Labor Code remains, as amended by Department Order No. 40-03, Series of 2003.

the actual hearing or conference is mandatory in ALL dismissal cases for the following reasons:

(1) Art. 277(b) of the Labor Code provides that:

> (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. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. (Emphasis supplied.)

The aforequoted provision states that employees are to be given "ample" opportunity to be heard and defend themselves. However, the word "ample" is vague and not defined in the said provision. Since the meaning of this word is unclear, then it should be given a liberal construction to favor labor. "Ample" means "considerably more than adequate or sufficient."[2] Ample opportunity can be construed to be broad enough to encompass an actual hearing or conference. To be sure, opportunity to be heard does not exclude an actual or formal hearing since such requirement would grant more than sufficient chance for an employee to be heard and adduce evidence. In this sense, I believe there is no discrepancy between Art. 277 and the Implementing Rule in question.

The Implementing Rules thus makes available for employees a considerably or generously sufficient opportunity to defend

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[2] WEBSTER'S *THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED* 74 (1993).

themselves through a hearing or conference. In *Tanala v. NLRC*, we said that:

> With respect to the issue of whether petitioner was denied due process in the administrative procedure entailed in his dismissal, we agree with the labor arbiter that petitioner was indeed denied procedural due process therein. His dismissal was not preceded by any notice of the charges against him and a hearing thereon. **The twin requirements of notice and hearing constitute the essential elements of due process in cases of dismissal of employees.** The purpose of the first requirement is obviously to enable the employee to defend himself against the charge preferred against him by presenting and substantiating his version of the facts.
>
> Contrary to the findings of the NLRC, the notice of preventive suspension cannot be considered as an adequate notice. **Even the fact that petitioner submitted a written explanation after the receipt of the order of suspension is not the "ample opportunity to be heard" contemplated by law. Ample opportunity to be heard is especially accorded to the employee sought to be dismissed after he is informed of the charges in order to give him an opportunity to refute such accusations levelled against him**.
>
> Furthermore, this Court has repeatedly held that to meet the requirements of due process, the law requires that an employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected, that is, (1) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice, **after due hearing**, which informs the employee of the employer's decision to dismiss him.[3] (Emphasis supplied.)

(2) The *ponencia* seems to underscore the absence of any mention of an "actual hearing" in Art. 277(b). It is conceded that there is no explicit mention of an actual hearing or conference in said legal provision. As earlier discussed, the requisite hearing is captured in the phrase "ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires." Even if the phrase "actual hearing" is not specified in

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[3] G.R. No. 116588, January 24, 1996, 252 SCRA 314, 320-321.

Art. 277(b), the same thing is true with respect to the second written notice informing the employee of the employer's decision which is likewise unclear in said provision. Thus, the fact that Art. 277(b) does not expressly mention actual hearing in Art. 277(b) does not bar the Secretary of Labor from issuing a rule (Sec. 2[d][ii], Rule I, Implementing Rules of Book VI of the Labor Code) implementing the provision that what really is meant is an actual hearing or conference. It should be noted that the Secretary of Labor also issued a rule on the need for a second written notice on the decision rendered in the illegal dismissal proceedings despite the silence of Art. 277(b) on the need for a written notice of the employer's decision.

(3) The majority opinion cites the rule in statutory construction that in case of discrepancy between the basic law and its implementing rules, the basic law prevails. In the case at bar, said principle does not apply because precisely there is no clear-cut discrepancy between Art. 277(b) of the Labor Code and Sec. 2(b), Rule XXIII, Implementing Rules of Book V of the Labor Code. To the extent of being repetitive the phrase "ample opportunity to be heard" can be construed to cover an actual hearing. This way, Sec. 2(b), Rule XXIII does not conflict with nor contravene Art. 277(b).

(4) Art. 4 of the Labor Code states that "all doubts in the implementation and interpretation of the provisions of [the Labor Code], including its implementing rules and regulations, shall be resolved in favor of labor." Since the law itself invests the Department of Labor and Employment (DOLE) the power to promulgate rules and regulations to set the standard guidelines for the realization of the provision, then the Implementing Rules should be liberally construed to favor labor. The Implementing Rules, being a product of such rule-making power, has the force and effect of law. Art. 277 of the Labor Code granted the DOLE the authority to develop the guidelines to enforce the process. In accordance with the mandate of the law, the DOLE developed Rule I, Sec. 2(d) of the Implementing Rules of Book VI of the Labor Code which provides that:

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes defined in Article 282 of the Labor Code:

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

(ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(iii) 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.

In any case, the standards of due process contained in Sec. 2(b), Rule XXIII, Implementing Rules of Book V of the Labor Code, and now in Sec. 2(d)(ii), Rule I, Implementing Rules of Books VI of the Labor Code, do not go beyond the terms and provisions of the Labor Code. The Implementing Rules merely encapsulates a vague concept into a concrete idea. In what forum can an employer provide employees with an ample opportunity to be heard and defend themselves with the assistance of a representative? This situation can only take place in a formal hearing or conference which the Implementing Rules provides. The employees may only be fully afforded a chance to respond to the charges made against them, present their evidence, or rebut the evidence presented against them in a formal hearing or conference. Therefore, in my humble opinion, there is no discrepancy between the law and the rules implementing the Labor Code.

(5) In addition, the hearing or conference requirement in termination cases finds support in the long standing jurisprudence in *Ang Tibay v. Court of Industrial Relations*, wherein we declared that the right to a hearing is one of the **cardinal primary**

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[4] 69 Phil. 635, 641-644 (1940).

rights[4] which must be respected even in cases of administrative character. We held:

> There are cardinal rights which must be respected even in proceedings of this character. The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented.

This Court has recognized even the right of students to a **summary proceeding**, in which (a) the students must be informed in writing of the nature and cause of any accusation against them; (b) they shall have the right to answer the charges against them, with the assistance of counsel, if they so desire; (c) they shall be informed of the evidence against them; (d) they shall have the right to adduce evidence in their own behalf; and (e) the evidence must be duly considered by the investigating committee or official designated by the school authorities to hear and decide the case.[5]

If administrative cases recognized that the right to a hearing is a "cardinal primary right" and students are afforded the opportunity to defend themselves by allowing them to answer the charges through their counsel and by adducing their evidence to rebut the charges, what more for employees or laborers in the private sector who are specifically protected by the Constitution's social justice provision? It would be unjust to the laborers if they are not afforded the same chance given to students or even to employees in administrative cases.

(6) Removing the right of employees to a hearing prior to termination would deprive them the opportunity to adduce their evidence. Notice can be taken of the limited opportunity given to the employees by the directive in the first written notice that embodies the charges. More often than not, the directive is only for the employees to explain their side without affording

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[5] *Guzman v. National University*, No. 68288, July 11, 1986, 142 SCRA 699, 706-707.

them the right to present evidence. Furthermore, a hearing gives employees the chance to hire the services of counsel whose presence is beneficial to employees during hearings because the counsel knows the intricacies of the law and the strategies to defend the client — something with which a lay person is most assuredly not familiar. A mere first notice is not sufficient enough for employees to assemble evidence for their defense. Most often, the first notice merely serves as or is limited to a general notice which cites the company rules that were allegedly violated by the employees without explaining in detail the facts and circumstances pertinent to the charges and without attaching the pieces of evidence supporting the same. Lastly, the holding of an actual hearing will prevent the railroading of dismissal of employees as the employers are obliged to present convincing evidence to support the charges. All in all, the advantages far outweigh the disadvantages in holding an actual hearing.

(7) The indispensability of a hearing is advantageous to both the employer and the employee because they are given the opportunity to settle the dispute or resort to the use of alternative dispute resolution to deflect the filing of cases with the NLRC and later the courts. It is important that a hearing is prescribed by the law since this is the best time that the possibility of a compromise agreement or a settlement can be exhaustively discussed and entered into. During this hearing, the relations of the parties may not be that strained and, therefore, they are more likely receptive to a compromise. Once dismissal is ordered by the employer, the deteriorated relationship renders the possibility of an amicable settlement almost nil. Thus, a hearing can help the parties come up with a settlement that will benefit them and encourage an out-of-court settlement which would be less expensive, creating a "win-win" situation for them. Of course the compromise agreement, as a product of the settlement, should be subscribed and sworn to before the labor official or arbiter.

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[6] G.R. No. 166208, June 29, 2007, 526 SCRA 116.

[7] G.R. No. 153510, February 13, 2008, 545 SCRA 23.

(8) Recent holdings of this Court have explained the propriety and necessity of an actual hearing or conference before an employee is dismissed. In *King of Kings Transport, Inc. v. Mamac*,[6] reiterated in *R.B. Michael Press v. Galit*,[7] we explained that the requirement of a hearing or conference is a necessary and indispensable element of procedural due process in the termination of employees, thus:

To clarify, the following should be considered in terminating the services of employees:

(1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

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[8] *King of Kings Transport, Inc.*, *supra* at 125-126.

(3) After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[8]

(9) Lastly, a liberal interpretation of Art. 277(b) of the Labor Code would be in keeping with Art. XIII of the Constitution which dictates the promotion of social justice and ordains full protection to labor. The basic tenet of social justice is that "those who have less in life must have more in law." Social justice commands the protection by the State of the needy and the less fortunate members of society. This command becomes all the more firm in labor cases where security of tenure is also an issue. In *Rance v. NLRC*, we declared that:

> It is the policy of the state to assure the right of workers to "security of tenure" (Article XIII, Sec. 3 of the New Constitution, Section 9, Article II of the 1973 Constitution). The guarantee is an act of social justice. When a person has no property, his job may possibly be his only possession or means of livelihood. Therefore, he should be protected against any arbitrary deprivation of his job. Article 280 of the Labor Code has construed security of tenure as meaning that "the employer shall not terminate the services of an employee except for a just cause or when authorized by" the code (*Bundoc v. People's Bank and Trust Company*, 103 SCRA 599 [1981]). Dismissal is not justified for being arbitrary where the workers were denied due process (*Reyes v. Philippine Duplicators, Inc.*, 109 SCRA 489 [1981]) and a clear denial of due process, or constitutional right must be safeguarded against at all times, (*De Leon v. National Labor Relations Commission*, 100 SCRA 691 [1980]).[9]

Between an employer and an employee, the latter is oftentimes on the losing or inferior position. Without the mandatory requirement of a hearing, employees may be unjustly terminated from their work, effectively losing their means of livelihood. The right of persons to their work is considered a property right which is well within the meaning of the constitutional guarantee.[10] Depriving employees their job without due process essentially amounts to a deprivation of property without due process.

We have applied social justice even to cases of just dismissal to grant equitable relief to laborers who were validly dismissed.

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[9] No. 68147, June 30, 1988, 163 SCRA 279, 284-285.

[10] *Batangas Laguna Tayabas Bus Co. v. Court of Appeals*, No. L-38482, June 18, 1976, 71 SCRA 470, 480.

WHEREFORE, we hereby *DECLARE* the mortgages constituted on OCT Nos. 24800, 24801, 25217 and 25802 *VOID* and, for this reason, we *DISMISS* the petition. We *AFFIRM* the approval of the compromise agreement by the Court of Appeals and the disposition of the case on the basis of compromise. The order to remand the case to the Regional Trial Court, Branch IV, Tuguegarao, Cagayan, for further proceedings is therefore *REVERSED*.

Costs against petitioner PNB.

SO ORDERED.

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

EN BANC

[G.R. No. 152048. April 7, 2009]

FELIX B. PEREZ and AMANTE G. DORIA, *petitioners, vs.* **PHILIPPINE TELEGRAPH AND TELEPHONE COMPANY and JOSE LUIS SANTIAGO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; LOSS OF CONFIDENCE; SHOULD BE ADEQUATELY PROVEN BY SUBSTANTIAL EVIDENCE. — Willful breach by the employee of the trust reposed in him by his employer or duly authorized representative is a just cause for termination. However, in *General Bank and Trust Co. v. CA,* we said: "[L]oss of confidence should not be simulated. It should not be used as a subterfuge for causes which are improper, illegal or unjustified. Loss of confidence may not be arbitrarily asserted

in the face of overwhelming evidence to the contrary. It must be genuine, not a mere afterthought to justify an earlier action taken in bad faith." The burden of proof rests on the employer to establish that the dismissal is for cause in view of the security of tenure that employees enjoy under the Constitution and the Labor Code. The employer's evidence must clearly and convincingly show the facts on which the loss of confidence in the employee may be fairly made to rest. It must be adequately proven by substantial evidence.

2. **ID.; ID.; ID.; TWO WRITTEN NOTICES, MANDATORY TO MEET THE REQUIREMENTS OF DUE PROCESS. —** To meet the requirements of due process in the dismissal of an employee, an employer must furnish the worker with two written notices: (1) a written notice specifying the grounds for termination and giving to said employee a reasonable opportunity to explain his side and (2) another written notice indicating that, upon due consideration of all circumstances, grounds have been established to justify the employer's decision to dismiss the employee.

3. **POLITICAL LAW; STATUTES; INTERPRETATION OF; IN CASE OF CONFLICT, THE LAW PREVAILS OVER THE ADMINISTRATIVE REGULATIONS IMPLEMENTING IT. —** [I]n case of conflict, the law prevails over the administrative regulations implementing it. The authority to promulgate implementing rules proceeds from the law itself. To be valid, a rule or regulation must conform to and be consistent with the provisions of the enabling statute. As such, it cannot amend the law either by abridging or expanding its scope.

4. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; THE DUE PROCESS REQUIREMENT IN CASES OF TERMINATION OF EMPLOYMENT DOES NOT REQUIRE AN ACTUAL OR FORMAL HEARING; EXPLAINED. —** Article 277(b) of the Labor Code provides that, in cases of termination for a just cause, an employee must be given "ample opportunity to be heard and to defend himself." Thus, the opportunity to be heard afforded by law to the employee is qualified by the word "ample" which ordinarily means "considerably more than adequate or sufficient." In this regard, the phrase "ample opportunity to be heard" can be reasonably interpreted as extensive enough to cover actual hearing or conference. To

this extent, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code is in conformity with Article 277(b). Nonetheless, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code should not be taken to mean that holding an actual hearing or conference is a condition *sine qua non* for compliance with the due process requirement in termination of employment. The test for the fair procedure guaranteed under Article 277(b) cannot be whether there has been a formal pretermination confrontation between the employer and the employee. The "ample opportunity to be heard" standard is neither synonymous nor similar to a formal hearing. To confine the employee's right to be heard to a solitary form narrows down that right. It deprives him of other equally effective forms of adducing evidence in his defense. Certainly, such an exclusivist and absolutist interpretation is overly restrictive. *The "very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation."* The standard for the hearing requirement, ample opportunity, is couched in general language revealing the legislative intent to give some degree of flexibility or adaptability to meet the peculiarities of a given situation. To confine it to a single rigid proceeding such as a formal hearing will defeat its spirit. Significantly, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code itself provides that the so-called standards of due process outlined therein shall be observed *"substantially,"* not strictly. This is a recognition that *while a formal hearing or conference is ideal, it is not an absolute, mandatory or exclusive avenue of due process.* An employee's right to be heard in termination cases under Article 277(b) as implemented by Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code should be interpreted in broad strokes. It is satisfied not only by a formal face to face confrontation but by any meaningful opportunity to controvert the charges against him and to submit evidence in support thereof. A hearing means that a party should be given a chance to adduce his evidence to support his side of the case and that the evidence should be taken into account in the adjudication of the controversy. *"To be heard" does not mean verbal argumentation alone inasmuch as one may be heard just as effectively through written explanations, submissions or pleadings.* Therefore, while the phrase "ample opportunity to be heard" may in fact include an actual hearing,

it is not limited to a formal hearing only. In other words, the existence of an actual, formal "trial-type" hearing, although preferred, is not absolutely necessary to satisfy the employee's right to be heard. This Court has consistently ruled that the due process requirement in cases of termination of employment does not require an actual or formal hearing.

5. **ID.; ID.; ID.; GUIDING PRINCIPLES IN CONNECTION WITH THE HEARING REQUIREMENT IN DISMISSAL CASES. —** [T]he following are the guiding principles in connection with the hearing requirement in dismissal cases: (a) "ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way. (b) a formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it. (c) the "ample opportunity to be heard" standard in the Labor Code prevails over the "hearing or conference" requirement in the implementing rules and regulations.

6. **ID.; ID.; OMNIBUS RULES IMPLEMENTING THE LABOR CODE; TERMINATION OF EMPLOYMENT; SUSPENSION OF EMPLOYEE FOR JUST CAUSE; AN EMPLOYEE MAY BE VALIDLY SUSPENDED BY THE EMPLOYER FOR A PERIOD OF THIRTY DAYS. —** An employee may be validly suspended by the employer for just cause provided by law. Such suspension shall only be for a period of 30 days, after which the employee shall either be reinstated or paid his wages during the extended period.

7. **ID.; ID.; TERMINATION OF EMPLOYMENT; DISMISSAL WITHOUT JUST OR AUTHORIZED CAUSE AND WITHOUT DUE PROCESS; EFFECT; CASE AT BAR. —** Where the dismissal was without just or authorized cause and there was no due process, Article 279 of the Labor Code, as amended, mandates that the employee is entitled to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement. In this case, however, reinstatement is no longer possible because of

the length of time that has passed from the date of the incident to final resolution. Fourteen years have transpired from the time petitioners were wrongfully dismissed. To order reinstatement at this juncture will no longer serve any prudent or practical purpose.

BRION, ***J., concurring opinion:***

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; TWO WRITTEN NOTICES, REQUIRED BEFORE TERMINATION OF EMPLOYMENT CAN BE EFFECTED. —** [T]he employer must furnish the worker to be dismissed with two written notices before termination of employment can be effected: a ***first written notice*** that informs the worker of the particular acts or omissions for which his or her dismissal is sought, and ***a second written notice*** which informs the worker of the employer's decision to dismiss him. ***Between these two notices, the worker must be afforded ample opportunity to be heard*** x x x.

2. **POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; BILL OF RIGHTS; DUE PROCESS; PROCEDURAL DUE PROCESS; EXPLAINED. —** In a long line of cases starting with *Banco Espanol v. Palanca*, the requirements of procedural due process in judicial proceedings have been defined. In these proceedings, the quantum of evidence that the prosecution must meet in criminal cases is proof beyond reasonable doubt, while in civil cases the standard has been described as "preponderance of evidence." The requirements of procedural due process in administrative proceedings have been similarly defined in the early case of *Ang Tibay v. CIR.* The proof required in these proceedings is the lower standard of "substantial evidence." The quantum of evidence required in these proceedings impacts on their hearing requirements. While both judicial and administrative proceedings require a hearing and the opportunity to be heard, they differ with respect to the hearing required before a decision can be made. In criminal cases where a constitutional presumption of innocence exists, procedural judicial due process requires that judgment be rendered upon lawful hearing where factual issues are tested through direct and cross-examination of witnesses to arrive at proof beyond reasonable doubt. In civil cases, evidentiary hearing are likewise

a must to establish the required preponderance of evidence. Administrative due process, on the other hand, requires that the decision be rendered on the evidence presented at the hearing, *or at least contained in the record and disclosed to the parties concerned.* Thus, substantial reasons justify the variance in the hearing requirements for these proceedings.

3. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; PROCEDURAL DUE PROCESS UNDER THE CODE REQUIRES NOTICE AND AMPLE OPPORTUNITY TO BE HEARD. —** Separately from the requirement of due process when State action is involved, the Constitution also guarantees **security of tenure to labor***,* which the Labor Code implements by requiring that there be a just or authorized cause before an employer can terminate the services of a worker. *This is the equivalent of and what would have satisfied* ***substantive due process*** *had a State action been involved.* The equivalent of ***procedural due process*** is detailed under Article 277 of the Labor Code, heretofore quoted, which requires notice and ample opportunity to be heard, both of which are fleshed out in the Implementing Rules of Book VI and in Rule XXIII of Department Order No. 9, Series of 1997, of the Department of Labor. *Thus, from the concept of due process being a limitation on state action, the concept has been applied by statute in implementing the guarantee of security of tenure in the private sector.* In *Serrano v. NLRC,* we had the occasion to draw the fine distinction between constitutional due process that applies to governmental action, and the due process requirement imposed by a statute as a limitation on the exercise of private power. Noting the distinctions between constitutional due process and the statutory duty imposed by the Labor Code, the Court thus decided in *Agabon v. NLRC* to treat the effects of failure to comply differently.

4. **ID.; ID.; ID.; ID.; ACTUAL HEARING, NOT AN ABSOLUTE NECESSITY. —** That an actual hearing in every case is not intended by the Labor Code in dismissal situations is supported by its express wording that only requires an "ample opportunity to be heard," not the "hearing or conference" that its implementing rules require. The "ample opportunity" required to be provided by the employer is similar in character to the process required in administrative proceedings where x x x an

actual hearing is not an absolute necessity. To be sure, it cannot refer to, or be compared with, the requirements of a judicial proceeding whose strict demands necessarily require a formal hearing. "Judicial declarations are rich to the effect that the essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side. A formal or trial type hearing is not at all time and in all circumstances essential to due process, the requirements of which are satisfied where the parties are afforded fair and reasonable opportunity to explain their side in the controversy."

5. **ID.; ID.; ID.; ID.; WHETHER AN ACTUAL HEARING WOULD BE REQUIRED SHOULD DEPEND ON THE CIRCUMSTANCES OF EACH CASE IN A PRIVATE SECTOR DISMISSAL SITUATION.** — Judicial and quasi-judicial processes are undertaken by the state, while the dismissal action the Labor Code regulates is undertaken by a private sector employer. A distinction between these actors ought to be recognized and given a proper valuation in considering the processes required from each. Due process in the private realm does not address an all-powerful State clothed with police power and the powers of taxation and eminent domain; it merely addresses a private sector-employer who, constitutionally, shares the same responsibility with the worker for industrial peace, and who is also entitled to reasonable returns on investments and to expansion and growth. Proportionality with the power sought to be limited dictates that due process in its *flexible signification* be applied to a private sector dismissal situation, ensuring only that there is fairness at all times so that the constitutional guarantee of security of tenure is not defeated. Thus, the required processes in a private sector dismissal situation should, *at the most*, be equivalent to those required in administrative proceedings; whether an actual hearing would be required should depend on the circumstances of each case.

VELASCO, JR., ***J., separate concurring and dissenting opinion:***

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; ARTICLE 277 (B) THEREOF; CONSTRUED.** — Art. 277 (b) of the Labor Code x x x states that employees are to be given "ample" opportunity to be heard and defend themselves.

However, the word "ample" is vague and not defined in the said provision. Since the meaning of this word is unclear, then it should be given a liberal construction to favor labor. "Ample" means "considerably more than adequate or sufficient." Ample opportunity can be construed to be broad enough to encompass an actual hearing or conference. To be sure, opportunity to be heard does not exclude an actual or formal hearing since such requirement would grant more than sufficient chance for an employee to be heard and adduce evidence. In this sense, I believe there is no discrepancy between Art. 277 and the Implementing Rule in question.

2. **ID.; ID.; ID.; REQUISITE HEARING; CAPTURED IN THE PHRASE "AMPLE OPPORTUNITY TO BE HEARD AND TO DEFEND HIMSELF WITH THE ASSISTANCE OF HIS REPRESENTATIVE IF HE SO DESIRES." —** The *ponencia* seems to underscore the absence of any mention of an "actual hearing" in Art. 277(b). It is conceded that there is no explicit mention of an actual hearing or conference in said legal provision. x x x [T]he requisite hearing is captured in the phrase "ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires." Even if the phrase "actual hearing" is not specified in Art. 277(b), the same thing is true with respect to the second written notice informing the employee of the employer's decision which is likewise unclear in said provision. Thus, the fact that Art. 277(b) does not expressly mention actual hearing in Art. 277(b) does not bar the Secretary of Labor from issuing a rule (Sec. 2[d][ii], Rule I, Implementing Rules of Book VI of the Labor Code) implementing the provision that what really is meant is an actual hearing or conference. It should be noted that the Secretary of Labor also issued a rule on the need for a second written notice on the decision rendered in the illegal dismissal proceedings despite the silence of Art. 277(b) on the need for a written notice of the employer's decision.

3. **ID.; ID.; TERMINATION OF EMPLOYMENT; NECESSITY OF HEARING PRIOR TO TERMINATION; SIGNIFICANCE. —** Removing the right of employees to a hearing prior to termination would deprive them the opportunity to adduce their evidence. Notice can be taken of the limited opportunity given to the employees by the directive in the first written notice that embodies the charges. More often than not, the directive

is only for the employees to explain their side without affording them the right to present evidence. Furthermore, a hearing gives employees the chance to hire the services of counsel whose presence is beneficial to employees during hearings because the counsel knows the intricacies of the law and the strategies to defend the client — something with which a lay person is most assuredly not familiar. A mere first notice is not sufficient enough for employees to assemble evidence for their defense. Most often, the first notice merely serves as or is limited to a general notice whch cites the company rules that were allegedly violated by the employees without explaining in detail the facts and circumstances pertinent to the charges and without attaching the pieces of evidence supporting the same. Lastly, the holding of an actual hearing will prevent the railroading of dismissal of employees as the employers are obliged to present convincing evidence to support the charges. All in all, the advantages far outweigh the disadvantages in holding an actual hearing. x x x The indispensability of a hearing is advantageous to both the employer and the employee because they are given the opportunity to settle the dispute or resort to the use of alternative dispute resolution to deflect the filing of cases with the NLRC and later the courts. It is important that a hearing is prescribed by the law since this is the best time that the possibility of a compromise agreement or a settlement can be exhaustively discussed and entered into. During this hearing, the relations of the parties may not be that strained and, therefore, they are more likely receptive to a compromise. Once dismissal is ordered by the employer, the deteriorated relationship renders the possibility of an amicable settlement almost nil. Thus, a hearing can help the parties come up with a settlement that will benefit them and encourage an out-of-court settlement which would be less expensive, creating a "win-win" situation for them. Of course the compromise agreement, as a product of the settlement, should be subscribed and sworn to before the labor official or arbiter.

4. **ID.; ID.; SOCIAL LEGISLATIONS, SUCH AS THE LABOR CODE, SHOULD BE LIBERALLY CONSTRUED. —** [A] liberal interpretation of Art. 277(b) of the Labor Code would be in keeping with Art. XIII of the Constitution which dictates the promotion of social justice and ordains full protection to labor. The basic tenet of social justice is that "those who have

less in life must have more in law." Social justice commands the protection by the State of the needy and the less fortunate members of society. This command becomes all the more firm in labor cases where security of tenure is also an issue. x x x Between an employer and an employee, the latter is oftentimes on the losing or inferior position. Without the mandatory requirement of a hearing, employees may be unjustly terminated from their work, effectively losing their means of livelihood. The right of persons to their work is considered a property right which is well within the meaning of the constitutional guarantee. Depriving employees their job without due process essentially amounts to a deprivation of property without due process. We have applied social justice even to cases of just dismissal to grant equitable relief to laborers who were validly dismissed. We also termed social justice as "compassionate" justice. Thus, the State should always show compassion and afford protection to those who are in most need — the laborers. Knowing that poverty and gross inequality are among the major problems of our country, then laws and procedures which have the aim of alleviating those problems should be liberally construed and interpreted in favor of the underprivileged. Thus, social legislations, such as the Labor Code, should be liberally construed to attain its laudable objectives.

APPEARANCES OF COUNSEL

Domingo G. Foronda for petitioners.
Melchor Ella Ancheta Law Firm for respondents.

D E C I S I O N

CORONA, *J.*:

Petitioners Felix B. Perez and Amante G. Doria were employed by respondent Philippine Telegraph and Telephone Company (PT&T) as shipping clerk and supervisor, respectively, in PT&T's Shipping Section, Materials Management Group.

Acting on an alleged unsigned letter regarding anomalous transactions at the Shipping Section, respondents formed a special audit team to investigate the matter. It was discovered that the

Shipping Section jacked up the value of the freight costs for goods shipped and that the duplicates of the shipping documents allegedly showed traces of tampering, alteration and superimposition.

On September 3, 1993, petitioners were placed on preventive suspension for 30 days for their alleged involvement in the anomaly.[1] Their suspension was extended for 15 days twice: first on October 3, 1993[2] and second on October 18, 1993.[3]

On October 29, 1993, a memorandum with the following tenor was issued by respondents:

> In line with the recommendation of the AVP-Audit as presented in his report of October 15, 1993 (copy attached) and the subsequent filing of criminal charges against the parties mentioned therein, [Mr. Felix Perez and Mr. Amante Doria are] *hereby dismissed from the service having falsified company documents*.[4] (emphasis supplied)

On November 9, 1993, petitioners filed a complaint for illegal suspension and illegal dismissal.[5] They alleged that they were dismissed on November 8, 1993, the date they received the above-mentioned memorandum.

The labor arbiter found that the 30-day extension of petitioners' suspension and their subsequent dismissal were both illegal. He ordered respondents to pay petitioners their salaries during their 30-day illegal suspension, as well as to reinstate them with backwages and 13th month pay.

The National Labor Relations Commission (NLRC) reversed the decision of the labor arbiter. It ruled that petitioners were dismissed for just cause, that they were accorded due process

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[1] Records, pp. 70-71.

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

[3] *Id.*, pp. 74-75.

[4] *Id.*, p. 76.

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

and that they were illegally suspended for only 15 days (without stating the reason for the reduction of the period of petitioners' illegal suspension).[6]

Petitioners appealed to the Court of Appeals (CA). In its January 29, 2002 decision,[7] the CA affirmed the NLRC decision insofar as petitioners' illegal suspension for 15 days and dismissal for just cause were concerned. However, it found that petitioners were dismissed without due process.

Petitioners now seek a reversal of the CA decision. They contend that there was no just cause for their dismissal, that they were not accorded due process and that they were illegally suspended for 30 days.

We rule in favor of petitioners.

RESPONDENTS FAILED TO PROVE JUST CAUSE AND TO OBSERVE DUE PROCESS

The CA, in upholding the NLRC's decision, reasoned that there was sufficient basis for respondents to lose their confidence in petitioners[8] for allegedly tampering with the shipping documents. Respondents emphasized the importance of a shipping order or request, as it was the basis of their liability to a cargo forwarder.[9]

We disagree.

Without undermining the importance of a shipping order or request, we find respondents' evidence insufficient to clearly and convincingly establish the facts from which the loss of

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[6] Decision penned by Commissioner Ireneo B. Bernardo, and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Joaquin A. Tanodra.

[7] Decision of the Court of Appeals, penned by Associate Justice (now retired Associate Justice of the Supreme Court) Ruben T. Reyes, and concurred in by Associate Justices Renato C. Dacudao and Mariano C. del Castillo of the Ninth Division of the Court of Appeals.

[8] *Rollo*, p. 34.

[9] Records, p. 107.

confidence resulted.[10] Other than their bare allegations and the fact that such documents came into petitioners' hands at some point, respondents should have provided evidence of petitioners' functions, the extent of their duties, the procedure in the handling and approval of shipping requests and the fact that no personnel other than petitioners were involved. There was, therefore, a patent paucity of proof connecting petitioners to the alleged tampering of shipping documents.

The alterations on the shipping documents could not reasonably be attributed to petitioners because it was never proven that petitioners alone had control of or access to these documents. Unless duly proved or sufficiently substantiated otherwise, impartial tribunals should not rely only on the statement of the employer that it has lost confidence in its employee.[11]

Willful breach by the employee of the trust reposed in him by his employer or duly authorized representative is a just cause for termination.[12] However, in *General Bank and Trust Co. v. CA,*[13] we said:

> [L]oss of confidence should not be simulated. It should not be used as a subterfuge for causes which are improper, illegal or unjustified. Loss of confidence may not be arbitrarily asserted in the face of overwhelming evidence to the contrary. It must be genuine, not a mere afterthought to justify an earlier action taken in bad faith.

The burden of proof rests on the employer to establish that the dismissal is for cause in view of the security of tenure that employees enjoy under the Constitution and the Labor Code. The employer's evidence must clearly and convincingly show the facts on which the loss of confidence in the employee may

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[10] *Commercial Motors Corporation v. Commissioners, et al.,* G.R. No. 14762, 10 December 1990, 192 SCRA 191, 197.

[11] *Santos v. NLRC,* G.R. No. 76991, October 28, 1988, 166 SCRA 759, 765; *De Leon v. NLRC,* G.R. No. 52056, October 30, 1980, 100 SCRA 691, 700.

[12] LABOR CODE, Book VI, Title 1, Art. 282 (c).

[13] G.R. No. L-42724, 9 April 1985, 135 SCRA 569, 578.

be fairly made to rest.[14] It must be adequately proven by substantial evidence.[15] Respondents failed to discharge this burden.

Respondents' illegal act of dismissing petitioners was aggravated by their failure to observe due process. To meet the requirements of due process in the dismissal of an employee, an employer must furnish the worker with two written notices: (1) a written notice specifying the grounds for termination and giving to said employee a reasonable opportunity to explain his side and (2) another written notice indicating that, upon due consideration of all circumstances, grounds have been established to justify the employer's decision to dismiss the employee.[16]

Petitioners were neither apprised of the charges against them nor given a chance to defend themselves. They were simply and arbitrarily separated from work and served notices of termination in total disregard of their rights to due process and security of tenure. The labor arbiter and the CA correctly found that respondents failed to comply with the two-notice requirement for terminating employees.

Petitioners likewise contended that due process was not observed in the absence of a *hearing* in which they could have explained their side and refuted the evidence against them.

There is no need for a hearing or conference. We note a marked difference in the standards of due process to be followed as prescribed in the Labor Code and its implementing rules. The Labor Code, on one hand, provides that an employer must provide the employee *ample opportunity to be heard and to defend himself* with the assistance of his representative if he so desires:

ART. 277. *Miscellaneous provisions.* — x x x

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[14] *Imperial Textile Mills, Inc. v. NLRC*, G.R. No. 101527, 19 January 1993, 217 SCRA 237, 244-245.

[15] *Starlite Plastic Industrial Corp. v. NLRC*, G.R. No. 78491, 16 March 1989, 171 SCRA 315, 324.

[16] Omnibus Rules Implementing the Labor Code, Book VI, Rule 1, Sec. 2 (a) and (c).

(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. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. (emphasis supplied)

The omnibus rules implementing the Labor Code, on the other hand, *require a hearing and conference* during which the employee concerned is given the opportunity to respond to the charge, present his evidence or rebut the evidence presented against him:[17]

Section 2. *Security of Tenure*. — x x x

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

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

(ii) **A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him.**

(iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances,

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[17] Section 2(d), Rule I, Implementing Rules of Book VI of the Labor Code.

grounds have been established to justify his termination. (emphasis supplied)

Which one should be followed? Is a hearing (or conference) mandatory in cases involving the dismissal of an employee? Can the apparent conflict between the law and its IRR be reconciled?

At the outset, we reaffirm the time-honored doctrine that, in case of conflict, the law prevails over the administrative regulations implementing it.[18] The authority to promulgate implementing rules proceeds from the law itself. To be valid, a rule or regulation must conform to and be consistent with the provisions of the enabling statute.[19] As such, it cannot amend the law either by abridging or expanding its scope.[20]

Article 277(b) of the Labor Code provides that, in cases of termination for a just cause, an employee must be given "ample opportunity to be heard and to defend himself." Thus, the opportunity to be heard afforded by law to the employee is qualified by the word "ample" which ordinarily means "considerably more than adequate or sufficient."[21] In this regard, the phrase "ample opportunity to be heard" can be reasonably interpreted as extensive enough to cover actual hearing or conference. To this extent, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code is in conformity with Article 277(b).

Nonetheless, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code should not be taken to mean that holding an actual hearing or conference is a condition *sine*

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[18] See *Conte v. Palma*, 332 Phil. 20 (1996) citing *Kilusang Mayo Uno Labor Center v. Garcia, Jr.*, G.R. No. 115381, 23 December 1994, 239 SCRA 386.

[19] *Id.* citing *Lina Jr. v. Cariño*, G.R. No. 100127, 23 April 1993, 221 SCRA 515.

[20] Implementing rules and regulations may not enlarge, alter or restrict the provisions of the law they seek to implement; they cannot engraft additional requirements not contemplated by the legislature (*Pilipinas Kao, Inc. v. Court of Appeals*, 423 Phil. 834 [2001]).

[21] WEBSTER'S *THIRD NEW COLLEGIATE INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED*, p. 74, 1993 edition.

qua non for compliance with the due process requirement in termination of employment. The test for the fair procedure guaranteed under Article 277(b) cannot be whether there has been a formal pretermination confrontation between the employer and the employee. The "ample opportunity to be heard" standard is neither synonymous nor similar to a formal hearing. To confine the employee's right to be heard to a solitary form narrows down that right. It deprives him of other equally effective forms of adducing evidence in his defense. Certainly, such an exclusivist and absolutist interpretation is overly restrictive. *The "very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation."*[22]

The standard for the hearing requirement, ample opportunity, is couched in general language revealing the legislative intent to give some degree of flexibility or adaptability to meet the peculiarities of a given situation. To confine it to a single rigid proceeding such as a formal hearing will defeat its spirit.

Significantly, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code itself provides that the so-called standards of due process outlined therein shall be observed *"substantially,"* not strictly. This is a recognition that *while a formal hearing or conference is ideal, it is not an absolute, mandatory or exclusive avenue of due process.*

An employee's right to be heard in termination cases under Article 277(b) as implemented by Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code should be interpreted in broad strokes. It is satisfied not only by a formal face to face confrontation but by any meaningful opportunity to controvert the charges against him and to submit evidence in support thereof.

A hearing means that a party should be given a chance to adduce his evidence to support his side of the case and that the evidence should be taken into account in the adjudication of the controversy.[23]

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[22] *Cafeteria Workers v. McElroy*, 367 U.S. 886 (1961).

[23] *Gonzales v. Commission on Elections*, G.R. No. 52789, 19 December 1980, 101 SCRA 752.

"To be heard" does not mean verbal argumentation alone inasmuch as one may be heard just as effectively through written explanations, submissions or pleadings.[24] Therefore, while the phrase "ample opportunity to be heard" may in fact include an actual hearing, it is not limited to a formal hearing only. In other words, the existence of an actual, formal "trial-type" hearing, although preferred, is not absolutely necessary to satisfy the employee's right to be heard.

This Court has consistently ruled that the due process requirement in cases of termination of employment does not require an actual or formal hearing. Thus, we categorically declared in *Skipper's United Pacific, Inc. v. Maguad*:[25]

The Labor Code does not, of course, require a formal or trial type proceeding before an erring employee may be dismissed. (emphasis supplied)

In *Autobus Workers' Union v. NLRC*,[26] we ruled:

The twin requirements of notice and hearing constitute the essential elements of due process. Due process of law simply means giving opportunity to be heard before judgment is rendered. In fact, **there is no violation of due process even if no hearing was conducted, where the party was given a chance to explain his side of the controversy**. What is frowned upon is the denial of the opportunity to be heard.

In the landmark case on administrative due process, *Ang Tibay v. Court of Industrial Relations* (69 Phil. 635 [1940]), this Court laid down seven cardinal primary rights:

> (1) The first of these rights is **the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof.** x x x (2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal *must consider* the evidence presented. x x x

[24] *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 168498, 16 June 2006, 491 SCRA 213.

[25] G.R. No. 166363, 15 August 2006, 498 SCRA 639.

[26] 353 Phil. 419 (1998).

x x x x x x x x x

A formal trial-type hearing is not even essential to due process. It is enough that the parties are given a fair and reasonable opportunity to explain their respective sides of the controversy and to present supporting evidence on which a fair decision can be based. This type of hearing is not even mandatory in cases of complaints lodged before the Labor Arbiter. (emphasis supplied)

In *Solid Development Corporation Workers Association v. Solid Development Corporation*,[27] we had the occasion to state:

[W]ell-settled is the dictum that the twin requirements of notice and hearing constitute the essential elements of due process in the dismissal of employees. It is a cardinal rule in our jurisdiction that the employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. **The requirement of a hearing, on the other hand, is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.**

In separate infraction reports, petitioners were both apprised of the particular acts or omissions constituting the charges against them. They were also required to submit their written explanation within 12 hours from receipt of the reports. Yet, neither of them complied. Had they found the 12-hour period too short, they should have requested for an extension of time. Further, notices of termination were also sent to them informing them of the basis of their dismissal. In fine, petitioners were given due process before they were dismissed. **Even if no hearing was conducted, the requirement of due process had been met** since they were accorded a chance to explain their side of the controversy. (emphasis supplied)

Our holding in *National Semiconductor HK Distribution, Ltd. v. NLRC*[28] is of similar import:

That the investigations conducted by petitioner may not be considered *formal* or *recorded* hearings or investigations is

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[27] G.R. No. 165995, 14 August 2007, 530 SCRA 132.

[28] 353 Phil. 551 (1998).

immaterial. A formal or trial type hearing is not at all times and in all instances essential to due process, the requirements of which are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy. It is deemed sufficient for the employer to follow the natural sequence of notice, hearing and judgment.

The above rulings are a clear recognition that the employer may provide an employee with ample opportunity to be heard and defend himself with the assistance of a representative or counsel in ways other than a formal hearing. The employee can be fully afforded a chance to respond to the charges against him, adduce his evidence or rebut the evidence against him through a wide array of methods, verbal or written.

After receiving the first notice apprising him of the charges against him, the employee may submit a written explanation (which may be in the form of a letter, memorandum, affidavit or position paper) and offer evidence in support thereof, like relevant company records (such as his 201 file and daily time records) and the sworn statements of his witnesses. For this purpose, he may prepare his explanation personally or with the assistance of a representative or counsel. He may also ask the employer to provide him copy of records material to his defense. His written explanation may also include a request that a formal hearing or conference be held. In such a case, the conduct of a formal hearing or conference becomes mandatory, just as it is where there exist substantial evidentiary disputes[29] or where company rules or practice requires an actual hearing as part of employment pretermination procedure. To this extent, we refine the decisions we have rendered so far on this point of law.

This interpretation of Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code reasonably implements the "ample opportunity to be heard" standard under Article 277(b) of the Labor Code without unduly restricting the language of the law or excessively burdening the employer. This not

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[29] See *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985) (Brennan J., concurring in part and dissenting in part) citing *Arnett v. Kennedy*, 416 U.S. 134 (1974) (Marshall, *J.*, dissenting).

only respects the power vested in the Secretary of Labor and Employment to promulgate rules and regulations that will lay down the guidelines for the implementation of Article 277(b). More importantly, this is faithful to the mandate of Article 4 of the Labor Code that "[a]ll doubts in the implementation and interpretation of the provisions of [the Labor Code], including its implementing rules and regulations shall be resolved in favor of labor."

In sum, the following are the guiding principles in connection with the hearing requirement in dismissal cases:

(a) "ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way.

(b) a formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it.

(c) the "ample opportunity to be heard" standard in the Labor Code prevails over the "hearing or conference" requirement in the implementing rules and regulations.

PETITIONERS WERE ILLEGALLY SUSPENDED FOR 30 DAYS

An employee may be validly suspended by the employer for just cause provided by law. Such suspension shall only be for a period of 30 days, after which the employee shall either be reinstated or paid his wages during the extended period.[30]

In this case, petitioners contended that they were not paid during the two 15-day extensions, or a total of 30 days, of their preventive suspension. Respondents failed to adduce evidence to the contrary. Thus, we uphold the ruling of the labor arbiter on this point.

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[30] Omnibus Rules Implementing the Labor Code, Book V, Rule XXIII, Sec. 9, as amended by Department of Labor and Employment Order No. 9 (1997).

Where the dismissal was without just or authorized cause and there was no due process, Article 279 of the Labor Code, as amended, mandates that the employee is entitled to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement.[31] In this case, however, reinstatement is no longer possible because of the length of time that has passed from the date of the incident to final resolution.[32] Fourteen years have transpired from the time petitioners were wrongfully dismissed. To order reinstatement at this juncture will no longer serve any prudent or practical purpose.[33]

WHEREFORE, the petition is hereby *GRANTED*. The decision of the Court of Appeals dated January 29, 2002 in CA-G.R. SP No. 50536 finding that petitioners Felix B. Perez and Amante G. Doria were not illegally dismissed but were not accorded due process and were illegally suspended for 15 days, is *SET ASIDE*. The decision of the labor arbiter dated December 27, 1995 in NLRC NCR CN. 11-06930-93 is hereby *AFFIRMED* with the *MODIFICATION* that petitioners should be paid their separation pay in lieu of reinstatement.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Carpio Morales, Tinga, Chico-Nazario, Nachura, Leonardo-de Castro, and *Peralta, JJ.,* concur.

Austria-Martinez,[*] *J.,* certifies that *J.* Martinez voted for the *ponencia* of *J.* Corona.

Brion, J., with concurring opinion.

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[31] *Agabon v. NLRC*, G.R. No. 158693, 17 November 2004, 442 SCRA 573, 610.

[32] *Panday v. NLRC*, G.R. No. 67664, 20 May 1992, 209 SCRA 122, 126-127.

[33] *Sealand Service, Inc. v. NLRC*, G.R. No. 90500, 5 October 1990, 190 SCRA 347, 355.

[*] On official leave.

Velasco, Jr., J., Pls. see separate concurring and dissenting opinion.

CONCURRING OPINION

BRION, *J.*:

I fully concur with the *ponencia* of my esteemed colleague, Associate Justice Renato C. Corona. I add these views on the specific issue of whether actual hearing is a mandatory requirement in a termination of employment situation.

The petitioners' position that *a formal hearing* should be an *absolute requirement* whose absence signifies the non-observance of procedural due process is an unduly strict view and is not at all what procedural due process requires. This is not the intent behind the Labor Code whose pertinent provision reads:

ART. 277.

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(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just or authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, ***the employer shall furnish the workers 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 defend himself with the assistance of his representative if he so desires*** in accordance with company rules and regulations promulgated pursuant to the guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer.

The Secretary of Labor and Employment may suspend the effects of the termination pending resolution of the dispute in the event of *prima facie* finding by the appropriate official of the Department of Labor and Employment before whom such dispute is pending that

the termination may cause a serious labor dispute or is in implementation of a mass layoff. (as amended by Republic Act No. 6715)

Historical Roots

At its most basic, procedural due process is about *fairness* in the mode of procedure to be followed. It is not a novel concept, but one that traces its roots in the common law principle of natural justice.

Natural justice connotes the requirement that administrative tribunals, when reaching a decision, must do so with procedural fairness. If they err, the superior courts will step in to quash the decision by *certiorari* or prevent the error by a writ of prohibition.[1] The requirement was initially applied in a purely judicial context, but was subsequently extended to executive regulatory fact-finding, as the administrative powers of the English justices of the peace were transferred to administrative bodies that were required to adopt some of the procedures reminiscent of those used in a courtroom. Natural justice was comprised of two main sub-rules: *audi alteram partem*[2] — that a person must know the case against him and be given an opportunity to answer it; and *nemo judex in sua cause debe esse*[3] — the rule against bias. Still much later, the natural justice principle gave rise to the *duty to be fair* to cover governmental decisions which cannot be characterized as judicial or quasi-judicial in nature.[4]

While the *audi alteram partem* rule provided for the right to be notified of the case against him, the right to bring evidence, and to make argument — whether in the traditional judicial or the administrative setting — common law maintained a distinction between the two settings. "An administrative tribunal had a

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[1] See: Jones, D.P. and De Villars A., *Principles of Administrative Law* (1985 ed.), pp. 148-149.

[2] Literally, "let the other side be heard."

[3] "No one can be the judge in his own cause."

[4] *Supra* note 1, pp. 157-160, citing *Ridge v. Baldwin*, [1963] 2 All E.R. 66 (H.L.)

duty to act in good faith and to listen fairly to both sides, *but not to treat the question as if it were a trial*. There would be no need to examine under oath, nor even to examine witnesses at all. Any other procedure could be utilized which would obtain the information required, as long as the parties had an opportunity to know and to contradict anything which might be prejudicial to their case."[5]

In the U.S., the due process clause of the U.S. Constitution[6] provides the guarantee for procedural due process, and has used a *general balancing formula* to identify the procedural guarantees appropriate to a particular context.[7] In *Mathews v. Eldridge,*[8] Justice Powell articulated this approach when he said:

> In recent years this Court increasingly has had occasion to consider the extent to which due process requires an evidentiary hearing prior to the deprivation of some type of property interest even if such hearing is provided thereafter. ***In only one case, Goldberg v. Kelly, has the Court ruled that a hearing closely approximating a judicial trial is necessary.*** *In other cases requiring some type of pretermination hearing as a matter of constitutional right, the Court has spoken sparingly about the requisite procedures. [Our] decisions underscore the truism that "[d]ue process, unlike some legal rules, is not a technical conception with a fixed content, unrelated to time, place and circumstances. [Due process] is flexible and calls for such procedural protections as the particular situation demands."* Accordingly, the resolution of the issue whether the administrative procedures provided here are constitutionally sufficient requires analysis of the governmental and private interests that are affected. More precisely, our prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural

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[5] *Supra* note 1, p. 200.

[6] UNITED STATES Constitution, 14th Amendment.

[7] See: Gunther, *Constitutional Law*, (11th ed.), pp. 583-585.

[8] 425 U.S. 319 (1976).

safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Thus, the U.S. approach is to calibrate the procedural processes to be observed in administrative cases based on specifically defined parameters.

Significantly in the U.S., the same common law root that gave rise to the concept of natural justice and the duty to be fair, branched out into the *doctrine of fair procedure* applicable to specific *private sector actors* due to their overwhelming economic power within certain fields (*e.g.*, professional associations, unions, hospitals, and insurance companies). The doctrine requires notice and hearing,[9] but to an extent slightly less than procedural due process; thus, when an association has clearly given a person the benefit of far more procedural protections than he would have been entitled to from a government entity, he has received the benefit of fair procedure and has no cause of action for the mildly adverse action that resulted.[10]

Philippine Due Process Requirement

Article III, Section 1 of the Philippine Constitution contains the constitutional guarantee against denial of due process,[11] and is a direct transplant from an American root — the Bill of Rights of the American Constitution.[12] As in the U.S., our jurisprudence has distinguished between the constitutional guarantee of due process that applies to state action, and the statutory due process guarantee under the Labor Code that applies to private employers.[13] The Labor Code provision, quoted above, is implemented under the Rules Implementing the Labor Code which provides that —

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[9] See: *Potvin v. Metropolitan Life Insurance Co.*, 22 Cal. 4th 1060 (2000).

[10] *Dougherty v. Haag*, 165 Cal. App. 4th 315 (2008).

[11] No person shall be denied the right to life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

[12] *Supra* note 6.

[13] *Serrano v. NLRC*, G.R. No. 117040, January 27, 2000, 323 SCRA 44; *Agabon v. NLRC*, G.R. No. 158693, Nov. 17, 2004, 442 SCRA 573.

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

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

(ii) A hearing or conference during which the employee concerned, with the assistance of counsel, if he so desires, is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(iii) 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.

For termination of employment as defined in Article 283 of the Labor Code, the requirement of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment at least thirty days before effectivity of the termination, specifying the ground or grounds for termination.

If the termination is brought about by the completion of a contract or phase thereof, or by failure of an employee to meet the standards of the employer in the case of probationary employment, it shall be sufficient that a written notice is served the employee within a reasonable time from the effective date of termination.[14]

Jurisprudence has expounded on the guarantee and its implementation by reiterating that the employer must furnish the worker to be dismissed with two written notices before termination of employment can be effected: a ***first written notice*** that informs the worker of the particular acts or omissions for which his or her dismissal is sought, and ***a second written notice*** which informs the worker of the employer's decision to dismiss him.[15]

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[14] Implementing Rules of Book VI of the Labor Code, Rule 1, Section 2, as amended by Department Order No. 10, series of 1997.

[15] *Tiu v. NLRC*, G.R. No. 83433, November 12, 1992, 215 SCRA 540; see also: *Serrano* and *Agabon* cases, *supra* note 13.

Between these two notices, the worker must be afforded ample opportunity to be heard in the manner the ponencia has very ably discussed.

The Confusion and Submission

Apparently, confusion has resulted in construing what ***"ample opportunity to be heard"*** requires because the implementing rules of the Labor Code themselves require that there be an ***actual hearing*** despite the clear text of the Labor Code that only requires ample opportunity to be heard.

I submit that *in the absence of a clear legislative intent* that what is intended is an actual hearing, the Court cannot construe the statutory procedural due process guaranty as an absolute requirement for an actual hearing in the way that at least two cases, namely *King of Kings of Transport, Inc. v. Mamac*[16] and *R.B. Michael Press v. Galit*[17] now require.

a. Historical Reason.

Procedural due process cannot be read completely dissociated from its roots. While the concept of procedural fairness that it embodies originated as a requirement in judicial proceedings, the concept has been extended to procedures that were not strictly judicial as regulatory fact-finding was devolved and delegated to administrative tribunals. The devolution was driven by need; it was beyond the capability of the courts to attend to the ever-increasing demands of regulation as society became increasingly complex. As discussed above, a trial-type procedure is not an absolute necessity in administrative due process. *In fact, in the U.S., not every administrative decision-making requires a hearing.*[18] As the U.S. Supreme Court stated in the *Mathews* ruling we quoted above: "[d]ue process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances. *[Due process] is*

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[16] G.R. No. 166208, June 29, 2007, 526 SCRA 116.

[17] G.R. No. 153510, February 13, 2008, 545 SCRA 23.

[18] *Supra* note 7.

flexible and calls for such procedural protections as the particular situation demands."[19] [Italics supplied]

b. Philippine Procedural Due Process Developments.

Our Constitution does not expressly define the principles that embody due process, as it is a concept intended to counterbalance a flexible power of state – police power. Early on, jurisprudence has recognized distinctions between procedural due process in judicial proceedings and in administrative proceedings.

In a long line of cases starting with *Banco Espanol v. Palanca,*[20] the requirements of procedural due process in judicial proceedings have been defined.[21] In these proceedings, the quantum of evidence that the prosecution must meet in criminal cases is proof beyond reasonable doubt,[22] while in civil cases the standard has been described as "preponderance of evidence."[23] The requirements of procedural due process in administrative

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[19] *Supra* note 8.

[20] 37 Phil. 921 (1918).

[21] The requirements of due process in judicial proceedings are as follows: 1) an impartial court or tribunal clothed with judicial power to hear and determine the matter before it; 2) jurisdiction lawfully acquired over the person of the defendant and over the property which is the subject matter of the proceeding; 3) an opportunity to be heard afforded to the defendant; and 4) judgment rendered upon lawful hearing.

[22] *People v. Berroya,* G.R. No. 122487, December 12, 1997, 283 SCRA 111.

[23] *Supreme Transliner, Incorporated v. Court of Appeals,* G.R. No. 125356, November 21, 2001, 370 SCRA 41.

[24] 69 Phil. 635 (1940); the observance of due process in administrative proceedings requires the following: (1) the right to a hearing, which includes the right of the party interested to present his own case and submit evidence in support thereof; (2) the tribunal must consider the evidence presented; (3) the decision must be supported by evidence; (4) the evidence must be substantial; (5) the decision must be rendered on the evidence present at the hearing, or at least contained in the record and disclosed to the parties affected; (6) the administrative body or any of its judges must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate; and (7) the administrative body should, in all controversial questions, render its decision in such a manner that the parties

proceedings have been similarly defined in the early case of *Ang Tibay v. CIR.*[24] The proof required in these proceedings is the lower standard of "substantial evidence."[25]

The quantum of evidence required in these proceedings impacts on their hearing requirements. While both judicial and administrative proceedings require a hearing and the opportunity to be heard, they differ with respect to the hearing required before a decision can be made. In criminal cases where a constitutional presumption of innocence exists, procedural judicial due process requires that judgment be rendered upon lawful hearing where factual issues are tested through direct and cross-examination of witnesses to arrive at proof beyond reasonable doubt. In civil cases, evidentiary hearings are likewise a must to establish the required preponderance of evidence.[26] Administrative due process, on the other hand, requires that the decision be rendered on the evidence presented at the hearing, *or at least contained in the record and disclosed to the parties concerned*.[27] Thus, substantial reasons justify the variance in the hearing requirements for these proceedings.

c. Due Process in the Private Employment Setting.

Separately from the requirement of due process when State action is involved, the Constitution also guarantees **security of tenure to labor,**[28] which the Labor Code implements by requiring

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to the proceeding can know the various issues involved, and the reasons for the decisions rendered.

[25] Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. See *Domasig v. National Labor Relations Commission*, G.R. No. 118101, September 16, 1996, 261 SCRA 779.

[26] See *People v. Dapitan*, G.R. No. 90625, May 23, 1991, 197 SCRA 378, citing *People v. Castillo,* 76 Phil. 72 (1946); *Banco Español de Filipino v. Palanca*, *supra* at note 20; *Macabingkil v. Yatco*, 21 SCRA 150 (1967); *Apurillo v. Garciano,* 28 SCRA 1054 (1969); *Shell Company of the Philippines, Ltd. v. Enage*, 49 SCRA 416 (1973); *Lorenzana v. Cayetano*, 68 SCRA 485 (1975).

[27] *Cuenca v. Atas,* G.R. No. 146214, October 5, 2007, 535 SCRA 48; *Alliance of Democratic Free Labor Organization v. Laguesma*, G.R. No. 108625, March 11, 1996, 254 SCRA 565.

[28] CONSTITUTION, Article XIII, Section 3, par. 2.

that there be a just or authorized cause before an employer can terminate the services of a worker.[29] *This is the equivalent of and what would have satisfied **substantive due process** had a State action been involved.* The equivalent of ***procedural due process*** is detailed under Article 277 of the Labor Code, heretofore quoted, which requires notice and ample opportunity to be heard, both of which are fleshed out in the Implementing Rules of Book VI and in Rule XXIII of Department Order No. 9, Series of 1997, of the Department of Labor.

Thus, from the concept of due process being a limitation on state action, the concept has been applied by statute in implementing the guarantee of security of tenure in the private sector. In *Serrano v. NLRC*,[30] we had the occasion to draw the fine distinction between constitutional due process that applies to governmental action, and the due process requirement imposed by a statute as a limitation on the exercise of private power. Noting the distinctions between constitutional due process and the statutory duty imposed by the Labor Code, the Court thus decided in *Agabon v. NLRC*[31] to treat the effects of failure to comply differently.

d. No Actual Hearing Requirement in the Labor Code.

That an actual hearing in every case is not intended by the Labor Code in dismissal situations is supported by its express wording that only requires an "ample opportunity to be heard," not the "hearing or conference" that its implementing rules require.

The "ample opportunity" required to be provided by the employer is similar in character to the process required in administrative proceedings where, as explained above, an actual hearing is not an absolute necessity. To be sure, it cannot refer to, or be compared with, the requirements of a judicial proceeding whose strict demands necessarily require a formal hearing.

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[29] LABOR CODE, Article 279.

[30] *Supra* note 13.

[31] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

"Judicial declarations are rich to the effect that the essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side. A formal or trial type hearing is not at all times and in all circumstances essential to due process, the requirements of which are satisfied where the parties are afforded fair and reasonable opportunity to explain their side in the controversy."[32] In *Arboleda v. NLRC*,[33] we held that:

> The requirement of notice and hearing in termination cases does not connote full adversarial proceedings as elucidated in numerous cases decided by this Court. Actual adversarial proceedings become necessary only for clarification or when there is a need to propound searching questions to witnesses who give vague testimonies. This is a procedural right that the employee must ask for since it is not an inherent right, and summary proceedings may be conducted thereon.

To the same effect is the following statement of Mr. Chief Justice Reynato S. Puno, albeit in a dissenting opinion, in *Agabon*: *"[t]his is not to hold that a trial-type proceeding is required to be conducted by employers. Hearings before the employers prior to the dismissal are in the nature of and akin to administrative due process which is free from the rigidity of certain procedural requirements,"* citing Mr. Justice Laurel's dictum in the landmark *Ang Tibay v. Court of Industrial Relations*. We have even held in *China Banking Corporation v. Borromeo*[34] that no formal administrative investigation is necessary in the process of dismissing an employee where the employee expressly admitted his infraction. All that is needed is to inform the employee of the findings of management.

The identity of the actor should not also be lost on us in considering the "ample opportunity" requirement. Judicial and quasi-judicial processes are undertaken by the state, while the dismissal action the Labor Code regulates is undertaken by a private sector employer. A distinction between these actors ought

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[32] *Neeco III v. NLRC*, G.R. No. 157603, June 23, 2005, 461 SCRA 169.

[33] G.R. No. 119503, February 11, 1999, 303 SCRA 38.

[34] G.R. No. 156515, October 19, 2004, 440 SCRA 621.

to be recognized and given a proper valuation in considering the processes required from each. Due process in the private realm does not address an all-powerful State clothed with police power and the powers of taxation and eminent domain; it merely addresses a private sector-employer who, constitutionally, shares the same responsibility with the worker for industrial peace, and who is also entitled to reasonable returns on investments and to expansion and growth.[35] Proportionality with the power sought to be limited dictates that due process in its *flexible signification* be applied to a private sector dismissal situation, ensuring only that there is fairness at all times so that the constitutional guarantee of security of tenure is not defeated. Thus, the required processes in a private sector dismissal situation should, *at the most*, be equivalent to those required in administrative proceedings; whether an actual hearing would be required should depend on the circumstances of each case.

Last but not the least, reasonableness and practicality dictate against an actual hearing requirement *in every case of dismissal.* There are simply too many variables to consider in the private sector dismissal situation — ranging from the circumstances of the employer, those of the employee, the presence of a union, and the attendant circumstances of the dismissal itself — so that a hard and fast actual hearing requirement may already be unreasonable for being way beyond what the statutory procedural due process requirement demands. Such a requirement can also substantially tie-up management operations and defeat the efficiency, growth and the profits that management and employees mutually need.

To recapitulate, the "ample opportunity to be heard" the Labor Code expressly requires does not mean an actual hearing in every dismissal action by the employer; whether an actual hearing would be required depends on the circumstances of each case as each particular situation demands. Thus, the identical rulings

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[35] CONSTITUTION, Article XIII, Section 3, pars. 3 and 4.

[36] *Supra* note 16.

[37] *Supra* note 17.

in *King of Kings of Transport, Inc. vs. Mamac*[36] and *R.B. Michael Press vs. Galit*[37] that an actual hearing is a mandatory requirement in employee dismissal should now be read with our present ruling in mind. The Department of Labor and Employment should as well be on notice that this ruling is the legally correct interpretation of Rule I, Section (2)(d)(ii) of Book VI of the Rules to Implement the Labor Code.

SEPARATE CONCURRING AND DISSENTING OPINION

VELASCO, JR., *J.*:

I concur in my esteemed colleague's well-written *ponencia*, except in one issue, to which I hereby register my dissent.

In gist, the facts as contained in the *ponencia* show that Felix B. Perez and Amante G. Doria were dismissed by the Philippine Telegraph and Telephone Company without a hearing or conference for a series of allegedly anomalous transactions.

The only issue covered by my dissent is, are Perez and Doria entitled to a hearing or conference as mandated by Section 2(b), Rule XXIII, Implementing Rules of Book V of the Labor Code?

The *ponencia* resolved this in the negative and held that Sec. 2(b), Rule XXIII, Implementing Rules of Book V,[1] by requiring a hearing, went beyond the terms and provisions of the Labor Code, particularly Article 277(b) thereof that merely requires the employer to provide employees with ample opportunity to be heard and to defend themselves with the assistance of their representatives if they so desire. The *ponencia*, however, conceded that a formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it or when similar circumstances justify. I submit that

[1] Now only Sec. 2(d)(ii), Rule I, Implementing Rules of Book VI of the Labor Code remains, as amended by Department Order No. 40-03, Series of 2003.

the actual hearing or conference is mandatory in ALL dismissal cases for the following reasons:

(1) Art. 277(b) of the Labor Code provides that:

> (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. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. (Emphasis supplied.)

The aforequoted provision states that employees are to be given "ample" opportunity to be heard and defend themselves. However, the word "ample" is vague and not defined in the said provision. Since the meaning of this word is unclear, then it should be given a liberal construction to favor labor. "Ample" means "considerably more than adequate or sufficient."[2] Ample opportunity can be construed to be broad enough to encompass an actual hearing or conference. To be sure, opportunity to be heard does not exclude an actual or formal hearing since such requirement would grant more than sufficient chance for an employee to be heard and adduce evidence. In this sense, I believe there is no discrepancy between Art. 277 and the Implementing Rule in question.

The Implementing Rules thus makes available for employees a considerably or generously sufficient opportunity to defend

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[2] WEBSTER'S *THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED* 74 (1993).

themselves through a hearing or conference. In *Tanala v. NLRC*, we said that:

> With respect to the issue of whether petitioner was denied due process in the administrative procedure entailed in his dismissal, we agree with the labor arbiter that petitioner was indeed denied procedural due process therein. His dismissal was not preceded by any notice of the charges against him and a hearing thereon. **The twin requirements of notice and hearing constitute the essential elements of due process in cases of dismissal of employees.** The purpose of the first requirement is obviously to enable the employee to defend himself against the charge preferred against him by presenting and substantiating his version of the facts.
>
> Contrary to the findings of the NLRC, the notice of preventive suspension cannot be considered as an adequate notice. **Even the fact that petitioner submitted a written explanation after the receipt of the order of suspension is not the "ample opportunity to be heard" contemplated by law. Ample opportunity to be heard is especially accorded to the employee sought to be dismissed after he is informed of the charges in order to give him an opportunity to refute such accusations levelled against him**.
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> Furthermore, this Court has repeatedly held that to meet the requirements of due process, the law requires that an employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected, that is, (1) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice, **after due hearing**, which informs the employee of the employer's decision to dismiss him.[3] (Emphasis supplied.)

(2) The *ponencia* seems to underscore the absence of any mention of an "actual hearing" in Art. 277(b). It is conceded that there is no explicit mention of an actual hearing or conference in said legal provision. As earlier discussed, the requisite hearing is captured in the phrase "ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires." Even if the phrase "actual hearing" is not specified in

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[3] G.R. No. 116588, January 24, 1996, 252 SCRA 314, 320-321.

Art. 277(b), the same thing is true with respect to the second written notice informing the employee of the employer's decision which is likewise unclear in said provision. Thus, the fact that Art. 277(b) does not expressly mention actual hearing in Art. 277(b) does not bar the Secretary of Labor from issuing a rule (Sec. 2[d][ii], Rule I, Implementing Rules of Book VI of the Labor Code) implementing the provision that what really is meant is an actual hearing or conference. It should be noted that the Secretary of Labor also issued a rule on the need for a second written notice on the decision rendered in the illegal dismissal proceedings despite the silence of Art. 277(b) on the need for a written notice of the employer's decision.

(3) The majority opinion cites the rule in statutory construction that in case of discrepancy between the basic law and its implementing rules, the basic law prevails. In the case at bar, said principle does not apply because precisely there is no clear-cut discrepancy between Art. 277(b) of the Labor Code and Sec. 2(b), Rule XXIII, Implementing Rules of Book V of the Labor Code. To the extent of being repetitive the phrase "ample opportunity to be heard" can be construed to cover an actual hearing. This way, Sec. 2(b), Rule XXIII does not conflict with nor contravene Art. 277(b).

(4) Art. 4 of the Labor Code states that "all doubts in the implementation and interpretation of the provisions of [the Labor Code], including its implementing rules and regulations, shall be resolved in favor of labor." Since the law itself invests the Department of Labor and Employment (DOLE) the power to promulgate rules and regulations to set the standard guidelines for the realization of the provision, then the Implementing Rules should be liberally construed to favor labor. The Implementing Rules, being a product of such rule-making power, has the force and effect of law. Art. 277 of the Labor Code granted the DOLE the authority to develop the guidelines to enforce the process. In accordance with the mandate of the law, the DOLE developed Rule I, Sec. 2(d) of the Implementing Rules of Book VI of the Labor Code which provides that:

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes defined in Article 282 of the Labor Code:

> (i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.
>
> (ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.
>
> (iii) 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.

In any case, the standards of due process contained in Sec. 2(b), Rule XXIII, Implementing Rules of Book V of the Labor Code, and now in Sec. 2(d)(ii), Rule I, Implementing Rules of Books VI of the Labor Code, do not go beyond the terms and provisions of the Labor Code. The Implementing Rules merely encapsulates a vague concept into a concrete idea. In what forum can an employer provide employees with an ample opportunity to be heard and defend themselves with the assistance of a representative? This situation can only take place in a formal hearing or conference which the Implementing Rules provides. The employees may only be fully afforded a chance to respond to the charges made against them, present their evidence, or rebut the evidence presented against them in a formal hearing or conference. Therefore, in my humble opinion, there is no discrepancy between the law and the rules implementing the Labor Code.

(5) In addition, the hearing or conference requirement in termination cases finds support in the long standing jurisprudence in *Ang Tibay v. Court of Industrial Relations*, wherein we declared that the right to a hearing is one of the **cardinal primary**

[4] 69 Phil. 635, 641-644 (1940).

rights[4] which must be respected even in cases of administrative character. We held:

> There are cardinal rights which must be respected even in proceedings of this character. The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented.

This Court has recognized even the right of students to a **summary proceeding**, in which (a) the students must be informed in writing of the nature and cause of any accusation against them; (b) they shall have the right to answer the charges against them, with the assistance of counsel, if they so desire; (c) they shall be informed of the evidence against them; (d) they shall have the right to adduce evidence in their own behalf; and (e) the evidence must be duly considered by the investigating committee or official designated by the school authorities to hear and decide the case.[5]

If administrative cases recognized that the right to a hearing is a "cardinal primary right" and students are afforded the opportunity to defend themselves by allowing them to answer the charges through their counsel and by adducing their evidence to rebut the charges, what more for employees or laborers in the private sector who are specifically protected by the Constitution's social justice provision? It would be unjust to the laborers if they are not afforded the same chance given to students or even to employees in administrative cases.

(6) Removing the right of employees to a hearing prior to termination would deprive them the opportunity to adduce their evidence. Notice can be taken of the limited opportunity given to the employees by the directive in the first written notice that embodies the charges. More often than not, the directive is only for the employees to explain their side without affording

[5] *Guzman v. National University*, No. 68288, July 11, 1986, 142 SCRA 699, 706-707.

them the right to present evidence. Furthermore, a hearing gives employees the chance to hire the services of counsel whose presence is beneficial to employees during hearings because the counsel knows the intricacies of the law and the strategies to defend the client — something with which a lay person is most assuredly not familiar. A mere first notice is not sufficient enough for employees to assemble evidence for their defense. Most often, the first notice merely serves as or is limited to a general notice which cites the company rules that were allegedly violated by the employees without explaining in detail the facts and circumstances pertinent to the charges and without attaching the pieces of evidence supporting the same. Lastly, the holding of an actual hearing will prevent the railroading of dismissal of employees as the employers are obliged to present convincing evidence to support the charges. All in all, the advantages far outweigh the disadvantages in holding an actual hearing.

(7) The indispensability of a hearing is advantageous to both the employer and the employee because they are given the opportunity to settle the dispute or resort to the use of alternative dispute resolution to deflect the filing of cases with the NLRC and later the courts. It is important that a hearing is prescribed by the law since this is the best time that the possibility of a compromise agreement or a settlement can be exhaustively discussed and entered into. During this hearing, the relations of the parties may not be that strained and, therefore, they are more likely receptive to a compromise. Once dismissal is ordered by the employer, the deteriorated relationship renders the possibility of an amicable settlement almost nil. Thus, a hearing can help the parties come up with a settlement that will benefit them and encourage an out-of-court settlement which would be less expensive, creating a "win-win" situation for them. Of course the compromise agreement, as a product of the settlement, should be subscribed and sworn to before the labor official or arbiter.

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[6] G.R. No. 166208, June 29, 2007, 526 SCRA 116.

[7] G.R. No. 153510, February 13, 2008, 545 SCRA 23.

(8) Recent holdings of this Court have explained the propriety and necessity of an actual hearing or conference before an employee is dismissed. In *King of Kings Transport, Inc. v. Mamac*,[6] reiterated in *R.B. Michael Press v. Galit*,[7] we explained that the requirement of a hearing or conference is a necessary and indispensable element of procedural due process in the termination of employees, thus:

> To clarify, the following should be considered in terminating the services of employees:
>
> (1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.
>
> (2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

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[8] *King of Kings Transport, Inc.*, *supra* at 125-126.

(3) After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[8]

(9) Lastly, a liberal interpretation of Art. 277(b) of the Labor Code would be in keeping with Art. XIII of the Constitution which dictates the promotion of social justice and ordains full protection to labor. The basic tenet of social justice is that "those who have less in life must have more in law." Social justice commands the protection by the State of the needy and the less fortunate members of society. This command becomes all the more firm in labor cases where security of tenure is also an issue. In *Rance v. NLRC*, we declared that:

> It is the policy of the state to assure the right of workers to "security of tenure" (Article XIII, Sec. 3 of the New Constitution, Section 9, Article II of the 1973 Constitution). The guarantee is an act of social justice. When a person has no property, his job may possibly be his only possession or means of livelihood. Therefore, he should be protected against any arbitrary deprivation of his job. Article 280 of the Labor Code has construed security of tenure as meaning that "the employer shall not terminate the services of an employee except for a just cause or when authorized by" the code (*Bundoc v. People's Bank and Trust Company*, 103 SCRA 599 [1981]). Dismissal is not justified for being arbitrary where the workers were denied due process (*Reyes v. Philippine Duplicators, Inc.*, 109 SCRA 489 [1981]) and a clear denial of due process, or constitutional right must be safeguarded against at all times, (*De Leon v. National Labor Relations Commission*, 100 SCRA 691 [1980]).[9]

Between an employer and an employee, the latter is oftentimes on the losing or inferior position. Without the mandatory requirement of a hearing, employees may be unjustly terminated from their work, effectively losing their means of livelihood. The right of persons to their work is considered a property right which is well within the meaning of the constitutional guarantee.[10] Depriving employees their job without due process essentially amounts to a deprivation of property without due process.

We have applied social justice even to cases of just dismissal to grant equitable relief to laborers who were validly dismissed.

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[9] No. 68147, June 30, 1988, 163 SCRA 279, 284-285.

[10] *Batangas Laguna Tayabas Bus Co. v. Court of Appeals*, No. L-38482, June 18, 1976, 71 SCRA 470, 480.

We also termed social justice as "compassionate" justice.[11] Thus, the State should always show compassion and afford protection to those who are in most need — the laborers. Knowing that poverty and gross inequality are among the major problems of our country, then laws and procedures which have the aim of alleviating those problems should be liberally construed and interpreted in favor of the underprivileged. Thus, social legislations, such as the Labor Code, should be liberally construed to attain its laudable objectives.[12]

THIRD DIVISION

[G.R. No. 156302. April 7, 2009]

THE HEIRS OF GEORGE Y. POE, *petitioners, vs.* **MALAYAN INSURANCE COMPANY, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FRESH PERIOD RULE, EXPLAINED; SCOPE OF APPLICATION. —** Propitious to petitioners is *Neypes v. Court of Appeals*, which the Court promulgated on 14 September 2005, and wherein it laid down the fresh period rule: To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a **fresh period of 15 days within which to file the notice of appeal** in the Regional Trial Court, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration. Henceforth, this **"fresh period rule" shall**

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[11] *Tanala*, *supra* note 3, at 320.

[12] *Manahan v. Employees' Compensation Commission*, No. L-44899, April 22, 1981, 104 SCRA 198, 202.

also apply to Rule 40 governing appeals from the Municipal Trial Courts to the Regional Trial Courts; **Rule 42 on petitions for review from the Regional Trial Courts to the Court of Appeals**; Rule 43 on appeals from quasi-judicial agencies to the Court of Appeals and Rule 45 governing appeals by *certiorari* to the Supreme Court. The new rule aims to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution. The fresh period of 15 days becomes significant when a party opts to file a motion for new trial or motion for reconsideration. In this manner, the trial court which rendered the assailed decision is given another opportunity to review the case and, in the process, minimize and/or rectify any error of judgment. With the advent of the fresh period rule, parties who availed themselves of the remedy of motion for reconsideration are now allowed to file a notice of appeal within fifteen days from the denial of that motion. The Court has accentuated that the fresh period rule is not inconsistent with Rule 41, Section 3 of the Rules of Court which states that the appeal shall be taken "within fifteen (15) days from notice of judgment **or** final order appealed from." The use of the disjunctive word "or" signifies disassociation and independence of one thing from another. It should, as a rule, be construed in the sense which it ordinarily implies. Hence, the use of "or" in the above provision supposes that the notice of appeal may be filed within 15 days from the notice of judgment or within 15 days from notice of the final order in the case.

2. **ID.; ID.; ID.; FRESH PERIOD RULE APPLIED RETROACTIVELY; RELEVANT RULINGS, CITED. —** Applying the fresh period rule, the Court agrees with the Court of Appeals and holds that respondent MICI seasonably filed its Notice of Appeal with the RTC on 9 July 2001, just 12 days from 27 June 2001, when it received the denial of its Motion for Reconsideration of the 15 June 2001 Resolution reinstating the 28 February 2000 Decision of the RTC. The fresh period rule may be applied to the case of respondent MICI, although the events which transpired concerning its Notice of Appeal took place in June and July 2001, inasmuch as rules of procedure may be given retroactive effect on actions pending and undetermined at the time of their passage. The Court notes that *Neypes* was promulgated on 14 September 2005, while

the instant Petition was still pending before this Court. Reference may be made to *Republic v. Court of Appeals,* involving the retroactive application of A.M. No. 00-2-03-SC which provided that the 60-day period within which to file a petition for *certiorari* shall be reckoned from receipt of the order denying the motion for reconsideration. In said case, the Court declared that rules of procedure "may be given retroactive effect to actions pending and undetermined at the time of their passage and this will not violate any right of a person who may feel that he is adversely affected, inasmuch as there is no vested rights in rules of procedure." Hence, the fresh period rule laid down in *Neypes* was applied by the Court in resolving the subsequent cases of *Sumaway v. Urban Bank, Inc., Elbiña v. Ceniza, First Aqua Sugar Traders, Inc. v. Bank of the Philippine Islands*, even though the antecedent facts giving rise to said cases transpired before the promulgation of *Neypes*. In *De los Santos v. Vda de Mangubat*, particularly, the Court applied the fresh period rule, elucidating that procedural law refers to the adjective law which prescribes rules and forms of procedure in order that courts may be able to administer justice. Procedural laws do not come within the legal conception of a retroactive law, or the general rule against the retroactive operation of statutes. The fresh period rule is irrefragably procedural, prescribing the manner in which the appropriate period for appeal is to be computed or determined and, therefore, can be made applicable to actions pending upon its effectivity without danger of violating anyone else's rights.

3. **ID.; ACTIONS; INSTANCES WHEN REMAND OF THE CASE IS AVOIDED; APPLICATION. —** Since the Court affirms the ruling of the Court of Appeals that respondent MICI filed its Notice of Appeal with the RTC within the reglementary period, the appropriate action, under ordinary circumstances, would be for the Court to remand the case to the RTC so that the RTC could approve the Notice of Appeal of respondent MICI and respondent MICI could already file its appeal with the Court of Appeals. However, considering that the case at bar has been pending for almost sixteen years, and the records of the same are already before this Court, remand is no longer necessary. 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 has 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. In *Lao v. People*, the Supreme Court, in consideration of the years that it had taken for the controversy therein to reach it, concluded that remand of the case to a lower court was no longer the more expeditious and practical route to follow, and it then decided the said case based on the evidentiary record before it. The consistent stand of the Court has always been that a case should be decided in its totality, resolving all interlocking issues in order to render justice to all concerned and to end the litigation once and for all. Verily, courts should always strive to settle the entire controversy in a single proceeding, leaving no root or branch to bear the seed of future litigation. Where the public interest so demands, the court will broaden its inquiry into a case and decide the same on the merits rather than merely resolve the procedural question raised. Such rule obtains in this case. The Court is convinced that the non-remanding of the case at bar is absolutely justified. Petitioners have already suffered from the tragic loss of a loved one, and must not be made to endure more pain and uncertainty brought about by the continued pendency of their claims against those liable. The case has been dragging on for almost 16 years now without the petitioners having been fully compensated for their loss. The Court cannot countenance such a glaring indifference to petitioners' cry for justice. To be sure, they deserve nothing less than full compensation to give effect to their substantive rights.

4. **COMMERCIAL LAW; INSURANCE; THIRD-PARTY LIABILITY OF THE INSURER UNDER INDEMNITY CONTRACTS, EXPLAINED. —** It is settled that where the insurance contract provides for indemnity against liability to third persons, the liability of the insurer is direct and such third persons can directly sue the insurer. The direct liability of the insurer under indemnity contracts against third party liability does not mean, however, that the insurer can be held solidarily liable with the insured and/or the other parties found at fault, since they are being held liable under different obligations. The liability of the insured carrier or vehicle owner is based on tort, in accordance with the provisions of the Civil

Code; while that of the insurer arises from contract, particularly, the insurance policy. The third-party liability of the insurer is only up to the extent of the insurance policy and that required by law; and it cannot be held solidarily liable for anything beyond that amount. Any award beyond the insurance coverage would already be the sole liability of the insured and/or the other parties at fault.

5. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; THE PARTY ASSERTING ITS LIMITED LIABILITY HAS THE BURDEN OF EVIDENCE TO ESTABLISH ITS CLAIM. —** The Court, though, is precluded from applying its ruling in *Vda. de Maglana* by the difference in one vital detail between the said case and the one at bar. The insurer was able to sufficiently establish its limited liability in *Vda. de Maglana*, while the same cannot be said for respondent MICI herein. The Court highlights that in this case, the insurance policy between Rhoda and respondent MICI, covering the truck involved in the accident which killed George, was never presented. There is no means, therefore, for this Court to ascertain the supposed limited liability of respondent MICI under said policy. Without the presentation of the insurance policy, the Court cannot determine the existence of any limitation on the liability of respondent MICI under said policy, and the extent or amount of such limitation. It should be remembered that respondent MICI readily admits that it is the insurer of the truck that hit and killed George, except that it insists that its liability under the insurance policy is limited. As the party asserting its limited liability, respondent MICI then has the burden of evidence to establish its claim. In civil cases, the party that alleges a fact has the burden of proving it. Burden of proof is the duty of a party to present evidence on the facts in issue necessary to prove its claim or defense by the amount of evidence required by law. Regrettably, respondent MICI failed to discharge this burden. The Court cannot rely on mere allegations of limited liability sans proof.

6. **ID.; ID.; DISPUTABLE PRESUMPTIONS; THAT EVIDENCE WILLFULLY SUPPRESSED WOULD BE ADVERSE IF PRODUCED, APPLIED. —** The failure of respondent MICI to present the insurance policy – which, understandably, is not in petitioners' possession, but in the custody and absolute control of respondent MICI as the insurer and/or Rhoda as the insured

– gives rise to the presumption that its presentation is prejudicial to the cause of respondent MICI. When the evidence tends to prove a material fact which imposes a liability on a party, and he has it in his power to produce evidence which, from its very nature, must overthrow the case made against him if it is not founded on fact, and he refuses to produce such evidence, the presumption arises that the evidence, if produced, would operate to his prejudice and support the case of his adversary. Respondent MICI had all the opportunity to prove before the RTC that its liability under the insurance policy it issued to Rhoda, was limited; yet, respondent MICI failed to do so. The failure of respondent MICI to rebut that which would have naturally invited an immediate, pervasive, and stiff opposition from it created an adverse inference that either the controverting evidence to be presented by respondent MICI would only prejudice its case, or that the uncontroverted evidence of petitioners indeed speaks of the truth.

7. **CIVIL LAW; DAMAGES; GUIDELINES IN THE COMPUTATION OF THE AMOUNT OF COMPENSATION FOR LOSS OF EARNING CAPACITY; APPLICATION. —** Article 2206 of the Civil Code provides that in addition to the indemnity for death caused by a crime or quasi-delict, the "defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter, x x x." Compensation of this nature is awarded not for loss of earnings but for loss of capacity to earn money. Hence, it is proper that compensation for loss of earning capacity should be awarded to the petitioners in accordance with the formula established in decided cases for computing net earning capacity, to wit: The formula for the computation of unearned income is: Net Earning Capacity = life expectancy x (gross annual income - reasonable and necessary living expenses). Life expectancy is determined in accordance with the formula: 2/3 x [80 - age of deceased at the time of death] Jurisprudence provides that the first factor, *i.e.*, life expectancy, shall be computed by applying the formula (2/3 x [80 - age at death]) adopted in the American Expectancy Table of Mortality or the Actuarial of Combined Experience Table of Mortality. The second factor is computed by multiplying the life expectancy by the net earnings of the deceased, *i.e.*, the total earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses. The loss

is not equivalent to the entire earnings of the deceased, but only such portion that he would have used to support his dependents or heirs. Hence, the Court deducts from his gross earnings the necessary expenses supposed to be used by the deceased for his own needs. The Court explained in *Villa Rey Transit v. Court of Appeals*: [The award of damages for loss of earning capacity is] concerned with the determination of the losses or damages sustained by the private respondents, as dependents and intestate heirs of the deceased, and that said damages consist, not of the full amount of his earnings, but of the support they received or would have received from him had he not died in consequence of the negligence of petitioner's agent. In fixing the amount of that support, we must reckon with the "necessary expenses of his own living," which should be deducted from his earnings. Thus, it has been consistently held that earning capacity, as an element of damages to one's estate for his death by wrongful act is necessarily his net earning capacity or his capacity to acquire money, "less necessary expense for his own living." Stated otherwise, the amount recoverable is not the loss of the entire earning, but rather the loss of that portion of the earnings which the beneficiary would have received. In other words, only net earnings, and not gross earnings are to be considered that is, the total of the earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses." Applying the aforestated jurisprudential guidelines in the computation of the amount of award for damages set out in *Villa Rey*, the Court computes the award for the loss of George's earning capacity as follows: Life expectancy = 2/3 x [80 - age of deceased at the time of death] 2/3 x [80 - 56] 2/3 x [24] FORMULA - NET EARNING CAPACITY (NEC) If: Age at time of death of George Poe = 58 Monthly Income at time of death = ₱6,946 Gross Annual Income (GAI) = [(6,946) (12)] = ₱83,352 Reasonable/Necessary Living Expenses (R/NLE) = 50% of GAI = ₱41,676 NEC = [2/3 (80-58)] [83,352-41,676] = [2/3 (22)] [41,676] = [14.67] [41,676] = ₱611,386.92. Therefore, George's lost net earning capacity is equivalent to ₱611,386.92

8. ID.; ID.; MORAL DAMAGES AND DEATH INDEMNITY, AWARDED. — In the instant case, petitioners' testimonies reveal the intense suffering which they continue to experience as a result of George's death. It is not difficult to comprehend that the sudden and unexpected loss of a husband and father

would cause mental anguish and serious anxiety in the wife and children he left behind. Moral damages in the amount of ₱100,000.00 are proper for George's death.

9. ID.; ID.; ATTORNEY'S FEES, AWARDED.— Petitioners are entitled to attorney's fees. Under Article 2008 of the Civil Code, attorney's fees may be granted when a party is compelled to litigate or incur expenses to protect his interest by reason of an unjustified act of the other party. In *Metro Manila Transit Corporation v. Court of Appeals*, the Court held that an award of ₱50,000.00 as attorney's fees was reasonable. Hence, petitioners are entitled to attorney's fees in that amount.

APPEARANCES OF COUNSEL

Salomon Gonong Dela Cruz Law Offices for petitioners.
Venturanza Law Office for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

The instant Petition for Review under Rule 45[1] of the Rules of Court assails the Decision[2] dated 26 June 2002 of the Court of Appeals in CA-G.R. SP No. 67297, which granted the Petition for *Certiorari* of respondent Malayan Insurance Company, Inc. (MICI) and recalled and set aside the Order[3] dated 6 September 2001 of the Regional Trial Court (RTC), Branch 73, of Antipolo City, in Civil Case No. 93-2705. The RTC, in its recalled Order, denied the Notice of Appeal of MICI and granted the Motion for the Issuance of a Writ of Execution filed by petitioners Heirs of George Y. Poe. The present Petition also challenges the Resolution[4] dated 29 November 2002 of the appellate court denying petitioners' Motion for Reconsideration.

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[1] Appeal by *certiorari* to the Supreme Court.

[2] Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Perlita J. Tria Tirona and Edgardo F. Sundiam, concurring; *rollo*, pp. 40-53.

[3] *Rollo*, p. 86.

[4] *Id.* at 54.

Records show that on 26 January 1996 at about 4:45 a.m., George Y. Poe (George) while waiting for a ride to work in front of Capital Garments Corporation, Ortigas Avenue Extension, Barangay Dolores, Taytay, Rizal, was run over by a ten-wheeler Isuzu hauler truck with Plate No. PMH-858 owned by Rhoda Santos (Rhoda), and then being driven by Willie Labrador (Willie).[5] The said truck was insured with respondent MICI under Policy No. CV-293-007446-8.

To seek redress for George's untimely death, his heirs and herein petitioners, namely, his widow Emercelinda, and their children Flerida and Fernando, filed with the RTC a Complaint for damages against Rhoda and respondent MICI, docketed as Civil Case No. 93-2705.[6] Petitioners identified Rhoda and respondent MICI, as follows:

> Defendant RHODA SANTOS is likewise of legal age, Filipino and a resident of Real Street, Pamplona, Las Piñas, Metro Manila where she may be served with summons and other court processes.
>
> [Herein respondent] MALAYAN INSURANCE COMPANY, INC. (hereinafter "[MICI]" for brevity) is a corporation duly organized and existing under Philippine law with address at Yuchengco Bldg., 484 Q. Paredes Street, Binondo, Manila where it may be served with summons and other processes of this Honorable Court;
>
> Defendant Rhoda Santos, who is engaged in the business, among others, of selling gravel and sand is the registered owner of one Isuzu Truck, with Plate No. PMH-858 and is the employer of Willie Labrador the authorized driver of the aforesaid truck.
>
> [Respondent MICI] on the other hand is the insurer of Rhoda Santos under a valid and existing insurance policy duly issued by said [MICI], Policy No. CV-293-007446-8 over the subject vehicle owned by Rhoda Santos, Truck-Hauler Isuzu 10 wheeler with plate no. PMH-858, serial no. SRZ451-1928340 and motor no. 10PA1-403803. Under said insurance policy, [MICI] binds itself, among others, to

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[5] At large (records, p. 258). Criminal case for reckless imprudence resulting to Homicide was also filed against him. Records are silent as to the status of this case. (Records, p. 194.)

[6] *Rollo*, p. 56.

be liable for damages as well as any bodily injury to third persons which may be caused by the operation of the insured vehicle.[7]

And prayed that:

[J]udgment issue in favor of [herein petitioners] ordering [Rhoda and herein respondent MICI] jointly and solidarily to pay the [petitioners] the following:

1. Actual damages in the total amount of THIRTY-SIX THOUSAND (₱36,000.00) PESOS for funeral and burial expenses;

2. Actual damages in the amount of EIGHT HUNDRED FIVE THOUSAND NINE HUNDRED EIGHTY-FOUR (₱805,984.00) PESOS as loss of earnings and financial support given by the deceased by reason of his income and employment;

3. Moral damages in the amount of FIFTY THOUSAND (₱50,000.00) PESOS;

4. Exemplary damages in the amount of FIFTY THOUSAND (₱50,000.00) PESOS;

5. Attorney's fees in the amount of FIFTY THOUSAND (₱50,000.00) PESOS and litigation expense in the amount of ONE THOUSAND FIVE HUNDRED (₱1,500.00) PESOS for each court appearance;

6. The costs of suit.

Other reliefs just and equitable in the premises are likewise prayed for.[8]

Rhoda and respondent MICI made the following admissions in their Joint Answer:[9]

That [Rhoda and herein respondent MICI] admit the allegations in paragraphs 2, 3 and 4 of the complaint;

That [Rhoda and respondent MICI] admit the allegations in paragraph 5 of the complaint that the cargo truck is insured with [respondent]

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[7] Records, pp. 1-2.

[8] *Id.* at 4-5.

[9] *Rollo*, p. 65.

Malayan Insurance Company, Inc. [(MICI)] however, the liability of the insured company attached only if there is a judicial pronouncement that the insured and her driver are liable and moreover, the liability of the insurance company is subject to the limitations set forth in the insurance policy.[10]

Rhoda and respondent MICI denied liability for George's death averring, among other defenses, that: a) the accident was caused by the negligent act of the victim George, who surreptitiously and unexpectedly crossed the road, catching the driver Willie by surprise, and despite the latter's effort to swerve the truck to the right, the said vehicle still came into contact with the victim; b) the liability of respondent MICI, if any, would attach only upon a judicial pronouncement that the insured Rhoda and her driver Willie are liable; c) the liability of MICI should be based on the extent of the insurance coverage as embodied in Rhoda's policy; and d) Rhoda had always exercised the diligence of a good father of a family in the selection and supervision of her driver Willie.

After the termination of the pre-trial proceedings, trial on the merits ensued.

Petitioners introduced and offered evidence in support of their claims for damages against MICI, and then rested their case. Thereafter, the hearings for the reception of the evidence of Rhoda and respondent MICI were scheduled, but they failed to adduce their evidence despite several postponements granted by the trial court. Thus, during the hearing on 9 June 1995, the RTC, upon motion of petitioners' counsel, issued an Order[11] declaring that Rhoda and respondent MICI had waived their right to present evidence, and ordering the parties to already submit their respective Memorandum within 15 days, after which, the case would be deemed submitted for decision.

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[10] Records, p. 13.

[11] *Id.* at 109.

Rhoda and respondent MICI filed a Motion for Reconsideration[12] of the Order dated 9 June 1995, but it was denied by the RTC in another Order dated 11 August 1995.[13]

Consequently, Rhoda and respondent MICI filed a Petition for *Certiorari*, *Mandamus*,[14] Prohibition and Injunction with Prayer for a Temporary Restraining Order and Writ of Preliminary Injunction, assailing the Orders dated 9 June 1995 and 11 August 1995 of the RTC foreclosing their right to adduce evidence in support of their defense. The Petition was docketed as CA-G.R. SP No. 38948.

The Court of Appeals, through its Third Division, promulgated a Decision[15] on 29 April 1996, denying due course to the Petition in CA-G.R. SP No. 38948. Rhoda and respondent MICI elevated the matter to the Supreme Court *via* a Petition for *Certiorari*,[16] docketed as G.R. No. 126244. This Court likewise dismissed the Petition in G.R. No. 126244 in a Resolution dated 30 September 1996.[17] Entry of Judgment was made in G.R. No. 126244 on 8 November 1996.[18]

On 28 February 2000, the RTC rendered a Decision in Civil Case No. 93-2705, the dispositive portion of which reads:

Wherefore, [Rhoda and herein respondent MICI] are hereby ordered to pay jointly and solidarily to the [herein petitioners] the following:

1. Moral damages amounting to ₱100,000.00;

2. Actual damages for loss of earning capacity amounting to ₱805,984.00;

3. ₱36,000.00 for funeral expenses;

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[12] *Id.* at 110.

[13] *Id.* at 115.

[14] *Id.* at 183.

[15] *Id.* at 140.

[16] *Id.* at 151.

[17] *Id.* at 201.

[18] *Id.* at 200.

4. ₱50,000.00 as exemplary damages;

5. ₱50,000.00 for attorney's fees plus ₱1,500 per court appearance; and

6. Cost of suit.[19]

Rhoda and respondent MICI received their copy of the foregoing RTC Decision on 14 March 2000.[20] On 22 March 2000, respondent MICI and Rhoda filed a Motion for Reconsideration[21] of said Decision, averring therein that the RTC erred in ruling that the obligation of Rhoda and respondent MICI to petitioners was solidary or joint and several; in computing George's loss of earning capacity not in accord with established jurisprudence; and in awarding moral damages although it was not buttressed by evidence.

Resolving the Motion of respondent MICI and Rhoda, the RTC issued an Order[22] on 24 January 2001 modifying and amending its Decision dated 28 February 2000, and dismissing the case against respondent MICI.

The RTC held that:

> After a careful evaluation of the issues at hand, the contention of the [herein respondent MICI] as far as the solidary liability of the insurance company with the other defendant [Rhoda] is meritorious. However, the assailed Decision can be modified or amended to correct the same honest inadvertence without necessarily reversing it and set aside to conform with the evidence on hand.

The RTC also re-computed George's loss of earning capacity, as follows:

> The computation of actual damages for loss of earning capacity was determined by applying the formula adopted in the American Expectancy Table of Mortality or the actuarial of Combined

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[19] *Id.* at 271.

[20] *Id.* at 272.

[21] *Id.*

[22] *Id.* at 308.

Experience Table of Mortality applied in x x x *Villa Rey Transit, Inc. v. Court of Appeals* (31 SCRA 521). Moral damages is awarded in accordance with Article 2206 of the New Civil Code of the Philippines. While death indemnity in the amount of ₱50,000.00 is automatically awarded in cases where the victim had died (*People v. Sison*, September 14, 1990 [189 SCRA 643]).[23]

In the end, the RTC decreed:

WHEREFORE, in view of the foregoing consideration, the Decision of this Court dated 28 February 2000 is hereby amended or modified. Said Decision should read as follows:

"Wherefore, defendant Rhoda Santos is hereby ordered to pay to the [herein petitioners] the following:

1. Moral damages amounting to ₱100,000.00;
2. Actual damages for loss of earning capacity amounting to ₱102,106.00;
3. ₱36,000.00 for funeral expenses;
4. ₱50,000.00 as death indemnity;
5. ₱50,000.00 for attorney's fees plus ₱1,500.00 per court appearance;
6. Costs of the suit.

The case against Malayan Insurance Company, Inc. is hereby dismissed."[24]

It was petitioners' turn to file a Motion for Reconsideration[25] of the 24 January 2001 Order, to which respondent MICI filed a "Vigorous Opposition to the Plaintiff's Motion for Reconsideration."[26]

On 15 June 2001, the RTC issued an Order reinstating its Decision dated 28 February 2000, relevant portions of which state:

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[23] *Id.* at 309.

[24] *Id.* at 308-309.

[25] *Id.* at 310.

[26] *Id.* at 346.

Finding the arguments raised by the [herein petitioners] in their Motion for Reconsideration of the Order of this Court dated January 24, 2001 to be more meritorious to [herein respondent's] Malayan Insurance Co., Inc. (sic) arguments in its vigorous opposition thereto, said motion is hereby granted.

Accordingly, the Order under consideration is hereby reconsidered and set aside. The decision of this Court dated February 28, 2000 is hereby reinstated.

Notify parties herein.[27]

Respondent MICI received a copy of the 15 June 2001 Order of the RTC on 27 June 2001.

Aggrieved by the latest turn of events, respondent MICI filed on 9 July 2001 a Notice of Appeal[28] of the 28 February 2000 Decision of the RTC, reinstated by the 15 June 2001 Resolution of the same court. Rhoda did not join respondent MICI in its Notice of Appeal.[29]

Petitioners filed their Opposition[30] to the Notice of Appeal of respondent MICI, with a Motion for the Issuance of Writ of Execution.

After considering the recent pleadings of the parties, the RTC, in its Order dated 6 September 2001, denied the Notice of Appeal of respondent MICI and granted petitioners' Motion for the Issuance of Writ of Execution. The RTC reasoned in its Order:

The records disclosed that on February 28, 2000 this Court rendered a Decision in favor of the [herein petitioners] and against [Rhoda and herein respondent MICI]. The Decision was said to have been received by MICI on March 14, 2000. Eight days after or on March 22, 2000, MICI mailed its Motion for Reconsideration to this Court and granted the same in the Order dated January 24, 2001. From this Order, [petitioners] filed a Motion for Reconsideration

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[27] *Id.* at 355.

[28] *Id.* at 356.

[29] *Id.* at 361.

[30] *Id.* at 360.

on February 21, 2001 to which MICI filed a vigorous opposition. On June 15, 2001 this Court granted [petitioners'] motion reinstating the Decision dated February 28, 2000. According to MICI, the June 15, 2001 order was received by it on June 27, 2001. MICI filed a Notice of Appeal on July 9, 2001 or twelve (12) days from receipt of said Order.

[Petitioners] contend that the Notice of Appeal was filed out of time while [respondent] MICI opposes, arguing otherwise. The latter interposed that the Order dated June 15, 2001 is in reality a new Decision thereby giving it a fresh fifteen (15) days within which to file notice of appeal.

[Respondent] MICI's contention is not meritorious. The fifteen (15) day period within which to file a notice of appeal should be reckoned from the date it received the Decision on March 14, 2000. So that when MICI mailed its Motion for Reconsideration on March 22, 2000, eight (8) days had already lapsed, MICI has remaining seven (7) days to file a notice of appeal. However, when it received the last Order of this Court it took [respondent] MICI twelve (12) days to file the same. Needless to say, MICI's Notice of Appeal was filed out of time. The Court cannot countenance the argument of MICI that a resolution to a motion for a final order or judgment will have the effect of giving a fresh reglementary period. This would be contrary to what was provided in the rules of procedure.[31]

Accordingly, the RTC adjudged:

WHEREFORE, premises considered, [herein respondent] MICI's Notice of Appeal is hereby Denied for having filed out of time making the Decision of this Court dated February 28, 2000 as final and executory. Accordingly, the Motion for Issuance of Writ of Execution filed by [herein petitioners] is hereby Granted.

Notify parties herein.[32]

Respondent MICI filed a Petition for *Certiorari*[33] under Rule 65 of the Rules of Court before the Court of Appeals, which was docketed as CA-G.R. SP No. 67297. The Petition assailed,

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[31] *Id.* at 371-372.

[32] *Id.* at 372.

[33] CA *rollo*, p. 2.

for having been rendered by the RTC with grave abuse of discretion amounting to lack or excess of jurisdiction, the following: (1) the Order dated 6 September 2001, denying the Notice of Appeal of respondent MICI and granting petitioners' Motion for the Issuance of Writ of Execution; (2) the Decision dated 28 February 2000, holding Rhoda and respondent MICI jointly and severally liable for George's death; and (3) the Order dated 15 June 2001, reinstating the Decision dated 28 February 2000.

The Court of Appeals granted the Petition for *Certiorari* of respondent MICI in a Decision dated 26 June 2000, ratiocinating thus:

Prescinding therefrom, we hold that the fifteen (15) day period to appeal must be reckoned from the time the [herein respondent] Malayan received the order dated 15 June 2001 reversing *in toto* the order of 24 January 2000 and reinstating in full the Decision dated 28 February 2000. Thus, [respondent] Malayan had until 12 July 2001 within which to file its notice of appeal. Therefore, when [respondent] Malayan filed its notice of appeal on 09 July 2001, it was well within the reglementary period and should have been given due course by the public respondent court.

It was therefore, an excess of jurisdiction on the part of the public respondent court when it reckoned the [respondent] Malayan's period to appeal on the date it received on 14 March 2000 the former's decision dated 28 February 2000. As earlier expostulated, the said decision was completely vacated insofar as the [respondent] Malayan is concerned when the public respondent court in its order dated 24 January 2001 dismissed the case against the former. Thus, to reckon the fifteen (15) days to appeal from the day the [respondent] Malayan received the said decision on 14 March 2000, is the height of absurdity because there was nothing for the [respondent] Malayan to appeal inasmuch as the public respondent court vacated the said decision in favor of the former.

The aforesaid conclusion finds support in *Sta. Romana vs. Lacson* (104 SCRA 93), where the court, relying on the case of *Magdalena Estate, Inc. vs. Caluag*, 11 SCRA 334, held that where the court of origin made a thoroughly (sic) restudy of the original judgment and rendered the amended and clarified judgment only after considering all the factual and legal issues, the amended and clarified decision

was an entirely new decision which superseded (sic). For all intents and purposes, the court concluded the trial court rendered a new judgment from which the time to appeal must be reckoned.

In the instant case, what is involved is not merely a substantial amendment or modification of the original decision, but the total reversal thereof in the order dated 24 January 2000. Given the rationale in the aforecited cases, it is only logical that the period of appeal be counted from 27 June 2001, the date that [respondent] Malayan received the order dated 15 June 2001 reversing *in toto* the order of 24 January 2000 and reinstating the Decision dated 28 February 2000.[34] (Emphasis supplied.)

The *fallo* of the Decision of the Court of Appeals reads:

WHEREFORE, in consideration of the foregoing premises, the petition for *certiorari* is partially GRANTED. Accordingly, the public respondent court's order dated 06 September 2001 is hereby RECALLED and SET ASIDE.

Public respondent court is hereby directed to approve the petitioner Malayan's notice of appeal and to refrain from executing the writ of execution granted on 06 September 2001.[35]

The Court of Appeals denied petitioners' Motion for Reconsideration in a Resolution dated 29 November 2002.

Understandably distraught, petitioners come before this Court in this Petition for Review, which raise the following issues:

I.

Whether or not the respondent Court of Appeals committed grave abuse of discretion when it ruled that private respondent could file a Petition for *Certiorari* even though its Motion for Reconsideration was still pending resolution with the lower court.

II.

Whether or not the respondent Court of Appeals committed grave abuse of discretion when it ruled that the private respondent had

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[34] *Rollo,* pp. 51-52.

[35] *Id.* at 52-53.

filed its Notice of Appeal with the trial court within the reglementary period.[36]

The Court first turns its attention to the primary issue for its resolution: whether the Notice of Appeal filed by respondent MICI before the RTC was filed out of time.

The period for filing a Notice of Appeal is set by Rule 41, Section 3 of the 1997 Rules of Court:

SEC. 3. *Period of ordinary appeal*. The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellants shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. x x x.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

It is clear under the Rules that an appeal should be taken within 15 days from the notice of judgment or final order appealed from.[37] A final judgment or order is one that finally disposes of a case, leaving nothing more for the court to do with respect to it. It is an adjudication on the merits which, considering the evidence presented at the trial, declares categorically what the rights and obligations of the parties are; or it may be an order or judgment that dismisses an action.[38]

Propitious to petitioners is *Neypes v. Court of Appeals*,[39] which the Court promulgated on 14 September 2005, and wherein it laid down the fresh period rule:

To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems

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[36] *Id.* at 282-283.

[37] *Nuñez v. GSIS Family Bank*, G.R. No. 163988, 17 November 2005, 475 SCRA 305, 319.

[38] *PAL Employees Savings and Loan Association, Inc. v. Philippine Airlines, Inc.*, G.R. No. 161110, 30 March 2006, 485 SCRA 632, 649.

[39] G.R. No. 141524, 14 September 2005, 469 SCRA 633, 644-645.

it practical to allow a **fresh period of 15 days within which to file the notice of appeal** in the Regional Trial Court, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration.

Henceforth, this **"fresh period rule" shall also apply to** Rule 40 governing appeals from the Municipal Trial Courts to the Regional Trial Courts; **Rule 42 on petitions for review from the Regional Trial Courts to the Court of Appeals**; Rule 43 on appeals from quasi-judicial agencies to the Court of Appeals and Rule 45 governing appeals by *certiorari* to the Supreme Court. The new rule aims to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution. (Emphases ours.)

The fresh period of 15 days becomes significant when a party opts to file a motion for new trial or motion for reconsideration. In this manner, the trial court which rendered the assailed decision is given another opportunity to review the case and, in the process, minimize and/or rectify any error of judgment.[40] With the advent of the fresh period rule, parties who availed themselves of the remedy of motion for reconsideration are now allowed to file a notice of appeal within fifteen days from the denial of that motion.[41]

The Court has accentuated that the fresh period rule is not inconsistent with Rule 41, Section 3 of the Rules of Court which states that the appeal shall be taken "within fifteen (15) days from notice of judgment **or** final order appealed from." The use of the disjunctive word "or" signifies disassociation and independence of one thing from another. It should, as a rule, be construed in the sense which it ordinarily implies.[42] Hence, the use of "or" in the above provision supposes that the notice of appeal may be filed within 15 days from the notice of judgment or within 15 days from notice of the final order in the case.

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[40] *Id.*

[41] *Active Realty and Development Corporation v. Fernandez,* G.R. No. 157186, 19 October 2007, 537 SCRA 116, 129.

[42] *Neypes v. Court of Appeals*, *supra* note 39 at 645-646.

Applying the fresh period rule, the Court agrees with the Court of Appeals and holds that respondent MICI seasonably filed its Notice of Appeal with the RTC on 9 July 2001, just 12 days from 27 June 2001, when it received the denial of its Motion for Reconsideration of the 15 June 2001 Resolution reinstating the 28 February 2000 Decision of the RTC.

The fresh period rule may be applied to the case of respondent MICI, although the events which transpired concerning its Notice of Appeal took place in June and July 2001, inasmuch as rules of procedure may be given retroactive effect on actions pending and undetermined at the time of their passage. The Court notes that *Neypes* was promulgated on 14 September 2005, while the instant Petition was still pending before this Court.

Reference may be made to *Republic v. Court of Appeals*,[43] involving the retroactive application of A.M. No. 00-2-03-SC which provided that the 60-day period within which to file a petition for *certiorari* shall be reckoned from receipt of the order denying the motion for reconsideration. In said case, the Court declared that rules of procedure "may be given retroactive effect to actions pending and undetermined at the time of their passage and this will not violate any right of a person who may feel that he is adversely affected, inasmuch as there is no vested rights in rules of procedure."

Hence, the fresh period rule laid down in *Neypes* was applied by the Court in resolving the subsequent cases of *Sumaway v. Urban Bank, Inc.*,[44] *Elbiña v. Ceniza*,[45] *First Aqua Sugar Traders, Inc. v. Bank of the Philippine Islands*,[46] even though the antecedent facts giving rise to said cases transpired before the promulgation of *Neypes*.

In *De los Santos v. Vda de Mangubat*,[47] particularly, the Court applied the fresh period rule, elucidating that procedural

[43] 447 Phil. 385, 393-394 (2003).

[44] G.R. No. 142534, 27 June 2006, 493 SCRA 99, 105-106.

[45] G.R. No. 154019, 10 August 2006, 498 SCRA 438, 443.

[46] G.R. No. 154034, 5 February 2007, 514 SCRA 223, 226-227.

[47] G.R. No. 149508, 10 October 2007, 535 SCRA 411, 422.

law refers to the adjective law which prescribes rules and forms of procedure in order that courts may be able to administer justice. Procedural laws do not come within the legal conception of a retroactive law, or the general rule against the retroactive operation of statutes. The fresh period rule is irrefragably procedural, prescribing the manner in which the appropriate period for appeal is to be computed or determined and, therefore, can be made applicable to actions pending upon its effectivity without danger of violating anyone else's rights.

Since the Court affirms the ruling of the Court of Appeals that respondent MICI filed its Notice of Appeal with the RTC within the reglementary period, the appropriate action, under ordinary circumstances, would be for the Court to remand the case to the RTC so that the RTC could approve the Notice of Appeal of respondent MICI and respondent MICI could already file its appeal with the Court of Appeals.

However, considering that the case at bar has been pending for almost sixteen years,[48] and the records of the same are already before this Court, remand is no longer necessary.

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 has 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.[49] In *Lao v. People*,[50] the Supreme Court, in consideration of the years that it had taken for the controversy therein to reach it, concluded that remand of the case to a lower court was no

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[48] The accident occurred on 26 January 1993 and the Complaint (Civil Case No. 93-2705) for Damages was filed on 26 May 1993. (Records, p. 1.)

[49] *Gokongwei, Jr. v. Securities and Exchange Commission,* 178 Phil. 266, 292 (1979).

[50] G.R. No. 159404, 27 June 2008, 556 SCRA 120, 128-129.

longer the more expeditious and practical route to follow, and it then decided the said case based on the evidentiary record before it.

The consistent stand of the Court has always been that a case should be decided in its totality, resolving all interlocking issues in order to render justice to all concerned and to end the litigation once and for all. Verily, courts should always strive to settle the entire controversy in a single proceeding, leaving no root or branch to bear the seed of future litigation.[51] Where the public interest so demands, the court will broaden its inquiry into a case and decide the same on the merits rather than merely resolve the procedural question raised.[52] Such rule obtains in this case.

The Court is convinced that the non-remanding of the case at bar is absolutely justified. Petitioners have already suffered from the tragic loss of a loved one, and must not be made to endure more pain and uncertainty brought about by the continued pendency of their claims against those liable. The case has been dragging on for almost 16 years now without the petitioners having been fully compensated for their loss. The Court cannot countenance such a glaring indifference to petitioners' cry for justice. To be sure, they deserve nothing less than full compensation to give effect to their substantive rights.[53]

The complete records of the present case have been elevated to this Court, and the pleadings and evidence therein could fully support its factual adjudication. Indeed, after painstakingly going over the records, the Court finds that the material and decisive facts are beyond dispute: George was killed when he was hit by the truck driven by Willie, an employee of Rhoda; and the truck is insured with respondent MICI. The only issue

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[51] *Monteroso v. Court of Appeals,* G.R. No. 105608, 30 April 2008, 553 SCRA 66, 109.

[52] *Latchme Motoomull v. Dela Paz*, G.R. No. 45302, 24 July 1990, 187 SCRA 743, 754.

[53] *Apo Fruits Corporation v. Court of Appeals,* G.R. No. 164195, 6 February 2007, 514 SCRA 537, 555-556.

left for the Court to resolve is the extent of the liability of Rhoda and respondent MICI for George's death and the appropriate amount of the damages to be awarded to petitioners.

The Court now turns to the issue of who is liable for damages for the death of George.

Respondent MICI does not deny that it is the insurer of the truck. Nevertheless, it asserts that its liability is limited, and it should not be held solidarily liable with Rhoda for all the damages awarded to petitioners.

A solidary or joint and several obligation is one in which each debtor is liable for the entire obligation, and each creditor is entitled to demand the whole obligation. In a joint obligation, each obligor answers only for a part of the whole liability and to each obligee belongs only a part of the correlative rights. Well-entrenched is the rule that solidary obligation cannot lightly be inferred. There is solidary liability only when the obligation expressly so states, when the law so provides or when the nature of the obligation so requires.[54]

It is settled that where the insurance contract provides for indemnity against liability to third persons, the liability of the insurer is direct and such third persons can directly sue the insurer. The direct liability of the insurer under indemnity contracts against third party liability does not mean, however, that the insurer can be held solidarily liable with the insured and/or the other parties found at fault, since they are being held liable under different obligations. The liability of the insured carrier or vehicle owner is based on tort, in accordance with the provisions of the Civil Code;[55]

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[54] *Industrial Management International Development Corporation v. National Labor Relations Commission*, 387 Phil. 659, 666 (2000).

[55] ART. 2180. The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.

while that of the insurer arises from contract, particularly, the insurance policy. The third-party liability of the insurer is only up to the extent of the insurance policy and that required by law; and it cannot be held solidarily liable for anything beyond that amount.[56] Any award beyond the insurance coverage would already be the sole liability of the insured and/or the other parties at fault.[57]

In *Vda. de Maglana v. Consolacion,*[58] it was ruled that an insurer in an indemnity contract for third-party liability is directly liable to the injured party up to the extent specified in the agreement, but it cannot be held solidarily liable beyond that amount. According to respondent MICI, its liability as insurer of Rhoda's truck is limited. Following *Vda. de Maglana*,

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The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in article 2176 shall be applicable.

Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage. (Emphasis supplied.)

ART. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

[56] *Metro Manila Transit Corporation v. Court of Appeals,* 359 Phil. 18, 42-43 (1998).

[57] See *Government Service Insurance System v. Court of Appeals,* 368 Phil. 36, 46 (1999); *Metro Manila Transit Corporation v. Court of Appeals*, *id.*

[58] G.R. No. 60506, 6 August 1992, 212 SCRA 218.

petitioners would have had the option either (1) to claim the amount awarded to them from respondent MICI, up to the extent of the insurance coverage, and the balance from Rhoda; or (2) to enforce the entire judgment against Rhoda, subject to reimbursement from respondent MICI to the extent of the insurance coverage. The Court, though, is precluded from applying its ruling in *Vda. de Maglana* by the difference in one vital detail between the said case and the one at bar. The insurer was able to sufficiently establish its limited liability in *Vda. de Maglana*, while the same cannot be said for respondent MICI herein.

The Court highlights that in this case, the insurance policy between Rhoda and respondent MICI, covering the truck involved in the accident which killed George, was never presented. There is no means, therefore, for this Court to ascertain the supposed limited liability of respondent MICI under said policy. Without the presentation of the insurance policy, the Court cannot determine the existence of any limitation on the liability of respondent MICI under said policy, and the extent or amount of such limitation.

It should be remembered that respondent MICI readily admits that it is the insurer of the truck that hit and killed George, except that it insists that its liability under the insurance policy is limited. As the party asserting its limited liability, respondent MICI then has the burden of evidence to establish its claim. In civil cases, the party that alleges a fact has the burden of proving it. Burden of proof is the duty of a party to present evidence on the facts in issue necessary to prove its claim or defense by the amount of evidence required by law.[59] Regrettably, respondent MICI failed to discharge this burden.[60] The Court cannot rely on mere allegations of limited liability sans proof.

The failure of respondent MICI to present the insurance policy — which, understandably, is not in petitioners' possession, but

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[59] Rule 131 section 1of the Rules of Court, cited in *Co v. Admiral United Savings Bank,* G.R. No. 154740, 16 April 2008, 551 SCRA 472, 480.

[60] *Northwest Airlines, Inc. v. Chiong,* G.R. No. 155550, 31 January 2008, 543 SCRA 308, 321.

in the custody and absolute control of respondent MICI as the insurer and/or Rhoda as the insured — gives rise to the presumption that its presentation is prejudicial to the cause of respondent MICI.[61] When the evidence tends to prove a material fact which imposes a liability on a party, and he has it in his power to produce evidence which, from its very nature, must overthrow the case made against him if it is not founded on fact, and he refuses to produce such evidence, the presumption arises that the evidence, if produced, would operate to his prejudice and support the case of his adversary.[62]

Respondent MICI had all the opportunity to prove before the RTC that its liability under the insurance policy it issued to Rhoda, was limited; yet, respondent MICI failed to do so. The failure of respondent MICI to rebut that which would have naturally invited an immediate, pervasive, and stiff opposition from it created an adverse inference that either the controverting evidence to be presented by respondent MICI would only prejudice its case, or that the uncontroverted evidence of petitioners indeed speaks of the truth. And such adverse inference, recognized and adhered to by courts in judging the weight of evidence in all kinds of proceedings, surely is not without basis — its rationale and effect rest on sound, logical and practical considerations, *viz*:

> The presumption that a man will do that which tends to his obvious advantage, if he possesses the means, supplies a most important test for judging of the comparative weight of evidence x x x If, on the supposition that a charge or claim is unfounded, the party against whom it is made has evidence within his reach by which he may repel that which is offered to his prejudice, his omission to do so supplies a strong presumption that the charge or claim is well founded; it would be contrary to every principle of reason, and to all experience of human conduct, to form any other conclusion." (*Starkie on Evidence,* p. 846, *Moore on Facts,* Vol. I, p. 544)

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[61] *Veterans Security Agency, Inc. v. Gonzalvo, Jr.*, G.R. No. 159293, 16 December 2005, 478 SCRA 298, 306.

[62] *Metropolitan Bank and Trust Company v. Court of Appeals*, 388 Phil. 880, 888 (2000); *Manila Bay Club Corporation v. Court of Appeals*, G.R. No. 110015, 13 October 1995, 249 SCRA 303, 306.

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The ordinary rule is that one who has knowledge peculiarly within his own control, and refuses to divulge it, cannot complain if the court puts the most unfavorable construction upon his silence, and infers that a disclosure would have shown the fact to be as claimed by the opposing party." (*Societe, etc., v. Allen*, 90 Fed. Rep. 815, 817, 33 C.C.A. 282, per Taft, C.J., Moore on Facts, Vol. I, p. 561).[63]

The inference still holds even if it be assumed, for argument's sake, that the solidary liability of respondent MICI with Rhoda is improbable, for it has likewise been said that:

Weak evidence becomes strong by the neglect of the party against whom it is put in, in not showing by means within the easy control of that party that the conclusion drawn from such evidence is untrue. (*Pittsburgh, etc., R. Co. v. Callaghan*, 50 III. App. 676, 681, Moore on Facts, Vol. I, p. 572).[64]

Given the admission of respondent MICI that it is the insurer of the truck involved in the accident that killed George, and in the utter absence of proof to establish both the existence and the extent/amount of the alleged limited liability of respondent MICI as insurer, the Court could only conclude that respondent MICI had agreed to fully indemnify third-party liabilities. Consequently, there is no more difference in the amounts of damages which petitioners can recover from Rhoda or respondent MICI; petitioners can recover the said amounts in full from either of them, thus, making their liabilities solidary or joint and several.

The Court now comes to the issue of the amounts of the damages awarded.

In its Decision dated 22 February 2000, the RTC awarded petitioners moral and actual damages, as well as funeral expenses and attorney's fees. Subsequently, in its Order dated 24 January 2001, the RTC reduced the amount of actual damages from

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[63] *Metropolitan Bank and Trust Company v. Court of Appeals*, *id.*; *Manila Bay Club Corporation v. Court of Appeals, id.* at 305-306.

[64] *Manila Bay Club Corporation v. Court of Appeals, supra* note 62 at 307.

₱805,984.00 to ₱102,106.00, but additionally awarded death indemnity in the amount of ₱50,000.00. Its award of moral damages and funeral expenses as well as attorney's fees remained constant in its 28 February 2000 decision and was carried over to its 24 January 2001 Order.

The Court shall now proceed to scrutinize said award of damages.

As regards the award of actual damages, Article 2199 of the Civil Code provides that "[e]xcept as provided by law or by stipulation one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved x x x."

The RTC awarded ₱36,000.00 for burial expenses. The award of ₱36,000.00 for burial expenses is duly supported by receipts evidencing that petitioners did incur this expense. The petitioners held a wake for two days at their residence and another two days at the Loyola Memorial Park.[65] The amount covered the expenses by petitioners for the wake, funeral and burial of George.[66]

As to compensation for loss of earning capacity, the RTC initially awarded ₱805,984.00 in its 28 February 2000 Decision, which it later reduced to ₱102,106.00 on 24 January 2001.

Article 2206 of the Civil Code provides that in addition to the indemnity for death caused by a crime or quasi-delict, the "defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter, x x x." Compensation of this nature is awarded not for loss of earnings but for loss of capacity to earn money. Hence, it is proper that compensation for loss of earning capacity should be awarded to the petitioners in accordance with the formula established in decided cases for computing net earning capacity, to wit:

> The formula for the computation of unearned income is:
>
> Net Earning Capacity = life expectancy x (gross annual income – reasonable and necessary living expenses).

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[65] Records, p. 254.

[66] *Id.* at 253.

Life expectancy is determined in accordance with the formula:

2/3 x [80 – age of deceased at the time of death][67]

Jurisprudence provides that the first factor, *i.e*., life expectancy, shall be computed by applying the formula (2/3 x [80 – age at death]) adopted in the American Expectancy Table of Mortality or the Actuarial of Combined Experience Table of Mortality.

The second factor is computed by multiplying the life expectancy by the net earnings of the deceased, *i.e*., the total earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses. The loss is not equivalent to the entire earnings of the deceased, but only such portion that he would have used to support his dependents or heirs. Hence, the Court deducts from his gross earnings the necessary expenses supposed to be used by the deceased for his own needs. The Court explained in *Villa Rey Transit v. Court of Appeals*[68]:

[The award of damages for loss of earning capacity is] concerned with the determination of the losses or damages sustained by the private respondents, as dependents and intestate heirs of the deceased, and that said damages consist, not of the full amount of his earnings, but of the support they received or would have received from him had he not died in consequence of the negligence of petitioner's agent. In fixing the amount of that support, we must reckon with the "necessary expenses of his own living," which should be deducted from his earnings. Thus, it has been consistently held that earning capacity, as an element of damages to one's estate for his death by wrongful act is necessarily his net earning capacity or his capacity to acquire money, "less necessary expense for his own living." Stated otherwise, the amount recoverable is not the loss of the entire earning, but rather the loss of that portion of the earnings which the beneficiary would have received. In other words, only net earnings, and not gross earnings are to be considered that is, the total of the earnings less

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[67] *Candano Shipping Lines, Inc. v. Sugata-on,* G.R. No. 163212, 13 March 2007, 518 SCRA 221, 235.

[68] G.R. No. L-25499, 18 February 1970, 31 SCRA 511; *Magbanua v. Tabusares, Jr.,* G.R. No. 152134, 4 June 2004, 431 SCRA 99, 104-105; *Candano Shipping Lines, Inc. v. Sugata-on, id.*

expenses necessary in the creation of such earnings or income and less living and other incidental expenses."

Applying the aforestated jurisprudential guidelines in the computation of the amount of award for damages set out in *Villa Rey*, the Court computes the award for the loss of George's earning capacity as follows:

Life expectancy = 2/3 x [80 – age of deceased at the time of death]
2/3 x [80 – 56]
2/3 x [24]

FORMULA – NET EARNING CAPACITY (NEC)

If:

Age at time of death of George Poe = 58[69]
Monthly Income at time of death = ₱6,946[70]
Gross Annual Income (GAI) = [(6,946) (12)] = ₱83,352
Reasonable/Necessary Living Expenses (R/NLE) = 50%[71] of GAI = ₱41,676

NEC = [2/3 (80-58)] [83,352-41,676]
= [2/3 (22)] [41,676]
= [14.67] [41,676]
= ₱611,386.92

Therefore, George's lost net earning capacity is equivalent to ₱611,386.92.

The RTC awarded moral damages[72] in the amount of ₱100,000.00. With respect to moral damages, the same are awarded under the following circumstances:

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[69] Records, p. 261.

[70] *Id.* at 241.

[71] In computing the third factor, the necessary living expense, a survey of more recent jurisprudence shows that this Court consistently pegged the amount at 50% of the gross annual income. We held in *Smith Bell Dodwell Shipping Agency Corp. v. Borja* (432 Phil. 913, 925 [2002]), that when there is no showing that the living expenses constituted the smaller percentage of the gross income, we fix the living expenses at half of the gross income. (*Candano Shipping Lines, Inc. v. Sugata-on, supra* note 67 at 237.)

[72] *Metro Manila Transit Corporation v. Court of Appeals, supra* note 56.

The award of moral damages is aimed at a restoration, within the limits of the possible, of the spiritual *status quo ante*. Moral damages are designed to compensate and alleviate in some way the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury unjustly caused a person. Although incapable of pecuniary computation, they must be proportionate to the suffering inflicted. The amount of the award bears no relation whatsoever with the wealth or means of the offender.

In the instant case, petitioners' testimonies reveal the intense suffering which they continue to experience as a result of George's death.[73] It is not difficult to comprehend that the sudden and unexpected loss of a husband and father would cause mental anguish and serious anxiety in the wife and children he left behind. Moral damages in the amount of ₱100,000.00 are proper for George's death.[74]

The RTC also awarded ₱50,000.00 as death indemnity which the Court shall not disturb. The award of ₱50,000.00 as death indemnity is in accordance with current rulings of the Court.[75]

Finally, the RTC awarded attorneys fees to petitioners. Petitioners are entitled to attorney's fees. Under Article 2008 of the Civil Code, attorney's fees may be granted when a party is compelled to litigate or incur expenses to protect his interest by reason of an unjustified act of the other party.[76] In *Metro Manila Transit Corporation v. Court of Appeals*,[77] the Court

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[73] Records, p. 254.

[74] *B.F. Metal (Corporation) v. Lomotan,* G.R. No. 170813, 16 April 2008, 551 SCRA 618, 628, citing *Victory Liner, Inc. v. Heirs of Malecdan,* 442 Phil. 784, 795 (2002); *People v. Ortiz,* 413 Phil. 592, 617-618 (2001); *People v. Cortez,* 401 Phil. 887, 902 (2000); *People v. Tambis,* 370 Phil. 459, 471 (1999).

[75] *Metro Manila Transit Corporation v. Court of Appeals, supra* note 56; *Victory Liner, Inc. v. Gammad,* G.R. No. 159636, 25 November 2004, 444 SCRA 355, 373.

[76] *Mercury Drug Corporation v. Huang,* G.R. No. 172122, 22 June 2007, 525 SCRA 427, 439-443.

[77] *Supra* note 56.

held that an award of ₱50,000.00 as attorney's fees was reasonable. Hence, petitioners are entitled to attorney's fees in that amount.[78]

WHEREFORE, premises considered, the instant Petition is *PARTIALLY GRANTED*. While the Court *AFFIRMS* the Decision, dated 26 June 2002, and Resolution, dated 29 November 2002, of the Court of Appeals in CA-G.R. SP No. 67297, granting the Petition for *Certiorari* of respondent Malayan Insurance Company, Inc., the Court, nonetheless, *RESOLVES*, in consideration of the speedy administration of justice, and the peculiar circumstances of the case, to give *DUE COURSE* to the present Petition and decide the same on its merits.

Rhoda Santos and respondent Malayan Insurance Company, Inc. are hereby ordered to pay jointly and severally the petitioners Heirs of George Y. Poe the following:

(1) Funeral expenses ₱36,000.00;

(2) Actual damages for loss of earning capacity ₱611,386.92;

(3) Moral damages amounting to ₱100,000.00;

(4) Death indemnity ₱50,000.00; and

(5) Attorney's fees ₱50,000.00 plus ₱1,500.00 per court appearance.

No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio Morales,[*] *Nachura,* and *Peralta, JJ.,* concur.

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[78] *Victory Liner, Inc. v. Heirs of Andres Malecdan, supra* note 74 at 527-528.

[*] Per Special Order No. 602, dated 20 March 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Conchita Carpio Morales to replace Associate Justice Ma. Alicia Austria-Martinez, who is on official leave.

SECOND DIVISION

[G.R. No. 160467. April 7, 2009]

SOLEDAD MUÑOZ MESA, *petitioner, vs.* **SOCIAL SECURITY SYSTEM and PHILROCK INCORPORATED,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; EMPLOYEES' COMPENSATION; FILING OF A CLAIM ONLY FOR FUNERAL BENEFITS SERVES AS CONSTRUCTIVE NOTICE FOR SSS/ECC THAT THE CLAIMANT WAS ALSO CLAIMING COMPENSATION BENEFITS. —** [T]he Court holds that petitioner's filing of a claim before the SSS, even *arguendo* that it was only for funeral benefits, **on November 25, 1988** served as constructive notice on the part of the SSS/ECC pursuant to the ECC Board Resolution 93-08-0068 *vis a vis* ECC Rules of Procedure for the Filing and Disposition of Employees' Compensation Claims, that she was claiming before the SSS for compensation benefits under P.D. No. 626, effectively tolling the running of the prescriptive period. The term "funeral benefits" certainly connotes benefits arising from death.

2. **ID.; ID.; WHEN REMAND OF THE CASE TO ECC IS IN ORDER. —** The issue of whether Mesa's death is compensable was never, however, fully raised nor discussed in any of the proceedings below, nor is it ventilated in the present petition, and the records are bereft of adequate evidence to enable the Court to rule thereon. A remand of the case to the ECC for the resolution of such issue is thus in order.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Amador M. Montiero, Joselito A. Vivit, and *Marites Sto. Tomas-Alonzo* for SSS.

D E C I S I O N

CARPIO MORALES, *J.*:

On appeal is the Court of Appeals Decision[1] dated January 16, 2003 sustaining the Decision[2] dated August 24, 2001 of the Employees Compensation Commission (ECC) in ECC Case No. MS-12322-501, as well as its Resolution[3] dated October 3, 2003 denying petitioner's motion for reconsideration.

Teodoro Mesa (Mesa), the deceased husband of petitioner Soledad Muñoz Mesa, was an employee of respondent Philrock Incorporated (Philrock), from April 1966 to November 1998.[4]

In the course of his employment, Mesa was diagnosed to be afflicted with diabetes mellitus, pulmonary tuberculosis, and ischemic heart disease[5] for which he was confined from September 23 to 30, 1988 at St. Martha's Specialty Clinic in Tarlac City. Upon his discharge from the hospital, he continued to work for Philrock until he succumbed to myocardial infarction on November 19, 1988. He last held the position of Project General Superintendent.

Close to 12 years later or in October 2000, Mesa's wife, herein petitioner, claimed for employees' compensation benefits under Presidential Decree (P.D.) No. 626 or the Employees' Compensation Law, as amended.

By pro-forma letter[6] dated January 18, 2001, the Social Security System (SSS) denied petitioner's claim on the ground

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[1] *Rollo*, pp. 85-91. Penned by Associate Justice Rebecca de Guia-Salvador and concurred in by Associate Justices Godardo A. Jacinto and Eloy R. Bello, Jr.

[2] CA *rollo*, pp. 37-40. Penned by ECC Executive Director Elmor D. Juridico.

[3] *Rollo*, p. 104. Penned by Associate Justice Rebecca de Guia-Salvador and concurred in by Associate Justices Godardo A. Jacinto and Eloy R. Bello, Jr.

[4] See Certification, Annex "B", CA *rollo*, p. 29.

[5] See Medical Certificate, Annex "C", *id.* at 30.

[6] See Annex "E", *id.* at 33.

of prescription. Petitioner moved for reconsideration, alleging that the filing of the claim was delayed because she was not aware that her husband was entitled to employees' compensation until she heard it from a friend who was able to claim a similar benefit, and that she could not file the claim immediately because she herself was in and out of the hospital. The motion was elevated by the SSS to the ECC per memorandum[7] dated April 17, 2001.

By Decision dated August 24, 2001, the ECC held that petitioner's claim had prescribed on November 26, 1991, following Article 201[8] of P.D. 626, as amended, which provides that claims under said law should be brought within three years from the time the cause of action accrued. Even if Art. 1144[9] of the Civil Code were applied, the ECC posed, the claim would still be barred by prescription since the period is reckoned from the date of contingency or November 25, 1998 to the date of filing of the claim in October 2000 which entailed a period of almost 12 years.

Petitioner thereupon appealed to the Court of Appeals, contending that the three-year period in P.D. 626 should not be construed as a prescriptive period but more of a requisite for the exercise of a right granted by law, and pleading for the application of the social justice precepts in resolving the controversy in her favor.

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[7] See Annex "G", *id.* at 35.

[8] Art. 201.

"No claim for compensation shall be given due course unless said claim is filed with the System within three years from the time the cause of action accrued."

[9] Art. 1144. The following actions must be brought **within ten years** from the time the right of action accrues:

1) **Upon a written contract**;

2) Upon an obligation created by law;

3) Upon a judgment;

x x x x x x x x x (Emphasis supplied)

Via a Supplement to the Petition,[10] petitioner submitted the Online Inquiry System-generated "D[eath] D[isability and] R[etirement] Claims Information" sheet[11] showing that she filed a claim for death and funeral benefits with the SSS on December 12, 1988.

By the challenged Decision dated January 16, 2003, the appellate court dismissed petitioner's petition and affirmed the ECC Decision. Citing *Vda. De Hornido v. ECC*, Art. 201 of P.D. 626, and Art. 1144 of the Civil Code, the appellate court held that at the time petitioner instituted the claim for employees' compensation benefits, almost 12 years had elapsed, hence, it had prescribed.

On petitioner's filing before the SSS of a claim for death and funeral benefits on November 25, 1988, the appellate court held that the same did not operate as constructive notice to the ECC for purposes of employees' compensation, hence, it did not toll the running of the prescriptive period. Additionally, it held that this issue was not presented before the lower tribunals and was raised for the first time on appeal, hence, it could not be entertained; and that although the November 25, 1988 claim was denominated as "SSS Death and Funeral Benefit," what petitioner actually claimed was funeral or burial benefits alone, *not* death benefits resulting from compensable injury or illness, and it was only in 2000 that she filed for death benefits, hence, the said claim for funeral benefits could not operate as constructive notice on the part of SSS within the purview of the rules on employees' compensation.

Petitioner's motion for reconsideration having been denied by Resolution dated October 3, 2003, the present appeal was filed.

Petitioner reiterates her contention that her claim has not prescribed and that the funeral claim served as constructive notice to the SSS/ECC to toll the running of the prescriptive

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[10] CA *rollo*, pp. 48-56.

[11] *Id*. at 61.

period pursuant to ECC Resolution No. 90-03-0022 and 93-08-0068. And she requests the Court to apply social justice precepts and humanitarian considerations.

The appeal is impressed with merit.

Apropos is the ruling in *Buena Obra v. SSS*[12] in which the Court, speaking through then Associate, now Chief Justice Puno, held that the claim for funeral benefits under P.D. No. 626, as amended, which was filed after the lapse of 10 years by the therein petitioner who had earlier filed a claim for death benefits, had *not* prescribed,

> The issue of prescription in the case at bar is governed by P.D. No. 626, or the Law on Employees' Compensation. Art. 201 of P.D. No. 626 and Sec. 6, Rule VII of the 1987 Amended Rules on Employees' Compensation both read as follows:
>
> > "No claim for compensation shall be given due course unless said claim is filed with the System within three years from the time the cause of action accrued."
>
> This is the general rule. The exceptions are found in Board Resolution 93-08-0068 and ECC Rules of Procedure for the Filing and Disposition of Employees' Compensation Claims. Board Resolution 93-08-0068 issued on 5 August 1993, states:
>
> "A claim for employee's compensation must be filed with System (SSS/GSIS) within three (3) years from the time the cause of action accrued, **provided however, that any claim filed within the System for any contingency that may be held compensable under the Employee's Compensation Program (ECP) shall be considered as the EC claim itself**. The three-year prescriptive period shall be reckoned from the onset of disability, or date of death. In case of presumptive death, the three (3) years limitation shall be counted from the date the missing person was officially declared to be presumptively dead." (emphasis supplied)
>
> In addition, Section 4(b), Rule 3 of the ECC Rules of Procedure for the Filing and Disposition of Employees' Compensation Claims, reads:

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[12] G.R. No. 147745, April 9, 2003, 401 SCRA 206.

"RULE 3. FILING OF CLAIM

Section 4. When to file.

(a) Benefit claims shall be filed with the GSIS or the SSS within three (3) years from the date of the occurrence of the contingency (sickness, injury, disability or death).

(b) Claims filed beyond the 3-year prescriptive period may still be given due course, provided that:

1. A claim was filed for Medicare, retirement with disability, burial, death claims, or life (disability) insurance, with the GSIS within three (3) years from the occurrence of the contingency.

2. **In the case of the private sector employees, a claim for Medicare, sickness, burial, disability or death was filed within three (3) years from the occurrence of the contingency.**

3. In any of the foregoing cases, the employees' compensation claim shall be filed with the GSIS or the SSS within a **reasonable time** as provided by law. [Emphasis supplied.]"

We agree with the petitioner that her claim for death benefits under the SSS law should be considered as the Employees' Compensation claim itself. This is but logical and reasonable because the claim for death benefits which petitioner filed with the SSS is of the same nature as her claim before the ECC. Furthermore, the SSS is the same agency with which Employees' Compensation claims are filed. **As correctly contended by the petitioner, when she filed her claim for death benefits with the SSS under the SSS law, she had already notified the SSS of her employees' compensation claim, because the SSS is the very same agency where claims for payment of sickness/disability/death benefits under P.D. No. 626 are filed.**

Section 4(b)(2), Rule 3 of the ECC Rules of Procedure for the Filing and Disposition of the Employees' Compensation Claims, quoted above, also provides for the conditions when EC claims filed beyond the three-year prescriptive period may still be given due course. Section 4(b)(2) states the condition for private sector employees, requiring that a claim for Medicare, sickness, burial, disability or death should be filed within three (3) years from the occurrence of the contingency. In the instant case, the petitioner was able to file her claim for death benefits **under the SSS law**

within the three-year prescriptive period. In fact, she has been receiving her pension under the SSS law since November 1988.

It is true that under the proviso, the employees' compensation claim shall be filed with the GSIS/SSS within a reasonable time as provided by law. **It should be noted that neither statute nor jurisprudence has defined the limits of "reasonable time." Thus, what is reasonable time depends upon the peculiar facts and circumstances of each case. In the case at bar, we also find petitioner's claim to have been filed within a reasonable time considering the situation and condition of the petitioner. We have ruled that when the petitioner filed her claim for death benefits under the SSS law, her claim for the same benefits under the Employees' Compensation Law should be considered as filed.** The evidence shows that the System failed to process her compensation claim. Under the circumstances, the petitioner cannot be made to suffer for the lapse committed by the System.[13] (Emphasis and underscoring supplied)

In light of the immediately-quoted portions of the Court's decision in *Buena Obra*, the Court holds that petitioner's filing of a claim before the SSS, even *arguendo* that it was only for funeral benefits, **on November 25, 1988** served as constructive notice on the part of the SSS/ECC pursuant to the ECC Board Resolution 93-08-0068 *vis a vis* ECC Rules of Procedure for the Filing and Disposition of Employees' Compensation Claims, that she was claiming before the SSS for compensation benefits under P.D. No. 626, effectively tolling the running of the prescriptive period. The term "funeral benefits" certainly connotes benefits arising from death. Petitioner's claim is thus not barred.

At this juncture, the Court reiterates its oft-repeated ruling that pursuant to the Constitutional guarantee of social justice, a liberal attitude in favor of the employee should be adopted.

[C]laims falling under the Employees' Compensation Act should be liberally resolved to fulfill its essence as a social legislation designed to afford relief to the working man and woman in our society. It is only this kind of interpretation that can give meaning and substance to the compassionate spirit of the law as embodied in Article 4 of

[13] *Id.* at 211-213.

the New Labor Code, which states that all doubts in the implementation and interpretation of the provisions of the Labor Code including its implementing rules and regulations should be resolved in favor of labor.[14] (Underscoring supplied)

The issue of whether Mesa's death is compensable was never, however, fully raised nor discussed in any of the proceedings below, nor is it ventilated in the present petition, and the records are bereft of adequate evidence to enable the Court to rule thereon. A remand of the case to the ECC for the resolution of such issue is thus in order.

WHEREFORE, the petition is *GRANTED.* The challenged Court of Appeals Decision dated January 16, 2003 and Resolution dated October 3, 2003 are *REVERSED* and *SET ASIDE.*

Let the records of the case be *REMANDED* to the Employees Compensation Commission which is *DIRECTED* to rule *with dispatch* on the merits of petitioner's claim for compensation benefits under Presidential Decree No. 626.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 161778. April 7, 2009]

CAYETANO A. TEJANO, JR., *petitioner, vs.* **THE HONORABLE SANDIGANBAYAN and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

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[14] *GSIS v. Cuanang*, G.R. No. 158846, June 3, 2004, 430 SCRA 639, 649.

SYLLABUS

1. **REMEDIAL LAW; APPEALS; DECISIONS AND FINAL ORDERS OF THE SANDIGANBAYAN SHALL BE APPEALABLE TO THE SUPREME COURT IN ACCORDANCE WITH RULE 45 OF THE RULES OF COURT; "FRESH PERIOD RULE" APPLIES THEREIN. —** In the present case, petitioner had already availed of a motion for reconsideration, which was denied by respondent Sandiganbayan. His next remedy is set forth under Section 7 of P.D. No. 1606, as amended by R.A. No. 8249, which provides that decisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court by petition for review on *certiorari* raising pure questions of law in accordance with Rule 45 of the Rules of Court. In *Neypes v. Court of Appeals*, the Court allowed a fresh period of 15 days within which to file a notice of appeal in the Regional Trial Court to be counted from receipt of the order dismissing a motion for new trial or motion for reconsideration. This "fresh period rule" shall also apply to Rule 45 governing appeals by *certiorari* to the Supreme Court.

2. **ID.; ID.; ID.; EFFECT OF FAILURE TO APPEAL. —** Without an appeal, the judgment becomes final upon expiration of the period and execution should necessarily follow. Unfortunately, petitioner failed to avail of the said remedy within the 15-day period and, instead, filed a motion for new trial. The petitioner cannot be allowed to resort to another remedy as a substitute for an appeal. Hence, respondent Sandiganbayan correctly ruled that its Decision dated March 17, 2003 became final and executory upon the lapse of the appeal period. Respondent Sandiganbayan promulgated its Decision on March 17, 2003. On March 25, 2003, petitioner moved for reconsideration of the said decision, but the same was denied on September 24, 2003. Petitioner received a copy of the resolution denying his motion for reconsideration and, thus, had 15 days, or until October 25, 2003, within which to file his petition for review on *certiorari*. Petitioner's procedural misstep of filing a motion for new trial did not produce any legal effect and, therefore, did not operate to suspend the enforcement of his sentence. Perforce, the Decision dated March 17, 2003 of respondent Sandiganbayan became final and executory after the expiration

of the 15-day reglementary period without an appeal having been properly taken by the petitioner.

3. ID.; CIVIL PROCEDURE; NEW TRIAL; REQUISITES OF NEWLY DISCOVERED EVIDENCE AS A GROUND THEREFOR, NOT SHOWN. — For the Court to grant a new trial on the ground of newly discovered evidence under Section 2, Rule 121 of the Rules of Court, it must be shown that: (a) the evidence was discovered after the trial; (b) such evidence could not have been discovered and produced at the trial with reasonable diligence; and (c) that it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment. Petitioner contends that he is entitled to a new trial because the conviction was based on facts which were then not available during the trial proper as accused Arancillo was at-large. Petitioner argues that the arrest and arraignment of accused Arancillo, who would be testifying that petitioner did not help and cooperate in the perpetration of the crime, constitutes newly discovered evidence which will be the vital testimonial evidence that may lead to his eventual acquittal. In cases where the accused avails of the remedy of new trial, the accused has the burden of showing that the new evidence he seeks to present has complied with the requisites to justify the holding of a new trial. In *Balanay v. Sandiganbayan*, this Court upheld the dismissal by therein respondent Sandiganbayan of therein petitioner's motion for new trial which was not supported by the affidavits of the proposed witnesses, or by a brief narration of the facts to which therein alleged witnesses will testify. Applying the same to the present case, petitioner not only failed to support his claim by not furnishing respondent Sandiganbayan with a copy of the affidavit of accused Arancillo, but he erroneously concluded that since his co-accused pleaded "not guilty," his own criminal liability has also been eradicated.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT PROPER REMEDY. — Procedurally, petitioner cannot file a petition for *certiorari* under Rule 65 of the Rules where appeal is available, even if the ground availed of is grave abuse of discretion. A special civil action for *certiorari* under Rule 65 lies only when there is no appeal, or plain, speedy and adequate remedy in the ordinary course of law. *Certiorari* cannot be allowed when a party to a case fails to appeal a judgment despite

the availability of that remedy, as the same should not be a substitute for the lost remedy of appeal. The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive. The right to appeal is a purely statutory right. Not being a natural right or a part of due process, the right to appeal may be exercised only in the manner and in accordance with the rules provided therefor. As petitioner failed to exercise this right, he cannot prevent the execution of judgment against him by resorting to a *certiorari* petition.

APPEARANCES OF COUNSEL

Marasigan Dangazo Cajigal & Associates for petitioner.
The Solicitor General for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for *certiorari* under Rule 65 of the Rules of Court filed by petitioner Cayetano A. Tejano, Jr. seeking to reverse the Resolution[1] dated January 26, 2004 of respondent Sandiganbayan which denied his Motion for New Trial in Criminal Case No. 24675, entitled *People of the Philippines v. Dolores Arancillo, Assistant Regional Administrator Central Bank, Cebu City; Cayetano A. Tejano, Jr., Manager and Vice-President, Amelia Fufunan, Cash Custodian, both of Philippine National Bank (PNB), Cebu Branch, Cebu City.*

Petitioner Tejano, Jr. was Vice-President of Philippine National Bank (PNB) and Manager of PNB Cebu (Casino Unit) Branch; and his co-accused Dolores Arancillo and Amelia Fufunan were Central Bank Assistant Regional Administrator and Cashier-Reliever, respectively, of PNB Cebu (Casino Unit) Branch.

On December 8, 1992, a certain "Juan dela Cruz" wrote a letter to then Ombudsman Conrado M. Vasquez seeking the

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[1] The Sandiganbayan (Fourth Division) is composed of Associate Justice Gregory S. Ong as Chairperson; and Associate Justices Norberto Y. Geraldez, Member, and Efren N. de la Cruz, Special Member.

investigation of certain accounts of PNB Cebu Branch, one of which was Jovana Fish Farms, Inc. owned by Arancillo. The letter alleged that Far East Bank & Trust Company (FEBTC) Check No. 742414 dated February 1, 1991, in the amount of ₱200,000.00, was approved for encashment by petitioner, and remained in his custody and made part of the cash on hand in the PNB-Casino Vault until February 7, 1991. Said check was sent for clearing only after the loan of Jovana Fish Farms, Inc. was approved and the proceeds were released to fund the same.

The letter was treated as a complaint lodged with the Office of the Ombudsman for the Visayas, docketed as OMB-VIS-(CRIM)-96-0363. On October 28, 1996, the Deputy Ombudsman for the Visayas issued an Order requiring accused Arancillo, petitioner, and Ma. Teresita Chan, Assistant Vice-President of PNB Cebu Branch, to submit their respective counter-affidavits, with which they all complied.

In her Counter-Affidavit[2] dated February 18, 1997, accused Fufunan stated that she was informed by another Cashier, Gaudioso Ypanto, that FEBTC Check No. 742414 was signed and approved for encashment by petitioner and was to be considered as cash until it could be deposited on the next banking day. She alleged that she was forced by circumstances to follow the treatment of the check as cash, for to do otherwise would result in a shortage in her Teller's Transfer Form.

In his Counter-Affidavit with Counter-Complaint[3] dated February 26, 1997, petitioner claimed that the grant of loan to Jovana Fish Farms, Inc. had been confirmed in the restructuring of its amount as approved by the Seniro Management Credit Committee, PNB Head Office. He also denied that the said check in the amount of ₱200,000.00 was allowed to remain as part of the cash on hand of PNB Cebu Branch.

On March 5, 1998, the Office of the Ombudsman for the Visayas rendered a Resolution,[4] the dispositive portion of which reads:

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[2] Sandiganbayan *rollo* (Vol. I), pp. 22-23.

[3] *Id*. at 14-21.

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

In sum, there is probable cause that respondents CAYETANO TEJANO, JR. and AMELIA FUFUNAN in the discharge of their official, administrative duties and DOLORES ARANCILLO conspired with each other in the realization of the treatment of subject FEBTC check as "cash" in the PNB-Casino Vault, thereby substituting its face value of ₱200,000.00 in cash, giving unwarranted benefit with manifest partiality to Dolores Arancillo and prejudicing the government or the PNB in terms of foregone interest; and that their conjoint acts are violative of Sec. 3(e), RA 3019.

Premises considered, it is recommended that an INFORMATION for violation of Section 3(e), RA 3019 be filed against respondents CAYETANO A. TEJANO, JR., AMELIA FUFUNAN and DOLORES ARANCILLO before the Sandiganbayan.

SO RESOLVED.

05 March 1998, Cebu City.

On March 25, 1998, Graft Investigation Officer II Edgemelo C. Rosales of the Office of the Ombudsman for the Visayas filed an Information for violation of Section 3(e) of Republic Act (R.A.) No. 3019 (Anti-Graft and Corrupt Practices Act) against petitioner and his co-accused, Amelia Fufunan and Dolores Arancillo, before respondent Sandiganbayan, stating:

That on or about the 1st day of February 1991, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, public officers, having been duly appointed and qualified to such public positions above-mentioned, in such capacity and committing the offense in relation to their office, conniving and confederating together and mutually helping with each other, with deliberate intent, evident bad faith and manifest partiality, did then and there willfully, unlawfully and feloniously accommodate a personal Far East Bank and Trust Company (FEBTC) check bearing SN-742414, dated February 1, 1991, in the amount of ₱200,000.00, issued by accused Dolores Arancillo, with accused Cayetano A. Tejano, Jr., endorsing the same, and directing accused Amelia Fufunan to place the said check at the PNB-Casino Vault of accused Amelia Fufunan, in lieu of the cash of ₱200,000.00, Philippine Currency, taken therefrom; which check remained at the said vault until the 7th day of February, 1991 and formed part of the cash therein, and treating the substituted check as part of the "operating cash" of the PNB-Casino Unit for a number of days and, thus, accused, in the discharge

or performance of their official functions, had given unwarranted benefits and advantage to Dolores Arancillo, to the damage and prejudice of the government.

CONTRARY TO LAW.

Cebu City (for Manila), Philippines.

March 25, 1998.

BAIL BOND RECOMMENDED : ₱30,000.00 each.[5]

During the arraignment of petitioner on November 12, 1999 and accused Amelia Fufunan on August 13, 2001, both entered a plea of "not guilty" to the crime charged while accused Arancillo remained at large.

The prosecution sought to establish the liability of petitioner and accused Arancillo through the Audit Investigation Report dated October 25, 1993, prepared by the Commission on Audit (COA), and Cash Count Sheet dated February 5, 1991, submitted by Douglasia Canuel, Cashier of PNB Cebu Branch.

The Audit Investigation Report yielded that accused Arancillo temporarily borrowed the amount of ₱200,000.00, without interest, from the operating cash of the PNB Cebu Branch and issued a personal check, FEBTC Check No. 742414 dated Feburary 1, 1991. On February 3, 1991, Elvisa Villamor, then Assistant Cashier of PNB, discovered the said check together with a note from accused Fufunan stating that the check was to form part of the "cash in vault temporarily," and that petitioner would be taking it back on February 4, 1991. On Feburary 5, 1991, Villamor found that the check in question was still part of the cash in vault. Two days later, or on February 7, 1991, Villamor noticed that the check was no longer in the cash vault.[6]

In her Cash Count Sheet, Douglasia Canuel noted the existence of FEBTC Check No. 742414 as part of the cash in vault on February 5, 1991.[7]

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[5] *Rollo,* pp. 49-50.

[6] Sandiganbayan *rollo* (Vol. II), pp. 43-49.

[7] *Id.* at 71.

Petitioner, on the other hand, cited Item "G" of the PNB Manual of Policies on Cash as part of his defense:

> G. The encashment of checks whose amounts exceed the Teller's authority shall be approved by officers/supervisors, depending [on] the limit of their respective approving authorities.
>
> In considering checks for approval, the Approving Officer/ Personnel should be guided by the following:
>
> 1. Out-of-town checks (except those issued by us) should be accepted by the Bank for deposit/collection only and not for outright encashment. The encashment of these checks is purely an act of accommodation as the Bank is not obliged to pay these checks. Approval of these checks for payment, therefore, should be done on a very selective basis depending on the merits of each case, and always on the Approving Personnel's responsibility.[8]

This document was also adopted by accused Fufunan as part of her defense.

Petitioner also averred in his Counter-Affidavit dated February 26, 1997 that he did not violate Section 19 of Executive Order No. 80 (The 1986 Revised Charter of the Philippine National Bank),[9] as the loan to the corporation Jovana Fish Farms, Inc. was not a loan to Arancillo.[10] He explained in his Further Suppletory Affidavit dated October 26, 1998 that his alleged accommodation of FEBTC was not a prohibited act in the performance of his functions because the encashment of checks was covered by the PNB Manual of Policies on Cash, COCI

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[8] *Id.* at 22-23.

[9] Section 19. Borrowing of directors, officers and employees. Restriction and Limitation. — x x x

The Bank shall not grant, directly or indirectly, any loans or credit accommodations to the head or to any officer or personnel directly exercising supervisory or regulatory authority over the activities of the bank such as those of the Central Bank of the Philippines or of the Commission on Audit.

[10] Sandiganbayan *rollo* (Vol. II), pp. 28-35.

and Deposits Operations,[11] and within his discretionary authority as Manager and Vice-President of PNB.[12]

During the pre-trial conference on August 27, 2001, the prosecution and the defense, petitioner and accused Fufunan, entered into the following stipulation of facts:

1) That during the material time and date alleged in the Information, herein accused are all public officers, Cayetano Tejano, Jr., being then the Vice-President of Philippine National Bank and Manager of PNB-Cebu (Casino Unit) Branch; Dolores Arancillo, being then a Central Bank Assistant Regional Administrator; and Amelia Fufunan, a cashier-reliever at the PNB Cebu (Casino Unit) Branch;

2) That Cayetano Tejano, Jr., Dolores Arancillo, and Amelia Fufunan admit their identity as the same persons who are accused in this case;

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[11] 3201.2 "Out-of-Town" Checks

Checks and drafts drawn on another PNB office or on other banks, located within or outside the locality which are subject to clearing or for collection.

A. Classification. "Out-of-Town" Checks are further classified as to:

1. Local Clearing — drawn on another bank which is a participant directly or indirectly in the local clearing system.

2. "Out-of-Town" Clearing — drawn on another PNB office or another bank which is not a participant in the local clearing system.

As a general rule, out-of-town checks shall be accepted only for DEPOSIT or COLLECTION.

x x x x x x x x x

3202. Approving Authority

3202.1 Encashment of Checks

x x x x x x x x x

B. Out of Town and other bank's checks (including non-PNB MDS checks) (Effective November 25, 1991)

	Branches
Up to 5,000.00	Cashier
Up to 10,000.00	Asst. Dept. Manager I
Up to 15,000.00	Asst. Dept. Manager II
Up to 20,000.00	Dept. Manager III/Asst. Vice President

[12] Sandiganbayan *rollo* (Vol. II), pp. 36-38.

3) That sometime in the early part of February, 1991, Cayetano A. Tejano, Jr. accommodated FEBTC Check No. 742414, dated February 1, 1991 in the amount of ₱200,000.00 of Dolores Arancillo and was kept in the PNB-Cebu (Casino Branch) vault from February 3 to 5, 1991;

4) That Amelia Fufunan was assigned as cashier-reliever at the PNB-Cebu (Casino Unit) on February 2, 1991 and prepared a Note addressed to Ms. Elvisa M. Villamor to the effect that the attached check (referring to FEBTC Check No. 742414) formed part of the cash on hand;

5) That [Douglasia] Canuel conducted a cash count and prepared a cash count sheet, dated February 5, 1991 and duly acknowledged by Ms. Elvisa Villamor;

6) That State Auditor IV Delia Monte De Ramos conducted an audit and prepared an Audit Investigation Report dated October 25, 1993;

7) That there exists PNB Manual of Policies on Cash, COCI, and Deposit Operations, 1991 edition;

8) That on or before February 7, 1991, FEBTC Check No. 74241[4] disappeared and actual ₱200,000.00 cash appeared in the vault;

9) That after Fufunan, there was another cashier-reliever in the name of Elvisa Villamor; and that Elvisa Villamor also treated this check of ₱200,000.00 as part of the cash.

The following documents were also pre-marked by the prosecution, to wit:

Exhibits "A" –	Audit Investigation Report dated October 25, 1993 conducted and prepared by Ms. Delia Monte De Ramos (COA State Auditor IV), consisting of 29 pages, including attachments;
"A-1" –	Signature of Delia Monte De Ramos appearing on page 7 of Exh. "A";
"A-2" –	SEC Reg. Certificate of Jovana Fish Farms;
"A-3" –	Certified xeroxed copy of FEBTC Check No. 742414 in the amount of ₱200,000.00, dated February 1, 1991 (back to back);

“A-4” – Note of Amelia Fufunan to Ms. Elvisa Villamor;

“A-5” – Cash Count Sheet dated Feb. 5, 1991, prepared by Douglasia Canuel;

“B” – Reply-Affidavit & Reply to Counter-Charge dated April 24, 1997, prepared by Delia Monte De Ramos, consisting of (4) pages, including attachment;

“B-1” – Signature of Delia Monte De Ramos, appearing on page 3 of Exh. “B”;

“B-2” – Sworn Affidavit of Elvisa M. Villamor, dated July 27, 1993, attesting to the fact that she saw the subject check inside the vault;

“C” – Counter-Affidavit of accused Amelia Fufunan, dated Feb. 18, 1997, attesting to the fact that, indeed, she found Arancillo’s FEBTC Check, dated February 1, 1991 in the amount of ₱200,000.00 inside the PNB vault and further found out that the same was treated as cash;

“D” – Further Suppletory Affidavit of Cayetano Tejano, Jr., dated October 26, 1998.

“D-1” – Signature of Cayetano Tejano, Jr. appearing on page 3 of Exh. “D”.

On the part of the accused Tejano, the following documents were pre-marked:

Exhibits “1” – PNB Manual of Policies on Cash, COCI, and Deposit Operations, 1991 edition;

“1-A” – Item “G” found on pages 25 and 26 of said Manual of Policies;

“2” – Certification issued by the PNB Adjudication Office, dated Aug. 23, 2001;

“2-A” – Signature of PNB Senior Vice-President Rosauro Macalagay;

“3” – Certification issued by PNB-Cebu, dated July 25, 1995 signed by Jacinto Ovano, Assistant Department Manager I;

"4"	–	Memorandum of Mr. Capistrano, dated August 3, 1993;
"5"	–	Counter-Affidavit of Cayetano Tejano, dated Feb. 26, 1997;
"6"	–	Further Suppletory Affidavit of Cayetano Tejano, dated October 26, 1998.

While on the part of accused Fufunan, the following were the documents pre-marked:

Exhibits "1"	–	Counter-Affidavit of Amelia Fufunan, dated February 18, 1997;
"1-A"	–	Signature of accused Fufunan;
"2"	–	PNB Manual of Policies on Cash, COCI, and Deposit Operations, 1991 edition;
"2-A"	–	Item "G" found on pages 25 and 26 of said Manual of Policies;
"3"	–	Certification issued by the PNB Adjudication Office, dated Aug. 23, 2002;
"3-A"	–	Signature of PNB Senior Vice-President Rosauro Macalagay;
"4"	–	Certification issued by PNB-Cebu, dated July 25, 1995, signed by Jacinto Ovano, Asst. Department Manager I;
"5"	–	Memorandum of Mr. Capistrano, dated August 3, 1993.

Both parties have the following common issues:

1. Whether or not, from the facts, stipulations, and documents, accused are guilty of the crime, as charged?
2. Whether or not conspiracy was present in the commission of the crime, as charged?

WHEREFORE, as the Court considered the documents self-explanatory and considering the waiver on admissibility, as manifested by the parties during the pre-trial conference, the documentary exhibits offered both by the prosecution and the defense are hereby ordered admitted. Parties are given thirty (30) days from today within which

to file their respective memoranda. After the submission of the same, this case shall be deemed submitted for decision.

SO ORDERED.[13]

On March 17, 2003, respondent Sandiganbayan rendered a Decision[14] finding the petitioner guilty beyond reasonable doubt of violation of Section 3(e) of R.A. No. 3019, the dispositive portion of which reads:

WHEREFORE, finding the presence of conspiracy in the commission of the crime between the accused Tejano and Arancillo, the former is hereby declared guilty beyond reasonable doubt of violating Section 3(e) of Republic Act 3019 and is hereby sentenced to suffer the indeterminate penalty of imprisonment of 6 years, two months and 1 day, as minimum, to 15 years, as maximum.

The participation of accused Amelia Fufunan in the transaction is purely administrative and does not constitute as an act or omission resorted to as a means to commit a crime. In the absence of unity of purpose with the other accused in the commission of the crime, she is declared innocent of the crime charged and is therefore acquitted.

SO ORDERED.[15]

On March 25, 2003, petitioner Tejano filed a Motion for Reconsideration[16] on the following grounds: (1) that his guilt was not proven beyond reasonable doubt; and (2) that conspiracy was not established by proof beyond reasonable doubt. In its Order[17] dated April 2, 2003, respondent Sandiganbayan denied his motion because it contained averments which were adversarial,

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[13] Penned by Associate Justice Rodolfo G. Palattao, with Associate Justices Narciso S. Nario (Chairperson) and Nicodemo T. Ferrer, concurring; *rollo*, pp. 66-70.

[14] Penned by Associate Justice Rodolfo G. Palattao, with Associate Justices Gregory S. Ong, Chairperson, and Justice Ma. Cristina G. Cortez-Estrada, designated Special Member, concurring; *rollo,* pp. 71-86.

[15] *Id.* at 84.

[16] *Id.* at 87-113.

[17] Sandiganbayan *rollo* (Vol. II), p. 203.

and which required the presence of the petitioner before the same could be resolved.

On April 2, 2003, petitioner filed an Omnibus Motion[18] seeking leave of court to file a Motion to Lift or Reconsider the denial of his motion for reconsideration and have the said motion set for hearing, invoking the following grounds: (1) that counsel for petitioner had an accident on the day the Decision promulgated on March 17, 2003 was set for hearing; (2) that the accused had good defense which would warrant a reasonable belief that the result would be otherwise if a reconsideration was to be granted; and (3) that the Motion was not intended to delay the speedy administration of justice.

On September 8, 2003, petitioner also filed a Motion to Hold in Abeyance the resolution of petitioner's motion for reconsideration on the ground that he was convicted upon facts which were not availing at that time because Arancillo was at-large.[19]

In a Resolution[20] dated September 24, 2003, respondent Sandiganbayan denied the petitioner's motion for reconsideration for lack of merit, stating thus:

> x x x [W]e reiterate what we have stated in our assailed decision that we do not question the propriety of granting accommodation to a check, if that is really the case. What we find objectionable is the manner by which the bank's policy on check accommodation was apparently utilized to cover up a prohibited transaction. For as it would appear, the check was placed inside the bank vault in substitution of the cash that was withdrawn, without the transaction being properly recorded in the books. It is immaterial that the transaction was intended to be a temporary arrangement because, in the meantime, the check was made to appear as operating cash for a number of days to the detriment of the bank and in violation of the trust reposed on it by its depositors. Indeed, accused took too much liberty of the discretionary authority granted to him under the bank's policies on cash and deposit operations as he went beyond what was allowed by

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[18] *Rollo,* pp. 114-123.

[19] *Id.* at 136-141.

[20] *Id.* at 143-147.

the said policies. As correctly observed by the prosecution in its *Comment*, this is not a case of accommodation, as what movant would have it appear, but plain and simple unauthorized loan to Arancillo.

On October 13, 2003, petitioner filed a Motion for New Trial[21] on the grounds that he was not properly advised of his rights in the case by his previous counsel, and that there was newly discovered evidence in view of the arrest, on April 29, 2003, of accused Arancillo, who was later arraigned on August 5, 2003.

In his Amended Motion for New Trial[22] dated October 22, 2003, petitioner included the ground that the evidence was insufficient to justify the judgment of conviction, claiming that there was no concrete evidence presented by the prosecution that petitioner endorsed Arancillo's check for ₱200,000.00 except for the unauthorized admission by the counsel for the accused.

On December 2, 2003, petitioner filed a Supplemental Motion for New Trial,[23] alleging that: (1) his criminal liability as accommodator of the check in question was dependent on the liability of accused Arancillo; (2) his defense that no proof of inducement or active participation in the criminal act could not be established because said accused was still at-large; and (3) a new trial would afford him protection of his constitutional right to presumption of innocence.

On January 26, 2004, respondent Sandiganbayan issued the assailed Resolution[24] denying the petitioner's Amended Motion for New Trial and directed its Division Clerk of Court to make an entry of judgment. The pertinent portions of the Resolution read as follows:

In the case at bar, accused Tejano admits that on October 10, 2003, he received a copy of the Court's resolution denying his motion for reconsideration of the judgment of conviction. Thus, under the

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[21] *Id.* at 148-158.

[22] *Id.* at 159-179.

[23] *Id.* at 182-188.

[24] *Supra* note 1.

rules (*Cf.* Section 4, P.D. 1606 as amended by R.A. No. 8249 in relation to Section 2, Rule 45 of the 1997 Rules of Civil Procedure), he had fifteen (15) days therefrom, or until October 25, 2003 within which to perfect an appeal to the Supreme Court. However, instead of seasonably filing the requisite petition for review on *certiorari* with the Supreme Court, accused Tejano, proceeded to file a motion for new trial and, thereafter, an amended motion for new trial.

The recourse taken by accused Tejano is **ill-advised**. As his motion for new trial and amended motion for new trial are already barred by the rules, the same will **not interrupt** the running of the period to appeal his conviction before the Supreme Court. Thus, on October 26, 2003, upon the lapse of the fifteen (15)-day period of appeal, the decision of this Court convicting him of the offense charged became **final and executory by operation of law**.

WHEREFORE, the subject amended motion for new trial is **DENIED DUE COURSE**. The Division Clerk of Court shall now make the final entry of the judgment of the decision rendered in this case as against accused Cayetano A. Tejano, Jr. In the meantime, let a Bench Warrant of Arrest be issued against said accused to compel him to serve the sentence imposed by the Court. The cash bond posted by accused Cayetano A. Tejano, Jr. for his provisional liberty is rendered *functus officio* and said accused is given fifteen (15) days from notice within which to voluntarily surrender his person to this Court for execution of the sentence; otherwise, his cash bond shall be forfeited in favor of the government.[25]

On January 29, 2004, respondent Sandiganbayan made an Entry of Judgment[26] and, thus, its Decision dated March 17, 2003 became final and executory on October 26, 2003 upon the lapse of the appeal period.

Hence, this present petition for *certiorari*.

In his petition, petitioner raises the following issues:

I

Respondent Honorable Sandiganbayan committed grave abuse of discretion when it denied due course petitioner's motion for new trial.

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[25] *Rollo*, pp. 44-47.

[26] *Id.* at 189-190.

II

Respondent Honorable Sandiganbayan committed grave abuse of discretion when it failed to appreciate the existence of grounds for new trial and that:

1. The petitioner was not properly advised of his rights and/ or was denied of his rights to due process;
2. The evidence finding the petitioner guilty of the crime charged is insufficient to justify the decision;
3. Newly discovered evidence which petitioner could not with reasonable diligence have discovered and produced during the trial and if admitted would probably change the judgment in the case.

III

Respondent Sandiganbayan committed grave abuse of discretion amounting to excess of jurisdiction when it issued an entry of judgment for a decision that has become final and executory.[27]

The Office of the Ombudsman, through the Office of the Special Prosecutor, maintains that respondent Sandiganbayan correctly dismissed petitioner's motion for new trial because such remedy was no longer available to him; that petitioner was not denied due process; that the evidence finding him guilty under Section 3(e) of R.A. 3019 was justified; that there was no newly discovered evidence which would warrant the reversal of the disputed ruling; and that the decision had indeed become final and executory.

The petition has no merit.

In dismissing petitioner's motion for new trial, respondent Sandiganbayan relied on Section 4 of Presidential Decree (P.D.) No. 1606, as amended by R.A. No. 8249, in relation to Section 2, Rule 45 of the Rules of Civil Procedure. Thus,

P.D. 1606, Sec. 4. Jurisdiction – The Sandiganbayan shall exercise:

(a) Exclusive original jurisdiction in all cases involving:

(1) Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices

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[27] *Id.* at 22.

> Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code;
>
> x x x x x x x x x
>
> The procedure prescribed in Batas Pambansa Blg. 129, as well as the implementing rules the Supreme Court has promulgated and may hereafter promulgate, relative to appeals/petitions for review to the Court of Appeals shall apply to appeals and petitions for review with the Sandiganbayan. In all cases elevated to the Sandiganbayan, the Office of the Tanodbayan shall represent the People of the Philippines.
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> x x x x x x x x x
>
> R.A. 8249, Sec. 7. x x x A petition for reconsideration of any final order or decision may be filed **within fifteen (15) days from promulgation or notice of the final order or judgment**, and such motion for reconsideration shall be decided within thirty (30) days from submission thereon.
>
> Decisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court by petition for review on *certiorari* raising pure questions of law in accordance with Rule 45 of the Rules of Court. x x x (emphasis ours)
>
> Rule 45, 1997 Rules of Civil Procedure:
>
> Sec. 2. *Time for filing; extension*. — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may, for justifiable reasons, grant an extension of thirty (30) days only within which to file the petition.

Petitioner alleges that the aforequoted provisions are applicable only when pure questions of law are involved which justified his Motion for New Trial on the ground of newly discovered evidence to be presented by accused Arancillo during the trial.

This Court disagrees. Section 1, Rule 121 of the Rules on Criminal Procedure provides that "the remedies of motion for reconsideration and motion for new trial may be availed of at

any time before a judgment of conviction becomes final, which is within fifteen (15) days from the promulgation of the judgment."

In the present case, petitioner had already availed of a motion for reconsideration, which was denied by respondent Sandiganbayan. His next remedy is set forth under Section 7 of P.D. No. 1606, as amended by R.A. No. 8249, which provides that decisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court by petition for review on *certiorari* raising pure questions of law in accordance with Rule 45 of the Rules of Court. In *Neypes v. Court of Appeals*,[28] the Court allowed a fresh period of 15 days within which to file a notice of appeal in the Regional Trial Court to be counted from receipt of the order dismissing a motion for new trial or motion for reconsideration. This "fresh period rule" shall also apply to Rule 45 governing appeals by *certiorari* to the Supreme Court. Without an appeal, the judgment becomes final upon expiration of the period and execution should necessarily follow.[29] Unfortunately, petitioner failed to avail of the said remedy within the 15-day period and, instead, filed a motion for new trial. The petitioner cannot be allowed to resort to another remedy as a substitute for an appeal.

Hence, respondent Sandiganbayan correctly ruled that its Decision dated March 17, 2003 became final and executory upon the lapse of the appeal period. Respondent Sandiganbayan promulgated its Decision on March 17, 2003. On March 25, 2003, petitioner moved for reconsideration of the said decision, but the same was denied on September 24, 2003. Petitioner received a copy of the resolution denying his motion for reconsideration and, thus, had 15 days, or until October 25, 2003, within which to file his petition for review on *certiorari*. Petitioner's procedural misstep of filing a motion for new trial did not produce any legal effect and, therefore, did not operate to suspend the enforcement of his sentence. Perforce, the Decision dated March 17, 2003 of respondent Sandiganbayan became

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[28] G.R. No. 141524, September 14, 2005, 469 SCRA 633.

[29] *Lubrica v. People of the Philippines*, G.R. Nos. 156147-54, February 26, 2007, 516 SCRA 674, 678.

final and executory after the expiration of the 15-day reglementary period without an appeal having been properly taken by the petitioner.

Even assuming that the remedy of a motion for new trial is allowed, petitioner has yet to establish the fact that the reappearance of the accused Arancillo, who would testify on certain matters, qualified as newly discovered evidence. For the Court to grant a new trial on the ground of newly discovered evidence under Section 2, Rule 121 of the Rules of Court, it must be shown that: (a) the evidence was discovered after the trial; (b) such evidence could not have been discovered and produced at the trial with reasonable diligence; and (c) that it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment.[30]

Petitioner contends that he is entitled to a new trial because the conviction was based on facts which were then not available during the trial proper as accused Arancillo was at-large. Petitioner argues that the arrest and arraignment of accused Arancillo, who would be testifying that petitioner did not help and cooperate in the perpetration of the crime, constitutes newly discovered evidence which will be the vital testimonial evidence that may lead to his eventual acquittal.

In cases where the accused avails of the remedy of new trial, the accused has the burden of showing that the new evidence he seeks to present has complied with the requisites to justify the holding of a new trial.[31] In *Balanay v. Sandiganbayan*,[32] this Court upheld the dismissal by therein respondent Sandiganbayan of therein petitioner's motion for new trial which was not supported by the affidavits of the proposed witnesses, or by a brief narration of the facts to which therein alleged witnesses will testify. Applying the same to the present case, petitioner

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[30] *Dinglasan, Jr. v. Court of Appeals, et al.*, G.R. No. 145420, September 19, 2006, 502 SCRA 253, 267.

[31] *Cabarlo v. People of the Philippines*¸ G.R. No. 172274, November 16, 2006, 507 SCRA 236, 243.

[32] 397 Phil. 853 (2000).

not only failed to support his claim by not furnishing respondent Sandiganbayan with a copy of the affidavit of accused Arancillo, but he erroneously concluded that since his co-accused pleaded "not guilty," his own criminal liability has also been eradicated.

Likewise, petitioner can hardly claim that he was tried and convicted on a "mere stipulation of facts" as the Pre-Trial Order[33] dated August 27, 2001 clearly stated that the parties gave a waiver of admissibility after respondent Sandiganbayan considered the documents self-explanatory and that they were also given the opportunity to submit their respective memoranda.

Procedurally, petitioner cannot file a petition for *certiorari* under Rule 65 of the Rules where appeal is available, even if the ground availed of is grave abuse of discretion.[34] A special civil action for *certiorari* under Rule 65 lies only when there is no appeal, or plain, speedy and adequate remedy in the ordinary course of law. *Certiorari* cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, as the same should not be a substitute for the lost remedy of appeal. The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive.[35]

The right to appeal is a purely statutory right. Not being a natural right or a part of due process, the right to appeal may be exercised only in the manner and in accordance with the rules provided therefor.[36] As petitioner failed to exercise this right,

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[33] Order dated August 27, 2001, *rollo*, pp. 66-70.

[34] *Tible & Tible Company, Inc. v. Royal Savings and Loan Association*, G.R. No. 155806, April 8, 2008, 550 SCRA 562, 575-576.

[35] *First Corporation v. Former Sixth Division of the Court of Appeals*, G.R. No. 171989, July 4, 2007, 526 SCRA 564; *Nippon Paint Employees Union-Olalia v. Court of Appeals,* G.R. No. 159010, November 19, 2004, 443 SCRA 286, 291; *Republic v. Court of Appeals,* 379 Phil. 92, 97 (2000).

[36] *Benjamin Bautista v. Shirley G. Unangst and Other Unknown Persons*, G.R. No. 173002, July 4, 2008; *Republic v. Luriz*, G.R. No. 158992, January 26, 2007, 513 SCRA 140, 143, 148; *Ciudad Fernandina Food Corporation Employees Union-Associated Labor Unions v. Court of Appeals*, G.R. No. 166594, July 20, 2006, 495 SCRA 807, 823, citing *Ginete v. Court of Appeals*, 357 Phil. 36 (1998); *Corporate Inn Hotel v. Lizo*, G.R. No. 148279, May 27, 2004, 429 SCRA 573, 577.

he cannot prevent the execution of judgment against him by resorting to a *certiorari* petition.

WHEREFORE, the petition is *DISMISSED*. The Resolution dated January 26, 2004 of respondent Sandiganbayan in Criminal Case No. 24675 entitled *People of the Philippines v. Dolores Arancillo, Assistant Regional Administrator, Central Bank, Cebu City; Cayetano A. Tejano, Jr., Manager and Vice President, Amelia Fufunan, Cash Custodian, both of Philippine National Bank (PNB), Cebu Branch, Cebu City* is *AFFIRMED*.

No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio Morales,[*] *Chico-Nazario,* and *Nachura, JJ.,* concur.

SECOND DIVISION

[G.R. No. 162272. April 7, 2009]

SANTIAGO C. DIVINAGRACIA, *petitioner, vs.* **CONSOLIDATED BROADCASTING SYSTEM, INC. and PEOPLE'S BROADCASTING SERVICE, INC.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE BODIES; NATIONAL TELECOMMUNICATIONS COMMISSION (NTC); NECESSITY OF GOVERNMENT REGULATION OVER BROAD CAST MEDIA, DISCUSSED. — Th[e] pre-regulation history of radio broadcast stations

[*] Per Special Order No. 602 dated March 20, 2009.

illustrates the continuing necessity of a government role in overseeing the broadcast media industry, as opposed to other industries such as print media and the Internet. Without regulation, the result would be a free-for-all market with rival broadcasters able with impunity to sabotage the use by others of the airwaves. Moreover, the airwaves themselves the very medium utilized by broadcast — are by their very nature not susceptible to appropriation, much less be the object of any claim of private or exclusive ownership. No private individual or enterprise has the physical means, acting alone to actualize exclusive ownership and use of a particular frequency. That end, desirable as it is among broadcasters, can only be accomplished if the industry itself is subjected to a regime of government regulation whereby broadcasters receive entitlement to exclusive use of their respective or particular frequencies, with the State correspondingly able by force of law to confine all broadcasters to the use of the frequencies assigned to them. Still, the dominant jurisprudential rationale for state regulation of broadcast media is more sophisticated than a mere recognition of a need for the orderly administration of the airwaves. After all, a united broadcast industry can theoretically achieve that goal through determined self-regulation. The key basis for regulation is rooted in empiricism — "that broadcast frequencies are a scarce resource whose use could be regulated and rationalized only by the Government." This concept was first introduced in jurisprudence in the U.S. case of *Red Lion v. Federal Communications Commission*. *Red Lion* enunciated the most comprehensive statement of the necessity of government oversight over broadcast media. The U.S. Supreme Court observed that within years from the introduction of radio broadcasting in the United States, "it became apparent that broadcast frequencies constituted a scarce resource whose use could be regulated and rationalized only by the Government… without government control, the medium would be of little use because of the cacophony of competing voices, none of which could be clearly and predictably heard."

2. **ID.; ID.; ID.; ID.; ID.; "SCARCITY OF RESOURCES" DOCTRINE REMAINS AN INDISPENSABLE JUSTIFICATION FOR THE STATE REGULATION OF BROADCAST MEDIA. —** [T]he scarcity of radio frequencies made it necessary for the government to step in and allocate frequencies to competing broadcasters. In undertaking that

function, the government is impelled to adjudge which of the competing applicants are worthy of frequency allocation. It is through that role that it becomes legally viable for the government to impose its own values and goals through a regulatory regime that extends beyond the assignation of frequencies, notwithstanding the free expression guarantees enjoyed by broadcasters. As the government is put in a position to determine who should be worthy to be accorded the privilege to broadcast from a finite and limited spectrum, it may impose regulations to see to it that broadcasters promote the public good deemed important by the State, and to withdraw that privilege from those who fall short of the standards set in favor of other worthy applicants. Such conditions are peculiar to broadcast media because of the scarcity of the airwaves. Indeed, any attempt to impose such a regulatory regime on a medium that is not belabored under similar physical conditions, such as print media, will be clearly antithetical to democratic values and the free expression clause. x x x Other rationales may have emerged as well validating state regulation of broadcast media, but the reality of scarce airwaves remains the primary, indisputable and indispensable justification for the government regulatory role. The integration of the scarcity doctrine into the jurisprudence on broadcast media illustrates how the libertarian ideal of the free expression clause may be tempered and balanced by actualities in the real world while preserving the core essence of the constitutional guarantee. Indeed, without government regulation of the broadcast spectrum, the ability of broadcasters to clearly express their views would be inhibited by the anarchy of competition. Since the airwaves themselves are not susceptible to physical appropriation and private ownership, it is but indispensable that the government step in as the guardian of the spectrum. Reference to the scarcity doctrine is necessary to gain a full understanding of the paradigm that governs the state regulation of broadcast media.

3. **ID.; ID.; ID.; ID.; LEGISLATIVE FRANCHISE IS STILL REQUIRED TO OPERATE A BROADCASTING STATION IN THE PHILIPPINES. —** [Several] enactments were considered when in 2003 the Court definitively resolved that the operation of a radio or television station does require a congressional franchise. In *Associated Communications & Wireless Services v. NTC,* the Court took note of the confusion then within the broadcast industry as to whether the franchise

requirement first ordained in the 1931 Radio Control Act remained extant given the enactment of P.D. No. 576-A in 1974 and E.O. No. 546 in 1979. Notably, neither law had specifically required legislative franchises for the operation of broadcast stations. Nonetheless, the Court noted that Section 1 of P.D. No. 576-A had expressly referred to the franchise requirement in stating that "[n]o radio station or television channel may obtain a franchise unless it has sufficient capital on the basis of equity for its operation for at least one year… ." Section 6 of that law made a similar reference to the franchise requirement. From those references, the Court concluded that the franchise requirement under the Radio Control Act was not repealed by P.D. No. 576-A. Turning to E.O. No. 546, the Court arrived at a similar conclusion, despite a Department of Justice Opinion stating that the 1979 enactment had dispensed with the congressional franchise requirement. The Court clarified that the 1989 ruling in *Albano v. Reyes*, to the effect that "franchises issued by Congress are not required before each and every public utility may operate" did not dispense with the franchise requirement insofar as broadcast stations are concerned. x x x The Court further observed that Congress itself had accepted it as a given that a legislative franchise is still required to operate a broadcasting station in the Philippines. x x x *Associated Communications* makes clear that presently broadcast stations are still required to obtain a legislative franchise, as they have been so since the passage of the Radio Control Act in 1931. By virtue of this requirement, the broadcast industry falls within the ambit of Section 11, Article XII of the 1987 Constitution, the one constitutional provision concerned with the grant of franchises in the Philippines. The requirement of a legislative franchise likewise differentiates the Philippine broadcast industry from that in America, where there is no need to secure a franchise from the U.S. Congress. It is thus clear that the operators of broadcast stations in the Philippines must secure a legislative franchise, a requirement imposed by the Radio Control Act of 1931 and accommodated under the 1987 Constitution.

4. **ID.; ID.; ID.; CERTIFICATE OF PUBLIC CONVENIENCE (CPC) FROM THE NTC IS ALSO REQUIRED TO OPERATE A BROADCASTING STATION. —** [T]he Court in *Associated Communications* referred to another form of "permission" required of broadcast stations, that is the CPC

issued by the NTC. What is the source of such requirement? The Radio Control Act had also obliged radio broadcast stations to secure a permit from the Secretary of Commerce and Industry prior to the construction or installation of any station. Said Department Secretary was also empowered to regulate "the establishment, use and operation of all radio stations and of all forms of radio communications and transmission within the Philippines." Among the specific powers granted to the Secretary over radio stations are the approval or disapproval of any application for the construction, installation, establishment or operation of a radio station and the approval or disapproval of any application for renewal of station or operation license. As earlier noted, radio broadcasting companies were exempted from the jurisdiction of the defunct Public Service Commission except with respect to their rates; thus, they did not fall within the same regulatory regime as other public services, the regime which was characterized by the need for CPC or CPCN. However, following the Radio Control Act, it became clear that radio broadcast companies need to obtain a similar license from the government in order to operate, at that time from the Department of Public Works and Communications. Then, as earlier noted, in 1972, President Marcos through P.D. No. 1, transferred to the Board of Communications the function of issuing CPCs for the operation of radio and television broadcasting systems, as well as the granting of permits for the use of radio frequencies for such broadcasting systems. With the creation of the NTC, through E.O. No. 546 in 1979, that agency was vested with the power to "[i]ssue certificate[s] of public convenience for the operation of . . . radio and television broadcasting system[s]." That power remains extant and undisputed to date.

5. **ID.; ID.; ID.; ID.; COMPLEXITIES OF DUAL FRANCHISE/ LICENSE REQUIREMENT FOR BROADCASTING MEDIA, EXPLAINED. —** The complexities of our dual franchise/ license regime for broadcast media should be understood within the context of separation of powers. The right of a particular entity to broadcast over the airwaves is established by law — *i.e.*, the legislative franchise — and determined by Congress, the branch of government tasked with the creation of rights and obligations. As with all other laws passed by Congress, the function of the executive branch of government, to which the NTC belongs, is the implementation of the law. In broad theory, the legal obligation of the NTC once Congress has

established a legislative franchise for a broadcast media station is to facilitate the operation by the franchisee of its broadcast stations. However, since the public administration of the airwaves is a requisite for the operation of a franchise and is moreover a highly technical function, Congress has delegated to the NTC the task of administration over the broadcast spectrum, including the determination of available bandwidths and the allocation of such available bandwidths among the various legislative franchisees. The licensing power of the NTC thus arises from the necessary delegation by Congress of legislative power geared towards the orderly exercise by franchisees of the rights granted them by Congress. Congress may very well in its wisdom impose additional obligations on the various franchisees and accordingly delegate to the NTC the power to ensure that the broadcast stations comply with their obligations under the law. Because broadcast media enjoys a lesser degree of free expression protection as compared to their counterparts in print, these legislative restrictions are generally permissible under the Constitution. Yet no enactment of Congress may contravene the Constitution and its Bill of Rights; hence, whatever restrictions are imposed by Congress on broadcast media franchisees remain susceptible to judicial review and analysis under the jurisprudential framework for scrutiny of free expression cases involving the broadcast media. The restrictions enacted by Congress on broadcast media franchisees have to pass the mettle of constitutionality. On the other hand, the restrictions imposed by an administrative agency such as the NTC on broadcast media franchisees will have to pass not only the test of constitutionality, but also the test of authority and legitimacy, *i.e.*, whether such restrictions have been imposed in the exercise of duly delegated legislative powers from Congress. If the restriction or sanction imposed by the administrative agency cannot trace its origin from legislative delegation, whether it is by virtue of a specific grant or from valid delegation of rule-making power to the administrative agency, then the action of such administrative agency cannot be sustained. The life and authority of an administrative agency emanates solely from an Act of Congress, and its faculties confined within the parameters set by the legislative branch of government.

6. ID.; ID.; ID.; ID.; NTC HAS NO POWER TO CANCEL OR SUSPEND THE CPC's IT HAS DULY ISSUED TO

BROADCAST STATIONS. — We earlier replicated the various functions of the NTC, as established by E.O. No. 546. One can readily notice that even as the NTC is vested with the power to issue CPCs to broadcast stations, it is not expressly vested with the power to cancel such CPCs, or otherwise empowered to prevent broadcast stations with duly issued franchises and CPCs from operating radio or television stations. In contrast, when the Radio Control Act of 1931 maintained a similar requirement for radio stations to obtain a license from a government official (the Secretary of Commerce and Industry), it similarly empowered the government, through the Secretary of Public Works and Communications, to suspend or revoke such license, as indicated in x x x Section 3(m) begets the question — did the NTC retain the power granted in 1931 to the Secretary of Public Works and Communications to "x x x suspend or revoke the offender's station or operator licenses or refuse to renew such licenses"? We earlier adverted to the statutory history. The enactment of the Public Service Act in 1936 did not deprive the Secretary of regulatory jurisdiction over radio stations, which included the power to impose fines. In fact, the Public Service Commission was precluded from exercising such jurisdiction, except with respect to the fixing of rates. Then, in 1972, the regulatory authority over broadcast media was transferred to the Board of Communications by virtue of P. D. No. 1, which adopted, approved, and made as part of the law of the land the Integrated Reorganization Plan which was prepared by the Commission on Reorganization. Among the cabinet departments affected by the plan was the Department of Public Works and Communications, which was now renamed the Department of Public Works, Transportation and Communication. New regulatory boards under the administrative supervision of the Department were created, including the Board of Communications. The functions of the Board of Communications were enumerated in Part X, Chapter I, Article III, Sec. 5 of the Integrated Reorganization Plan. What is noticeably missing from these enumerated functions of the Board of Communications is the power to revoke or cancel CPCs, even as the Board was vested the power to issue the same. That same pattern held true in 1976, when the Board of Communications was abolished by E.O. No. 546. Said executive order, promulgated by then President Marcos in the exercise of his legislative powers, created the NTC but likewise withheld from

it the authority to cancel licenses and CPCs, even as it was empowered to issue CPCs. Given the very specific functions allocated by law to the NTC, it would be very difficult to recognize any intent to allocate to the Commission such regulatory functions previously granted to the Secretary of Public Works and Communications, but not included in the exhaustive list of functions enumerated in Section 15. Certainly, petitioner fails to point to any provision of E.O. No. 546 authorizing the NTC to cancel licenses. Neither does he cite any provision under P.D. No. 1 or the Radio Control Act, even if Section 3(m) of the latter law provides at least, the starting point of a fair argument. Instead, petitioner relies on the power granted to the Public Service Commission to revoke CPCs or CPCNs under Section 16(m) of the Public Service Act. That argument has been irrefragably refuted by Section 14 of the Public Service Act, and by jurisprudence, most especially *RCPI v. NTC*. As earlier noted, at no time did radio companies fall under the jurisdiction of the Public Service Commission as they were expressly excluded from its mandate under Section 14. In addition, the Court ruled in *RCPI* that since radio companies, including broadcast stations and telegraphic agencies, were never under the jurisdiction of the Public Service Commission except as to rate-fixing, that Commission's authority to impose fines did not carry over to the NTC even while the other regulatory agencies that emanated from the Commission did retain the previous authority their predecessor had exercised. No provision in the Public Service Act thus can be relied upon by the petitioner to claim that the NTC has the authority to cancel CPCs or licenses.

7. ID.; ID.; ID.; ID.; CONSTITUTIONAL IMPLICATIONS OF THE NTC'S POWER TO REVOKE OR SUSPEND CPC, DISCUSSED. — It is beyond question that respondents, as with all other radio and television broadcast stations, find shelter in the Bill of Rights, particularly Section 3, Article III of the Constitution. At the same time, as we have labored earlier to point out, broadcast media stands, by reason of the conditions of scarcity, within a different tier of protection from print media, which unlike broadcast, does not have any regulatory interaction with the government during its operation. Still, the fact that state regulation of broadcast media is constitutionally justified does not mean that its practitioners are precluded from invoking Section 3, Article III of the Constitution in their

behalf. Far from it. Our democratic way of life is actualized by the existence of a free press, whether print media or broadcast media. As with print media, free expression through broadcast media is protected from prior restraint or subsequent punishment. The franchise and licensing requirements are mainly impositions of the laws of physics which would stand to periodic reassessment as technology advances. The science of today renders state regulation as a necessity, yet this should not encumber the courts from accommodating greater freedoms to broadcast media when doing so would not interfere with the existing legitimate state interests in regulating the industry. x x x Should petitioner's position that the NTC has the power to cancel CPCs or licenses it has issued to broadcast stations although they are in the first place empowered by their respective franchise to exercise their rights to free expression and as members of a free press, be adopted, broadcast media would be encumbered by another layer of state restrictions. As things stand, they are already required to secure a franchise from Congress and a CPC from the NTC in order to operate. Upon operation, they are obliged to comply with the various regulatory issuances of the NTC, which has the power to impose fees and fines and other mandates it may deem fit to prescribe in the exercise of its rule-making power. The fact that broadcast media already labors under this concededly valid regulatory framework necessarily creates inhibitions on its practitioners as they operate on a daily basis. Newspapers are able to print out their daily editions without fear that a government agency such as the NTC will be able to suspend their publication or fine them based on their content. Broadcast stations do already operate with that possibility in mind, and that circumstance ineluctably restrains its content, notwithstanding the constitutional right to free expression. However, the cancellation of a CPC or license to operate of a broadcast station, if we recognize that possibility, is essentially a death sentence, the most drastic means to inhibit a broadcast media practitioner from exercising the constitutional right to free speech, expression and of the press.

8. **ID.; ID.; ID.; ID.; ID.; DOCTRINE OF "STRICT SCRUTINY," APPLIED; ABSENCE OF COMPELLING STATE INTEREST TO JUSTIFY THE GRANT OF AUTHORITY TO THE NTC TO CANCEL CPC's OR LICENSES. —** When confronted with laws dealing with freedom of the mind or

restricting the political process, of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection, the Court has deemed it appropriate to apply "strict scrutiny" when assessing the laws involved or the legal arguments pursued that would diminish the efficacy of such constitutional right. The assumed authority of the NTC to cancel CPCs or licenses, if sustained, will create a permanent atmosphere of a less free right to express on the part of broadcast media. So that argument could be sustained, it will have to withstand the strict scrutiny from this Court. Strict scrutiny entails that the presumed law or policy must be justified by a compelling state or government interest, that such law or policy must be narrowly tailored to achieve that goal or interest, and that the law or policy must be the least restrictive means for achieving that interest. It is through that lens that we examine petitioner's premise that the NTC has the authority to cancel licenses of broadcast franchisees. In analyzing the compelling government interest that may justify the investiture of authority on the NTC advocated by petitioner, we cannot ignore the interest of the State as expressed in the respective legislative franchises of the petitioner, R.A. No. 7477 and R. A. Act No. 7582. Since legislative franchises are extended through statutes, they should receive recognition as the ultimate expression of State policy. What the legislative franchises of respondents express is that the Congress, after due debate and deliberation, declares it as State policy that respondents should have the right to operate broadcast stations. The President of the Philippines, by affixing his signature to the law, concurs in such State policy. Allowing the NTC to countermand State policy by revoking respondent's vested legal right to operate broadcast stations unduly gives to a mere administrative agency veto power over the implementation of the law and the enforcement of especially vested legal rights. That concern would not arise if Congress had similarly empowered the NTC with the power to revoke a franchisee's right to operate broadcast stations. But as earlier stated, there is no such expression in the law, and by presuming such right the Court will be acting contrary to the stated State interest as expressed in respondents' legislative franchises. If we examine the particular franchises of respondents, it is readily apparent that Congress has especially invested the NTC with certain powers with respect to their broadcast operations.

Both R.A. No. 7477 and R.A. No. 7582 require the grantee "to secure from the [NTC] the appropriate permits and licenses for its stations," barring the private respondents from "using any frequency in the radio spectrum without having been authorized by the [NTC]." At the same time, both laws provided that "[the NTC], however, shall not unreasonably withhold or delay the grant of any such authority." An important proviso is stipulated in the legislative franchises, particularly under Section 5 of R.A. No. 7477 and Section 3 of R.A. No. 7582, in relation to Section 11 of R.A. No. 3902. x x x The provision authorizes the President of the Philippines to exercise considerable infringements on the right of the franchisees to operate their enterprises and the right to free expression. Such authority finds corollary constitutional justification as well under Section 17, Article XII, which allows the State "in times of national emergency, when the public interest so requires x x x during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately-owned public utility or business affected with public interest." We do not doubt that the President or the State can exercise such authority through the NTC, which remains an agency within the executive branch of government, but such can be exercised only under limited and rather drastic circumstances. They still do not vest in the NTC the broad authority to cancel licenses and permits. These provisions granting special rights to the President in times of emergency are incorporated in our understanding of the legislated state policy with respect to the operation by private respondents of their legislative franchises. There are restrictions to the operation of such franchises, and when these restrictions are indeed exercised there still may be cause for the courts to review whether said limitations are justified despite Section 3, Article I of the Constitution. At the same time, the state policy as embodied in these franchises is to restrict the government's ability to impair the freedom to broadcast of the stations only upon the occurrence of national emergencies or events that compromise the national security. It should be further noted that even the aforequoted provision does not authorize the President or the government to cancel the licenses of the respondents. The temporary nature of the takeover or closure of the station is emphasized in the provision. That fact further disengages the provision from any sense that such delegated

authority can be the source of a broad ruling affirming the right of the NTC to cancel the licenses of franchisees. With the legislated state policy strongly favoring the unimpeded operation of the franchisee's stations, it becomes even more difficult to discern what compelling State interest may be fulfilled in ceding to the NTC the general power to cancel the franchisee's CPC's or licenses absent explicit statutory authorization. This absence of a compelling state interest strongly disfavors petitioner's cause.

9. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *QUO WARRANTO*; PETITION THEREFOR TO SEEK CANCELLATION OF PCP ON THE GROUND OF VIOLATION OF LEGISLATIVE FRANCHISE, PROPER REMEDY. —** Under Section 1 of Rule 66, "an action for the usurpation of a public office, position or franchise may be brought in the name of the Republic of the Philippines against a person who usurps, intrudes into, or unlawfully holds or exercises public office, position or franchise." Even while the action is maintained in the name of the Republic, the Solicitor General or a public prosecutor is obliged to commence such action upon complaint, and upon good reason to believe that any case specified under Section 1 of Rule 66 can be established by proof. The special civil action of *quo warranto* is a prerogative writ by which the Government can call upon any person to show by what warrant he holds a public office or exercises a public franchise. It is settled that "[t]he determination of the right to the exercise of a franchise, or whether the right to enjoy such privilege has been forfeited by non-user, is more properly the subject of the prerogative writ of *quo warranto*, the right to assert which, as a rule, belongs to the State 'upon complaint or otherwise,' the reason being that the abuse of a franchise is a public wrong and not a private injury." A forfeiture of a franchise will have to be declared in a direct proceeding for the purpose brought by the State because a franchise is granted by law and its unlawful exercise is primarily a concern of Government. *Quo warranto* is specifically available as a remedy if it is thought that a government corporation has offended against its corporate charter or misused its franchise. x x x It is beyond dispute that *quo warranto* exists as an available and appropriate remedy against the wrong imputed on private respondents. Petitioners argue that since their prayer involves the cancellation of the provisional authority and CPCs, and

not the legislative franchise, then *quo warranto* fails as a remedy. The argument is artificial. The authority of the franchisee to engage in broadcast operations is derived in the legislative mandate. To cancel the provisional authority or the CPC is, in effect, to cancel the franchise or otherwise prevent its exercise. By law, the NTC is incapacitated to frustrate such mandate by unduly withholding or canceling the provisional authority or the CPC for reasons other than the orderly administration of the frequencies in the radio spectrum. What should occur instead is the converse. If the courts conclude that private respondents have violated the terms of their franchise and thus issue the writs of *quo warranto* against them, then the NTC is obliged to cancel any existing licenses and CPCs since these permits draw strength from the possession of a valid franchise. If the point has not already been made clear, then licenses issued by the NTC such as CPCs and provisional authorities are junior to the legislative franchise enacted by Congress. The licensing authority of the NTC is not on equal footing with the franchising authority of the State through Congress. The issuance of licenses by the NTC implements the legislative franchises established by Congress, in the same manner that the executive branch implements the laws of Congress rather than creates its own laws. And similar to the inability of the executive branch to prevent the implementation of laws by Congress, the NTC cannot, without clear and proper delegation by Congress, prevent the exercise of a legislative franchise by withholding or canceling the licenses of the franchisee. And the role of the courts, through *quo warranto* proceedings, neatly complements the traditional separation of powers that come to bear in our analysis. The courts are entrusted with the adjudication of the legal status of persons, the final arbiter of their rights and obligations under law. The question of whether a franchisee is in breach of the franchise specially enacted for it by Congress is one inherently suited to a court of law, and not for an administrative agency, much less one to which no such function has been delegated by Congress. In the same way that availability of judicial review over laws does not preclude Congress from undertaking its own remedial measures by appropriately amending laws, the viability of *quo warranto* in the instant cases does not preclude Congress from enforcing its own prerogative by abrogating the legislative

franchises of respondents should it be distressed enough by the franchisees' violation of the franchises extended to them.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioner.
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D E C I S I O N

TINGA, *J.*:

Does the National Telecommunications Commission (NTC) have jurisdiction over complaints seeking the cancellation of certificates of public convenience (CPCs) and other licenses it had issued to the holders of duly-issued legislative franchises on the ground that the franchisees had violated the terms of their franchises? The Court, in resolving that question, takes the opportunity to elaborate on the dynamic behind the regulation of broadcast media in the Philippines, particularly the interrelationship between the twin franchise and licensing requirements.

I.

Respondents Consolidated Broadcasting System, Inc. (CBS) and People's Broadcasting Service, Inc. (PBS) were incorporated in 1961 and 1965, respectively. Both are involved in the operation of radio broadcasting services in the Philippines, they being the grantees of legislative franchises by virtue of two laws, Republic Act (R.A.) No. 7477 and R.A. No. 7582. R.A. No. 7477, enacted on 5 May 1992, granted PBS a legislative franchise to construct, install, maintain and operate radio and television stations within the Philippines for a period of 25 years. R.A. No. 7582, enacted on 27 May 1992, extended CBS's previous legislative franchise[1] to operate radio stations for another 25 years. The CBS and PBS radio networks are two of the three networks that comprise the well-known "Bombo Radyo Philippines."[2]

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[1] Under Republic Act No. 3902.

[2] See *Rollo*, p. 45.

Section 9 of R.A. No. 7477 and Section 3 of R.A. No. 7582 contain a common provision predicated on the "constitutional mandate to democratize ownership of public utilities."[3] The common provision states:

> SEC. 9. Democratization of ownership. — In compliance with the constitutional mandate to democratize ownership of public utilities, the herein grantee shall make public offering through the stock exchanges of at least thirty percent (30%) of its common stocks within a period of three (3) years from the date of effectivity of this Act: *Provided*, That no single person or entity shall be allowed to own more than five percent (5%) of the stock offerings.[4]

It further appears that following the enactment of these franchise laws, the NTC issued four (4) Provisional Authorities to PBS and six (6) Provisional Authorities to CBS, allowing them to install, operate and maintain various AM and FM broadcast stations in various locations throughout the nation.[5] These Provisional Authorities were issued between 1993 to 1998, or after the enactment of R.A. No. 7477 and R.A. No. 7582.

Petitioner Santiago C. Divinagracia[6] filed two complaints both dated 1 March 1999 with the NTC, respectively lodged

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[3] See CONSTITUTION, Art. XII, Sec. 11, which provides in part: "The State shall encourage equity participation in public utilities by the general public." Particular to mass media organizations, one may also refer to Section 11(1), Article XVI, Constitution, which provides in part: "The Congress shall regulate or prohibit monopolies in commercial mass media when the public interest so requires. No combinations in restraint of trade or unfair competition therein shall be allowed."

[4] See *rollo*, pp. 73, 75; citing Section 9, R.A. No. 7477 and Section 3, R.A. No. 7582. Even as the above-cited provision is found in both sections, Section 9 of Rep. Act No. 7477 is captioned "Democratization of Ownership"; while Section 3 of Rep. Act No. 7582 is captioned "Public Ownership." Nonetheless, the variance in caption has no bearing for this Court, which acknowledges the sameness of both provisions.

[5] See *id.* at 92, 96. In the case of CBS, it was likewise granted a Provisional Authority to install, operate and maintain a Cable Television System in Aroroy, Masbate. See *id.* at 96.

[6] Petitioner died on 14 April 2004 and is now legally represented by his daughter, Elsa. See *id.* at 207.

against PBS[7] and CBS.[8] He alleged that he was "the actual and beneficial owner of Twelve percent (12%) of the shares of stock" of PBS and CBS separately,[9] and that despite the provisions in R.A. No. 7477 and R.A. No. 7582 mandating the public offering of at least 30% of the common stocks of PBS and CBS, both entities had failed to make such offering. Thus, Divinagracia commonly argued in his complaints that the failure on the part of PBS and CBS "to comply with the mandate of their legislative franchise is a misuse of the franchise conferred upon it by law and it continues to exercise its franchise in contravention of the law to the detriment of the general public and of complainant who are unable to enjoy the benefits being offered by a publicly listed company."[10] He thus prayed for the cancellation of all the Provisional Authorities or CPCs of PBS and CBS on account of the alleged violation of the conditions set therein, as well as in its legislative franchises.[11]

On 1 August 2000, the NTC issued a consolidated decision dismissing both complaints.[12] While the NTC posited that it had full jurisdiction to revoke or cancel a Provisional Authority or CPC for violations or infractions of the terms and conditions embodied therein,[13] it held that the complaints actually constituted

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[7] *Id.* at 91-94, docketed as Adm. Case No. 99-022.

[8] *Id.* at 95-98, docketed as Adm. Case No. 99-023.

[9] *Id.* at 91, 95. In the complaint against CBS, petitioner stated that he was the actual and beneficial owner of Twelve percent (12%) of the shares of stock "of PBS," *id.* at 95. This appears to be a typographical error, petitioner intending to say therein "of CBS." This conclusion is borne out by the fact that the present petition alleges petitioner's ownership "of twelve (12%) percent of the shares of stock of [PBS] and twelve (12%) percent of the shares of CBS," *id.* at 12, and also by the narration of facts of the Court of Appeals which states that "[p]etitioner owns twelve (12%) percent of the shares of stock of [CBS] and twelve (12%) percent of the shares of stock of [PBS]," *id.* at 45.

[10] *Id.* at 93, 97.

[11] *Id.*

[12] *Id.* at 100-106. Decision signed by Deputy Commissioners Aurelio M. Umali and Nestor Dacanay.

[13] *Id.* at 103.

collateral attacks on the legislative franchises of PBS and CBS since the sole issue for determination was whether the franchisees had violated the mandate to democratize ownership in their respective legislative franchises. The NTC ruled that it was not competent to render a ruling on that issue, the same being more properly the subject of an action for *quo warranto* to be commenced by the Solicitor General in the name of the Republic of the Philippines, pursuant to Rule 66 of the Rules of Court.[14]

After the NTC had denied Divinagracia's motion for reconsideration,[15] he filed a petition for review under Rule 43 of the Rules of Court with the Court of Appeals.[16] On 18 February 2004, the Court of Appeals rendered a decision[17] upholding the NTC. The appellate court agreed with the earlier conclusion that the complaints were indeed a collateral attack on the legislative franchises of CBS and PBS and that a *quo warranto* action was the proper mode to thresh out the issues raised in the complaints.

Hence this petition, which submits as the principal issue, whether the NTC, with its retinue of regulatory powers, is powerless to cancel Provisional Authorities and Certificates of Public Convenience it issued to legislative franchise-holders. That central issue devolves into several narrower arguments, some of which hinge on the authority of the NTC to cancel the very Provisional Authorities and CPCs which it is empowered to issue, as distinguished from the legislative franchise itself, the cancellation of which Divinagracia points out was not the relief he had sought from the NTC. Questions are raised as to whether the complaints did actually constitute a collateral attack on the legislative franchises.

Yet this case ultimately rests to a large degree on fundamentals. Divinagracia's case rotates on the singular thesis that the NTC

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[14] *Id.* at 104-105.

[15] *Id.* at 107-113.

[16] *Id.* at 53-70.

[17] *Id.* at 44-52. Penned by Associate Justice Regalado Maambong, concurred in by Associate Justices Buenaventura Guerrero and Andres Reyes, Jr.

has the power to cancel Provisional Authorities and CPCs, or in effect, the power to cancel the licenses that allow broadcast stations to operate. The NTC, in its assailed Decision, expressly admits that it has such power even as it refrained from exercising the same.[18] The Court has yet to engage in a deep inquiry into the question of whether the NTC has the power to cancel the operating licenses of entities to whom Congress has issued franchises to operate broadcast stations, especially on account of an alleged violation of the terms of their franchises. This is the opportune time to examine the issue.

II.

To fully understand the scope and dimensions of the regulatory realm of the NTC, it is essential to review the legal background of the regulation process. As operative fact, any person or enterprise which wishes to operate a broadcast radio or television station in the Philippines has to secure a legislative franchise in the form of a law passed by Congress, and thereafter a license to operate from the NTC.

The franchise requirement traces its genesis to Act No. 3846, otherwise known as the Radio Control Act, enacted in 1931.[19]

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[18] See *id.* at 103. "We [at the NTC] are cognizant that the Commission has full jurisdiction to revoke or cancel a PA or even a CPC for violation or infractions of the terms and conditions embodied therein."

[19] "An Act Providing for the Regulation of Radio Stations and Radio Communications in the Philippine Islands, And For Other Purposes." 27 Public Laws 294-297.

Mystifyingly, the official website of the National Telecommunications Commission has published therein a "Republic Act No. 3846," purportedly enacted on 10 August 1963, which has exactly the same title as Act No. 3846 of 1931. (http://portal.ntc.gov.ph/wps/portal/!ut/p/ _s.7_0_A/7_0_LU/ .cmd/ad/.ps/X/.c/6_0_FM/.ce/7_0_95U/.p/5_0_7DI/.d/ 0?PC_7_0_95U_F=law3846.html#7_0_95U, last visited 24 November 2008) A similar "Republic Act No. 3846" dated to 1963 is also published in the popular but unofficial online compilation prepared by the Chan Robles Virtual Law Library (http://www.chanrobles.com/republicacts/republicactno3846.html, last visited 24 November 2008). However, as confirmed by the Supreme Court Library, "Republic Act No. 3846" is in fact a general appropriations law and not a statute governing the regulation of radio stations in the Philippines.

Section 1 thereof provided that "[n]o person, firm, company, association or corporation shall construct, install, establish, or operate x x x a radio broadcasting station, without having first obtained a franchise therefor from the National Assembly x x x"[20] Section 2 of the law prohibited the construction or installation of any station without a permit granted by the Secretary of Public Works and Communication, and the operation of such station without a license issued by the same Department Secretary.[21] The law likewise empowered the Secretary of Public Works and Communication "to regulate the establishment, use, and operation of all radio stations and of all forms of radio communications and transmissions within the Philippine Islands and to issue such rules and regulations as may be necessary."[22]

Noticeably, our Radio Control Act was enacted a few years after the United States Congress had passed the Radio Act of 1927. American broadcasters themselves had asked their Congress to step in and regulate the radio industry, which was then in its infancy. The absence of government regulation in that market had led to the emergence of hundreds of radio broadcasting stations, each using frequencies of their choice and changing frequencies at will, leading to literal chaos on the airwaves. It was the Radio Act of 1927 which introduced a licensing requirement for American broadcast stations, to be overseen eventually by the Federal Communications Commission (FCC).[23]

This pre-regulation history of radio broadcast stations illustrates the continuing necessity of a government role in overseeing the broadcast media industry, as opposed to other industries such as print media and the Internet.[24] Without regulation, the result

[20] See ACT NO. 3846 (1931), Sec. 1, as amended by Commonwealth Act No. 365, Commonwealth Act No. 571 and Republic Act No. 584 (1950).

[21] See ACT NO. 3846 (1931), Sec. 2 as amended by Republic Act No. 584 (1950). The Cabinet Secretary originally designated in Sections 2 and 3 of the law was the Secretary of Commerce and Communications.

[22] See ACT NO. 3846 (1931), as amended by Republic Act No. 584 (1950).

[23] With the passage of the Communications Act of 1934.

[24] It has been entrenched in American constitutional law that the Internet enjoys the same degree of constitutional protection as print media, in contrast

would be a free-for-all market with rival broadcasters able with impunity to sabotage the use by others of the airwaves.[25] Moreover, the airwaves themselves the very medium utilized by broadcast — are by their very nature not susceptible to appropriation, much less be the object of any claim of private or exclusive ownership. No private individual or enterprise has the physical means, acting alone to actualize exclusive ownership and use of a particular frequency. That end, desirable as it is among broadcasters, can only be accomplished if the industry itself is subjected to a regime of government regulation whereby broadcasters receive entitlement to exclusive use of their respective or particular frequencies, with the State correspondingly able by force of law to confine all broadcasters to the use of the frequencies assigned to them.

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to the lower level of First Amendment protection guaranteed to broadcast media. See *Reno v. ACLU*, 521 U.S. 844 (1997);

[25] "Although broadcasting is clearly a medium affected by a First Amendment interest, *United States v. Paramount Pictures, Inc*., 334 U.S. 131, 166 (1948), differences in the characteristics of new media justify differences in the First Amendment standards applied to them. *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 503 (1952). For example, the ability of new technology to produce sounds more raucous than those of the human voice justifies restrictions on the sound level, and on the hours and places of use, of sound trucks so long as the restrictions are reasonable and applied without discrimination. *Kovacs v. Cooper,* 336 U.S. 77 (1949). Just as the Government may limit the use of sound-amplifying equipment potentially so noisy that it drowns out civilized private speech, so may the Government limit the use of broadcast equipment. The right of free speech of a broadcaster, the user of a sound truck, or any other individual does not embrace a right to snuff out the free speech of others. *Associated Press v. United States,* 326 U.S. 1, 20 (1945).

When two people converse face to face, both should not speak at once if either is to be clearly understood. But the range of the human voice is so limited that there could be meaningful communications if half the people in the United States were talking and the other half listening. Just as clearly, half the people might publish and the other half read. But the reach of radio signals is [395 U.S. 367, 388] incomparably greater than the range of the human voice and the problem of interference is a massive reality. The lack of know-how and equipment may keep many from the air, but only a tiny fraction of those with resources and intelligence can hope to communicate by radio at the same time if intelligible communication is to be had, even if the entire radio spectrum is utilized in the present state of commercially acceptable technology." *Red Lion v. FCC*, *infra*, at 386-387.

Still, the dominant jurisprudential rationale for state regulation of broadcast media is more sophisticated than a mere recognition of a need for the orderly administration of the airwaves. After all, a united broadcast industry can theoretically achieve that goal through determined self-regulation. The key basis for regulation is rooted in empiricism – "that broadcast frequencies are a scarce resource whose use could be regulated and rationalized only by the Government." This concept was first introduced in jurisprudence in the U.S. case of *Red Lion v. Federal Communications Commission*.[26]

Red Lion enunciated the most comprehensive statement of the necessity of government oversight over broadcast media. The U.S. Supreme Court observed that within years from the introduction of radio broadcasting in the United States, "it became apparent that broadcast frequencies constituted a scarce resource whose use could be regulated and rationalized only by the Government . . . without government control, the medium would be of little use because of the cacophony of competing voices, none of which could be clearly and predictably heard." The difficulties posed by spectrum scarcity was concretized by the U.S. High Court in this manner:

> Scarcity is not entirely a thing of the past. Advances in technology, such as microwave transmission, have led to more efficient utilization of the frequency spectrum, but uses for that spectrum have also grown apace. Portions of the spectrum must be reserved for vital uses unconnected with human communication, such as radio-navigational aids used by aircraft and vessels. Conflicts have even emerged between such vital functions as defense preparedness and experimentation in methods of averting midair collisions through radio warning devices. "Land mobile services" such as police, ambulance, fire department, public utility, and other communications systems have been occupying an increasingly crowded portion of the frequency spectrum and there are, apart from licensed amateur radio operators' equipment, 5,000,000 transmitters operated on the "citizens' band" which is also increasingly congested. Among the various uses for radio frequency space, including marine, aviation, amateur, military, and common carrier users, there are easily enough claimants to permit use of the whole

[26] 395 U.S. 367 (1969).

with an even smaller allocation to broadcast radio and television uses than now exists.(citations omitted)[27]

After interrelating the premise of scarcity of resources with the First Amendment rights of broadcasters, *Red Lion* concluded that government regulation of broadcast media was a necessity:

Where there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish. If 100 persons want broadcast [395 U.S. 367, 389] licenses but there are only 10 frequencies to allocate, all of them may have the same "right" to a license; but if there is to be any effective communication by radio, only a few can be licensed and the rest must be barred from the airwaves. It would be strange if the First Amendment, aimed at protecting and furthering communications, prevented the Government from making radio communication possible by requiring licenses to broadcast and by limiting the number of licenses so as not to overcrowd the spectrum.

This has been the consistent view of the Court. Congress unquestionably has the power to grant and deny licenses and to eliminate existing stations. No one has a First Amendment right to a license or to monopolize a radio frequency; to deny a station license because "the public interest" requires it "is not a denial of free speech."

By the same token, as far as the First Amendment is concerned those who are licensed stand no better than those to whom licenses are refused. A license permits broadcasting, but the licensee has no constitutional right to be the one who holds the license or to monopolize a radio frequency to the exclusion of his fellow citizens. There is nothing in the First Amendment which prevents the Government from requiring a licensee to share his frequency with others and to conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves.[28]

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[27] *Id.* at 396-398.

[28] *Id.* at 388-389.

Rather than confer frequency monopolies on a relatively small number of licensees, in a Nation of 200,000,000, the Government could surely have decreed that each frequency should be shared among all or some of those who wish to use it, each being assigned a portion of the broadcast day or the broadcast week. The ruling and regulations at issue here do not go quite so far. They assert that under specified circumstances, a licensee must offer to make available a reasonable amount of broadcast time to those who have a view different from that which has already been expressed on his station. The expression of a political endorsement, or of a personal attack while dealing with a controversial public issue, simply triggers this time sharing. As we have said, the First Amendment confers no right on licensees to prevent others from broadcasting on "their" frequencies and no right to an unconditional monopoly of a scarce resource which the Government has denied others the right to use.

In terms of constitutional principle, and as enforced sharing of a scarce resource, the personal attack and political editorial rules are indistinguishable from the equal-time provision of §315, a specific enactment of Congress requiring stations to set aside reply time under specified circumstances and to which the fairness doctrine and these constituent regulations are important complements. That provision, which has been part of the law since 1927, Radio Act of 1927, §18, 44 Stat. 1170, has been held valid by this Court as an obligation of the licensee relieving him of any power in any way to prevent or censor the broadcast, and thus insulating him from liability for defamation. The constitutionality of the statute under the First Amendment was unquestioned.(citations omitted)[29]

As made clear in *Red Lion*, the scarcity of radio frequencies made it necessary for the government to step in and allocate frequencies to competing broadcasters. In undertaking that function, the government is impelled to adjudge which of the competing applicants are worthy of frequency allocation. It is through that role that it becomes legally viable for the government to impose its own values and goals through a regulatory regime that extends beyond the assignation of frequencies, notwithstanding the free expression guarantees enjoyed by broadcasters. As the government is put in a position to determine who should be worthy to be accorded the privilege to broadcast from a finite

[29] *Id.* at 390-391.

and limited spectrum, it may impose regulations to see to it that broadcasters promote the public good deemed important by the State, and to withdraw that privilege from those who fall short of the standards set in favor of other worthy applicants.

Such conditions are peculiar to broadcast media because of the scarcity of the airwaves. Indeed, any attempt to impose such a regulatory regime on a medium that is not belabored under similar physical conditions, such as print media, will be clearly antithetical to democratic values and the free expression clause. This Court, which has adopted the "scarcity of resources" doctrine in cases such as *Telecom. & Broadcast Attys. of the Phils., Inc. v. COMELEC,*[30] emphasized the distinction citing *Red Lion*:

> Petitioners complain that B.P. Blg. 881, §92 singles out radio and television stations to provide free air time. They contend that newspapers and magazines are not similarly required as, in fact, in *Philippine Press Institute v. COMELEC* we upheld their right to the payment of just compensation for the print space they may provide under §90.
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> The argument will not bear analysis. It rests on the fallacy that broadcast media are entitled to the same treatment under the free speech guarantee of the Constitution as the print media. There are important differences in the characteristics of the two media, however, which justify their differential treatment for free speech purposes. Because of the physical limitations of the broadcast spectrum, the government must, of necessity, allocate broadcast frequencies to those wishing to use them. There is no similar justification for government allocation and regulation of the print media.
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> In the allocation of limited resources, relevant conditions may validly be imposed on the grantees or licensees. The reason for this is that, as already noted, the government spends public funds for the allocation and regulation of the broadcast industry, which it does not do in the case of the print media. To require the radio and television broadcast industry to provide free air time for the COMELEC Time is a fair exchange for what the industry gets.[31]

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[30] 352 Phil. 153 (1998).

[31] *Id.* at 182-183.

Other rationales may have emerged as well validating state regulation of broadcast media,[32] but the reality of scarce airwaves remains the primary, indisputable and indispensable justification for the government regulatory role. The integration of the scarcity doctrine into the jurisprudence on broadcast media illustrates how the libertarian ideal of the free expression clause may be tempered and balanced by actualities in the real world while preserving the core essence of the constitutional guarantee. Indeed, without government regulation of the broadcast spectrum, the ability of broadcasters to clearly express their views would be inhibited by the anarchy of competition. Since the airwaves themselves are not susceptible to physical appropriation and private ownership, it is but indispensable that the government step in as the guardian of the spectrum.

Reference to the scarcity doctrine is necessary to gain a full understanding of the paradigm that governs the state regulation of broadcast media. That paradigm, as it exists in the United States, is contextually similar to our own, except in one very crucial regard — the dual franchise/license requirements we impose.

III.

Recall that the Radio Control Act specifically required the obtention of a legislative franchise for the operation of a radio station in the Philippines. When the Public Service Act was enacted in 1936, the Public Service Commission (PSC) was vested with jurisdiction over "public services," including over "wire or wireless broadcasting stations."[33] However, among those specifically exempted from the regulatory reach of the PSC were "radio companies, except with respect to the fixing of rates."[34]

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[32] See, *e.g.*, *Eastern Broadcasting Corp. (DYRE) v. Hon. Dans, Jr*., 222 Phil. 151 (1985).

[33] See Section 13(b), C.A. No. 146, as amended.

[34] See Section 14, C.A. No. 146, as amended. This point was made especially clear in *Radio Communications of the Philippines, Inc. v. Santiago*, G.R. Nos. L-29236 & 29247, 21 August 1974, 58 SCRA 493, 495-497; and *Radio Communications of the Philippine v. National Telecommunications Commission*, G.R. No. 93237, 6 November 1992, 215 SCRA 455.

Thus, following the Radio Control Act, the administrative regulation of "radio companies" remained with the Secretary of Public Works and Communications. It appears that despite the advent of commercial television in the 1950s, no corresponding amendment to either the Radio Control Act or the Public Service Act was passed to reflect that new technology then.

Shortly after the 1972 declaration of martial law, President Marcos issued Presidential Decree (P.D.) No. 1, which allocated to the Board of Communications the authority to issue CPCs for the operation of radio and television broadcasting systems and to grant permits for the use of radio frequencies for such broadcasting systems. In 1974, President Marcos promulgated Presidential Decree No. 576-A, entitled "Regulating the Ownership and Operation of Radio and Television Stations and for other Purposes." Section 6 of that law reads:

SECTION 6**.** All franchises, grants, licenses, permits, certificates or other forms of authority to operate radio or television broadcasting systems shall terminate on December 31, 1981. Thereafter, irrespective of any franchise, grants, license, permit, certificate or other forms of authority to operate granted by any office, agency or person, no radio or television station shall be authorized to operate without the authority of the Board of Communications and the Secretary of Public Works and Communications or their successors who have the right and authority to assign to qualified parties frequencies, channels or other means of identifying broadcasting systems; *Provided*, *however*, that any conflict over, or disagreement with a decision of the aforementioned authorities may be appealed finally to the Office of the President within fifteen days from the date the decision is received by the party in interest.

A few years later, President Marcos promulgated Executive Order (E.O.) No. 546, establishing among others the National Telecommunications Commission. Section 15 thereof enumerates the various functions of the NTC.

SECTION 15. *Functions of the Commission*. — The Commission shall exercise the following functions:

a. Issue Certificate of Public Convenience for the operation of communications utilities and services, radio communications

systems, wire or wireless telephone or telegraph systems, radio and television broadcasting system and other similar public utilities;

b. Establish, prescribe and regulate areas of operation of particular operators of public service communications; and determine and prescribe charges or rates pertinent to the operation of such public utility facilities and services except in cases where charges or rates are established by international bodies or associations of which the Philippines is a participating member or by bodies recognized by the Philippine Government as the proper arbiter of such charges or rates;

c. Grant permits for the use of radio frequencies for wireless telephone and telegraph systems and radio communication systems including amateur radio stations and radio and television broadcasting systems;

d. Sub-allocate series of frequencies of bands allocated by the International Telecommunications Union to the specific services;

e. Establish and prescribe rules, regulations, standards, specifications in all cases related to the issued Certificate of Public Convenience and administer and enforce the same;

f. Coordinate and cooperate with government agencies and other entities concerned with any aspect involving communications with a view to continuously improve the communications service in the country;

g. Promulgate such rules and regulations, as public safety and interest may require, to encourage a larger and more effective use of communications, radio and television broadcasting facilities, and to maintain effective competition among private entities in these activities whenever the Commission finds it reasonably feasible;

h. Supervise and inspect the operation of radio stations and telecommunications facilities;

i. Undertake the examination and licensing of radio operators;

j. Undertake, whenever necessary, the registration of radio transmitters and transceivers; and

k. Perform such other functions as may be prescribed by law.

These enactments were considered when in 2003 the Court definitively resolved that the operation of a radio or television station does require a congressional franchise. In *Associated Communications & Wireless Services v. NTC,*[35] the Court took note of the confusion then within the broadcast industry as to whether the franchise requirement first ordained in the 1931 Radio Control Act remained extant given the enactment of P.D. No. 576-A in 1974 and E.O. No. 546 in 1979. Notably, neither law had specifically required legislative franchises for the operation of broadcast stations. Nonetheless, the Court noted that Section 1 of P.D. No. 576-A had expressly referred to the franchise requirement in stating that "[n]o radio station or television channel may obtain a franchise unless it has sufficient capital on the basis of equity for its operation for at least one year . . .."[36] Section 6 of that law made a similar reference to the franchise requirement.[37] From those references, the Court concluded that the franchise requirement under the Radio Control Act was not repealed by P.D. No. 576-A.[38]

Turning to E.O. No. 546, the Court arrived at a similar conclusion, despite a Department of Justice Opinion stating that the 1979 enactment had dispensed with the congressional franchise requirement. The Court clarified that the 1989 ruling in *Albano v. Reyes*, to the effect that "franchises issued by Congress are not required before each and every public utility may operate" did not dispense with the franchise requirement insofar as broadcast stations are concerned.

Our ruling in *Albano* that a congressional franchise is not required before "each and every public utility may operate" should be viewed in its proper light. Where there is a law such as P.D. No. 576-A which requires a franchise for the operation of radio and television stations, that law must be followed until subsequently repealed. As we have earlier shown, however, there is nothing in the subsequent E.O. No. 546 which evinces an intent to dispense with the franchise

[35] 445 Phil. 621 (2003).

[36] See *id.* at 637.

[37] *Id.*

[38] *Id.* at 637-640.

requirement. In contradistinction with the case at bar, the law applicable in *Albano*, *i.e.*, E.O. No. 30, did not require a franchise for the Philippine Ports Authority to take over, manage and operate the Manila International Port Complex and undertake the providing of cargo handling and port related services thereat. Similarly, in *Philippine Airlines, Inc. v. Civil Aeronautics Board*, *et al.,* we ruled that a legislative franchise is not necessary for the operation of domestic air transport because "there is nothing in the law nor in the Constitution which indicates that a legislative franchise is an indispensable requirement for an entity to operate as a domestic air transport operator." Thus, while it is correct to say that specified agencies in the Executive Branch have the power to issue authorization for certain classes of public utilities, this does not mean that the authorization or CPC issued by the NTC dispenses with the requirement of a franchise as this is clearly required under P.D. No. 576-A.[39]

The Court further observed that Congress itself had accepted it as a given that a legislative franchise is still required to operate a broadcasting station in the Philippines.

That the legislative intent is to continue requiring a franchise for the operation of radio and television broadcasting stations is clear from the franchises granted by Congress after the effectivity of E.O. No. 546 in 1979 for the operation of radio and television stations. Among these are: (1) R.A. No. 9131 dated April 24, 2001, entitled "An Act Granting the Iddes Broadcast Group, Inc., a Franchise to Construct, Install, Establish, Operate and Maintain Radio and Television Broadcasting Stations in the Philippines"; (2) R.A. No. 9148 dated July 31, 2001, entitled "An Act Granting the Hypersonic Broadcasting Center, Inc., a Franchise to Construct, Install, Establish, Operate and Maintain Radio Broadcasting Stations in the Philippines"; and (3) R.A. No. 7678 dated February 17, 1994, entitled "An Act Granting the Digital Telecommunication Philippines, Incorporated, a Franchise to Install, Operate and Maintain Telecommunications Systems Throughout the Philippines." All three franchises require the grantees to secure a CPCN/license/permit to construct and operate their stations/systems. Likewise, the Tax Reform Act of 1997 provides in Section 119 for tax on franchise of radio and/or television broadcasting companies x x x[40]

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[39] *Id.* at 644.

[40] *Id.* at 645.

Associated Communications makes clear that presently broadcast stations are still required to obtain a legislative franchise, as they have been so since the passage of the Radio Control Act in 1931. By virtue of this requirement, the broadcast industry falls within the ambit of Section 11, Article XII of the 1987 Constitution, the one constitutional provision concerned with the grant of franchises in the Philippines.[41] The requirement of a legislative franchise likewise differentiates the Philippine broadcast industry from that in America, where there is no need to secure a franchise from the U.S. Congress.

It is thus clear that the operators of broadcast stations in the Philippines must secure a legislative franchise, a requirement imposed by the Radio Control Act of 1931 and accommodated under the 1987 Constitution. At the same time, the Court in *Associated Communications* referred to another form of "permission" required of broadcast stations, that is the CPC issued by the NTC. What is the source of such requirement?

The Radio Control Act had also obliged radio broadcast stations to secure a permit from the Secretary of Commerce and Industry[42] prior to the construction or installation of any station.[43] Said Department Secretary was also empowered to regulate "the establishment, use and operation of all radio stations and of

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[41] The provision reads:

SECTION 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or corporations or associations organized under the laws of the Philippines at least sixty *per centum* of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

[42] Earlier known as the Secretary of Commerce and Communications.

[43] ACT NO. 3846 (1931), Sec. 2.

all forms of radio communications and transmission within the Philippines."[44] Among the specific powers granted to the Secretary over radio stations are the approval or disapproval of any application for the construction, installation, establishment or operation of a radio station[45] and the approval or disapproval of any application for renewal of station or operation license.[46]

As earlier noted, radio broadcasting companies were exempted from the jurisdiction of the defunct Public Service Commission except with respect to their rates; thus, they did not fall within the same regulatory regime as other public services, the regime which was characterized by the need for CPC or CPCN. However, following the Radio Control Act, it became clear that radio broadcast companies need to obtain a similar license from the government in order to operate, at that time from the Department of Public Works and Communications.

Then, as earlier noted, in 1972, President Marcos through P.D. No. 1, transferred to the Board of Communications the function of issuing CPCs for the operation of radio and television broadcasting systems, as well as the granting of permits for the use of radio frequencies for such broadcasting systems. With the creation of the NTC, through E.O. No. 546 in 1979, that agency was vested with the power to "[i]ssue certificate[s] of public convenience for the operation of… radio and television broadcasting system[s]."[47] That power remains extant and undisputed to date.

This much thus is clear. Broadcast and television stations are required to obtain a legislative franchise, a requirement imposed by the Radio Control Act and affirmed by our ruling in *Associated Broadcasting*. After securing their legislative franchises, stations are required to obtain CPCs from the NTC before they can

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[44] ACT NO. 3846 (1931), Sec. 3. That function later devolved to the Director, Telecommunication Control Bureau of the Department of Public Works and Communications.

[45] ACT NO. 3846 (1931), Sec. 3(k).

[46] ACT NO. 3846 (1931), Sec. 3(m).

[47] Executive Order No. 546 (1979), Sec. 15(a).

operate their radio or television broadcasting systems. Such requirement while traceable also to the Radio Control Act, currently finds its basis in E.O. No. 546, the law establishing the NTC.

From these same legal premises, the next and most critical question is whether the NTC has the power to cancel the CPCs it has issued to legislative franchisees.

IV.

The complexities of our dual franchise/license regime for broadcast media should be understood within the context of separation of powers. The right of a particular entity to broadcast over the airwaves is established by law — *i.e.*, the legislative franchise — and determined by Congress, the branch of government tasked with the creation of rights and obligations. As with all other laws passed by Congress, the function of the executive branch of government, to which the NTC belongs, is the implementation of the law. In broad theory, the legal obligation of the NTC once Congress has established a legislative franchise for a broadcast media station is to facilitate the operation by the franchisee of its broadcast stations. However, since the public administration of the airwaves is a requisite for the operation of a franchise and is moreover a highly technical function, Congress has delegated to the NTC the task of administration over the broadcast spectrum, including the determination of available bandwidths and the allocation of such available bandwidths among the various legislative franchisees. The licensing power of the NTC thus arises from the necessary delegation by Congress of legislative power geared towards the orderly exercise by franchisees of the rights granted them by Congress.

Congress may very well in its wisdom impose additional obligations on the various franchisees and accordingly delegate to the NTC the power to ensure that the broadcast stations comply with their obligations under the law. Because broadcast media enjoys a lesser degree of free expression protection as compared to their counterparts in print, these legislative restrictions are generally permissible under the Constitution. Yet no enactment of Congress may contravene the Constitution and its Bill of

Rights; hence, whatever restrictions are imposed by Congress on broadcast media franchisees remain susceptible to judicial review and analysis under the jurisprudential framework for scrutiny of free expression cases involving the broadcast media.

The restrictions enacted by Congress on broadcast media franchisees have to pass the mettle of constitutionality. On the other hand, the restrictions imposed by an administrative agency such as the NTC on broadcast media franchisees will have to pass not only the test of constitutionality, but also the test of authority and legitimacy, *i.e.*, whether such restrictions have been imposed in the exercise of duly delegated legislative powers from Congress. If the restriction or sanction imposed by the administrative agency cannot trace its origin from legislative delegation, whether it is by virtue of a specific grant or from valid delegation of rule-making power to the administrative agency, then the action of such administrative agency cannot be sustained. The life and authority of an administrative agency emanates solely from an Act of Congress, and its faculties confined within the parameters set by the legislative branch of government.

We earlier replicated the various functions of the NTC, as established by E.O. No. 546. One can readily notice that even as the NTC is vested with the power to issue CPCs to broadcast stations, it is not expressly vested with the power to cancel such CPCs, or otherwise empowered to prevent broadcast stations with duly issued franchises and CPCs from operating radio or television stations.

In contrast, when the Radio Control Act of 1931 maintained a similar requirement for radio stations to obtain a license from a government official (the Secretary of Commerce and Industry), it similarly empowered the government, through the Secretary of Public Works and Communications, to suspend or revoke such license, as indicated in Section 3(m):

> SECTION 3. The Secretary of Public Works and Communications is hereby empowered, to regulate the construction or manufacture, possession, control, sale and transfer of radio transmitters or transceivers (combination transmitter-receiver) and the establishment, use, the operation of all radio stations and of all form of radio

communications and transmissions within the Philippines. In addition to the above he shall have the following specific powers and duties:

> (m) He may, at his direction bring criminal action against violators of the radio laws or the regulations and confiscate the radio apparatus in case of illegal operation; or simply suspend or revoke the offender's station or operator licenses or refuse to renew such licenses; or just reprimand and warn the offenders;[48]

Section 3(m) begets the question — did the NTC retain the power granted in 1931 to the Secretary of Public Works and Communications to "x x x suspend or revoke the offender's station or operator licenses or refuse to renew such licenses"? We earlier adverted to the statutory history. The enactment of the Public Service Act in 1936 did not deprive the Secretary of regulatory jurisdiction over radio stations, which included the power to impose fines. In fact, the Public Service Commission was precluded from exercising such jurisdiction, except with respect to the fixing of rates.

Then, in 1972, the regulatory authority over broadcast media was transferred to the Board of Communications by virtue of P. D. No. 1, which adopted, approved, and made as part of the law of the land the Integrated Reorganization Plan which was prepared by the Commission on Reorganization.[49] Among the cabinet departments affected by the plan was the Department of Public Works and Communications, which was now renamed the Department of Public Works, Transportation and Communication.[50] New regulatory boards under the administrative supervision of the Department were created, including the Board of Communications.[51]

The functions of the Board of Communications were enumerated in Part X, Chapter I, Article III, Sec. 5 of the

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[48] ACT NO. 3846 (1931), Sec. 3; See also *Bolinao Electronics Corp., et al. v. Valencia and San Andres*, 120 Phil. 469 (1964).

[49] See Presidential Decree No. 1 (1972).

[50] See Integrated Reorganization Plan, Part X, Chapter I, Article II.

[51] See Integrated Reorganization Plan, Part X, Chapter I, Article III, Sec. 1.

Integrated Reorganization Plan.[52] What is noticeably missing from these enumerated functions of the Board of Communications is the power to revoke or cancel CPCs, even as the Board was

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[52] "5. The Board of Communications shall be composed of a full-time Chairman who shall be of unquestioned integrity and recognized prominence in previous public and/or private employment; two full-time members who shall be competent on all aspects of communications and preferably one of whom shall be a lawyer and the other an economist; and the Director of the Radio Control Office and a senior representative of the Institute of Mass Communication of the University of the Philippines, as *ex-officio* members.

The functions of this Board are as follows:

a. Issue Certificates of Public Convenience for the operation of communications utilities and services, radio communications systems, wire or wireless telephone or telegraph systems, radio and television broadcasting systems and other similar public utilities;

b. Establish, prescribe and regulate routes, zones and/or areas of operation of particular operator of public service communications; and determine, fix and/or prescribe charges and/or rates pertinent to the operation of such public utility facilities and services except in cases where charges or rates are established by international bodies or associations of which the Philippines is a participating member or by bodies recognized by the Philippine Government as the proper arbiter of such charges or rates;

c. Grant permits for the use of radio frequencies for wireless telephone and telegraph systems, radio communications systems and radio and television broadcasting systems including amateur radio stations;

d. Suballocate series of frequencies of bands allocated by the International Telecommunications Union to the specific services;

e. Establish, fix and/or prescribe rules, regulations, standards, specifications in all cases related to the Issued Certificates of Public Convenience and administer and enforce the same through the Radio Control Office of the Department;

f. Promulgate rules requiring any operator of any public communications utilities to equip, install and provide in such utilities and in their stations such devices, equipment, facilities and operating procedures and techniques as may promote or insure the highest degree of safety, protection, comfort and convenience to persons, and property in their charge as well as the safety of persons and property within their areas of operation;

g. Coordinate and cooperate with government agencies and entities concerned with any aspect involving communications with a view to continually improve the communications service in the country;

vested the power to issue the same. That same pattern held true in 1976, when the Board of Communications was abolished by E.O. No. 546.[53] Said executive order, promulgated by then President Marcos in the exercise of his legislative powers, created the NTC but likewise withheld from it the authority to cancel licenses and CPCs, even as it was empowered to issue CPCs. Given the very specific functions allocated by law to the NTC, it would be very difficult to recognize any intent to allocate to the Commission such regulatory functions previously granted to the Secretary of Public Works and Communications, but not included in the exhaustive list of functions enumerated in Section 15.

Certainly, petitioner fails to point to any provision of E.O. No. 546 authorizing the NTC to cancel licenses. Neither does he cite any provision under P.D. No. 1 or the Radio Control Act, even if Section 3(m) of the latter law provides at least, the starting point of a fair argument. Instead, petitioner relies on the power granted to the Public Service Commission to revoke CPCs or CPCNs under Section 16(m) of the Public Service Act.[54] That argument has been irrefragably refuted by Section 14 of the Public Service Act, and by jurisprudence, most especially *RCPI v. NTC*.[55] As earlier noted, at no time did radio companies fall under the jurisdiction of the Public Service Commission as they were expressly excluded from its mandate under Section 14. In addition, the Court ruled in *RCPI* that since radio companies, including broadcast stations and telegraphic agencies, were never under the jurisdiction of the Public Service Commission except as to rate-fixing, that Commission's authority

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h. Make such rules and regulations, as public interest may require, to encourage a larger and more effective use of communications, radio and television broadcasting facilities, and to maintain competition in these activities whenever the Board finds it reasonably feasible;

i. Promulgate from time to time, such rules and regulations, and prescribe such restrictions and conditions, not inconsistent with law, as public convenience, interest or necessity may require; and

j. Exercise such other functions as may be prescribed by law."

[53] See Section 14, E.O. No. 546 (1972).

[54] *Rollo*, p. 32.

[55] See note 34.

to impose fines did not carry over to the NTC even while the other regulatory agencies that emanated from the Commission did retain the previous authority their predecessor had exercised.[56] No provision in the Public Service Act thus can be relied upon by the petitioner to claim that the NTC has the authority to cancel CPCs or licenses.

It is still evident that E.O. No. 546 provides no explicit basis to assert that the NTC has the power to cancel the licenses or CPCs it has duly issued, even as the government office previously tasked with the regulation of radio stations, the Secretary of Public Works and Communications, previously possessed such power by express mandate of law. **In order to sustain petitioner's premise, the Court will be unable to rely on an unequivocally current and extant provision of law that justifies the NTC's power to cancel CPCs**. Petitioner suggests that since the NTC has the power to issue CPCs, it necessarily has the power to revoke the same. One might also argue that through the general rule-making power of the NTC, we can discern a right of the NTC to cancel CPCs.

We must be mindful that the issue for resolution is not a run-of-the-mill matter which would be settled with ease with the application of the principles of statutory construction. It is at this juncture that the constitutional implications of this case must ascend to preeminence.

A.

It is beyond question that respondents, as with all other radio and television broadcast stations, find shelter in the Bill of Rights, particularly Section 3, Article III of the Constitution. At the same time, as we have labored earlier to point out, broadcast media stands, by reason of the conditions of scarcity, within a different tier of protection from print media, which unlike broadcast, does not have any regulatory interaction with the government during its operation.

Still, the fact that state regulation of broadcast media is constitutionally justified does not mean that its practitioners

[56] *Id.* at 460-461.

are precluded from invoking Section 3, Article III of the Constitution in their behalf. Far from it. Our democratic way of life is actualized by the existence of a free press, whether print media or broadcast media. As with print media, free expression through broadcast media is protected from prior restraint or subsequent punishment. The franchise and licensing requirements are mainly impositions of the laws of physics which would stand to periodic reassessment as technology advances. The science of today renders state regulation as a necessity, yet this should not encumber the courts from accommodating greater freedoms to broadcast media when doing so would not interfere with the existing legitimate state interests in regulating the industry.

In *FCC v. League of Women Voters of California,*[57] the U.S. Supreme Court reviewed a law prohibiting noncommercial broadcast stations that received funding from a public corporation from "engaging in editorializing." The U.S. Supreme Court acknowledged the differentiated First Amendment standard of review that applied to broadcast media. Still, it struck down the restriction, holding that "[the] regulation impermissibly sweeps within its prohibition a wide range of speech by wholly private stations on topics that do not take a directly partisan stand or that have nothing whatever to do with federal, state, or local government."[58] We are similarly able to maintain fidelity to the fundamental rights of broadcasters even while upholding the rationale behind the regulatory regime governing them.

Should petitioner's position that the NTC has the power to cancel CPCs or licenses it has issued to broadcast stations although they are in the first place empowered by their respective franchise to exercise their rights to free expression and as members of a free press, be adopted, broadcast media would be encumbered by another layer of state restrictions. As things stand, they are already required to secure a franchise from Congress and a CPC from the NTC in order to operate. Upon operation, they are obliged to comply with the various regulatory issuances of the NTC, which has the power to impose fees and fines and

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[57] 468 U.S. 364 (1984).

[58] *Id.* at 395.

other mandates it may deem fit to prescribe in the exercise of its rule-making power.

The fact that broadcast media already labors under this concededly valid regulatory framework necessarily creates inhibitions on its practitioners as they operate on a daily basis. Newspapers are able to print out their daily editions without fear that a government agency such as the NTC will be able to suspend their publication or fine them based on their content. Broadcast stations do already operate with that possibility in mind, and that circumstance ineluctably restrains its content, notwithstanding the constitutional right to free expression. However, the cancellation of a CPC or license to operate of a broadcast station, if we recognize that possibility, is essentially a death sentence, the most drastic means to inhibit a broadcast media practitioner from exercising the constitutional right to free speech, expression and of the press.

This judicial philosophy aligns well with the preferred mode of scrutiny in the analysis of cases with dimensions of the right to free expression. When confronted with laws dealing with freedom of the mind or restricting the political process, of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection, the Court has deemed it appropriate to apply "strict scrutiny" when assessing the laws involved or the legal arguments pursued that would diminish the efficacy of such constitutional right. The assumed authority of the NTC to cancel CPCs or licenses, if sustained, will create a permanent atmosphere of a less free right to express on the part of broadcast media. So that argument could be sustained, it will have to withstand the strict scrutiny from this Court.

Strict scrutiny entails that the presumed law or policy must be justified by a compelling state or government interest, that such law or policy must be narrowly tailored to achieve that goal or interest, and that the law or policy must be the least restrictive means for achieving that interest. It is through that lens that we examine petitioner's premise that the NTC has the authority to cancel licenses of broadcast franchisees.

B.

In analyzing the compelling government interest that may justify the investiture of authority on the NTC advocated by petitioner, we cannot ignore the interest of the State as expressed in the respective legislative franchises of the petitioner, R.A. No. 7477 and R.A. Act No. 7582. Since legislative franchises are extended through statutes, they should receive recognition as the ultimate expression of State policy. What the legislative franchises of respondents express is that the Congress, after due debate and deliberation, declares it as State policy that respondents should have the right to operate broadcast stations. The President of the Philippines, by affixing his signature to the law, concurs in such State policy.

Allowing the NTC to countermand State policy by revoking respondent's vested legal right to operate broadcast stations unduly gives to a mere administrative agency veto power over the implementation of the law and the enforcement of especially vested legal rights. That concern would not arise if Congress had similarly empowered the NTC with the power to revoke a franchisee's right to operate broadcast stations. But as earlier stated, there is no such expression in the law, and by presuming such right the Court will be acting contrary to the stated State interest as expressed in respondents' legislative franchises.

If we examine the particular franchises of respondents, it is readily apparent that Congress has especially invested the NTC with certain powers with respect to their broadcast operations. Both R.A. No. 7477[59] and R.A. No. 7582[60] require the grantee "to secure from the [NTC] the appropriate permits and licenses for its stations," barring the private respondents from "using any frequency in the radio spectrum without having been authorized by the [NTC]." At the same time, both laws provided that "[the NTC], however, shall not unreasonably withhold or delay the grant of any such authority."

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[59] See R.A. No. 7477 (1992), Sec. 3.

[60] See R.A. Act No. 3902 (1964) in relation with R.A. No. 7582 (1992), Sec. 2.

An important proviso is stipulated in the legislative franchises, particularly under Section 5 of R.A. No. 7477 and Section 3 of R.A. No. 7582, in relation to Section 11 of R.A. No. 3902.

SECTION 5. *Right of Government*. — A special right is hereby reserved to the President of the Philippines, in times of rebellion, public peril, calamity, emergency, disaster or disturbance of peace and order, to temporarily take over and operate the stations of the grantee, temporarily suspend the operation of any stations in the interest of public safety, security and public welfare, or authorize the temporary use and operation thereof by any agency of the Government, upon due compensation to the grantee, for the use of said stations during the period when they shall be so operated.

The provision authorizes the President of the Philippines to exercise considerable infringements on the right of the franchisees to operate their enterprises and the right to free expression. Such authority finds corollary constitutional justification as well under Section 17, Article XII, which allows the State "in times of national emergency, when the public interest so requires x x x during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately-owned public utility or business affected with public interest." We do not doubt that the President or the State can exercise such authority through the NTC, which remains an agency within the executive branch of government, but such can be exercised only under limited and rather drastic circumstances. They still do not vest in the NTC the broad authority to cancel licenses and permits.

These provisions granting special rights to the President in times of emergency are incorporated in our understanding of the legislated state policy with respect to the operation by private respondents of their legislative franchises. There are restrictions to the operation of such franchises, and when these restrictions are indeed exercised there still may be cause for the courts to review whether said limitations are justified despite Section 3, Article I of the Constitution. At the same time, the state policy as embodied in these franchises is to restrict the government's ability to impair the freedom to broadcast of the stations only

upon the occurrence of national emergencies or events that compromise the national security.

It should be further noted that even the aforequoted provision does not authorize the President or the government to cancel the licenses of the respondents. The temporary nature of the takeover or closure of the station is emphasized in the provision. That fact further disengages the provision from any sense that such delegated authority can be the source of a broad ruling affirming the right of the NTC to cancel the licenses of franchisees.

With the legislated state policy strongly favoring the unimpeded operation of the franchisee's stations, it becomes even more difficult to discern what compelling State interest may be fulfilled in ceding to the NTC the general power to cancel the franchisee's CPC's or licenses absent explicit statutory authorization. This absence of a compelling state interest strongly disfavors petitioner's cause.

C.

Now, we shall tackle jointly whether a law or policy allowing the NTC to cancel CPCs or licenses is to be narrowly tailored to achieve that requisite compelling State goal or interest, and whether such a law or policy is the least restrictive means for achieving that interest. We addressed earlier the difficulty of envisioning the compelling State interest in granting the NTC such authority. But let us assume for argument's sake, that relieving the injury complained off by petitioner — the failure of private respondents to open up ownership through the initial public offering mandated by law — is a compelling enough State interest to allow the NTC to extend consequences by canceling the licenses or CPCs of the erring franchisee.

There is in fact a more appropriate, more narrowly-tailored and least restrictive remedy that is afforded by the law. Such remedy is that adverted to by the NTC and the Court of Appeals — the resort to *quo warranto* proceedings under Rule 66 of the Rules of Court.

Under Section 1 of Rule 66, "an action for the usurpation of a public office, position or franchise may be brought in the

name of the Republic of the Philippines against a person who usurps, intrudes into, or unlawfully holds or exercises public office, position or franchise."[61] Even while the action is maintained in the name of the Republic,[62] the Solicitor General or a public prosecutor is obliged to commence such action upon complaint, and upon good reason to believe that any case specified under Section 1 of Rule 66 can be established by proof.[63]

The special civil action of *quo warranto* is a prerogative writ by which the Government can call upon any person to show by what warrant he holds a public office or exercises a public franchise.[64] It is settled that "[t]he determination of the right to the exercise of a franchise, or whether the right to enjoy such privilege has been forfeited by non-user, is more properly the subject of the prerogative writ of *quo warranto*, the right to assert which, as a rule, belongs to the State 'upon complaint or otherwise,' the reason being that the abuse of a franchise is a public wrong and not a private injury."[65] A forfeiture of a franchise will have to be declared in a direct proceeding for the purpose brought by the State because a franchise is granted by law and its unlawful exercise is primarily a concern of Government.[66] *Quo warranto* is specifically available as a remedy if it is thought that a government corporation has offended against its corporate charter or misused its franchise.[67]

The Court of Appeals correctly noted that in *PLDT v. NTC,*[68] the Court had cited *quo warranto* as the appropriate recourse

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[61] See RULES OF COURT, Sec. 1.

[62] *Id.*

[63] See Section 2, Rule 66.

[64] O. HERRERRA, *III Remedial Law* (1999 ed.), at 295; citing *Newman v. U.S.*, 238 U.S. 537, 545, 56 L.Ed. 513, and Moran, *Comments on the Rules of Court,* Vol. 3, 1970 ed.

[65] *PLDT v. NTC*, G.R. No. 88404, 18 October 1990, 190 SCRA 717, 730-731.

[66] *Id.*

[67] *Kilosbayan v. Morato*, 316 Phil. 652 (1995).

[68] *PLDT v. NTC*, G.R. No. 88404, 18 October 1990, 190 SCRA 717.

with respect to an allegation by petitioner therein that a rival telecommunications competitor had failed to construct its radio system within the ten (10) years from approval of its franchise, as mandated by its legislative franchise.[69] It is beyond dispute that *quo warranto* exists as an available and appropriate remedy against the wrong imputed on private respondents.

Petitioners argue that since their prayer involves the cancellation of the provisional authority and CPCs, and not the legislative franchise, then *quo warranto* fails as a remedy. The argument is artificial. The authority of the franchisee to engage in broadcast operations is derived in the legislative mandate. To cancel the provisional authority or the CPC is, in effect, to cancel the franchise or otherwise prevent its exercise. By law, the NTC is incapacitated to frustrate such mandate by unduly withholding or canceling the provisional authority or the CPC for reasons other than the orderly administration of the frequencies in the radio spectrum.

What should occur instead is the converse. If the courts conclude that private respondents have violated the terms of their franchise and thus issue the writs of *quo warranto* against them, then the NTC is obliged to cancel any existing licenses and CPCs since these permits draw strength from the possession of a valid franchise. If the point has not already been made clear, then licenses issued by the NTC such as CPCs and provisional authorities are junior to the legislative franchise enacted by Congress. The licensing authority of the NTC is not on equal footing with the franchising authority of the State through Congress. The issuance of licenses by the NTC implements the legislative franchises established by Congress, in the same manner that the executive branch implements the laws of Congress rather than creates its own laws. And similar to the inability of the executive branch to prevent the implementation of laws by Congress, the NTC cannot, without clear and proper delegation by Congress, prevent the exercise of a legislative franchise by withholding or canceling the licenses of the franchisee.

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[69] *Rollo*, pp. 49-50.

And the role of the courts, through *quo warranto* proceedings, neatly complements the traditional separation of powers that come to bear in our analysis. The courts are entrusted with the adjudication of the legal status of persons, the final arbiter of their rights and obligations under law. The question of whether a franchisee is in breach of the franchise specially enacted for it by Congress is one inherently suited to a court of law, and not for an administrative agency, much less one to which no such function has been delegated by Congress. In the same way that availability of judicial review over laws does not preclude Congress from undertaking its own remedial measures by appropriately amending laws, the viability of *quo warranto* in the instant cases does not preclude Congress from enforcing its own prerogative by abrogating the legislative franchises of respondents should it be distressed enough by the franchisees' violation of the franchises extended to them.

Evidently, the suggested theory of petitioner to address his plaints simply overpowers the delicate balance of separation of powers, and unduly grants superlative prerogatives to the NTC to frustrate the exercise of the constitutional freedom of speech, expression, and of the press. A more narrowly-tailored relief that is responsive to the cause of petitioner not only exists, but is in fact tailor-fitted to the constitutional framework of our government and the adjudication of legal and constitutional rights. Given the current status of the law, there is utterly no reason for this Court to subscribe to the theory that the NTC has the presumed authority to cancel licenses and CPCs issued to due holders of legislative franchise to engage in broadcast operations.

V.

An entire subset of questions may arise following this decision, involving issues or situations not presently before us. We wish to make clear that the only aspect of the regulatory jurisdiction of the NTC that we are ruling upon is its presumed power to cancel provisional authorities, CPCs or CPCNs and other such licenses required of franchisees before they can engage in broadcast operations. Moreover, our conclusion that the NTC has no such power is borne not simply from the statutory language

of E.O. No. 546 or the respective stipulations in private respondents' franchises, but moreso, from the application of the strict scrutiny standard which, despite its weight towards free speech, still involves the analysis of the competing interests of the regulator and the regulated.

In resolving the present questions, it was of marked impact to the Court that the presumed power to cancel would lead to utterly fatal consequences to the constitutional right to expression, as well as the legislated right of these franchisees to broadcast. Other regulatory measures of less drastic impact will have to be assessed on their own terms in the proper cases, and our decision today should not be accepted or cited as a blanket shearing of the NTC's regulatory jurisdiction. In addition, considering our own present recognition of legislative authority to regulate broadcast media on terms more cumbersome than print media, it should not be discounted that Congress may enact amendments to the organic law of the NTC that would alter the legal milieu from which we adjudicated today.

Still, the Court sees all benefit and no detriment in striking this blow in favor of free expression and of the press. While the ability of the State to broadly regulate broadcast media is ultimately dictated by physics, regulation with a light touch evokes a democracy mature enough to withstand competing viewpoints and tastes. Perhaps unwittingly, the position advocated by petitioner curdles a most vital sector of the press — broadcast media — within the heavy hand of the State. The argument is not warranted by law, and it betrays the constitutional expectations on this Court to assert lines not drawn and connect the dots around throats that are free to speak.

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

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Velasco, Jr., and *Peralta,*[*] *JJ.,* concur.

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[*] Additional member as replacement of Justice Arturo D. Brion who is on official leave per Special Order No. 587.

SECOND DIVISION

[G.R. Nos. 163957-58. April 7, 2009]

MUNIB S. ESTINO and ERNESTO G. PESCADERA, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. Nos. 164009-11. April 7, 2009]

ERNESTO G. PESCADERA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; NEW TRIAL; RULES THEREON CONSTRUED LIBERALLY SO AS TO GIVE THE ACCUSED A CHANCE TO PROVE THEIR INNOCENCE. —** We resolve to grant petitioners a chance to prove their innocence by remanding the case to the Sandiganbayan for a new trial of Criminal Case No. 26192. Rule 121 of the Rules of Court allows the conduct of a new trial before a judgment of conviction becomes final when new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment. Although the documents offered by petitioners are strictly not newly discovered, it appears to us that petitioners were mistaken in their belief that its production during trial was unnecessary. x x x Faced with conviction, nevertheless, they deserve a chance to prove their innocence. This opportunity must be made available to the accused in every possible way in the interest of justice. Hence, petitioners should be allowed to prove the authenticity of the vouchers they submitted and other documents that may absolve them. A remand of the case for a new trial is in order. This procedure will likewise grant the prosecution equal opportunity to rebut petitioners' evidence. x x x As the court of last resort, we cannot and should not be hasty in convicting the accused when there are factual circumstances that could save them from imprisonment. In this case, the accused should be afforded

the chance to prove the authenticity of documents which have a tendency to prove their innocence. Procedural rules should be interpreted liberally or even set aside to serve the ends of justice. Hence, we order the remand of Criminal Case No. 26192 to the Sandiganbayan for a new trial.

2. CRIMINAL LAW; MALVERSATION OF PUBLIC FUNDS; DEMAND TO THE ACCOUNTABLE OFFICER IS NECESSARY FOR THE PRESUMPTION OF CONVERSION TO APPLY. — We agree with Pescadera that this is not the demand contemplated by law. The demand to account for public funds must be addressed to the accountable officer. The above-cited letter was made by the Provincial Auditor recommending to the Chairperson of the COA to "require the Provincial Treasurer of Sulu to remit all trust liabilities such as GSIS premium/loans, repayments/state insurance, Medicare and Pag-ibig." Nowhere in the pleadings did the Special Prosecutor refute the lack of a formal demand upon Pescadera to account for the GSIS premiums. Pescadera even denies being informed of the conduct of the audit, an assertion which was not refuted by the prosecution. It can be concluded then that Pescadera was not given an opportunity to explain why the GSIS premiums were not remitted. Without a formal demand, the *prima facie* presumption of conversion under Art. 217 cannot be applied. While demand is not an element of the crime of malversation, it is a requisite for the application of the presumption. Without this presumption, the accused may still be proved guilty under Art. 217 based on direct evidence of malversation.

3. ID.; ID.; ELEMENTS OF MALVERSATION; ABSENCE OF MISAPPROPRIATION. — The elements of Art. 217 are: (1) the offender is a public officer, (2) he or she has custody or control of the funds or property by reason of the duties of his office, (3) the funds or property are public funds or property for which the offender is accountable, and, most importantly, (4) the offender has appropriated, taken, misappropriated or consented, or, through abandonment or negligence, permitted another person to take them. The last and most important element of malversation was not proved in this case. There is no proof that Pescadera used the GSIS contributions for his personal benefit. The prosecution merely relied on the presumption of malversation which we have already disproved due to lack of

notice. Hence, the prosecution should have proven actual misappropriation by the accused. Pescadera, however, emphasized that the GSIS premiums were applied in the meantime to the salary differentials and loan obligations of Sulu, that is, the GSIS premiums were appropriated to another public use. Thus, there was no misappropriation of the public funds for his own benefit. And since the charge lacks one element, we set aside the conviction of Pescadera.

TINGA, *J., concurring & dissenting opinion:*

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; NEW TRIAL; ABSENCE OF SPECIAL CIRCUMSTANCES TO ALLOW IT. —** Under Section 2, Rule 121 of the 2000 Rules of Criminal Procedure, the accused may be granted a new trial on any of the following grounds: (1) that errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial; or (2) that new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment. The majority concedes that the evidence which the accused now seeks to be introduced is "strictly not newly discovered." The accused do not even bother to offer any argument that the evidence is new and material, or that they could not with reasonable diligence have discovered and produced the same at the trial. Instead, they claim that they were actually misled during the trial as to the true nature of the charges against them and thus saw no need to submit the now-challenged evidence in the course of the trial. Thusly, there is no procedural rule that sanctions the recourse now sought by the accused. The majority attempts to establish one by allowing for "a more lenient interpretation of Rule 121, Sec. 2 on new trial in view of the special circumstances sufficient to cast doubt as to the truth of the charges against petitioners." With due respect, I submit that no such "special circumstances" exist in this case.
2. **ID.; ID.; ID.; NEW TRIAL IS NOT PROPER SINCE ACCUSED WERE INFORMED OF THE CHARGES AGAINST THEM AND THEY WERE NOT MISLED INTO NOT PRESENTING EVIDENCE TO PROVE THEIR INNONCENCE. —** Accused have been duly and unequivocally informed that they were being

charged for the failure to the provincial employees of Sulu their RATA, among other benefits, sometime in or about January to May of 1999. Because the Information is written the way it is, it is impossible for accused to claim that they were misled into not presenting evidence establishing that they either paid out the RATA, or that they paid out such RATA from January to May of 1999. The Information duly alerted accused that they were being made accountable to pay out the RATA from January to May of 1999. x x x Under Section 323 of the Local Government Code, if the local sanggunian is still unable to pass the ordinance authorizing the annual appropriations after ninety (90) days from the beginning of the fiscal year, "the ordinance authorizing the appropriations of the preceding year shall be deemed reenacted and shall remain in force and effect" until the new budget is enacted. That situation apparently occurred in Sulu in 1999, where the new budget was enacted only on 17 June 1999, or six months after the start of the fiscal year 1999. The majority harps on a purported distinction between payment of RATA under the 1998 reenacted budget and payment of RATA under the 1999 budget, positing that the evidence of the prosecution was confined only to alleged nonpayment of RATA under the 1999 budget. However, the Special Audit Report which was duly presented as evidence for the prosecution unequivocally states, to repeat: It was noted that no benefits were paid to the employees of Sulu Provincial Office for the period covered from January, 1999 to May, 1999 based on the submitted paid disbursement vouchers. (Annex E) The Special Audit Report stands as evidence duly presented of the nonpayment of RATA for the period from January to May of 1999. It cannot be claimed that the evidence of the prosecution was confined only to nonpayment of RATA under the 1999 budget, since the Special Audit Report is proof that accused failed to pay out the RATA from January to May 1999, a period during which the local government of Sulu was operating under the 1998 reenacted budget. This evidence for the prosecution likewise aligns with the charge under the Information that accused failed to pay out the RATA from January to May of 1999. The majority's distinction would have mattered if accused were specifically charged in the Information with failing to pay out the RATA out of the appropriations provided in the new 1999 budget. That is not what the Information or the Special Audit Report provides, as they were charged

with failing to pay out the RATA from January to May 1999 without qualification as to the source of the appropriation. The majority's distinction would have also mattered if the only evidence presented during trial by the prosecution was limited to proving that accused failed to pay out the RATA from the appropriations of the new 1999 budget. The Special Audit Report is proof that the evidence submitted was not merely confined to proving that the unpaid RATA came from the new 1999 budget. The distinction may have also been material if in fact the 1998 budget reenacted for 1999 had not provided for the payment of RATA. In such a case, petitioners could have validly relied on the distinction, claiming they had no fiscal means to pay the RATA while in office from January to May of 1999, and that they were no longer holding office at the time the 1999 budget was finally enacted on 16 June 1999. Yet it is undisputed by all parties that the reenacted 1998 budget did provide for the payment of RATA to the Sulu government employees. x x x It would be incredible for accused to assume all along in good faith that they were being tried for failing to pay the RATA out of the reenacted 1998 budget. That was the only budget in operation from January to May of 1999, the periods specified in the Information against them. The Information, as well as the Special Audit Report, are unequivocal in accusing accused of failing to release the RATA benefits while they were in office from January to May of 1999. Since the only budget for Sulu in effect during that period was the reenacted 1998 budget, accused very well knew when the trial began that it was for their failure to disburse the RATA out of such reenacted budget, and no other, that they were being called to account. In no way could Balabaran's testimony have amended the Information or the Special Audit Report, or somehow reoriented respondents as to the true nature of the charges no matter what the Information said.

3. **ID.; ID.; ID.; THE INTRODUCTION OF PURPORTED "NEW EVIDENCE" HAS UTTERLY NO BASIS IN LAW. —** The new evidence which accused desire to introduce is uncomfortably precise, oriented as it is to rebut the justifications cited by the Sandiganbayan to convict them. Convicted felons will not pass up the chance to manufacture exculpatory evidence created in reaction to the decision that convicted them. The new evidence which accused submitted in their Supplemental

Motion for Reconsideration before the Sandiganbayan consists of: (1) a certification dated 11 May 2004 (or after the conviction of the accused) by Abdurasad J. Undain, Provincial Auditor of Sulu, attesting that the RATA for the period January to May 1999 of all officials of Sulu who were entitled to such benefit had been paid out; and (2) approximately eighty-three (83) Disbursement Vouchers purportedly proving the payment of RATA to several Sulu provincial employees from January to April 1999. Notably, accused had duly introduced into evidence similar disbursement vouchers, covering the month of May 1999, but the Sandiganbayan discounted such evidence, noting that "the same were not signed by the claimants thereof." It bears notice that this time, the January-April disbursement vouchers accused now want to enter into evidence are signed by the claimants thereof. The observations of the Office of the Solicitor General with respect to the January-April disbursement vouchers bears repeating: 2. Aside from not being part of the evidence presented, a cursory examination of said disbursement vouchers revealed that the same suffer from numerous irregularities. They do not bear the dorsal portion of the vouchers nor the signature of the Provincial Auditor. It therefore cannot be determined if the same were liquidated and passed on audit by the Commission on Audit. 3. Many of the vouchers do not contain the signatures of the supposed claimants and/or recipients. Some were signed for the claimants by persons who neglected to attach any proof of their authority to so sign in behalf of their principals. 4. The vouchers also showed that in patent violation of Presidential Decree No. 1445, the RATA were paid in cash instead of through checks. 5. It bears mentioning at this point that if indeed, as petitioners claim, the RATA were paid during their incumbency, it would have been logical to present as evidence in this manner and in their favor, if not the aforementioned disbursement vouchers and sworn statements, at least the pertinent payroll which every recipient government official is required to sign by way of acknowledgment of receipt of the RATA. And yet, inconceivably, petitioners neglected to do so. It may be that since this Court is not a trier of fact, we will not be in a position to affirm these factual allegations of the OSG, even if these can be facially confirmed upon examining the aforementioned vouchers. Nonetheless, the question before us is simply whether accused may be entitled to a new trial, even though the Rules of Criminal

Procedure squarely reject their legal arguments. Our allowing a new trial for the accused rests solely on our beneficence, and may ultimately depend on our belief whether accused' arguments unsettle our belief that they are guilty beyond reasonable doubt. Unfortunately for them, I am convinced that despite the purported "new evidence," the introduction of which has utterly no basis in law, accused are guilty beyond reasonable doubt and the disposition of the Sandiganbayan in Criminal Case No. 26192 is correct.

APPEARANCES OF COUNSEL

Pete Quirino-Quadra for petitioners.
Juan Climaco P. Elago II for M. Estino.
The Solicitor General for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

For review before the Court under Rule 45 are the April 16, 2004 Decision[1] and June 14, 2004 Resolution[2] of the Sandiganbayan in the consolidated Criminal Case Nos. 26192 and 26193 entitled *People of the Philippines v. Munib S. Estino and Ernesto G. Pescadera*. In G.R. Nos. 163957-58, petitioners Munib S. Estino and Ernesto G. Pescadera appeal their conviction of violation of Section 3(e), Republic Act No. (RA) 3019 or the *Anti-Graft and Corrupt Practices Act* for failure to pay the Representation and Transportation Allowance (RATA) of the provincial government employees of Sulu. In G.R. Nos. 164009-11, petitioner Pescadera alone appeals his conviction of malversation of public funds under Article 217 of the Revised Penal Code for failure to remit the Government Service Insurance System (GSIS) contributions of the provincial government

[1] *Rollo* (G.R. Nos. 163957-58), pp. 39-67. Penned by Associate Justice Norberto Y. Geraldez and concurred in by Associate Justices Gregory S. Ong and Efren N. dela Cruz.

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

employees amounting to PhP 4,820,365.30. In these consolidated appeals, petitioners pray for their acquittal.

The Facts

Estino was elected Vice-Governor of Sulu in the May 1998 elections along with Gov. Abdusakur Tan. On June 23, 1998, this Court issued a *status quo* order in G.R. No. 133676, suspending the effects of the proclamation of Gov. Tan and ordering Vice-Gov. Estino to assume the position of Governor until further orders. Thus, Estino acted as Governor of Sulu from July 27, 1998 up to May 23, 1999 when this Court lifted the suspension order against Gov. Tan. Ernesto G. Pescadera, on the other hand, was Provincial Treasurer of Sulu during Estino's stint as Acting Governor.[3]

Pursuant to Commission on Audit (COA)-ARMM Office Order No. 99-165 dated August 26, 1999, a special audit team was created upon the request of the Provincial Government of Sulu. An audit of the disbursement vouchers and payrolls for the period starting July 27, 1998 up to May 23, 1999 was then conducted by COA State Auditor II Mona U. Balabaran and her team. The COA Special Audit Report stated that there were anomalies in the payment of salary differentials, allowances, and benefits, among others. The Ombudsman then filed three informations against petitioners, as follows:

CRIMINAL CASE NO. 26192

That sometime in or about January to May 1999, or shortly prior or subsequent thereto, in Jolo, Sulu and within the jurisdiction of this Honorable Court, accused Munib S. Estino and Ernesto G. Pescadera, both high ranking public officers, being the Vice-Governor and Provincial Treasurer of Sulu, respectively, taking advantage of their official positions and acting in relation to their official functions, conspiring and confederating with each other, did there and then willfully, unlawfully and feloniously, cause undue injury to the employees of the Provincial Government of Sulu through evident bad faith by failing to pay them their salary differentials, Additional Compensation Allowance (ACA), Personal Emergency and

[3] *Rollo* (G.R. Nos. 164009-11), p. 197.

Representation Allowance (PERA), Representation and Travel Allowance (RATA), Mid-year Bonus, Cash Gift and Clothing Allowance in the total amount of ₱8,435,625.34.

CONTRARY TO LAW.

CRIMINAL CASE NO. 26193

That sometime in or about July 1998 to May 1999, or shortly prior or subsequent thereto, in Jolo, Sulu and within the jurisdiction of this Honorable Court, accused Munib S. Estino and Ernesto G. Pescadera, both high ranking public officers, being the Vice Governor and Provincial Treasurer of Sulu, respectively, taking advantage of their official positions and acting in relation to their official functions, conspiring and confederating with each other, did there and then, willfully, unlawfully and feloniously, take, convert and misappropriate the GSIS monthly contributions and loan amortizations collected from the provincial employees in the amount of ₱4,820,365.30 for their own personal benefit or advantage to the damage and prejudice of the said employees and the government as well.

CONTRARY TO LAW.

CRIMINAL CASE NO. 26194

That sometime in or about May 1999, or shortly prior or subsequent thereto, in Jolo, Sulu and within the jurisdiction of this Honorable Court, accused Munib S. Estino and Ernesto G. Pescadera, both high ranking public officers, being the Vice Governor and Provincial Treasurer of Sulu, respectively, taking advantage of their official positions and acting in relation to their official functions, conspiring and confederating with each other, did there and then, willfully, unlawfully and feloniously, cause undue injury to the government through evident bad faith by withdrawing from Philippine National Bank-Jolo Branch the amount of ₱21.5 million on 07 May 1999 out of the Internal Revenue Allotment of ₱28,268,578.00 which was deposited to the account of Sulu Provincial Government on the same day and using the said amount to pay "various expenses" without, however, specifying what the expenses are in violation of existing government accounting rules.

CONTRARY TO LAW. [4]

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[4] *Rollo* (G.R. Nos. 163957-58), pp. 40-41.

Petitioners pleaded not guilty to the offenses charged in the informations.

Criminal Case No. 26192

During trial in the Sandiganbayan, Balabaran testified that based on the disbursement vouchers and payrolls she and her team examined for the period January to May 1999, the Provincial Government of Sulu failed to pay the provincial government employees their salary differentials, Additional Compensation Allowance (ACA), Personal Emergency and Representation Allowance (PERA), and other benefits; that the Department of Budget and Management confirmed to the special audit team that funds were released to the Provincial Government of Sulu for January to May 1999 so there was no reason why the money was not released to the employees; and that the funds released came from the internal revenue allotment (IRA) of the provincial government for the 1999 budget. The prosecution submitted that this failure violated Sec. 3(e) of RA 3019 which provides:

Section 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

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

In his defense, Estino testified that when he assumed office as Acting Governor of Sulu, he called for a general meeting of all the heads of departments, as well as officials and employees to inform them that the remaining money of the provincial government was PhP 47 only. He further informed them of the pending amortization for the loan from the Philippine National Bank (PNB) payable from April to June 1998, and suggested

that the salary differentials of all the government employees be paid first while the GSIS remittance be deferred since the pending IRA for the provincial government was not yet released. As to the ACA, PERA, and clothing allowance, he said that these were not paid because the budget for 1999 was not yet approved and there was no provision for those items in the 1998 budget. The budget for 1999 was approved only on June 17, 1999 when Estino was no longer the Acting Governor. The RATA, on the other hand, was provided for in the 1998 budget; hence, the 1998 budget was used in paying the RATA.[5]

Pescadera testified that the employees' benefits were not paid because the 1999 budget was not yet approved then. Also, he said that there was no appropriation for ACA and PERA in the 1998 budget; that the RATA for 1999 was paid; that the cash gift, mid-year bonus, and clothing allowance for the period January to May 1999 were not paid as these were supposed to be paid in December 1999; and that he was the Provincial Treasurer of Sulu up to May 1999 only.[6]

The Sandiganbayan found petitioners not guilty with regard to the charge of nonpayment of PERA, ACA, cash gift, mid-year bonus, and clothing allowance. The court found that the Provincial Government of Sulu did operate under the 1998 reenacted budget which had no appropriation for PERA and ACA. Petitioners were not held liable for nonpayment of the Year-End Bonus and Cash Gift because these may be given from May 1 to May 31 of each year, while Estino held office as Acting Governor until May 23, 1999 and Pescadera was the Provincial Treasurer until May 1999. As to the clothing allowance, no evidence was presented as to when it should be given to the employees. Payment for the salary differentials for January to May 1999 could not also be done since the 1999 budget was not yet approved.[7]

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[5] *Id.* at 44.

[6] *Id.* at 45.

[7] *Id.* at 47.

As regards the RATA, the Sandiganbayan held that petitioners' defense of payment was an affirmative allegation that required proof. The court stated:

> x x x [N]o convincing evidence was presented by the defense to support their claim that they paid the same. Although accused Pescadera testified that Exhibits "3-O" to "3-T", "3-W", "3-X", "3-HH" and "3-II" were vouchers showing payment of RATA for the month of May 1999 for various officers of the Provincial Government of Sulu, the same were not signed by the claimants thereof.
>
> There is budget for the payment of RATA. The IRA pertaining to the province was regularly released. The non-payment thereof constitutes a conscious and deliberate intent to perpetrate an injustice to the officials of the Provincial Government of Sulu. Evident bad faith therefore exists.
>
> x x x x x x x x x
>
> In the instant case, failure to pay the RATA constitutes an inaction which caused actual damage to the officials entitled thereto, the amount of which was equivalent to the actual amount of the RATA that was due them for the period January to May 1999.
>
> The information alleged that the two accused committed this offense by conspiring and confederating with each other. In conspiracy, it is essential that there must be unity of purpose and unity in the execution of the unlawful objective. These were present in the instant case. Both accused knew that they failed to pay the RATA to the officers entitled thereto.[8]

The aforesaid judgment is the subject of the appeal docketed as G.R. Nos. 163957-58.

Criminal Case No. 26193

Auditor Balabaran testified that the GSIS premiums for the government and personal share of officials and employees of the Provincial Government of Sulu were deducted from their salaries, but upon confirmation with the Branch Manager of the GSIS in Jolo, the audit team learned that the GSIS premiums were not remitted. According to Estino, however, the audit reports

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

showed that he and Pescadera did not malverse the funds of the Provincial Government. In addition, Pescadera testified that when Estino assumed office as Acting Governor, the Provincial Government of Sulu was already indebted to the GSIS for its failure to remit the said GSIS monthly remittances which amounted to PhP 4 million. Pescadera stated that Estino called a general assembly of all the officers and employees of the provincial government to discuss the cash operation of Sulu. In that meeting, the officers and employees decided to prioritize the payment of the salary differentials first, followed by the loan amortization to the PNB, and lastly, the GSIS remittances. Pescadera added that the provincial government intended to pay or remit the accrued GSIS monthly remittances as soon as the cash position of the province improves and the 10% of the IRA is released.[9]

Before the Sandiganbayan, the prosecution charged petitioners with malversation of public funds under Art. 217 of the Revised Penal Code. The Sandiganbayan consequently exonerated Estino but convicted Pescadera. The court held:

> In the case at bar, there was evidence that GSIS contributions for the period July 1998 to May 1999 consisting of employee share and loan amortizations were deducted from the salaries of the employees of the province. The 1998 reenacted budget provided for GSIS Premiums (Government Share) and the IRA for the province was regularly released by the DBM. These GSIS contributions were not remitted. In fact contrary to accused Estino's claim, Provincial Auditor Nora A. Imlan stated in her 1998 and 1999 Annual Audit Report that the Province of Sulu had unremitted GSIS contributions for CY 1998 and 1999.
>
> Accused Pescadera, being then the Provincial Treasurer, was the public officer charged with the disbursement of GSIS funds for remittance to the GSIS. He failed to disburse and to remit it to the GSIS at the time it became due. He failed to account for it upon demand by Provincial Auditor Nora A. Imlan and by the Special Audit Team. It is now incumbent upon the accused to rebut the presumption of conversion.

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

x x x x x x x x x

However, no evidence was presented to support the claim that the employees agreed to prioritize the payment of PNB loan amortization. Even if there were such an agreement, it would still be contrary to Section 6(b) of the Government Service Insurance System Act of 1997 (R.A. 8291) which provides:

> Each employer shall remit directly to the GSIS the employees' and employers' contributions within the first ten (10) days of the calendar month to which the contributions apply. <u>The remittance by the employer of the contributions to the GSIS shall take priority over and above the payment of any and all obligations, except salaries and wages of its employees</u>.

Insufficiency of funds of the province is not a valid defense. The fact remained that the GSIS contributions consisting of employee share and loan amortizations were deducted from the salaries of the employees.

While it was true that the budget for 1999 was approved only on June 2, 1999, it was also true that on January to May 1999, the province of Sulu operated under the 1998 reenacted budget. Further, the reenacted budget provided for GSIS Premiums (Government Share). The DBM letter dated October 28, 1999 (Exhibit "A-39") and Summary of Releases of IRA for July 1998 to May 1999 (Exhibit "A-40") clearly showed that the IRA pertaining to the province was regularly released.

Moreover, prosecution witness Mona Balabaran correctly testified that the Trial Balance, Journal of Checks Issued and Report of Checks Issued showed only the sum total of all the money transactions of the Province of Sulu. These reports did not contain the cash status *vis-à-vis* the mandatory obligations and the details on where the fund of the province was spent. Clearly, accused Pescadera was not able to rebut the presumption of conversion.[10]

With respect to Estino, however, the Sandiganbayan did not find any conspiracy with Pescadera. The court held that it was Pescadera's duty as the Provincial Treasurer to advise Estino, then Acting Governor, and other local government officials

[10] *Id.* at 54-56.

regarding the disposition of local government funds and other matters related to public finance. It was found that Pescadera failed to inform Estino that the GSIS contributions must be remitted directly to the GSIS within the first 10 days of the calendar month following the month to which the contributions apply.[11] Also, the Sandiganbayan explained that even if Estino was Pescadera's co-signatory in the checks, mere signature or approval is not enough to sustain a finding of conspiracy, based on *Sabiniano v. Court of Appeals*.[12]

Pescadera's appeal of his conviction is the subject of G.R. Nos. 164009-11.

Criminal Case No. 26194

Anent the last charge, Balabaran testified that internal control was violated when petitioners signed the vouchers without the signature of Provincial Accountant Nestor Lozano. As a result, the transactions were not recorded in the book of accounts. She further stated that the amount of cash in the trial balance was overstated. The audit team did not examine the monthly trial balance, the journal and analysis of obligations, the journal of checks issued, the report of checks issued, and the journal of cash disbursement because all these documents merely contained the sum total, whereas the disbursement vouchers and payrolls stated the particular transactions that transpired which could help them discover any anomaly.[13]

Petitioners were charged with violation of RA 3019, Sec. 3(e). In his defense, Estino testified that the disbursement vouchers for the PhP 21.5 million cash advances he approved were supported with documents; that the 5% of the 10% retention of the IRA of the national government was paid only in May 2002; and that he was authorized by the Provincial Board to withdraw PhP 21.5 million on May 7, 1999. Pescadera, on the other hand, testified that the cash advances amounting to PhP 21.5

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

[12] G.R. No. 76490, October 6, 1995, 249 SCRA 24.

[13] *Rollo* (G.R. Nos. 163957-58), pp. 57-58.

million from the PNB was accompanied by vouchers and supporting documents; that the said amount was used in paying specific obligations of the Provincial Government of Sulu; that the signature of the provincial accountant did not appear on the cash advances and vouchers because during the withdrawal of the amounts, the provincial accountant was out of town; and that the provincial auditor of Sulu allowed said cash advances.[14]

RA 3019, Sec. 3(e) has three elements: (1) the accused is a public officer discharging administrative, judicial, or official functions; (2) the accused must have acted with manifest partiality, evident bad faith, or inexcusable negligence; and (3) the accused's action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his or her functions.

The Sandiganbayan found only the first two elements in this case. *First*, petitioners were public officers at the time in question. *Second*, bad faith was evident in petitioners' act of withdrawing amounts without the signature of the provincial accountant. This violated Sec. 344 of the Local Government Code and Secs. 157 and 168 of the *Government Accounting and Auditing Manual*. Nevertheless, the government did not suffer actual damages from the withdrawal of PhP 21.5 million. While said cash advances did not specify the particulars of payment, the documentary exhibits attached to the cash advances, *i.e.*, disbursement vouchers, Request for Obligation of Allotment, Summary of Payrolls, Time Book, and Payrolls, sufficiently itemized the obligations to be paid by the cash advances. Since the prosecution failed to prove any damage or injury to the Provincial Government of Sulu, petitioners were acquitted of the crime charged.[15]

The Ruling of the Sandiganbayan

The dispositive portion of the Sandiganbayan's April 16, 2004 judgment reads:

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[14] *Id.* at 58.

[15] *Id.* at 59-65.

WHEREFORE:

I. In **Criminal Case No. 26192**, the Court finds accused **MUNIB S. ESTINO** and **ERNESTO G. PESCADERA**, both GUILTY, beyond reasonable doubt, for violation of Sec. 3(e) of R.A. 3019, and pursuant to Section 9 thereof, and are hereby sentenced to suffer the penalty of:

(A) Imprisonment of, after applying the Indeterminate Sentence Law, six (6) years and one (1) month as minimum, up to fifteen (15) years, as maximum; and,

(B) Perpetual Disqualification from Public Office.

II. In **Criminal Case No. 26193**, this Court finds accused **ERNESTO G. PESCADERA**, GUILTY, beyond reasonable doubt, of the crime of malversation of public funds, and is hereby sentenced to suffer the penalty of:

(A) Imprisonment of, after applying the Indeterminate Sentence Law, twelve (12) years, five (5) months and eleven (11) days of *reclusion temporal*, as minimum, up to twenty years (20) years of *reclusion perpetua*, as maximum;

(B) Perpetual Special Disqualification;

(C) Fine of FOUR MILLION EIGHT HUNDRED TWENTY THOUSAND THREE HUNDRED SIXTY-FIVE PESOS AND THIRTY CENTAVOS (Php4,820,365.30), with subsidiary imprisonment in case of insolvency;

(D) All the accessory penalties provided for under the law; and,

(E) To pay the cost of the suit.

Accused PESCADERA is likewise ordered to restitute the amount of FOUR MILLION EIGHT HUNDRED TWENTY THOUSAND THREE HUNDRED SIXTY-FIVE PESOS AND THIRTY CENTAVOS (Php4,820,365.30) to the Provincial Government of Sulu.

With respect to **MUNIB S. ESTINO**, for failure of the Prosecution to prove his [guilt] beyond reasonable doubt, he is hereby ordered ACQUITTED of the crime of malversation of public funds.

III. In Criminal Case No. 26194, for failure of the Prosecution to prove the guilt of accused **MUNIB S. ESTINO** and **ERNESTO G.**

PESCADERA beyond reasonable doubt, both accused are hereby ordered ACQUITTED.[16]

Petitioners filed a Motion for Reconsideration and a Supplemental Motion for Reconsideration and New Trial which were denied in the June 14, 2004 Sandiganbayan Resolution. Thus, they filed these petitions.

The Issues

WHETHER OR NOT PETITIONERS FAILED TO PAY THE RATA AND ARE THUS GUILTY OF VIOLATING SEC. 3(e) OF RA 3019

WHETHER OR NOT PETITIONER PESCADERA IS GUILTY OF MALVERSATION OF PUBLIC FUNDS FOR FAILURE TO REMIT THE GSIS CONTRIBUTIONS

The Court's Ruling

G.R. Nos. 163957-58

Petitioners Estino and Pescadera point out that the basis of the information for Criminal Case No. 26192 was the COA Report, which reads:

2. **On the allegation that no payments were intended for the salary differentials, ACA, PERA and other benefits of employees of the Provincial Government of Sulu for the period covered from January, 1999 to May, 1999**

It was noted that no benefits were paid to the employees of Sulu Provincial Office for the period covered from January, 1999 to May, 1999 based on the submitted paid disbursement vouchers (Annex E).

For the month of May 1999, the Provincial Government of Sulu received a total allotment of **₱28,268,587.00**, which includes January, 1999 to April, 1999 releases for IRA differentials (See Annex B). The amount intended for the said benefits were disbursed other than specific purpose for which these are appropriated (Annex C).[17]

Petitioners note that the COA Report does not state that they did not pay the RATA under the reenacted budget of 1998.

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[16] *Id.* at 65-66.

[17] *Id.* at 226.

The prosecution witness, Auditor Balabaran, testified that the COA Report pertains to the nonpayment of ACA, PERA, and other benefits provided for in the 1999 budget. The 1999 budget, however, was not approved during the incumbency of Estino as Acting Governor. In the cross-examination of Balabaran, she testified as follows:

CROSS-EXAMINATION:
(Atty. Quadra)

Q. I show to you, Madam Witness, your Audit Report dated January 12, 2000, and I call your attention on the finding in page 5 thereof which reads: "On the allegation that no payments were made intended for the salary [differentials], ACA, PERA, and other benefits of the employees of the Provincial Government of Sulu for the period covered from January 1999 to May 1999." Now, it is stated here that no payments of the said benefits of the employees were made from January 1999 to May 1999. My question is, when you said benefits of the employees you are referring to the benefits of the employees provided for in the 1999 Budget? Please go over this Report.

(Witness looking at the document)

A. You want me to explain?
AJ Palattao: What benefit are you referring?
A. We are referring to the benefits that was to be paid, your Honor, the ACA, the PERA, and the other benefits.

Q Yes, and those benefits that you are referring to are the benefits provided for in the Annual Budget for the Year 1999?
AJ Palattao: Are you referring to a benefit granted to the employees under the 1999 Annual Budget? Yes or no?
A. The benefits that are intended to the employees for the year 1999.

Q. 1999. You are not referring to the benefits of the employees provided for in the 1998 budget?
A. Yes, it is very clear, January 1999 to May 1999.

Q. It is only in 1999?
A. Yes, Sir. [TSN, p. 5 December 6, 2000][18]

Petitioners insist that there is enough evidence to show that the RATA provided for in the 1998 reenacted budget was paid

[18] *Id.* at 22-23.

for the period January to May 1999. In their Supplemental Motion for Reconsideration and Motion for New Trial, petitioners presented to the Sandiganbayan a Certification dated May 11, 2002 issued by the Provincial Auditor Abdurasad J. Undain, stating that the RATA for the period January to May 1999 was paid to the officials entitled to it and that the GSIS premiums pertaining to prior years were also settled by the Provincial Government of Sulu. In support of this certification, petitioners submitted sworn statements of the provincial officials entitled to RATA, stating that they were paid such allowance from January to May 1999 and that they did not have any complaint to its alleged nonpayment.[19] They also submitted 99 certified true copies of the Disbursement Vouchers showing the payment of the RATA from January to May 1999 provided for in the 1998 reenacted budget. Petitioners presented these vouchers only in their Supplemental Motion for Reconsideration and/or Motion for New Trial allegedly because they thought that the COA Report pertained only to the benefits provided in and to be paid with the 1999 budget. They may have been misled when Auditor Balabaran did not testify on the alleged nonpayment of the RATA for January to May 1999 with the reenacted budget of 1998.

Anent the Sandiganbayan's finding that the vouchers showing payment of RATA for May 1999 were not signed by the claimants, petitioners explain that the actual release of RATA is the responsibility of the cashier of the province. Petitioners claim that they could not be faulted for the failure of the cashier to require the claimants to sign the receipt of payment. Furthermore, the claimants in Exhibits "3-O" to "3-T", "3-W", "3-X", "3-HH", and "3-II" all executed sworn statements that they received their RATA.

Petitioners further point out that the Sandiganbayan justices who heard and tried their case were not the ones who rendered the questioned decision. The trial was conducted by Justices Narciso S. Nario, Rodolfo G. Palattao, and Nicodemo T. Ferrer,

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[19] *Id.* at 24-29.

while the decision was rendered by Justices Gregory T. Ong, Norberto Y. Geraldez, and Efren N. dela Cruz.

On the other hand, the Office of the Special Prosecutor asserts that the petition should be dismissed because it raises questions of fact not proper in an appeal by *certiorari*. It also asserts the following: Even if the petition is given due course, there are factual and legal bases for the conviction. Although the term "RATA" was not mentioned in the COA Report, said allowance was contemplated by the auditors in their use of the term "benefits." Also, the sworn statements of the officials on their receipt of the RATA and the certification of the Provincial Auditor to the effect that the RATA has been paid are belated and unsubstantiated. These were submitted only in petitioners' Supplemental Motion for Reconsideration, thus implying that payments of the RATA were made after the conviction of petitioners. Likewise, the unsigned disbursement vouchers deserve no merit because of the irregularities in these documents. Some do not bear the dorsal portion of the vouchers or the signature of the Provincial Auditor, while others were signed by persons other than the claimants without any proof of their authority from the principals. The vouchers also show that the RATA was paid in cash instead of through checks in violation of Presidential Decree No. 1445.

The Case Should be Remanded to the Sandiganbayan

Petitioners' defense is anchored on their payment of RATA, and for this purpose, they submitted documents which allegedly show that they paid the RATA under the 1998 reenacted budget. They also claim that the COA Report did not sufficiently prove that they did not pay the RATA because the alleged disbursement vouchers, which were supposed to be annexed to the COA Report as proof of nonpayment of RATA, were not submitted with said report.

We resolve to grant petitioners a chance to prove their innocence by remanding the case to the Sandiganbayan for a new trial of Criminal Case No. 26192. Rule 121 of the Rules of Court allows the conduct of a new trial before a judgment of conviction becomes final when new and material evidence

has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment.[20] Although the documents offered by petitioners are strictly not newly discovered, it appears to us that petitioners were mistaken in their belief that its production during trial was unnecessary. In their Supplemental Motion and/or Motion for New Trial, they stressed that they no longer presented the evidence of payment of RATA because Balabaran testified that the subject of the charge was the nonpayment of benefits under the 1999 budget, without mention of the RATA nor the 1998 reenacted budget. It seems that they were misled during trial. They were precluded from presenting pieces of evidence that **may** prove actual payment of the RATA under the 1998 reenacted budget because the prosecution's evidence was confined to alleged nonpayment of RATA under the 1999 budget.

In this instance, we are inclined to give a more lenient interpretation of Rule 121, Sec. 2 on new trial in view of the special circumstances sufficient to cast doubt as to the truth of the charges against petitioners. The situation of the petitioners is peculiar, since they were precluded from presenting exculpatory evidence during trial upon the honest belief that they were being tried for nonpayment of RATA under the 1999 budget. This belief was based on no less than the testimony of the prosecution's lone witness, COA Auditor Mona Balabaran. Even Associate Justice Palattao of the Sandiganbayan had to clarify from Balabaran which budget she was referring to. Balaraban, however, made it very clear that the unpaid benefits were those provided under the 1999 budget, to wit:

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[20] RULES OF COURT, Rule 121, Sec. 2 provides:

SEC. 2. *Grounds for a new trial.*—The court shall grant a new trial on any of the following grounds:

(a) That errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial;

(b) That new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment.

AJ Palattao: Are you referring to a benefit granted to the employees under the 1999 Annual Budget? Yes or no?

A. The benefits that are intended to the employees for the year 1999.

Q. 1999. **You are not referring to the benefits of the employees provided for in the 1998 budget**?

A. Yes, it is very clear, January 1999 to May 1999.

Q. It is only in 1999?

A. Yes, Sir. [TSN, p. 5 December 6, 2000][21] (Emphasis supplied.)

From the foregoing discourse, it is understandable how petitioners could have thought that they need not present any more evidence to prove payment of the RATA under the 1998 budget. Apparently, the COA Auditor who prepared the report and testified on it established that the trial was about nonpayment of benefits under the 1999 budget. That budget was not approved during petitioners' stint in Sulu. Faced with conviction, nevertheless, they deserve a chance to prove their innocence. This opportunity must be made available to the accused in every possible way in the interest of justice. Hence, petitioners should be allowed to prove the authenticity of the vouchers they submitted and other documents that may absolve them. A remand of the case for a new trial is in order. This procedure will likewise grant the prosecution equal opportunity to rebut petitioners' evidence.

In granting petitioners' motion for new trial, we reiterate our pronouncement in *Cano v. People*:

It is x x x equally settled that rules of procedure are not to be applied in a very rigid, technical sense and are used only to help secure substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated. They should be liberally construed so that litigants can have ample opportunity to prove their claims and thus prevent a denial of justice due to technicalities.[22]

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[21] *Supra* note 18.

[22] G.R. No. 155258, October 7, 2003, 413 SCRA 92, 98.

More importantly, we have settled that procedural rules can be suspended if matters of life, liberty, honor, and property are at stake, thus:

> In *Ginete vs. Court of Appeals*, we specifically laid down the range of reasons which may provide justifications for a court to resist a strict adherence to procedure and suspend the enforcement of procedural rules. Among such reasons x x x are: (1) matters of life, liberty, honor or property; (2) counsel's negligence without any 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; and (6) a lack of any showing that the review sought is merely frivolous and dilatory.[23]

We have also held that:

> Unquestionably, the Court has the power to suspend procedural rules in the exercise of its inherent power, as expressly recognized in the Constitution, to promulgate rules concerning 'pleading, practice and procedure in all courts.' In proper cases, procedural rules may be relaxed or suspended in the interest of substantial justice, which otherwise may be miscarried because of a rigid and formalistic adherence to such rules. x x x
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> x x x x x x x x x
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> We have made similar rulings in other cases, thus:
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> > Be it remembered that rules of procedure are but mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided. x x x Time and again, this Court has suspended its own rules and excepted a particular case from their operation whenever the higher interests of justice so require.[24]

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[23] *Philippine Economic Zone Authority v. General Milling Corporation*, G.R. No. 131276, August 2, 2005 (*En Banc* Resolution).

[24] *Agote v. Lorenzo*, G.R. No. 142675, July 22, 2005, 464 SCRA 60, 69-70; citing *Solicitor General, et al. v. The Metropolitan Manila Authority*, G.R. No. 102782, December 11, 1991, 204 SCRA 837, 842-843.

While the information states that the accused failed to pay the RATA sometime in or about January to May 1999, there was no mention which budget the RATA was supposed to be sourced. Petitioners relied on the COA Auditor's testimony that they were being tried for nonpayment of benefits under the 1999 budget. The Special Audit Report does not also distinguish the budget source but upon the testimony of Balabaran, it was established that the source was the 1999 budget. Balabaran verified this when cross-examined by Sandiganbayan Justice Palattao. This distinction is material because conviction or acquittal depends on which budget source the information referred to. Thus, even if the 1998 budget was automatically reenacted in 1999, if the trial was clearly about the nonpayment of benefits under the 1999 budget as established by the prosecution, then petitioners could not be faulted for proceeding accordingly. The prosecution could have been clearer about the budget source through re-direct examination of Balabaran but it did not choose to do so. As always in criminal cases, the burden is on the prosecution to establish guilt beyond reasonable doubt based on sufficient information. It is not the responsibility of the accused to produce exculpatory evidence in a trial that does not demand it, as in this peculiar case where the prosecution failed to be clear about how they have allegedly been negligent in paying employee benefits.

The evidence sought to be introduced by the petitioners were presented in their Supplemental Motion for Reconsideration. Obviously, it was after their conviction that petitioners realized their mistake and belatedly presented their evidence which consist of (1) a certification dated May 11, 2004 by Abdurasad J. Undain, Provincial Auditor of Sulu, attesting to the payment of the RATA for the period January to May 1999 to officials of Sulu who were entitled to such benefit; (2) disbursement vouchers showing payment of RATA to provincial employees of Sulu for the period January to May 1999; and (3) sworn statements from the claimants of the RATA attesting to their receipt of RATA from January to May 1999. The Sandiganbayan noted how some of the disbursement vouchers were not signed by the claimants. Petitioners, however, were not given the chance to explain this

alleged irregularity. The Sandiganbayan also completely disregarded the sworn statements from the claimants of the RATA which state that they did not have any complaint to its alleged nonpayment. It should be remembered that petitioners are being charged with violation of Sec. 3(e) of RA 3019, an element of which is undue injury to any party. If the claimants of the RATA, the supposed injured parties, state that they received the RATA and have no complaints to its nonpayment, then these sworn statements could absolve petitioners. These documents should be weighed properly, its authenticity duly established by the accused, and the prosecution should be given the chance to rebut these pieces of evidence. Since we are not a trier of facts, we should remand this case to the Sandiganbayan.

As the court of last resort, we cannot and should not be hasty in convicting the accused when there are factual circumstances that could save them from imprisonment. In this case, the accused should be afforded the chance to prove the authenticity of documents which have a tendency to prove their innocence. Procedural rules should be interpreted liberally or even set aside to serve the ends of justice. Hence, we order the remand of Criminal Case No. 26192 to the Sandiganbayan for a new trial.

G.R. Nos. 164009-11

Petitioner Pescadera's defense consists of two arguments: (1) that the elements of the crime of malversation under Art. 217 of the Revised Penal Code were not present; and (2) that his failure to remit the GSIS contributions was due to the prioritization of other obligations of the Provincial Government of Sulu.

Pescadera claims that the elements of the crime of malversation were not met because there was no demand on him by the Provincial Auditor or by the Special Audit Team to account for the GSIS contributions. He submits that the *prima facie* presumption of malversation is not applicable when no written demand for accounting was given to him. Assuming that there was a demand, there is allegedly no direct evidence showing misappropriation of PhP 4,820,365.30. He asserts that he did not withdraw such amount from the provincial government funds.

He submitted documents that show how the funds of the Provincial Government of Sulu were spent from July 1998 to May 23, 1999. These documents consisted of the monthly trial balance from August 31, 1998 to May 31, 1999; certified true copies of the journal of checks issued from July 1998 to May 7 to 30, 1999; certified true copies of the Treasurer's Journal Cash Disbursements from August 1998 to February 1999; and annual Audit Report for 1998 and 1999. Pescadera claims that the COA Special Audit Team merely examined the disbursement vouchers and the payrolls and found that the only irregularity was the non-remittance of the GSIS contributions and loan amortization.

Art. 217 of the Revised Penal Code provides:

> Art. 217. *Malversation of Public Funds or Property — Presumption of Malversation*. Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or consent, or through abandonment or negligence, shall permit any other person to take such funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation of such funds or property, shall suffer:
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> The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses.

There is no dispute that Pescadera is a public officer who has control or custody of public funds and, thus, accountable for them. As to whether Pescadera misappropriated the GSIS premiums, he argues that the presumption of malversation does not apply because there was no demand on him.

The Sandiganbayan held that Pescadera failed to account for the GSIS premiums when demand was made by Provincial Auditor Nora Imlan and the Special Audit Team, citing Exhibit "12-c". Pescadera points out, however, that Exhibit "12-c" referred to the "State Auditor's Opinion on the Financial Statements" herein reproduced:

The auditor rendered a qualified opinion on the fairness of the presentation of the financial statements due to management's failure to conduct physical inventory on its fixed assets and inventories as discussed in finding no. 1 and inability to conduct inspection on the infra projects under the 20% Development Fund.

SUMMARY OF SIGNIFICANT FINDINGS AND RECOMMENDATIONS

During the year under audit, the following are the findings and recommendations, to wit:

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2. Non-remittances [in] 1998 of various trust liabilities in violation of laws, rules, and regulations.

Require the Provincial Treasurer to remit all trust liabilities such as GSIS premiums/loans repayments/state insurance, MEDICARE AND PAGIBIG.[25]

We agree with Pescadera that this is not the demand contemplated by law. The demand to account for public funds must be addressed to the accountable officer. The above-cited letter was made by the Provincial Auditor recommending to the Chairperson of the COA to "require the Provincial Treasurer of Sulu to remit all trust liabilities such as GSIS premium/loans, repayments/state insurance, Medicare and Pag-ibig." Nowhere in the pleadings did the Special Prosecutor refute the lack of a formal demand upon Pescadera to account for the GSIS premiums. Pescadera even denies being informed of the conduct of the audit, an assertion which was not refuted by the prosecution. It can be concluded then that Pescadera was not given an opportunity to explain why the GSIS premiums were not remitted. Without a formal demand, the *prima facie* presumption of conversion under Art. 217 cannot be applied.

While demand is not an element of the crime of malversation,[26] it is a requisite for the application of the presumption. Without

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[25] *Rollo* (G.R. Nos. 164009-11), pp. 20-21.

[26] *Madarang v. Sandiganbayan*, G.R. No. 112314, March 28, 2001, 355 SCRA 525, 532-533.

this presumption, the accused may still be proved guilty under Art. 217 based on direct evidence of malversation. In this case, the prosecution failed to do so. There is no proof that Pescadera misappropriated the amount for his personal use.

The elements of Art. 217 are: (1) the offender is a public officer, (2) he or she has custody or control of the funds or property by reason of the duties of his office, (3) the funds or property are public funds or property for which the offender is accountable, and, most importantly, (4) the offender has appropriated, taken, misappropriated or consented, or, through abandonment or negligence, permitted another person to take them. The last and most important element of malversation was not proved in this case. There is no proof that Pescadera used the GSIS contributions for his personal benefit. The prosecution merely relied on the presumption of malversation which we have already disproved due to lack of notice. Hence, the prosecution should have proven actual misappropriation by the accused. Pescadera, however, emphasized that the GSIS premiums were applied in the meantime to the salary differentials and loan obligations of Sulu, that is, the GSIS premiums were appropriated to another public use. Thus, there was no misappropriation of the public funds for his own benefit. And since the charge lacks one element, we set aside the conviction of Pescadera.

WHEREFORE, the Decision dated April 16, 2004 of the Sandiganbayan in Criminal Case No. 26192 is *SET ASIDE* and the case is *REMANDED* to the Sandiganbayan for new trial on the alleged nonpayment of RATA. The Decision dated April 16, 2004 of the Sandiganbayan in Criminal Case No. 26193 is *REVERSED* and *SET ASIDE,* and Ernesto G. Pescadera is *ACQUITTED* of the charge against him. Costs against petitioners.

SO ORDERED.

Quisumbing (Chairperson) and *Brion, JJ.,* concur.

Tinga, J., please see concurring and dissenting opinion.

Carpio Morales, J., joins the concurring and dissenting opinion of *J.* Tinga.

CONCURRING AND DISSENTING OPINION

TINGA, *J.*:

The consolidated petitions are appeals from an 16 April 2004 Decision of the Sandiganbayan which convicted petitioners Munib Estino and Ernesto Pescadera in Criminal Case No. 26192, and petitioner Pescadera alone in Criminal Case No. 26193. The petitions in G.R. No. 163957-58 concern Criminal Case No. 26192, while the petitions in G.R. No. 164009-11 involve Criminal Case No. 26193. I concur with the draft *ponencia* with respect to its ruling in G.R. No. 164009-11 and will not dwell on those petitions in this opinion. However, with due respect, I submit that the majority's ruling that the petitioners-accused (accused) are entitled to a remand of Criminal Case No. 26192 is without legal basis. Because the majority has voted to grant the petitions in G.R. No. 163957-58, I respectfully dissent.

To recall, in Criminal Case No. 26192, the accused were adjudged guilty by the Sandiganbayan for violation of Section 3(e) of Rep. Act No. 3019, which specifically penalizes "[c]ausing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence." Under Section 3(e), the elements of the offense are: (1) that the accused are public officers or private persons charged in conspiracy with them; (2) that said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they cause undue injury to any party, whether the Government or a private party; (4) that such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.[1]

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

In particular, the Sandiganbayan found that accused failed to pay the employees of the Provincial Government of Sulu their Representation and Travel Allowances (RATA), for which there was a budget allocation for. In their defense, accused submitted vouchers which allegedly showed the payment of RATA for the month of May 1999. However, the Sandiganbayan pointed out that said vouchers were not signed by the claimants. The Sandiganbayan also took note of the testimony of Mona Balabaran (Balabaran), a Commission on Audit State Auditor, who was part of the special audit team that audited the disbursement vouchers and payrolls of the provincial government of Jolo, Sulu for the period 27 July 1998 to 23 May 1999. Balabaran was among the signatories to the Special Audit Report dated 12 January 2000. The Report, Exhibit "A-2" for the prosecution, concluded that "no benefits were paid to the employees of Sulu Provincial Office for the period covered from January 1999 to May 1999 based on the submitted paid disbursement vouchers."[2]

Some context is necessary with respect to the budget situation during the period in question. The national government encountered considerable delay in enacting a budget for 1999, and the new 1999 budget was approved only on 17 June 1999. From 1 January 1999 until 16 June 1999, the government and the Province of Sulu automatically operated under the reenacted 1998 budget. The petitioners' tenure as Vice-Governor and Provincial Treasurer ended on 23 May 1999, or weeks before the new budget was approved. Accordingly, they could not have been responsible for any disbursements sourced from the new 1999 budget, a fact which the Sandiganbayan acknowledged in its Decision.

At the same time, the anti-graft court still found accused liable for failure to pay the RATA from January to May 1999 on the premise that under the reenacted 1998 budget which was operative during those months, there were appropriations for the payment of RATA to the provincial employees.

Before this Court, the accused are making it appear that they were erroneously assumed during trial that they were being

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[2] Records, pp. 206-207.

tried for failing to pay the RATA out of the new 1999 budget. Because of that erroneous assumption, they were precluded during trial from submitting evidence that proved they paid out the RATA out of the reenacted 1998 budget.

The majority rules that accused are entitled to submit their new evidence to prove their innocence through a remand of the case to the Sandiganbayan. This conclusion is justified in this manner:

> x x x Although the documents offered by accused are strictly not newly discovered, it appears to us that accused were mistaken in their belief that its production during trial was unnecessary. In their Supplemental Motion and/or Motion for New Trial, they stress that they no longer presented the evidence of payment of RATA because [State Auditor] Balabaran testified that the subject of the charge was the nonpayment of benefits under the 1999 budget, without mention of the RATA nor the 1998 reenacted budget. It seems that they were misled during trial. They were precluded from presenting pieces of evidence that may prove actual payment of the RATA under the 1998 reenacted budget because the prosecution's evidence was confined to alleged nonpayment of RATA under the 1999 budget.[3]

I take exception to these conclusions, for the following reasons:

First. Under Section 2, Rule 121 of the 2000 Rules of Criminal Procedure, the accused may be granted a new trial on any of the following grounds: (1) that errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial; or (2) that new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment.[4]

The majority concedes that the evidence which the accused now seeks to be introduced is "strictly not newly discovered."[5] The accused do not even bother to offer any argument that the

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[3] Draft *ponencia*, p. 16.

[4] See RULES OF CRIMINAL PROCEDURE, Rule 121, Sec. 2.

[5] See note 3.

evidence is new and material, or that they could not with reasonable diligence have discovered and produced the same at the trial. Instead, they claim that they were actually misled during the trial as to the true nature of the charges against them and thus saw no need to submit the now-challenged evidence in the course of the trial.

Thusly, there is no procedural rule that sanctions the recourse now sought by the accused. The majority attempts to establish one by allowing for "a more lenient interpretation of Rule 121, Sec. 2 on new trial in view of the special circumstances sufficient to cast doubt as to the truth of the charges against petitioners."[6] With due respect, I submit that no such "special circumstances" exist in this case.

Second. According to the Information in Criminal Case No. 26192, the accused were charged as follows:

> That **sometime in or about January to May 1999**, or shortly prior or subsequent thereto, in Jolo, Sulu and within the jurisdiction of this Honorable Court, accused Munib S. Estino and Ernesto G. Pescadera, both high ranking public officers, being the Vice Governor and Provincial Treasurer of Sulu, respectively, taking advantage of their official positions and acting in relation to their official functions, conspiring and confederating with each other, did there and then, willfully, unlawfully and feloniously, cause undue injury to the employees of the Provincial Government of Sulu through evident bad faith by **failing to pay them their** salary differentials, Additional Compensation Allowance (ACA), Personal Emergency and Representation Allowance (PERA), **Representation and Travel Allowance (RATA)**, Mid-Year Bonus, Cash Gift and Clothing Allowance in the total amount of ₱8,435,625.34.
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> CONTRARY TO LAW.[7]

Accused have been duly and unequivocally informed that they were being charged for the failure to the provincial employees of Sulu their RATA, among other benefits, sometime in or about January to May of 1999. Because the Information is written

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[6] *Supra* note 3 at 16.

[7] *Rollo*, p. 40.

the way it is, it is impossible for accused to claim that they were misled into not presenting evidence establishing that they either paid out the RATA, or that they paid out such RATA from January to May of 1999. The Information duly alerted accused that they were being made accountable to pay out the RATA from January to May of 1999.

Third. Under Section 323 of the Local Government Code, if the local *sanggunian* is still unable to pass the ordinance authorizing the annual appropriations after ninety (90) days from the beginning of the fiscal year, "the ordinance authorizing the appropriations of the preceding year shall be deemed reenacted and shall remain in force and effect" until the new budget is enacted. That situation apparently occurred in Sulu in 1999, where the new budget was enacted only on 17 June 1999, or six months after the start of the fiscal year 1999.

The majority harps on a purported distinction between payment of RATA under the 1998 reenacted budget and payment of RATA under the 1999 budget, positing that the evidence of the prosecution was confined only to alleged nonpayment of RATA under the 1999 budget.

However, the Special Audit Report[8] which was duly presented as evidence for the prosecution unequivocally states, to repeat:

> It was noted that no benefits were paid to the employees of Sulu Provincial Office for the period covered from January, 1999 to May, 1999 based on the submitted paid disbursement vouchers. (Annex E)[9]

The Special Audit Report stands as evidence duly presented of the nonpayment of RATA for the period from January to May of 1999. It cannot be claimed that the evidence of the prosecution was confined only to nonpayment of RATA under the 1999 budget, since the Special Audit Report is proof that accused failed to pay out the RATA from January to May 1999, a period during which the local government of Sulu was operating

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[8] Records, pp. 203-208.

[9] *Id*. at 207.

under the 1998 reenacted budget. This evidence for the prosecution likewise aligns with the charge under the Information that accused failed to pay out the RATA from January to May of 1999.

The majority's distinction would have mattered if accused were specifically charged in the Information with failing to pay out the RATA out of the appropriations provided in the new 1999 budget. That is not what the Information or the Special Audit Report provides, as they were charged with failing to pay out the RATA from January to May 1999 without qualification as to the source of the appropriation. The majority's distinction would have also mattered if the only evidence presented during trial by the prosecution was limited to proving that accused failed to pay out the RATA from the appropriations of the new 1999 budget. The Special Audit Report is proof that the evidence submitted was not merely confined to proving that the unpaid RATA came from the new 1999 budget.

The distinction may have also been material if in fact the 1998 budget reenacted for 1999 had not provided for the payment of RATA. In such a case, petitioners could have validly relied on the distinction, claiming they had no fiscal means to pay the RATA while in office from January to May of 1999, and that they were no longer holding office at the time the 1999 budget was finally enacted on 16 June 1999. Yet it is undisputed by all parties that the reenacted 1998 budget did provide for the payment of RATA to the Sulu government employees.

Fourth. It would be incredible for accused to assume all along in good faith that they were being tried for failing to pay the RATA out of the reenacted 1998 budget. That was the only budget in operation from January to May of 1999, the periods specified in the Information against them. Moreover, they very well knew that their tenure as Acting Governor and Provincial Treasurer had expired well before the 1999 budget finally came into effect and that they had no opportunity to expend public funds from that source.

The reason why they have to insist on such ignorance is that they need some modicum of a reason to sneak in the new evidence

they failed to present during trial. Hence, the ploy without manifest basis that they were misled during trial as to the nature of the charges against them. This claim is anchored on a supposed admission by Balabaran during her testimony before the Sandiganbayan that the accused were investigated and charged for failing to pay the RATA out of the 1999 budget. Hereunder is the cited testimony of Balabaran, as quoted in the petition:

> Q. I show to you, Madam Witness, your Audit Report dated January 12, 2000, and I call your attention on the finding in page 5 thereof which reads: "On the allegation that no payments were made intended for the salary differentials, ACA, PERA, and other benefits of the employees of the Provincial Government of Sulu for the period covered from January 1999 to May 1999." Now, it is stated here that no payments of the said benefits of the employees were made from January 1999 to May 1999. My question is, when you said benefits of the employees you are referring to the benefits of the employees provided for in the 1999 Budget? Please go over this Report.
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> (Witness looking at the document)
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> A. You want me to explain?
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> AJ PALATTAO:
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> What benefit are you referring?
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> A. We are referring to the benefits that was to be paid, your Honor, the ACA, the PERA, and the other benefits.
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> Q. Yes, and those benefits that you are referring to are the benefits provided for in the Annual Budget for the Year 1999?
>
> AJ PALATTAO:
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> Are you referring to a benefit granted to the employees under the 1999 Annual Budget? Yes or not?
>
> A. The benefits that are intended to the employees for the year 1999.
>
> Q. 1999. You are not referring to the benefits of the employees provided for in the 1998 budget?
>
> A. Yes, it is very clear, January 1999 to May 1999.

Q. It is only in 1999?
A. Yes, Sir.[10]

This passage cannot be taken as a definitive indication that the People of the Philippines was confining its prosecution of accused for failing to pay the RATA out of the 1999 budget. Notably, this line of questioning was not prefaced with any distinction between the 1998 reenacted budget and the 1999 budget. The witness may have very well understood the questions as referring to the year when the benefits should have been paid out, and not the technical source of such funding. Perhaps this passage may have borne materiality had Balabaran's testimony been the sole evidence presented against the accused to establish their failure to duly release the RATA benefits, but it is not.

Moreover, accused cannot legitimately claim that Balabaran's supposed admission somehow precluded them from presenting evidence that they did release the RATA benefits sourced from the reenacted 1998 budget. The Information, as well as the Special Audit Report, are unequivocal in accusing accused of failing to release the RATA benefits while they were in office from January to May of 1999. Since the only budget for Sulu in effect during that period was the reenacted 1998 budget, accused very well knew when the trial began that it was for their failure to disburse the RATA out of such reenacted budget, and no other, that they were being called to account. In no way could Balabaran's testimony have amended the Information or the Special Audit Report, or somehow reoriented respondents as to the true nature of the charges no matter what the Information said.

Fifth. The new evidence which accused desire to introduce is uncomfortably precise, oriented as it is to rebut the justifications cited by the Sandiganbayan to convict them. Convicted felons will not pass up the chance to manufacture exculpatory evidence created in reaction to the decision that convicted them.

The new evidence which accused submitted in their Supplemental Motion for Reconsideration before the Sandiganbayan consists

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[10] *Rollo*, pp. 13-14.

of: (1) a certification dated 11 May 2004 (or after the conviction of the accused) by Abdurasad J. Undain, Provincial Auditor of Sulu, attesting that the RATA for the period January to May 1999 of all officials of Sulu who were entitled to such benefit had been paid out; and (2) approximately eighty-three (83) Disbursement Vouchers purportedly proving the payment of RATA to several Sulu provincial employees from January to April 1999. Notably, accused had duly introduced into evidence similar disbursement vouchers, covering the month of May 1999, but the Sandiganbayan discounted such evidence, noting that "the same were not signed by the claimants thereof."[11] It bears notice that this time, the January-April disbursement vouchers accused now want to enter into evidence are signed by the claimants thereof.[12]

The observations of the Office of the Solicitor General with respect to the January-April disbursement vouchers bears repeating:

> 2. Aside from not being part of the evidence presented, a cursory examination of said disbursement vouchers revealed that the same suffer from numerous irregularities. They do not bear the dorsal portion of the vouchers nor the signature of the Provincial Auditor. It therefore cannot be determined if the same were liquidated and passed on audit by the Commission on Audit.
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> 3. Many of the vouchers do not contain the signatures of the supposed claimants and/or recipients. Some were signed for the claimants by persons who neglected to attach any proof of their authority to so sign in behalf of their principals.
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> 4. The vouchers also showed that in patent violation of Presidential Decree No. 1445, the RATA were paid in cash instead of through checks.
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> 5. It bears mentioning at this point that if indeed, as petitioners claim, the RATA were paid during their incumbency, it would have been logical to present as evidence in this manner and in their favor, if not the aforementioned disbursement vouchers and sworn

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[11] *Id*. at 48.

[12] See *id*. at 125-209.

statements, at least the pertinent payroll which every recipient government official is required to sign by way of acknowledgment of receipt of the RATA. And yet, inconceivably, petitioners neglected to do so.[13]

It may be that since this Court is not a trier of fact, we will not be in a position to affirm these factual allegations of the OSG, even if these can be facially confirmed upon examining the aforementioned vouchers. Nonetheless, the question before us is simply whether accused may be entitled to a new trial, even though the Rules of Criminal Procedure squarely reject their legal arguments. Our allowing a new trial for the accused rests solely on our beneficence, and may ultimately depend on our belief whether accused' arguments unsettle our belief that they are guilty beyond reasonable doubt. Unfortunately for them, I am convinced that despite the purported "new evidence," the introduction of which has utterly no basis in law, accused are guilty beyond reasonable doubt and the disposition of the Sandiganbayan in Criminal Case No. 26192 is correct.

I **VOTE** to **DENY** the petitions in G.R. Nos. 163957-58 and affirm the convictions in Criminal Case No. 26192. I concur with the majority in granting the petitions in G.R. Nos. 164009-11 and acquitting petitioner Ernesto Pescadera in Criminal Case No. 26193.

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[13] *Id*. at 382-383.

THIRD DIVISION

[G.R. No. 168631. April 7, 2009]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **CAROLINA B. *VDA. DE* ABELLO and HEIRS OF ELISEO ABELLO, NAMELY: NENITA, SULITA, ROLANDO, IMELDA and ELISEO, JR., all surnamed ABELLO,** *respondents.*

SYLLABUS

POLITICAL LAW; CONSTITUTIONAL LAW; EMINENT DOMAIN; DETERMINATION OF JUST COMPENSATION SHOULD BE IN ACCORDANCE WITH R.A. 6657. — Under the factual circumstances of the case, the agrarian reform process is still incomplete as the just compensation to be paid respondents has yet to be settled. Considering the passage RA 6657 before the completion of this process, the just compensation should be determined and the process concluded under the said law. Indeed, this Court has time and again upheld the applicability of RA 6657, with PD 27 and EO 228 having only suppletory effect, conformably with our ruling in *Paris v. Alfeche*. Section 17 of RA 6657, which is particularly relevant, providing as it does the guideposts for the determination of just compensation, x x x. To be sure, just compensation should be determined in accordance with RA 6657, and not PD 27 or EO 228. This is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample. The determination of the proper valuation of the land upon any other basis would not only be unjust, it is bordering on absurdity. For years, respondents have been deprived of the use and enjoyment of their landholding, yet to date, they have not received just compensation therefor. Although the purpose of PD 27 was the emancipation of tenants from the bondage of the soil and transferring to them the ownership of the land they till, such noble purpose should not trample on the landowners' right to be fairly and justly compensated for the value of their property. In sum, the SAC and the CA committed no reversible error

when it ruled that it is the provisions of RA 6657 that is applicable to the present case. The SAC arrived at the just compensation for respondents' property after taking into consideration the commissioners' report on the nature of the subject landholding, its proximity from the city proper, its use, average gross production, and the prevailing value of the lands in the vicinity. This Court is convinced that the SAC correctly determined the amount of just compensation due to respondents in accordance with, and guided by, RA 6657 and existing jurisprudence.

APPEARANCES OF COUNSEL

LBP Legal Department for petitioner.
N.V. Flora Law Office for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*, under Rule 45 of the Rules of Court, seeking to annul and set aside the Decision[1] dated February 28, 2005, and Resolution[2] dated June 27, 2005, of the Court of Appeals (CA) in CA-G.R. SP No. 85091.

The antecedents are as follows:

Respondent Carolina *Vda. de* Abello (Carolina) is the widow of the late Eliseo Abello, while the rest of the respondents are their children. Respondents are the owners of a parcel of land covered by Transfer Certificate of Title (TCT) No. NT-55863, containing an area of 12.1924 hectares, situated at Brgy. Sto. Niño 3rd, San Jose City.[3]

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[1] Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Noel G. Tijam and Arturo D. Brion (now a member of this Court), concurring, *rollo*, pp. 45-51.

[2] *Id.* at 54-55.

[3] *Id.* at 148-150.

In a letter[4] dated March 6, 2000 addressed to a certain Dalmacio Regino, thru Eliseo Abello, the Land Valuation and Landowner's Compensation Office III of the Land Bank of the Philippines (LBP) informed the respondents that 10.3476 hectares of their property have been placed under the government's Operation Land Transfer[5] and that the assessed compensation for the land's expropriation was ₱146,938.54.

Using the guidelines for just compensation embodied in Presidential Decree No. 27[6] (PD 27) and implemented in Executive Order No. 228[7] (EO 228), and taking into consideration the Government Support Price (GSP) for one *cavan* of 50 kilos *palay* in October 21, 1972 which was ₱35.00,[8] the Department of Agrarian Reform (DAR) and the LBP computed the value of the 10.3476 hectare land at ₱40,743.66.[9] Based on DAR

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[4] CA *rollo*, p. 93.

[5] *Rollo*, p. 149.

[6] Decreeing the Emancipation of Tenant's From the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanism Therefor.

[7] Declaring Full Land Ownership to Qualified Farmer Beneficiaries Covered by Presidential Decree No. 27; Determining the Value of Remaining Unvalued Rice and Corn Lands Subject to P.D. No. 27; and Providing for the Manner of Payment by the Farmer Beneficiary and Mode of Compensation to the Landowner.

[8] EO 228, Sec. 2.

Henceforth, the valuation of rice and corn lands covered by P.D. No. 27 shall be based on the average gross production determined by the Barangay Committee on Land Production in accordance with Department Memorandum Circular No. 26, Series of 1973, and related issuances and regulations of the Department of Agrarian Reform. The average gross production per hectare shall be multiplied by two and a half (2.5), the product of which shall be multiplied by Thirty Five Pesos (₱35.00), the government support price for one cavan of 50 kilos of palay on October 21, 1972, or Thirty One Pesos (₱31.00), the government support price for one cavan of 50 kilos of corn on October 21, 1972, and the amount arrived at shall be the value of the rice and corn land, as the case may be, for the purpose of determining its cost to the farmer and compensation to the landowner.

[9] CA *rollo,* p. 93; *rollo,* pp. 186-192.

Administrative Order No. 13 (DAR AO 13),[10] series of 1994, a 6% increment in the amount of ₱106,194.88 was added to the original valuation.[11] Thus, the formula they used to compute the value of the property was:

Land value	=	***Average Gross Production*** (AGP) ***x 2.5 x Government Support Price*** (GSP)
Or	=	45 x 2.5 x 35
	=	₱3,937.5 x 10.3476 hectare
	=	₱40,743.66 + ₱106,198.88 Increment per CAR AO 13, S. 1994
	=	₱146,938.54

Claim No. 03-EO-94-0573 reflects that the proceeds of the claim amounts as follows:

	Original	**Increment per DAR AO 13, S. 1994**	***Total***
Cash	₱ 4,074.37	10,619.48	14,693.85
Bond	36,669.29	95,575.40	132,244.69
Total	40,743.66	106,194.88	146,938.54[12]

In a letter[13] dated June 6, 2000, Carolina informed LBP that she is the owner of the said parcel of land and not Dalmacio Regino. Further, she stated that the prevailing market value of an agricultural land at Sto. Niño 3rd, San Jose City at that time was ₱300,000.00 to ₱400,000.00 per hectare. She pegged the value of the subject property at ₱350,000.00 per hectare or a total of ₱4,267,340.00, which should be paid to her and the other heirs of Eliseo Abello.[14]

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[10] Rules and Regulations Governing the Grant of Increment of Six Percent (6%) Yearly Interest Compounded Annually on Lands Covered by P.D. No. 27 and E.O. No. 228.

[11] CA *rollo,* p. 93.

[12] *Id.*

[13] *Rollo*, pp. 177-179.

[14] *Id.* at 178-179.

Subsequently, respondents filed a Petition for Just Compensation[15] before the Special Agrarian Court (SAC), Regional Trial Court, Branch 33, Guimba, Nueva Ecija, which petition was later docketed as Special Agrarian Case No. 1193-G.

Respondents alleged that they are the owners of an agricultural land covered by TCT No. NT-55863 consisting of 12.1924 hectares situated at Barangay Sto. Niño 3rd, San Jose City, their ownership being evidenced by a deed of absolute sale executed in favor of the spouses Eliseo Abello and Carolina Abello by the registered owner, Eleuteria *Vda. de* Ignacio; that 10.3476 hectares of the aforesaid land was placed under Operation Land Transfer by the government; that the defendant LBP fixed the value of their land at ₱145,938.54; that their land yields an average harvest of 120 *cavans* of *palay* per hectare per cropping; that the prevailing purchase price per hectare in the area ranges from ₱300,000.00 to ₱400,000.00 per hectare; and that the petitioners are willing to sell aforesaid landholding for ₱350,000.00 per hectare.[16] Ultimately, they prayed, among other things, that the just compensation for the subject property be fixed in the amount of not less than ₱4,267,340.00.

On July 26, 2002, LBP filed its Answer.[17] Among other things, LBP alleged that the said landholding was under Operation Land Transfer by the DAR, and was valued in accordance with PD 27 and EO 228; that it was endorsed to the LBP for payment in November 1994; that LBP reviewed the claim and found the same in order; that the subject landholding was valued at ₱40,743.66 for the 10.3426 hectares covered; that the average gross production (AGP) was determined to be 45 *cavans* per hectare; that the government support price in 1972 per *cavan* of *palay* was ₱35.00, the price obtaining at that time; that in addition to the amount of ₱40,743.66, DAR AO 13 provides for an incremental increase of 6% compounded annually, hence,

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[15] *Id.* at 146-154.

[16] *Id.* at 148-152.

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

the total compensation due the landowner is ₱146,938.54.[18] LBP prayed that the said valuation be adopted by the SAC or that it be judicially determined in accordance with law and jurisprudence.

Thereafter, the SAC appointed commissioners to assist it in examining, investigating, and ascertaining the facts relevant to the dispute, including the valuation of the subject landholding. The team was headed by Officer-in-Charge, Branch Clerk of Court, Mr. Arsenio S. Esguerra, Jr. (Esguerra), with Mr. Gil Alvarez and Mr. Willy Wong as members.

On January 30, 2003, Commissioner Esguerra submitted a Consolidated Commissioner's Report[19] detailing their findings. Based on their ocular inspection, the land is situated four kilometers from the town proper and accessible by a feeder road. The topography is generally flat and there are water pumps installed. He recommended that the compensation for the subject land should be pegged at ₱200,000.00 per hectare. It reads:

x x x x x x x x x

The landholdings of the plaintiff has an aggregate area of 10.3476 hectares situated at Barangay Sto. Niño 3rd, San Jose City.

The landholding is classified as riceland. It is four (4) kilometers away from the city proper of San Jose City and traversed by a feeder road. It is accessible to all kinds of transportation. It is along the San Jose City-Lupao, Nueva Ecija provincial highway. The topography is generally flat and there is a creek (Linamuyak Creek) near the landholdings where farmer-beneficiaries can derive water. There are also water pumps installed, hence, the landholding is artificially irrigated. There is electricity in the site. The average gross harvest ranges from 100 to 110 cavans per hectare.

Based from the foregoing considerations, the undersigned believes that the compensation of plaintiff's landholdings with an aggregate area of 10.3476 hectares is ₱200,000.00 per hectare.

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[18] *Id.* at 183-184.

[19] Records, pp. 111-112.

On April 12, 2004, the SAC rendered a Decision[20] adopting the recommendation of its appointed commissioners which fixed the just compensation for the subject property at ₱200,000.00 per hectare. The decretal portion of which reads:

WHEREFORE, judgment is hereby rendered:

1. Fixing the just compensation for plaintiffs' 10.342 hectare land at ₱200,000 per hectare or a total of ₱2,068,520.00.

2. Ordering the defendant Land Bank of the Philippines to pay the above amount to the plaintiffs.

SO ORDERED.[21]

Both the LBP and the DAR filed separate motions for reconsideration which was denied in the Order[22] dated July 5, 2004.

Pursuant to Section 60 of RA 6657, LBP sought recourse before the CA in CA-G.R. SP No. 85091, arguing that:

A. THE COURT *A QUO* ERRED IN FIXING THE JUST COMPENSATION OF THE COVERED AREA OF 10.3476 HECTARES AT ₱200,000.00 PER HECTARE BY **NOT** FOLLOWING THE APPROPRIATE LAND VALUATION FORMULA PRESCRIBED UNDER PD 27 AND EO NO. 288.

B. THE COURT *A QUO* ERRED IN APPLYING THE VALUATION FACTORS UNDER R.A. 6657 TO SUBJECT LANDHOLDING ACQUIRED UNDER P.D. 27.[23]

On February 28, 2005, the CA rendered a Decision[24] denying the petition, the dispositive portion of which reads:

WHEREFORE, finding no reversible error from the order abovementioned, the petition is hereby **DENIED** and the decision

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[20] *Rollo*, pp. 127-131.

[21] *Id.* at 131.

[22] Records, p. 275.

[23] *Rollo,* p. 109.

[24] *Id.* at 45-51.

of the Regional Trial Court[,] Branch No. 33 of Guimba, Nueva Ecija in Agrarian Case No. 1193-G is **AFFIRMED** in all respect.

SO ORDERED.[25]

The CA opined that the SAC made no mistake when it ruled that the provisions of RA 6657 is controlling and that the provisions of PD 27 and EO 228 shall apply only in suppletory character to RA 6657.[26]

LBC filed a motion for reconsideration, but it was denied in the Resolution[27] dated June 27, 2005.

Hence, this present petition.

The core issue submitted by LBP to be resolved in the present case is:

WHETHER OR NOT THE SPECIAL AGRARIAN COURT CAN DISREGARD THE FORMULA PRESCRIBED UNDER P.D. NO. 27 AND E.O. 228 IN FIXING THE JUST COMPENSATION OF P.D. 27-COVERED LAND.[28]

LBP maintains that the formula under PD 27 and EO 228, coupled with the grant of compounded interest pursuant to DAR AO 13, is sufficient to arrive at a just compensation for the subject property. Moreover, LBP insists that it is the value of the property at the time of taking — not at the time of payment — that is controlling.[29]

To buttress its claim, LBP argues that the property was legally taken by the government upon the effectivity of PD 27 or on October 21, 1972, and it is such date that ownership over the subject land was deemed transferred from the landowner to the farmer-beneficiaries. When EO 228 fixed the basis in determining the value of the land using the government support price (GSP)

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[25] *Id.* at 50.

[26] *Id.* at 48-59.

[27] *Id.* at 54-55.

[28] *Id.* at 31.

[29] *Id.* at 35-38.

for one *cavan* of 50 kilos of *palay* on October 21, 1972 at ₱35.00, it was in cognizance of the rule that just compensation is the value of the property at the time of the taking. As such, PD 27 and EO 228 should be the basis in computing the value of the land because respondents were effectively deprived not only of possession, but also of dominion over the subject property on October 21, 1972.[30]

The petition is bereft of merit.

As the opening paragraph of PD 27 explains, the statute was issued in order to address the then prevailing violent conflict and social tension brought about by the iniquitous landownership by a few. It is within this context that former President Ferdinand Marcos deemed it proper to declare the emancipation of all tenant-farmers effective October 21, 1972.[31] Thereafter, EO 228 declared full land ownership to all qualified farmer- beneficiaries as of October 21, 1972 and gave the formula for land valuation.

On June 15, 1988, the Comprehensive Agrarian Reform Law (CARL), or RA 6657, was enacted to promote social justice to the landless farmers and provide "a more equitable distribution and ownership of land with due regard to the rights of landowners to just compensation and to the ecological needs of the nation."[32]

Section 4 of RA 6657 provides that the CARL shall cover all public and private agricultural lands, including other lands of the public domain suitable for agriculture. Section 7[33] provides

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[30] *Id.* at 34.

[31] *Coruña v. Cinamin*, G.R. No. 154286, February 28, 2006, 483 SCRA 507, 519.

[32] RA 6657, Sec 2.

[33] **SEC. 7.** *Priorities* — The DAR, in coordination with the PARC shall plan and program the acquisition and distribution of all agricultural lands through a period of ten (10) years from the effectivity of this Act. Lands shall be acquired and distributed as follows:

Phase One: Rice and Corn lands under Presidential Decree No. 27; all idle or abandoned lands; all private lands voluntarily offered by the owners for agrarian reform; all lands foreclosed by government financial institutions; all lands acquired by the Presidential Commission on Good Government (PCGG);

that rice and corn lands under PD 27, among other lands, will comprise phase one of the acquisition plan and distribution program. Section 75[34] of RA 6657 expressly states that the provisions of PD 27 and EO 228 and 229, and other laws not inconsistent with RA 6657, shall have suppletory effect.

In *Office of the President, Malacañang, Manila v. Court of Appeals,*[35] this Court ruled that the seizure of the landholding did not take place on the date of effectivity of PD 27 but would take effect on the payment of just compensation. LBP's contention that the subject property was acquired for purposes of agrarian reform on October 21, 1972, the time of the effectivity of PD 27, *ergo* just compensation should be based on the value of the property as of that time, is consequently flawed.

In *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*,[36] the Court held that it is a recognized rule that title to the property expropriated shall pass from the owner to the expropriator only upon full payment of just compensation. The Court further held that:

> It is true that P.D. No. 27 expressly ordered the emancipation of tenant-farmer as [of] October 21, 1972 and declared that he shall "be deemed the owner" of a portion of land consisting of a family-sized farm except that "no title to the land owned by him was to be actually issued to him unless and until he had become a full-fledged member of a duly recognized farmer's cooperative." It was understood, however, that full payment of just compensation also had to be made first, conformably to the constitutional requirement.

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and all other lands owned by the government devoted to or suitable for agriculture, which shall be acquired and distributed immediately upon the effectivity of this Act, with the implementation to be completed within a period of not more than four (4) years;

[34] **SEC. 75.** *Suppletory Application of Existing Legislation.* — The provisions of Republic Act Number 3844 as amended, Presidential Decree Number 27 and 266 as amended, Executive Order Number 228 and 229, both Series of 1987; and other laws not inconsistent with this Act shall have suppletory effect.

[35] 413 Phil. 711 (2001).

[36] G.R. No. 78742, July 14, 1989, 175 SCRA 343, 390.

In *Land Bank of the Philippines v. Natividad*,[37] the Court held that the determination of just compensation should be in accordance with RA 6657, and not PD 27 and EO 228, thus:

> It would certainly be inequitable to determine just compensation based on the guideline provided by PD 27 and EO 228 considering the DAR's failure to determine the just compensation for a considerable length of time. That just compensation should be determined in accordance with RA 6657, and not PD 27 or EO 228, is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample."

Under the factual circumstances of the case, the agrarian reform process is still incomplete as the just compensation to be paid respondents has yet to be settled. Considering the passage RA 6657 before the completion of this process, the just compensation should be determined and the process concluded under the said law.[38] Indeed, this Court has time and again upheld the applicability of RA 6657, with PD 27 and EO 228 having only suppletory effect, conformably with our ruling in *Paris v. Alfeche*.[39]

Section 17 of RA 6657, which is particularly relevant, providing as it does the guideposts for the determination of just compensation, reads as follows:

> Sec. 17. *Determination of Just Compensation.* — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

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[37] G.R. No. 127198, May 16, 2005, 458 SCRA 441, 452-453.

[38] *Land Bank of the Philippines v. Heirs of Angel T. Domingo*, G.R. No. 168553, February 4, 2008, 543 SCRA 627, 639.

[39] 416 Phil. 473 (2001), citing *Land Bank of the Philippines v. Court of Appeals*, 321 SCRA 629 (1999).

To be sure, just compensation should be determined in accordance with RA 6657, and not PD 27 or EO 228. This is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample.[40]

The determination of the proper valuation of the land upon any other basis would not only be unjust, it is bordering on absurdity. For years, respondents have been deprived of the use and enjoyment of their landholding, yet to date, they have not received just compensation therefor. Although the purpose of PD 27 was the emancipation of tenants from the bondage of the soil and transferring to them the ownership of the land they till, such noble purpose should not trample on the landowners' right to be fairly and justly compensated for the value of their property.

In sum, the SAC and the CA committed no reversible error when it ruled that it is the provisions of RA 6657 that is applicable to the present case. The SAC arrived at the just compensation for respondents' property after taking into consideration the commissioners' report on the nature of the subject landholding, its proximity from the city proper, its use, average gross production, and the prevailing value of the lands in the vicinity. This Court is convinced that the SAC correctly determined the amount of just compensation due to respondents in accordance with, and guided by, RA 6657 and existing jurisprudence.

WHEREFORE, the petition is *DENIED*. The Decision dated February 28, 2005 and Resolution dated June 27, 2005 of the Court of Appeals, in CA-G.R. SP No. 85091, are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio Morales,[*] *Chico-Nazario,* and *Nachura, JJ.,* concur.

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[40] *Supra* note 37, at 452.

[*] Per Special Order No. 602 dated March 20, 2009.

EN BANC

[G.R. No. 169914. April 7, 2009]

ASIA'S EMERGING DRAGON CORPORATION, *petitioner, vs.* **DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, SECRETARY LEANDRO R. MENDOZA and MANILA INTERNATIONAL AIRPORT AUTHORITY,** *respondents.*

[G.R. No. 174166. April 7, 2009]

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS and MANILA INTERNATIONAL AIRPORT AUTHORITY, *petitioners, vs.* **HON. COURT OF APPEALS and SALACNIB BATERINA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; STATUTES; BUILD-OPERATE-TRANSFER (BOT) LAW; ORIGINAL PROPONENT OF THE BOT PROJECT IS NOT AUTOMATICALLY ENTITLED TO THE AWARD OF THE PROJECT UPON NULLIFICATION OF THE AWARD TO THE OTHER BIDDER. — The declaration of nullity of the award of the NAIA IPT III Project to PIATCO in *Agan* does not automatically entitle AEDC to the award of the said project on the mere basis that it was the original proponent thereof. x x x In his dissent to this Resolution, Mr. Justice Renato C. Corona submits that the original proponent of an unsolicited proposal for a BOT project, under Section 4-A of Republic Act No. 6957, as amended, is entitled to the award of the project in at least three circumstances: (1) no competitive bid was submitted; (2) there was a lower bid by a qualified bidder but the original proponent matched it; and (3) there was a lower bid but it was made by a person/entity not qualified to bid, in which case, it is as if no competitive bid had been made. Both Justice Corona and Mr. Justice Presbiterio J. Velasco, Jr., in their dissenting opinions, conclude that AEDC is entitled to the award of the NAIA IPT III project as the original proponent thereof because the third circumstance

is extant in this case. We can only accept in part the aforementioned enumeration of the circumstances when an original proponent is entitled to the award of the project under Section 4-A of Republic Act No. 6957, as amended. In the 18 April 2008 Decision, we have already exhaustively scrutinized Section 4-A of the BOT Law, as amended, in relation to its IRR, and in consideration of the intent of the legislators who crafted the BOT Law. We find no reason to disturb our conclusion therein that: The special rights or privileges of an original proponent thus come into play only when there are other proposals submitted during the public bidding of the infrastructure project. As can be gleaned from the plain language of the statutes and the IRR, the original proponent has: (1) the right to match the lowest or most advantageous proposal within 30 working days from notice thereof, and (2) in the event that the original proponent is able to match the lowest or most advantageous proposal submitted, then it has the right to be awarded the project. The second right or privilege is contingent upon the actual exercise by the original proponent of the first right or privilege. Before the project could be awarded to the original proponent, he must have been able to match the lowest or most advantageous proposal within the prescribed period. Hence, when the original proponent is able to timely match the lowest or most advantageous proposal, with all things being equal, it shall enjoy preference in the awarding of the infrastructure project.

2. **ID.; ID.; ID.; GENERAL CIRCUMSTANCES WHEN THE ORIGINAL PROPONENT MAY ENJOY THE PREFERENTIAL RIGHT TO THE AWARD OF THE PROJECT OVER THE OTHER BIDDER; ABSENCE THEREOF IN CASE AT BAR. —** It is without question that in a situation where there is **no other competitive bid** submitted for the BOT project that the project would be awarded to the original proponent thereof. However, **when there are competitive bids submitted,** the original proponent must be able to match the most advantageous or lowest bid; only when it is able to do so, will the original proponent enjoy the preferential right to the award of the project over the other bidder. These are the general circumstances covered by Section 4-A of Republic Act No. 6957, as amended. We cannot accede to include in such enumeration the situation in this case and categorically declare that the right of AEDC to the NAIA IPT III Project is ensured and protected by Section 4-A of Republic

Act No. 6957, as amended. What had happened in the proposal, bidding, and awarding process of the NAIA IPT III Project is indisputably unique and convoluted. We cannot subscribe to disposing of the controversy as regards the NAIA IPT III Project with a generalized rule, *i.e.,* there was a lower bid but it was made by a person/entity not qualified to bid, in which case, it is as if no competitive bid had been made. As we said in the Decision of 18 April 2008, it would be a simplistic approach to what is a complex problem. In the instant case, AEDC may be the original proponent of the NAIA IPT III Project; however, the Pre-Qualification Bids and Awards Committee (PBAC) also found the People's Air Cargo & Warehousing Co., Inc. Consortium (Paircargo), the predecessor of PIATCO, to be a qualified bidder for the project. Upon consideration of the bid of Paircargo/PIATCO, PBAC found the same to be far more advantageous than the original offer of AEDC. It is already an established fact in *Agan* that AEDC failed to match the more advantageous proposal submitted by PIATCO by the time the 30-day working period expired on 28 November 1996; and since it did not exercise its right to match the most advantageous proposal within the prescribed period, it cannot assert its right to be awarded the project.

3. ID.; ID.; ID.; CIRCUMSTANCES WHICH PREVENTED THE COURT FROM CONCLUDING THAT AEDC AUTOMATICALLY ACQUIRE THE NAIA IPT III PROJECT UPON THE DISQUALIFICATION OF PIATCO. — PIATCO already began building the NAIA IPT III facilities. By the time this Court promulgated its Decision in *Agan*, disqualifying PIATCO as a bidder and annulling the award of the NAIA IPT III Project to it, the NAIA IPT III facilities were substantially complete. The Court, in its Resolution in *Agan*, recognized the right of PIATCO to just compensation for the NAIA IPT III facilities, in accordance with law and equity. The Government, thereafter, instituted an expropriation case for the determination of the just compensation to be paid to PIATCO. In *Republic v. Gingoyon*, the Court affirmed the application of Republic Act No. 8974 to the expropriation case and the right of the Government to take possession of the NAIA IPT III facilities upon the payment to PIATCO of the proffered value of the same. On 11 September 2006, the Manila International Airport Authority (MIAA) tendered a Land Bank check in the amount of ₱3,002,125,000.00 representing the

proffered value of NAIA IPT III, which was received by a duly authorized representative of PIATCO. As a result, the MIAA and other concerned government agencies were able to take possession of the NAIA IPT III facilities and prepare them for operation. The NAIA IPT III opened for domestic air travel on 22 July 2008. The first international flight took off from NAIA IPT III on 1 August 2008. These developments, as well as the implications and consequences thereof, cannot be conveniently ignored. The factual backdrop has significantly changed from the time of the bidding of the NAIA IPT III Project, which prevents us from concluding that, with the disqualification of PIATCO, AEDC shall automatically acquire NAIA IPT III Project as the original proponent thereof. The bidding and awarding process for the NAIA IPT III Project had long been closed. The Court could not just conveniently revert to the stage of bidding and awarding of the said project and ignore all the factual and legal developments that had already taken place. There is no point in subjecting the NAIA IPT III Project to another bidding and awarding process when it is substantially finished and, contrary to the averments of AEDC, already operational. Worth stressing is that the NAIA IPT III Project is a **build-operate-transfer** project. When the NAIA IPT III facilities have already been **built,** their possession **transferred** to the government, and are now being **operated** by the latter, nothing much remains of the project. The ultimate goal of a BOT project is for the government to eventually gain possession, ownership, and control of the infrastructure subject thereof from the private sector that undertook its building and financing, after allowing the latter to recoup its investments and reap reasonable profit. In this case, the government has already attained possession and control of the NAIA IPT III facilities. It would also acquire ownership of said facilities once the just and equitable compensation due PIATCO as builder has been determined and paid in the ongoing expropriation proceedings, docketed as Case No. 04-0876CFM, before the Pasay City RTC. To return the NAIA IPT III facilities to the private sector would only be a step backwards. The lack of technical skill and competence of the Government to operate NAIA IPT III cannot justify turning over the same to AEDC. There are several other ways for the Government to cope, *i.e.,* recruiting more qualified people, without it having to relinquish ownership, possession, and control of NAIA IPT III.

4. **ID.; ID.; ID.; THREE PRINCIPLES OF PUBLIC BIDDING ON UNSOLICITED PROPOSALS, EXPLAINED. —** The three principles of public bidding are: the offer to the public, an opportunity for competition, and a basis for an exact comparison of bids, all of which are present in Sec. 10.9 to Sec. 10.16 of the IRR. *First*, the project is offered to the public through the publication of the invitation for comparative proposals. *Second*, the challengers are given the opportunity to compete for the project through the submission of their tender/bid documents. *And third*, the exact comparison of the bids is ensured by using the same requirements/qualifications/ criteria for the original proponent and the challengers, to wit: the proposals of the original proponent and the challengers must all be in accordance with the requirements of the Terms of Reference (TOR) for the project; the original proponent and the challengers are required to post bid bonds equal in amount and form; and the qualifications of the original proponent and the challengers shall be evaluated by the concerned agency/ LGU using the same evaluation criteria. A perusal of Sec. 10.9 to Sec. 10.16 of the IRR further reveals repeated mention of "comparative proposals" and "tender/bid documents"; as well as reference to and required compliance with the same rules followed in ordinary bidding of government projects, such as Rule 4 (Bid/Tender Documents); Rule 5 (Qualification of Bidders); and Sec. 7.1(b) and Sec. 7.1(c) of Rule 7 (Submission, Receipt and Opening of Bids) of the same IRR. Hence, the process of unsolicited proposals does involve public bidding where, in the end, the government is free to choose the bid or proposal most advantageous to it. However, by adoption of the Swiss Challenge, special consideration is given in said process to the original proponent of the project, namely, the right to be awarded the project should it be able to match the lowest or most advantageous proposal within 30 working days from notice.

5. **REMEDIAL LAW; EVIDENCE; DOCUMENTS; A MERE COPY CANNOT BE GIVEN MUCH WEIGHT AND CREDENCE IN ESTABLISHING THE EXACT CONTENT OF A DOCUMENT. —** AEDC itself invoked the provisions of the MOU and attached a copy thereof as one of the Annexes to its Petition in G.R. No. 169914. By submitting a copy of the MOU, AEDC subjects the said document to the scrutiny of the Court, which is duty-bound to examine and weigh the same in accordance with the rules. We are not obligated to

receive a copy of the MOU just as AEDC offered it; and accept hook, line, and sinker, the references made by AEDC to the contents thereof without ascertaining that it was actually the very same document executed by the parties. Nowhere in our 18 April 2008 Decision did we expressly declare that there was no MOU between AEDC and the government. What we called attention to therein was the fact that the document attached to the Petition of AEDC was highly suspect, not being a clear copy and not being properly certified as a true copy of the MOU, for which reasons, it could not be given much weight and credence in establishing the exact contents of the MOU in question.

6. **ID.; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; PRO-FORMA; NO SUFFICIENT REASON TO REVERSE A DECISION. —** There is likewise no sufficient reason for us to reverse the pronouncements in our Decision dated 18 April 2008 that the Petition of AEDC in G.R. No. 169914 suffered from procedural defects: having been filed beyond reasonable time and being barred by *res judicata*. We have already adequately explained in our 18 April 2008 Decision our finding that the Petition of AEDC was filed beyond reasonable time. AEDC is merely reiterating in its Motion for Reconsideration the same disputation it previously made in its Petition — that the period for filing of said Petition should only be counted from 21 September 2005, the date when it received the letter of the Solicitor General denying its offer to take over the NAIA IPT III Project — and which we had already considered and rejected in our Decision dated 18 April 2008.

7. **ID.; ID.; JUDGMENTS; *RES JUDICATA*; THE COURT MAY *MOTU PROPIO* DISMISS A PETITION ON THE GROUND OF *RES JUDICATA*. —** Even if the public respondents in G.R. No. 169914 failed to plead *res judicata* in their Comment and is deemed to have waived the said defense, we may still *motu proprio* dismiss the Petition by reason thereof if it appears in the pleadings or the evidence on record that the said Petition is barred by prior judgment. Although [Section 1, Rule 10 of the Revised Rules of Court] appears under the rules on proceedings before the trial court, the power to dismiss provided therein is among the residual prerogatives which the Court of Appeals and even this Court may exercise by virtue of Section 2, Rule 1 of the Revised Rules of Court. The Petition of AEDC

itself brought to our attention the institution of, the developments in, as well as the eventual dismissal with prejudice of Civil Case No. 66213 by the Pasig City RTC. We had to take cognizance thereof, and after careful consideration, found that the dismissal with prejudice of Civil Case No. 66213 by the Pasig City RTC effectively bars the instant Petition of AEDC. AEDC had waived its right to challenge the award of the NAIA IPT III Project to PIATCO when it amicably settled Civil Case No. 66213 before the Pasig City RTC, resulting in the dismissal with prejudice of said case. We should not allow the revival by AEDC of its right to the NAIA IPT III Project as the original proponent thereof, after some other party secured the annulment of the award to PIATCO, not only because it is barred by *res judicata,* but also because it constitutes palpable opportunism.

8. ID.; ID.; MOTION FOR INTERVENTION; ABSENCE OF INTEREST AND LEGAL STANDING TO INTERVENE. — [A] second hard look at this case convinces us that the issue of whether he is bound by *Agan* and *Gingoyon* is not even material, given the fact that he has repeatedly failed to establish to the satisfaction of the courts his interest and legal standing to intervene in previous or pending judicial proceedings involving the NAIA IPT III Project. Baterina's Motion for Intervention and Motion for Reconsideration-in-Intervention of the Decision in *Gingoyon* were denied by the Court, not only for having been belatedly filed, but also pursuant to the following significant observation: In the case of Representative Baterina, he invokes his prerogative as legislator to curtail the disbursement without appropriation of public funds to compensate PIATCO, as well as that as a taxpayer, as the basis of his legal standing to intervene. However, it should be noted that the amount which the Court directed to be paid by the Government to PIATCO was derived from the money deposited by the Manila International Airport Authority, an agency which enjoys corporate autonomy and possesses a legal personality separate and distinct from those of the National Government and agencies thereof whose budgets have to be approved by Congress.

9. ID.; ID.; ID.; EFFECT OF FAILURE TO AVAIL OF ANY REMEDY FROM THE DENIAL OF A MOTION FOR INTERVENTION. — Since Baterina failed to avail himself of any remedy from the denial of his Motion for Intervention in Case No. 04-0876CFM, the same has become final and

executory as to him. Baterina, therefore, can no longer participate in the proceedings before the Pasay City RTC in Case No. 04-0876CFM, for he is already a stranger to said case. Having been barred from participating any further in Case No. 04-0876CFM before the Pasay City RTC, Baterina is attempting to have us rule on the merits of his Petition in Intervention (which was not admitted by the Pasay City RTC) by merely reiterating the contents thereof in his Comment on the Petition of the Republic in G.R. No. 174166. This is a blatant circumvention of the rules of procedure which we cannot countenance. In light of Baterina's failure to have the denial by the Pasay City RTC of his Motion for Intervention reversed, no court, not even this Court, can take cognizance of his Petition in Intervention, even if so cleverly presented as another pleading but with essentially the same prayer.

CORONA, ***J., dissenting opinion: (on Justice Nazario's draft resolution of the Motion for Reconsideration)***

1. POLITICAL LAW; STATUTES; BUILD-OPERATE-TRANSFER (BOT) LAW; THREE INSTANCES WHEN THE ORIGINAL PROPONENT IS ENTITLED TO THE AWARD OF THE PROJECT. — [T]he award of the project in at least three cases: (1) no competitive bid was submitted; (2) there was a lower bid by a qualified bidder but the original proponent matched it and (3) there was a lower bid but it was made by a person/ entity not qualified to bid, in which case it is as if no competitive bid had been made. This is consistent not only with Article II, Section 20 of the Constitution: "[the] State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives needed to investments" but also the rationale behind Section 4-A of the BOT Law which is to protect the original proponent. This is also in accord with logic because, contrary to the majority's interpretation, **it recognizes the very real possibility that no other competitive bid exists. It is illogical that an original proponent would have preferential rights when there are other bidders but none if there are no other qualified bidders**.

2. ID.; ID.; ID.; RATIONALE FOR AN ORIGINAL PROPONENT'S PREFERENTIAL RIGHTS. — The rationale for an original proponent's preferential rights under Section 4-A of the BOT

Law is to protect and recognize said proponent's entrepreneurial spirit, its willingness to assume risks and incur costs in connection with a national government infrastructure project. This rationale does not depend on the submission of competitive bids. Consequently, the preferential rights of the original proponent exist whether or not there are competitive bids. As I stated: The majority's reading of the law considerably waters down the rights accorded to an original proponent. In failing to consider a situation where either no competitive bid was submitted or a lower bid was submitted by an entity not qualified to bid, the rights of the original proponent are unduly subjected to the condition of the presence of competitive bids. To reiterate, the spirit of the provision is "to protect project proponents which have already incurred costs in the conceptual design and in the preparation of the proposal." Certainly, regardless of the presence of competitive bids, the original proponent incurs costs. As such, it deserves the protection which the law seeks to afford it. The law which seeks to encourage private sector participation should be interpreted in a way that would recognize, not emasculate, rights of private investors. More than logic, experience (which is the life of the law) shows that investors, original proponents included, are encouraged to invest in a climate of broad rather than limited incentives. Reduced to its essence, business is all about reduction of costs, maximization of benefits and optimization of profits. The majority's restrictive interpretation of Section 4-A, however, fails to promote such kind of an investor-friendly business climate.

3. **ID.; ID.; ID.; SECTION 4-A OF BOT LAW CONTRADICTS THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION. —** Section 4-A (as interpreted by the majority) is constitutionally infirm. It contradicts the equal protection clause as it made a suspect classification when it limited the application of Section 4-A to an original proponent whose proposal was challenged by competitive bids. I repeat: the rationale of Section 4-A is not conditioned on the presence of competitive bids. On this account, the majority's classification is not germane to the purpose of the law. Nor does the classification rest on substantial distinctions. An original proponent incurs costs in the conceptual design and in the preparation of the proposal whether its proposal is

challenged by another bidder or not. Therefore, it deserves the protection of Section 4-A.

4. **ID.; ID.; THE ORIGINAL PROPONENT HAD THE RIGHT TO EXPECT THAT ONLY A QUALIFIED BIDDER WITH A VALID BID COULD DEFEAT ITS ORIGINALLY ACCEPTED PROPOSAL. —** The majority declares that PIATCO's disqualification as a challenger did not mean that its financial proposal was also objectionable and that, on the contrary, it was still the most advantageous proposal. Since AEDC failed to match such proposal, it could no longer assert its right to be awarded the project. This does not make sense. There can only be a valid competitive bid if there is a qualified competitive bidder. Since PIATCO was disqualified as a bidder, it follows that its bid also could not be considered. Consequently, there was no other valid proposal left standing aside from that of AEDC. If we accept the reasoning of the majority, it means that an original proponent has no right to expect an award in case of a failure or absence of a qualified challenger even if its proposal has already been accepted. Furthermore, an original proponent must match even an invalid challenge because it is only in this way that an award can be expected. This reasoning is absolutely absurd. It nullifies the rights given by the BOT Law to the original proponent. Again, the law clearly does not confer rights on the proponent only if a challenge is made. Based on the wording and spirit of the BOT Law, AEDC had the right to legally expect that only a qualified bidder with a valid bid could defeat its originally accepted proposal. **Without this pre-requisite, its right to match would actually work to its disadvantage if it had to match even an invalid proposal**. **This could not have been the intention of the law**.

5. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS* AND PROHIBITION; THE PETITION WAS TIMELY FILED. —** I cannot also agree with the position of the majority that the petition of AEDC was filed beyond a reasonable time. This is premised on the fact that AEDC filed this petition 20 months after the promulgation of *Agan*. When the government chose to expropriate the structures built pursuant to the NAIA IPT III project, AEDC chose to first demand the award of the project from the former. When it became evident that the government was not willing to recognize AEDC's rights to the

project, the latter did not delay in filing this petition. What it did was to exhaust administrative remedies and it should not be faulted for doing so.

6. **ID.; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA;* DOCTRINE NOT APPLICABLE. —** The majority rigidly applied the doctrine of *res judicata* and ruled that the dismissal of Civil Case No. 66213 (Pasig Case) bars the instant petition of AEDC. This point has been sufficiently addressed in my dissenting opinion. There is no identity of causes of action between the two cases. The principal relief sought by AEDC in the Pasig case was to prevent the award of the project to PIATCO on the ground that the latter was not a qualified bidder. In this case, AEDC is seeking that the project be awarded to it as the unchallenged original proponent. More importantly, I reiterate my stance that, in view of the monumental importance of this case, the billions of pesos of investments involved and its implications to the whole nation and the Asean region, it would not be sound judicial policy to blindly apply the technical doctrine of *res judicata*.

VELASCO, JR., ***J., dissenting opinion:***

1. **POLITICAL LAW; STATUTES; BUILD-OPERATE-TRANSFER (BOT) LAW; ASIA'S EMERGING DRAGON CORPORATION (AEDC) HAS A LEGAL RIGHT TO THE NAIA IPT III PROJECT AS THE ORIGINAL PROPONENT. —** [T]he BOT Law and its IRR confer legal rights to the original proponent of an unsolicited proposal. According to Sec. 10.6 of the IRR, once an "unsolicited proposal" is accepted, the proponent is then recognized as the "original proponent." Consequently, the Government becomes obligated to pursue the project with the "original proponent" unless a challenger in a process known as the "Swiss Challenge" offers a better competitive or comparative proposal, and the "original proponent" is unable to match the better offer. Thus, on February 13, 1996, when the Government accepted the unsolicited proposal of AEDC through the DOTC, favorably endorsed by the NEDA-ICC and approved it through ICC-Cabinet Committee and NEDA Board, AEDC became the "recognized original proponent" of the NAIA IPT III Project. As a result of such recognition, DOTC became obligated to pursue the NAIA IPT

III project with AEDC pursuant to Sec. 10.6 of the IRR of the BOT Law, subject only to a better offer being received and accepted by the Government in a "Swiss Challenge" process. Moreover, the Government lost its option to reject the proposal and bid out the project after the successful conclusion of the negotiation process as described in Sec. 10.9 of the IRR of the BOT Law. Undoubtedly, as the recognized original proponent of the unsolicited proposal, AEDC has the legal rights afforded to him by the BOT Law and its IRR. Notably, this Court stated in *Agan* that the rights or privileges to the original proponent of an unsolicited proposal for an infrastructure project are meant to encourage private sector initiative in conceptualizing infrastructure projects that would benefit the public. Further, acceptance by the proper authorities of a bid in accordance with the specifications converts the offer into a binding contract, even though a formal bidder's contract has not been executed. It cannot be denied, therefore, that AEDC, as an original proponent, has legal rights under the BOT Law, as well as its IRR.

2. **ID.; ID.; ID.; AEDC HAS A PROTECTED PROPERTY INTEREST IN THE NAIA IPT III PROJECT; RELEVANT AMERICAN JURISPRUDENCE, CITED. —** Further, in a Decision rendered by the United States District Court, a disappointed bidder has a constitutionally protected property interest if applicable state law acknowledges such. It further states that to establish a property interest, the plaintiff must have a legitimate claim of entitlement as determined by reference to state law. Property interests do not only emanate from the Constitution, but also from state or federal statutory schemes, which create legitimate claims of entitlement to the benefits which they confer. Moreover, a majority of the courts in the United States follows the rule that such protected property interest is entitled to the non-arbitrary exercise by the city of its discretion in making the award and that a deprivation of the protected property interest without due process is an actionable wrong. In the present case, the BOT Law and its IRR acknowledge the rights of the original proponent in an unsolicited proposal. Thus, it rightfully follows that AEDC, as the original proponent, has a protected property interest in the NAIA IPT III proposal as the law creates this protected property interest in the BOT Law.

3. **ID.; ID.; ID.; DISQUALIFICATION OF PIATCO MAKES AEDC THE SOLE BIDDER.—** As this Court ruled in *Agan*, the "Swiss

Challenge" conducted by DOTC failed to produce a better offer from a qualified challenger because PIATCO was found to be ineligible and disqualified by this Court and the award to PIATCO and all agreements it entered into with DOTC and MIAA were declared null and void. Thus, since there was no qualified bidder during the "Swiss Challenge," it follows, therefore, that no other proposals could have been considered by respondents and the original proponent remain unchallenged. In other words, since there was no qualified challenger to AEDC's unsolicited proposal, the obligation to match the better offer never arose. PIATCO's disqualification had the effect of making AEDC as the sole and unchallenged bidder for the NAIA IPT III project. As a result, AEDC should be awarded NAIA IPT III Project.

4. **ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION; FAILURE TO AWARD THE NAIA IPT III PROJECT TO AEDC WOULD RESULT IN A DENIAL OF EQUAL PROTECTION. —** [I]t could also be argued that failure to award the project to AEDC would result in a denial of equal protection. In *L&H Sanitation, Inc. v. Lake City Sanitation, Inc.*, the United States District Court stated that there is a denial of equal protection as to the unsuccessful bidder when there is: (1) a regulated bidding procedure, (2) material compliance with the procedure by the unsuccessful bidder, and (3) material and significant noncompliance with the procedure by the successful bidder. In the present instance, PIATCO failed to comply with the requirements set by DOTC and yet, was still awarded the project. This results in a denial of equal protection to AEDC, who complied with all the requirements. As a matter of fact, the appropriate government bodies already approved AEDC's unsolicited proposal. Further, the execution of the DOTC-AEDC Memorandum clearly shows that AEDC already submitted all requirements. Evidently, AEDC, as the unchallenged and recognized original proponent, has the right to be awarded the NAIA IPT III Project. This Court should not refuse its duty to uphold the intent and meaning of the BOT Law when it seeks to protect the original proponent in situations such as these.

5. **ID.; ID.; THE POLICY OF THE GOVERNMENT TO PROMOTE PRIVATE BUSINESS SHOULD BE UPHELD. —** It has been the long-standing policy of the government to promote investments in private businesses and veer away from

engaging in business that would otherwise be best served by private interests. Indeed, this policy is declared in the Constitution x x x provides incentives to needed investments." This policy of the State has been consistently put into operation in several legislations, such as in Republic Act No. 9168. Also, in Section 1 of Proclamation No. 50, x x x. It should be noted, however, that while Proclamation No. 50 mandates that non-performing assets should be promptly sold, it does not prohibit the disposal of other kinds of assets, whether performing, necessary or appropriate. Without a doubt, the State's policy of establishing the privatization program is to promote private businesses and not to engage in business itself. More significantly, in the BOT Law, Section 1 provides: It is the declared **policy of the State to recognize the indispensable role of the private sector as the main engine for national growth and development** and provide the most appropriate incentives to mobilize private resources for the purpose of financing the construction, operation and maintenance of infrastructure and development projects normally financed and undertaken by the Government. Such incentives, aside from financial incentives as provided by law, shall include providing a climate of minimum government regulations and procedures and specific government undertakings in support of the private sector. Clearly, the Government's consistent policy on the promotion of the private sector cannot be denied. Thus, while the judiciary does not want to intrude in the actions of the executive department, it must be stressed that the law supports privatization and this should be upheld. The Government should not be engaged in business.

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RESOLUTION

CHICO-NAZARIO, *J*.:

In the Decision[1] dated 18 April 2008, We dismissed the Petitions in G.R. No. 169914 and G.R. No. 174166 of Asia's Emerging Dragon Corporation (AEDC) and Salacnib F. Baterina (Baterina), respectively. The *fallo* of the Decision reads:

WHEREFORE, in view of the foregoing:

a. The Petition in G.R. No. 169914 is hereby DISMISSED for lack of merit; and

b. The Petition in G.R. No. 174166 is hereby likewise DISMISSED for being moot and academic.

No costs.

Presently before us are the separate Motions for Reconsideration of the aforementioned Decision filed by AEDC and Baterina.

The Motion for Reconsideration of AEDC (G.R. No. 169914)

AEDC invokes the following grounds for its Motion for Reconsideration:

I.

AEDC, BEING THE ORIGINAL PROPONENT OF THE [NINOY AQUINO INTERNATIONAL AIRPORT-INTERNATIONAL PASSENGER TERMINAL III (NAIA IPT III)] PROJECT, THOUGH NOT ENTITLED TO ANY UNDUE PREFERENCE, HAS VESTED RIGHTS, BOTH LEGAL (UNDER THE BOT LAW) AND CONTRACTUAL, WHICH MUST BE RESPECTED AND/OR RECOGNIZED.

A) THE DECISION MISTAKENLY CHARACTERIZED THE PROCESS OF UNSOLICITED PROPOSALS UNDER SECTION 4-A OF THE BOT LAW AS A BIDDING. AEDC, AS THE ORIGINAL PROPONENT, HAS RIGHTS

[1] *Rollo*, G.R. No. 169914, Vol. II, pp. 302-429; *rollo*, G.R. No. 174166, Vol. IV, pp. 196-322.

UNDER THE BOT LAW, WHICH MUST BE RESPECTED AND RECOGNIZED.

B) THE DECISION MISTAKENLY CONCLUDES THAT EVEN IF THE CHALLENGE WAS SUBSEQUENTLY DECLARED VOID, THE ORIGINAL PROPONENT IS LEFT WITHOUT ANY RIGHTS OR REMEDY SIMPLY BECAUSE THE DISQUALIFIED CHALLENGER HAS ALREADY PROCEEDED TO IMPLEMENT THE PROJECT.

II.

GIVEN THE DECLARATION OF THIS HONORABLE COURT THAT THE [PHILIPPINE INTERNATIONAL AIR TERMINALS CO., INC. (PIATCO)] CONTRACTS ARE VOID *AB INITIO*, AT THE VERY LEAST, THE [NAIA IPT III] PROJECT SHOULD BE COVERED ANEW BY SECTION 10.11, RULE 10 OF THE [IMPLEMENTING RULES AND REGULATIONS (IRR)] OF THE BOT LAW, WHEREIN INVITATIONS FOR COMPARATIVE PROPOSALS SHALL AGAIN BE MADE AND THE RIGHT OF AEDC AS THE ORIGINAL PROPONENT TO MATCH THE BEST OFFER SHOULD BE REINSTATED.

III.

WITH THE NULLIFICATION OF THE PIATCO CONTRACTS, GOVERNMENT SHOULD NOT HAVE INITIATED EXPROPRIATION PROCEEDINGS AGAINST THE [NAIA IPT III] FACILITIES. BUT HAVING DONE SO, THE GOVERNMENT MAY PROCEED WITH THE EXPROPRIATION AND THEN USE THE FAIR AND JUST VALUATION, AS MAY BE DETERMINED IN THE EXPROPRIATION PROCEEDINGS, AS THE FLOOR PRICE FOR THE NEW INVITATION FOR COMPARATIVE PROPOSALS FOR THE [NAIA IPT III] PROJECT.

IV.

IN THE EVENT OF A NEW INVITATION FOR COMPARATIVE PROPOSALS, LAW AND EQUITY DICTATES THAT GOVERNMENT SHOULD RECOGNIZE AND/OR REINSTATE AEDC'S RIGHT TO MATCH THE LOWEST PRICE OFFER/PROPOSAL FOR THE [NAIA IPT III] PROJECT WITHIN THE PERIOD ALLOWED UNDER THE BOT LAW.

V.

THERE IS NO FACTUAL BASIS TO CONCLUDE THAT AEDC WAS NOT FINANCIALLY QUALIFIED TO UNDERTAKE THE [NAIA IPT III] PROJECT BECAUSE THIS MATTER WAS NOT PUT IN ISSUE BY THE PARTIES. A DECLARATION THAT AEDC WAS NOT QUALIFIED WILL JEOPARDIZE THE REPUBLIC'S POSITION IN THE INTERNATIONAL ARBITRATION CASES BECAUSE THE GOVERNMENT WILL BE VIEWED AS HAVING LET PIATCO TO BELIEVE THAT PIATCO'S CONTRACTING PROCESS WAS LEGAL AND THAT PIATCO COMMITTED NO VIOLATION. CONSEQUENTLY, PIATCO MAY BE ENTITLED NOT ONLY TO COMPENSATION BUT ALSO TO DAMAGES.

VI.

[NAIA IPT III] WAS BUILT BY PIATCO WITH SIGNIFICANT DEVIATION FROM THE BID DOCUMENTS AND DRAFT CONCESSION AGREEMENT. AEDC'S TAKING OVER OF [NAIA IPT III] WILL NOT RESULT IN AN AMENDMENT OF ITS PROPOSAL. INSTEAD AEDC WILL IMPLEMENT OR ENFORCE THE DRAFT CONCESSION AGREEMENT AND THE TECHNICAL SPECIFICATIONS APPROVED BY THE NEDA, ICC AND OTHER GOVERNMENT AGENCIES, THE MEMORANDUM OF UNDERSTANDING AND TERMS OF REFERENCE OR BID DOCUMENTS.

VII.

THIS HONORABLE COURT SHOULD NOT HAVE PASSED UPON EITHER THE AUTHENTICITY OR IMPORT OF THE MEMORANDUM OF UNDERSTANDING ("MOU") BECAUSE IT WAS NOT A LITIGATED ISSUE. GOVERNMENT NEVER DISPUTED THE CAPACITY OF THE MOU TO CREATE RIGHTS AND OBLIGATIONS. TO CONCLUDE THAT THE MOU WAS VOID IS TO NECESSARILY ALSO CONCLUDE THAT THERE WAS NO CONTRACT TO OPEN UP TO CHALLENGE, AND THAT PIATCO WAS WRONGFULLY LED TO MOUNT A CHALLENGE THAT COULD NOT POSSIBLY BE VALID. BASED ON THIS PREMISE, GOVERNMENT IS ENTIRELY TO BLAME FOR THE [NAIA IPT III] DISASTER AND WILL ENTITLE PIATCO TO DAMAGES.

VIII.

AEDC RELIED ON AND ACTED DETRIMENTALLY IN RELYING ON THE MOU. IT IS A DANGEROUS JUDICIAL POLICY TO

PERMIT GOVERNMENT TO UNILATERALLY BREACH CONTRACTUAL OBLIGATIONS WITHOUT CONSEQUENCE, ESPECIALLY WHEN THE OTHER PARTY IS NOT IN BREACH.

IX.

THE PETITION IS NOT BARRED BY THE DISMISSAL OF THE PASIG CASE. WHETHER THE DISMISSAL CONSTITUTES *RES JUDICATA* OR PRECLUDES AEDC'S CLAIM IS NOT AMONG THE ISSUES RAISED AND LITIGATED BY THE PARTIES IN THIS CASE. HENCE, THE STATEMENT THAT THE INSTANT PETITION IS NOT BARRED BY *RES JUDICATA* SHOULD NOT HAVE BEEN MADE. TO UPHOLD THE DISMISSAL OF THE PASIG CASE AS A VALID JUDGMENT WOULD BE TO PUT GOVERNMENT'S ARBITRATION CASES IN PERIL BECAUSE IT WOULD AFFIRM THAT GOVERNMENT, INCLUDING THE SOLICITOR GENERAL, AND NOT JUST MIAA OR DOTC, UPHELD THE VALIDITY OF THE PIATCO CONTRACTS, SUCH WOULD PLACE GOVERNMENT IN ESTOPPEL TO DENY CLAIMS FOR DAMAGES, IN ADDITION TO COMPENSATION, BY PIATCO.

X.

THE FUNDAMENTAL PREMISE FOR THE COMPROMISE AGREEEMENT (*I.E.* THE AMICABLE SETTLEMENT OF AEDC'S AND PUBLIC RESPONDENTS' CLAIMS) HAS CEASED TO EXIST IN VIEW OF PUBLIC RESPONDENTS' ADOPTION OF AEDC'S LEGAL POSITION THAT THE AWARD OF THE [NAIA IPT III] PROJECT TO PIATCO WAS ILLEGAL. THEREFORE, BOTH AEDC AND PUBLIC RESPONDENTS SHOULD BE RELEASED FROM THEIR MUTUAL OBLIGATIONS UNDER THE COMPROMISE AGREEMENT.

XI.

THE PETITION FOR *MANDAMUS* WAS TIMELY FILED WITHIN THE PERIOD PROVIDED UNDER THE RULES OF COURT.[2]

At the end of its Motion, AEDC prays to this Court to reconsider the latter's Decision of 18 April 2008, insofar as the former's Petition in G.R. No. 169914 is concerned, and render, in its stead, judgment —

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[2] *Rollo*, G.R. No. 169914, Vol. II, pp. 512-515.

1. Directing Public Respondents, their officers, agents, successors, representatives or persons or entities acting on their behalf to recognize AEDC's rights as an Original Proponent of an unsolicited project as set forth above;

2. Directing Public Respondents to issue the appropriate Notice of Award of the Project to AEDC, sign the draft concession agreement with AEDC and implement the same;

3. Directing Public Respondents, their officers, agents, successors, representatives or persons or entities acting on their behalf to recognize AEDC's right to conduct an invasive inspection and valuation of the structures currently built as [NAIA IPT III] for an effective valuation and determination of the work to be conducted thereon; and

4. Permanently enjoining Public Respondents, their officers, agents, successors, representatives or persons or entities acting on their behalf, from negotiating, re-bidding, awarding or otherwise entering into any concession contract with PIATCO and other third parties, except as otherwise stated above, within the context of permitting AEDC to complete the construction and operation of the [NAIA IPT III] Project.

5. In the alternative, directing Public Respondents to effect a new invitation for comparative proposals for the [NAIA IPT III] Project in accordance with Rule 10 of the IRR of the BOT Law, as soon as practicable and in the process recognize and/or reinstate the right of AEDC to match the best offer.

Other reliefs, just and equitable in the premises, are likewise prayed for.[3]

AEDC persistently asserts its right to be awarded the NAIA IPT III Project as the original proponent thereof, following the declaration of nullity of the award of the said project to PIATCO in *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*[4] Extensive as its Motion for Reconsideration may seem, it is mostly a reiteration of the arguments AEDC already raised in

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[3] *Id.* at 579-580.

[4] Decision, 450 Phil. 744 (2003); the Resolution on the Motion for Reconsideration, 465 Phil. 545 (2004).

its Petition for *Mandamus* and Prohibition (with Application for Temporary Restraining Order), considered by this Court when it rendered its Decision dated 18 April 2008 dismissing said Petition.

We are not persuaded, whether by the previous Petition or the present Motion, to grant AEDC the writs of *mandamus* and prohibition it prays for in the absence of a clear right to the same. The declaration of nullity of the award of the NAIA IPT III Project to PIATCO in *Agan* does not automatically entitle AEDC to the award of the said project on the mere basis that it was the original proponent thereof.

The rights of the original proponent of an unsolicited proposal are rooted in Section 4-A of Republic Act No. 6957,[5] more commonly known as the Build-Operate-Transfer (BOT) Law, as amended by Republic Act No. 7718, which reads:

> SEC. 4-A. *Unsolicited proposals.* — Unsolicited proposals for projects may be accepted by any government agency or local government unit on a negotiated basis: Provided, That, all the following conditions are met: (1) such projects involve a new concept or technology and/or are not part of the list of priority projects, (2) no direct government guarantee, subsidy or equity is required, and (3) the government agency or local government unit has invited by publication, for three (3) consecutive weeks, in a newspaper of general circulation, comparative or competitive proposals and no other proposal is received for a period of sixty (60) working days: Provided, further, That in the event another proponent submits a lower price proposal, the original proponent shall have the right to match the price within thirty (30) working days.

In his dissent to this Resolution, Mr. Justice Renato C. Corona submits that the original proponent of an unsolicited proposal for a BOT project, under Section 4-A of Republic Act No. 6957, as amended, is entitled to the award of the project in at least three circumstances: (1) no competitive bid was submitted; (2) there was a lower bid by a qualified bidder but the original

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[5] An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for other Purposes.

proponent matched it; and (3) there was a lower bid but it was made by a person/entity not qualified to bid, in which case, it is as if no competitive bid had been made. Both Justice Corona and Mr. Justice Presbiterio J. Velasco, Jr., in their dissenting opinions, conclude that AEDC is entitled to the award of the NAIA IPT III project as the original proponent thereof because the third circumstance is extant in this case.

We can only accept in part the afore-mentioned enumeration of the circumstances when an original proponent is entitled to the award of the project under Section 4-A of Republic Act No. 6957, as amended. In the 18 April 2008 Decision, we have already exhaustively scrutinized Section 4-A of the BOT Law, as amended, in relation to its IRR,[6] and in consideration of the intent of the legislators who crafted the BOT Law. We find no reason to disturb our conclusion therein that:

> The special rights or privileges of an original proponent thus come into play only when there are other proposals submitted during the public bidding of the infrastructure project. As can be gleaned from the plain language of the statutes and the IRR, the original proponent has: (1) the right to match the lowest or most advantageous proposal within 30 working days from notice thereof, and (2) in the event that the original proponent is able to match the lowest or most advantageous proposal submitted, then it has the right to be awarded the project. The second right or privilege is contingent upon the actual exercise by the original proponent of the first right or privilege. Before the project could be awarded to the original proponent, he must have been able to match the lowest or most advantageous proposal within the prescribed period. Hence, when the original proponent is able to timely match the lowest or most advantageous proposal, with all things being equal, it shall enjoy preference in the awarding of the infrastructure project.[7]

It is without question that in a situation where there is **no other competitive bid** submitted for the BOT project that the project would be awarded to the original proponent thereof. However, **when there are competitive bids submitted,** the

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[6] The entire Rule 10 on Unsolicited Proposals.

[7] *Rollo*, G.R. No. 169914, Vol. II, pp. 24-25.

original proponent must be able to match the most advantageous or lowest bid; only when it is able to do so, will the original proponent enjoy the preferential right to the award of the project over the other bidder. These are the general circumstances covered by Section 4-A of Republic Act No. 6957, as amended.

We cannot accede to include in such enumeration the situation in this case and categorically declare that the right of AEDC to the NAIA IPT III Project is ensured and protected by Section 4-A of Republic Act No. 6957, as amended. What had happened in the proposal, bidding, and awarding process of the NAIA IPT III Project is indisputably unique and convoluted. We cannot subscribe to disposing of the controversy as regards the NAIA IPT III Project with a generalized rule, *i.e.,* there was a lower bid but it was made by a person/entity not qualified to bid, in which case, it is as if no competitive bid had been made. As we said in the Decision of 18 April 2008, it would be a simplistic approach to what is a complex problem.

In the instant case, AEDC may be the original proponent of the NAIA IPT III Project; however, the Pre-Qualification Bids and Awards Committee (PBAC) also found the People's Air Cargo & Warehousing Co., Inc. Consortium (Paircargo), the predecessor of PIATCO, to be a qualified bidder for the project. Upon consideration of the bid of Paircargo/PIATCO, PBAC found the same to be far more advantageous than the original offer of AEDC. It is already an established fact in *Agan* that AEDC failed to match the more advantageous proposal submitted by PIATCO by the time the 30-day working period expired on 28 November 1996;[8] and since it did not exercise its right to match the most advantageous proposal within the prescribed period, it cannot assert its right to be awarded the project.

Also, in *Agan*, the Court disqualified PIATCO from the NAIA IPT III Project for failure to put up the required minimum equity of ₱2.7 million. The feasibility, however, of the financial proposal of Paircargo/PIATCO was never put in issue. The

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[8] Decision, *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*, *supra* note 4 at 794.

proposals of AEDC and Paircargo/PIATCO contained the following terms:

> Both proponents offered to build the NAIA Passenger Terminal III for at least $350 million at no cost to the government and to pay the government: 5% share in gross revenues for the first five years of operation, 7.5% share in gross revenues for the next ten years of operation, and 10% share in gross revenues for the last ten years of operation, in accordance with the Bid Documents. However, in addition to the foregoing, AEDC offered to pay the government a total of **₱135 million** as guaranteed payment for 27 years while Paircargo Consortium offered to pay the government a total of **₱17.75 billion** for the same period. x x x.[9] (Emphasis ours.)

Clearly, the ₱17.75 billion guaranteed payment of PIATCO is more advantageous to the government. There is not a single allegation that such proposal is impossible to implement. It is true that AEDC instituted before the Regional Trial Court (RTC) of Pasig City Civil Case No. 66213, complaining that it was not given access to certain documents by which it could have evaluated the financial proposal of PIATCO and its ability to match the same. Thus, AEDC sought, among other things, the nullification of the proceedings before the PBAC and the declaration of the absence of any other competitive bid by a qualified bidder. Nevertheless, AEDC would also later jointly move (with therein public respondents[10]) for the dismissal of Civil Case No. 66213 pursuant to a Concession Agreement it executed on 12 July 1997 with the Department of Transportation and Communications (DOTC). The Pasig City RTC granted the joint motion of the parties and accordingly dismissed with prejudice Civil Case No. 66213 in an Order dated 30 April 1999. Therefore, AEDC not only failed to match the more advantageous proposal of PIATCO, but it also agreed to no longer pursue its objections thereto.

In the meantime, PIATCO already began building the NAIA IPT III facilities. By the time this Court promulgated its Decision

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[9] *Id.*

[10] The Secretary of the Department of Transportation and Communications (DOTC) and the Chairman and Members of the Prequalification Bids and Awards Committee for the NAIA IPT III Project.

in *Agan*, disqualifying PIATCO as a bidder and annulling the award of the NAIA IPT III Project to it, the NAIA IPT III facilities were substantially complete. The Court, in its Resolution in *Agan*, recognized the right of PIATCO to just compensation for the NAIA IPT III facilities, in accordance with law and equity. The Government, thereafter, instituted an expropriation case for the determination of the just compensation to be paid to PIATCO. In *Republic v. Gingoyon*,[11] the Court affirmed the application of Republic Act No. 8974[12] to the expropriation case and the right of the Government to take possession of the NAIA IPT III facilities upon the payment to PIATCO of the proffered value of the same.

On 11 September 2006, the Manila International Airport Authority (MIAA) tendered a Land Bank check in the amount of ₱3,002,125,000.00 representing the proffered value of NAIA IPT III, which was received by a duly authorized representative of PIATCO. As a result, the MIAA and other concerned government agencies were able to take possession of the NAIA IPT III facilities and prepare them for operation. The NAIA IPT III opened for domestic air travel on 22 July 2008.[13] The first international flight took off from NAIA IPT III on 1 August 2008.[14]

These developments, as well as the implications and consequences thereof, cannot be conveniently ignored. The factual backdrop has significantly changed from the time of the bidding of the NAIA IPT III Project, which prevents us from concluding that, with the disqualification of PIATCO, AEDC shall automatically acquire NAIA IPT III Project as the original proponent thereof. The bidding and awarding process for the

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[11] Decision, G.R. No. 166429, 19 December 2005, 478 SCRA 474.

[12] An Act to Facilitate the Acquisition of Right-of-Way, Site or Location for National Government Infrastructure Projects and For Other Purposes.

[13] http://newsinfo.inquirer.net/breakingnews/metro/view/20080722-149917/UPDATE-3-Planes-start-flying-out-of-NAIA-3-for-1st-time; http://newsinfo.inquirer.net/inquirerheadlines/nation/ view/ 20080723-150120/After-6-years-NAIA-3-finally-opens.

[14] http://www.bworldonline.com/BW080208/content.php?id=005

NAIA IPT III Project had long been closed. The Court could not just conveniently revert to the stage of bidding and awarding of the said project and ignore all the factual and legal developments that had already taken place.

There is no point in subjecting the NAIA IPT III Project to another bidding and awarding process when it is substantially finished and, contrary to the averments of AEDC, already operational. Worth stressing is that the NAIA IPT III Project is a **build-operate-transfer** project. When the NAIA IPT III facilities have already been **built**, their possession **transferred** to the government, and are now being **operated** by the latter, nothing much remains of the project. The ultimate goal of a BOT project is for the government to eventually gain possession, ownership, and control of the infrastructure subject thereof from the private sector that undertook its building and financing, after allowing the latter to recoup its investments and reap reasonable profit. In this case, the government has already attained possession and control of the NAIA IPT III facilities. It would also acquire ownership of said facilities once the just and equitable compensation due PIATCO as builder[15] has been determined and paid in the ongoing expropriation proceedings, docketed as Case No. 04-0876CFM, before the Pasay City RTC. To return the NAIA IPT III facilities to the private sector would only be a step backwards.

The lack of technical skill and competence of the Government to operate NAIA IPT III cannot justify turning over the same to AEDC. There are several other ways for the Government to cope, *i.e.,* recruiting more qualified people, without it having to relinquish ownership, possession, and control of NAIA IPT III.

The protestation by AEDC of our characterization of the process on unsolicited proposal as public bidding is specious.

We call attention to the following relevant sections of Rule 10 of the IRR specifically on Unsolicited Proposals:

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[15] As mandated in the Resolution on the Motion for Reconsideration, *Agan, Jr. v. Philippine International Air Terminals Co., Inc., supra* note 4 at 603.

Sec. 10.9. Negotiation With the Original Proponent. — Immediately after ICC/Local Sanggunian's clearance of the project, the Agency/LGU shall proceed with the in-depth negotiation of the project scope, implementation arrangements and concession agreement, **all of which will be used in the Terms of Reference for the solicitation of comparative proposals.** The Agency/LGU and the proponent are given ninety (90) days upon receipt of ICC's approval of the project to conclude negotiations. The Agency/LGU and the original proponent shall negotiate in good faith. However, should there be unresolvable differences during the negotiations, the Agency/LGU shall have the option to reject the proposal and bid out the project. On the other hand, if the negotiation is successfully concluded, **the original proponent shall then be required to reformat and resubmit its proposal in accordance with the requirements of the Terms of Reference to facilitate comparison with the comparative proposals.** The Agency/LGU shall validate the reformatted proposal if it meets the requirements of the TOR prior to the issuance of the invitation for comparative proposals.

Sec. 10.10. Tender Documents. — **The qualification and tender documents shall be prepared along the lines specified under Rules 4 and 5 hereof.** The concession agreement that will be part of the tender documents will be considered final and non-negotiable by the challengers. Proprietary information shall, however, be respected, protected and treated with utmost confidentiality. As such, it shall not form part of the bidding/tender and related documents.

Sec. 10.11. Invitation for Comparative Proposals. — The Agency/LGU shall **publish the invitation for comparative or competitive proposals** only after ICC/Local Sanggunian issues a no objection clearance of the draft contract. The invitation for comparative or competitive proposals should be published at least once every week for three (3) weeks in at least one (1) newspaper of general circulation. It shall indicate the time, which should not be earlier than the last date of publication, and place where **tender/bidding documents** could be obtained. It shall likewise explicitly specify a time of sixty (60) working days reckoned from the date of issuance of the **tender/bidding documents** upon which proposals shall be received. Beyond said deadline, no proposals shall be accepted. A **pre-bid conference** shall be conducted ten (10) working days after the issuance of the tender/bidding documents.

Sec. 10.12. Posting of Bid Bond by Original Proponent. — The original proponent shall be required at the date of the first date of the publication of the invitation for comparative proposals to **submit a bid bond equal to the amount and in the form required of the challengers**.

Sec. 10.13. Simultaneous Qualification of the Original Proponent. — **The Agency/LGU shall qualify the original proponent based on the provisions of Rule 5 hereof**, within thirty (30) days from start of negotiation. For consistency, the **evaluation criteria used for qualifying the original proponent should be the same criteria used in the Terms of Reference for the challengers.**

Sec. 10.14. Submission of Proposal. — The bidders are required to submit the proposal in three envelopes at the time and place specified in the Tender Documents. **The first envelope shall contain the qualification documents, the second envelope the technical proposal as required under Sec. 7.1.(b), and the third envelope as required under Sec. 7.1.(c).**

Sec. 10.15. Evaluation of Proposals. — In terms of procedure, the evaluation will be in three stages: Stage 1 is the evaluation of qualification documents; Stage 2, the technical proposal; and Stage 3, the financial proposal. Only those bids which passed the first stage will be considered for the second stage and similarly, only those which passed the second stage will be considered for the third stage evaluation. The Agency/LGU will return to the disqualified bidders the remaining envelopes unopened together with a letter explaining why they were disqualified. **The criteria for evaluation will follow Rule 5 for the qualification of bidders and Rule 8 for the technical and financial proposals. The time frames under Rules 5 and 8 shall likewise be followed.**

Sec. 10.16. Disclosure of the Price Proposal. — The disclosure of the price proposal of the original proponent in the Tender Documents will be left to the discretion of the Agency/LGU. However, if it was not disclosed in the Tender Documents, the original proponent's price proposal should be revealed upon the opening of the financial proposals of the challengers. **The right of the original proponent to match the best proposal within thirty (30) working days starts upon official notification by the Agency/LGU of the most advantageous financial proposal**. (Emphasis ours.)

After the concerned government agency or local government unit (LGU) has received, evaluated, and approved the pursuance of the project subject of the unsolicited proposal, the subsequent steps are fundamentally similar to the bidding process conducted for ordinary government projects.

The three principles of public bidding are: the offer to the public, an opportunity for competition, and a basis for an exact comparison of bids,[16] all of which are present in Sec. 10.9 to Sec. 10.16 of the IRR. *First*, the project is offered to the public through the publication of the invitation for comparative proposals. *Second*, the challengers are given the opportunity to compete for the project through the submission of their tender/bid documents. *And third*, the exact comparison of the bids is ensured by using the same requirements/qualifications/criteria for the original proponent and the challengers, to wit: the proposals of the original proponent[17] and the challengers must all be in accordance with the requirements of the Terms of Reference (TOR) for the project; the original proponent and the challengers are required to post bid bonds equal in amount and form;[18] and the qualifications of the original proponent and the challengers shall be evaluated by the concerned agency/LGU using the same evaluation criteria.[19]

A perusal of Sec. 10.9 to Sec. 10.16 of the IRR further reveals repeated mention of "comparative proposals" and "tender/bid documents"; as well as reference to and required compliance with the same rules followed in ordinary bidding of government projects, such as Rule 4 (Bid/Tender Documents); Rule 5 (Qualification of Bidders); and Sec. 7.1(b) and Sec. 7.1(c) of Rule 7 (Submission, Receipt and Opening of Bids) of the same IRR.

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[16] *Malaga v. Penachos, Jr.*, G.R. No. 86695, 3 September 1992, 213 SCRA 516, 526.

[17] Section 10.9 of the IRR obliges the original proponent to reformat and resubmit its proposal in accordance with the Terms of Reference (TOR) of the project.

[18] Section 10.12 of the IRR.

[19] Section 10.13 of the IRR.

Hence, the process of unsolicited proposals does involve public bidding where, in the end, the government is free to choose the bid or proposal most advantageous to it. However, by adoption of the Swiss Challenge, special consideration is given in said process to the original proponent of the project, namely, the right to be awarded the project should it be able to match the lowest or most advantageous proposal within 30 working days from notice.

There is no truth to the averment of AEDC that by our Decision of 18 April 2008, we are allowing PIATCO to benefit from its own fraud and wrongdoing. Our refusal to award the NAIA IPT III Project to AEDC does not in any way benefit PIATCO. PIATCO cannot benefit from the NAIA IPT III Project when its Concession Agreements involving the same were set aside for being null and void, rendering it unable to derive profit therefrom. It is only entitled to just and equitable compensation for building the NAIA IPT III facilities, "for the government cannot unjustly enrich itself at the expense of PIATCO and investors."[20]

AEDC takes exception to the doubts raised by this Court on the authenticity of the Memorandum of Understanding (MOU) dated 26 February 1996 it executed with the DOTC.

To recall, our Decision of 18 April 2008 states:

> It is important to note, however, that the document attached as Annex "E" to the Petition of AEDC is a "certified photocopy of records on file." This Court cannot give much weight to said document considering that its existence and due execution have not been established. It is not notarized, so it does not enjoy the presumption of regularity of a public document. It is not even witnessed by anyone. It is not certified true by its supposed signatories, Secretary Jesus B. Garcia, Jr. for DOTC and Chairman Henry Sy, Sr. for AEDC, or by any government agency having its custody. It is certified as a photocopy of records on file by an Atty. Cecilia L. Pesayco, the Corporate Secretary, of an unidentified corporation.[21]

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[20] *Supra* note 15.

[21] *Rollo*, G.R. No. 169914, Vol. II, p. 332.

AEDC itself invoked the provisions of the MOU and attached a copy thereof as one of the Annexes to its Petition in G.R. No. 169914. By submitting a copy of the MOU, AEDC subjects the said document to the scrutiny of the Court, which is duty-bound to examine and weigh the same in accordance with the rules. We are not obligated to receive a copy of the MOU just as AEDC offered it; and accept hook, line, and sinker, the references made by AEDC to the contents thereof without ascertaining that it was actually the very same document executed by the parties. Nowhere in our 18 April 2008 Decision did we expressly declare that there was no MOU between AEDC and the government. What we called attention to therein was the fact that the document attached to the Petition of AEDC was highly suspect, not being a clear copy and not being properly certified as a true copy of the MOU, for which reasons, it could not be given much weight and credence in establishing the exact contents of the MOU in question.

Furthermore, it would do well for AEDC to remember that we did proceed, for the sake of argument, to rule on the contents of the MOU as follows:

> Even assuming for the sake of argument, that the said Memorandum of [Understanding], is in existence and duly executed, it does little to support the claim of AEDC to the award of the NAIA IPT III Project. The commitments undertaken by the DOTC and AEDC in the Memorandum of [Understanding] may be simply summarized as a commitment to comply with the procedure and requirements provided in Rules 10 and 11 of the IRR. It bears no commitment on the part of the DOTC to award the NAIA IPT III Project to AEDC. On the contrary, the document includes express stipulations that negate any such government obligation. Thus, in the first clause, the DOTC affirmed its commitment to pursue, implement and complete the NAIA IPT III Project on or before 1998, noticeably without mentioning that such commitment was to pursue the project specifically with AEDC. Likewise, in the second clause, it was emphasized that the DOTC shall pursue the project under Rules 10 and 11 of the IRR of Republic Act No. 6957, as amended by Republic Act No. 7718. And most significantly, the tenth clause of the same document provided:

10. Nothing in this Memorandum of Understanding shall be understood, interpreted or construed as permitting, allowing or authorizing the circumvention of, or non-compliance with, or as waiving, the provisions of, and requirements and procedures under, existing laws, rules and regulations.[22]

Hence, even after a consideration of the contents of the MOU, we do not find therein an absolute undertaking on the part of the government, represented by the DOTC, to award the NAIA IPT III Project to AEDC.

There is likewise no sufficient reason for us to reverse the pronouncements in our Decision dated 18 April 2008 that the Petition of AEDC in G.R. No. 169914 suffered from procedural defects: having been filed beyond reasonable time and being barred by *res judicata*.

We have already adequately explained in our 18 April 2008 Decision our finding that the Petition of AEDC was filed beyond reasonable time, to wit:

AEDC revived its hope to acquire the NAIA IPT III Project when this Court promulgated its Decision in *Agan* on 5 May 2003. The said Decision became final and executory on 17 February 2004 upon the denial by this Court of the Motion for Leave to File Second Motion for Reconsideration submitted by PIATCO. It is this Decision that declared the award of the NAIA IPT III Project to PIATCO as null and void; without the same, then the award of the NAIA IPT III Project to PIATCO would still subsist and other persons would remain precluded from acquiring rights thereto, including AEDC. Irrefutably, the present claim of AEDC is rooted in the Decision of this Court in *Agan*. However, AEDC filed the Petition at bar only 20 months after the promulgation of the Decision in *Agan* on 5 May 2003.[23]

AEDC is merely reiterating in its Motion for Reconsideration the same disputation it previously made in its Petition — that the period for filing of said Petition should only be counted from 21 September 2005, the date when it received the letter

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[22] *Id.* at 332-333.

[23] *Id.* at 337.

of the Solicitor General denying its offer to take over the NAIA IPT III Project — and which we had already considered and rejected in our Decision dated 18 April 2008 for the following reasons:

> AEDC contends that the "reasonable time" within which it should have filed its petition should be reckoned only from 21 September 2005, the date when AEDC received the letter from the Office of the Solicitor General refusing to recognize the rights of AEDC to provide the available funds for the completion of the NAIA IPT III Project and to reimburse the costs of the structures already built by PIATCO. It has been unmistakable that even long before said letter — especially when the Government instituted with the RTC of Pasay City expropriation proceedings for the NAIA IPT III on 21 December 2004 — that the Government would not recognize any right that AEDC purportedly had over the NAIA IPT III Project and that the Government is intent on taking over and operating the NAIA IPT III itself.[24]

Without any new argument on this issue, we are not persuaded to change our afore-quoted ruling.

On the issue of *res judicata*, AEDC argues that we erred in taking cognizance thereof even when the issue was not raised by the parties. We disagree.

Even if the public respondents in G.R. No. 169914 failed to plead *res judicata* in their Comment and is deemed to have waived the said defense, we may still *motu proprio* dismiss the Petition by reason thereof if it appears in the pleadings or the evidence on record that the said Petition is barred by prior judgment.

Section 1, Rule 10 of the Revised Rules of Court provides:

> SECTION 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. **However, when it appears from the pleadings or the evidence on record that** the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that **the action is**

[24] *Id.* at 338.

barred by a prior judgment or by statute of limitations, the court shall dismiss the claim. (Emphasis ours.)

Although the foregoing provision appears under the rules on proceedings before the trial court, the power to dismiss provided therein is among the residual prerogatives which the Court of Appeals[25] and even this Court may exercise by virtue of Section 2, Rule 1 of the Revised Rules of Court.[26]

The Petition[27] of AEDC itself brought to our attention the institution of, the developments in, as well as the eventual dismissal with prejudice of Civil Case No. 66213 by the Pasig City RTC. We had to take cognizance thereof, and after careful consideration, found that the dismissal with prejudice of Civil Case No. 66213 by the Pasig City RTC effectively bars the instant Petition of AEDC.

AEDC had waived its right to challenge the award of the NAIA IPT III Project to PIATCO when it amicably settled Civil Case No. 66213 before the Pasig City RTC, resulting in the dismissal with prejudice of said case. We should not allow the revival by AEDC of its right to the NAIA IPT III Project as the original proponent thereof, after some other party secured the annulment of the award to PIATCO, not only because it is barred by *res judicata,* but also because it constitutes palpable opportunism.

Finally, we find baseless the averment of AEDC that our judgment recognizing and respecting the final and immediately executory Order dated 30 April 1999 of the Pasig City RTC — which granted, with prejudice, the Joint Motion to Dismiss Civil Case No. 66213 filed by the parties therein — will imperil the position of the government in the international arbitration cases involving the NAIA IPT III Project still pending before the International Chamber of Commerce (ICC). AEDC points out

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[25] See *Katon v. Palanca*, G.R. No. 151149, 7 September 2004, 437 SCRA 565, 573.

[26] SEC. 2. *In what courts applicable.* — These Rules shall apply in all the courts, except as otherwise provided by the Supreme Court.

[27] *Rollo*, G.R. No. 169914, Vol. I, pp. 26-29.

that the position taken by the government in Civil Case No. 66213 (that PIATCO was qualified to participate in the bidding for the NAIA IPT III Project) is inconsistent with the position the latter is espousing in the international arbitration cases (that PIATCO was financially disqualified from bidding for the NAIA IPT III Project).

It should be recalled, however, that in the Joint Motion to Dismiss Civil Case No. 66213, the parties, **without admitting liability or conceding to the position taken by the other**, agreed to release and forever discharge each other from any and all liabilities, whether criminal or civil, arising in connection with the case. Evidently, the parties consented to release and discharge each other from any liability regardless of whether the other party maintained or conceded its position. Stated otherwise, the position taken by the parties on the issues in the case was not material to their agreement to release and discharge each other from any liability. The Order dated 30 April 1999 of the Pasig City RTC merely granted the Joint Motion to Dismiss Civil Case No. 66213, the very terms of which rendered it unnecessary for the said court to consider or rule upon the positions of the parties. Thus, nothing in the said Order of the Pasig City RTC precludes the government in the international arbitration proceedings before the ICC from adopting the position that PIATCO was financially disqualified to bid for the NAIA IPT III Project.

The Motion for Reconsideration of Baterina (G.R. No. 174166)

Baterina presents the following arguments in support of his Motion for Reconsideration:

The principles of res judicata and stare decisis, and the doctrine of the "law of the case," do not apply to Baterina because he was not a party to the previous cases; and because the issues raised here are not the same issues litigated in Gingoyon.[28]

The issues advocated by Baterina, especially on the ownership of Terminal 3 and the propriety of paying just compensation to

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[28] *Rollo*, G.R. No. 174166, Vol. IV, p. 327.

PIATCO, have not become moot and academic because these issues remain to be viable and justiciable controversies; a resolution on the merits of these issues will serve a useful purpose that will inure to the benefit of the Filipino people.[29]

The issues advocated by Baterina remain to be viable and justiciable controversies because the pronouncements relating thereto in Agan and in Gingoyon were not a final adjudication on the merits.[30]

Baterina was deprived of a fair opportunity to be heard because the Court may have unwittingly failed to explain the factual and legal reasons that led the Court to reject Baterina's arguments that the pronouncement in Gingoyon regarding PIATCO's ownership of Terminal 3 was not a final adjudication on the merits and may have been improvident.[31]

A resolution on the merits of the ownership of Terminal 3 will serve a useful and practical purpose, and will inure to the benefit of the Filipino people, because it will determine the regime of compensation that must be applied to PIATCO.[32]

Baterina then seeks from this Court the following:

PRAYER

WHEREFORE, premises considered, it is respectfully prayed that the Honorable Court **RECONSIDER** and **SET ASIDE** the Decision dated 18 April 2008, at least insofar as G.R. No. 174166 is concerned, and **RENDER** a new judgment as follows:

1. **DECLARE** that: (i) Terminal 3 as a matter of law, is public property and thus not a proper object of eminent domain proceedings; and (ii) PIATCO, as a matter of law, is merely the builder of Terminal 3 and, as such, it may file a claim for recovery on *quantum meruit* with the Commission on Audit for determination of the amount thereof, if any.

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[29] *Id.* at 356.

[30] *Id.* at 358.

[31] *Id.* at 369.

[32] *Id.* at 376.

2. **DIRECT** the Regional Trial Court of Pasay City, Branch 117 to dismiss the expropriation case, Civil Case No. 04-0876-CFM.

3. **DECLARE** that the Php3 Billion paid to PIATCO on 11 September 2006 (representing the proferred value of Terminal 3) as funds held in trust by PIATCO for the benefit of the Republic and subject to the outcome of the proceedings to determine recovery on *quantum meruit* due to PIATCO, if any.

4. **DIRECT** the Solicitor General to disclose the evidence it has gathered on the corruption, bribery, fraud, bad faith, *etc.*, to this Honorable Court and the Commission on Audit, and to **DECLARE** such evidence to be admissible in any proceeding for the determination of any compensation due to PIATCO, if any.

5. In the alternative, to:

i. **SET ASIDE** the expropriaton court's Order dated 08 August 2006 denying Baterina's motion for intervention in the expropriation case, and

ii. **DIRECT** the expropriation court to hear and resolve the issue of ownership of Terminal 3 consistent with the Honorable Court's holding in Gingoyon that "the interests of the movants-in-intervention may be duly litigated in proceedings which are extant before lower courts."

6. As another alternative, even should this Honorable Court not reconsider its Decision dated 18 April 2008, to declare that the expropriation court is empowered and is mandated, by both law and to protect the public interest and to ensure good governance, to consider evidence of PIATCO's illegal activities and unreasonable expenses and to accordingly adjust the amount of just compensation due to PIATCO.

Other reliefs, just and equitable in the premises, are likewise prayed for.[33]

Baterina's present Motion presents no new arguments for our consideration and only displays his obstinate refusal to acknowledge and respect our final and executory decisions in *Agan* and *Gingoyon*.

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[33] *Id.* at 380-382.

We stand firm on our pronouncement in our Decision dated 18 April 2008 that the entitlement of PIATCO to just and equitable consideration for its construction of NAIA IPT III and the propriety of the Republic's resort to expropriation proceedings were already recognized and upheld by this Court in *Agan* and *Gingoyon*. Undoubtedly, the **Republic and PIATCO**, the parties in Case No. 04-0876CFM, the expropriation case instituted by the Republic before the Pasay City RTC, are bound by *Agan* and *Gingoyon* by conclusiveness of judgment and law of the case.

However, as to Baterina, a second hard look at this case convinces us that the issue of whether he is bound by *Agan* and *Gingoyon* is not even material, given the fact that he has repeatedly failed to establish to the satisfaction of the courts his interest and legal standing to intervene in previous or pending judicial proceedings involving the NAIA IPT III Project.

Baterina's Motion for Intervention and Motion for Reconsideration-in-Intervention of the Decision in *Gingoyon* were denied by the Court, not only for having been belatedly filed, but also pursuant to the following significant observation:

> In the case of Representative Baterina, he invokes his prerogative as legislator to curtail the disbursement without appropriation of public funds to compensate PIATCO, as well as that as a taxpayer, as the basis of his legal standing to intervene. However, it should be noted that the amount which the Court directed to be paid by the Government to PIATCO was derived from the money deposited by the Manila International Airport Authority, an agency which enjoys corporate autonomy and possesses a legal personality separate and distinct from those of the National Government and agencies thereof whose budgets have to be approved by Congress.[34]

True, we also noted that the interests of the movants-in-intervention in *Gingoyon*, which included Baterina, "may be duly litigated in proceedings which are extant before the lower

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[34] The Resolution on the Motion for Reconsideration, *Republic v. Gingoyon,* G.R. No. 166429, 1 February 2006, 481 SCRA 457, 471.

courts."[35] But such statement simply recognized Baterina's option to pursue his intervention in Case No. 04-0876CFM before the Pasay City RTC, and contained no absolute assurance to Baterina or categorical directive to the trial court that his intervention shall be allowed and given due course. The Pasay City RTC can still exercise its discretion in granting or denying Baterina's Motion for Intervention and in admitting or rejecting his Petition in Intervention.

In fact, in its exercise of said discretion, the Pasay City RTC issued an Order[36] dated 8 August 2006 denying Baterina's Motion for Intervention and refusing to admit his Petition in Intervention in Case No. 04-0876CFM, ratiocinating thus:

As regards Congressman Baterina, *et. al.*, (sic) the Court finds that, as legislators and taxpayers, they have no legal interest to intervene in this case.

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There has been no showing up to this point that plaintiffs intend to use tax refunds in the course of their expropriation of NAIA IPT 3. In fact, the amount that plaintiffs initially deposited with the Land Bank of the Philippines for the purposes of this case comprised funds (sic) of plaintiff Manila International Authority (MIAA) (sic) and did not come from the collection of taxes. The reasoning behind the Supreme Court's denial of their motion to intervene in *Republic vs. Gingoyon* also applies here:

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More importantly, this Court itself will decide how much payment will be due from plaintiffs to defendant PIATCO, in accordance with law, since the determination of just compensation is a judicial function. The amount of just compensation is not for the plaintiffs or defendant PIATCO to decide. This, Congressman Baterina, *Et* (sic) *al*. could not possibly set up a petition against both plaintiffs and defendant for illegal disbursement of public funds when it is precisely the Court, not plaintiff or defendant, which will ensure that the

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[35] *Id.*

[36] Penned by Acting Presiding Judge Jesus B. Mupas; *rollo*, G.R. No. 174166, Vol. I, pp. 371-377.

determination and payment of just compensation to defendant PIATCO would be in compliance with Philippine laws.

There is, therefore, no room in this expropriation case for a taxpayer's intervention. Similarly, there is also no room in this expropriation case for the accommodation of a legislator's petition. Plaintiffs' exercise of the right of eminent domain does not infringe howsoever on legislative prerogatives, powers of (sic) privileges.

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The motion that private property may be taken without need for payment of just compensation, as espoused by Congressman Baterina, *et al*., is so foreign to Philippine Constitutional democracy that it has no place for consideration in an expropriation case. Congressman Baterina, *et.al*., (sic) also cannot rely on criminal charges filed against private individuals, not involving defendant PIATCO, to defeat the payment of just compensation for the taking of private property, which no less than the Philippine Constitution mandates. Those criminal cases are irrelevant to this expropriation.

Neither may Congressman Baterina, *et al.*, rely on the Supreme Court's ruling in *Again vs. PIATCO* (G.R. No. 155001, May 5, 2003) to establish legal standing here. *Agan vs. PIATCO* was an entirely different case, involving very different legal interests. It was not an expropriation case. Congressman Baterina, *Et.al*., (sic) cannot use this expropriation case as a venue to belatedly ventilate arguments that they may forgotten to raise in *Agan vs. PIATCO*. That is not allowed, especially since Congressman Baterina, *Et.al*., (sic) has (sic) every opportunity to seek reconsideration of the Supreme Court's decision in *Agan vs. PIATCO*.

Furthermore, there is no basis under the Rules of Court or in jurisprudence for the allowance of a petition for prohibition being intermingled with a special civil action for expropriation.

Finally, the Court notes that Congressman Baterina *et.al*. (sic) never paid filing fees for their petition for prohibition in intervention. This Court, therefore, never obtained jurisdiction over their petition and never acquired jurisdiction to permit their intervention. As the Supreme Court clarified in *Serrano vs. Delica* (G.R. No. 136325, July 29, 2005). (sic) It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed

docket fees that vests a trial court with jurisdiction over the subject matter or nature of the action. [37]

There is no showing that Baterina filed a Motion for Reconsideration of the foregoing **Order dated 8 August 2006** of the Pasay City RTC denying his Motion for Intervention; or that he appealed the said Order or challenged the same in a Petition for *Certiorari* before the higher courts.

Baterina's Petition for *Certiorari* and Prohibition (With Urgent Prayer for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction), docketed as CA-G.R. No. 95539, was filed before the Court of Appeals on **6 August 2006**. It questioned the issuance by the Pasay City RTC, allegedly in grave abuse of discretion, of the **Orders dated 27 March 2006 and 15 June 2006 and Writ of Execution dated 27 March 2006,** which directed the MIAA and Land Bank of the Philippines to already pay PIATCO the proffered value of the NAIA IPT III facilities, so that the government could take possession of the said infrastructures. Thus, the 8 August 2006 Order denying Baterina's Motion for Intervention was clearly not among the orders of the Pasay City RTC assailed in CA-G.R. No. 95539. Additionally, it was the issuance by the Court of Appeals of a Temporary Restraining Order (TRO) in CA-G.R. No. 95539 that gave rise to the Petition for *Certiorari* and Prohibition of the Republic before this Court, docketed as G.R. No. 174166. The Republic sought to enjoin the appellate court from implementing the said TRO and from proceeding with CA-G.R. No. 95539. None of the afore-described proceedings before the Court of Appeals or this Court involve the Pasay City RTC Order dated 8 August 2006.

Since Baterina failed to avail himself of any remedy from the denial of his Motion for Intervention in Case No. 04-0876CFM, the same has become final and executory as to him. Baterina, therefore, can no longer participate in the proceedings before the Pasay City RTC in Case No. 04-0876CFM, for he is already a stranger to said case. Having been barred from participating

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[37] *Id.* at 373-375.

any further in Case No. 04-0876CFM before the Pasay City RTC, Baterina is attempting to have us rule on the merits of his Petition in Intervention (which was not admitted by the Pasay City RTC) by merely reiterating the contents thereof in his Comment on the Petition of the Republic in G.R. No. 174166. This is a blatant circumvention of the rules of procedure which we cannot countenance. In light of Baterina's failure to have the denial by the Pasay City RTC of his Motion for Intervention reversed, no court, not even this Court, can take cognizance of his Petition in Intervention, even if so cleverly presented as another pleading but with essentially the same prayer.

WHEREFORE, premises considered, the Motions for Reconsideration of our 18 April 2008 Decision filed by Asia's Emerging Dragon Corporation and Salacnib F. Baterina are hereby *DENIED WITH FINALITY.*

SO ORDERED.

Puno, C.J., Ynares-Santiago, Carpio Morales, Tinga, Leonardo-de Castro, and *Brion, JJ.,* concur.

Austria-Martinez, J., the *C.J.* certifies that *J*. Martinez concurred with *J*. Nazario.

Quisumbing and *Peralta, JJ.,* join the dissent of Justice Corona.

Corona and *Velasco, Jr., JJ.,* see their dissenting opinions.

Carpio and *Nachura, JJ.,* no part.

DISSENTING OPINION
(on Justice Nazario's draft resolution of the Motion for Reconsideration)

CORONA, *J.*:

In my dissent to the April 18, 2008 decision in these cases, I dissented from the majority's narrow interpretation of Section 4-A of the BOT Law.[1] The majority insisted that only two rights are conceded to the original proponent of an unsolicited proposal: (1) the right to match the lowest or most advantageous proposal within 30 working days from notice thereof and (2) in the event that the original proponent is able to match the lowest or most advantageous proposal submitted, then it has the right to be awarded the project.[2] Thus, the original proponent is awarded the project only if it exercises its right to match the most advantageous proposal.

I maintain my position that the original proponent is entitled to the award of the project in at least three cases: (1) no competitive bid was submitted; (2) there was a lower bid by a qualified bidder but the original proponent matched it and (3) there was a lower bid but it was made by a person/entity not qualified to bid, in which case it is as if no competitive bid had been made. This is consistent not only with Article II, Section 20 of the Constitution:

"[the] State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives needed to investments"

but also the rationale behind Section 4-A of the BOT Law which is to protect the original proponent. This is also in accord with logic because, contrary to the majority's interpretation, **it recognizes the very real possibility that no other competitive bid exists. It is illogical that an original proponent would**

[1] Republic Act No. 6957, amended by RA 7718.

[2] 18 April 2008, 552 SCRA 59, 91.

have preferential rights when there are other bidders but none if there are no other qualified bidders.

The rationale for an original proponent's preferential rights under Section 4-A of the BOT Law is to protect and recognize said proponent's entrepreneurial spirit, its willingness to assume risks and incur costs in connection with a national government infrastructure project. This rationale does not depend on the submission of competitive bids. Consequently, the preferential rights of the original proponent exist whether or not there are competitive bids. As I stated:

> The majority's reading of the law considerably waters down the rights accorded to an original proponent. In failing to consider a situation where either no competitive bid was submitted or a lower bid was submitted by an entity not qualified to bid, the rights of the original proponent are unduly subjected to the condition of the presence of competitive bids. To reiterate, the spirit of the provision is "to protect project proponents which have already incurred costs in the conceptual design and in the preparation of the proposal." Certainly, regardless of the presence of competitive bids, the original proponent incurs costs. As such, it deserves the protection which the law seeks to afford it. The law which seeks to encourage private sector participation should be interpreted in a way that would recognize, not emasculate, rights of private investors.[3]

More than logic, experience (which is the life of the law)[4] shows that investors, original proponents included, are encouraged to invest in a climate of broad rather than limited incentives. Reduced to its essence, business is all about reduction of costs, maximization of benefits and optimization of profits. The majority's restrictive interpretation of Section 4-A, however, fails to promote such kind of an investor-friendly business climate. Rather than breathing life into the law, the majority effectively emasculated Section 4-A and imprisoned its spirit in a bottle.

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[3] *Id.*, Dissenting Opinion, pp. 156-157.

[4] Holmes, Oliver Wendell, *The Common Law, Little, Brown & Co.*, 1881, p. 1. See also *Estrada v. Escritor*, 455 Phil. 411, 583 (2003), citing Justice Holmes.

Worse, Section 4-A (as interpreted by the majority) is constitutionally infirm. It contradicts the equal protection clause as it made a suspect classification when it limited the application of Section 4-A to an original proponent whose proposal was challenged by competitive bids. I repeat: the rationale of Section 4-A is not conditioned on the presence of competitive bids. On this account, the majority's classification is not germane to the purpose of the law. Nor does the classification rest on substantial distinctions. An original proponent incurs costs in the conceptual design and in the preparation of the proposal whether its proposal is challenged by another bidder or not. Therefore, it deserves the protection of Section 4-A.

The majority declares that PIATCO's disqualification as a challenger did not mean that its financial proposal was also objectionable[5] and that, on the contrary, it was still the most advantageous proposal. Since AEDC failed to match such proposal, it could no longer assert its right to be awarded the project. This does not make sense. There can only be a valid competitive bid if there is a qualified competitive bidder. Since PIATCO was disqualified as a bidder, it follows that its bid also could not be considered. Consequently, there was no other valid proposal left standing aside from that of AEDC.

If we accept the reasoning of the majority, it means that an original proponent has no right to expect an award in case of a failure or absence of a qualified challenger even if its proposal has already been accepted. Furthermore, an original proponent must match even an invalid challenge because it is only in this way that an award can be expected. This reasoning is absolutely absurd. It nullifies the rights given by the BOT Law to the original proponent. Again, the law clearly does not confer rights on the proponent only if a challenge is made.

Based on the wording and spirit of the BOT Law, AEDC had the right to legally expect that only a qualified bidder with a valid bid could defeat its originally accepted proposal. **Without this pre-requisite, its right to match would actually work**

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[5] Resolution, pp. 11-12.

to its disadvantage if it had to match even an invalid proposal. This could not have been the intention of the law.

According to the majority, it would be a step backwards to return the project to the private sector considering the developments in NAIA IPT III.[6] I disagree. Under the BOT Law, it is AEDC which had — and still has — the right to the project. Not only is it a step in the right direction to recognize the clear legal rights of the private sector, it is also imperative since the State encourages it to take part in national development.

I hope we do not close our eyes to the fact that, given its inherent inefficiencies and its crippling bureaucratic shortcomings, government should not be in business. NAIA Terminal III is a fully computerized, high-tech facility that needs not only quick, continuous funding but also an international expertise to run, operate and maintain. We have seen the humiliating downgrading of our rating by the U.S. Federal Aviation Administration to Category II. How can government operate it well?

I cannot also agree with the position of the majority that the petition of AEDC was filed beyond a reasonable time. This is premised on the fact that AEDC filed this petition 20 months after the promulgation of *Agan*. When the government chose to expropriate the structures built pursuant to the NAIA IPT III project, AEDC chose to first demand the award of the project from the former. When it became evident that the government was not willing to recognize AEDC's rights to the project, the latter did not delay in filing this petition. What it did was to exhaust administrative remedies and it should not be faulted for doing so.

The majority rigidly applied the doctrine of *res judicata* and ruled that the dismissal of Civil Case No. 66213 (Pasig Case) bars the instant petition of AEDC. This point has been sufficiently addressed in my dissenting opinion. There is no identity of causes of action between the two cases. The principal relief sought by AEDC in the Pasig case was to prevent the award of the project to PIATCO on the ground that the latter was not a qualified bidder. In this case, AEDC is seeking that the project be awarded

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

to it as the unchallenged original proponent. More importantly, I reiterate my stance that, in view of the monumental importance of this case, the billions of pesos of investments involved and its implications to the whole nation and the Asean region, it would not be sound judicial policy to blindly apply the technical doctrine of *res judicata*.

Accordingly, I maintain my position and I respectfully vote to **GRANT** petitioner Asia's Emerging Dragon Corporation's motion for reconsideration.

DISSENTING OPINION

VELASCO, JR., *J.*:

I concur with the reasons advanced by Justice Corona in his dissent on why the Motion for Reconsideration of the Decision dated April 18, 2008 should be granted. I, however, would like to elaborate more on the grounds already provided.

A summary of the pertinent facts is as follows:

In 1993, six business leaders consisting of John Gokongwei, Andrew Gotianun, Henry Sy, Sr., Lucio Tan, George Ty and Alfonso Yuchengco met with then President Fidel V. Ramos to explore the possibility of investing in the construction and operation of a new international airport terminal. To signify their commitment to pursue the project, they formed the Asia's Emerging Dragon Corporation (AEDC).

Consequently, on October 5, 1994, AEDC submitted an unsolicited proposal to the Government through the Department of Transportation and Communication (DOTC) and the Manila International Airport Authority (MIAA) for the development of the Ninoy Aquino International Airport International Passenger Terminal III (NAIA IPT III) under a build-operate-transfer arrangement pursuant to Republic Act No. 6957, as amended by Republic Act No. 7718 (BOT Law).[1]

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[1] An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes (1990).

The unsolicited proposal submitted by AEDC was endorsed by DOTC to the National Economic and Development Authority (NEDA) on March 27, 1995. A revised proposal, however, was forwarded by DOTC to NEDA on December 13, 1995. The NEDA-Investment Coordinating Council (NEDA-ICC) Technical Board then favorably endorsed the project to the ICC-Cabinet Committee on January 5, 1996. Subsequently, the ICC-Cabinet Committee approved the same on January 19, 1996. Then on February 13, 1996, the NEDA Board passed Resolution No. 2, which approved the NAIA IPT Project as proposed by AEDC.

Upon the approval of the project, DOTC and AEDC then entered into a Memorandum of Understanding on February 26, 1996 (DOTC-AEDC MOU).

On June 7, 14, and 21, 1996, the DOTC and MIAA caused the publication in two daily newspapers of an invitation for competitive or comparative proposals on AEDC's unsolicited proposal, in accordance with Section 4-A of the BOT Law.

As a result of the invitation to bid, the consortium composed of People's Air Cargo and Warehousing Co., Inc. (Paircargo), Phil. Air and Grounds Services, Inc. (PAGS) and Security Bank Corporation (Security Bank) (collectively, Paircargo Consortium) submitted their competitive proposal to the Prequalification Bids and Awards Committee (PBAC) on September 20, 1996.

Both AEDC and Paircargo Consortium offered to build the NAIA IPT III for at least USD 350 million at no cost to the government and to pay the government: 5% share in gross revenues for the first five years of operation, 7.5% share in gross revenues for the next ten years of operation, and 10% share in gross revenues for the last 10 years of operation, in accordance with the Bid Documents. In addition to the foregoing, AEDC, however, offered to pay the government a total of PhP 135 million as guaranteed payment for 27 years while Paircargo Consortium offered to pay the government a total of PhP 17.75 billion for the same period.

Thus, the PBAC formally informed AEDC that it accepted the price proposal submitted by the Paircargo Consortium, and

gave AEDC 30 working days within which to match the said bid; otherwise, the project would be awarded to Paircargo Consortium. AEDC, however, failed to match the bid and expressed certain objections as to the prequalification of Paircargo Consortium.

On February 27, 1997, Paircargo Consortium incorporated into Philippine International Airport Terminals Co., Inc. (PIATCO).

Subsequently, AEDC protested the alleged undue preference given to PIATCO and reiterated its previously expressed objections. Accordingly, on April 16, 1997, AEDC filed with the Regional Trial Court in Pasig City a Petition for Declaration of Nullity of the Proceedings, *Mandamus* and Injunction against the Secretary of the DOTC, the Chairman of the PBAC, and the voting members of the PBAC and Pantaleon D. Alvarez, in his capacity as Chairperson of the PBAC Technical Committee.

Yet, on July 9, 1997, the DOTC issued the notice of award for the project to PIATCO. Several agreements were then entered into between the Government, through DOTC, in furtherance of the project, namely: (1) the Concession Agreement for the Build-Operate-and-Transfer Arrangement of the Ninoy Aquino International Airport Passenger Terminal III (1997 Concession Agreement); (2) the Amended and Restated Concession Agreement (ARCA); (3) the First Supplement to the ARCA; (4) the Second Supplement to the ARCA; and (5) the Third Supplement to the ARCA.

As a result of these agreements, several petitions were filed before the Court assailing the validity of the agreements.

In deciding the legality of the agreements, this Court ruled in *Agan, Jr. v. Philippine International Air Terminals Co., Inc.* that:

In sum, **this Court rules that in view of the absence of the requisite financial capacity of the Paircargo Consortium, predecessor of respondent PIATCO, the award by the PBAC of the contract of construction, operation and maintenance of the NAIA IPT III is null and void**. Further, considering that the 1997 Concession Agreement contains material and substantial amendments,

which amendments had the effect of converting the 1997 Concession Agreement into an entirely different agreement from the contract bidded upon, **the 1997 Concession Agreement is similarly null and void for being contrary to public policy**. The provisions under Sections 4.04(b) and (c) in relation to Section 1.06 of the 1997 Concession Agreement and Section 4.04(c) in relation to Section 1.06 of the ARCA, which constitute a direct government guarantee expressly prohibited by, among others, the BOT Law and its Implementing Rules and Regulations are also null and void. The Supplements, being accessory contracts to the ARCA, are likewise null and void.[2]

Further, in a Resolution[3] dated January 21, 2004, the Court denied with finality the Motions for Reconsideration of its May 5, 2003 Decision in *Agan* filed by therein respondents PIATCO and Congressman Paras, *et al.,* and respondents-intervenors.[4] Notably, the Court declared in the same Resolution that:

> This Court, however, is not unmindful of the reality that the structures comprising the NAIA IPT III facility are almost complete and that funds have been spent by PIATCO in their construction. For the government to take over the said facility, it has to compensate respondent PIATCO as builder of the said structures. The compensation must be just and in accordance with law and equity for the government cannot unjustly enrich itself at the expense of PIATCO and its investors.[5]

Meanwhile, in a letter to respondent DOTC dated March 14, 2005, AEDC offered to immediately operate the NAIA IPT III project.[6] Yet, DOTC did not respond. Thus, AEDC sent another letter dated September 1, 2005, demanding the immediate implementation of the DOTC-AEDC MOU. Again, DOTC did

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[2] G.R. Nos. 155001, 155547 & 155661, May 5, 2003, 402 SCRA 612, 678-679.

[3] *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*, G.R. Nos. 155001, 155547 & 155661, January 21, 2004, 420 SCRA 575.

[4] *Id*. at 580-581. Identified as employees of PIATCO, other workers of NAIA IPT III, and Nagkaisang Maralita ng Tanong Association, Inc. (NMTAI),

[5] *Id*. at 603.

[6] *Rollo* (G.R. No. 169914), p. 31.

not reply. It was only on September 21, 2005 that DOTC replied, after AEDC sent a third letter, saying that AEDC had no basis in law to claim a vested and perfected legal right to operate NAIA IPT III and that the Government had no obligation to recognize AEDC's right to operate the terminal.[7]

Therefore, on October 20, 2005, AEDC filed the Petition for *Mandamus* and Prohibition (with Application for Temporary Restraining Order). This Court, however, denied AEDC's petition in its Decision rendered on April 18, 2008. AEDC now comes before us praying for a motion for reconsideration of the decision. AEDC prays that this Court: (1) direct public respondents, their officers, agents, successors, representatives or persons or entities acting on their behalf to recognize AEDC's rights as an Original Proponent of an unsolicited project; (2) direct public respondents to issue the appropriate Notice of Award of the Project to AEDC, sign the draft concession agreement with AEDC and implement the same; (3) direct public respondents, their officers, agents, successors, representatives or persons or entities acting on their behalf to recognize AEDC's right to conduct an invasive inspection and valuation of the structures currently built as NAIA 3 for an effective valuation and determination of the work to be conducted thereon; (4) permanently enjoining public respondents, their officers, agents, successors, representatives or persons or entities acting on their behalf, from negotiating, re-bidding, awarding or otherwise entering into any concession contract with PIATCO and other third parties, except as otherwise stated above within the context of permitting AEDC to complete the construction and operation of the NAIA 3 Project; and (5) in the alternative, directing public respondents to effect a new invitation for comparative proposals for the NAIA 3 Project in accordance with Rule 10 of the IRR of the BOT Law, as soon as practicable and in the process recognize and/or reinstate the right of AEDC to match the best offer.[8]

A careful examination of the law applicable to this case will reveal that the motion for reconsideration should be granted.

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[7] *Id*. at 32.

[8] *Id*. at 579-580.

AEDC has a Legal Right to the NAIA IPT III Project as the Original Proponent

The proposal submitted by AEDC for the NAIA IPT III is called an "unsolicited proposal." Such proposal is governed by Section 4-A of the BOT Law:

> SEC. 4-A. Unsolicited proposals. — Unsolicited proposals for projects may be accepted by any government agency or local government unit on a negotiated basis: Provided, That, all the following conditions are met: [1] such projects involve a new concept or technology and/or are not part of the list of priority projects, [2] no direct government guarantee, subsidy or equity is required, and [3] the government agency or local government unit has invited by publication, for three [3] consecutive weeks, in a newspaper of general circulation, comparative or competitive proposals and no other proposal is received for a period of sixty [60] working days: Provided, further, That in the event another proponent submits a lower price proposal, the original proponent shall have the right to match that price within thirty [30] working days.

The Implementing Rules and Regulations (IRR) of the BOT Law further expound on unsolicited proposals:

> Sec. 10.1. Requisites for Unsolicited Proposals.— Any Agency/ LGU may accept unsolicited proposals on a negotiated basis provided that all the following conditions are met:
>
> a. the project involves a new concept or technology and/or is not part of the list of priority projects;
>
> b. no direct government guarantee, subsidy or equity is required; and
>
> c. the Agency/LGU concerned has invited by publication, for three (3) consecutive weeks, in a newspaper of general circulation, comparative or competitive proposals and no other proposal is received for a period of sixty (60) working days. In the event that another project proponent submits a price proposal lower than that submitted by the original proponent, the latter shall have the right to match said price proposal within thirty (30) working days. Should the original project proponent fail to match the lower price proposal submitted within the specified period, the contract shall be awarded to the tenderer of the lowest price. On the other hand, if the original project proponent matches the submitted

lowest price within the specified period, he shall immediately be awarded the project.

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Sec. 10.6. Evaluation of Unsolicited Proposals. — The Agency/ LGU is tasked with the initial evaluation of the proposal. The Agency/ LGU shall: 1) appraise the merits of the project; 2) evaluate the qualification of the proponent; and 3) assess the appropriateness of the contractual arrangement and reasonableness of the risk allocation. The Agency/LGU is given sixty (60) days to evaluate the proposal from the date of submission of the complete proposal. Within this 60-day period the Agency/LGU, shall advise the proponent in writing whether it accepts or rejects the proposal. Acceptance means commitment of the Agency/LGU to pursue the project and recognition of the proponent as the "original proponent." At this point, the Agency/ LGU will no longer entertain other similar proposals until the solicitation of comparative proposals. The implementation of the project, however, is still contingent primarily on the approval of the appropriate approving authorities consistent with Section 2.7 of these IRR, the agreement between the original proponent and the Agency/LGU of the contract terms, and the approval of the contract by the ICC or Local Sanggunian.

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Sec. 10.9. Negotiation With the Original Proponent. — Immediately after ICC/Local Sanggunian's clearance of the project, the Agency/LGU shall proceed with the in-depth negotiation of the project scope, implementation arrangements and concession agreement, all of which will be used in the Terms of Reference for the solicitation of comparative proposals. The Agency/LGU and the proponent are given ninety (90) days upon receipt of ICC's approval of the project to conclude negotiations. The Agency/LGU and the original proponent shall negotiate in good faith. However should there be unresolvable differences during the negotiations, the Agency/ LGU shall have the option to reject the proposal and bid out the project. On the other hand, if the negotiation is successfully concluded, the original proponent shall then be required to reformat and resubmit its proposal in accordance with the requirements of the Terms of Reference to facilitate comparison with the comparative proposals. The Agency/LGU shall validate the reformatted proposal if it meets the requirements of the TOR prior to the issuance of the invitation for comparative proposals.

Clearly, the BOT Law and its IRR confer legal rights to the original proponent of an unsolicited proposal. According to Sec. 10.6 of the IRR, once an "unsolicited proposal" is accepted, the proponent is then recognized as the "original proponent." Consequently, the Government becomes obligated to pursue the project with the "original proponent" unless a challenger in a process known as the "Swiss Challenge" offers a better competitive or comparative proposal, and the "original proponent" is unable to match the better offer.

Thus, on February 13, 1996, when the Government accepted the unsolicited proposal of AEDC through the DOTC, favorably endorsed by the NEDA-ICC and approved it through ICC-Cabinet Committee and NEDA Board, AEDC became the "recognized original proponent" of the NAIA IPT III Project.

As a result of such recognition, DOTC became obligated to pursue the NAIA IPT III project with AEDC pursuant to Sec. 10.6 of the IRR of the BOT Law, subject only to a better offer being received and accepted by the Government in a "Swiss Challenge" process. Moreover, the Government lost its option to reject the proposal and bid out the project after the successful conclusion of the negotiation process as described in Sec. 10.9 of the IRR of the BOT Law.

Undoubtedly, as the recognized original proponent of the unsolicited proposal, AEDC has the legal rights afforded to him by the BOT Law and its IRR. Notably, this Court stated in *Agan* that the rights or privileges to the original proponent of an unsolicited proposal for an infrastructure project are meant to encourage private sector initiative in conceptualizing infrastructure projects that would benefit the public.[9] Further, acceptance by the proper authorities of a bid in accordance with the specifications converts the offer into a binding contract,[10] even though a formal bidder's contract has not been executed.[11]

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[9] *Supra* note 2, at 667.

[10] *Harvey v. United States*, 105 US 671, 26 L.Ed. 1206 (1881).

[11] *Pennington v. Sumner,* 222 Iowa 1005, 270 NW 629, 109 ALR 355 (1936).

It cannot be denied, therefore, that AEDC, as an original proponent, has legal rights under the BOT Law, as well as its IRR.

Further, in a Decision rendered by the United States District Court,[12] a disappointed bidder has a constitutionally protected property interest if applicable state law acknowledges such.[13] It further states that to establish a property interest, the plaintiff must have a legitimate claim of entitlement as determined by reference to state law.[14] Property interests do not only emanate from the Constitution, but also from state or federal statutory schemes, which create legitimate claims of entitlement to the benefits which they confer.[15]

Moreover, a majority of the courts in the United States follows the rule that such protected property interest is entitled to the non-arbitrary exercise by the city of its discretion in making the award and that a deprivation of the protected property interest without due process is an actionable wrong.[16]

In the present case, the BOT Law and its IRR acknowledge the rights of the original proponent in an unsolicited proposal. Thus, it rightfully follows that AEDC, as the original proponent, has a protected property interest in the NAIA IPT III proposal as the law creates this protected property interest in the BOT Law.

Furthermore, the intent of Section 4-A of the BOT Law is the protection of the original proponent. In Senator Gloria

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[12] *Metric Constructors, Inc. v. Gwinnet County, Georgia,* 729 F.Supp. 101 (1990).

[13] *Id*.

[14] *Id*.; See *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972).

[15] *Board of Regents*, *supra*.

[16] *Kendrick v. City Council,* 516 F.Supp. 1134, 1138 (S.D. Ga. 1981). See also *Three Rivers Cablevision, Inc., et al., v. City of Pittsburgh, et al.,* 502 F.Supp. 1118 (W.D. Pa. 1980); *Teleprompter of Erie, Inc. v. City of Erie,* 567 F.Supp. 1277 (W.D. Pa. 1983); *Higgins, Inc. v. Florida Keys,* 565 F.Supp. 126 (S.D. Fla. 1983); *L&H Sanitation, Inc. v. Lake City Sanitation, Inc.,* 769 F.2d 517 (8th Cir. 1985); *Kasom v. City of Sterling Heights,* 600 F.Supp. 1555 (E.D. Mich. 1985).

Macapagal-Arroyo's[17] sponsorship speech, she explained the object of the amendment to Section 4-A of the BOT Law, to wit:

> The object of the amendment is to protect proponents which may have already incurred costs in the conceptual design and in the preparation of the proposal, and which may have adopted an imaginative method of construction or innovative concept for the proposal.[18]

Certainly, it cannot be emphasized enough that this Court should accord AEDC, as the recognized original proponent, its protected rights under the BOT Law.

Disqualification of PIATCO Makes AEDC the Sole Bidder

A "Swiss Challenge" occurs after the Agency or Local Government Unit (LGU) concerned has invited, by publication in a newspaper of general circulation, comparative or competitive proposal and another project proponent submits a price proposal lower than that submitted by the original proponent. The original proponent shall then have the right to match the said price proposal within 30 days. If the original project proponent fails to match the lower price proposal submitted, the contract shall be awarded to the tenderer of the lowest price. If, on the other hand, the original project proponent matches the submitted lowest price, the original proponent shall immediately be awarded the project.[19]

Hence, should the "Swiss Challenge" process fail to produce a better offer, the right to the award belongs to the original proponent.

As this Court ruled in *Agan*, the "Swiss Challenge" conducted by DOTC failed to produce a better offer from a qualified challenger because PIATCO was found to be ineligible and disqualified by this Court and the award to PIATCO and all agreements it entered into with DOTC and MIAA were declared null and void.

Thus, since there was no qualified bidder during the "Swiss Challenge," it follows, therefore, that no other proposals could

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[17] Now incumbent President of the Republic of the Philippines.

[18] January 25, 1994, Senate deliberations; *rollo* (G.R. No. 169914), p. 75.

[19] See Sec. 10.1(c) of the IRR of the BOT Law.

have been considered by respondents and the original proponent remain unchallenged.

In other words, since there was no qualified challenger to AEDC's unsolicited proposal, the obligation to match the better offer never arose. PIATCO's disqualification had the effect of making AEDC as the sole and unchallenged bidder for the NAIA IPT III project. As a result, AEDC should be awarded NAIA IPT III Project.

Further, it is helpful to look at the legislative intent of the BOT Law as clarified by former Congressman Renato Diaz of the 2nd District of Nueva Ecija when he stated that the original proponent should be automatically awarded the project in case nobody presents a valid challenge within the period prescribed by law.[20] Such is the situation in the case at hand.

Furthermore, it could also be argued that failure to award the project to AEDC would result in a denial of equal protection. In *L&H Sanitation, Inc. v. Lake City Sanitation, Inc.*,[21] the United States District Court stated that there is a denial of equal protection as to the unsuccessful bidder when there is: (1) a regulated bidding procedure, (2) material compliance with the procedure by the unsuccessful bidder, and (3) material and significant noncompliance with the procedure by the successful bidder.[22]

In the present instance, PIATCO failed to comply with the requirements set by DOTC and yet, was still awarded the project. This results in a denial of equal protection to AEDC, who complied with all the requirements. As a matter of fact, the appropriate government bodies already approved AEDC's unsolicited proposal. Further, the execution of the DOTC-AEDC Memorandum clearly shows that AEDC already submitted all requirements.

Evidently, AEDC, as the unchallenged and recognized original proponent, has the right to be awarded the NAIA IPT III Project.

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[20] *Rollo* (G.R. No. 169914), p. 46.

[21] *Supra* note 16.

[22] *L&H Sanitation, Inc.*, *supra* note 16; citing *Three Rivers Cablevision, Inc.*, *supra* note 16; *Kendrick*, *supra* note 16.

This Court should not refuse its duty to uphold the intent and meaning of the BOT Law when it seeks to protect the original proponent in situations such as these.

Policy of the Government to Promote Private Business

It has been the long-standing policy of the government to promote investments in private businesses and veer away from engaging in business that would otherwise be best served by private interests. Indeed, this policy is declared in the Constitution that "[t]he State recognized the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments."[23]

This policy of the State has been consistently put into operation in several legislations, such as in Republic Act No. 9168.[24]

Also, in Section 1 of Proclamation No. 50,[25] it is declared that it is the "policy of the State to promote privatization through an orderly, coordinated and efficient program for the prompt disposition of the large number of non-performing assets of the government financial institutions, and certain government-owned or controlled corporations which have been found unnecessary or inappropriate for the government sector to remain." It should be noted, however, that while Proclamation No. 50 mandates that non-performing assets should be promptly sold, it does not prohibit the disposal of other kinds of assets, whether performing, necessary or appropriate.[26]

Without a doubt, the State's policy of establishing the privatization program is to promote private businesses and not to engage in business itself.

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[23] CONSTITUTION, Art. II, Sec. 20.

[24] An Act to Provide Protection to New Plant Varieties, Establishing a National Plant Variety Protection Board and For Other Purposes (2002).

[25] Proclaiming and Launching a Program for the Expeditious Disposition and Privatization of Certain Government Corporations and/or the Assets Thereof, and Creating the Committee on Privatization and the Asset Privatization Trust (1986).

[26] *Amado S. Bagatsing v. Committee on Privatization*, G.R. No. 112399, July 14, 1995, 246 SCRA 334.

More significantly, in the BOT Law, Section 1 provides:

> It is the declared **policy of the State to recognize the indispensable role of the private sector as the main engine for national growth and development** and provide the most appropriate incentives to mobilize private resources for the purpose of financing the construction, operation and maintenance of infrastructure and development projects normally financed and undertaken by the Government. Such incentives, aside from financial incentives as provided by law, shall include providing a climate of minimum government regulations and procedures and specific government undertakings in support of the private sector.[27] (Emphasis supplied.)

Clearly, the Government's consistent policy on the promotion of the private sector cannot be denied. Thus, while the judiciary does not want to intrude in the actions of the executive department, it must be stressed that the law supports privatization and this should be upheld. The Government should not be engaged in business.

The NAIA IPT III Project is a BOT Project that should be Awarded to AEDC

Undeniably, the NAIA IPT III Project stemmed from an unsolicited proposal and is, therefore, covered by the BOT Law. As such, the BOT Law still applies despite completion of the building of the project.

A BOT Project is divided into three stages: (1) build, (2) operate, and (3) transfer. Thus, even though the first stage has been completed, there remain two stages that still need execution. In this light, AEDC, as the original proponent of NAIA IPT III, can conclude the last two stages despite the completion of the first stage.

To recapitulate, AEDC has the legal right to the NAIA IPT III Project as the original proponent for lack of a qualified bidder. And to advance the policy of the State to promote the private sector, the operation and possession of the NAIA IPT III should

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[27] Republic Act No. 6957 (1990), as amended by Republic Act No. 7718 (1994), Sec. 1.

be turned-over to AEDC. In this way, the Government would make use of the resources of the private sector in the financing, operation and maintenance of infrastructure and development projects which are necessary for national growth and development but which the government, unfortunately, could not afford due to lack of funds.[28]

Likewise, prohibition is in order to prevent respondents from bidding out or awarding the operation of NAIA IPT III to third parties. This would result in the violation of the rights of AEDC.

However, should AEDC be awarded the NAIA IPT III Project, it is obligated to comply with the following*:*

(1) to construct an underground passenger access terminal connecting terminals I, II, and III;[29]

(2) complete the construction of NAIA IPT III;[30]

(3) finance the additional investments necessary to put NAIA IPT III in operation;[31]

(4) reimburse the government the initial payment of PhP 3,002,125,000.00 it made to PIATCO;[32]

(5) pay the balance of the compensation due to PIATCO as the builder of NAIA IPT III; and

(6) pay the obligations owing to the general contractors.[33]

Similarly, under the BOT Law, the government is also entitled to the fees and income it should receive from AEDC.

I, therefore, vote to **GRANT** petitioner Asia's Emerging Dragon Corporation's motion for reconsideration.

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[28] *Agan*, *supra* note 2, at 667.

[29] AEDC's Motion for Reconsideration of the Decision dated April 18, 2008, p. 36.

[30] *Id*.

[31] *Id*.

[32] *Id*.

[33] *Id*. These are the Takenaka and Asahikosan Corporations.

THIRD DIVISION

[G.R. No. 170750. April 7, 2009]

HEIRS OF TOMAS DOLLETON, HERACLIO ORCULLO, REMEDIOS SAN PEDRO, HEIRS OF BERNARDO MILLAMA, HEIRS OF AGAPITO VILLANUEVA, HEIRS OF HILARION GARCIA, SERAFINA SP ARGANA, and HEIRS OF MARIANO VILLANUEVA, *petitioners, vs.* **FIL-ESTATE MANAGEMENT INC.,** ***ET AL.*** **and THE REGISTER OF DEEDS OF LAS PIÑAS CITY,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; CAUSE OF ACTION; ELEMENTS. —** Section 2, Rule 2 of the Rules of Civil Procedure defines a cause of action as the act or omission by which a party violates the right of another. Its essential elements are as follows: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff, for which the latter may maintain an action for recovery of damages or other appropriate relief.

2. **ID.; ID.; ID.; TEST TO DETERMINE IF A COMPLAINT SUFFICIENTLY STATES A CAUSE OF ACTION; APPLICATION. —** The elementary test for failure to state a cause of action is whether the complaint alleges facts which if true would justify the relief demanded. The inquiry is into the sufficiency, not the veracity, of the material allegations. If the allegations in the complaint furnish sufficient basis on which it can be maintained, it should not be dismissed regardless of the defense that may be presented by the defendant. This Court is convinced that each of the Complaints filed by petitioners sufficiently stated a cause of action. The Complaints alleged that petitioners are the owners of the subject properties by acquisitive prescription. As owners thereof, they have the

right to remain in peaceful possession of the said properties and, if deprived thereof, they may recover the same. Section 428 of the Civil Code provides that: Article 428. The owner has the right to enjoy and dispose of a thing without other limitations than those established by law. The owner has also a right of action against the holder and possessor of the thing in order to recover it. Petitioners averred that respondents had violated their rights as owner of the subject properties by evicting the former therefrom by means of force and intimidation. Respondents allegedly retained possession of the subject properties by invoking certificates of title covering other parcels of land. Resultantly, petitioners filed the cases before the RTC in order to recover possession of the subject properties, to prevent respondents from using their TCTs to defeat petitioners' rights of ownership and possession over said subject properties, and to claim damages and other reliefs that the court may deem just and equitable.

3. **ID.; CIVIL PROCEDURE; KINDS OF PLEADINGS; COMPLAINT; SHOULD NOT HAVE BEEN DISMISSED DESPITE THE SEEMING ERROR IN THE PRAYER. —** The Court notes that petitioners' prayer for the cancellation of respondents' certificates of title are inconsistent with their allegations. Petitioners prayed for in their Complaints that, among other reliefs, judgment be rendered so that "Transfer Certificate of Title Numbers 9176, 9177, 9178, 9179, 9180, 9181, and 9182 be cancelled by the Register of Deeds for Las Piñas, Metro Manila, insofar as they are or may be utilized to deprive plaintiffs of possession and ownership of said lot." Yet, petitioners also made it plain that the subject properties, of which respondents unlawfully deprived them, were not covered by respondents' certificates of title. It is apparent that the main concern of petitioners is to prevent respondents from using or invoking their certificates of title to deprive petitioners of their ownership and possession over the subject properties; and not to assert a superior right to the land covered by respondents' certificates of title. Admittedly, while petitioners can seek the recovery of the subject properties, they cannot ask for the cancellation of respondents' TCTs since petitioners failed to allege any interest in the land covered thereby. Still, the other reliefs sought by petitioners, *i.e.*, recovery of the possession of the subject properties and compensation for the damages resulting from respondents' forcible taking of their

property, are still proper. Petitioners' Complaints should not have been dismissed despite the seeming error made by petitioners in their prayer.

4. **CIVIL LAW; PRESCRIPTION OF ACTIONS; *ACCION REIVINDICATORIA* MAY BE AVAILED OF WITHIN 10 YEARS FROM DISPOSSESSION. —** [P]etitioners' Complaints may be said to be in the nature of an *accion reivindicatoria*, an action for recovery of ownership and possession of the subject properties, from which they were evicted sometime between 1991 and 1994 by respondents. An *accion reivindicatoria* may be availed of **within 10 years from dispossession**. There is no showing that prescription had already set in when petitioners filed their Complaints in 1997.

5. **ID.; ID.; ALLEGATION OF PRESCRIPTION DOES NOT AUTOMATICALLY WARRANT THE DISMISSAL OF A COMPLAINT. —** [T]he affirmative defense of prescription does not automatically warrant the dismissal of a complaint under Rule 16 of the Rules of Civil Procedure. An allegation of prescription can effectively be used in a motion to dismiss only when the Complaint on its face shows that indeed the action has already prescribed. If the issue of prescription is one involving evidentiary matters requiring a full-blown trial on the merits, it cannot be determined in a motion to dismiss. In the case at bar, respondents must first be able to establish by evidence that the subject properties are indeed covered by their certificates of title before they can argue that any remedy assailing the registration of said properties or the issuance of the certificates of title over the same in the names of respondents or their predecessors-in-interest has prescribed.

6. **ID.; LACHES, DEFINED AND EXPLAINED; ELEMENTS OF LACHES MUST BE PROVEN. —** Laches has been defined as the failure of or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence, could or should have been done earlier; or to assert a right within reasonable time, warranting a presumption that the party entitled thereto has either abandoned it or declined to assert it. Thus, the doctrine of laches presumes that the party guilty of negligence had the opportunity to do what should have been done, but failed to do so. Conversely, if the said party did not have the occasion to assert the right, then, he cannot be adjudged guilty of laches. Laches is not concerned with the mere lapse

of time; rather, the party must have been afforded an opportunity to pursue his claim in order that the delay may sufficiently constitute laches. x x x It also appears from the records that the RTC did not conduct a hearing to receive evidence proving that petitioners were guilty of laches. Well-settled is the rule that the elements of laches must be proven positively. Laches is evidentiary in nature, a fact that cannot be established by mere allegations in the pleadings and cannot be resolved in a motion to dismiss. At this stage, therefore, the dismissal of petitioners' Complaints on the ground of laches is premature. Those issues must be resolved at the trial of the case on the merits, wherein both parties will be given ample opportunity to prove their respective claims and defenses.

7. ID.; JUDGMENTS; *RES JUDICATA*, TWO CONCEPTS OF. — *Res judicata* refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit. *Res judicata* has two concepts: (1) "bar by prior judgment" as enunciated in Rule 39, Section 47 (b) of the Rules of Civil Procedure; and (2) "conclusiveness of judgment" in Rule 39, Section 47 (c). There is "bar by prior judgment" when, as between the first case where the judgment was rendered, and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. But where there is **identity of parties and subject matter** in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. There is "conclusiveness of judgment." Under the doctrine of conclusiveness of judgment, facts and issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties, even if the latter suit may involve a different claim or cause of action. The identity of causes of action is not required but merely identity of issues.

8. ID.; ID.; ID.; DOCTRINE OF "CONCLUSIVENESS OF JUDGMENT," NOT APPLICABLE. — *Vda. de Cailles* and *Orosa* cannot bar the filing of petitioners' Complaints before the RTC under the doctrine of conclusiveness of judgment, since they involve entirely different subject matters. In both

cases, the subject matter was a parcel of land referred to as Lot 9 Psu-11411 Amd-2, while subject matter of the petitioners' Complaints are lots which are not included in the said land.

9. ID.; ID.; ID.; STRINGENT REQUIREMENTS OF "BAR BY PRIOR JUDGEMENT," DO NOT APPLY. — It follows that the more stringent requirements of *res judicata* as "bar by prior judgment" will not apply to petitioners' Complaints. In *Vda. de Cailles*, the Court confirmed the ownership of Dominador Mayuga over a 53-hectare parcel of land located in Las Piñas, Rizal, more particularly referred to as Lot 9, Psu-11411, Amd-2. The Court also recognized that Nicolas Orosa was Dominador Mayuga's successor-in-interest. However, the judgment in said case was not executed because the records of the Land Registration Authority revealed that the property had previously been decreed in favor of Jose T. Velasquez, to whom OCT No. 6122 was issued. During the execution proceedings, Goldenrod Inc. filed a motion to intervene, the granting of which by the trial court was challenged in *Orosa*. The Court held in *Orosa* that Goldenrod, Inc., despite having acquired the opposing rights of Nicolas Orosa and Jose T. Velasquez to the property sometime in 1987, no longer had any interest in the same as would enable it to intervene in the execution proceedings, since it had already sold its interest in February 1989 to the consortium composed of respondents, Peaksun Enterprises and Export Corporation, and Elena Jao. The adjudication of the land to respondents' predecessors-in-interest in *Vda. de Cailles* and *Orosa* is not even relevant to petitioners' Complaints. According to petitioners' allegations in their Complaints, although the subject properties were derived from the 119.8-hectare parcel of land referred to as Lot 9, Psu-11411, they are not included in the 53-hectare portion thereof, specifically identified as Lot 9, Psu-11411, Amd-2, subject of *Vda. de Cailles* and *Orosa*. This was the reason why petitioners had to cite *Vda. de Cailles* and *Orosa*: to distinguish the subject properties from the land acquired by respondents and the other members of the consortium. There clearly being no identity of subject matter and of parties, then, the rulings of this Court in *Vda. de Cailles* and *Orosa* do not bar by prior judgment Civil Cases No. LP-97-0228, No. LP-97-0229, No. LP-97-0230, No. LP-97-0231, No. LP-97-0236,

No. LP-97-0237, No. LP-97-0238, and No. LP-97-0239 instituted by petitioners in the RTC.

APPEARANCES OF COUNSEL

Patrocinio S. Palanog for petitioners.
Poblador Bautista & Reyes 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 (1) the Decision[1] dated 16 September 2005, rendered by the Court of Appeals in CA-G.R. CV No. 80927, which affirmed the Resolutions[2] dated 8 September 2000 and 30 June 2003, of the Regional Trial Court (RTC), Branch 253, of Las Piñas City, dismissing the Complaints in Civil Cases No. LP-97-0228, No. LP-97-0229, No. LP-97-0230, No. LP-97-0231, No. LP-97-0236, No. LP-97-0237, No. LP-97-0238, and No. LP-97-0239; and (2) the Resolution dated 9 December 2005 of the same court denying petitioners' Motion for Reconsideration.

In October 1997, petitioners Heirs of Tomas Dolleton,[3] Heraclio Orcullo, Remedios San Pedro, *et al.*,[4] Heirs of Bernardo Millama,

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[1] Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Portia Aliño-Hormachuelos and Vicente Roxas, concurring. *Rollo*, pp. 49-57.

[2] Penned by Presiding Judge Jose F. Caoibes, Jr. *Id.* at 111-114 and117-118.

[3] The Heirs of Tomas Dolleton are composed of the children of his deceased children Marcelo, Alipio, Severa, Pablo, Nicomedes and Apolonio, herein named as Ignacia Dolleton, Benjamin Dolleton, Jorge Dolleton, Rosita Dolleton, Rolando Dolleton, Dominga Amatorio, Francisca Alcantara, Emeteria Solomon, Minerva Parel, Zoraida D. Vargas, Pascual Dolleton, Nancy Dolleton, Alejandro Dolleton, Zenaida Dolleton, Celia D. Vasquez, Apolonio Dolleton, Jr., Rosalia Panganiban. Records, Vol. 1, p. 1.

[4] The co-plaintiffs of Remedios San Pedro are Rodolfo San Pedro, Nora San Pedro, Avelina San Pedro, Caridad San Pedro, Solidad San Pedro, Tomas San Pedro, Nicasio San Pedro II, Alfredo San Pedro, Jesus San Pedro, Adorado

et al.,[5] Heirs of Agapito Villanueva, *et al.*,[6] Heirs of Hilarion Garcia, *et al.*,[7] Serafina SP Argana, *et al.*,[8] and Heirs of Mariano Villanueva, *et al.*[9] filed before the RTC separate Complaints for Quieting of Title and/or Recovery of Ownership and Possession with Preliminary Injunction/Restraining Order and Damages against

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San Pedro, Dolores San Pedro, Francisca San Pedro, Rodrigo San Pedro, Renato San Pedro and Rea San Pedro. Records, Vol. 4, p. 1.

[5] The Heirs of Bernardo Millama are composed of his children namely Mariano Millama, Teodoro Millama, Candida Javier, Raymundo Millama, Eleuterio Estomata, and Rodrigo Millama, as well as the children and granchildren of his deceased son Valeriano Millama who were named as Julita M. Navarro, Amparo Gutierrez, Elena Dimacale, Zenaida Simpron, Sonia Fiel, Ricardo Solis, Christina Solis, Federico Solis Jr., Ronaldo Solis and Reynaldo Solis. Records, Vol. 5, p. 1.

[6] The Heirs of Agapito Villanueva are composed of his children namely Pablo Villanueva, Bernardo Villanueva, Francisco Villanueva, Dolores Miranda, Benjamin Villanueva, Rolando Villanueva, Ernesto Villanueva, Artemio Villanueva and Ester Villanueva, as well as the children of his deceased children Antonio Villanueva, Jose Villanueva and Mario Villanueva, who were named as Arnel Villanueva, Rodel Villanueva, Rodel Villanueva, Redentor Villanueva, Arthur Villanueva, Arlene Villanueva, Noralyn Villanueva, Dante Villanueva, Joselito Villanueva, Ferdinand Villanueva, Morris Villanueva, Marian Arena, and Marilou Pabiz. Records, Vol. 6, p. 1.

[7] The Heirs of Hilarion Garcia are Basilisa Garcia, Salvador Villablanca, Jr. and Celso Villablanca. Records, Vol. 7, p. 1.

[8] Plaintiff Serafina SP Argana is represented in this suit by her daughter Victoria Marcelo. Her co-plaintiffs are Remedios P. San Pedro, Rodolfo San Pedro, Nora San Pedro, Avelina San Pedro, Caridad San Pedro, Solidad San Pedro, Tomas San Pedro, Nicasio San Pedro II, Alfredo San Pedro, Jesus San Pedro, Adorado San Pedro, Dolores San Pedro, Francisca San Pedro, Rodrigo San Pedro, Renato San Pedro, Rea San Pedro, Jemenes Placido, Vivian Placido, Constancia Placido, Flordeliza Placido, Lorna Placido, Myrna Placido, Teresa Placido and Edgar Placido. Records, Vol. 8, p. 1.

[9] The heirs of Mariano Villanueva are composed of the children of their deceased children Gonzalo Villanueva and Julia Uneta, and the children of Rodolfo Uneta, Julia Uneta's deceased son, namely: Ofelia Rodriguez, Yolanda Rivera, Loida Lacson, Sonny Villanueva, Emerita V. Savado, Restituto Villanueva, Adelaida Villanueva, Ernesto Villanueva, Alberto Villanueva, Marites Villanueva, Jaime Uneta, Amor Reyes, Irenea Santos, Emelita Santos, Rolly Uneta, Teresita De Vera, Carina Uneta, Leonila Domingo, Marita Uneta, Jesusa Uneta, Ronaldo Uneta, Peter Uneta, and Rodolfo Uneta Jr. Records, Vol. 9, p. 1.

respondents Fil-Estate Management Inc., Spouses Arturo E. Dy and Susan Dy, Megatop Realty Development, Inc.,[10] and the Register of Deeds of Las Piñas. The Complaints, which were later consolidated, were docketed as follows:

1. Civil Case No. L-97-0228, which was filed by the Heirs of Tomas Dolleton covering a parcel of land with an area of 17,681 square meters, located in Magasawang Mangga, Barrio Pugad Lawin, Las Piñas, Rizal under Psu-235279 approved by the Director of the Bureau of Lands on 20 February 1959;

2. Civil Case No. L-97-0229, which was filed by Heraclio Orcullo covering two (2) parcels of land with the total areas of 14,429 square meters and 2,105 square meters, respectively, located in Magasawang Mangga, Barrio Pugad Lawin, Las Piñas, Rizal under Lots 1 and 2, Psu-169404 approved by the Director of the Bureau of Lands on 4 December 1959;

3. Civil Case No. L-97-0230, which was filed by Remedios San Pedro, *et al.*, covering a parcel of land with an area of 17,159 square meters, located in Barrio Pugad Lawin, Las Piñas, Rizal under Psu-96901 approved by the Director of the Bureau of Lands on 21 July 1933;

4. Civil Case No. L-97-0231, which was filed by the Heirs of Bernardo Millama, *et al.*, covering a parcel of land with an area of 23,359 square meters, located in Magasawang Mangga, Barrio Pugad Lawin, Las Piñas, Rizal under Psu-96905 approved by the Director of the Bureau of Lands on 16 January 1933;

5. Civil Case No. L-97-0236, which was filed by the Heirs of Agapito Villanueva covering a parcel of land with an area

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[10] Although they were individually named in the eight complaints filed before the RTC, respondents Fil-Estate Management Inc., Spouses Arturo E. Dy and Susan Dy, and Megatop Realty Development, Inc. were referred to as "Fil-Estate Management Inc, *et al.*" in the pleadings before the Court of Appeals and Supreme Court. It should be noted, however, that the certificates of title, covering the parcels of land subject of the present Petition, are registered under the names of Fil-Estate Management Inc., Spouses Arturo E. Dy and Susan Dy, Megatop Realty Development, Inc., together with Peaksun Enterprises and Export Corporation and Elena Jao, who all formed a consortium.

of 10,572 square meters, located in Magasawang Mangga, Barrio Pugad Lawin, Las Piñas, Rizal;

6. Civil Case No. L-97-0237, which was filed by the Heirs of Hilarion Garcia, *et al.*, covering a parcel of land with an area of 15,372 square meters, located in Magasawang Mangga, Barrio Pugad Lawin, Las Piñas, Rizal under Psu-96920 approved by the Director of the Bureau of Lands on 16 January 1933;

7. Civil Case No. L-97-0238, which was filed by Serafina SP Argana, *et al.*, covering a parcel of land with an area of 29,391 square meters, located in Magasawang Mangga, Barrio Pugad Lawin, Las Piñas, Rizal under Psu-96909 approved by the Director of the Bureau of Lands on 18 January 1933; and

8. Civil Case No. L-97-0239, which was filed by the Heirs of Mariano Villanueva, *et al.*, covering a parcel of land with an area of 7,454 square meters, located in Magasawang Mangga, Barrio Pugad Lawin, Las Piñas, Rizal under Psu-96910 approved by the Director of the Bureau of Lands on 16 January 1933.

The eight Complaints[11] were similarly worded and contained substantially identical allegations. Petitioners claimed in their Complaints that they had been in continuous, open, and exclusive possession of the afore-described parcels of land (subject properties) for more than 90 years until they were forcibly ousted by armed men hired by respondents in 1991. They had cultivated the subject properties and religiously paid the real estate taxes for the same. Respondents cannot rely on Transfer Certificates of Title (TCTs) No. 9176, No. 9177, No. 9178, No. 9179, No. 9180, No. 9181 and No. 9182,[12] issued by the Registry of Deeds of Las Piñas in their names, to support their claim over the

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[11] Records, Vol. 1, pp. 1-9; Vol. 3, pp. 1-10; Vol. 4, pp. 1-9; Vol. 5, pp. 1-9; Vol. 6, pp. 1-9; Vol. 7, pp. 1-8; Vol. 8, pp. 1-9; and Vol. 9, pp. 1-9.

[12] *Rollo*, pp. 293-316. Of the seven titles named in the petitioners' complaints, only three titles, TCTs No. T-9177, No. T-9178, and No. T-9179, actually refer to the parcel of land referred to as Lot 9 Psu-11411, Amd 2, and located at Barrio Pugad Lawin, Las Piñas, Rizal. The remaining four titles TCTs No. T-9176, No. T-9180, No. T-9181 and No. T-9182 refer to parcels of land located in Barrio Almanza, Las Piñas, Rizal.

subject properties since, petitioners averred, the subject properties were not covered by said certificates. Petitioners also alleged that said TCTs, purportedly derived from Original Certificate of Title (OCT) No. 6122, issued in favor of Jose Velasquez, were spurious.

To support their narration of facts, petitioners cited *Vda. de Cailles v. Mayuga*[13] and *Orosa v. Migrino*,[14] which both involved the parcel of land referred to as Lot 9, Psu-11411, Amd-2. In these cases, the Court adjudicated said piece of land to Dominador Mayuga, who later transferred it to Marciano Villanueva, who sold it to Nicolas Orosa. Pending a controversy between the Heirs of Nicolas Orosa and Jose Velasquez, Delta Motors Corporation somehow acquired the rights over their conflicting claims to the land and managed to obtain certificates of title over the same. Delta Motors Corporation sold the land to Goldenrod, Inc., which finally transferred it to a consortium composed of respondents, Peaksun Enterprises and Export Corporation, and Elena Jao.

Petitioners stressed, however, that in *Vda. de Cailles* and *Orosa*, the land that was transferred was Lot 9, Psu-11411, Amd-2, measuring 53 hectares, which was only a portion of the entire Lot 9, Psu-11411, with a total area of 119.8 hectares. And respondents' TCTs, derived from OCT No. 6122 in the name of Jose Velasquez, covered only 26.44 hectares or roughly half of Lot 9, Psu-11411, Amd-2. Petitioners averred that the subject properties were not included in the 53 hectares of Lot 9, Psu-11411, adjudicated to Dominador Mayuga.

Petitioners thus sought from the RTC that an order be issued enjoining respondents from making any developments on the subject properties, and that after hearing, judgment be rendered as follows:

> A. [Herein respondents] be ordered to recognize the rights of [herein petitioners]; to vacate the subject lot and peacefully surrender possession thereof to [petitioners]; and that Transfer Certificate of

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[13] G.R. No. L-30859, 20 February 1989, 170 SCRA 347.

[14] G.R. Nos. 99338-40, 1 February 1993, 218 SCRA 311.

Title Numbers 9176, 9177, 9178, 9179, 9180 and 9182 be cancelled by the Register of Deeds for Las Pinas, Metro Manila, insofar as they are or may be utilized to deprive [petitioners] of the possession and ownership of said lot.

B. Making the preliminary injunctions permanent.

C. An order be issued directing [respondents] to pay [petitioners] the sums of:

a. ₱500,000.00 as moral damages;

b. ₱150,000.00 as exemplary damages;

c. ₱100,000.00 as attorney's fees; and,

d. Cost of suit.

[Petitioners] further pray for such other affirmative reliefs as are deemed just and equitable in the premises.[15]

Respondents filed before the RTC a Motion to Dismiss and Opposition to Application for a Temporary Restraining Order/ Writ of Preliminary Injunction.[16] They moved for the dismissal of the eight Complaints on the grounds of (1) prescription; (2) laches; (3) lack of cause of action; and (4) *res judicata*.[17]

Respondents argued that the Complaints sought the annulment of the certificates of title that were issued in their names. Section 32 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree,[18] provides that the decree of

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[15] Records, Vol. 1, p. 8; Vol. 3, p. 9; Vol. 4, pp. 8-9; Vol. 5, p. 8; Vol. 6, p. 8; Vol. 7, pp. 7-8; Vol. 8, p. 8; and Vol. 9, p. 8.

[16] Records, Vol. 1, pp. 83-123.

[17] *Id.* at 91.

[18] SEC 32. *Review of decree of registration; Innocent purchaser for value.* The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after date of the entry of such decree of

registration and the certificate of title issued pursuant thereto can only be nullified on the ground of fraud within one year after the entry of such decree of registration. Respondents' TCTs could be traced back to the decree/s of registration entered in 1966/1967, which resulted in the issuance of OCT No. 6122 in the name of Jose Velasquez, respondents' predecessor-in-interest. Hence, the filing of the Complaints only in October 1997 was made beyond the prescription period for assailing a decree of registration and/or the certificate of title issued pursuant thereto. Additionally, petitioners' Complaints were actions for reconveyance of the subject properties based on implied trust, the filing of which prescribes after 10 years from the time said properties were first registered under the Torrens system, in accordance with Articles 1144 and 1456 of the Civil Code.[19] Since the subject properties were first registered in 1966/1967, then the actions for their reconveyance, instituted only in 1997 or 30 years later, should be dismissed on the ground of prescription.[20]

Respondents also contended that petitioners were guilty of laches. Despite their alleged possession of the subject properties

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registration, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, or other encumbrancer for value.

Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other persons responsible for the fraud.

[19] Article 1144. The following actions must be brought within ten year from the time the right of action accrues:

(1) Upon a written contract;
(2) Upon an obligation created by law; and
(3) Upon a judgment.

Article 1456. If property is acquired through mistakes or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

[20] Records, Vol. 1, pp. 91-94.

for 90 years, petitioners failed to take any steps to oppose the land registration cases involving the same properties or to seek the nullification of the decrees of registration and certificates of title which were entered and issued as early as 1966 and 1967.[21]

Moreover, respondents maintained that the Complaints should be dismissed for failure to state a cause of action. Even assuming that petitioners were able to prove their allegations of longtime possession and payment of realty taxes on the subject properties, and to submit a sketch plan of the same, these cannot defeat a claim of ownership over the parcels of land, which were already registered under the Torrens system in the name of respondents and the other consortium members.[22]

Lastly, respondents insisted that the Complaints should be dismissed on the ground of *res judicata*.[23] By virtue of the decided cases *Vda. de Cailles* and *Orosa*, which petitioners themselves cited in their Complaints, any claims to all portions of Lot 9, Psu 11411, Amd-2 are barred by *res judicata*. In said cases, respondents' predecessors-in-interest were declared owners of Lot 9, Psu 11411, Amd-2. Respondents also referred to a Decision[24] dated 17 December 1991 rendered by the Metropolitan Trial Court (MTC) of Las Piñas, Branch 79, in Civil Case No. 3271, entitled *Heirs of Benito Navarro v. Fil-Estate Management Inc.*[25] In its Decision, the MTC declared that therein plaintiffs were not in possession of the land, which it found to belong to respondent Fil-Estate Management Inc.

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

[22] *Id.* at 98-102

[23] *Id.* at 102-114.

[24] *Id.* at 156-159.

[25] Civil Case No. 3271 for Forcible Entry was filed by the Heirs of Benito Navarro, the Heirs of Florencio Malaca, the Heirs of Tomas Dolleton, the Heirs of Hilarion Garcia, the Heirs of Marcos Soligam, the Heirs of Mariano Villanueva, the Heirs of Basilio Miranda, the heirs of Regino Dullas, the Heirs of Teodoro Malaca, and Bernardo Millama. Civil Case No. 3271 was consolidated with Civil Case No. 323, filed by the Heirs of Francisco Alma, *et al.*, Civil Case No. 3174, filed by the Heirs of Nicasio San Pedro, *et al*., and Civil Case No. 3295, filed by the Heirs of Teodora Bunyi, *et al. Id.* at 151-159.

On 11 June 1998, the Heirs of Jose Velasquez (intervenors) filed a Motion for Intervention with Leave of Court and a Complaint-in-Intervention, alleging that the subject properties, covered by TCTs No. 9176, No. 9177, No. 9178, No. 9179, No. 9180, and No. 9181, were once owned by the Spouses Jose Velasquez and Loreto Tiongkiao. Without settling the conjugal partnership after the death of his wife Loreto Tiongkiao, and without obtaining the intervenors' consent, Jose Velasquez, together with J.V. Development Corporation, Delta Motors Corporation, and Nicolas Orosa, transferred all their rights to the subject properties to Goldenrod, Inc., from which respondents acquired the same. The intervenors sought the cancellation and nullification of respondents' certificates of title insofar as their mother's share in the subject properties was concerned.[26]

On 8 September 2000, the RTC issued a Resolution[27] in Civil Case No. LP-97-0228 granting respondents' Motion to Dismiss. The trial court determined that the subject properties were already registered in the names of respondents, and that petitioners were unable to prove by clear and convincing evidence their title to the said properties. The dispositive part of the RTC Resolution reads:

> On the basis of the foregoing reasons alone, the instant complaint should immediately be DISMISSED. Accordingly, the prayer for a temporary restraining order and preliminary injunction is DENIED. This, however, is without prejudice to the complaint-in-intervention filed by intervenors over the disputed properties, their undivided interests being intertwined and attached to the disputed properties wherever it goes and whoever is in possession of the same, their right to bring action to pursue the same being imprescriptible.[28]

On 12 August 2002, respondents filed a Motion for Clarification[29] asking the RTC whether the order of dismissal of Civil Case No. LP-97-0228, included Civil Cases No. LP-

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[26] *Id.* at 233-234; 246-252.

[27] *Rollo*, pp. 111-114.

[28] *Id.* at 113.

[29] Records, Vol. 9, pp. 692-695.

97-0229, No. LP-97-0230, No. LP-97-0231, No. LP-97-0236, No. LP-97-0237, No. LP-97-0238, and No. LP-97-0239. In a Resolution[30] dated 30 June 2003, the RTC reiterated its Resolution dated 8 September 2000 dismissing the Complaint of petitioners Heirs of Tomas Dolleton in Civil Case No. LP-97-0228; and declared that the other cases — Civil Cases No. LP-97-0229, No. LP-97-0230, No. LP-97-0231, No. LP-97-0236, No. LP-97-0237, No. LP-97-0238, and No. LP-97-0239 — were similarly dismissed since they involved the same causes of action as Civil Case No. LP-97-0228.

On 9 July 2003, petitioners filed a consolidated Notice of Appeal questioning the 30 June 2003 Resolution of the RTC.[31] They accordingly filed an appeal of the said Resolution of the trial court with the Court of Appeals, docketed as CA-G.R. CV No. 80927.

In its Decision dated 16 September 2005 in CA-G.R. CV No. 80927, the Court of Appeals denied petitioners' appeal and affirmed the RTC Resolutions dated 8 September 2000 and 30 June 2003. The appellate court found that respondents' titles to the subject properties were indefeasible because they were registered under the Torrens system. Thus, petitioners could not say that any claim on the subject properties casts a cloud on their title when they failed to demonstrate a legal or an equitable title to the same. The Court of Appeals also ruled that petitioners' actions had already prescribed. Section 32 of Presidential Decree No. 1529 requires that an action assailing a certificate of title should be filed within one year after its issuance. Moreover, actions assailing fraudulent titles should be filed within 10 years after the said titles were issued. The appellate court further decreed that the cases for quieting of title should be dismissed based on the allegation of petitioners themselves that the parcels of land covered by respondents' certificates of title were not the subject properties which petitioners claimed as their own.[32]

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[30] *Rollo*, pp. 117-118.

[31] Records, Vol. 2, pp. 707-708.

[32] *Rollo*, pp. 55-57.

Petitioners filed a Motion for Reconsideration of the aforementioned Decision,[33] which the Court of Appeals denied in a Resolution dated 9 December 2005.[34]

Hence, the present Petition, where petitioners made the following assignment of errors:

I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT AFFIRMED THE RESOLUTION OF THE COURT *A QUO*, DATED SEPTEMBER 8, 2000 AND THE RESOLUTION DATED JUNE 30, 2003, BASED PURELY ON THE TECHNICALITY OF THE LAW RATHER THAN THE LAW THAT PROTECT[S] THE PROPERTY RIGHTS OF THE PETITIONERS WHO WERE FORCIBLY EVICTED FROM THEIR RESPECTIVE LANDHOLDINGS BY THE USED (sic) OF BRUTE FORCE OF ARMED MEN ON THE BASIS OF THE TITLES OF THE PRIVATE RESPONDENTS, IN VIOLATION OF THEIR PROPERTY RIGHTS AND OF DUE PROCESS.

II

THAT THE COURT OF APPEALS GRAVELY ERRED WHEN IT AFFIRMED THE RESOLUTION OF THE COURT *A QUO*, DESPITE THE FACT THAT A FULL BLOWN HEARING ON THE MERIT[S] IS NECESSARY TO DETERMINE THE ACTUAL LOCATION ON THE ACTUAL GROUND [OF] THE LOTS COVERED BY THE PRIVATE RESPONDENT (sic) TITLES, LOTS COVERED BY ITS TITLES ARE MORE THAN THREE HUNDRED (300 m) METERS AWAY TO THE WEST-NORTHWEST FROM THE CONSOLIDATED LOTS OF THE HEREIN PETITIONERS AND THEREFORE PRIVATE RESPONDENTS BRUTAL ACTION IN FORCIBLY EVICTING THE PETITIONERS FROM THEIR RESPECTIVE LANDHOLDINGS BY THE USED (sic) OF BRUTE FORCE OF ARMED MEN, ARE PURELY CASES OF LANDGRABBING.[35]

This Petition is meritorious.

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[33] *Id.* at 61-82.

[34] *Id.* at 59-60.

[35] *Id.* at 14-15

The main issue in this case is whether the RTC properly granted respondents' motion to dismiss. This Court finds that the trial court erred in dismissing petitioners' Complaints.

Complaints sufficiently stated a cause of action.

Respondents seek the dismissal of petitioners' Complaints for failure to state a cause of action. Even assuming as true that the subject properties have been in the possession of petitioners and their predecessors-in-interest for 90 years; that petitioners have been paying the realty taxes thereon; and that petitioners are able to submit a sketch plan of the subject properties, respondents maintain that their ownership of the subject properties, evidenced by certificates of title registered in their names, cannot be defeated. This contention is untenable.

Respondents mistakenly construe the allegations in petitioners' Complaints. What petitioners alleged in their Complaints was that while the subject properties were not covered by respondents' certificates of title, nevertheless, respondents forcibly evicted petitioners therefrom. Hence, it is not simply a question of whether petitioners' possession can defeat respondents' title to registered land. Instead, an initial determination has to be made on whether the subject properties were in fact covered by respondents' certificates of title.

Section 2, Rule 2 of the Rules of Civil Procedure defines a cause of action as the act or omission by which a party violates the right of another. Its essential elements are as follows: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff, for which the latter may maintain an action for recovery of damages or other appropriate relief.[36]

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[36] *Universal Aquarius, Inc. v. Q.C. Human Resources Management Corporation*, G.R. No.155990, 12 September 2007, 533 SCRA 38, 45-46; *Vergara v. Court of Appeals*, 377 Phil. 336, 341 (1999).

The elementary test for failure to state a cause of action is whether the complaint alleges facts which if true would justify the relief demanded. The inquiry is into the sufficiency, not the veracity, of the material allegations. If the allegations in the complaint furnish sufficient basis on which it can be maintained, it should not be dismissed regardless of the defense that may be presented by the defendant.[37]

This Court is convinced that each of the Complaints filed by petitioners sufficiently stated a cause of action. The Complaints alleged that petitioners are the owners of the subject properties by acquisitive prescription. As owners thereof, they have the right to remain in peaceful possession of the said properties and, if deprived thereof, they may recover the same. Section 428 of the Civil Code provides that:

Article 428. The owner has the right to enjoy and dispose of a thing without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it.

Petitioners averred that respondents had violated their rights as owner of the subject properties by evicting the former therefrom by means of force and intimidation. Respondents allegedly retained possession of the subject properties by invoking certificates of title covering other parcels of land. Resultantly, petitioners filed the cases before the RTC in order to recover possession of the subject properties, to prevent respondents from using their TCTs to defeat petitioners' rights of ownership and possession over said subject properties, and to claim damages and other reliefs that the court may deem just and equitable.

The Court notes that petitioners' prayer for the cancellation of respondents' certificates of title are inconsistent with their allegations. Petitioners prayed for in their Complaints that, among other reliefs, judgment be rendered so that "Transfer Certificate of Title Numbers 9176, 9177, 9178, 9179, 9180, 9181, and

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[37] *Hongkong and Shanghai Banking Corporation, Limited v. Catalan*, G.R. No. 159590, 18 October 2004, 440 SCRA 498, 510-511.

9182 be cancelled by the Register of Deeds for Las Piñas, Metro Manila, insofar as they are or may be utilized to deprive plaintiffs of possession and ownership of said lot." Yet, petitioners also made it plain that the subject properties, of which respondents unlawfully deprived them, were not covered by respondents' certificates of title. It is apparent that the main concern of petitioners is to prevent respondents from using or invoking their certificates of title to deprive petitioners of their ownership and possession over the subject properties; and not to assert a superior right to the land covered by respondents' certificates of title. Admittedly, while petitioners can seek the recovery of the subject properties, they cannot ask for the cancellation of respondents' TCTs since petitioners failed to allege any interest in the land covered thereby. Still, the other reliefs sought by petitioners, *i.e.*, recovery of the possession of the subject properties and compensation for the damages resulting from respondents' forcible taking of their property, are still proper.

Petitioners' Complaints should not have been dismissed despite the seeming error made by petitioners in their prayer. To sustain a motion to dismiss for lack of cause of action, the complaint must show that the claim for relief **does not exist**, rather than that a claim has been defectively stated, or is ambiguous, indefinite or uncertain.[38]

Complaints are not barred by prescription and laches.

In their Motion to Dismiss, respondents argued that petitioners' cases were barred by prescription, in accordance with Section 32 of the Property Registration Decree and Articles 1144(2) and 1456 of the Civil Code. Respondents relied on the premise that the actions instituted by petitioners before the RTC were for the reopening and review of the decree of registration and reconveyance of the subject properties.

Section 32 of the Property Registration Decree provides that a decree of registration may be reopened when a person is

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[38] *Pioneer Concrete Philippines, Inc. v. Todaro*, G.R. No. 154830, 8 June 2007, 524 SCRA 153, 162; *Vergara v. Court of Appeals*, *supra* note 36 at 341.

deprived of land or an interest therein by such adjudication or confirmation obtained by actual fraud. On the other hand, an action for reconveyance respects the decree of registration as incontrovertible but seeks the transfer of property, which has been wrongfully or erroneously registered in other persons' names, to its rightful and legal owners, or to those who claim to have a better right.[39] In both instances, the land of which a person was deprived should be the same land which was fraudulently or erroneously registered in another person's name, which is not the case herein, if the Court considers the allegations in petitioners' Complaints.

As previously established, petitioners' main contention is that the subject properties from which they were forcibly evicted were not covered by respondents' certificates of title. Stated differently, the subject properties and the land registered in respondents' names are not identical. Consequently, petitioners do not have any interest in challenging the registration of the land in respondents' names, even if the same was procured by fraud.

While petitioners improperly prayed for the cancellation of respondents' TCTs in their Complaints, there is nothing else in the said Complaints that would support the conclusion that they are either petitions for reopening and review of the decree of registration under Section 32 of the Property Registration Decree or actions for reconveyance based on implied trust under Article 1456 of the Civil Code. Instead, petitioners' Complaints may be said to be in the nature of an *accion reivindicatoria*, an action for recovery of ownership and possession of the subject properties, from which they were evicted sometime between 1991 and 1994 by respondents. An *accion reivindicatoria* may be availed of **within 10 years from dispossession**.[40] There is no showing that prescription had already set in when petitioners filed their Complaints in 1997.

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[39] *Heirs of Valeriano S. Concha v. Lumocso*, G.R. No. 158121, 12 December 2007, 540 SCRA 1, 13-14; *Santos v. Lumbao*, G.R. No. 169129, 28 March 2007, 519 SCRA 408, 429.

[40] *Cutanda v. Heirs of Cutanda*, 390 Phil. 740, 748 (2000).

Furthermore, the affirmative defense of prescription does not automatically warrant the dismissal of a complaint under Rule 16 of the Rules of Civil Procedure. An allegation of prescription can effectively be used in a motion to dismiss only when the Complaint on its face shows that indeed the action has already prescribed.[41] If the issue of prescription is one involving evidentiary matters requiring a full-blown trial on the merits, it cannot be determined in a motion to dismiss.[42] In the case at bar, respondents must first be able to establish by evidence that the subject properties are indeed covered by their certificates of title before they can argue that any remedy assailing the registration of said properties or the issuance of the certificates of title over the same in the names of respondents or their predecessors-in-interest has prescribed.

Neither can the Court sustain respondents' assertion that petitioners' Complaints were barred by laches.

Laches has been defined as the failure of or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence, could or should have been done earlier; or to assert a right within reasonable time, warranting a presumption that the party entitled thereto has either abandoned it or declined to assert it. Thus, the doctrine of laches presumes that the party guilty of negligence had the opportunity to do what should have been done, but failed to do so. Conversely, if the said party did not have the occasion to assert the right, then, he cannot be adjudged guilty of laches. Laches is not concerned with the mere lapse of time; rather, the party must have been afforded an opportunity to pursue his claim in order that the delay may sufficiently constitute laches.[43]

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[41] *National Irrigation Administration v. Court of Appeals*, 376 Phil. 362, 376 (1999).

[42] *Pineda v. Heirs of Eliseo Guevarra*, G.R. No. 143188, 14 February 2007, 515 SCRA 627, 637.

[43] *Placewell International Services Corporation v. Camote*, G.R. No. 169973, 26 June 2006, 492 SCRA 761,769; *Philippine National Construction Corporation v. National Labor Relations Commission*, 366 Phil. 678, 686 (1999).

Again, going back to petitioners' chief claim that the subject properties are distinct from the land covered by respondents' certificates of title, then, petitioners would have no standing to oppose the registration of the latter property in the names of respondents or their predecessors-in-interest, or to seek the nullification of the certificates of title issued over the same.

It also appears from the records that the RTC did not conduct a hearing to receive evidence proving that petitioners were guilty of laches. Well-settled is the rule that the elements of laches must be proven positively. Laches is evidentiary in nature, a fact that cannot be established by mere allegations in the pleadings and cannot be resolved in a motion to dismiss. At this stage, therefore, the dismissal of petitioners' Complaints on the ground of laches is premature. Those issues must be resolved at the trial of the case on the merits, wherein both parties will be given ample opportunity to prove their respective claims and defenses.[44]

Complaints are not barred by res judicata.

Lastly, respondents argued in their Motion to Dismiss that petitioners' Complaints are barred by *res judicata*, citing *Vda. de Cailles* and *Orosa*. Likewise, petitioners are barred from instituting any case for recovery of possession by the MTC Decision in Civil Case No. 3271.

Res judicata refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit. *Res judicata* has two concepts: (1) "bar by prior judgment" as enunciated in Rule 39, Section 47 (b) of the Rules of Civil Procedure; and (2) "conclusiveness of judgment" in Rule 39, Section 47 (c).

There is "bar by prior judgment" when, as between the first case where the judgment was rendered, and the second case

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[44] *Pineda v. Heirs of Eliseo Guevarra*, *supra* note 42 at 634-635; *Gochan and Sons Realty Corporation v. Heirs of Raymundo Baba*, 456 Phil. 569, 579-580 (2003); *National Irrigation Administration v. Court of Appeals*, *supra* note 41 at 362.

that is sought to be barred, there is identity of parties, subject matter, and causes of action. But where there is **identity of parties and subject matter** in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. There is "conclusiveness of judgment." Under the doctrine of conclusiveness of judgment, facts and issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties, even if the latter suit may involve a different claim or cause of action. The identity of causes of action is not required but merely identity of issues.[45]

Vda. de Cailles and *Orosa* cannot bar the filing of petitioners' Complaints before the RTC under the doctrine of conclusiveness of judgment, since they involve entirely different subject matters. In both cases, the subject matter was a parcel of land referred to as Lot 9 Psu-11411 Amd-2, while subject matter of the petitioners' Complaints are lots which are not included in the said land.

It follows that the more stringent requirements of *res judicata* as "bar by prior judgment" will not apply to petitioners' Complaints. In *Vda. de Cailles*, the Court confirmed the ownership of Dominador Mayuga over a 53-hectare parcel of land located in Las Piñas, Rizal, more particularly referred to as Lot 9, Psu-11411, Amd-2. The Court also recognized that Nicolas Orosa was Dominador Mayuga's successor-in-interest. However, the judgment in said case was not executed because the records of the Land Registration Authority revealed that the property had previously been decreed in favor of Jose T. Velasquez, to whom OCT No. 6122 was issued. During the execution proceedings, Goldenrod Inc. filed a motion to intervene, the granting of which by the trial court was challenged in *Orosa*. The Court held in *Orosa* that Goldenrod, Inc., despite having acquired the opposing rights of Nicolas Orosa and Jose T. Velasquez to the property sometime in 1987, no longer had any interest in the same as

[45] *Republic v. Yu*, G.R. No. 157557, 10 March 2006, 484 SCRA 416, 422; *Francisco v. Co*, G.R. No. 151339, 31 January 2006, 481 SCRA 241, 249-250.

would enable it to intervene in the execution proceedings, since it had already sold its interest in February 1989 to the consortium composed of respondents, Peaksun Enterprises and Export Corporation, and Elena Jao.

The adjudication of the land to respondents' predecessors-in-interest in *Vda. de Cailles* and *Orosa* is not even relevant to petitioners' Complaints. According to petitioners' allegations in their Complaints, although the subject properties were derived from the 119.8-hectare parcel of land referred to as Lot 9, Psu-11411, they are not included in the 53-hectare portion thereof, specifically identified as Lot 9, Psu-11411, Amd-2, subject of *Vda. de Cailles* and *Orosa*. This was the reason why petitioners had to cite *Vda. de Cailles* and *Orosa*: to distinguish the subject properties from the land acquired by respondents and the other members of the consortium. There clearly being no identity of subject matter and of parties, then, the rulings of this Court in *Vda. de Cailles* and *Orosa* do not bar by prior judgment Civil Cases No. LP-97-0228, No. LP-97-0229, No. LP-97-0230, No. LP-97-0231, No. LP-97-0236, No. LP-97-0237, No. LP-97-0238, and No. LP-97-0239 instituted by petitioners in the RTC.

The Court is aware that petitioners erroneously averred in their Complaints that the subject properties "originated from Psu-11411, Lot 9, Amd-2," instead of stating that the said properties originated from Psu-11411, Lot 9. However, this mistake was clarified in later allegations in the same Complaints, where petitioners stated that "Psu-114, Lot 9 consists of 1,198,017 square meters," or 119.8 hectares when converted, while Psu-11411, Lot 9, Amd-2 referred to a 53-hectare parcel. Petitioners pointed out that in *Vda. de Cailles* and *Orosa*, the Court acknowledged "the ownership [of respondents' predecessor-in-interest] only over a fifty-three (53) hectare parcel, more particularly referred to as Lot 9 Psu-11411, Amd-2." Thus, petitioners argued that the rights which respondents acquired from Mayuga and Orosa "cover[ed] only 531, 449 square meters or 53 hectares of Psu-11411, Lot 9. They do not extend to the latter's other portion of 1,198, 017 square meters part of which [petitioners] had been occupying until they were forcibly evicted by [respondents]." Accordingly, the single statement in the

Complaints that the subject properties originated from Lot 9, Psu-11411, Amd-2, is an evident mistake which cannot prevail over the rest of the allegations in the same Complaints.

Similarly, the Decision dated 17 December 1991 of the MTC in Civil Case No. 3271 cannot bar the filing of petitioners' Complaints before the RTC because they have different subject matters. The subject matter in Civil Case No. 3271 decided by the MTC was the parcel of land covered by TCTs No. 9176, No. 9177, No. 9178, No. 9179, No. 9180, and No. 9181, in the name of respondents and the other consortium members; while, according to petitioners' allegations in their Complaints, the subject matters in Civil Cases No. LP-97-0228, No. LP-97-0229, No. LP-97-0230, No. LP-97-0231, No. LP-97-0236, No. LP-97-0237, No. LP-97-0238, and No. LP-97-0239, before the RTC, are the subject properties which are not covered by respondents' certificates of title.

The MTC, in its 17 December 1991 Decision in Civil Case No. 3271 found that:

The subject parcels of land are covered by (TCT) Nos. 9176, 9177, 9178, 9179, [9180], [9181] and 9182 (Exhs. "1" to "7", Defendants) all issued in the name of defendant Fil-Estate Management, Inc. It appears from the evidence presented that defendant Fil-Estate purchased the said property from Goldenrod, Inc. It also appears from the evidence that the subject property at the time of the purchase was then occupied by squatters/ intruders. By reason thereof, the Municipality of Las Piñas conducted in 1989 a census of all structures/shanties on subject property. Those listed in the census were relocated by defendant, which relocation program started in 1990 up to the present. **Interestingly, however, all of the plaintiffs herein except the Almas, were not listed as among those in possession of defendant's land as of November 1989.**

x x x x x x x x x

In fine, plaintiffs have not clearly established their right of possession over the property in question. They claim ownership, but no evidence was ever presented to prove such fact. They claim

possession from time immemorial. But the Census prepared by Las Piñas negated this posture.[46] (Emphasis provided.)

The determination by the MTC that petitioners were not occupants of the parcels of land covered by TCTs No. 9176, No. 9177, No. 9178, No. 9179, No. 9180, and No. 9181 cannot bar their claims over another parcel of land **not covered** by the said TCTs. It should also be noted that petitioners Heirs of Agapito Villanueva do not appear to be plaintiffs in Civil Case No. 3271 and, therefore, cannot be bound by the MTC Decision therein.

In all, this Court pronounces that respondents failed to raise a proper ground for the dismissal of petitioners' Complaints. Petitioners' claims and respondents' opposition and defenses thereto are best ventilated in a trial on the merits of the cases.

IN VIEW OF THE FOREGOING, the instant Petition is *GRANTED*. The Decision dated 16 September 2005 and Resolution dated 9 December 2005 of the Court of Appeals in CA-G.R. CV No. 80927 are *REVERSED* and *SET ASIDE*. Let the records of the case be remanded for further proceedings to the Regional Trial Court, Branch 253, of Las Piñas City, which is hereby ordered to try and decide the case with deliberate speed.

SO ORDERED.

Quisumbing,[*] *Ynares-Santiago (Chairperson), Carpio Morales,*[**] and *Peralta, JJ.,* concur.

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[46] Records, Vol. 1, pp. 156-158.

[*] Per Special Order No. 607, dated 30 March 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Ma. Alicia Austria-Martinez, who is on official leave.

[**] Associate Justice Conchita Carpio Morales was designated to sit as additional member replacing Associate Justice Antonio Eduarto B. Nachura per Raffle dated 14 January 2008.

SECOND DIVISION

[G.R. No. 171072. April 7, 2009]

GOLDCREST REALTY CORPORATION, *petitioner, vs.* **CYPRESS GARDENS CONDOMINIUM CORPORATION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; QUESTION OF FACT; THE QUESTION OF WHETHER A CERTAIN ACT IMPAIRS AN EASEMENT IS UNDENIABLY ONE OF FACT. —** Goldcrest essentially contends that since the roof deck's common limited area is for its exclusive use, building structures thereon and leasing the same to third persons do not impair the subject easement. For its part, Cypress insists the said acts impair the subject easement because the same are already beyond the contemplation of the easement granted to Goldcrest. The question of whether a certain act impairs an easement is undeniably one of fact, considering that its resolution requires us to determine the act's propriety in relation to the character and purpose of the subject easement. In this case, we find no cogent reason to overturn the similar finding of the HLURB, the Office of the President and the Court of Appeals that Goldcrest has no right to erect an office structure on the limited common area despite its exclusive right to use the same.

2. **CIVIL LAW; EASEMENTS; RESTRICTIONS ON THE RIGHTS OF THE OWNER OF THE DOMINANT ESTATE; BREACH THEREOF IN CASE AT BAR. —** The owner of the dominant estate cannot violate any of the following prescribed restrictions on its rights on the servient estate, to wit: (1) it can only exercise rights necessary for the use of the easement; (2) it cannot use the easement except for the benefit of the immovable original contemplated; (3) it cannot exercise the easement in any other manner than that previously established; (4) it cannot construct anything on it which is not necessary for the use and preservation of the easement; (5) it cannot alter or make the easement more burdensome; (6) it must notify the servient estate owner of its intention to make necessary works on the servient estate; (7) it should choose the most convenient time and manner to

build said works so as to cause the least convenience to the owner of the servient estate. Any violation of the above constitutes impairment of the easement. Here, a careful scrutiny of Goldcrest's acts shows that it breached a number of the aforementioned restrictions. First, it is obvious that the construction and the lease of the office structure were neither necessary for the use or preservation of the roof deck's limited area. Second, the weight of the office structure increased the strain on the condominium's foundation and on the roof deck's common limited area, making the easement more burdensome and adding unnecessary safety risk to all the condominium unit owners. Lastly, the construction of the said office structure clearly went beyond the intendment of the easement since it illegally altered the approved condominium project plan and violated Section 4 of the condominium's Declaration of Restrictions.

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon & San Jose for petitioner.
Santiago Cruz & Sarte Law Offices for respondent.

D E C I S I O N

QUISUMBING, *J.*:

For review on *certiorari* are the Decision[1] dated September 29, 2005 and the Resolution[2] dated January 16, 2006 of the Court of Appeals in CA G.R. SP No. 79924.

The antecedent facts in this case are as follows:

Petitioner Goldcrest Realty Corporation (Goldcrest) is the developer of Cypress Gardens, a ten-storey building located at Herrera Street, Legaspi Village, Makati City. On April 26, 1977, Goldcrest executed a Master Deed and Declaration of Restrictions[3]

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[1] *Rollo*, pp. 32-43. Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Andres B. Reyes, Jr. and Monina Arevalo-Zenarosa, concurring.

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

[3] *Id.* at 47-61.

which constituted Cypress Gardens into a condominium project and incorporated respondent Cypress Gardens Condominium Corporation (Cypress) to manage the condominium project and to hold title to all the common areas. Title to the land on which the condominium stands was transferred to Cypress under Transfer Certificate of Title No. S-67513. But Goldcrest retained ownership of the two-level penthouse unit on the ninth and tenth floors of the condominium registered under Condominium Certificate of Title (CCT) No. S-1079 of the Register of Deeds of Makati City. Goldcrest and its directors, officers, and assigns likewise controlled the management and administration of the Condominium until 1995.

Following the turnover of the administration and management of the Condominium to the board of directors of Cypress in 1995, it was discovered that certain common areas pertaining to Cypress were being occupied and encroached upon by Goldcrest. Thus, in 1998, Cypress filed a complaint with damages against Goldcrest before the Housing and Land Use Regulatory Board (HLURB), seeking to compel the latter to vacate the common areas it allegedly encroached on and to remove the structures it built thereon. Cypress sought to remove the door erected by Goldcrest along the stairway between the 8th and 9th floors, as well as the door built in front of the 9th floor elevator lobby, and the removal of the cyclone wire fence on the roof deck. Cypress likewise prayed that Goldcrest pay damages for its occupation of the said areas and for its refusal to remove the questioned structures.

For its part, Goldcrest averred that it was granted the exclusive use of the roof deck's limited common area by Section 4(c)[4] of

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

Section 4. The Limited Common Areas. Certain parts of the common areas are to be set aside and reserved for the exclusive use of certain units and each unit shall have appurtenant thereto as exclusive easement for the use of such limited areas:

x x x x x x x x x

(c) Exclusive use of the portion of the roof deck (not shaded red in sheet 10 of Annex "B") by the Penthouse unit on the roof deck.

the condominium's Master Deed. It likewise argued that it constructed the contested doors for privacy and security purposes, and that, nonetheless, the common areas occupied by it are unusable and inaccessible to other condominium unit owners.

Upon the directive of HLURB Arbiter San Vicente, two ocular inspections[5] were conducted on the condominium project. During the first inspection, it was found that Goldcrest enclosed and used the common area fronting the two elevators on the ninth floor as a storage room. It was likewise discovered that Goldcrest constructed a permanent structure which encroached 68.01 square meters of the roof deck's common area.[6]

During the second inspection, it was noted that Goldcrest failed to secure an alteration approval for the said permanent structure.

In his Decision[7] dated December 2, 1999, Arbiter San Vicente ruled in favor of Cypress. He required Goldcrest, among other things, to: (1) remove the questioned structures, including all other structures which inhibit the free ingress to and egress from the condominium's limited and unlimited common areas; (2) vacate the roof deck's common areas and to pay actual damages for occupying the same; and (3) pay an administrative fine for constructing a second penthouse and for making an unauthorized alteration of the condominium plan.

On review, the HLURB Special Division modified the decision of Arbiter San Vicente. It deleted the award for actual damages after finding that the encroached areas were not actually measured and that there was no evidentiary basis for the rate of compensation fixed by Arbiter San Vicente. It likewise held that Cypress has no cause of action regarding the use of the roof deck's limited common area because only Goldcrest has the right to use the same. The dispositive portion of the decision reads:

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[5] Records, Vol. I, pp. 152 and 173-174.

[6] No distinction, however, was made between the roof deck's limited and unlimited common areas.

[7] CA *rollo*, pp. 86-99.

WHEREFORE, in view of the foregoing, the decision of the office [is] modified as follows:

1. Directing respondent to immediately remove any or all structures which obstruct the use of the stairway from the eighth to tenth floor, the passage and use of the lobbies at the ninth and tenth floors of the Cypress Gardens Condominium; and to remove any or all structures that impede the use of the unlimited common areas.

2. Ordering the respondent to pay an administrative fine of ₱10,000.00 for its addition of a second penthouse and/or unauthorized alteration of the condominium plan.

All other claims are hereby dismissed.

SO ORDERED.[8]

Aggrieved, Cypress appealed to the Office of the President. It questioned the deletion of the award for actual damages and argued that the HLURB Special Division in effect ruled that Goldcrest could erect structures on the roof deck's limited common area and lease the same to third persons.

The Office of the President dismissed the appeal. It ruled that the deletion of the award for actual damages was proper because the exact area encroached by Goldcrest was not determined. It likewise held that, contrary to the submissions of Cypress, the assailed decision did not favor the building of structures on either the condominium's limited or unlimited common areas. The Office of the President stressed that the decision did not only order Goldcrest to remove the structures impeding the use of the unlimited common areas, but also fined it for making unauthorized alteration and construction of structures on the condominium's roof deck.[9] The dispositive portion of the decision reads:

WHEREFORE, premises considered, the appeal of Cypress Gardens Corporation is hereby **DISMISSED** and the decision of the Board *a quo* dated May 11, 2000 is hereby **AFFIRMED**.

SO ORDERED.[10]

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[8] *Id.* at 107.

[9] *Id.* at 108-119.

[10] *Id.* at 119.

Cypress thereafter elevated the matter to the Court of Appeals, which partly granted its appeal. The appellate court noted that the right of Goldcrest under Section 4(c) of the Master Deed for the exclusive use of the easement covering the portion of the roof deck appurtenant to the penthouse did not include the unrestricted right to build structures thereon or to lease such area to third persons. Thus the appellate court ordered the removal of the permanent structures constructed on the limited common area of the roof deck. The dispositive portion of the decision reads:

> WHEREFORE, the petition is **PARTIALLY GRANTED**. The Decision of the Office of the President dated June 2, 2003 is hereby AFFIRMED with modification. Respondent Goldcrest Realty Corporation is further directed to remove the permanent structures constructed on the limited common area of the roof deck.
>
> SO ORDERED.[11]

The parties separately moved for partial reconsideration but both motions were denied.

Hence this petition, raising the following issues:

I.

[WHETHER OR NOT] THE APPELLATE COURT ERRED IN RULING THAT GOLDCREST BUILT AN OFFICE STRUCTURE ON A SUPPOSED ENCROACHED AREA IN THE OPEN SPACE OF THE ROOF DECK.

II.

[WHETHER OR NOT] THE APPELLATE COURT ERRED IN RULING THAT PETITIONER IMPAIRED THE EASEMENT ON THE PORTION OF THE ROOF DECK DESIGNATED AS A LIMITED COMMON AREA.[12]

Anent the first issue, Goldcrest contends that since the areas it allegedly encroached upon were not actually measured during the previous ocular inspections, the finding of the Court of Appeals that it built an office structure on the roof deck's limited

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[11] *Id.* at 341.

[12] *Rollo*, p. 21.

common area is erroneous and that its directive "to remove the permanent structures[13] constructed on the limited common area of the roof deck" is impossible to implement.

On the other hand, Cypress counters that the Court of Appeals' finding is correct. It also argues that the absence of such measurement does not make the assailed directive impossible to implement because the roof deck's limited common area is specifically identified by Section 4(c) of the Master Deed, which reads:

> Section. 4. The Limited Common Areas. Certain parts of the common areas are to be set aside and reserved for the exclusive use of certain units and each unit shall have appurtenant thereto as exclusive easement for the use of such limited areas:
>
> x x x x x x x x x
>
> (c) Exclusive use of the portion of the roof deck (not shaded red in sheet 10 of Annex "B") by the Penthouse unit on the roof deck.[14]
>
> x x x x x x x x x

We rule in favor of Cypress. At this stage of the proceedings, the failure to measure the supposed encroached areas is no longer relevant because the award for actual damages is no longer in issue. Moreover, a perusal of the records shows that the finding of the Court of Appeals that Goldcrest built an office structure on the roof deck's limited common area is supported by substantial evidence and established facts, to wit: (1) the ocular inspection reports submitted by HLURB Inspector Edwin D. Aquino; (2) the fact that the second ocular inspection of the roof deck was intended to measure the actual area encroached upon by Goldcrest;[15] (3) the fact that Goldcrest had been fined for building a structure on the limited common area;[16] and (4) the fact that Goldcrest neither denied the structure's existence nor its encroachment on the roof deck's limited common area.

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[13] Referring to the office structure.

[14] CA *rollo*, pp. 37-38.

[15] *Id.* at 173-174.

[16] *Rollo*, p. 316.

Likewise, there is no merit in Goldcrest's submission that the failure to conduct an actual measurement on the roof deck's encroached areas makes the assailed directive of the Court of Appeals impossible to implement. As aptly pointed out by Cypress, the limited common area of the roof deck is specifically identified by Section 4(c) of the Master Deed.

Anent the second issue, Goldcrest essentially contends that since the roof deck's common limited area is for its exclusive use, building structures thereon and leasing the same to third persons do not impair the subject easement.

For its part, Cypress insists the said acts impair the subject easement because the same are already beyond the contemplation of the easement granted to Goldcrest.

The question of whether a certain act impairs an easement is undeniably one of fact, considering that its resolution requires us to determine the act's propriety in relation to the character and purpose of the subject easement.[17] In this case, we find no cogent reason to overturn the similar finding of the HLURB, the Office of the President and the Court of Appeals that Goldcrest has no right to erect an office structure on the limited common area despite its exclusive right to use the same. We note that not only did Goldcrest's act impair the easement, it also illegally altered the condominium plan, in violation of Section 22[18] of Presidential Decree No. 957.[19]

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[17] See *Breliant v. Preferred Equities Corp.*, No. 23737, 109 Nev. 842, 858 P.2d 1258 (1993) and *Bijou Irr. Dist. v. Empire Club*, 804 P.2d 175 21 Envtl. L. Rep. 21,461 (Colo. 1991), both cited in 25 Am. Jur. 2d Easements and Licenses § 71.

[18] SEC. 22. *Alteration of Plans*. — No owner or developer shall change or alter the roads, open spaces, infrastructures, facilities for public use and/or other form of subdivision development as contained in the approved subdivision plan and/or represented in its advertisements, without the permission of the Authority and the written conformity or consent of the duly organized homeowners association, or in the absence of the latter, by the majority of the lot buyers in the subdivision.

[19] THE SUBDIVISION AND CONDOMINIUM BUYERS' PROTECTIVE DECREE, done on July 12, 1976.

The owner of the dominant estate cannot violate any of the following prescribed restrictions on its rights on the servient estate, to wit: (1) it can only exercise rights necessary for the use of the easement;[20] (2) it cannot use the easement except for the benefit of the immovable originally contemplated;[21] (3) it cannot exercise the easement in any other manner than that previously established;[22] (4) it cannot construct anything on it which is not necessary for the use and preservation of the easement;[23] (5) it cannot alter or make the easement more burdensome;[24] (6) it must notify the servient estate owner of its intention to make necessary works on the servient estate;[25] and (7) it should choose the most convenient time and manner to build said works so as to cause the least convenience to the owner of the servient estate.[26] Any violation of the above constitutes impairment of the easement.

Here, a careful scrutiny of Goldcrest's acts shows that it breached a number of the aforementioned restrictions. First, it is obvious that the construction and the lease of the office structure

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[20] CIVIL CODE,

Art. 625. Upon the establishment of an easement, all the rights necessary for its use are considered granted.

[21] *Id.*

Art. 626. The owner of the dominant estate cannot use the easement except for the benefit of the immovable originally contemplated. Neither can he exercise the easement in any other manner than that previously established.

[22] *Id.*

[23] *Id.*

Art. 627. The owner of the dominant estate may make, at his own expense, on the servient estate any works necessary for the use and preservation of the servitude, but without altering it or rendering it more burdensome.

For this purpose he shall notify the owner of the servient estate, and shall choose the most convenient time and manner so as to cause the least inconvenience to the owner of the servient estate.

[24] *Id.*

[25] *Id.*

[26] *Id.*

were neither necessary for the use or preservation of the roof deck's limited area. Second, the weight of the office structure increased the strain on the condominium's foundation and on the roof deck's common limited area, making the easement more burdensome and adding unnecessary safety risk to all the condominium unit owners. Lastly, the construction of the said office structure clearly went beyond the intendment of the easement since it illegally altered the approved condominium project plan and violated Section 4[27] of the condominium's Declaration of Restrictions.[28]

WHEREFORE, the petition is *DENIED* for lack of merit. The assailed Decision dated September 29, 2005 of the Court of Appeals in CA G.R. SP. No. 79924 is hereby *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

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

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[27] Section. 4. Maintenance, Repairs and Alterations. — . . .

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Notwithstanding the foregoing provisions, the owner, tenant or occupant of a unit may not undertake any structural repairs or alterations, or any other work which would jeopardize the safety of the Building, or another unit, or impair any easement, without the prior written approval of the Condominium Corporation and of the owners of the units directly affected by such work.

x x x x x x x x x

[28] *Rollo*, pp. 51-58.

SECOND DIVISION

[G.R. No. 171138. April 7, 2009]

H. TAMBUNTING PAWNSHOP, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; PAWNSHOPS; PAWN TICKET IS A DOCUMENT THAT EVIDENCES THE PLEDGE. — [A] pledge is an accessory, real and unilateral contract by virtue of which the debtor or a third person delivers to the creditor or to a third person movable property as security for the performance of the principal obligation, upon fulfillment of which the thing pledged, with all its accessions and accessories, shall be returned to the debtor or to the third person. The pawn ticket is required to contain the same essential information that would be found in a pledge agreement. Only the nomenclature of the requirements in the pawn ticket is changed to refer to the specific kind of pledge transactions undertaken by pawnshops. The property or thing pledged is referred to as the pawn, the creditor (pledgee) is referred to as the pawnee and the debtor (pledgor) is referred to as the pawner. Petitioner's explanations fail to dissuade us from recognizing the pawn ticket as the document that evidences the pledge. True, the pawn ticket is neither a security nor a printed evidence of indebtedness. But, precisely being a *receipt for a pawn*, it documents the pledge. A pledge is a real contract, hence, it is necessary in order to constitute the contract of pledge, that the thing pledged be placed in the possession of the creditor, or of a third person by common agreement. Consequently, the issuance of the pawn ticket by the pawnshop means that the thing pledged has already been placed in its possession and that the pledge has been constituted.

2. ID.; ID.; A PAWN TICKET IS SUBJECT TO DOCUMENTARY STAMP TAX; RELEVANT RULING, CITED. — The law imposes DST on documents issued in respect of the specified transactions, such as pledge, and not only on papers evidencing indebtedness. Therefore, a pawn ticket, being issued in respect

of a pledge transaction, is subject to documentary stamp tax. x x x The question of whether pawnshop transactions evidenced by pawn tickets are subject to documentary stamp taxes has been answered in the affirmative in *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*. There the Court held: x x x Section 195 of the National Internal Revenue Code (NIRC) imposes a DST on **every** pledge regardless of whether the same is a conventional pledge governed by the Civil Code or one that is governed by the provisions of P.D. No. 114. All pledges are subject to DST, unless there is a law exempting them in clear and categorical language . . . x x x . . . No law on legal hermeneutics could change the fact that the entries contained in a pawnshop ticket spell out a contract of pledge and that the exercise of the privilege to conclude such a contract is taxable under Section 195 of the NIRC.

VELASCO, JR., ***J., dissenting opinion:***

1. **COMMERCIAL LAW; PAWNSHOPS; PAWN TICKET, DEFINED; PAWN TICKET DOES NOT DOCUMENT THE PLEDGE.—** The pawn ticket is simply defined as the "pawnbroker's receipt for a pawn." PD 114 declares that "it is neither a security nor a printed evidence of indebtedness." Section 12 of said law clearly explains the nature of the pawn ticket x x x. Thus the ticket is simply a receipt and nothing more. It does NOT document the pledge. Such purpose is accomplished by the pawnbroker in the memorandum book which is governed by Sec. 11 x x x PD 114 does not consider a pawn ticket an evidence of indebtedness or a security for the payment of any sum of money, since it is in the possession of the pawnee. This is differentiated from a promissory note, bond or debenture which is in the possession of the creditor. If the pawn ticket is an evidence of indebtedness, it would only be logical for the pawnbroker to hold on the "ticket" as his evidence. This does not obtain in the pawnshop industry. The inescapable conclusion is that a "pawnshop ticket" is merely a pawnshop's receipt for a pawn. It does not document or substantiate the existence of a loan as the loan transaction itself is required to be registered in the Loans Extended Register per the Manual of Regulations for Non-Bank Financial Institutions. The pawn ticket, not being a document or instrument evidencing an indebtedness nor a security, then it is not subject to DST.

2. **ID.; ID.; PAWN TICKET IS EXEMPT FROM DOCUMENTARY STAMP TAX (DST); REASONS. —** While it can be conceded that a pawn ticket is a paper issued in respect of the pledge, it is my view that a pawn ticket is excluded from the coverage of Sec. 195 of the NIRC and the pledge that relates to the ticket is an exempt transaction anchored on PD 114, a special law which must prevail over the NIRC, a general law. A pawn transaction is a kind of pledge covered by a special law — PD 114 regulating the establishment and operation of pawnshop (Article 2123). x x x Art. 2096 requires that a pledge must be in a public instrument if the pledge has to take effect against third persons. x x x While Art. 1358 does not require a pledge in a public document, it requires that all other contracts where the amount involved exceeds five hundred pesos must appear in writing, even a private one. It is my submission that the "documents loan agreements, instruments and papers" referred to in Sec. 173 of the NIRC applies only on pledges covered by a written document under Art. 1358 or a public instrument under Art. 2096 where an agreement is clearly reflected. The pawn ticket by itself cannot be a document, instrument or paper under Sec. 173 because of the explicit definition of a pawn ticket that it is neither a security nor a written evidence of indebtedness. It is a ticket evidencing the receipt of the thing pledged but does not embody the agreement of pledge on the thing pawned and the loan secured by the pledge. It is merely the receipt of the pawned item. With respect to the pledge covered by a pawn ticket, PD 114 does not require a contract but simply entries in the memorandum book and the issuance of a pawn ticket. Why is this so? It is because the document evidencing the loan and pledge was made to be simple as it involves only small borrowers who may not be able to comprehend the legal terms in a contract of pledge. Secondly, a pawn ticket shall not be imposed any DST because the policy of the law is to alleviate the financial condition of small borrowers who are mainly poor or who do not have sufficient income. Thus one of the policies of PD 114 is for pawnshops "to provide an additional source of credit especially for small borrowers left unserved by the banking and other financial institutions in the country." Pursuant thereto, a pawn ticket was defined simply as a pawnbrokers' receipt for the pawn and it is neither a security nor a printed evidence of indebtedness. While the contents of a pawn ticket as prescribed by CBC No. 374 clearly demonstrate that it is a

printed evidence of indebtedness as the amount of the principal loan, the period of maturity and interest rate are reflected in the ticket, still the law defines it otherwise, revealing the clear intent of Congress to exempt the pawn ticket and the pledge agreement from the coverage of DST. Moreover, the ticket also describes the pawned item yet PD 114 does not consider it a security. This does not make sense. The only logical explanation to such a seeming aberration is the intent of Congress to exempt the pawn transaction from DST.

3. **ID.; ID.; ID.; CONGRESS NEVER INTENDED TO IMPOSE DST ON PAWN TICKET. —** [T]he history of the statutes on DST easily reveals that Congress never intended to impose DST on a pawn ticket or a pawn transaction. Pawing was never mentioned in the laws imposing DST nor its amendments x x x. Since the enactment on 27 February 1914 of Act No. 2339, the first imposition of DST upon documents by the BIR is found in RMO No. 15-91 and RMC No. 43-91 promulgated in 1991. Prior to said revenue memorandum issuances, the BIR, for seventy-seven (77) years, never assessed DST on any pawn ticket or pawn transaction. Thus, BIR has not collected DST on pawn transactions despite the fact that Secs. 173 and 195 of the NIRC has been in force for a long period of time. Prior to RMO 15-91 and RMC 43-91 which sought to impose DST on pawn transactions, the BIR, in its BIR ruling 325-88 ruled that the pawn ticket cannot be considered a document subject to DST x x x.

4. **ID.; ID.; P.D. 114 AND NIRC MUST BE GIVEN THE MOST LIBERAL INTERPRETATION TO EXEMPT PAWN TRANSACTIONS FROM DST. —** [I]t is my submission that PD 114 is a piece of legislation granting social justice to the poor, the marginalized and the weak. Our view on the exclusion of pawn transactions from the coverage of DST hews closely with the principle that those who have less in life should have more in law. It commands a legal bias in favor of those who are underprivileged. In *Federation of Free Farmers*, it was explained that when the law is clear and valid, it simply must be applied; but when the law can be interpreted in more ways than one, an interpretation that favors the underprivileged must be sustained. PD 114 and NIRC must be given the most liberal interpretation to benefit the poor and marginalized, hence the exemption of the pawn transactions from DST.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
Gerlo C. Gacaitan for respondent.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review assails the Decision[1] dated June 30, 2005 of the Court of Appeals in CA-G.R.-SP No. 79116 and its Resolution[2] dated January 10, 2006, denying the motion for reconsideration. The appellate court had modified the Decision[3] dated March 18, 2003 of the Court of Tax Appeals (CTA) in C.T.A. Case No. 6366.

The case stemmed from a Pre-Assessment Notice[4] issued by the Commissioner of Internal Revenue (CIR) against H. Tambunting Pawnshop, Inc. (Tambunting) for, among others, deficiency documentary stamp tax (DST) of ₱50,910. Thereafter, the CIR issued an assessment notice[5] with the corresponding demand letters[6] for the payment of the DST and the corresponding compromise penalty for taxable year 1997.

Tambunting filed its written protest to the assessment notice alleging that it was not subject to documentary stamp tax under Section 195[7] of the National Internal Revenue Code (NIRC) because documentary stamp taxes were applicable only to pledge contracts, and the pawnshop business did not involve contracts of pledge.

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[1] *Rollo*, pp. 42-50. Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Portia Aliño-Hormachuelos and Juan Q. Enriquez, Jr., concurring.

[2] *Id.* at 52-53.

[3] *Id.* at 54-70.

[4] *Id.* at 137.

[5] *Id.* at 141.

[6] *Id.* at 143-146.

When Tambunting's written protest was not acted upon by the CIR, the former filed a petition with the CTA appealing the assessments issued by the CIR. The CTA gave due course to Tambunting's petition for review and rendered a Decision, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, petitioner is hereby **ORDERED** to **PAY** deficiency VAT assessment. . . . However, finding that petitioner is not subject to the documentary stamp tax under Section 195 of the Tax Code, Assessment Notice No. 32-97 dated April 11, 2001 for deficiency documentary stamp tax is hereby **CANCELLED and SET ASIDE**.

SO ORDERED.[8]

The CIR's motion for reconsideration was denied by the CTA. Thus, the CIR elevated the case to the Court of Appeals. The appellate court ruled in favor of the CIR and decreed:

WHEREFORE, premises considered, Petition for Partial Review by the Commissioner of Internal Revenue is hereby **GRANTED** and the assailed March 18, 2003 Decision of the Court of Tax Appeals, ..., in so far as it cancelled the deficiency documentary stamp tax assessment of Php 50,910.00 against respondent TAMBUNTING,

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[7] SEC. 195. *Stamp Tax on Mortgages, Pledges and Deeds of Trust.* — On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid, being payable, and on any conveyance of land, estate, or property whatsoever, in trust or to be sold, or otherwise converted into money which shall be and intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax at the following rates:

(a) When the amount secured does not exceed Five thousand pesos (₱5,000), Twenty pesos (₱20.00).

(b) On each Five thousand pesos (₱5,000), or fractional part thereof in excess of Five thousand pesos (₱5,000), an additional tax of Ten pesos (₱10.00).

x x x x x x x x x

[8] *Rollo*, p. 69.

is hereby **MODIFIED** in that respondent TAMBUNTING is hereby ordered to pay petitioner Commissioner of Internal Revenue, the amount of Php50,910.00 as 1997 deficiency documentary stamp tax assessment, plus 25% surcharge, 20% deficiency interest, and 20% delinquency interest thereon from May 11, 2001 until fully paid pursuant to Section 248 and 249 (B) of the Tax Code.

SO ORDERED.[9]

Tambunting now before us raises the following issue:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING PETITIONER LIABLE FOR DST ON PAWN TICKETS.[10]

Stated simply, is Tambunting liable for documentary stamp taxes based on the pawn tickets that it issued?

Petitioner contends that it is the document evidencing a pledge of personal property which is subject to the DST. A pawn ticket is defined under Section 3 of Presidential Decree No. 114[11] as "the pawnbroker's receipt for a pawn [and] is neither a security nor a printed evidence of indebtedness." Petitioner argues that since the document taxable under Section 195 must show the existence of a debt, a pawn ticket which is merely a receipt for a pawn is not subject to DST.

Petitioner further contends that the DST is imposed on the documents issued, not the "transactions so had or accomplished." It insists that the document to be taxed under the transaction contemplated should be the pledge agreement, if any is issued, not the pawn ticket.

On the other hand, the CIR, through the Office of the Solicitor General, argues that Section 195 of the NIRC expressly provides that a documentary stamp tax shall be collected on every pledge of personal property as a security for the fulfillment of the

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[9] *Id.* at 50.

[10] *Id.* at 212.

[11] REGULATING THE ESTABLISHMENT AND OPERATION OF PAWNSHOPS, done on January 29, 1973.

contract of loan. Since the transactions in a pawnshop business partake of the nature of pledge transactions, then pawn transactions evidenced by pawn tickets, are subject to documentary stamp taxes.

The CIR further argues that the pawn ticket is the pledge contract itself and thus, it is subject to documentary stamp tax.

After considering the submission of the parties, we find that the instant petition lacks merit.

First, on the subject of pawn tickets, the Bangko Sentral ng Pilipinas Manual of Regulations for Non-Bank Financial Institutions[12] provides:

SEC. 4322P **Pawn Ticket**. Pawnshops shall at the time of the loan, deliver to each pawner a pawn ticket which shall contain the following:

a. Name and residence of the pawner;
b. Date the loan is granted;
c. Amount of the principal loan;
d. Interest rate in percent;
e. Period of maturity;
f. Description of the pawn;
g. Expiry date of redemption period;
h. Signature of the pawnshop's authorized representative;
i. Signature or thumbmark of the pawner or his authorized representative; and
j. Such other terms and conditions as may be agreed upon between the pawnshop and the pawner.

Notably, a pledge is an accessory, real and unilateral contract by virtue of which the debtor or a third person delivers to the creditor or to a third person movable property as security for the performance of the principal obligation, upon fulfillment of which the thing pledged, with all its accessions and accessories, shall be returned to the debtor or to the third person.[13] The pawn ticket is required to contain the same essential information

[12] *P* REGULATIONS, updated as of December 2007.

[13] *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166786, May 3, 2006, 489 SCRA 147, 153.

that would be found in a pledge agreement. Only the nomenclature of the requirements in the pawn ticket is changed to refer to the specific kind of pledge transactions undertaken by pawnshops. The property or thing pledged is referred to as the pawn, the creditor (pledgee) is referred to as the pawnee[14] and the debtor (pledgor) is referred to as the pawner.

Petitioner's explanations fail to dissuade us from recognizing the pawn ticket as the document that evidences the pledge. True, the pawn ticket is neither a security nor a printed evidence of indebtedness. But, precisely being a *receipt for a pawn*, it documents the pledge. A pledge is a real contract, hence, it is necessary in order to constitute the contract of pledge, that the thing pledged be placed in the possession of the creditor, or of a third person by common agreement.[15] Consequently, the issuance of the pawn ticket by the pawnshop means that the thing pledged has already been placed in its possession and that the pledge has been constituted.

Second, on the subject of documentary stamp tax, the NIRC provides:

> SEC. 173. *Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers*. — **Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto**, there shall be levied, collected and paid for, and **in respect of the transaction so had** or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections . . . (Emphasis supplied.)

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[14] Presidential Decree No. 114 (1973),

Sec. 3. *Definitions.*— As used in this Decree, unless the context otherwise requires, the following terms shall have the following meanings:

"Pawnshop" shall refer to a person or entity engaged in the business of lending money on personal property delivered as security for loans …

x x x x x x x x x

"Pawnee" shall refer to the pawnshop or pawnbroker.

x x x x x x x x x

[15] CIVIL CODE OF THE PHILIPPINES, Art. 2093.

SEC. 195. *Stamp Tax on Mortgages, Pledges and Deeds of Trust.* — **On every** mortgage or **pledge** of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid, being payable, and on any conveyance of land, estate, or property whatsoever, in trust or to be sold, or otherwise converted into money which shall be and intended only as security, either by express stipulation or otherwise, **there shall be collected a documentary stamp tax** at the following rates:

a) When the amount secured does not exceed Five thousand pesos (₱5,000), Twenty pesos (₱20.00).

(b) On each Five thousand pesos (₱5,000), or fractional part thereof in excess of Five thousand pesos (₱5,000), an additional tax of Ten pesos (₱10.00). (Emphasis supplied.)

x x x x x x x x x

The law imposes DST on <u>documents</u> issued <u>in respect of</u> the specified <u>transactions</u>, such as pledge, and not only on papers evidencing indebtedness. Therefore, a pawn ticket, being issued in respect of a pledge transaction, is subject to documentary stamp tax.

Third, the issue in this case is not novel. The question of whether pawnshop transactions evidenced by pawn tickets are subject to documentary stamp taxes has been answered in the affirmative in *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*.[16] There the Court held:

x x x x x x x x x

Section 195 of the National Internal Revenue Code (NIRC) imposes a DST on **every** pledge regardless of whether the same is a conventional pledge governed by the Civil Code or one that is governed by the provisions of P.D. No. 114. All pledges are subject to DST, unless there is a law exempting them in clear and categorical language . . .

x x x x x x x x x

[16] *Supra* note 13; G.R. No. 166786, September 11, 2006, 501 SCRA 450.

… No law on legal hermeneutics could change the fact that the entries contained in a pawnshop ticket spell out a contract of pledge and that the exercise of the privilege to conclude such a contract is taxable under Section 195 of the NIRC.[17]

Even so, we note that the present case was filed with the Supreme Court before September 11, 2006, when the Court resolved for the first time the matter of surcharges and interest for failure to pay documentary stamp taxes on pledge transactions in *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*. Hence, as in the said case, we can still ascribe good faith to petitioner. Consequently, the imposition of surcharges and interest in the present case must also be deleted.[18]

WHEREFORE, the petition is *PARTLY GRANTED.* The Decision dated June 30, 2005 of the Court of Appeals in CA-G.R.-SP No. 79116 is *AFFIRMED with the MODIFICATION* that surcharges and interest imposed on the deficiency documentary stamp tax assessment are *DELETED.*

SO ORDERED.

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

Velasco, Jr., J., with dissenting opinion.

DISSENTING OPINION

VELASCO, JR., *J.*:

With all due respect to my well-esteemed colleague, I take a contrary position to the majority opinion that the pawn ticket is subject to Documentary Stamp Tax (DST).

The *ponencia* while admitting that the pawn ticket is neither a security nor a printed evidence of indebtedness however asseverates that the pawn ticket, being the receipt for a pawn, documents the pledge.

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[17] *Id.* at 454-456.

[18] *Id.* at 460.

I beg to disagree.

The pawn ticket is simply defined as the "pawnbroker's receipt for a pawn."[1] PD 114 declares that "it is neither a security nor a printed evidence of indebtedness."[2] Section 12 of said law clearly explains the nature of the pawn ticket, thus:

SEC. 12. *Pawn ticket*. — Every pawnbroker shall, at the time of every such loan or pledge, deliver to each person pawning or pledging any article or thing a memorandum or ticket signed by such pawnbroker and containing the substance of the record required to be kept in such pawnbroker's memorandum book in section eleven hereof, excluding the description of the person so pawning or pledging such article or thing, and no compensation of any kind whatsoever shall be received by any pawnbroker for any such memorandum of ticket.

Thus the ticket is simply a receipt and nothing more. It does NOT document the pledge. Such purpose is accomplished by the pawnbroker in the memorandum book which is governed by Sec. 11 which reads:

SEC. 11. *Maintenance of records*. — Every pawnbroker shall keep a memorandum book in which shall be entered, in ink, at the time of each loan or pledge, an accurate account and description, in Pilipino or English with corresponding translation in the local dialect of every pawn, the amount of money loaned thereon, the date of pawning or pledging the same, the rate of interest to be pain on the loan, and the name and residence of each pawner, together with a particular description of such pawner, including his or her nationality, sex, and general appearance, and no pawnbroker or other person shall alter or erase any entry made in such book. Every person pawning or pledging any article or thing with a pawnbroker shall sign his name and give his address to said pawnbroker and such name and address shall be made part of the record heretofore described in this section: Provided, That a person who is unable to write shall imprint his thumbmark, and his name shall be written by a competent person, who shall sign his own name as witness to said thumbmark.

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[1] Sec. 3, PD No. 114.

[2] *Id.*

From the foregoing, the entries in the memorandum book document the loan or pledge agreement and not the pawn ticket.

PD 114 does not consider a pawn ticket an evidence of indebtedness or a security for the payment of any sum of money, since it is in the possession of the pawnee. This is differentiated from a promissory note, bond or debenture which is in the possession of the creditor. If the pawn ticket is an evidence of indebtedness, it would only be logical for the pawnbroker to hold on the "ticket" as his evidence. This does not obtain in the pawnshop industry. The inescapable conclusion is that a "pawnshop ticket" is merely a pawnshop's receipt for a pawn. It does not document or substantiate the existence of a loan as the loan transaction itself is required to be registered in the Loans Extended Register per the Manual of Regulations for Non-Bank Financial Institutions. The pawn ticket, not being a document or instrument evidencing an indebtedness nor a security, then it is not subject to DST.

Moreover, the *ponencia* relies on Sec. 173 of the National Internal Revenue Code (NIRC) which reads:

> **SEC. 173**. *Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers*. — **Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto**, there shall be levied, collected and paid for, and **in respect of the transaction so had** or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections x x x. (Emphasis supplied.)

Based on the abovequoted provision, the *ponencia* argues that the "law imposes DST on documents issued in respect of the specified transactions, such as pledge and not only on papers evidencing indebtedness."

Moreover, the *ponencia* relies on Sec. 195 of the NIRC as basis for its conclusion that the pledge contained in the pawn ticket is subject to DST, thus:

> **SEC. 195.** *Stamp Tax on Mortgages, Pledges and Deeds of Trust*. — **On every** mortgage or **pledge** of lands, estate, or property, real

or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid, being payable, and on any conveyance of land, estate, or property whatsoever, in trust or to be sold, otherwise converted into money which shall be and intended only as security, either by express stipulation or otherwise, **there shall be collected a documentary stamp tax** at the following rates:

(a) When the amount secured does not exceed Five thousand pesos (₱5,000), Twenty pesos (₱20.00).

(b) On each Five thousand pesos (₱5,000), or fractional part thereof in excess of Five thousand pesos (₱5,000), an additional tax of Ten pesos (₱10.00). (Emphasis supplied.)

x x x x x x x x x

While it can be conceded that a pawn ticket is a paper issued in respect of the pledge, it is my view that a pawn ticket is excluded from the coverage of Sec. 195 of the NIRC and the pledge that relates to the ticket is an exempt transaction anchored on PD 114, a special law which must prevail over the NIRC, a general law.

A pawn transaction is a kind of pledge covered by a special law — PD 114 regulating the establishment and operation of pawnshop (Article 2123). All other pledges are governed by Arts. 2085 up to 2122 of the Civil Code. Art. 2096 requires that a pledge must be in a public instrument if the pledge has to take effect against third persons. Art. 2096 reads:

Article 2096. A pledge shall not take effect against third persons if a description of the thing pledged and the date of the pledge do not appear in a public instrument.

While Art. 1358 does not require a pledge in a public document, it requires that all other contracts where the amount involved exceeds five hundred pesos must appear in writing, even a private one.

It is my submission that the "documents loan agreements, instruments and papers" referred to in Sec. 173 of the NIRC

applies only on pledges covered by a written document under Art. 1358 or a public instrument under Art. 2096 where an agreement is clearly reflected. The pawn ticket by itself cannot be a document, instrument or paper under Sec. 173 because of the explicit definition of a pawn ticket that it is neither a security nor a written evidence of indebtedness. It is a ticket evidencing the receipt of the thing pledged but does not embody the agreement of pledge on the thing pawned and the loan secured by the pledge. It is merely the receipt of the pawned item.

With respect to the pledge covered by a pawn ticket, PD 114 does not require a contract but simply entries in the memorandum book and the issuance of a pawn ticket. Why is this so? It is because the document evidencing the loan and pledge was made to be simple as it involves only small borrowers who may not be able to comprehend the legal terms in a contract of pledge. Secondly, a pawn ticket shall not be imposed any DST because the policy of the law is to alleviate the financial condition of small borrowers who are mainly poor or who do not have sufficient income. Thus one of the policies of PD 114 is for pawnshops "to provide an additional source of credit especially for small borrowers left unserved by the banking and other financial institutions in the country." Pursuant thereto, a pawn ticket was defined simply as a pawnbrokers' receipt for the pawn and it is neither a security nor a printed evidence of indebtedness. While the contents of a pawn ticket as prescribed by CBC No. 374 clearly demonstrate that it is a printed evidence of indebtedness as the amount of the principal loan, the period of maturity and interest rate are reflected in the ticket, still the law defines it otherwise, revealing the clear intent of Congress to exempt the pawn ticket and the pledge agreement from the coverage of DST. Moreover, the ticket also describes the pawned item yet PD 114 does not consider it a security. This does not make sense. The only logical explanation to such a seeming aberration is the intent of Congress to exempt the pawn transaction from DST.

More importantly, the history of the statutes on DST easily reveals that Congress never intended to impose DST on a pawn

ticket or a pawn transaction. Pawning was never mentioned in the laws imposing DST nor its amendments, *viz*:

LAW	PERTINENT PROVISIONS
ACT NO. 2339 (An Act Revising And Consolidating The Laws Relative To Internal Revenue 1), 27 February 1914	SECTION 30. *Stamp Tax Upon Documents and Papers.* — Upon documents, instruments, and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right, or property incident thereto documentary taxes for and in respect of the transaction so had or accomplished shall be paid as hereinafter prescribed, by the persons making, signing, issuing, accepting, or transferring the same, and at the time such act is done or transaction had: x x x x x x x x x (w) On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid being payable, and on any conveyance of land, estate, or property whatsoever in trust or to be sold or otherwise converted into money, which shall be and intended only as security, either by express stipulation or otherwise: 1. When the amount for which the mortgage or deed of trust is given is not less than one thousand pesos nor more than

	three thousand pesos, fifty centavos; 2. On each three thousand pesos, or fractional part thereof, in excess of three thousand pesos, an additional tax of fifty centavos;
COMMONWEALTH ACT NO. 466 (An Act To Revise, Amend And Codify The Internal Revenue Laws Of The Philippines), 15 June 1939	SECTION 232. *Stamp tax on mortgages, pledges, and deeds of trust*. — On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid being payable, and on any conveyance of land, estate, or property, whatsoever, in trust or to be sold, or otherwise converted into money, which shall be and intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax at the following rates: (a) When the amount for which the mortgage or deed of trust is given exceeds one thousand pesos and does not exceed three thousand pesos, one peso. (b) On each three thousand pesos or fractional part thereof in excess of three thousand pesos, an additional tax of one peso.
REPUBLIC ACT NO. 40 (An Act To Amend Certain Sections Of The National Internal Revenue Code,	SEC. 232. *Stamp tax on mortgages, pledges, and deeds of trust*. — On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever,

Relative To Documentary Stamp Taxes), 1 October 1946	where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid being payable, and on any conveyance of land, estate, or property, whatsoever, in trust or to be sold, or otherwise converted into money, which shall be and intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax at the following rates: (a) When the amount for which the mortgage or deed of trust is given exceeds one thousand pesos and does not exceed three thousand pesos, one peso and fifty centavos. (b) On each three thousand pesos or fractional part thereof in excess of three thousand pesos, an additional tax of one peso and fifty centavos.
REPUBLIC ACT NO. 567 (An Act To Amend Title VI Of Commonwealth Act Numbered Four Hundred And Sixty-Six, Otherwise Known As The National Internal Revenue Code), 31 August 1950	SECTION 5. Section two hundred and thirty-two of Commonwealth Act Numbered Four hundred and sixty-six, as amended by section twenty-one of Republic Act Numbered Forty, is hereby further amended to read as follows: Sec. 232. *Stamp tax on mortgages, pledges, and deeds of trust*. — On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and

	owing or forborne to be paid being payable, and on any conveyance of land, estate, or property, whatsoever, in trust or to be sold, or otherwise converted into money, which shall be and intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax at the following rates: (a) When the amount for which the mortgage or deed or trust is given exceeds one thousand pesos and does not exceed three thousand pesos, one peso and fifty centavos. (b) On each three thousand pesos or fractional part thereof in excess of three thousand pesos, an additional tax of one peso and fifty centavos. On any mortgage, pledge, or deed of trust, where the same shall be made as a security for the payment of a fluctuating account or future advances without fixed limit, the documentary stamp tax on such mortgage, pledge or deed of trust shall be computed on the amount actually loaned or given at the time of the execution of the mortgage, pledge or deed of trust. However, if subsequent advances are made on such mortgage, pledge or deed of trust, additional documentary stamp tax shall be paid which shall be computed on the basis of the amount advanced or loaned at the rates specified above: Provided, however, That if the full amount of the loan

	or credit granted under the mortgage, pledge, or deed of trust, the documentary stamp tax prescribed in this section shall be paid and computed on the full amount of the loan or credit granted.
REPUBLIC ACT NO. 1980 (An Act To Further Amend Section Two Hundred Twenty-Seven Of The National Internal Revenue Code), 22 June 1957	The law increased the rate of DST on bills of ladings or receipt.
REPUBLIC ACT NO. 6110 (An Act Amending Certain Provisions Of The National Internal Revenue Code, As Amended), 4 August 1969	The law increased the DST rate on some of the documents mentioned in CA 466. The law also introduced additional documents and papers not subject to stamp tax.
PRESIDENTIAL DECREE NO. 69 (Amending Certain Sections Of The National Internal Revenue Code), 24 November 1972	DST of the Tax Code, there was no amendment on Section 232.
PRESIDENTIAL DECREE NO. 1158 (A Decree To Consolidate And Codify All The Internal Revenue Laws Of The Philippines), 3 June 1977	Section 232 was renumbered to Section 195. SECTION 195. *Stamp tax on mortgages, pledges, and deeds of trust*. — On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid being payable, and on any conveyance of land, estate, or property

	whatsoever, in trust or to be sold, or otherwise converted into money which shall be and intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax the following rates: (a) When the amount secured does not exceed five thousand pesos, ten pesos. (b) On each five thousand pesos, or fractional part thereof in excess of five thousand pesos, an additional tax of five pesos.
PRESIDENTIAL DECREE NO. 1959 (Amending Certain Sections Of The National Internal Revenue Code, As Amended), 10 October 1984	The law renumbered and increased the rates of DST on certain documents. Section 195 was renumbered to Section 244, without increase in the rate of DST.
PRESIDENTIAL DECREE NO. 1994 (Further Amending Certain Provisions Of The National Internal Revenue Code), 1 January 1986	Section 244 was renumbered to Section 195. There was no change in the rate.
REPUBLIC ACT NO. 7660 (An Act Rationalizing Further The Structure And Administration Of The Administration Of The Documentary Stamp Tax, Amending For The Purpose Certain Provisions Of The National Internal Revenue Code, As Amended, Allocating Funds For Specific	SECTION 19. Section 195 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows: Sec. 195. *Stamp tax on mortgages, pledges, and deeds of trust*. — On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of

Programs, And For Other Purposes), 23 December 1993	money lent at the time or previously due and owing or forborne to be paid being payable, and on any conveyance of land, estate, or property whatsoever, in trust or to be sold, or otherwise converted into money which shall be and intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax at the following rates: (a) When the amount secured does not exceed Five thousand pesos, Twenty pesos (₱20.00); (b) On each Five Thousand pesos, or fractional part thereof in excess of Five thousand pesos, an additional tax of Ten pesos (₱10.00).
REPUBLIC ACT NO. 8424 (An Act Amending The National Internal Revenue Code, As Amended, And For Other Purposes), 1 January 1998	SECTION 195. *Stamp Tax on Mortgages, Pledges and Deeds of Trust.* — On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid, being payable, and on any conveyance of land, estate, or property whatsoever, in trust or to be sold, or otherwise converted into money which shall be and intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax at the following rates: (a) When the amount secured does not exceed Five thousand pesos (₱5,000), Twenty pesos (₱20.00).

	(b) On each Five thousand pesos (₱5,000), or fractional part thereof in excess of Five thousand pesos (₱5,000), an additional tax of Ten pesos (₱10.00).

Since the enactment on 27 February 1914 of Act No. 2339, the first imposition of DST upon documents by the BIR is found in RMO No. 15-91 and RMC No. 43-91 promulgated in 1991. Prior to said revenue memorandum issuances, the BIR, for seventy-seven (77) years, never assessed DST on any pawn ticket or pawn transaction. Thus, BIR has not collected DST on pawn transactions despite the fact that Secs. 173 and 195 of the NIRC has been in force for a long period of time. Prior to RMO 15-91 and RMC 43-91 which sought to impose DST on pawn transactions, the BIR, in its BIR ruling 325-88 ruled that the pawn ticket cannot be considered a document subject to DST, thus:

Under Section 195 of the Tax Code, documentary stamp tax is imposed on every pledge of personal property "where the same (personal property) shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid being payable, x x x" In other words, a document evidencing a pledge of personal property which is made as a security for payment of a loan is subject to the documentary stamp tax. This implies that, under the document subject to tax, the pledgor is indebted to the pledge and, therefore, the former has pledged personal property to secure payment of the debt.

In the case of the pawnshop business, the pawnee (pawnshop or pawnbroker) issues a "pawn ticket" to the pawner (borrower from a pawnshop). The pawn is the personal property delivered by the pawner to the pawnee as security for a loan. **The "pawn ticket" is the pawnbroker's receipt for a pawn. It is neither a security nor a printed evidence of indebtedness.** (Sec. 3, P.D. No. 114 or the Pawnshop Regulation Act) Accordingly, considering that the document taxable under Section 195 of the Tax Code must show the existence of debt and inasmuch as, under the law, a pawn ticket is not a printed evidence of indebtedness, such pawn ticket cannot be considered as a document subject to the documentary stamp tax imposed by Section 195 of the Tax Code.

The BIR cannot now be allowed to change the interpretation it gave to the pertinent legal provisions on DST.

Lastly, it is my submission that PD 114 is a piece of legislation granting social justice to the poor, the marginalized and the weak. Our view on the exclusion of pawn transactions from the coverage of DST hews closely with the principle that those who have less in life should have more in law. It commands a legal bias in favor of those who are underprivileged.[3] In *Federation of Free Farmers*,[4] it was explained that when the law is clear and valid, it simply must be applied; but when the law can be interpreted in more ways than one, an interpretation that favors the underprivileged must be sustained.

PD 114 and NIRC must be given the most liberal interpretation to benefit the poor and marginalized, hence the exemption of the pawn transactions from DST.

I vote to grant the petition.

SECOND DIVISION

[G.R. No. 171536. April 7, 2009]

APRIL JOY ASETRE, BENJIE EBCAS, GALINZCHEL GAMBOA, and BUENAVENTURA GAMBOA, *petitioners, vs.* **JUNEL ASETRE, CHARITY DAINE ALAGBAN, and COURT OF APPEALS (SPECIAL FORMER EIGHTEENTH DIVISION),** *respondents.*

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[3] Bernas, *THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES*, p. 1191.

[4] 107 SCRA 352-362.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; AUTHORITY OF THE STATE PROSECUTOR TO DETERMINE PROBABLE CAUSE AND THE POWER OF THE SECRETARY OF JUSTICE, DISCUSSED. —** A preliminary investigation falls under the authority of the state prosecutor who is given by law the power to direct and control criminal actions. He is, however, subject to the control of the Secretary of Justice. The Secretary of Justice, upon petition by a proper party, can reverse his subordinates' (provincial or city prosecutors and their assistants') resolutions finding probable cause against suspects of crimes. The full discretionary authority to determine probable cause in a preliminary investigation to ascertain sufficient ground for the filing of information rests with the executive branch. Hence, judicial review of the resolution of the Secretary of Justice is limited to a determination whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction. Courts cannot substitute the executive branch's judgment. The determination of probable cause to warrant the prosecution in court should be consigned and entrusted to the DOJ, as reviewer of the findings of the public prosecutors; to do otherwise is to usurp a duty that exclusively pertains to an executive official. As department head, the Secretary of Justice has the power to alter, modify, nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter. While it is the duty of the fiscal to prosecute persons who, according to evidence received from the complainant, are shown to be guilty of a crime, the Secretary of Justice is likewise bound by his oath of office to protect innocent persons from groundless, false or serious prosecutions. He would be committing a serious dereliction of duty if he orders or sanctions the filing of charge sheets based on complaints where he is not convinced that the evidence would warrant the filing of an action in court. He has the ultimate power to decide which as between the conflicting theories of the parties should be believed. The Secretary is empowered to order or perform the very acts questioned in this case. In *Joaquin, Jr. v. Drilon*, this Court affirmed the DOJ Secretary's power of control over the authority of a state prosecutor to conduct preliminary

investigations on criminal actions. It is only where the decision of the Justice Secretary is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction that the Court of Appeals may take cognizance of the case in a petition for *certiorari* under Rule 65 of the Revised Rules of Civil Procedure.

2. **ID.; EVIDENCE; EXPERT WITNESS; NOT A CASE OF WHEN THE OPINIONS OF THE THREE DOCTORS WERE NOT GIVEN WEIGHT. —** The disquisition of the Secretary of Justice deserves more credence than that of the Court of Appeals, because of the following reasons: First, Dr. Samson Gonzaga, the private physician who signed the death certificate, and Dr. Luis Gamboa, the medico-legal officer of Bacolod City who conducted the post-mortem autopsy on Hanz's body, are not expert witnesses, nor were they offered to testify as medico-legal experts. Dr. Nicasio Botin, medico-legal officer, NBI-Iloilo City, who prepared the exhumation report is also not a forensic expert. They never opined that it was improbable for the deceased to have committed suicide. The death certificate signed by Dr. Gonzaga indicated "asphyxia secondary to strangulation" as the cause of death, without explaining whether it was suicide or not. It pointed to "depression" as the antecedent cause, implying that Hanz committed suicide. Thus, the appellate court lacks sufficient basis to conclude that it was "improbable" for Hanz to commit suicide based on the opinions of the three doctors. Dr. Gamboa's post-mortem findings, we note, also did not categorically state foul play as the cause of death.

3. **ID.; ID.; CONSPIRACY; NOT ESTABLISHED BY THE CIRCUMSTANTIAL EVIDENCE. —** [T]he finding that there was conspiracy to kill Hanz is not supported by any evidence on record and hence must be discarded. Under Article 8 of the Revised Penal Code, there is conspiracy if two or more persons agree to commit a felony and decide to commit it. Conspiracy must be proven during trial with the same quantum of evidence as the felony subject of the agreement of the parties. Conspiracy may be proved by direct or circumstantial evidence consisting of acts, words, or conduct of the alleged conspirators before, during and after the commission of the felony to achieve a common design or purpose. x x x All circumstances considered, we find that the DOJ Secretary correctly held that the circumstantial evidence presented by private respondents to prove probable cause against petitioners, does not support the

theory of conspiracy to commit murder. Such circumstantial evidence in our view, would not sufficiently warrant a conclusion that private respondents are responsible for the death of Hanz. Petitioners' mere presence at the death scene, without more, does not suffice to establish probable cause against them. It is noteworthy that complainants failed to establish conclusively that April, Hanz's cousins, and his workers had an ax to grind against Hanz. The alleged quarrel of the couple the night before the incident is hearsay and could not establish enough credible motive on the part of April, contrary to the opinion of the investigating prosecutor, because the same witness who testified about the alleged fight also stated that the couple had a good relationship and that it was not unusual for the couple to have verbal altercations occasionally. Equally worth stressing is the positive proof that the accused were not the only persons present inside the couple's house; and that the door of the gate of the house, including the door of the room where the victim was found hanging, were not so well secured as to exclude the possibility that the act was committed by other persons who were also then present in the house, or even by intruders. April was not attempting to reduce the number of possible witnesses as stated by the investigating prosecutor when she sent her children to Iloilo as it was the victim's decision to send their children to Iloilo upon his cousin's invitation.

APPEARANCES OF COUNSEL

Defensor Teodosio Daquilanea Ventilacion & Averia Law Offices for petitioners.

Law Office of Mirano Mirano Mirano & Mirano for private respondents.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review on *certiorari* assails the Decision[1] dated October 18, 2005 of the Court of Appeals in CA-G.R.

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[1] *Rollo*, pp. 127-138. Penned by Executive Justice Mercedes Gozo-Dadole, with Associate Justices Pampio A. Abarintos and Enrico A. Lanzanas, concurring.

SP No. 78493. Said decision had reversed the Resolution[2] dated December 17, 2002 of the Department of Justice (DOJ) which ordered the withdrawal of an information for parricide against petitioner April Joy Asetre and for murder against petitioners Benjie Ebcas, Galinzchel Gamboa and Buenaventura Gamboa.

The facts, based on the findings of the Court of Appeals, are as follows:

On December 27, 2000, Hanz Dietrich Asetre was found dead in his residence, which also housed his printing press business. He was 26 years old.

Petitioner April Joy Gonzaga-Asetre, Hanz's wife, alleged that her husband committed suicide by hanging himself using bedcovers. She said Hanz was depressed, suicidal, a drug dependent, an alcoholic and violent even before they got married. She also claimed that when Hanz got high on drugs and alcohol, he would break things. When his mother contracted cancer, he became despondent, losing concentration in his work as well as lacking sleep at night. Then, after his mother died of cancer, he started writing letters expressing his desire to "follow his mother." He also became depressed because they were left with huge debts and he had to assume payments. It was recommended that Hanz undergo rehabilitation in Cebu City, but he stayed there only for two weeks.[3]

However, respondent Junel Asetre, Hanz's brother, claimed that the mark on Hanz's neck was not that of bedspreads but of a rope. He claimed that petitioner Buenaventura Gamboa knew who killed Hanz, but was reluctant to divulge it lest he be charged or harmed by April's father.

On her part, respondent Charity Asetre-Alagban, Hanz's sister, claimed that Hanz confided to her a few days before his death that April issued checks without his knowledge, and that Hanz died without reconciling his differences with April.[4]

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[2] CA *rollo*, pp. 292-306.

[3] *Id.* at 585-586.

[4] *Id.* at 43-49.

In a Resolution[5] dated October 3, 2001, the Office of the City Prosecutor of Bacolod found probable cause against April, Hanz's first cousins Galinzchel and Buenaventura Gamboa, and printing press worker Benjie Ebcas. The investigating prosecutor held that from the evidence adduced by the parties, herein petitioners were physically and actively interacting with Hanz shortly before he was found dead. Moreover, from the actuations of petitioners and the events that took place, it can be gleaned that they connived in killing Hanz and later tried to cover up the crime. Further, the prosecutor rejected petitioners' "suicide theory" because it is inconsistent with the medico-legal findings that while Hanz might have wanted to end his life, the circumstances of his death proved he could not have done it himself. The prosecutor explained that the possibility of murder is not negated even if Hanz sustained no wounds or injuries, since he had been drinking shortly before his death which could have rendered him too drunk to be aware that he was being strangled. Thus, the prosecutor recommended that murder charges under Article 248 of the Revised Penal Code[6] be filed against Ebcas and the Gamboas and a parricide charge under

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[5] *Rollo*, pp. 92-112.

[6] ART. 248. *Murder*. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

2. In consideration of a price, reward or promise;

3. By means or inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity;

5. With evident premeditation;

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

Article 246[7] of the Revised Penal Code be filed against April. The cases[8] were filed with the Regional Trial Court (RTC) of Negros Occidental, Branch 50.

Subsequently, on November 26, 2001, the four accused asked the DOJ for a review of the prosecutor's findings.

In a Resolution dated December 17, 2002, DOJ Acting Secretary Ma. Merceditas N. Gutierrez absolved petitioners and reversed the investigating prosecutor's resolution, not because she believed the "suicide theory" of the petitioners, but rather because she did not find sufficient evidence to sustain the theory of the prosecution of "conspiracy to commit murder." Secretary Gutierrez explained that while there is overwhelming proof that Hanz might not have committed suicide, there is no direct or circumstantial evidence that could link petitioners as the authors of the crime. She reasoned in this wise: (1) the prosecution failed to establish petitioners' motive to kill Hanz; (2) the alleged "quarrel incident" of the spouses was not substantiated; (3) April's actuations during the incident should not be taken against her as there is no standard human behavioral response when one is confronted with a strange or frightful experience; (4) even her actuations after the incident, like burning the bed sheets and alleged suicide letters of Hanz, and her opposition to the exhumation/autopsy of Hanz's body because they could only traumatize her and her children, could not cast doubt on April's innocent intentions. An ordinary person like her could believe that the police investigation done at the time of the incident and the initial post-mortem examination on Hanz's body were more than enough to conclude and close the investigation; (5) even the apparent inconsistent testimonies of the other petitioners on their participation during the incident could not be taken against them because witnesses to a stirring incident could see differently some details thereof due in large part to excitement and confusion that such an incident usually brings.

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[7] ART. 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.

[8] Criminal Case No. 01-23021.

Accordingly, Secretary Gutierrez directed the prosecutor to withdraw the information against petitioners in Criminal Case No. 01-23021. The dispositive portion of the ruling reads:

WHEREFORE, premises considered, the assailed resolution is **REVERSED**. The City Prosecutor of Bacolod City is hereby directed to withdraw the information filed against April Joy Asetre, Benjie Ebcas, Galinzchel Gamboa and Buenaventura Gamboa for murder in Criminal Case No. 01-23021 and to report the action taken therein within five (5) days from receipt hereof.

SO ORDERED.[9]

Pursuant to the ruling, the prosecutor filed a Motion to Withdraw Information in Criminal Case No. 01-23021, which was granted by the RTC on January 21, 2003.[10] The trial court also recalled the warrant of arrest issued against the accused, and later denied private respondents' motion for reconsideration in an Order[11] dated February 27, 2003.

On June 16, 2003, the DOJ denied[12] the Asetre siblings' motion for reconsideration of the Secretary's Order dated December 17, 2002. Thereafter, respondent Asetres filed a petition for *certiorari* and *mandamus* before the Court of Appeals, arguing that the DOJ Secretary acted with grave abuse of discretion in issuing the December 17, 2002 Resolution despite the circumstantial evidence against petitioners.

In its Decision dated October 18, 2005, the appellate court found that the DOJ Secretary committed grave abuse of discretion amounting to lack or excess of jurisdiction in reversing the investigating prosecutor's finding of probable cause. According to the Court of Appeals, the congruence of facts and circumstances of the case strongly shows a reasonable ground of suspicion that crimes of murder and parricide had been

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[9] *Rollo*, pp. 124-125.

[10] *Id.* at 181.

[11] *Id.* at 182.

[12] *Id.* at 229-230.

committed by the petitioners. It agreed with the investigating prosecutor that the physical evidence at hand negates the "suicide theory" of petitioners. It further held that the medical findings of the three medical doctors–that it was improbable for Hanz to have committed suicide–were credible, impartial and unbiased. It added that when an information has already been filed in court, the latter acquires jurisdiction over the case until its termination, and any relief desired by any party should be addressed to the trial court. The dispositive portion of the Court of Appeals' decision reads:

> WHEREFORE, premises considered, the petition for *certiorari* and *mandamus* is granted. Accordingly, the Resolutions dated December 17, 2002 and June 16, 2003 of the Secretary/Acting Secretary of Justice of the Department of Justice, in Criminal Case No. 01-23021, are hereby **REVERSED** and **SET ASIDE**. No pronouncement as to costs.
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> SO ORDERED.[13]

On February 13, 2006, the Court of Appeals denied the petitioners' motion for reconsideration.[14] Hence, the instant petition before us.

Petitioners raise the following issues:

I.

WHETHER THE PURPORTED OPINIONS OF DR. SAMSON GONZAGA, DR. LUIS GAMBOA, AND DR. NICASIO BOTIN, THAT HANZ ASETRE DID NOT COMMIT SUICIDE HAVE SUFFICIENT WEIGHT, AS COMPARED TO THE DIRECT TESTIMONIES OF THE PETITIONERS, THEIR WITNESSES, AND THE CIRCUMSTANTIAL EVIDENCE SHOWING THAT INDEED HANZ ASETRE COMMITTED SUICIDE.

II.

WHETHER THE CONCLUSION OF THE RESPONDENT COURT OF APPEALS, THAT THERE IS PROBABLE CAUSE TO CHARGE

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[13] *Id.* at 138.

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

PETITIONERS FOR PARRICIDE IS SUPPORTED BY SUFFICIENT EVIDENCE, AND IN ACCORD WITH JURISPRUDENCE AND LAW.

III.

WHETHER THE [CONCLUSION] OF THE RESPONDENT COURT THAT THE SECRETARY OF JUSTICE COMMITTED GRAVE ABUSE OF DISCRETION AND HAS EXCEEDED HIS JURISDICTION IS CORRECT AND IN ACCORDANCE WITH LAW AND PROCEDURE.

IV.

WHETHER THE PETITION FOR *CERTIORARI* FILED BY PRIVATE RESPONDENTS BEFORE THE RESPONDENT COURT, SHOULD HAVE BEEN DISMISSED CONSIDERING THAT THE REGIONAL TRIAL COURT BR. 50, WAS NOT IMPLEADED AND THE INFORMATION WAS ALREADY ORDERED WITHDRAWN, AND SUCH FACT WAS NOT REVEALED BY THE PRIVATE RESPONDENTS IN THEIR PETITION FOR *CERTIORARI* BEFORE THE COURT OF APPEALS EVEN IN THEIR DISCLAIMER OF FORUM SHOPPING.[15]

Briefly stated, the main issue presented for our resolution is whether the Court of Appeals erred in reversing the ruling of the DOJ Secretary and in finding probable cause to indict petitioners for murder and parricide.

In their brief and memorandum,[16] petitioners insist that the Court of Appeals should not have relied on the opinion of the three medical doctors, who executed affidavits stating that it was improbable that Hanz killed himself, because they are not forensic experts.[17]

Petitioners also argue that there are forensic yardsticks in this case consistent with suicide: total absence of stains, injuries, defense wounds on the bodies of Hanz and petitioners; a chair in the premises where Hanz committed suicide; no sign of struggle

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[15] *Id.* at 283-284.

[16] *Id.* at 272-362.

[17] *Id.* at 25-32.

in Hanz's body; Hanz attempted suicide twice sometime in the middle of 2000; Hanz wrote letters indicative of his frustrations in life; the material used in hanging was accessible to Hanz; he had a history of reverses in life like drug addiction, losing his mother and financial problems; he was hooked on drugs and he had an unpredictable personality.

They also criticize the appellate court for its failure to specifically point out a portion in the Resolution of the DOJ Secretary that showed that she acted with grave abuse of discretion. They insist that the Secretary of Justice's reversal of the investigating prosecutor's resolution was within her authority as the head of the DOJ.[18] They stress that mere abuse of discretion is not sufficient to justify the issuance of a writ of *certiorari* as the abuse of discretion must be grave, patent, arbitrary and despotic.[19]

They further aver that after the DOJ Secretary reversed her subordinate prosecutor, the motion to withdraw information filed by the prosecutor was granted by the RTC on January 21, 2003, and private respondents' motion for reconsideration was denied on February 27, 2003. This means that the DOJ Secretary's ruling was not attended with grave abuse of discretion. Petitioners argue that private respondents' failure to question the aforementioned orders should have been fatal to their petition before the appellate court, and private respondents are guilty of forum-shopping for not informing the Court of Appeals that the RTC had already issued an order granting the withdrawal of the information.[20]

In their Memorandum,[21] private respondents argue that the petition, filed under Rule 45 of the Rules of Court, should be limited to questions of law but petitioners raised pure questions of fact. They argue that the evidentiary weight of the opinion of expert witnesses, the weighing of facts to determine probable

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[18] *Id.* at 67-69; 71; 73-76.

[19] *Id.* at 77-78.

[20] *Id.* at 81-83.

[21] *Id.* at 223-250.

cause, and the determination of whether there is sufficient evidence to support the same are all factual questions.[22]

They enumerated circumstantial evidence which warrant the finding of probable cause against the petitioners, to wit: (a) the victim died at around 2:00 p.m. on December 27, 2000; (b) the victim was brought to the hospital dead; (c) respondent Junel Asetre was not informed of the victim's death and became aware of it through a friend; (d) at the hospital, April already hired a counsel; (e) Hanz was hurriedly buried on December 29, 2000 even before an autopsy could be conducted and despite the prior request of private respondents for an autopsy; (f) the following day, December 30, 2000, April, despite the request of a police investigator to keep the bedspreads allegedly used by the victim in hanging himself, burned them; (g) she also burned the alleged suicide note of the victim; (h) April objected to the suggestion of private respondents to have the body exhumed to determine the cause of death, and even threatened them with trouble; (i) April and her counsel objected to the authority granted by the city prosecutor to exhume the body and conduct an autopsy; (j) when private respondents filed a petition in court for the exhumation of the body, April objected; (k) when the petition was granted, April filed a multi-million damage suit before the RTC against private respondents and the NBI agents who conducted the examination, although the case against the NBI agents was later withdrawn by April; (l) April also filed a criminal case, which was later dismissed, against private respondents and the NBI agents before the city prosecutor's office for exhuming the victim to determine the cause of death; (m) she also filed another case, which was also dismissed, against the NBI agents before the Office of the Ombudsman; (n) petitioners went into hiding after the information was filed; (o) the first to arrive at the crime scene were the policemen of Bago City where April's father was vice mayor at the time of the incident, and not the policemen of Bacolod City; (p) the suicide theory was debunked by the NBI medico-legal officer, the investigating prosecutor and the acting Secretary of Justice as it was contrary

[22] *Id.* at 233.

to physical evidence; (q) all the petitioners were present at the scene shortly before, during, and after the victim died and they were the last persons seen with the victim.[23]

After serious consideration of the circumstances in this case, we are agreed that the petition is impressed with merit.

A preliminary investigation falls under the authority of the state prosecutor who is given by law the power to direct and control criminal actions. He is, however, subject to the control of the Secretary of Justice. Thus, Section 4, Rule 112 of the Revised Rules of Criminal Procedure provides:

> SEC. 4. *Resolution of Investigating Prosecutor and its Review.* — . . .
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> x x x x x x x x x
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> If upon petition by a proper party under such Rules as the Department of Justice may prescribe or *motu proprio*, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. The same Rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman.

The Secretary of Justice, upon petition by a proper party, can reverse his subordinates' (provincial or city prosecutors and their assistants') resolutions finding probable cause against suspects of crimes.[24]

The full discretionary authority to determine probable cause in a preliminary investigation to ascertain sufficient ground for the filing of information rests with the executive branch. Hence, judicial review of the resolution of the Secretary of Justice is limited to a determination whether there has been a grave abuse

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[23] *Id.* at 241-244.

[24] See *Webb v. Secretary of Justice*, G.R. No. 139120, July 31, 2003, 407 SCRA 532, 540.

of discretion amounting to lack or excess of jurisdiction. Courts cannot substitute the executive branch's judgment.[25]

Grave abuse of discretion is defined as "such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law."[26]

The determination of probable cause to warrant the prosecution in court should be consigned and entrusted to the DOJ, as reviewer of the findings of the public prosecutors; to do otherwise is to usurp a duty that exclusively pertains to an executive official.[27]

As department head, the Secretary of Justice has the power to alter, modify, nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter. While it is the duty of the fiscal to prosecute persons who, according to evidence received from the complainant, are shown to be guilty of a crime, the Secretary of Justice is likewise bound by his oath of office to protect innocent persons from groundless, false or serious prosecutions. He would be committing a serious dereliction of duty if he orders or sanctions the filing of charge sheets based on complaints where he is not convinced that the evidence would warrant the filing of an action in court. He has the ultimate power to decide which as between the conflicting theories of

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[25] See *Metropolitan Bank and Trust Company v. Tonda*, G.R. No. 134436, August 16, 2000, 338 SCRA 254, 270-271; *RCL Feeders PTE., Ltd. v. Perez*, G.R. No. 162126, December 9, 2004, 445 SCRA 696, 705-706.

[26] *D.M. Consunji, Inc. v. Esguerra*, G.R. No. 118590, July 30, 1996, 260 SCRA 74, 82.

[27] See *Roberts, Jr. v. Court of Appeals*, G.R. No. 113930, March 5, 1996, 254 SCRA 307, 349 (Separate Opinion of Chief Justice Andres Narvasa).

the parties should be believed.[28] The Secretary is empowered to order or perform the very acts questioned in this case.[29]

In *Joaquin, Jr. v. Drilon*,[30] this Court affirmed the DOJ Secretary's power of control over the authority of a state prosecutor to conduct preliminary investigations on criminal actions. Thus, we held:

> In reviewing resolutions of prosecutors, the Secretary of Justice is not precluded from considering errors, although unassigned, for the purpose of determining whether there is probable cause for filing cases in court. He must make his own finding of probable cause and is not confined to the issues raised by the parties during preliminary investigation. Moreover, his findings are not subject to review unless shown to have been made with grave abuse.[31]

It is only where the decision of the Justice Secretary is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction that the Court of Appeals may take cognizance of the case in a petition for *certiorari* under Rule 65 of the Revised Rules of Civil Procedure. The Court of Appeals decision may then be appealed to this Court by way of a petition for review on *certiorari*.[32]

In this case, however, the Secretary of Justice committed no grave abuse of discretion. Based on the totality of the evidence presented by both parties, it is clear that there is a dearth of proof to hold petitioners for trial.

The disquisition of the Secretary of Justice deserves more credence than that of the Court of Appeals, because of the following reasons:

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[28] See *Vda. de Jacob v. Puno*, Nos. 61554-55, July 31, 1984, 131 SCRA 144, 148-149; *Jalandoni v. Drilon*, G.R. Nos. 115239-40, March 2, 2000, 327 SCRA 107, 117-118.

[29] *Marquez v. Alejo*, No. L-40575, September 28, 1987, 154 SCRA 302, 307.

[30] G.R. No. 108946, January 28, 1999, 302 SCRA 225.

[31] *Id.* at 232.

[32] *Torres, Jr. v. Aguinaldo*, G.R. No. 164268, June 28, 2005, 461 SCRA 599, 612.

First, Dr. Samson Gonzaga, the private physician who signed the death certificate, and Dr. Luis Gamboa, the medico-legal officer of Bacolod City who conducted the post-mortem autopsy on Hanz's body, are not expert witnesses, nor were they offered to testify as medico-legal experts. Dr. Nicasio Botin, medico-legal officer, NBI-Iloilo City, who prepared the exhumation report is also not a forensic expert. They never opined that it was improbable for the deceased to have committed suicide. The death certificate signed by Dr. Gonzaga indicated "asphyxia secondary to strangulation" as the cause of death, without explaining whether it was suicide or not. It pointed to "depression" as the antecedent cause, implying that Hanz committed suicide. Thus, the appellate court lacks sufficient basis to conclude that it was "improbable" for Hanz to commit suicide based on the opinions of the three doctors.

Dr. Gamboa's post-mortem findings, we note, also did not categorically state foul play as the cause of death:

x x x x x x x x x

9. Q: Was the death of HANZ DIETRICH ASETRE, based on your findings, suicidal or there was (sic) foul play?

A: I cannot determine that but based on my findings the cause of death was strangulation.[33]

x x x x x x x x x

Second, we note also that while there is physical evidence to buttress private respondents' assertion that there was foul play, that evidence is inconclusive. The ligature that was seen on December 27 or 28, 2000 was no longer the same ligature seen on March 1, 2001. Since Hanz was obese, the entire ligature will not be very conspicuous. Further, the absence of an upward direction ligature did not necessarily mean that Hanz was strangled. If the bedsheet was tightly wound around Hanz's neck, it is possible that there will be no room for the bedsheet to form an upward direction ligature because of the fatty folds in the skin of Hanz at his neck.

[33] *Rollo*, p. 144.

Third, the finding that there was conspiracy to kill Hanz is not supported by any evidence on record and hence must be discarded.

Under Article 8[34] of the Revised Penal Code, there is conspiracy if two or more persons agree to commit a felony and decide to commit it. Conspiracy must be proven during trial with the same quantum of evidence as the felony subject of the agreement of the parties. Conspiracy may be proved by direct or circumstantial evidence consisting of acts, words, or conduct of the alleged conspirators before, during and after the commission of the felony to achieve a common design or purpose.[35]

The Bacolod City Prosecutor's Office, in this case, ruled that conspiracy can be deduced from petitioners' actuations before, during and after the incident, pointing to a joint purpose of killing Hanz: they were physically and actively interacting with Hanz shortly before he was found dead; they tried to cover up the crime by narrating stories which border on the "impossible to the bizarre;" nowhere in their counter-affidavits is it stated that Hanz had gone wild when drinking Tanduay that day; Hanz was very quiet at the children's room and even partook lunch with his cousins; it was unusual for April to call a specific person to pacify Hanz who had allegedly gone wild earlier on the day he died, and unusual for her not to shout for help when she saw Hanz hanging; if she was shocked, her voice could have impelled other people to immediately come upstairs and respond; but it was only Ebcas who came up; Buenaventura Gamboa came up later only when told to call for a taxi; the other employees just continued with their work as if nothing unusual was

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[34] ART. 8. *Conspiracy and proposal to commit felony*. — Conspiracy and proposal to commit felony are punishable only in the cases in which the law specially provides a penalty therefor.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.

There is proposal when the person who has decided to commit a felony proposes its execution to some other person or persons.

[35] *Preferred Home Specialties, Inc. v. Court of Appeals*, G.R. No. 163593, December 16, 2005, 478 SCRA 387, 414-415.

happening. The Bacolod City Prosecutor's Office further ruled that April, as the widow, should have demanded full and exhaustive investigation surrounding Hanz's death to put an end to the questions and speculations on the real cause of death. Also, according to said office, her reason in opposing the exhumation, *e.g.*, that her prior consent was not secured, is flimsy.

All circumstances considered, we find that the DOJ Secretary correctly held that the circumstantial evidence presented by private respondents to prove probable cause against petitioners, does not support the theory of conspiracy to commit murder. Such circumstantial evidence in our view, would not sufficiently warrant a conclusion that private respondents are responsible for the death of Hanz. Petitioners' mere presence at the death scene, without more, does not suffice to establish probable cause against them. It is noteworthy that complainants failed to establish conclusively that April, Hanz's cousins, and his workers had an ax to grind against Hanz. The alleged quarrel of the couple the night before the incident is hearsay and could not establish enough credible motive on the part of April, contrary to the opinion of the investigating prosecutor, because the same witness who testified about the alleged fight also stated that the couple had a good relationship and that it was not unusual for the couple to have verbal altercations occasionally. Equally worth stressing is the positive proof that the accused were not the only persons present inside the couple's house; and that the door of the gate of the house, including the door of the room where the victim was found hanging, were not so well secured as to exclude the possibility that the act was committed by other persons who were also then present in the house, or even by intruders. April was not attempting to reduce the number of possible witnesses as stated by the investigating prosecutor when she sent her children to Iloilo as it was the victim's decision to send their children to Iloilo upon his cousin's invitation. Likewise, concerning the act of burning the bedsheets, we find no grave abuse of discretion in the ruling of the DOJ that an ordinary person like April could have believed that the police investigation made at the death scene and the post-mortem examination conducted on the body of the victim were already more than

enough to conclude and close the investigation. Thus, we find no grave abuse of discretion on the part of the Secretary of Justice.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals dated October 18, 2005 in CA-G.R. SP No. 78493 is *REVERSED* and the Resolution dated December 17, 2002 of the Department of Justice is *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 171636. April 7, 2009]

NORMAN A. GAID, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; RECKLESS IMPRUDENCE RESULTING IN HOMICIDE, NOT A CASE OF. —** The presence or absence of negligence on the part of petitioner is determined by the operative events leading to the death of Dayata which actually comprised of two phases or stages. The first stage began when Dayata flagged down the jeepney while positioned on the left side of the road and ended when he was run over by the jeepney. The second stage covered the span between the moment immediately after the victim was run over and the point when petitioner put the jeepney to a halt. During the first stage, petitioner was not shown to be negligent. Reckless imprudence consists of voluntarily doing or failing to do, without malice, an act from which material damage results by reason of an inexcusable lack of precaution on the part of the person

performing or failing to perform such act. x x x In the instant case, petitioner was driving slowly at the time of the accident, as testified to by two eyewitnesses. Prosecution witness Actub affirmed this fact on cross-examination x x x. It appears from the evidence Dayata came from the left side of the street. Petitioner, who was driving the jeepney on the right lane, did not see the victim flag him down. He also failed to see him go near the jeepney at the left side. Understandably, petitioner was focused on the road ahead. In Dayata's haste to board the jeep which was then running, his feet somehow got pinned to the left rear tire, as narrated by Bongolto. Actub only saw Dayata after he heard a strong impact coming from the jeep. With the foregoing facts, petitioner can not be held liable during the first stage. Specifically, he cannot be held liable for reckless imprudence resulting in homicide, as found by the trial court. The proximate cause of the accident and the death of the victim was definitely his own negligence in trying to catch up with the moving jeepney to get a ride.

2. ID.; SIMPLE NEGLIGENCE RESULTING IN HOMICIDE; ELEMENTS; TEST TO DETERMINE WHETHER A PERSON IS NEGLIGENT. — Negligence has been defined as the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury. The elements of simple negligence: are (1) that there is lack of precaution on the part of the offender; and (2) that the damage impending to be caused is not immediate or the danger is not clearly manifest. The standard test in determining whether a person is negligent in doing an act whereby injury or damage results to the person or property of another is this: could a prudent man, in the position of the person to whom negligence is attributed, foresee harm to the person injured as a reasonable consequence of the course actually pursued? If so, the law imposes a duty on the actor to refrain from that course or to take precautions to guard against its mischievous results, and the failure to do so constitutes negligence. Reasonable foresight of harm, followed by the ignoring of the admonition born of this provision, is always necessary before negligence can be held to exist.

3. ID.; ID.; TO BE HELD GUILTY OF SIMPLE NEGLIGENCE RESULTING IN HOMICIDE, IT MUST BE SHOWN THAT

THE PROXIMATE CAUSE OF THE VICTIM'S DEATH WAS THE ACCUSED NEGLIGENCE. — Assuming *arguendo* that petitioner had been negligent, it must be shown that his negligence was the proximate cause of the accident. Proximate cause is defined as that which, in the natural and continuous sequence, unbroken by any efficient, intervening cause, produces the injury, and without which the result would not have occurred. In order to establish a motorist's liability for the negligent operation of a vehicle, it must be shown that there was a direct causal connection between such negligence and the injuries or damages complained of. Thus, negligence that is not a substantial contributing factor in the causation of the accident is not the proximate cause of an injury. The head injuries sustained by Dayata at the point of impact proved to be the immediate cause of his death, as indicated in the post-mortem findings. His skull was crushed as a result of the accident. Had petitioner immediately stopped the jeepney, it would still not have saved the life of the victim as the injuries he suffered were fatal. The evidence on record do not show that the jeepney dragged the victim after he was hit and run over by the jeepney. Quite the contrary, the evidence discloses that the victim was not dragged at all. In fact, it is the other way around.

4. **ID.; ID.; DAMAGES CANNOT BE AWARDED WHEN THE VICTIM'S OWN NEGLIGENCE WAS THE IMMEDIATE AND PROXIMATE CAUSE OF HIS DEATH. —** The award of damages must also be deleted pursuant to Article 2179 of the Civil Code which states that when the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages.

VELASCO, JR., ***J., dissenting opinion:***

1. **CRIMINAL LAW; SIMPLE NEGLIGENCE RESULTING IN HOMICIDE; SIMPLE NEGLIGENCE, DEFINED; ELEMENTS. —** Article 365 of the Revised Penal Code (RPC) defines "simple negligence" as one that "consists in the lack of precaution displayed in those cases in which the damage impending to be caused is not immediate nor the danger clearly manifest." The elements of simple imprudence are (1) that there is lack of precaution on the part of the offender; and

(2) that the damage impending to be caused is not immediate or the danger is not clearly manifest. As early as in *People v. Vistan*, the Court defined simple negligence, penalized under what is now Art. 365 of the RPC, as "a mere lack of prevision in a situation where either the threatened harm is not immediate or the danger not openly visible." Elsewise put, the gravamen of the offense of simple negligence is the failure to exercise the diligence necessitated or called for by the situation which was not immediately life-destructive but which culminated, in the present case, in the death of a human being.

2. ID.; ID.; SIMPLE NEGLIGENCE RESULTING IN HOMICIDE, COMMITTED; RELEVANT RULING, CITED. — The evidence shows that petitioner continued on his route even after sensing that he had run over a "hard object." At this point, petitioner should have displayed precaution by stopping on his tracks. Unfortunately, this was not done. Instead, even after he heard the shout "*aduney bata naligsan*!" which means "a child has been run over," petitioner nonetheless continued to run towards the direction of Moog, Laguindingan, dragging the victim a few meters from the point of impact. His lack of care was, thus, perceivable. Indeed, petitioner could not exonerate himself from his negligent act. He failed the test of being a prudent man. The test for determining whether or not a person is negligent in doing an act that results in damage or injury to the person or property of another is: **Would a prudent man, in the position of the person to whom negligence is attributed, foresee harm to the person injured as a reasonable consequence of the course about to be pursued?** If so, the law imposes the duty on the doer to refrain from that course or take precaution against its mischievous results, and the failure to do so constitutes negligence. Reasonable foresight of harm, followed by ignoring the admonition borne of this prevision, is the constitutive fact in negligence. Even the Death Certificate of the victim and the testimonies of Dr. Remedios L. Uy and Dr. Tammy L. Uy of the National Bureau of Investigation proved that the victim died of injuries caused by the force or impact and found extensive/serious fractures and disfigurement as described in the Autopsy Report. Dr. Tammy further testified that based on the type, multiplicity, and severity of the injuries to the victim's head, he believed that the head was run over and subsequently, the body was dragged also based on the multiplicity of the abrasions. x x x Had petitioner

promptly applied the brakes when he heard the shout that he ran over someone and felt the bump, could the victim had survived? Alas, that cannot be answered as the victim was dragged for approximately 5.7 meters. If indeed petitioner's jeepney was running at only around 15 kilometers per hour, it would be easy to stop the jeepney within a distance of five (5) feet. Had he instantly applied the brakes and put the jeepney to a sudden stop, hence, the life of Dayata could have been saved. Worse, the lack of care and precaution of petitioner was shown in his utter lack of concern towards the victim. It was only his conductor who brought the victim on a motorcycle to the hospital when petitioner was duty-bound to do so. Clear to my mind is that petitioner did not exercise the necessary care expected of him given the circumstances.

APPEARANCES OF COUNSEL

Gapuz & Associates Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

TINGA, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the 12 July 2005 Decision[2] of the Court of Appeals and its subsequent Resolution[3] denying petitioner's motion for reconsideration.

Petitioner Norman A. Gaid was charged with the crime of reckless imprudence resulting in homicide in an information which reads as follow:

That on or about 12:00 high noon of October 25, 2001, infront of the Laguindingan National High School, Poblacion, Laguindingan,

[1] *Rollo,* pp. 27-43.

[2] *Id.* at 8-21; Penned by Associate Justice Myrna Dimaranan-Vidal, and concurred in by Associate Justices Teresita Dy-Liacco Flores and Edgardo A. Camello.

[3] *Id.* at 23-24.

Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the said accused mentioned above while driving a passenger's jeepney color white bearing plate no. KVG-771 owned by barangay captain Levy Etom has no precautionary measure to preempt the accident, did then and there willfully, unlawfully and feloniously ran [*sic*] over Michael Dayata resulting of [*sic*] his untimely death as pronounced by the attending physician of Northern Mindanao Medical Center Hospital, Cagayan de Oro City.

CONTRARY TO LAW.[4]

Petitioner entered a not guilty plea. Thereafter, trial ensued.

The antecedent facts are undisputed.

At around 12:00 noon on 25 October 2001, petitioner was driving his passenger jeepney along a two-lane road where the Laguindingan National High School is located toward the direction of Moog in Misamis Oriental. His jeepney was filled to seating capacity.[5] At the time several students were coming out of the school premises.[6] Meanwhile, a fourteen year-old student, Michael Dayata (Dayata), was seen by eyewitness Artman Bongolto (Bongolto) sitting near a store on the left side of the road. From where he was at the left side of the road, Dayata raised his left hand to flag down petitioner's jeepney[7] which was traveling on the right lane of the road.[8] However, neither did petitioner nor the conductor, Dennis Mellalos (Mellalos), saw anybody flagging down the jeepney to ride at that point.[9]

The next thing Bongalto saw, Dayata's feet was pinned to the rear wheel of the jeepney, after which, he laid flat on the ground behind the jeepney.[10] Another prosecution witness, Usaffe

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

[5] *Vide* t.s.n., Records, p. 209.

[6] *Id.* at 264.

[7] Records, p. 69.

[8] *Vide*: TSN, Records, p. 209.

[9] *Id.* at 251 and 265.

[10] *Id.* at 229.

Actub (Actub), who was also situated on the left side of the street but directly in front of the school gate, heard "a strong impact coming from the jeep sounding as if the driver forced to accelerate in order to hurdle an obstacle."[11] Dayata was then seen lying on the ground[12] and caught in between the rear tires.[13] Petitioner felt that the left rear tire of the jeepney had bounced and the vehicle tilted to the right side.[14]

Mellalos heard a shout that a boy was run over, prompting him to jump off the jeepney to help the victim. Petitioner stopped and saw Mellalos carrying the body of the victim.[15] Mellalos loaded the victim on a motorcycle and brought him to the hospital. Dayata was first brought to the Laguindingan Health Center, but it was closed. Mellalos then proceeded to the El Salvador Hospital. Upon advice of its doctors, however, Dayata was brought to the Northern Mindanao Medical Center where he was pronounced dead on arrival.[16]

Dr. Tammy Uy issued an autopsy report stating cranio-cerebral injuries as the cause of death.[17] She testified that the head injuries of Dayata could have been caused by having run over by the jeepney.[18]

The Municipal Circuit Trial Court (MCTC) of Laguindingan[19] found petitioner guilty beyond reasonable doubt of the crime charged. The lower court held petitioner negligent in his driving considering that the victim was dragged to a distance of 5.70

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[11] *Id.* at 235.

[12] *Id.*

[13] *Id.* at 208-211.

[14] *Id.*

[15] *Id.* at 264-265.

[16] *Id.* at 248-252.

[17] *Id.* at 65.

[18] *Id.* at 148.

[19] CA *rollo,* pp. 84-92. Presided by Judge Teofilo T. Adilan. Promulgated on 30 July 2003.

meters from the point of impact. He was also scored for "not stopping his vehicle after noticing that the jeepney's left rear tire jolted causing the vehicle to tilt towards the right."[20] On appeal, the Regional Trial Court (RTC)[21] affirmed *in toto* the decision of the MCTC.

The Court of Appeals affirmed the trial court's judgment with modification in that it found petitioner guilty only of simple negligence resulting in homicide.

The Court of Appeals exonerated petitioner from the charge of reckless imprudence resulting to homicide on the ground that he was not driving recklessly at the time of the accident. However, the appellate court still found him to be negligent when he failed "to promptly stop his vehicle to check what caused the sudden jotting of its rear tire."[22]

In its 6 February 2006 Resolution, the Court of Appeals denied petitioner's motion for reconsideration.[23]

Hence, the instant petition.

Petitioner submits that the Court of Appeals erred in finding that "there is (*sic*) absolutely lack of precaution on the part of the petitioner when he continued even after he had noticed that the left rear tire and the jeep tilted to its right side."[24] Petitioner stressed that he, in fact, stopped his jeep when its left rear tire bounced and upon hearing that somebody had been ran over.

Moreover, petitioner asserts that the Court of Appeals committed a grave abuse of discretion in convicting him of the offense of simple negligence resulting in homicide. Assuming *arguendo* that he failed to promptly stop his vehicle, petitioner maintains that no prudent man placed in the same situation could have foreseen the vehicular accident or could have stopped

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[20] *Rollo*, p. 74.

[21] CA *rollo,* pp. 274-276. Penned by Acting Judge Mamindiara P. Mangotara.

[22] *Rollo*, p. 18.

[23] *Supra* note 3.

[24] *Rollo,* p. 35.

his vehicle in time when its left rear tire bounced due to the following reasons: (1) the victim was only a trespasser; (2) petitioner's attention was focused on the road and the students outside the school's gate; and (3) the jeepney was fully loaded with passengers and cargoes and it was impossible for the petitioner to promptly stop his vehicle.[25]

The Office of the Solicitor-General (OSG) maintained that petitioner was negligent when he continued to run towards the direction of Moog, Laguindingan, dragging the victim a few meters from the point of impact, despite hearing that a child had been run over.[26]

The presence or absence of negligence on the part of petitioner is determined by the operative events leading to the death of Dayata which actually comprised of two phases or stages. The first stage began when Dayata flagged down the jeepney while positioned on the left side of the road and ended when he was run over by the jeepney. The second stage covered the span between the moment immediately after the victim was run over and the point when petitioner put the jeepney to a halt.

During the first stage, petitioner was not shown to be negligent.

Reckless imprudence consists of voluntarily doing or failing to do, without malice, an act from which material damage results by reason of an inexcusable lack of precaution on the part of the person performing or failing to perform such act.[27]

In *Manzanares v. People*,[28] this Court convicted petitioner of the crime of reckless imprudence resulting in multiple homicide and serious physical injuries when he was found driving the Isuzu truck very fast before it smashed into a jeepney.[29] Likewise,

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[25] *Id.* at 37.

[26] *Id.* at 92.

[27] *People v. Garcia,* 467 Phil. 1102, 1108-1109 (2004; *People v. Aglidav,* 419 Phil. 555, 566 (2001).

[28] G.R. Nos. 153760-61, 16 October 2006, 504 SCRA 354.

[29] *Id.* at 376-377.

in *Pangonorom v. People*,[30] a public utility driver, who was driving very fast, failed to slow down and hit a swerving car. He was found negligent by this Court.

In the instant case, petitioner was driving slowly at the time of the accident, as testified to by two eyewitnesses. Prosecution witness Actub affirmed this fact on cross-examination, thus:

ATTY. MACUA:

(to the witness)
Q Mr. Witness, when the passenger jeepney passed by the gate of the Laguindingan National High School, is it running slowly, am I correct?
A Yes, he was running slowly.[31]

The slow pace of the jeepney was seconded by Mellalos:

Q You testified that you heard somebody outside from the vehicle shouting that a boy was ran over, am I correct?
A Yes, Sir.

Q Now, before you heard that shouting, did you observe any motion from the vehicle?
A The jeep was moving slowly and I noticed that there was something that [*sic*] the jeep a little bit bounced up as if a hump that's the time I heard a shout from outside.[32]

Petitioner stated that he was driving at no more than 15 kilometers per hour.[33]

It appears from the evidence Dayata came from the left side of the street. Petitioner, who was driving the jeepney on the right lane, did not see the victim flag him down. He also failed to see him go near the jeepney at the left side. Understandably, petitioner was focused on the road ahead. In Dayata's haste to board the jeep which was then running, his feet somehow got

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[30] G.R. No. 143380, 11 April 2005, 455 SCRA 211.

[31] Records, p. 237.

[32] *Id.* at 250.

[33] *Id.* at 275.

pinned to the left rear tire, as narrated by Bongolto. Actub only saw Dayata after he heard a strong impact coming from the jeep.

With the foregoing facts, petitioner can not be held liable during the first stage. Specifically, he cannot be held liable for reckless imprudence resulting in homicide, as found by the trial court. The proximate cause of the accident and the death of the victim was definitely his own negligence in trying to catch up with the moving jeepney to get a ride.

In the instant case, petitioner had exercised extreme precaution as he drove slowly upon reaching the vicinity of the school. He cannot be faulted for not having seen the victim who came from behind on the left side.

However, the Court of Appeals found petitioner guilty of simple negligence resulting in homicide for failing to stop driving at the time when he noticed the bouncing of his vehicle. Verily, the appellate court was referring to the second stage of the incident.

Negligence has been defined as the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.[34]

The elements of simple negligence: are (1) that there is lack of precaution on the part of the offender; and (2) that the damage impending to be caused is not immediate or the danger is not clearly manifest.[35]

The standard test in determining whether a person is negligent in doing an act whereby injury or damage results to the person or property of another is this: could a prudent man, in the position of the person to whom negligence is attributed, foresee harm to the person injured as a reasonable consequence of the course actually pursued? If so, the law imposes a duty on the actor to refrain from that course or to take precautions to guard against its mischievous results, and the failure to do so constitutes

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[34] *Fernando v. Court of Appeals*, G.R. No. 92087, 8 May 1992, 208 SCRA 714, 718.

[35] REYES, LUIS B., *THE REVISED PENAL CODE*, 15th ed., p. 1002.

negligence. Reasonable foresight of harm, followed by the ignoring of the admonition born of this provision, is always necessary before negligence can be held to exist.[36]

In *Philippine National Construction Corporation v. Court of Appeals*,[37] the petitioner was the franchisee that operates and maintains the toll facilities in the North and South Luzon Toll Expressways. It failed to exercise the requisite diligence in maintaining the NLEX safe for motorists. The lighted cans and lane dividers on the highway were removed even as flattened sugarcanes lay scattered on the ground. The highway was still wet from the juice and sap of the flattened sugarcanes. The petitioner should have foreseen that the wet condition of the highway would endanger motorists passing by at night or in the wee hours of the morning.[38] Consequently, it was held liable for damages.

In an American case, *Hernandez v. Lukas*,[39] a motorist traveling within the speed limit and did all was possible to avoid striking a child who was then six years old only. The place of the incident was a neighborhood where children were playing in the parkways on prior occasions. The court ruled that it must be still proven that the driver did not exercise due care. The evidence showed that the driver was proceeding in lawful manner within the speed limit when the child ran into the street and was struck by the driver's vehicle. Clearly, this was an emergency situation thrust upon the driver too suddenly to avoid.

In this case, the courts below zeroed in on the fact that petitioner did not stop the jeepney when he felt the bouncing of his vehicle, a circumstance which the appellate court equates with negligence. Petitioner contends that he did not immediately stop because he did not see anybody go near his vehicle at the time of the incident.[40]

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[36] *Philippine National Construction Corporation v. Court of Appeals*, G.R. No. 159270, 22 August 2005, 467 SCRA 569, 581.

[37] *Supra* note 36 at 569.

[38] *Id.*

[39] 432 N.E.2d 1028.

[40] Records, p. 271.

Assuming *arguendo* that petitioner had been negligent, it must be shown that his negligence was the proximate cause of the accident. Proximate cause is defined as that which, in the natural and continuous sequence, unbroken by any efficient, intervening cause, produces the injury, and without which the result would not have occurred.[41] In order to establish a motorist's liability for the negligent operation of a vehicle, it must be shown that there was a direct causal connection between such negligence and the injuries or damages complained of. Thus, negligence that is not a substantial contributing factor in the causation of the accident is not the proximate cause of an injury.[42]

The head injuries sustained by Dayata at the point of impact proved to be the immediate cause of his death, as indicated in the post-mortem findings.[43] His skull was crushed as a result of the accident. Had petitioner immediately stopped the jeepney, it would still not have saved the life of the victim as the injuries he suffered were fatal.

The evidence on record do not show that the jeepney dragged the victim after he was hit and run over by the jeepney. Quite the contrary, the evidence discloses that the victim was not dragged at all. In fact, it is the other way around. Bongolto narrated that after the impact, he saw Dayata left behind the jeepney.[44] Actub saw Dayata in a prone position and bleeding within seconds after impact.[45] Right after the impact, Mellalos immediately jumped out of the jeepney and saw the victim lying on the ground.[46] The distance of 5.70 meters is the length of

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[41] *Calimutan v. People,* G.R. No. 152133, 9 February 2006, 482 SCRA 44, 60; *Lambert v. Heirs of Roy Castillon*, G.R. No. 160709, 23 February 2005, 452 SCRA 285, 291; *St. Mary's Academy v. Carpitanos*, 426 Phil. 878, 886 (2002); *Raynera v. Hiceta*, 365 Phil. 546, 553 (1999).

[42] 8 AM. JUR. 2D AUTOMOBILES §426, citing *Branstetter v. Gerdeman*, 364 Mo. 1230, 274 S.W.2d 240 (1955) and *Salerno v. LaBarr*, 159 Pa. Commw. 99, 632 A.2d 1002 (1993).

[43] Records, p. 65.

[44] *Vide* TSN, Records, p. 228.

[45] *Id.* at 235.

[46] *Id.* at 255.

space between the spot where the victim fell to the ground and the spot where the jeepney stopped as observed by the trial judge during the ocular inspection at the scene of the accident.[47]

Moreover, mere suspicions and speculations that the victim could have lived had petitioner stopped can never be the basis of a conviction in a criminal case.[48] The Court must be satisfied that the guilt of the accused had been proven beyond reasonable doubt.[49] Conviction must rest on nothing less than a moral certainty of the guilt of the accused. The overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains doubt as to his guilt.[50]

Clearly then, the prosecution was not able to establish that the proximate cause of the victim's death was petitioner's alleged negligence, if at all, even during the second stage of the incident.

If at all again, petitioner's failure to render assistance to the victim would constitute abandonment of one's victim punishable under Article 275 of the Revised Penal Code. However, the omission is not covered by the information. Thus, to hold petitioner criminally liable under the provision would be tantamount to a denial of due process.

Therefore, petitioner must be acquitted at least on reasonable doubt. The award of damages must also be deleted pursuant to Article 2179 of the Civil Code which states that when the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages.

WHEREFORE, the petition is *GRANTED*. The decision of the Court of Appeals dated 12 July 2005 is *REVERSED* and *SET ASIDE*. Petitioner Norman A. Gaid is *ACQUITTED* of the crime of Simple Negligence Resulting in Homicide as found

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[47] *Id.* at 283. These two separate spots are marked as Exhs. "F-3" and "F-4" on the sketch of the accident scene drawn by witness Bongolto, Exh. "F" and "Exh. "2", Records, p. 88.

[48] *People v. Ador*, G.R. Nos. 140538-39, 14 June 2004.

[49] *People v. Sol*, G.R. No. 118504, 7 May 1997.

[50] *Supra* note 50.

by the Court of Appeals and of the charge of Reckless Imprudence Resulting in Homicide in Criminal Case No. 1937 of the MCTC of Laguindingan, Misamis Oriental.

SO ORDERED.

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

Velasco, Jr., J., pls. see dissent.

DISSENTING OPINION

VELASCO, JR., *J.*:

With all due respect to my esteemed colleague, Mr. Justice Tinga, who has, as usual, prepared a well-written and comprehensive *ponencia*, I regret my inability to share the view that petitioner Norman A. Gaid should be acquitted of the crime of Simple Negligence Resulting in Homicide.

Simple negligence was shown on the part of petitioner at the second stage of the operative events leading to the death of Dayata. The second stage constituted the time between the moment immediately after the victim was run over and the point when petitioner stopped the jeepney.

Article 365 of the Revised Penal Code (RPC) defines "simple negligence" as one that "consists in the lack of precaution displayed in those cases in which the damage impending to be caused is not immediate nor the danger clearly manifest."

The elements of simple imprudence are (1) that there is lack of precaution on the part of the offender; and (2) that the damage impending to be caused is not immediate or the danger is not clearly manifest.[1] As early as in *People v. Vistan*,[2] the Court defined simple negligence, penalized under what is now Art. 365 of the RPC, as "a mere lack of prevision in a situation where either the threatened harm is not immediate or the danger

[1] 2 L.B. Reyes, *THE REVISED PENAL CODE* 988 (12th ed.).

[2] G.R. No. L-17218, September 8, 1921.

not openly visible." Elsewise put, the gravamen of the offense of simple negligence is the failure to exercise the diligence necessitated or called for by the situation which was not immediately life-destructive but which culminated, in the present case, in the death of a human being.

On October 25, 2001, on or about 12:00 high noon, the victim Dayata was waiting for a ride home in front of the gate of Laguindingan National High School, Misamis Oriental when he was run over by a passenger utility jeep, driven by petitioner. Dayata was dragged to a distance of 5.7 meters from the point of impact before petitioner stopped the jeep which was running at an estimated speed of 15 kilometers per hour. Petitioner did not get off to attend to the victim; only the conductor did. The conductor loaded the victim on a motorcycle, and brought the victim to the hospital. The victim was declared dead on arrival. Petitioner claimed that he did not see the victim prior to the accident and was unaware of how it happened because the passenger jeep was fully loaded.

The evidence shows that petitioner continued on his route even after sensing that he had run over a "hard object." At this point, petitioner should have displayed precaution by stopping on his tracks. Unfortunately, this was not done. Instead, even after he heard the shout "*adunay bata naligsan*!" which means "a child has been run over," petitioner nonetheless continued to run towards the direction of Moog, Laguindingan, dragging the victim a few meters from the point of impact. His lack of care was, thus, perceivable.

Indeed, petitioner could not exonerate himself from his negligent act. He failed the test of being a prudent man. The test for determining whether or not a person is negligent in doing an act that results in damage or injury to the person or property of another is: **Would a prudent man, in the position of the person to whom negligence is attributed, foresee harm to the person injured as a reasonable consequence of the course about to be pursued?** If so, the law imposes the duty on the doer to refrain from that course or take precaution against its mischievous results, and the failure to do so constitutes negligence.

Reasonable foresight of harm, followed by ignoring the admonition borne of this prevision, is the constitutive fact in negligence.[3]

Even the Death Certificate of the victim and the testimonies of Dr. Remedios L. Uy and Dr. Tammy L. Uy of the National Bureau of Investigation proved that the victim died of injuries caused by the force or impact and found extensive/serious fractures and disfigurement as described in the Autopsy Report.[4]

Dr. Tammy further testified that based on the type, multiplicity, and severity of the injuries to the victim's head, he believed that the head was run over and subsequently, the body was dragged also based on the multiplicity of the abrasions.[5]

The degree of precaution and diligence required of an individual in any given case so as to avoid being charged with recklessness varies with the degree of the danger. If the danger of doing harm to a person or to another's property, on account of a certain line of conduct, is great, the individual who chooses to follow that particular course of conduct is compelled to be very careful in order to prevent or avoid the damage or injury. On the other hand, if the danger is small, very little care is required. It is, thus, possible that there are infinite degrees of precaution or diligence, from the most slight and instantaneous thought or the transitory glance of care to the most vigilant effort. The duty of the person to employ more or less degree of care in such cases will depend upon the circumstances of each particular case.[6]

An example of simple imprudence is a case where the driver of a cart, passing along the street of a city at the speed prescribed by the ordinances and leading his team from the side by a strap attached to the bridle or head of one of the horses, on turning

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[3] 3 R.C. Aquino, *THE REVISED PENAL CODE* 602-603 (1988); citing *Picart v. Smith*, 37 Phil. 809, 813 (1918).

[4] Records, p. 83.

[5] *Id*. at 148. TSN, June 24, 2002, p. 13.

[6] R.C. Aquino, *supra* note 3, at 603; citing *Vistan*, *supra* note 2.

a corner and in a moment of distraction, does not see a child asleep in the gutter on the side of the team opposite to him, by reason whereof the child is run over by the cart and killed. The act cannot be denominated as purely accidental, because, if the cart driver had been paying attention to his duty, he would have seen the child and very likely would have been able to avoid the accident. Nor can it be called gross or reckless negligence, because he was not able to foresee the extremely unusual occurrence of a child being asleep in the gutter.[7]

In the fairly similar case of *People v. De los Santos*,[8] where petitioner Glenn De los Santos run over several Philippine National Police (PNP) trainees doing their jogging, killing 11 of them and injuring another 10, this Court set aside the Regional Trial Court's conviction of Glenn for the complex crime of multiple murder, multiple frustrated murder and multiple attempted murder, with the use of motor vehicle as the qualifying circumstance. We held that what happened in the wee hours of the morning with overcast skies and the PNP trainees who were hard to discern due to their dark attire and running at the wrong side of the road was an accident. Glenn was, however, found to be negligent in failing to apply the brakes, or to swerve his vehicle to the left or to a safe place the moment he heard and felt the first bumping thuds. Had he done so, many trainees would have been spared.

It is true that in the instant case, it could be argued that victim Dayata might have died instantaneously upon being run over by the left rear tire of petitioner's jeepney. Nonetheless, that is already academic at this point. Had petitioner promptly applied the brakes when he heard the shout that he ran over someone and felt the bump, could the victim had survived? Alas, that cannot be answered as the victim was dragged for approximately 5.7 meters. If indeed petitioner's jeepney was running at only around 15 kilometers per hour, it would be

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[7] *Id*. at 607; citing *U.S. v. Reodique*, 32 Phil. 458 (1915); *U.S. v. Clemente*, 24 Phil. 178.

[8] G.R. No. 131588, March 27, 2001, 355 SCRA 415.

easy to stop the jeepney within a distance of five (5) feet. Had he instantly applied the brakes and put the jeepney to a sudden stop, hence, the life of Dayata could have been saved. Worse, the lack of care and precaution of petitioner was shown in his utter lack of concern towards the victim. It was only his conductor who brought the victim on a motorcycle to the hospital when petitioner was duty-bound to do so.

Clear to my mind is that petitioner did not exercise the necessary care expected of him given the circumstances. What the Court said in *De los Santos* is apropos that "[A] man must use common sense, and exercise due reflection in all his acts; it is his duty to be cautious, careful, and prudent, if not from instinct, then through fear of incurring punishment. He is responsible for such results as anyone might foresee and for acts which no one would have performed except through culpable abandon."[9]

In the instant case, like in *De los Santos*, petitioner's offense is in not applying the brakes when he heard the shout and felt the bump that he ran over something. These are not denied by petitioner. Petitioner, thus, failed to show lack of precaution given the circumstances.

Therefore, I vote to affirm the finding of the Court of Appeals that petitioner is guilty beyond reasonable doubt of the lesser offense of Simple Negligence Resulting in Homicide under Art. 365 of the RPC, with the corresponding penalty of four (4) months imprisonment, including the awards of civil indemnity, moral and actual damages, plus costs.

FROM ALL THE FOREGOING REASONS, I, therefore, vote for the outright **DISMISSAL** of the instant petition for lack of merit.

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[9] *Id*. at 430; citing *U.S. v. Meleza*, 14 Phil. 468, 470 (1909), cited in *People v. Pugay*, No. 74324, November 17, 1988, 167 SCRA 439, 448.

THIRD DIVISION

[G.R. No. 172832. April 7, 2009]

ROSARIO T. DE VERA, *petitioner, vs.* **GEREN A. DE VERA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; MODIFICATION OF JUDGMENT; CONSENT OF THE ACCUSED IS NECESSARY BEFORE A JUDGMENT OF CONVICTION MAY BE MODIFIED; APPLICATION. — In filing her motion for reconsideration before the RTC and her petition for *certiorari* before the CA, petitioner sought the modification of the court's judgment of conviction against Geren, because of the allegedly mistaken application of the mitigating circumstance of "voluntary surrender." The eventual relief prayed for is the increase in the penalty imposed on Geren. Is this action of petitioner procedurally tenable? Section 7, Rule 120 of the Revised Rules of Criminal Procedure provides x x x. Simply stated, in judgments of conviction, errors in the decision cannot be corrected unless the accused consents thereto; or he, himself, moves for reconsideration of, or appeals from, the decision. Records show that after the promulgation of the judgment convicting Geren of bigamy, it was petitioner (as private complainant) who moved for the reconsideration of the RTC decision. This was timely opposed by Geren, invoking his right against double jeopardy. Although the trial court correctly denied the motion for lack of merit, we would like to add that the same should have been likewise denied pursuant to the above-quoted provision of the Rules.

2. ID.; ID.; ID.; SIGNIFICANT CHANGES ON THE RULE ON MODIFICATION OF JUDGMENTS OF CONVICTION, CITED. — As explained in *People v. Viernes,* the rule on the modification of judgments of conviction had undergone significant changes before and after the 1964 and 1985 amendments to the Rules. Prior to the 1964 Rules of Court, we held in various cases that the prosecution (or private complainant) cannot move to increase the penalty imposed in a promulgated judgment, for to do so would place the accused

in double jeopardy. The 1964 amendment, however, allowed the prosecutor to move for the modification or the setting aside of the judgment before it became final or an appeal was perfected. In 1985, the Rules was amended to include the phrase "upon motion of the accused," effectively resurrecting our earlier ruling prohibiting the prosecution from seeking a modification of a judgment of conviction. Significantly, the present Rules retained the phrase "upon motion of the accused." Obviously, the requisite consent of the accused is intended to protect him from having to defend himself anew from more serious offenses or penalties which the prosecution or the court may have overlooked.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT PROPER REMEDY TO ASSAIL A JUDGMENT OF CONVICTION IN CASE AT BAR. — Equally important is this Court's pronouncement in *People v. Court of Appeals* on the propriety of a special civil action for *certiorari* assailing a judgment of conviction. In that case, the trial court convicted the accused of homicide. The accused thereafter appealed his conviction to the CA which affirmed the judgment of the trial court but increased the award of civil indemnity. The Office of the Solicitor General (OSG), on behalf of the prosecution, then filed before this Court a petition for *certiorari* under Rule 65, alleging grave abuse of discretion. The OSG prayed that the appellate court's judgment be modified by convicting the accused of homicide without appreciating in his favor any mitigating circumstance. In effect, the OSG wanted a higher penalty to be imposed. The Court declared that the petition constituted a violation of the accused's right against double jeopardy; hence, dismissible. Certainly, we are not inclined to rule differently. x x x Grave abuse of discretion defies exact definition, but it generally refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Obviously, no grave abuse of discretion may be attributed to a court simply because of its alleged misappreciation of the mitigating circumstance of voluntary surrender. Consequently, the trial court's action cannot come within the ambit of the writ's limiting requirement

of excess or lack of jurisdiction. Thus, the trial court's action becomes an improper object of, and therefore non-reviewable by, *certiorari*.

4. **CRIMINAL LAW; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; REQUISITES. —** For voluntary surrender to be appreciated, the following requisites should be present: 1) the offender has not been actually arrested; 2) the offender surrendered himself to a person in authority or the latter's agent; and 3) the surrender was voluntary. The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture. Without these elements, and where the clear reasons for the supposed surrender are the inevitability of arrest and the need to ensure his safety, the surrender is not spontaneous and, therefore, cannot be characterized as "voluntary surrender" to serve as a mitigating circumstance. Petitioner is correct in saying that in *People v. Cagas* and in *People v. Taraya,* the Court added a fourth requisite before "voluntary surrender" may be appreciated in favor of the accused — that there is no pending warrant of arrest or information filed.

5. **ID.; ID.; ID.; CIRCUMSTANCES SHOWING VOLUNTARINESS OF THE SURRENDER. —** In this case, it appears that the Information was filed with the RTC on February 24, 2005. On March 1, 2005, the court issued an Order finding probable cause for the accused to stand trial for the crime of bigamy and for the issuance of a warrant of arrest. In the afternoon of the same day, Geren surrendered to the court and filed a motion for reduction of bail. After the accused posted bail, there was no more need for the court to issue the warrant of arrest. The foregoing circumstances clearly show the voluntariness of the surrender. As distinguished from the earlier cases, upon learning that the court had finally determined the presence of probable cause and even before the issuance and implementation of the warrant of arrest, Geren already gave himself up, acknowledging his culpability. This was bolstered by his eventual plea of guilt during the arraignment. Thus, the trial court was correct in appreciating the mitigating circumstance of "voluntary surrender."

6. ID.; ID.; ID.; MERE FILING OF INFORMATION AND/OR ISSUANCE OF WARRANT OF ARREST WILL NOT AUTOMATICALLY MAKE THE SURRENDER "INVOLUNTARY." — We would like to point out that the mere filing of an information and/or the issuance of a warrant of arrest will not automatically make the surrender "involuntary." In *People v. Oco*, the Court appreciated the mitigating circumstance because immediately upon learning that a warrant for his arrest was issued, and without the same having been served on him, the accused surrendered to the police. Thus, it is clear that notwithstanding the pendency of a warrant for his arrest, the accused may still be entitled to the mitigating circumstance in case he surrenders, depending on the actual facts surrounding the very act of giving himself up.

APPEARANCES OF COUNSEL

Perez Calima Suratos Maynigo Roque Law Offices for petitioner.

Nolan R. Evangelista for respondent.

D E C I S I O N

NACHURA, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to reverse the February 28, 2006 Decision[1] of the Court of Appeals (CA) and its May 24, 2006 Resolution[2] in CA-G.R. SP No. 91916.

The facts, as found by the CA, are as follows:

Petitioner Rosario T. de Vera accused her spouse Geren A. de Vera (Geren) and Josephine F. Juliano (Josephine) of Bigamy.

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Hakim S. Abdulwahid and Estela M. Perlas-Bernabe, concurring; *rollo*, pp. 43-51.

[2] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Hakim S. Abdulwahid and Sesinando E. Villon, concurring; *rollo*, pp. 52-53.

They were thus indicted in an Information, the accusatory portion of which reads:

> That on or about the 31st day of July, 2003, in the Municipality of San Juan, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the said accused Geren A. De Vera being previously united in lawful marriage with Rosario Carvajal Tobias-De Vera, and without said marriage having been legally dissolved, did, then and there willfully, unlawfully and feloniously contract a second marriage with accused Josephine Juliano *y* Francisco, who likewise has previous knowledge that accused Geren A. De Vera's previous marriage with Rosario T. De Vera is still valid and subsisting, said second marriage having all the essential requisites for its validity.
>
> CONTRARY TO LAW.[3]

Upon arraignment, Geren pleaded "Guilty." However, in a Motion[4] dated April 8, 2005, he prayed that he be allowed to withdraw his plea in the meantime in order to prove the mitigating circumstance of voluntary surrender. The motion was opposed[5] by petitioner on the ground that not all the elements of the mitigating circumstance of "voluntary surrender" were present. She added that "voluntary surrender" was raised only as an afterthought, as Geren had earlier invoked a "voluntary plea of guilty" without raising the former. Finally, she posited that since the case was ready for promulgation, Geren's motion should no longer be entertained.

In an Order[6] dated June 6, 2005, the Regional Trial Court (RTC) granted Geren's motion and appreciated the mitigating circumstance of voluntary surrender in the determination of the penalty to be imposed. Thus, on even date, the RTC promulgated Geren's Sentence,[7] the dispositive portion of which reads:

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[3] *Rollo*, p. 45.

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

[5] *Id*. at 102-107.

[6] Penned by Judge Jesus G. Bersamira, *id*. at 115-116.

[7] *Id*. at 117-118.

WHEREFORE, the court finds accused Geren A. de Vera guilty beyond reasonable doubt of the crime of bigamy as charged in the Information and there being two (2) mitigating circumstances (Plea of guilty and voluntary surrender), and no aggravating circumstance and applying the provision of Article 349 in relation to paragraph 5, Article 64, Revised Penal Code, as amended, and the Indeterminate Sentence Law, accused is hereby sentenced to suffer the penalty of 6 MONTHS of *ARRESTO MAYOR,* as minimum to FOUR (4) YEARS, TWO (2) MONTHS of *PRISION CORRECCIONAL*, as maximum.

No pronouncement as to cost.

SO ORDERED.

Unsatisfied, petitioner moved for the partial reconsideration[8] of the decision but the same was denied in an Order[9] dated August 25, 2005.

In the meantime, on June 8, 2005, Geren applied for probation[10] which was favorably acted upon by the RTC by referring it to the Probation Officer of San Juan, Metro Manila.[11]

For failure to obtain favorable action from the RTC, petitioner instituted a special civil action for *certiorari* before the CA. However, she failed to persuade the CA which rendered the assailed decision affirming the RTC Order and Sentence, and the assailed resolution denying her motion for reconsideration. In sustaining the appreciation of the mitigating circumstance of voluntary surrender, the CA maintained that all its requisites were present.

Hence, the instant petition based on the following grounds:

THE HONORABLE COURT OF APPEALS HAS DECIDED QUESTIONS OF SUBSTANCE IN A WAY NOT PROBABLY IN ACCORD WITH LAW AND WITH APPLICABLE DECISIONS OF THIS HONORABLE COURT WHEN:

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[8] *Rollo*, pp. 122-131.

[9] *Id*. at 144-145.

[10] *Id*. at 119-120.

[11] *Id*. at 139.

A. IT ERRONEOUSLY FAILED TO APPLY THE RULING IN *PEOPLE VS. CAGAS* REGARDING THE REQUISITES OF VOLUNTARY SURRENDER TO BE APPRECIATED IN THE INSTANT CASE.

B. IT INCORRECTLY AFFIRMED THE ORDER AND SENTENCE BOTH DATED JUNE 6, 2005 AND THE ORDER DATED AUGUST 25, 2005 RENDERED BY THE PUBLIC RESPONDENT IN APPRECIATING THE MITIGATING CIRCUMSTANCES OF PLEA OF GUILTY AND VOLUNTARY SURRENDER IN FAVOR OF THE PRIVATE RESPONDENT IN CRIMINAL CASE NO. 130139, AN ACT THAT WARRANTS THIS HONORABLE COURT TO EXERCISE ITS APPELLATE JUDICIAL DISCRETION.[12]

The petition lacks merit.

While we are called upon to resolve the sole issue of *whether the CA correctly denied the issuance of the writ of certiorari*, we cannot ignore the procedural issues which the trial and appellate courts failed to appreciate.

In filing her motion for reconsideration before the RTC and her petition for *certiorari* before the CA, petitioner sought the modification of the court's judgment of conviction against Geren, because of the allegedly mistaken application of the mitigating circumstance of "voluntary surrender." The eventual relief prayed for is the increase in the penalty imposed on Geren. Is this action of petitioner procedurally tenable?

Section 7, Rule 120 of the Revised Rules of Criminal Procedure provides:

> Sec. 7. *Modification of judgment.* — A judgment of conviction may, upon motion of the accused, be modified or set aside before it becomes final or before appeal is perfected. Except where the death penalty is imposed, a judgment becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or when the accused has waived in writing his right to appeal, or has applied for probation.

Simply stated, in judgments of conviction, errors in the decision cannot be corrected unless the accused consents thereto; or he,

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[12] *Id*. at 347-348.

himself, moves for reconsideration of, or appeals from, the decision.[13]

Records show that after the promulgation of the judgment convicting Geren of bigamy, it was petitioner (as private complainant) who moved for the reconsideration[14] of the RTC decision. This was timely opposed by Geren, invoking his right against double jeopardy.[15] Although the trial court correctly denied the motion for lack of merit, we would like to add that the same should have been likewise denied pursuant to the above-quoted provision of the Rules.

As explained in *People v. Viernes,*[16] the rule on the modification of judgments of conviction had undergone significant changes before and after the 1964 and 1985 amendments to the Rules. Prior to the 1964 Rules of Court, we held in various cases[17] that the prosecution (or private complainant) cannot move to increase the penalty imposed in a promulgated judgment, for to do so would place the accused in double jeopardy. The 1964 amendment, however, allowed the prosecutor to move for the modification or the setting aside of the judgment before it became final or an appeal was perfected. In 1985, the Rules was amended to include the phrase "upon motion of the accused," effectively resurrecting our earlier ruling prohibiting the prosecution from seeking a modification of a judgment of conviction. Significantly, the present Rules retained the phrase "upon motion of the accused." Obviously, the requisite consent of the accused is intended to protect him from having to defend himself anew from more serious offenses or penalties which the prosecution or the court may have overlooked.[18]

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[13] *People v. Astudillo*, 449 Phil. 778, 793-794 (2003).

[14] *Rollo*, pp. 122-131.

[15] *Id.* at 143.

[16] 423 Phil. 463 (2001).

[17] *People v. Judge Ruiz*, 171 Phil. 400 (1978); *People v. Pomeroy*, *et al.,* 97 Phil. 927 (1955); *People v. Ang Cho Kio,* 95 Phil. 475 (1954).

[18] *People v. Astudillo*, *supra* note 13, at 793.

Equally important is this Court's pronouncement in *People v. Court of Appeals*[19] on the propriety of a special civil action for *certiorari* assailing a judgment of conviction. In that case, the trial court convicted the accused of homicide. The accused thereafter appealed his conviction to the CA which affirmed the judgment of the trial court but increased the award of civil indemnity. The Office of the Solicitor General (OSG), on behalf of the prosecution, then filed before this Court a petition for *certiorari* under Rule 65, alleging grave abuse of discretion. The OSG prayed that the appellate court's judgment be modified by convicting the accused of homicide without appreciating in his favor any mitigating circumstance. In effect, the OSG wanted a higher penalty to be imposed. The Court declared that the petition constituted a violation of the accused's right against double jeopardy; hence, dismissible. Certainly, we are not inclined to rule differently.

Indeed, a petition for *certiorari* may be resorted to on jurisdictional grounds. In *People v. Veneracion*,[20] we entertained the petition for *certiorari* initiated by the prosecution to resolve the issue of whether the RTC gravely abused its discretion in imposing a lower penalty. In that case, the trial judge, fully aware of the appropriate provisions of the law, refused to impose the penalty of death because of his strong personal aversion to the death penalty law, and imposed instead *reclusion perpetua*. In resolving the case in favor of the prosecution, the Court concluded that the RTC gravely abused its discretion, and remanded the case to the trial court for the imposition of the proper penalty. By so doing, we allowed a modification of the judgment not on motion of the accused but through a petition initiated by the prosecution. But it was an exceptional case. Here and now, we reiterate the rule that review is allowed only in apparently void judgments where there is a patent showing of grave abuse of discretion amounting to lack or excess of jurisdiction. The aggrieved parties, in such cases, must clearly

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[19] 405 Phil. 247 (2001).

[20] 319 Phil. 364 (1995).

show that the public respondent acted without jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction.[21]

Grave abuse of discretion defies exact definition, but it generally refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[22] Obviously, no grave abuse of discretion may be attributed to a court simply because of its alleged misappreciation of the mitigating circumstance of voluntary surrender. Consequently, the trial court's action cannot come within the ambit of the writ's limiting requirement of excess or lack of jurisdiction. Thus, the trial court's action becomes an improper object of, and therefore non-reviewable by, *certiorari*.[23]

Even if we dwell on the merit of the case, which had already been done by the appellate court, we find no cogent reason to grant the instant petition.

For voluntary surrender to be appreciated, the following requisites should be present: 1) the offender has not been actually arrested; 2) the offender surrendered himself to a person in authority or the latter's agent; and 3) the surrender was voluntary.[24] The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture.[25] Without these elements,

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[21] *People v. Court of Appeals*, 368 Phil. 169, 180 (1999).

[22] *Id*.

[23] *People v. Court of Appeals*, 468 Phil. 1, 12 (2004).

[24] *People v. Oco*, 458 Phil. 815, 851 (2003).

[25] *People v. Garcia*, G.R. No. 174479, June 17, 2008, 554 SCRA 616, 637; *Mendoza v. People*, G.R. No. 173551, October 4, 2007, 534 SCRA 668, 697-698.

and where the clear reasons for the supposed surrender are the inevitability of arrest and the need to ensure his safety, the surrender is not spontaneous and, therefore, cannot be characterized as "voluntary surrender" to serve as a mitigating circumstance.[26]

Petitioner is correct in saying that in *People v. Cagas*[27] and in *People v. Taraya,*[28] the Court added a fourth requisite before "voluntary surrender" may be appreciated in favor of the accused — that there is no pending warrant of arrest or information filed. Since the warrant of arrest had been issued, petitioner insists that arrest was imminent and the "surrender" could not be considered "voluntary."

In *Cagas,* after the stabbing incident, the accused ran to the upper portion of the cemetery where a police officer caught up with him. Thereupon, he voluntarily gave himself up. The Court held that if the accused did then and there surrender, it was because he was left with no choice. Thus, the "surrender" was not spontaneous.

In *Taraya*, when the accused learned that the police authorities were looking for him (because of a warrant for his arrest), he immediately went to the police station where he confessed that he killed the victim. Notwithstanding such surrender and confession to the police, the Court refused to appreciate the mitigating circumstance in his favor.

Lastly, in *People v. Barcino, Jr.,*[29] the accused surrendered to the authorities after more than one year from the incident in order to disclaim responsibility for the killing of the victim. The Court refused to mitigate the accused's liability because there was no acknowledgment of the commission of the crime or the intention to save the government the trouble and expense in his search and capture; and there was a pending warrant for his arrest.

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[26] *People v. Garcia*, *supra*, at 637-638.

[27] G.R. No. 145504, June 30, 2004, 433 SCRA 290.

[28] 398 Phil. 311 (2000).

[29] 467 Phil. 709 (2004).

Certainly, we cannot apply the same conclusion to the instant case. *Cagas* is not applicable because the accused therein did not surrender but was caught by the police. In *Taraya*, the warrant of arrest had, in fact, been issued and was forwarded to the proper authorities for implementation. In *Barcino*, it was a year after the commission of the crime when the accused went to the police station, not for purposes of acknowledging his culpability, nor to save the government the expense and trouble of looking for and catching him, but actually to deny his culpability.

In this case, it appears that the Information was filed with the RTC on February 24, 2005. On March 1, 2005, the court issued an Order finding probable cause for the accused to stand trial for the crime of bigamy and for the issuance of a warrant of arrest. In the afternoon of the same day, Geren surrendered to the court and filed a motion for reduction of bail. After the accused posted bail, there was no more need for the court to issue the warrant of arrest.[30]

The foregoing circumstances clearly show the voluntariness of the surrender. As distinguished from the earlier cases, upon learning that the court had finally determined the presence of probable cause and even before the issuance and implementation of the warrant of arrest, Geren already gave himself up, acknowledging his culpability. This was bolstered by his eventual plea of guilt during the arraignment. Thus, the trial court was correct in appreciating the mitigating circumstance of "voluntary surrender."

We would like to point out that the mere filing of an information and/or the issuance of a warrant of arrest will not automatically make the surrender "involuntary." In *People v. Oco*,[31] the Court appreciated the mitigating circumstance because immediately upon learning that a warrant for his arrest was issued, and without the same having been served on him, the accused surrendered to the police. Thus, it is clear that notwithstanding the pendency

[30] *Rollo*, p. 115.

[31] *Supra* note 24.

of a warrant for his arrest, the accused may still be entitled to the mitigating circumstance in case he surrenders, depending on the actual facts surrounding the very act of giving himself up.

WHEREFORE, premises considered, the petition is *DENIED*. The Court of Appeals February 28, 2006 Decision and its May 24, 2006 Resolution in CA-G.R. SP No. 91916 are *AFFIRMED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio Morales,[*] *Chico-Nazario,* and *Peralta, JJ.,* concur.

SECOND DIVISION

[G.R. No. 173791. April 7, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PABLO AMODIA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT. — We have emphasized often enough that the factual findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of their probative weight are given high respect, if not conclusive effect, unless cogent facts and circumstances of substance were ignored, misconstrued or misinterpreted, which, if considered, would alter the outcome of the case. Under the circumstances, we find no exceptional reason to warrant a deviation from this rule. The records show that both the RTC and CA convicted Pablo of *murder* based on the positive identification by Romildo and Luther and their

[*] Additional member in lieu of Assoociate Justice Ma. Alicia Austria-Martinez per Special Order No. 602 dated March 20, 2009.

eyewitness accounts of the actual killing, showing the existence of a conspiracy among Pablo's group to kill the victim.

2. **ID.; ID.; IDENTIFICATION OF THE ACCUSED; TESTIMONIES OF WITNESSES SUFFICIENTLY ESTABLISHED THE IDENTITY OF THE ACCUSED. —** The RTC and CA found the identification made by Romildo and Luther to be *clear*, *categorical,* and *consistent.* We observed that in accepting the truth of the identification and the account of how the stabbing took place, the RTC and CA considered the witnesses' proximity to the victim and his assailants at the time of the stabbing — they were about three arms length away and 15 meters away, respectively; the well-lighted condition of the crime scene; and the familiarity of these eyewitnesses with the victim and his assailants — they were all residents of the same area. Similarly, we also note that no evidence was presented to establish that these eyewitnesses harbored any ill-will against Pablo and had no reason to fabricate their testimonies. The weight of jurisprudence is to accept these kinds of testimonies as true for being consistent with the natural order of events, human nature and the presumption of good faith. Aside from these, we additionally note that Romildo and Luther never wavered, despite the contrary efforts of the defense, in their positive identification of Pablo as one of the assailants of the victim. x x x [W]e have Romildo's testimony stating that Pablo lived across Scorpion Street from where he lived. He also stated that he had known Pablo for more than a year. On the other hand, Luther testified that he had known Pablo since 1986 because they were neighbors and that he even played basketball with him. We stress that Pablo never denied these allegations. x x x The association the eyewitnesses cited — specifically, being neighbors and even basketball game mates — rendered them familiar with Pablo, making it highly unlikely that they could have committed a mistake in identifying him as one of the assailants. Their identification came at the first opportunity (*i.e.*, when they revealed) what they knew of the killing, and culminated with their courtroom identification of Pablo as among those who assaulted the victim.

3. **ID.; ID.; ID.; MISTAKE IN THE NAME OF THE ACCUSED IS NOT EQUIVALENT TO A MISTAKE IN HIS IDENTITY. —** [P]ositive identification pertains essentially to *proof of identity* and not necessarily to the name of the assailant. A mistake in the name of the accused is not equivalent, and does

not necessarily amount to, a mistake in the identity of the accused especially when sufficient evidence is adduced to show that the accused is pointed to as one of the perpetrators of the crime.

4. **ID.; ID.; CREDIBILITY OF WITNESSES; ABSENCE OF CIRCUMSTANCES THAT DISCREDIT. —** We find nothing irregular, unusual, or inherently unbelievable, in the eyewitnesses' testimonies that would affect their credibility. Their narratives are remarkably compatible with the physical evidence on hand; likewise, their accounts are also consistent with each other. More importantly, the narration of these eyewitnesses are in full accord with the human experience of individuals who are exposed to a startling event and their initial reluctance to involve themselves in the criminal matters especially those involving violent crimes committed by individuals known to them.

5. **ID.; ID.; ALIBI; EXPLAINED. —** *Alibi* is a defense that comes with various jurisprudentially-established limitations. A first limitation fully applicable to this case is that *alibi* cannot overcome positive identification. For the defense of *alibi* to prosper, evidence other than the testimony of the accused must be adduced. Evidence referred to in this respect does not merely relate to any piece of evidence that would support the *alibi*; rather, there must be sufficient evidence to show the physical impossibility (as to time and place) that the accused could have committed or participated in the commission of the crime. For *alibi* to be given evidentiary value, there must be clear and convincing evidence showing that at the time of the commission of the crime, it was physically impossible for the accused to have been at the *situs criminis*.

6. **ID.; ID.; ID.; THE REQUIREMENTS OF PHYSICAL IMPOSSIBILITY OF TIME AND PLACE, NOT MET. —** Pablo's *alibi* does not also meet the requirements of physical impossibility of time and place. A scrutiny of the entire testimony of Elma failed to show that it was physically impossible for Pablo to be at the crime scene when the stabbing took place. We note that although Elma testified that Pablo was at Elias' house at the time of the stabbing, she nonetheless admitted that her house (which was located beside Elias' house) and the bridge where the crime was committed is a 10-minute walking distance away from each other. She further testified that after Pablo left for Elias' house, she only saw him again

at around 1:00 a.m. and at 2:00 a.m at their brother's house. Hence, it was possible that Pablo could have gone out of Elias' house to join Damaso, George, and Arnold in assaulting the victim, and afterwards returned to his brother's house without Elma knowing that he was ever gone.

7. **ID.; ID.; CONSPIRACY; EXPLAINED. —** Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It arises on the very instant the plotters agree, **expressly or impliedly**, to commit the felony and forthwith decide to pursue it. It may be proved by direct or circumstantial evidence. Direct proof of conspiracy is rarely found; circumstantial evidence is often resorted to in order to prove its existence. Absent of any direct proof, as in the present case, conspiracy may be deduced from the mode, method, and manner the offense was perpetrated, or inferred from the acts of the accused themselves, when such acts point to a joint purpose and design, concerted action, and community of interest. An accused participates as a conspirator if he or she has performed some overt act as a direct or indirect contribution in the execution of the crime planned to be committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime, or by exerting moral ascendancy over the other co-conspirators. Stated otherwise, it is not essential that there be proof of the previous agreement and decision to commit the crime; it is sufficient that the malefactors acted in concert pursuant to the same objective.

8. **ID.; ID.; ID.; CONSPIRACY IS MANIFESTED FROM THE CHAIN OF EVENTS SHOWING COMMONALITY OF PURPOSE IN KILLING THE VICTIM. —** Although there was no evidence in the present case showing a prior agreement among Pablo, Arnold, George, and Damaso, the following chain of events however show their commonality of purpose in killing the victim: *first,* the accused surrounded the victim on all sides: Damaso at the front, George at the victim's rear, while Pablo and Arnold flanked the victim on each side; *second*, Pablo then wrested the right arm of the victim and restrained his movement, while Arnold did the same to the left arm of the victim; *third*, George then hit the victim's head with a piece

of wood; and *fourth*, Damaso stabbed the victim three times. x x x [T]he existence of conspiracy among the four accused is clear; their acts were aimed at the accomplishment of the same unlawful object, each doing their respective parts in the series of acts that, although appearing independent from one another, indicated a concurrence of sentiment and intent to kill the victim. Following the reasoning in *Manalo*, if there was in fact no unity of purpose among Pablo and the three other accused, Pablo's reaction would have been to let go of the victim and flee after the first stabbing by Damaso. The evidence reveals, however, that after the first stabbing, Pablo still continued to hold the right arm of the victim, rendering him immobile and exposed to further attack.

9. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; WHEN PRESENT. — With Pablo's participation in the killing duly established beyond reasonable doubt, what is left to examine is whether or not the aggravating circumstance of *abuse of superior strength*, which qualifies the crime to *murder*, is present under the circumstances. To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked. Taking advantage of superior strength does not mean that the victim was completely defenseless. x x x In the present case, we find that there was abuse of superior strength employed by Pablo, Arnold, George and Damaso in committing the killing. The evidence shows that the victim was unarmed when he was attacked. In the attack, two assailants held his arms on either side, while the other two, on the victim's front and back, each armed with a knife and a piece of wood that they later used on the victim. x x x Under these circumstances, no doubt exists that there was gross inequality of forces between the victim and the four accused and that the victim was overwhelmed by forces he could not match. The RTC and CA therefore correctly appreciated the aggravating circumstance of abuse of superior strength which qualified the killing to the crime of *murder*.

10. ID.; MURDER; PENALTY. — The penalty for *murder* under Article 248 of the Code is *reclusion perpetua* to death. Article 63 (2) of the same Code states that when the law prescribes a penalty consisting of two indivisible penalties and there are neither mitigating nor aggravating circumstances in the

commission of the crime, the lesser penalty shall be imposed. Since the aggravating circumstance of abuse of superior strength already qualified the killing to murder, it can no longer be used to increase the imposable penalty. We note that while another aggravating circumstance, *i.e.,* employing means to weaken the defense of the victim, was alleged in the Information, the prosecution failed to adduce evidence to support the presence of this circumstance. Hence, the RTC and CA correctly imposed the penalty of *reclusion perpetua*.

11. ID.; ID.; AWARD OF DAMAGES. — [T]he CA correctly awarded ₱50,000.00 as moral damages and ₱25,000 as exemplary to the heirs of the victim consistent with prevailing jurisprudence. However, in line with recent jurisprudence, the award of civil indemnity shall be increased from ₱50,000.00 to ₱75,000.00. Further, the CA erred in awarding actual damages in the amount of ₱23,268.00. In *People v. Villanueva*, we held that when actual damages proven by receipts during the trial amount to less than ₱25,000.00, the award of temperate damages for ₱25,000.00 is justified in lieu of actual damages of a lesser amount. We reiterated this ruling in the recent cases of *People v. Casta* and *People v. Ballesteros* where we awarded temperate damages, in lieu of actual damages, in the amount of ₱25,000.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BRION, *J*.:

We review in this appeal the decision of the Court of Appeals[1] (*CA*) affirming with modification the decision of the Regional Trial Court (*RTC*), Branch 38, Makati City in Criminal Case

[1] Dated May 4, 2006; penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justice Godardo A. Jacinto (retired) and Associate Justice Q. Roxas, concurring; *rollo*, pp. 3-13.

No. 97-289. The RTC found the accused-appellant Pablo Amodia (*Pablo*) guilty *beyond reasonable doubt* of the crime of *murder* and sentenced him to suffer the penalty of *reclusion perpetua* and to pay the corresponding civil liabilities to the heirs of the victim.

Pablo was indicted, together with three other accused, under the following Information:[2]

That on or about the 26th day of November 1996, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, while armed with a piece of wood and bladed weapon, taking advantage of their superior strength [*sic*] and employing means to weaken the defense, did then and there, willfully, unlawfully and feloniously attack, assault and employ personal violence upon one FELIX OLANDRIA *y* BERGAÑO, by beating him on the head with a piece of wood and stabbing him repeatedly on the different parts of his body, thereby inflicting upon him mortal/fatal stab wounds which directly caused his death.

CONTRARY TO LAW.[3]

The Information, dated February 21, 1997, was filed with the court on February 28, 1997.

Pablo was arrested on June 5, 1998 and was thereafter prosecuted. The other accused remained at large.[4] Pablo moved to quash the Information on the ground of mistaken identity and the staleness of the warrant of arrest issued on March 4, 1997. The RTC denied his motion.[5]

Pablo entered a plea of "not guilty" to the charge when arraigned on August 3, 1998.[6]

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[2] They are: Damaso Amodia, George Palacio and Arnold Partosa.

[3] Records, p. 1.

[4] *Id.,* pp. 16-17.

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

[6] *Id.,* p. 42.

The Prosecution's Version

The prosecution presented evidence, both documentary[7] and testimonial,[8] to establish that Pablo was one of the four assailants who, by their concerted efforts, killed Felix Olandria *y* Bergaño (*victim*).[9] Acting together, they hit him on the head and stabbed him.

The records show that Romildo Ceno (*Romildo*) was a resident of Zone 17, Pembo, Makati City and lived in the house of Freda Elnar (*Freda*).[10] At around 12:05 a.m. of November 26, 1996, he, Mario Bitco (*Mario*),[11] and Freda were talking and watching television at their house[12] when he heard a noise coming somewhere below the C-5 bridge, located some forty (40) to fifty (50) meters away from their house; he also heard somebody shout "*may away doon*."[13] Curious, he and Mario went to the bridge[14] and saw five persons whom he identified as the victim, Pablo, Arnold Partosa (*Arnold*), George Palacio (*George*),[15] and Damaso Amodia (*Damaso*). He knew these men; the victim

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[7] The prosecution offered the following documentary evidence: (1) *Salaysay* ni Romildo Cero *y* Bitco dated December 24, 1996 (Exhibit A); (2) NBI Medico Legal Division Anatomic Diagram (Exhibit B); (3) Autopsy Report No. N-96-2366(Exhibit C); (4) Certificate of Post-Mortem Examination in Case No. N-96-2366 (Exhibit D); (5) Certificate of Death (Exhibit E); (6) Embalming expenses (Exhibit F); (7) Funeral services (Exhibit G); (8) Job estimate (Exhibit H); (8) Job estimate (Exhibit I); (9) List of expenses (Exhibit J); (10) *Salaysay ni* Mario Bitco *y* Besagas dated December 24, 1996 (Exhibit K); (11) *Salaysay ni Florita Olandria y Vergano* dated December 24, 1996 (Exhibit L); and (12) Final Investigation Report dated January 6, 1997 by SPO2 Romeo O. Ubaña of the PNP, Makati Police Station 2 (Exhibit M).

[8] The prosecution's witnesses were: Romildo Cero (also referred to as Romido in the records), Dr. Antonio Vertido, Claudio Olandria, SPO2 Romeo Ubaña, Luther Caberte, and Amelita Sagarino who was presented as a rebuttal witness.

[9] Also referred to as Olandia in the records.

[10] TSN, August 25, 1998, p. 32, and TSN, August 31, 1998, p. 5.

[11] Also referred to as Mario Meto or Mario Vitco in the records.

[12] TSN, August 18, 1998, pp. 5-7 (Romildo).

[13] *Id.,* pp.7-8 (Romildo).

[14] *Id.*, p. 9 (Romildo).

[15] Also referred to as Jorge in the records.

was his neighbor, while Pablo, Arnold, George and Damaso were residents of Scorpion Street, Zone 17 Pembo, Makati City.[16]

When Romildo was about three arms-length away from the place of the commotion, then illuminated by light coming from a Meralco post located some five (5) to six (6) meters from the scene, he saw the victim being held on his right hand by Pablo, while the other hand was held by Arnold.[17] George was positioned at the victim's back and clubbed the victim on the head; Damaso was in front of the victim and stabbed him three times.[18]

Luther Caberte (*Luther*), who happened to be passing by the C-5 Bridge at the time, also saw what happened. He testified that he saw men fighting under the C-5 Bridge which was illuminated by a light coming from a lamppost located some ten (10) meters away.[19] From his vantage point (about 15 meters away from the fight), he saw Pablo, Damaso, George and Arnold ganging up (*pinagtulung-tulungan*) on the victim.[20] He saw Pablo holding the victim's hand while Damaso was stabbing him. He also confirmed that George was positioned behind the victim.[21] He personally knew both Pablo and the victim; they have been neighbors since 1986.[22]

Both eyewitnesses left the scene after the stabbing; Romildo was chased away by George and Damaso, while Luther went home immediately. Both were shaken and shocked with what they had seen.[23]

At 3:00 a.m. of the same day, the CID Homicide received a report of an unidentified body found in a road along Comembo

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[16] TSN, August 18, 1998, pp. 11-14 and 24 (Romildo).

[17] *Id.,* pp. 15 and 18-19 (Romildo).

[18] *Id.,* pp. 16-17 (Romildo).

[19] TSN, November 16, 1998, pp. 7-8.

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

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

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

[23] TSN, August 31, 1998, p. 18; TSN, November 16, 1998, p. 28.

Bridge, Barangay Pembo.[24] SPO2 Romeo Ubana (*SPO2 Ubana*), a police investigator assigned to the CID Homicide, and a police photographer went to the place and saw the body of a dead male person with three stab wounds whom they subsequently identified as the victim.[25] He prepared a *Final Investigation Report* of the incident.[26]

After the spot investigation, the victim's body was taken to the Veronica Memorial Chapel where Dr. Antonio Bertido (*Dr. Bertido*), a National Bureau of Investigation (*NBI*) Medico Legal Officer, subjected it to a *post-mortem examination.*[27] The autopsy yielded the following findings:

> Pallor, intergument and nailbeds.
>
> Stab wounds.
>
> 1. Elongated 4.5. cms. Edges are clean cut, medial border is sharp, lateral border is blunt. Located at the chest, anterior, left side, 6.0 cms. From the anterior median line. Directed backwards, upwards and medially involving the skin and underlying soft tissues, into the thoracic cavity, perforating the pericardial sac, into the pericardial cavity, penetrating the heart with an approximate depth of 10.0 cms.
> 2. Elongated, 3.5 cms edges are clean cut, medial border is blunt, lateral border is sharp. Located at the anterior abdominal wall, left side, 6.5 cms. From the anterior median line. Directed backwards, upwards and medially involving the skin and underlying soft tissues, perforating the stomach with an approximate depth of 14.0 cms.
> 3. Elongated, 3.0 cms, edges are clean-cut, medial border is blunt, lateral border is sharp. Located at the anterior abdominal wall, right side. 2.0 cms. From the anterior median line. Directed backwards, upwards and laterally involving the skin and underlying soft tissues, penetrating the head of the pancreas with an approximate depth of 12.0 cms.[28]

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[24] TSN, November 9, 1998, pp. 4-5.

[25] *Id.* p. 6.

[26] Dated January 6, 1997; records, p. 100.

[27] TSN, August 25, 1998, p. 4.

[28] Records, p. 90.

Dr. Bertido stated that the victim was stabbed three times on the body by a *single-bladed sharp-pointed instrument*.[29] Through the use of an anatomic diagram, Dr. Bertido showed that the victim was stabbed on his left chest and over his right and left abdominals.[30] He also stated that of the three stab wounds, the wound on the victim's chest was the most fatal because it was near his heart, while the other wounds involved the victim's stomach and pancreas.[31] Dr. Bertido declared that no other wound, aside from the three stab wounds, was found on the victim's body.[32] He later on executed a *Certificate of Post-Mortem Examination* showing the cause of death as *hemorrhage, secondary to stab wounds*.[33]

Dr. Bertido admitted that while he could not specifically determine the position of the victim at the time he was stabbed, he was certain that the stab wounds were inflicted when the victim and his assailant were facing each other.[34] He also disclosed that the sizes of the wounds were different from each other.[35]

The prosecution also presented Claudio Olandria,[36] the victim's father, who took the witness stand and testified on the expenses that he and his family incurred by reason of his son's death.

The Defense's Version

The defense relied on the defense of *alibi*, submitting testimonial and documentary evidence[37] to support Pablo's claim that he was in another place at the time of the stabbing.

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[29] TSN, August 25, 1998, p. 12.

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

[31] *Id.*, pp. 9-10.

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

[33] Records, p. 91.

[34] TSN, May 25, 1998, p. 14.

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

[36] TSN, October 12, 1998, pp. 2-7.

[37] They are: the accused Amodia and Elma Amodia Romero. Meanwhile, the testimony of defense witness Elias Amodia, the brother of Amodia, was

Pablo averred that his name is Pablito Amodia and stated that at the time of the incident, he lived in the house of Elma Amodia Romero (*Elma*), his sister, located at Zone 13, Ilocos Street, Barangay Rizal, Makati City.[38] He has lived there since 1994. He claimed that he was at home in the evening of November 25, 1996, until the early morning of the next day.[39] At around 10:00 of that evening, his brother — Elias Amodia (*Elias*) — who lived next door, awakened him[40] and told him that his (Elias') wife, then pregnant, had started having labor pains.[41] He went back to sleep only to be awakened by Elias at past 12:00 midnight. Elias then requested him to take care of his house.[42]

Pablo related that it was at this time that Damaso (another brother), George, Arnold, and another person he did not know, came to Elma's house.[43] He noticed that Damaso was in a hurry and was packing his clothes; the latter told him that they (Damaso and his companions) encountered trouble.[44] Damaso and his companions left past midnight; on the other hand, he went to Elias' house to take care of the latter's children, while Elias and his wife went to a lying-in clinic.[45] While at Elias' house, Elma visited him to check on him and the children.[46] He stayed there until 9:00 a.m. of November 26, 1996 when he went back to Elma's house; he went to school later in the day.[47]

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dispensed with upon stipulation by the prosecution and the defense as stated in the RTC Order dated May 17, 1999. The defense also offered in evidence: (1) the Certificate of Live Birth of Mercedes Balmera Amodia (Exhibit 1); (2) the Certificate from Trace Computer College (Exhibit 2); (3) Photocopy of official receipt issued by Trace College (Exhibit 3).

[38] TSN, February 16, 1999, pp. 2-3.

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

[40] *Id.*, pp. 7-8.

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

[42] *Ibid.*

[43] TSN, February 16, 1999, p. 11.

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

[45] *Id.,* pp. 15-17.

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

[47] *Id.*, pp. 19 and 25-26.

Pablo also alleged that it was only after returning from school that he came to know of the victim's death; he only knew the victim by name and even went to the victim's wake the first night.[48]

He further alleged that he stopped schooling for lack of funds and went to Zamboanga del Norte in January 1997.[49] He went back to Manila on May 22, 1998 to continue his education, but was arrested on June 5, 1998.[50]

Elma and Elias corroborated Pablo's story.[51] Elma stated that Pablo lived with her in their brother's house together with her husband, their children, and Damaso.[52] She added that Damaso told her that they were in trouble (*atraso*) because of a fight, and that he and his companions were on their way to Cebu.[53] Elma declared that Pablo was with her when Damaso came to the house to pack his clothes.[54] Pablo and Damaso left at 12:30, but for different destinations.[55] She knew that Pablo

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[48] *Id.*, p. 44, and TSN, March 22, 1999, p. 15.

[49] TSN, February 16, 1999, pp.30- 32.

[50] *Id.,* pp. 31 and 33; records, p. 18.

[51] His testimony was dispensed with in view of the following stipulations made at the hearing dated May 17, 1999, as reproduced: "(1) He woke up Pablo Amodia at 10 o'clock of November 25, 1999. He requested Pablo Amodia to stay with his wife; (2) The witness Elias went back at around 12 o'clock to the house of his sister Elma Amodia to go to the house of the witness; (3) At 1:00 in the morning, when the witness and his wife went to the lying[-in] hospital at the maternity hospital at Fort Bonifacio; the accused Pablo was already there in the house of the witness; (4) When the witness went back to his house at past 4:00 early morning, the accused was there in his house at the house of the witness; (5) When the witness went back at almost 9:00 in the morning of November 26, 1996, when he went back to his house, meaning the witness, the accused was in his house [*sic*]; (6) At 9:00 in the morning of November 26, the accused leave (sic) the residence of the witness to go to school at Trace Computer; (7) The witness will identify the certificate of live birth; (8) That the witness is the full blood of the accused."[*sic*]

[52] TSN, February 15, 1999, p. 5.

[53] TSN, February 15, 1999, pp. 13 and 23.

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

[55] *Id.,* pp. 33 and 37.

went to Elias' house because she went to check on him and the children around 1 a.m. and then again at 2 a.m.[56] Elias' wife gave birth to a baby girl at 2:50 p.m. of November 26, 1996.[57]

After some prodding, Elma admitted that she knew that cases have been filed against Pablo and Damaso as early as December 1996.[58] The defense thereafter rested its case.

Prosecution's Rebuttal Evidence

The prosecution presented Amelita Sagarino, a resident of Scorpion Street, Zone 17 since 1989, as a rebuttal witness.[59] She testified that she knew the victim and the accused who were all her neighbors.[60] She stated that she served food at the victim's wake from seven in the evening up to six in the morning and that she never saw Pablo there.[61] She also heard from her neighbors that the people responsible for the victim's death were *George, Arnold, Damaso, Pabling and Pablito Amodia*.[62] She clarified that Pabling and Pablito Amodia are one and the same person.[63]

Subsequently, she stated that Pablito Amodia also attended the wake of the victim.[64]

Ruling of the RTC

The RTC convicted Pablo of *murder* after finding sufficient evidence of his identity, role in the crime as principal by direct participation, and conspiracy between him and the other accused who used their superior strength to weaken the victim. The

[56] *Id.,* p. 33.

[57] *Id.*, p. 20; records, p. 140.

[58] TSN, February 15, 1999, p. 47.

[59] TSN, May 25, 1999, p. 4.

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

[61] *Id.,* pp. 7-8.

[62] *Id.*, pp. 9-11, and TSN, June 15, 1999, p. 3.

[63] TSN, June 15, 1999, p. 18.

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

RTC relied on the testimonies of eyewitnesses Romildo and Luther, the autopsy results conducted on the body of the victim, and the lack of physical impossibility on the part of Pablo to be at the crime scene. The dispositive portion of the RTC decision reads:

WHEREFORE, the Court finds accused Pablo guilty of having committed the crime of murder as principal by conspiracy. Considering that there are no aggravating or mitigating circumstances attendant to the commission of the crime, pursuant to Article 64 (1) of the Revised Penal Code, accused is sentenced to suffer imprisonment of *reclusion perpetua*. He is further sentence to pay the heirs of the deceased Felix Olandria the amount of ₱50,000.00 as moral damages and to reimburse said heirs of the amount of ₱23,568.00 for expenses incurred for the funeral service, burial and incidental expenses.

SO ORDERED.[65]

Ruling of the CA

On appeal, the CA agreed with the RTC's findings and affirmed Pablo's conviction.[66] The CA, however, corrected the RTC's ruling on the applicable provision of the Revised Penal Code, as amended (*Code*), and modified the award of actual damages, as follows:

WHEREFORE, premises considered, the appeal is hereby **DENIED**. The assailed Decision dated July 19, 1999 is hereby **AFFIRMED with MODIFICATION**. Appellant is hereby sentenced to suffer the penalty of *reclusion perpetua* in accordance with *Rule 63(2)* of the *Revised Penal Code*. He is likewise ordered to pay the heirs of the victim, ₱23,268.00, as actual damages, ₱50,000 as civil indemnity and ₱25,000.00, as exemplary damages, in addition to the award of ₱50,000.00 as moral damages.

SO ORDERED.

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[65] Decision, pp. 5-6; CA *rollo*, pp. 29-30.

[66] Previously, we transferred the initial review of the case to the CA *via* Resolution dated August 17, 2005, in view of the ruling in *People v. Mateo,* G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

The Issues

In his *Brief* before this Court,[67] Pablo assigns the following errors committed by both the RTC and CA:

(1) In finding that his guilt for the crime charged has been proven beyond reasonable doubt.

(2) In finding the existence of conspiracy.

Pablo argues that the lower courts erred in failing to give evidentiary weight to his *alibi,* thus disregarding the constitutional presumption of innocence in his favor.[68] He emphasizes that his *alibi* was corroborated by defense witness Elma who confirmed that he was at Elias's house at the time of the stabbing.[69]

He alternatively argues that granting that he was a part of Damaso's group and that this group killed the victim, the prosecution failed to prove the conspiracy among them; there was no evidence adduced to establish how the incident that led to the stabbing began. Any doubt that he acted as a principal should have been resolved in his favor.[70]

In their *Brief,*[71] the Office of the Solicitor General (*OSG*) representing the *People*, maintain that no reversible error was committed by the lower courts. The OSG avers that the prosecution's evidence has satisfactorily proven all the elements of the crime. Similarly, the conspiracy between Pablo and the three accused was proven by the autopsy report which corroborated the categorical testimonies of Romildo and Luther on how the accused and the others acted, clearly showing a unity of purpose in the accomplishment of their criminal objective.[72] The testimonies of these two eyewitnesses also reveal that the killing was attended by the aggravating circumstance of abuse

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[67] CA *rollo*, pp. 92-102.

[68] *Id.,* p. 99.

[69] *Ibid.*

[70] *Id.,* p. 101.

[71] *Id.,* p. 114-129.

[72] CA *rollo*, p. 122.

of superior strength, and the employment of means to weaken the defense of the victim. These circumstances qualify the killing to *murder*.

The Court's Ruling

We affirm Pablo's conviction.

The appeal essentially attacks the soundness of the factual findings of the RTC and CA that, according to Pablo, are not in accord with the totality of the evidence in the case. He emphasizes that the RTC and CA disregarded his *alibi* and the lack of evidence establishing a conspiracy to kill the victim.

A review of the records fails to persuade us to overturn Pablo's judgment of conviction. We have emphasized often enough that the factual findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of their probative weight are given high respect, if not conclusive effect, unless cogent facts and circumstances of substance were ignored, misconstrued or misinterpreted, which, if considered, would alter the outcome of the case.[73] Under the circumstances, we find no exceptional reason to warrant a deviation from this rule.

The records show that both the RTC and CA convicted Pablo of *murder* based on the positive identification by Romildo and Luther and their eyewitness accounts of the actual killing, showing the existence of a conspiracy among Pablo's group to kill the victim. The CA decision clearly reflects these findings and reasoning:

> The evidence on record gives the picture of the incident at the time when Felix Olandria was already being held on both hands by accused Pablo Amodia and Arnold Pantosa. It was while in this position that accused Damaso Amodia delivered three (3) stab blows which proved to be fatal . . .[74]

Both courts gathered, too, from these testimonies that the killing was qualified by the aggravating circumstance of abuse of superior strength, demonstrated by the concerted efforts of Pablo's group

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

[74] *Rollo*, p.10; p. 8 of CA decision, citing p. 4 of RTC decision.

to overpower the victim's strength with their own in carrying out their criminal plan:

> . . . the nature of the evidence presented, there are sufficient reasons to conclude and consider as having been established beyond reasonable doubt, the existence of conspiracy and the qualifying aggravating circumstances of abuse of superior strength and employment of means to weaken the defense. These are: first, the convergence of four (4) accused; x x x second, the time when the four (4) accused were seen together which is about 12:05 in the early morning of November 26, 1997; x x x third, the place where they were seen together which is below the bridge of C-5; fourth, possession by accused Damaso Amodia of a knife his occupation being that of a painter; fifth, absence of any other injuries in other parts of the body of the victim Felix Olandria x x x; sixth, the location of the three stab wounds all of which were directed against delicate parts of the body indicating intent to kill . . . The foregoing circumstances clearly proven by the prosecution evidence, when taken together with the fact that death ensued indicate that there was conspiracy on the part of the accused that they abused their superior strength and employed means to weaken the defense. The act of one is to be considered therefore the act of the other.[75]

The Eyewitnesses Testimonies.

The RTC and CA found the identification made by Romildo and Luther to be *clear*, *categorical,* and *consistent.*[76] We observed that in accepting the truth of the identification and the account of how the stabbing took place, the RTC and CA considered the witnesses' proximity to the victim and his assailants at the time of the stabbing — they were about three arms length away and 15 meters away, respectively; the well-lighted condition of the crime scene; and the familiarity of these eyewitnesses with the victim and his assailants — they were all residents of the same area. Similarly, we also note that no evidence was presented to establish that these eyewitnesses harbored any ill-will against Pablo and had no reason to fabricate their testimonies. The weight of jurisprudence is to accept these kinds of testimonies

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[75] *Id.*, p. 11; p. 9 of CA decision citing, p. 5 of the RTC decision.

[76] CA decision, p. 7 and RTC decision, p. 4; CA *rollo*, pp. 28 and 139.

as true for being consistent with the natural order of events, human nature and the presumption of good faith.[77]

Aside from these, we additionally note that Romildo and Luther never wavered, despite the contrary efforts of the defense, in their positive identification of Pablo as one of the assailants of the victim. The records glaringly show the defense counsel's vain efforts to prove that these eyewitnesses committed a mistake in identifying Pablo as one of the assailants since his name was allegedly Pablito Amadio, and not Pablo.

We state in this regard that positive identification pertains essentially to *proof of identity* and not necessarily to the name of the assailant. A mistake in the name of the accused is not equivalent, and does not necessarily amount to, a mistake in the identity of the accused especially when sufficient evidence is adduced to show that the accused is pointed to as one of the perpetrators of the crime. In this case, the defense's line of argument is negated by the undisputed fact that the accused's identity was known to both the eyewitnesses. On the one hand, we have Romildo's testimony stating that Pablo lived across Scorpion Street from where he lived.[78] He also stated that he had known Pablo for more than a year.[79] On the other hand, Luther testified that he had known Pablo since 1986 because they were neighbors and that he even played basketball with him.[80] We stress that Pablo never denied these allegations.

In *People v. Ducabo,* we took notice of the human trait that once a person knows another through association, identification becomes an easy task even from a considerable distance; most often, the face and body movements of the person identified has created a lasting impression on the identifier's mind that cannot easily be erased.[81]

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[77] *Velasco v. People*, G.R. No. 166479, February 28, 2006, 483 SCRA 649, 668.

[78] TSN, September 21, 1998, p. 10.

[79] TSN, August 18, 1998, p. 10.

[80] TSN, November 16, 1998, pp. 5-6 and 33.

[81] G.R. No. 175594, September 28, 2007, 534 SCRA 458, 471.

The association the eyewitnesses cited — specifically, being neighbors and even basketball game mates — rendered them familiar with Pablo, making it highly unlikely that they could have committed a mistake in identifying him as one of the assailants. Their identification came at the first opportunity (*i.e.*, when they revealed) what they knew of the killing, and culminated with their courtroom identification of Pablo as among those who assaulted the victim.[82]

Two reasons settle the argument about Pablo's name against his favor. It strikes us that this argument is a line of defense that came only as the defense's turn to present evidence neared. We have on record that prior to the defense's presentation of evidence, Pablo referred to himself as Pablo Amodia when the court asked him his name.[83] We likewise find no competent evidence, other than his assertion and those of his siblings, showing that his true name is really Pablito Amodia. We therefore conclude that any uncertainty on the name by which the accused is or should be known is an extraneous matter that in no way renders his identification as a participant in the stabbing uncertain.

We find nothing irregular, unusual, or inherently unbelievable, in the eyewitnesses' testimonies that would affect their credibility. Their narratives are remarkably compatible with the physical evidence on hand; likewise, their accounts are also consistent with each other. More importantly, the narration of these eyewitnesses are in full accord with the human experience of individuals who are exposed to a startling event and their initial reluctance to involve themselves in the criminal matters especially those involving violent crimes committed by individuals known to them.

The Defense of Alibi

Pablo argues that his *alibi* should have been given greater evidentiary weight because it was corroborated by his sister, Elma. As reproduced by Pablo in his *Brief*, the substance of Elma's testimony is as follows:

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[82] TSN, November 16, 1998, p. 6, and TSN, August 18, 1996, p. 11.

[83] TSN, August 18, 1996, p. 11.

Q: Mrs. Witness while you were sleeping which you said you start sleeping at 10:00 o'clock in the evening of November 25, 1996, while you were sleeping, what transpired, if any, was there any unusual incident that transpired? [*sic*]
A: *Pumunta po ang isang kapatid ko, si Elias Amodia dahil naglalabor daw and hipag ko at manganganak at dadalhin niya sa lying-in, eh malayo po at siya ang pinagbabantay sa mga pamangking kong maliliit, sir.*

Q: Could you tell the Honorable Court what time did your brother Elias Amodia wake up Pablo Amodia?
A: 12:00 midnight, sir.

x x x x x x x x x

Q: When Pablo woke up, what if any did Pablo Amodia do?
A: *Pumunta po siya sa bahay ng kapatid ko, sir?*

Q: And where was that house of your brother Elias located?
A: *Malapit lang po sa amin.*

Q: How far is your house to his house?
A: *Tatlong (3) dipa po ang layo, sir.*[84]

Alibi is a defense that comes with various jurisprudentially-established limitations. A first limitation fully applicable to this case is that *alibi* cannot overcome positive identification.[85] For the defense of *alibi* to prosper, evidence other than the testimony of the accused must be adduced. Evidence referred to in this respect does not merely relate to any piece of evidence that would support the *alibi*; rather, there must be sufficient evidence to show the physical impossibility (as to time and place) that the accused could have committed or participated in the commission of the crime. For *alibi* to be given evidentiary value, there must be clear and convincing evidence showing that at the time of the commission of the crime, it was physically impossible for the accused to have been at the *situs criminis*.[86]

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[84] TSN, February 15, 1999, pp. 9-10; CA *rollo*, p. 100.

[85] G.R. No. 133733, August 29, 2003, 410 SCRA 132,180.

[86] G.R. No. 133733, August 29, 2003, 410 SCRA 132,180.

As we have discussed at length, Pablo was positively identified by Romildo and Luther as one of the victim's assailants. We find no reason to doubt the accuracy of the identification made.

Pablo's *alibi* does not also meet the requirements of physical impossibility of time and place. A scrutiny of the entire testimony of Elma failed to show that it was physically impossible for Pablo to be at the crime scene when the stabbing took place. We note that although Elma testified that Pablo was at Elias' house at the time of the stabbing, she nonetheless admitted that her house (which was located beside Elias' house) and the bridge where the crime was committed is a 10-minute walking distance away from each other.[87] She further testified that after Pablo left for Elias' house, she only saw him again at around 1:00 a.m. and at 2:00 a.m at their brother's house. [88] Hence, it was possible that Pablo could have gone out of Elias' house to join Damaso, George, and Arnold in assaulting the victim, and afterwards returned to his brother's house without Elma knowing that he was ever gone.

We scrutinize Elma's version of the events with utmost care considering that she is Pablo's sister. This is not the first time that this Court has encountered a case where *alibi* is provided by a close kin; we have recognized that in these situations, it may come naturally to some to give more weight to blood ties and close relationship than to the objective truth;[89] thus, our strict scrutiny.

We find that the time frame in Elma's version of events shows a pattern of inconsistency that renders its truthfulness suspect. The testimony is inconsistent on the time Pablo slept and was awakened by Elias — details that, to our mind, are material to show his whereabouts on that fateful night.[90]

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[87] TSN, February 15, 1999, pp. 25-26.

[88] *Id.,* p. 33.

[89] *People v. Larrañaga*, G.R. Nos. 138874-75, February 3, 2004, 421 SCRA 530, 576, citing *People v. Ching*, 240 SCRA 267 (1995).

[90] TSN, February 15, 1999, pp. 9, 26-27 and 31.

Elma initially stated that Pablo slept at 9:00 p.m. and was awakened by Elias at 12:00 midnight.[91] Thereafter, she claimed that Pablo was also awakened by Elias at 9:00 p.m. (the same time that Pablo slept) that evening, and that Pablo went to Elias's house around 12:30 p.m.[92] Subsequently, she averred that Pablo was awakened at 10:00 p.m. but went back to sleep then awakened again at 12:00 p.m.[93]

These conflicting statements are not rendered any more believable by their conflict with the time frames claimed in Pablo's version of events.[94] Similarly, Elma's version of *what* occurred *when* is likewise inconsistent with Elias' version of events.[95]

Finally, even granting that a semblance of truth exists in the defense's narration of events, the inconsistencies and contradictions in its witnesses' testimonies render their evidence uncertain. In the final analysis, even their version does not preclude Pablo from being physically present at the crime scene when the killing took place. Thus, the defense and prosecution's evidence taken together, render Pablo guilty of the crime charged beyond reasonable doubt.

Conspiracy

As an alternative argument, Pablo puts into issue the failure of the prosecution's evidence to establish the conspiracy between him and his other co-accused to make him liable for *murder*. He emphasizes that the evidence, as testified to by the eyewitnesses, only relate to events during, and not prior to, the assault and the stabbing of the victim. He argues that no evidence was adduced to show that the accused all agreed to kill the victim.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide

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

[92] *Id.*, pp. 28 and 30.

[93] *Id.*, pp. 27 and 31.

[94] TSN, February 16, 1999, pp. 7 and 9.

[95] TSN, May 17, 1999, pp. 3-4.

to commit it.[96] It arises on the very instant the plotters agree, **expressly or impliedly**, to commit the felony and forthwith decide to pursue it.[97] It may be proved by direct or circumstantial evidence.[98]

Direct proof of conspiracy is rarely found; circumstantial evidence is often resorted to in order to prove its existence.[99] Absent of any direct proof, as in the present case, conspiracy may be deduced from the mode, method, and manner the offense was perpetrated, or inferred from the acts of the accused themselves, when such acts point to a joint purpose and design, concerted action, and community of interest.[100] An accused participates as a conspirator if he or she has performed some overt act as a direct or indirect contribution in the execution of the crime planned to be committed.[101] The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime, or by exerting moral ascendancy over the other co-conspirators.[102] Stated otherwise, it is not essential that there be proof of the previous agreement and decision to commit the crime; it is sufficient that the malefactors acted in concert pursuant to the same objective.[103]

Although there was no evidence in the present case showing a prior agreement among Pablo, Arnold, George, and Damaso, the following chain of events however show their commonality of purpose in killing the victim: *first,* the accused surrounded

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[96] THE REVISED PENAL CODE, Article 8.

[97] Dissenting Opinion of Associate Justice Ynares-Santiago in the case of *People v. Agsalog,* G.R. No. 141087, March 31, 2004, 426 SCRA 624, 644.

[98] *People v. Pelopero*, G.R. No. 126119, October 15, 2003, 413 SCRA 397, 410.

[99] Dissenting Opinion, *supra* note 97, p. 645.

[100] *People v. Pelopero*, *supra* note 98, p. 410.

[101] *Id.,* p. 410.

[102] *Ibid.*

[103] *People v. Dacillo*, G.R. No. 149368, April 14, 2004, 427 SCRA 528, 535.

the victim on all sides: Damaso at the front, George at the victim's rear, while Pablo and Arnold flanked the victim on each side; *second*, Pablo then wrested the right arm of the victim and restrained his movement, while Arnold did the same to the left arm of the victim; *third*, George then hit the victim's head with a piece of wood; and *fourth*, Damaso stabbed the victim three times.

In *People v. Elijorde,*[104] we said:

> The cooperation that the law punishes is the assistance knowingly or intentionally rendered which cannot exist without previous cognizance of the criminal act intended to be executed. It is therefore required in order to be liable either as a principal by indispensable cooperation or as an accomplice that the accused must unite with the criminal design of the principal by direct participation.

In *People v. Manalo,*[105] we declared that the act of the appellant in holding the victim's right hand while the latter was being stabbed constituted sufficient proof of conspiracy:

> Indeed, the act of the appellant of holding the victim's right hand while the victim was being stabbed by Dennis shows that he concurred in the criminal design of the actual killer. If such act were separate from the stabbing, appellant's natural reaction should have been to immediately let go of the victim and flee as soon as the first stab was inflicted. But appellant continued to restrain the deceased until Dennis completed his attack.

Tested against these, the existence of conspiracy among the four accused is clear; their acts were aimed at the accomplishment of the same unlawful object, each doing their respective parts in the series of acts that, although appearing independent from one another, indicated a concurrence of sentiment and intent to kill the victim. Following the reasoning in *Manalo*, if there was in fact no unity of purpose among Pablo and the three other accused, Pablo's reaction would have been to let go of the victim and flee after the first stabbing by Damaso. The evidence

[104] G.R. No. 126531, April 21, 1999, 306 SCRA 188, 197.

[105] G.R. No. 144734, March 7, 2002, 378 SCRA 629, 639.

reveals, however, that after the first stabbing, Pablo still continued to hold the right arm of the victim, rendering him immobile and exposed to further attack.

Where there is conspiracy, a person may be convicted for the criminal act of another.[106] Where there is conspiracy, the act of one is deemed the act of all.[107]

The Crime

Murder is committed by killing a person under any of the qualifying circumstances enumerated by Article 248 of the Code not falling within the provisions of Article 246 (*on parricide*), Article 249 (*on homicide*), and Article 255 (on *infanticide*) of the said Code.

With Pablo's participation in the killing duly established beyond reasonable doubt, what is left to examine is whether or not the aggravating circumstance of *abuse of superior strength*, which qualifies the crime to *murder*, is present under the circumstances.

To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked.[108] Taking advantage of superior strength does not mean that the victim was completely defenseless.[109]

In *People v. Ventura*, we opined that there are no fixed and invariable rules in considering abuse of superior strength or employing means to weaken the defense of the victim.[110] Superiority does not always mean numerical superiority. Abuse of superiority depends upon the relative strength of the aggressor

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[106] *People v. Dacillo*, *supra* note 103, p. 537.

[107] *People v. Caballero*, G. R. Nos. 149028-30, April 2, 2003, 400 SCRA 424, 437.

[108] *People v. De Leon*, G.R. No. 128436, December 10, 1999, 320 SCRA 495, 505.

[109] *People v. Ventura*, G.R. Nos. 148145-46, July 5, 2004, 433 SCRA 389, 411.

[110] *People v. Ventura*, G.R. Nos. 148145-46, July 5, 2004, 433 SCRA 412.

vis-à-vis the victim.[111] Abuse of superiority is determined by the excess of the aggressor's natural strength over that of the victim, considering the position of both, and the employment of the means to weaken the defense, although not annulling it.[112] The aggressor must have advantage of his natural strength to ensure the commission of the crime.[113]

In the present case, we find that there was abuse of superior strength employed by Pablo, Arnold, George and Damaso in committing the killing. The evidence shows that the victim was unarmed when he was attacked. In the attack, two assailants held his arms on either side, while the other two, on the victim's front and back, each armed with a knife and a piece of wood that they later used on the victim. Against this onslaught, the victim's reaction was graphically described by the prosecution eyewitness, Luther, when he testified:

Q: Which came first, by the way, was the victim or what was the victim doing then when the fight took place?

A: ***Wala siyang nagawa kase hinawakan siya, gusto niyang makawala pero wala siyang magawa hinawakan siya sa leeg,*** *sir.*[114] [Emphasis supplied]

Under these circumstances, no doubt exists that there was gross inequality of forces between the victim and the four accused and that the victim was overwhelmed by forces he could not match. The RTC and CA therefore correctly appreciated the aggravating circumstance of abuse of superior strength which qualified the killing to the crime of *murder*.

The Penalty

The penalty for *murder* under Article 248 of the Code is *reclusion perpetua* to death. Article 63 (2) of the same Code states that when the law prescribes a penalty consisting of two

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[111] *Ibid.*

[112] *Ibid.*

[113] *Ibid.*

[114] TSN, November 16, 1998, p. 23.

indivisible penalties and there are neither mitigating nor aggravating circumstances in the commission of the crime, the lesser penalty shall be imposed. Since the aggravating circumstance of abuse of superior strength already qualified the killing to murder, it can no longer be used to increase the imposable penalty. We note that while another aggravating circumstance, *i.e.,* employing means to weaken the defense of the victim, was alleged in the Information, the prosecution failed to adduce evidence to support the presence of this circumstance. Hence, the RTC and CA correctly imposed the penalty of *reclusion perpetua*.

Likewise, the CA correctly awarded ₱50,000.00 as moral damages and ₱25,000 as exemplary to the heirs of the victim consistent with prevailing jurisprudence.[115] However, in line with recent jurisprudence, the award of civil indemnity shall be increased from ₱50,000.00 to ₱75,000.00.[116]

Further, the CA erred in awarding actual damages in the amount of ₱23,268.00. In *People v. Villanueva*, we held that when actual damages proven by receipts during the trial amount to less than ₱25,000.00, the award of temperate damages for ₱25,000.00 is justified in lieu of actual damages of a lesser amount.[117] We reiterated this ruling in the recent cases of *People v. Casta*[118] and *People v. Ballesteros*[119] where we awarded temperate damages, in lieu of actual damages, in the amount of ₱25,000.00.

WHEREFORE, premises considered, this Court *AFFIRMS* the Court of Appeals decision dated May 4, 2006 in CA-G.R.

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[115] *People v. Beltran, Jr.*, G.R. No. 168051, September 27, 2006, 503 SCRA 715, 740-741; *People v. Malinao*, G.R. No. 128148, February 16, 2004, 423 SCRA 34, 55; *People v. Caloza, Jr.*, G.R. Nos. 138404-06, January 28, 2003, 396 SCRA 329, 346-347; *People v. Rafael*, G.R. Nos. 146235-36, May 29, 2002, 382 SCRA 753, 770-771.

[116] *People v. de Guzman,* G.R. No. 173477, February 4, 2009.

[117] G.R. No. 139177, August 11, 2003, 408 SCRA 571, 581-582.

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

[119] G.R. No. 172696, August 11, 2008.

CR.-H.C. No. 01764 finding accused-appellant Pablo Amodia *GUILTY beyond reasonable doubt* of the crime of *murder*, with the *MODIFICATION* that:

(1) The award of civil indemnity shall be increased from ₱50,000.00 to ₱75,000.00;

(2) The award of actual damages in the amount of ₱23,268.00 is hereby *DELETED*; and

(3) In lieu thereof, accused-appellant is *ORDERED* to pay ₱25,000.00 as temporate damages.

The other portions of the appealed decision are hereby *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 175945. April 7, 2009]
(Formerly G.R. Nos. 153211-12)

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **LOLITO HONOR *y* ALIGWAY, ALBERTO GARJAS *y* EMPIMO, NOEL SURALTA *y* PAÑA, and PEDRO TUMAMPO *y* NAYA,** *appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT. — [The Court held that] findings of facts and assessment of credibility of witnesses is a matter best left to

the trial court because of its unique position of having observed the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. When the credibility of the witnesses is at issue, appellate courts will not disturb the findings of the trial court, the latter being in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying during the trial unless certain facts of substance and value had been overlooked, misunderstood or misappreciated which, if considered, might affect the results of the case. Minor variances in the details of a witness' account, more frequently than not, are badges of truth rather than *indicia* of falsehood and they often bolster the probative value of the testimony. Indeed, even the most candid witnesses oftentimes make mistakes and would fall into confused statements, and at times, far from eroding the effectiveness of the evidence, such lapses could instead constitute signs of veracity. If it appears that the same witness has not willfully perverted the truth, as may be gleaned from the tenor of his testimony and the conclusion of the trial judge regarding his demeanor and behavior on the witness stand, his testimony on material points may be accepted. In this case, Panlubasan's testimony positively points to the accused as the ones who stabbed the victims. At the time of the incident, the witness may have been under the influence of liquor; nonetheless, nothing in his testimony and conduct during the trial appears to suggest total erosion of his mental faculties that would negate his identification of the accused.

2. **ID.; ID.; PROOF BEYOND REASONABLE DOUBT, ESTABLISHED. —** [W]e are in agreement that there is proof beyond reasonable doubt concerning the guilt of the accused. The positive identification of the assailant, when categorical and consistent and made without any ill motive on the part of the prosecution witnesses, prevails over alibi and denial which are negative, self-serving and undeserving of weight in law. The defense of denial, like alibi, is considered with suspicion and is always received with caution, not only because it is inherently weak and unreliable, but also because it can be fabricated easily. In this case, the positive identification of the accused is supported by the corroborating testimony of the medical officer who attended the victims as to the nature and location of the wounds. This, coupled with the accused's

weak defense of denial and alibi, amounts to proof beyond reasonable doubt that the accused were indeed guilty.

3. **ID.; CRIMINAL PROCEDURE; INFORMATION; THE ACCUSED WERE CONVICTED OF TWO COUNTS OF MURDER UNDER ONE INFORMATION. —** Two deaths having resulted from the treacherous attack, the OSG correctly argues that the accused should be sentenced for two counts of murder. The Information dated February 12, 2001 charged them for two distinct offenses of murder on the persons of Nestor Nodalo and Henry Argallon. Although under Section 13 Rule 110 of the Rules of Court, an information must charge only one offense, the accused failed to file a motion to quash information and thus waived their right to be tried for only one crime under one information pursuant to Section 9 Rule 117 of the Rules of Court.

4. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY, PRESENT. —** The killing of Nodalo and of Argallon, in our considered view, were attended by treachery. There is treachery when the means, methods and forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and such means, methods and forms of execution were deliberately and consciously adopted by the accused without danger to his person. What is decisive in an appreciation of treachery is that the execution of the attack made it impossible for the victim to defend himself. In this case, the victims were unarmed and on their way home when they were suddenly attacked and stabbed, hence they were helpless and without means of defending themselves. x x x The qualifying circumstance of treachery having been established, the crime committed by the appellants is murder in accordance with Article 248 of the Revised Penal Code abovementioned.

5. **ID.; MURDER; RECOVERABLE DAMAGES, ENUMERATED; AWARD OF SEVERAL KINDS OF DAMAGES IN CASE AT BAR. —** As for damages, the accused should be made jointly and severally liable for damages, conspiracy being attendant to the killings. When death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation, and (6) interest, in proper cases. The

award for civil indemnity is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime. Hence, based on current jurisprudence, the award of civil indemnity *ex delicto* of ₱75,000 in favor of the heirs of each of the two victims Nestor Nodalo and Henry Argallon, to be paid jointly and severally by accused Honor and Garjas is in order. Moral damages in the amount of ₱50,000 are also properly awarded in view of the violent deaths of each of the victims and the resultant grief to their respective families, which damages have likewise to be paid jointly and severally by accused Honor and Gajas.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellants.

D E C I S I O N

QUISUMBING, *J.*:

On appeal is the Decision[1] dated September 28, 2006 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00224. It had affirmed with modification the guilty verdict rendered by the Regional Trial Court (RTC) of Ormoc City, Branch 35 in a murder case against appellants Lolito Honor and Alberto Garjas.

The facts in this case are as follows:

In an Information[2] dated February 12, 2001, Lolito Honor, Alberto Garjas, Noel Suralta, and Pedro Tumampo were charged with murder before the RTC of Ormoc City, Branch 35 as follows:

That on or about the 3rd day of February, 2001, at past 9:00 o'clock in the evening, at corner Real and Aviles Sts., this City, and within the jurisdiction of this Honorable Court, the above-named accused:

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[1] *Rollo*, pp. 4-8. Penned by Associate Justice Agustin S. Dizon, with Associate Justices Pampio A. Abarintos and Priscilla Baltazar-Padilla, concurring.

[2] Records, pp. 2-3.

LOLITO HONOR *y* Aligway, ALBERTO GARJAS *y* Empimo, NOEL SURALTA *y* Paña and PEDRO TUMAMPO *y* Naya, conspiring together, confederating with and mutually helping and aiding one another, with treachery, evident premeditation and intent to kill, and with the use of bladed weapons, did then and there willfully, unlawfully and feloniously attack, stab and wound the victims herein, HENRY ARGALLON and NESTOR NODALO, without giving them sufficient time to defend themselves, thereby inflicting upon said Henry Argallon and Nestor Nodalo mortal wounds which cause[d] their death. Medico-Legal Certificates are hereto attached.

In violation of Article 248, RPC, as amended by RA 7659.
Ormoc City, February 12, 2001.[3]

Another Information dated February 12, 2001 charged the abovementioned accused for frustrated murder of Randy Autida on the same date and occasion, as follows:

That on or about the 3rd day of February, 2001 at around 9:00 o'clock in the evening, at corner Real and Aviles Sts., this City, and within the jurisdiction of this Honorable Court, the above-named accused: LOLITO HONOR *y* Aligway, ALBERTO GARJAS *y* Empimo, NOEL SURALTA *y* Paña and PEDRO TUMAMPO *y* Naya, conspiring together, confederating with and mutually helping and aiding one another, with treachery, evident premeditation and intent to kill, did then and there willfully, unlawfully and feloniously, with the use of a bladed weapon, attack, stab and wound the person of the complainant herein RANDY AUTIDA, thereby inflicting upon the latter a "stab wound 2.5 cm. posterior axillary line at the level of T5-T6, penetrating chest cavity," thus performing all the acts of execution which would have produced the crime of murder but which did not, by reason of causes independent of accused's will, that is, by the able and timely medical assistance given the said Ran[d]y Autida, which prevented his death. Medico-Legal Certificate is hereto attached.

In violation of Article 248 in rel. to Art. 6, Revised Penal Code.
Ormoc City, February 12, 2001.[4]

The abovementioned cases for murder and frustrated murder were tried jointly.

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[3] *Id.* at 2.

[4] CA *rollo*, p. 64.

Warrants of arrest against the accused were issued on February 13, 2001.[5] Only Lolito Honor and Alberto Garjas, however, were apprehended. Noel Suralta and Pedro Tumampo have remained at large.

During arraignment on March 13, 2001, Honor and Garjas pleaded not guilty.[6] Since Suralta and Tumampo remained at large, trial proceeded only against Honor and Garjas.

The prosecution presented eyewitness Rey Panlubasan, a farm worker of a sugar plantation in Torrevillas and a resident of Brgy. Juaton, Ormoc City. Panlubasan testified that the victims Nestor Nodalo, Henry Argallon and Randy Autida worked under his supervision in said sugar plantation. On February 3, 2001, at about 5:00 p.m., after receiving their wages, seven of them, including the victims, went to Doris Videoke, a small tavern at the public market of Ormoc City. Their group occupied the first table at the tavern while another group of four individuals — whom he later recognized as the accused Lolito Honor, Alberto Garjas, Noel Suralta and Pedro Tumampo — occupied the second table about 2 ½ meters away from them. There were only two groups having a drinking spree then: their group and the group of the accused. After having consumed 1 ½ gallons of *tuba*, at around 9:00 p.m. of the same day, Nestor Nodalo accidentally dropped a bottle of Mallorca which he was holding near the table of the accused. The group of the accused then stared at them angrily. After a while, Panlubasan's group left the bar to go home. His group walked along Real Street towards Aviles Street. Panlubasan testified that he then saw the group of the accused leave and follow them at a distance of 15 meters. When they were only one meter apart, the group of the accused suddenly attacked them. Panlubasan testified that there was sufficient electrical light in the street for him to identify the assailants as the same group who drank and occupied the other table at Doris Videoke. He testified that the accused Honor and Garjas were the ones who stabbed Nestor Nodalo, Henry Argallon and Randy Autida while the other accused, Noel Suralta and Pedro

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[5] Records, pp. 25-27.

[6] *Id.* at 31.

Tumampo, verbally instigated them by uttering "Follow them and kill them all."[7]

The prosecution also presented Dr. Jesus Castro, the attending physician at the Ormoc District Hospital. Dr. Castro testified that he treated the victim Nestor Nodalo at around 11:45 p.m. on February 3, 2001 and that Nodalo had a stab wound 2.5 cm. in size at the left posterior axillary line which is at the back left side posterior penetrating Nodalo's chest cavity. He testified that the wound was fatal as it was a penetrating wound causing massive blood loss and hitting a vital organ. He listed Nodalo's cause of death as cardio-pulmonary arrest due to hypovolemic shock. As per medical certificate dated February 10, 2001, the victim Nodalo was listed as dead on arrival at the hospital.

As for the victim Henry Argallon, Dr. Castro testified that he attended to him on February 3, 2001 at around 10:30 p.m. Dr. Castro recounted that Argallon had three (3) stab wounds: a stab wound 6 cm. at his right shoulder, a stab wound 5 cm. at the right mandibular area, and a stab wound 2.5 cm. at the left side of his neck penetrating the chest cavity and transecting the trachea. He listed Argallon's cause of death as cardio-pulmonary arrest due to hypovolemic shock. Argallon was also pronounced dead on arrival at the hospital.

As for the third victim, Randy Autida, Dr. Castro testified that he also attended to the latter on February 3, 2001 at around 11:45 p.m. and that Autida suffered one (1) stab wound 2.5 cm. on the right posterior axillary line penetrating Autida's chest cavity. Autida was still conscious when attended to at the hospital and he was not confined. His injury required medical attention for 15 days. Dr. Castro testified, however, that if Autida's wound was left unattended, infection could have set in and possibly result in death.[8]

The prosecution also presented SPO4 Rodrigo Sano, the police officer who apprehended and brought Honor and Garjas to the

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[7] *Id.* at 101; TSN, June 5, 2001, pp. 7-46.

[8] Records, pp. 100-101; TSN, May 31, 2001, pp. 5-15.

police headquarters where they were identified as the ones who stabbed Nodalo, Argallon and Autida by witnesses.[9]

The defense presented as witnesses Lolito Honor and his wife, Hilde Honor, and Alberto Garjas.

Lolito Honor testified that he knew his co-accused Garjas, Suralta and Tumampo since they worked as extra laborers in hauling at the Agrivet Breeders Store in Ormoc City and they were his drinking buddies. He testified that on February 3, 2001, at about 7:00 p.m. after work, he went to the public market to buy fish. He met his co-accused in the market and they had a drinking spree at a tavern there. He testified that he stayed with his drinking buddies for only about 15 minutes. He stated that he could not recall if there was a group of people in the tavern aside from them since he was there only for a short time. He testified that he has no knowledge of the stabbing incident since he reached his home at around 8:30 p.m.[10]

Lolito's testimony was corroborated by his wife, Hilde. Hilde confirmed that her husband, Lolito, arrived at their home at around 8:25 p.m. on February 3, 2001.[11]

Alberto Garjas confirmed his friendship with his co-accused Honor, Suralta and Tumampo and that the four of them met at the public market of Ormoc City on February 3, 2001. He testified that they were drinking at a tavern and there were two groups drinking then. He recounted that Honor was the only one who sang among them and that Honor left soon after. Then the dropping of the Mallorca bottle from the other group of drinkers occurred. He testified that he recognized the prosecution eyewitness, Rey Panlubasan, as among that group. He stated Panlubasan's group left ahead of them and after consuming a gallon of tuba, his group also left. He was left behind as he was still paying for their drinks and buying cigarettes. He was intending to take a ride home when he saw his companions, Suralta and

[9] Records, p. 101.

[10] *Id.* at 102; TSN, August 22, 2001, pp. 5-19.

[11] *Id.*; TSN, September 18, 2001, pp. 7-8.

Tumampo, attack and stab the young persons who were part of the other group in the tavern. He confirmed that the place was well illuminated and he saw his companions Suralta and Tumampo walk away casually after the melee. Then, he took a ride home and, as he did not want to get involved, he did not report the incident.[12]

In a Joint Judgment[13] promulgated on November 20, 2001, by the RTC of Ormoc City, the accused Lolito Honor and Alberto Garjas were acquitted in regard to the crime of frustrated murder. But the two were found guilty of murder and sentenced to suffer the penalty of *reclusion perpetua*. The RTC found that the testimony of Garjas virtually confirmed the testimony of prosecution eyewitness Rey Panlubasan and that the testimonies of Lolito Honor and his wife, Hilde Honor, were self-serving, specious and made up. The RTC found that the element of treachery was present in the killing because the suddenness of the attack afforded the victims no opportunity to defend themselves.

The dispositive portion of the decision reads as follows:

Wherefore, after considering the foregoing, the Court finds the accused Lolito Honor *y* Aligway and accused Alberto Garjas *y* [Empimo] NOT GUILTY of the crime of Frustrated Murder as charged under Criminal Case No. 6015-0 for failure of the prosecution to prove their guilt beyond reasonable doubt.

If the said accused are detained, they should be discharged from prison unless they are held for any other lawful cause.

As to Criminal Case No. 6016-0, the Court finds the accused Lolito Honor *y* Aligway and accused Alberto Garjas *y* Empimo GUILTY beyond reasonable doubt for the crime of Murder as charged, and hereby sentences each of them to suffer imprisonment of *Reclusion Perpetua* and for accused Lolito Honor to indemnify the offended party, for the victim Henry Argallon, the sum of ₱50,000.00 and for accused Alberto Garjas to indemnify the offended party for victim Nestor Nodalo, the sum of ₱50,000.00.

SO ORDERED.[14]

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[12] *Id.* at 102-103; TSN, August 23, 2001, pp. 6-17, 21-24.

[13] Records, pp. 98-104. Penned by Presiding Judge Fortunito L. Madrona.

[14] *Id.* at 104.

Honor and Garjas appealed to the Court of Appeals. In a Decision dated September 28, 2006, the Court of Appeals affirmed with modification the RTC's verdict by ordering both accused Honor and Garjas to pay jointly and solidarily the heirs of Nestor Nodalo and Henry Argallon ₱50,000 each as moral damages. The dispositive portion of the decision states:

> *WHEREFORE*, the assailed Decision is ***AFFIRMED*** with the ***MODIFICATION*** that accused-appellants are ordered to pay jointly and severally the heirs of Henry Argallon and Nestor Nodalo Php 50,000.00 each as moral damages.
>
> *SO ORDERED*.[15]

In the instant appeal, Honor and Garjas seek a reversal of the Court of Appeals and RTC rulings. They raise the following issues:

I.

[WHETHER OR NOT] THE COURT *A QUO* GRAVELY ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONY OF LONE WITNESS REY PANLUBASAN DESPITE … ITS MATERIAL INCONSISTENCIES.

II.

[WHETHER OR NOT] THE COURT *A QUO* GRAVELY ERRED IN FINDING ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.[16]

Appellants argue that the trial court and the Court of Appeals erred in giving full faith and credence to the testimony of eyewitness Rey Panlubasan, which was based mainly on generalities, without going deeply into and analyzing the points and details of his testimony. They argue that the posture of the lower court reveals its bias in favor of the prosecution and against the defense. They cite inconsistencies in the testimony of Panlubasan. Thus, Panlubasan stated in his direct testimony that Honor and Garjas stabbed Argallon but on cross-examination,

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[15] *Rollo*, p. 7.

[16] CA *rollo*, p. 56.

he pointed only to Honor as the one who stabbed Argallon.[17] The accused argue that irreconcilable and unexplained contradictions in the testimonies of the prosecution witnesses cast doubt on the guilt of the accused.[18] They also argue that the lower court overlooked the fact that Panlubasan's reaction during the startling and frightening incident was inconsistent with the usual reaction of persons in similar situations. They claim that Panlubasan did not run away during the stabbing incident but instead opted to stay with the victims.[19] They also argue that although alibi is an inherently weak defense which cannot prevail over the positive identification of the accused, when the identification of the accused is inconclusive, alibi assumes importance and, although alibi is not always deserving of credit, there are times when the accused has no other possible defense for what could really be the truth as to his whereabouts.[20]

For the State as appellee, the Office of the Solicitor General (OSG) contends that the trial court correctly gave credence to the testimony of Rey Panlubasan. It is a time-tested doctrine, says the OSG, that a trial court's assessment of the credibility of a witness is entitled to great weight.[21] Further, the OSG argues that the alleged discrepancy in Rey Panlubasan's testimony regarding "who stabbed whom" does not necessarily cast doubt on the identity of the assailants since conspiracy was alleged in the information and each of the accused is liable not only for his own act but also for the act of the other.[22] The OSG points out that Panlubasan's testimony was corroborated by other evidence, notably the testimony of Dr. Castro on the nature and location of the wounds sustained by the victims.[23]

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

[18] *Id.* at 58.

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

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

[21] *Id.* at 100.

[22] *Id.* at 102.

[23] *Id.* at 103.

Simply stated, the two issues for our resolution are: (1) Did the RTC and the Court of Appeals err in giving credence to the testimony of Rey Panlubasan? and (2) Was the guilt of appellants proved beyond reasonable doubt?

As to the first issue, findings of facts and assessment of credibility of witnesses is a matter best left to the trial court because of its unique position of having observed the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts.[24] When the credibility of the witnesses is at issue, appellate courts will not disturb the findings of the trial court, the latter being in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying during the trial unless certain facts of substance and value had been overlooked, misunderstood or misappreciated which, if considered, might affect the results of the case.[25]

Minor variances in the details of a witness' account, more frequently than not, are badges of truth rather than *indicia* of falsehood and they often bolster the probative value of the testimony.[26] Indeed, even the most candid witnesses oftentimes make mistakes and would fall into confused statements, and at times, far from eroding the effectiveness of the evidence, such lapses could instead constitute signs of veracity. If it appears that the same witness has not willfully perverted the truth, as may be gleaned from the tenor of his testimony and the conclusion of the trial judge regarding his demeanor and behavior on the witness stand, his testimony on material points may be accepted.[27]

In this case, Panlubasan's testimony positively points to the accused as the ones who stabbed the victims. At the time of the incident, the witness may have been under the influence of liquor; nonetheless, nothing in his testimony and conduct during

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[24] *People v. Sades*, G.R. No. 171087, July 12, 2006, 494 SCRA 716, 724.

[25] *People v. Malejana*, G.R. No. 145002, January 24, 2006, 479 SCRA 610, 620.

[26] *People v. Sades*, *supra* at 725-726.

[27] *Id.* at 726.

the trial appears to suggest total erosion of his mental faculties that would negate his identification of the accused.

As to the second issue, we are in agreement that there is proof beyond reasonable doubt concerning the guilt of the accused.

The positive identification of the assailant, when categorical and consistent and made without any ill motive on the part of the prosecution witnesses, prevails over alibi and denial which are negative, self-serving and undeserving of weight in law. The defense of denial, like alibi, is considered with suspicion and is always received with caution, not only because it is inherently weak and unreliable, but also because it can be fabricated easily.[28]

In this case, the positive identification of the accused is supported by the corroborating testimony of the medical officer who attended the victims as to the nature and location of the wounds. This, coupled with the accused's weak defense of denial and alibi, amounts to proof beyond reasonable doubt that the accused were indeed guilty.

The killing of Nodalo and of Argallon, in our considered view, were attended by treachery. There is treachery when the means, methods and forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and such means, methods and forms of execution were deliberately and consciously adopted by the accused without danger to his person. What is decisive in an appreciation of treachery is that the execution of the attack made it impossible for the victim to defend himself.[29] In this case, the victims were unarmed and on their way home when they were suddenly attacked and stabbed, hence they were helpless and without means of defending themselves.

Article 248 of the Revised Penal Code provides:

ART. 248. ***Murder***. — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder

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[28] *Id.* at 727.

[29] *Id.* at 727-728.

and shall be punished by *reclusion perpetua,* to death if committed with any of the following attendant circumstances:

1. ***With treachery***, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

2. In consideration of a price, reward, or promise;

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;

5. With evident premeditation;

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (Emphasis supplied.)

The qualifying circumstance of treachery having been established, the crime committed by the appellants is murder in accordance with Article 248 of the Revised Penal Code abovementioned. Since there is no aggravating circumstance and no mitigating circumstance, the penalty to be imposed should be in its minimum period which is *reclusion perpetua*, pursuant to the abovecited Revised Penal Code provision.

Two deaths having resulted from the treacherous attack, the OSG correctly argues that the accused should be sentenced for two counts of murder. The Information dated February 12, 2001 charged them for two distinct offenses of murder on the persons of Nestor Nodalo and Henry Argallon. Although under Section 13[30] Rule 110 of the Rules of Court, an information must charge only one offense, the accused failed to file a motion to quash information and thus waived their right to be tried for

[30] **SEC. 13**. *Duplicity of the offense*. — A complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses.

only one crime under one information pursuant to Section 9[31] Rule 117 of the Rules of Court. Moreover, an appeal in a criminal case opens the *whole* case for review and this includes the penalty, which may be increased.[32]

As for damages, the accused should be made jointly and severally liable for damages, conspiracy being attendant to the killings.

When death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation, and (6) interest, in proper cases.[33]

The award for civil indemnity is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime. Hence, based on current jurisprudence, the award of civil indemnity *ex delicto* of ₱75,000 in favor of the heirs of each of the two victims Nestor Nodalo and Henry Argallon, to be paid jointly and severally by accused Honor and Garjas is in order.[34] Moral damages in the amount of ₱50,000 are also properly awarded in view of the violent deaths of each of the victims and the resultant grief to their respective families,[35] which damages have likewise to be paid jointly and severally by accused Honor and Gajas.

WHEREFORE, the Decision dated September 28, 2006 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00224 affirming

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[31] **SEC. 9**. *Failure to move to quash or to allege any ground therefor*. — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rule.

[32] *Obosa v. Court of Appeals*, G.R. No. 114350, January 16, 1997, 266 SCRA 281, 301.

[33] *People v. Tubongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727, 742.

[34] *Id*.

[35] *Id.* at 743.

with modification the Joint Judgment dated November 20, 2001 of the Regional Trial Court of Ormoc City, Branch 35 is *AFFIRMED with MODIFICATION.* Appellants Lolito Honor and Alberto Garjas are each found *GUILTY* beyond reasonable doubt of two counts of *MURDER* as defined in Article 248 of the Revised Penal Code, qualified by treachery with no aggravating circumstance or mitigating circumstance. For each count of murder, the sentence of *reclusion perpetua* is imposed on each of the appellants. Appellants are further *ORDERED* to jointly and severally pay the heirs of Nestor Nodalo the amounts of ₱75,000 as civil indemnity and ₱50,000 as moral damages, both with interest at the legal rate of six percent (6%) per annum from this date until fully paid. The same amounts of ₱75,000 as civil indemnity and ₱50,000 as moral damages shall also be paid jointly and severally by the accused to the heirs of Henry Argallon, both with the same legal rate of interest until fully paid.

Costs *de oficio*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 177187. April 7, 2009]

SPS. JUANITO R. VILLAMIL and LYDIA M. VILLAMIL, represented herein by their Attorney-in-Fact/Son WINFRED M. VILLAMIL, *petitioners, vs.* **LAZARO CRUZ VILLAROSA,** *respondent.*

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; WHAT CONSTITUTES A PURCHASER IN GOOD FAITH. —** An innocent purchaser for value is one who buys the property of another without notice that some other person has a right to or interest in that same property, and who pays a full and fair price at the time of the purchase or before receiving any notice of another person's claim. The honesty of intention that constitutes good faith implies freedom from knowledge of circumstances that ought to put a prudent person on inquiry. Good faith consists in the belief of the possessors that the persons from whom they received the thing are its rightful owners who could convey their title. Good faith, while always presumed in the absence of proof to the contrary, requires this *well-founded* belief.

2. **ID.; ID.; ID.; CIRCUMSTANCES SHOWING GOOD FAITH. —** In the instant case, there were no traces of bad faith on Villarosa's part in acquiring the subject property by purchase. Villarosa merely responded to a newspaper advertisement for the sale of a parcel of land with an unfinished structure located in Tierra Pura, Tandang Sora, Quezon City. He contacted the number specified in the advertisement and was able to talk to a certain lady named Annabelle who introduced him to the owner, Mateo Tolentino. When he visited the site, he inquired from Mateo Tolentino about the unfinished structure and was informed that the latter allegedly ran out of money and eventually lost interest in pursuing the construction because of his old age. Villarosa was then given a copy of the title. He went to the Register of Deeds and was able to verify the authenticity of the title. He also found out that the property was mortgaged under the name of Mario Villamor, who turned out to be the employer of Tolentino. Upon reaching an agreement on the price of ₱276,000.00, Villarosa redeemed the title from Express Financing Company. Thereafter, the property was released from mortgage and a deed of sale was executed. Villarosa then secured the transfer of title in his name.

3. **ID.; ID.; ID.; A PERSON WHO DEALS WITH REGISTERED PROPERTY IN GOOD FAITH WILL ACQUIRE GOOD TITLE FROM A FORGER AND BE ABSOLUTELY PROTECTED BY A TORRENS TITLE; APPLICATION. —** Well-settled is the rule that every person dealing with a registered land may safely

rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go beyond the certificate to determine the condition of the property. Where there is nothing in the certificate of title to indicate any cloud or vice in the ownership of the property, or any encumbrance thereon, the purchaser is not required to explore further than what the Torrens Title upon its face indicates in quest for any hidden defects or inchoate right that may subsequently defeat his right thereto. x x x A forged or fraudulent document may become the root of a valid title if the property has already been transferred from the name of the owner to that of the forger. This doctrine serves to emphasize that a person who deals with registered property in good faith will acquire good title from a forger and be absolutely protected by a Torrens title. Having made the necessary inquiries and having found the title to be authentic, Villarosa need not go beyond the certificate of title. When dealing with land that is registered and titled, as in this case, buyers are not required by the law to inquire further than what the Torrens certificate of title indicates on its face. He examined the transferor's title, which was then under the name of Spouses Tolentino. He did not have to scrutinize each and every title and previous owners of the property preceding Tolentino.

APPEARANCES OF COUNSEL

Limqueco & Macaraeg Law Office for petitioners.

D E C I S I O N

TINGA, *J.*:

The instant petition for review seeks the reversal of the Decision and Resolution of the Court of Appeals[1] dated 12 September 2006 and 23 March 2007, which partially reversed and set aside the Decision of the Regional Trial Court (RTC)[2] of Quezon City, Branch 88, in Civil Case No. Q-92-11997.

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[1] Penned by Associate Justice Rebecca De Guia-Salvador, concurred in by Associate Justices Magdangal M. De Leon and Ramon R. Garcia.

[2] Presided by Judge Abednego O. Adre.

Spouses Juanito and Lydia Villamil (petitioners) represented by their son and attorney-in-fact, Winfred Villamil, filed a complaint[3] for annulment of title, recovery of possession, reconveyance, damages, and injunction against the Spouses Mateo and Purificacion Tolentino (Spouses Tolentino), Lazaro Villarosa (Villarosa) and the Register of Deeds of Quezon City before the RTC of Quezon City. The complaint alleged that petitioners were the registered owners of a parcel of land situated at Siska Subdivision, Tandang Sora, Quezon City, covered by Transfer Certificate of Title (TCT) No. 223611;[4] that Juanito Villamil Jr. asked permission from his parents, petitioners herein, to construct a residential house on the subject lot in April 1986; that in the first week of May 1987, petitioners visited the lot and found that a residential house was being constructed by a certain Villarosa; that petitioners proceeded to the Office of the Register of Deeds to verify their title; that they discovered a Deed of Sale[5] dated 16 July 1979 which they purportedly executed in favor of Cipriano Paterno (Paterno) as the vendee; that they later found out that the TCT in their names was cancelled and a new one, TCT No. 351553, was issued in the name of Paterno; that a Deed of Assignment[6] was likewise executed by Paterno in favor of the Spouses Tolentino, and; that on the basis of said document, TCT No. 351553 was cancelled and in its place TCT No. 351673[7] was issued in the name of the Spouses Tolentino.

Three months later, the Spouses Tolentino executed a Deed of Absolute Sale[8] in favor of Villarosa for the sum of ₱276,000.00. TCT No. 354675 was issued in place of TCT No. 351673.[9]

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[3] *Rollo*, p. 174. Spouses Villamil had previously filed a similar complaint before the RTC of Quezon City, Branch 77 on 26 May 1987 but the records of said case were totally destroyed in a fire prompting them to refile this case.

[4] *Id.* at 176.

[5] *Id.* at 177.

[6] *Id.* at 180.

[7] *Id.* at 181.

[8] *Id.* at 185.

[9] *Id.* at 188.

Spouses Villamil asserted that the Deed of Sale in favor of Paterno is a falsified document because they did not participate in its execution and notarization. They also assailed the Deed of Assignment in favor of the Spouses Tolentino as having been falsified because the alleged assignor is a fictitious person. Finally, they averred that the Deed of Sale between Spouses Tolentino and Villarosa is void considering that the former did not have any right to sell the subject property.

In their Answer, the Spouses Tolentino alleged that Paterno had offered the property for sale and presented to him TCT No. 351553 registered in his (Paterno's) name. Since they did not have sufficient funds then, the Spouses Tolentino negotiated with and obtained from Express Credit Financing a loan, the proceeds of which they used in paying the agreed consideration. They paid Paterno ₱180,000.00, but upon the latter's request, a deed of assignment was issued, instead of a deed of sale, to avoid payment of capital gains tax. Express Credit Financing held their title as security for the loan. The Spouses Tolentino thereafter decided to sell the property to Villarosa to pay their obligation to Express Credit Financing.[10]

Villarosa, for his part, claimed in his Answer that he is a purchaser in good faith and for value, having paid ₱276,000.00 as consideration for the purchase of the land and the payment having been received and acknowledged by Mateo Tolentino.[11]

In their Reply, petitioners insisted that the deed of absolute sale executed by the Spouses Tolentino in favor of Villarosa is legally defective, having been notarized by one Atty. Juanito Andrade, who was not a duly commissioned notary public for the year 1987, as evidenced by a certification of the Clerk of Court of the RTC of Quezon City.[12]

To establish that the deed of sale between the Spouses Villamil and Paterno is spurious, the Spouses Villamil proffered three

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[10] *Id.* at 115.

[11] *Id.* at 91.

[12] *Id.* at 150.

points, namely: first, the residence certificate number of Juanito Villamil in the Deed of Sale was 510462 while in the income tax return he filed in 1979, his residence certificate was numbered 4868818;[13] second, the tax account numbers in these two documents are not the same, in the Deed of Sale, it was 9007-586-9 whereas in the income tax return he filed in 1979 it was J 4545-30821-A-1;[14] and third, the Spouses Villamil had paid the real estate taxes over the subject land from 1976-1987.[15]

Petitioner also alleged that Paterno is a fictitious person.[16]

During the pre-trial, the parties agreed to limit the issues to the following:

1. whether the Deed of Absolute Sale executed by Villamil in favor of Paterno is fake;

2. Whether Paterno is a fictitious person;

3. Whether the Spouses Tolentino are buyers in good faith;

Whether Villarosa, the present registered owner, is a buyer in good faith.[17]

On 12 June 2003, the trial court declared all the TCTs of Paterno, Spouses Tolentino and Villarosa null and void and ordered the cancellation of the latter's title and the issuance of a new one in the name of the Spouses Villamil. The dispositive portion reads:

WHEREFORE, in view of the foregoing, the court finds merit on plaintiff's complaint and hereby orders the following:

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[13] TSN, 5 November 1993, pp. 23-24.

[14] *Id.* at 27.

[15] *Id.* at 30.

[16] *Id.* at 58-59. They went to the address indicated in the Deed of Sale but there was no such house. They even inquired with the *barangay* but were told that there was no such address and person living in the area.

[17] Records, vol.1, p. 295.

A. The injunction against defendant Lazaro Cruz Villarosa, enjoining him from further acts of possession, ownership and dominion over the property is made permanent.

B. Transfer Certificate of Titles Number 351553; in the name of Cipriano Paterno, 351673; in the name of Spouses Mateo A. Tolentino and Purificacion Tolentino and 354675; in the name of Lazaro Cruz Villarosa are declared null and void;

C. All of the existing improvements on the land shall be forfeited in favor of the plaintiffs;

D. The Register of Deeds of Quezon City is hereby ordered to cancel TCT No. 354675 in the name of Lazaro Cruz Villarosa and issue a new one in the name of Spouses Juanito R. Villamil and Lydia M. Villamil;

E. Defendant Lazaro Cruz Villarosa shall pay plaintiffs the rent of ₱1,000.00 per month to commence February 1987 up to the present;

F. Defendants shall pay solidarily plaintiffs the amount of ₱30,000.00 as attorney's fees, ₱50,000.00 as moral damages and ₱20,000.00 exemplary damages.

G. The counterclaims of the defendants are dismissed.

SO ORDERED.[18]

The trial court also found that the Deed of Absolute Sale executed by the Spouses Villamil in favor of Paterno is fake; that Paterno is a fictitious person; and that Spouses Tolentino and Villarosa are both buyers in bad faith.

On 12 September 2006, the Court of Appeals reversed the trial court and declared void the title of the Spouses Tolentino and Paterno but upheld the validity of the title of Villarosa. The dispositive portion of the appellate court's decision reads, thus:

WHEREFORE, the appeal is GRANTED and the trial court's June 12, 2003 Decision is REVERSED and SET ASIDE with respect to appellant. In lieu thereof, another is entered as follows: (a) ordering the dissolution of the injunction issued by the trial court; (b) declaring

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[18] CA *rollo*, p. 146.

Transfer Certificate of Title No. 354675 in the name of appellant valid; (c) affirming appellant's ownership of the subject parcel as well as all existing improvements thereon; and (d) absolving appellant of liability for all monetary awards adjudicated by the trial court.[19]

The appellate court ruled that while the Spouses Tolentino's acquisition of the subject land does not "appear to be above board,"[20] the circumstances surrounding Villarosa's acquisition, on the other hand, indicate that he is a purchaser for value and in good faith.[21]

On 23 March 2007, the appellate court denied petitioners' motion for reconsideration. Hence, this petition.

It should be noted that Paterno was not made a defendant in the complaint before the trial court and that the decision of the Court of Appeals insofar as it nullified the title in the name of the Spouses Tolentino was not appealed to this Court. Thus, the petition before this Court centers on the validity of Villarosa's title only. The resolution of this issue devolves on whether Villarosa is a purchaser in good faith.

The Spouses Villamil maintains that Villarosa is not a purchaser in good faith considering that he has knowledge of the circumstances that should have forewarned him to make further inquiry beyond the face of the title.[22]

Villarosa counters that he is a purchaser in good faith because before buying the property, he went to the Register of Deeds of Quezon City to verify the authenticity of Spouses Tolentino's title, as well as to the Express Credit Financing Corporation to check whether Spouses Tolentino had indeed mortgaged the subject property. Having been assured of the authenticity and genuineness of its title, he proceeded to purchase the property.[23]

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[19] *Rollo*, p. 66.

[20] *Id.* at 59.

[21] *Id.* at 65.

[22] *Rollo*, p. 23.

[23] *Id.* at 1066.

The determination of whether Villarosa is a purchaser in good faith is a factual issue which is generally outside the province of this Court to determine in a petition for review. Indeed, this Court is not a trier of facts, and the factual findings of the Court of Appeals are binding and conclusive upon this Court.[24] However, the rule has its recognized exceptions,[25] one of which obtains in this case, *i.e.*, there is a conflict between the findings of fact of the Court of Appeals and those of the trial court.

In the case at bar, the courts below arrived at the same findings concerning the circumstances related to the transfer of titles in favor of Paterno and the Spouses Tolentino and on that basis declared both their titles spurious. But they differ with respect to the title of Villarosa. The trial court held that Villarosa knew of the circumstances of Spouses Tolentino's acquisition of the subject property, thus making him (Villarosa) a purchaser in bad faith. To the contrary, the Court of Appeals, upon review of the records, found that Villarosa is a purchaser in good faith.

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[24] *Sigaya v. Mayuga*, G.R. No. 143254, 18 August 2005, citing *Orquiola v. Court of Appeals*, G.R. No. 141463, August 6, 2002, 386 SCRA 301, 309; *Sps. Uy v. Court of Appeals*, G.R. No. 109197, 21 June 2001, 359 SCRA 262, *Baricuatro v. Court of Appeals*, G.R No. 105902, February 9, 2000, 325 SCRA 137, 145.

[25] (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. *Insular Life Assurance Company, Ltd. vs. Court of Appeals,* G.R. No. 126850, 28 April 2004; *Go v. Court of Appeals*, G.R. No. 112550, 5 February 2001, 351 SCRA 145, citing *Reyes v. Court of Appeals*, 258 SCRA 651 (1996).

The burden of proving the status of a purchaser in good faith lies upon one who asserts that status.[26]

An innocent purchaser for value is one who buys the property of another without notice that some other person has a right to or interest in that same property, and who pays a full and fair price at the time of the purchase or before receiving any notice of another person's claim.[27]

The honesty of intention that constitutes good faith implies freedom from knowledge of circumstances that ought to put a prudent person on inquiry. Good faith consists in the belief of the possessors that the persons from whom they received the thing are its rightful owners who could convey their title. Good faith, while always presumed in the absence of proof to the contrary, requires this *well-founded* belief.[28]

Indeed, we found that Villarosa had successfully discharged this burden. In the instant case, there were no traces of bad faith on Villarosa's part in acquiring the subject property by purchase. Villarosa merely responded to a newspaper advertisement for the sale of a parcel of land with an unfinished structure located in Tierra Pura, Tandang Sora, Quezon City.[29] He contacted the number specified in the advertisement and was able to talk to a certain lady named Annabelle[30] who introduced him to the owner, Mateo Tolentino.[31] When he visited the site, he inquired from Mateo Tolentino about the unfinished structure and was informed that the latter allegedly ran out of money and eventually lost interest in pursuing the construction because of his old age.[32] Villarosa was then given a copy of the title.[33] He went to the

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[26] *Potenciano v. Reynoso,* G.R. No. 140707, 22 April 2003.

[27] *Domingo v. Reed*, G.R. No. 157701, 9 December 2005, 477 SCRA 227.

[28] *Id.* at 241.

[29] TSN, 24 July 1995, p. 35.

[30] *Id.* at 39.

[31] *Id.* at 43.

[32] *Id.* at 49.

[33] *Id.* at 52.

Register of Deeds and was able to verify the authenticity of the title.[34] He also found out that the property was mortgaged under the name of Mario Villamor, who turned out to be the employer of Tolentino. Upon reaching an agreement on the price of ₱276,000.00, Villarosa redeemed the title from Express Financing Company.[35] Thereafter, the property was released from mortgage and a deed of sale was executed.[36] Villarosa then secured the transfer of title in his name.[37]

Well-settled is the rule that every person dealing with a registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go beyond the certificate to determine the condition of the property. Where there is nothing in the certificate of title to indicate any cloud or vice in the ownership of the property, or any encumbrance thereon, the purchaser is not required to explore further than what the Torrens Title upon its face indicates in quest for any hidden defects or inchoate right that may subsequently defeat his right thereto.[38]

This principle does not apply when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser has knowledge of a defect or the lack of title in his vendor or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation. One who falls within the exception can neither be denominated an innocent purchaser for value nor a purchaser in good faith.[39]

Petitioner enumerates the instances that should have put Villarosa on guard with respect to the title of the Spouses Tolentino.

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[34] *Id.* at 56.

[35] *Id.* at 61.

[36] *Id.* at 69-71.

[37] *Id.* at 75.

[38] *Lim v. Chuatoco*, G.R. No. 161861, 11 March 2005, citing *Legarda v. Court of Appeals,* G.R. No. 94457, 16 October 1997, 280 SCRA 642; *Cruz v. Court of Appeals*, 346 Phil. 506 (1997); *Halili v. Court of Industrial Relations*, 326 Phil. 982 (1996); *Sandoval v. Court of Appeals*, 329 Phil. 48 (1996).

[39] *Occeña v. Esponilla*, G.R. No. 156973, 4 June 2004.

First, petitioner points out that Villarosa should have inquired about the unfinished structure by verifying if there was a building permit. If he did ask, Villarosa would have found out that it was not the Spouses Tolentino who owned the structure, petitioner adds.

In finding bad faith on Villarosa, the trial court relied mainly on the alleged testimony of Mateo Tolentino that he told Villarosa at the time he offered the property for sale to him that the lot and the unfinished structure belonged to Spouses Villamil.[40] However, as observed by the appellate court to which the Court agrees, all that the transcript of the stenographic notes of the hearing concerned state is that Mateo Tolentino told Villarosa that the unfinished structure belonged to the previous owner without mention of the Spouses Villamil.[41]

In any event, even if Mateo Tolentino had particularly referred to or mentioned the Spouses Villamil, that would not have mattered at all. Specifically, the information alone and without more would not be enough to make Villarosa investigate further.

Second, petitioner notes that while the title of the Spouses Tolentino was issued only on 6 November 1986 they offered the property for sale barely two months later. According to petitioner, this should have prompted Villarosa to make further inquiries.

Third, petitioner harps that the property was mortgaged to Express Financing to secure a loan in the amount of ₱225,000.00 which was satisfied out of the proceeds of the sale to Villarosa, leaving the Spouses Tolentino a "measly" ₱21,000.00 from the transaction. The circumstance was no cause for Villarosa to be alarmed nor to arouse his suspicion that there was a defect in the title of the Spouses Tolentino. There was nothing unlawful or irregular with the fact that the property offered for sale or sold was mortgaged. Besides, the records are bereft of any indication that Villarosa had knowledge of the details of the mortgage transaction. Also, there is no question about the adequacy of the price provided in the deed of sale in favor of Villarosa.

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[40] CA *rollo*, pp. 144-145.

[41] TSN, 7 March 1995, pp. 49-53.

Petitioner also avers that since Paterno's transfer to Spouses Tolentino is spurious, the Spouses Tolentino could not also transfer any right to Villarosa on account of the principle that no one can transfer a greater right to another than he himself has.

We do not agree.

A forged or fraudulent document may become the root of a valid title if the property has already been transferred from the name of the owner to that of the forger.[42] This doctrine serves to emphasize that a person who deals with registered property in good faith will acquire good title from a forger and be absolutely protected by a Torrens title.[43]

Having made the necessary inquiries and having found the title to be authentic, Villarosa need not go beyond the certificate of title. When dealing with land that is registered and titled, as in this case, buyers are not required by the law to inquire further than what the Torrens certificate of title indicates on its face.[44] He examined the transferor's title, which was then under the name of Spouses Tolentino. He did not have to scrutinize each and every title and previous owners of the property preceding Tolentino.

In sum, Villarosa was able to establish good faith when he bought the subject property. Therefore, TCT No. 354675 issued in his name is declared valid.

WHEREFORE, the Decision of the Court of Appeals dated 12 September 2006 is *AFFIRMED*. Costs against petitioners.

SO ORDERED.

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

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[42] *Republic v. Agunoy*, G.R. No. 155394, 17 February 2005, citing *Pino v. Court of Appeals*, 198 SCRA 434, 445 (1991), *Duran v. IAC*, 138 SCRA 489, 494 (1985) reiterated in *Philippine National Bank v. Court of Appeals*, 187 SCRA 735, 741 (1990).

[43] *Lim v. Chuatoco*, *supra* citing *Fule v. Legare,* 117 Phil. 367 (1963).

[44] *Supra* note 28.

THIRD DIVISION

[G.R. No. 177210. April 7, 2009]

SUMMA KUMAGAI, INC.-KUMAGAI GUMI CO., LTD. JOINT VENTURE, *petitioner, vs.* **ROMAGO, INCORPORATED,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; RULES OF COURT; TECHNICAL RULES OF PROCEDURE AND EVIDENCE ARE NOT STRICTLY APPLIED IN ADMINISTRATIVE PROCEEDINGS; APPLICATION. —** It is true that the Rules of Procedure Governing Construction Arbitration (CIAC Rules) does not mention any suppletory application of the Rules of Court to CIAC proceedings. However, rules of procedure of courts are stricter than those of quasi-judicial bodies. Administrative tribunals exercising quasi-judicial powers are unfettered by the rigidity of certain procedural requirements, subject to the observance of fundamental and essential requirements of due process in justiciable cases presented before them. In administrative proceedings, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense. Hence, it is completely unreasonable for an administrative body such as CIAC to be even more severe than the courts when it comes to requiring the filing of a reply. It does well for the CIAC Arbitrators to remember that the CIAC Rules explicitly direct them to use every and all reasonable means to ascertain the facts in each case speedily and objectively **without regard to technicalities of law and procedure, all in the interest of substantive due process.** Accordingly, the Court of Appeals was correct in finding the judgment of the CIAC with respect to the counterclaims of SK-KG to have been rendered in disregard of the right of Romago to due process. Considering the amounts involved in the case at bar, the CIAC should have been more circumspect in its admission or rejection of evidence presented before it. CIAC should not have taken the evidence of SK-KG hook, line and sinker, and should have used all means to ascertain the facts in the interest of substantial justice.

2. ID.; CIVIL PROCEDURE; COUNTERCLAIMS; A PERMISSIVE COUNTERCLAIM MAY BE SEVERED FROM THE MAIN ACTION; CASE AT BAR. — To the mind of this Court, however, and in the interest of substantial justice, SK-KG may still assert its claims against Romago, and Romago may still refute the same. Just as it is wrong to award the counterclaims of SK-KG without allowing Romago to submit contrary evidence, neither is it just to dismiss the counterclaims outright for the same reasons. Counsel for Romago himself has persistently argued that his client should have been allowed to present evidence on the counterclaims of SK-KG. And although counsel for SK-KG has actively argued that CIAC should not allow the presentation by Romago of evidence against the counterclaims of SK-KG, it is only to be expected of a counsel required by the Code of Professional Responsibility to represent his client with zeal. Whether SK-KG should be awarded its counterclaims should depend on the merit thereof and the evidence of the parties. The Court takes note that permissive counterclaims are considered as separate actions in themselves, and may be severed from the action on the Complaint. In the case at bar, the counterclaims of SK-KG rest on different provisions of the contract, and relate to amounts/obligations separate and distinct from those being claimed by SK-KG in its Complaint. The evidence required for SK-KG to prove its claims is different from that needed to establish the demands of Romago in its Complaint; thus, the counterclaim of SK-KG is merely permissive and, consequently, may be severed from the main action.

3. ID.; COURTS; COURT OF APPEALS; POWER TO AFFIRM, MODIFY, OR REVERSE THE FINDINGS OF FACT OF THE CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC). — As to the judgment of the Court of Appeals increasing the award in favor of Romago, the Court affirms the same. SK-KG questions the power and authority of the Court of Appeals to reverse the ruling of CIAC, on the ground that CIAC is specialized body with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or essentially factual matters. However, although CIAC findings are entitled to respect, the Court of Appeals is not always bound thereby. The Court of Appeals necessarily has the power to affirm, modify or reverse the findings of fact of the CIAC if the evidence so

warrants; otherwise, appeals would be inutile. In *Metro Construction, Inc. v. Chatham Properties, Inc.*, we held that review of the CIAC award may involve either questions of fact or of law, or of both fact and law.

APPEARANCES OF COUNSEL

Teodoro C. Baroque for petitioner.

Mutia Trinidad Venadas and Verzosa and *Kapunan Tamano and Associates* for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review under Rule 45, seeking the reversal of (1) the Decision[1] dated 22 December 2006 of the Court of Appeals in CA-G.R. SP No. 89959, which modified the Decision dated 3 March 2005 of the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 28-2004; and (2) the Resolution[2] dated 20 March 2007 of the appellate court in the same case which denied the Motion for Reconsideration of petitioner Summa Kumagai, Inc. – Kumagai Gumi Co., Ltd. Joint Venture (SK-KG).

The facts of the case are as follows:

SK-KG engaged the services of respondent Romago, Incorporated (Romago), under a Sub-Contract Agreement, for electrical works needed in the construction of The New Medical City Superstructure Project, the original date of completion of which was set on 18 September 2003.

As the implementation of the contract progressed, SK-KG issued change orders through Project Management Instructions

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[1] Penned by Associate Justice Amelita G. Tolentino with Associate Justices Portia Aliño Hormachuelos and Roberto A. Barrios, concurring. *Rollo,* Vol. I, pp. 11-40.

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

(PMI), Contractor's Instructions and oral instructions. Romago complied with the specified changes, although they were allegedly outside the scope of the Sub-Contract Agreement.

From the early part of the project, SK-KG incurred delays in its payment to Romago. SK-KG also incurred delays in the delivery of equipment to Romago, prompting the latter to do crash programs. The changes in the specified contracted works led to an extension of 101 days. These complications resulted in additional expenses on the part of Romago. Also according to Romago, it encountered so much difficulty resulting from an alleged extraction of arbitrary back charges and illegal deductions on the part of SK-KG.

Romago eventually completed the contracted works. SK-KG though refused to pay its obligations to Romago, and did not issue a certificate of completion for the works it subcontracted to Romago.

After efforts to reach an amicable settlement between SK-KG and Romago failed, Romago filed a complaint with the CIAC on 18 August 2004. The case was docketed as CIAC Case No. 28-2004. On 20 September 2004, SK-KG filed its Answer with Counterclaim. Romago did not file a Reply. After the issues were joined, an Arbitration Panel was constituted by the CIAC to hear the case.

During the hearings, Romago tried to present evidence to controvert the counterclaims of SK-KG. However, the Arbitration Panel did not allow Romago to do so on the ground that the failure of Romago to file a Reply to the Answer was deemed an admission of the counterclaims of SK-KG.

Romago filed a Motion to Submit Additional Evidence on 21 April 2005, but was denied by the Officer-in-Charge of the CIAC. On 3 March 2005, the CIAC rendered its Decision, the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered and award made on the monetary claims of the parties as FOLLOWS:

A. In favor of the [herein respondent]-Sub Contractor ROMAGO, INC., against [herein petitioner] Main Contractor SUMMA KUMAGAI, INC., KUMAGAI GUMI CO., LTD. JOINT VENTURE:

₱2,195,535.18 – as the admitted liability of the [SK-KG] to the [Romago] for the unpaid balance of the PMIs and the CIs.

₱480,538.89 – for the total of Claim Items Nos. 186, 187 and 198 of the unreconciled items on this claim.

₱296,039.37 – representing what [SK-KG] admittedly had mistakenly overcharged [Romago] for its electric power consumption interest at the rate of 6% per annum shall be computed from 29 October 2003 up to the date of payment.

₱263,984.95 – for the installation of the ECB's. Interest at the rate of 6% per annum shall be computed from 06 September 2003 up to the date of payment.

₱484,883.26 – for the costs of power interconnection to the DDC. Interest at the rate of 6% per annum shall be computed from 14 July 2003 up to the date of payment.

₱553,225.20 – for the installation of extension ring boxes to connect pipes and to complete the rough-in conduit works performed by the previous Electrical Sub-Contractor, Engineering Equipment Incorporated SKI-KG JV.

₱3,568,077.03 – as reimbursement of [Romago's] bid amount based on the OLEX Brand of Fire Rated Cable.

₱157,675.05 – as payment for rectification works due to spatial clashes in the second floor.

₱7,999,958.13 – TOTAL DUE TO [Romago]

B. In favor of the [petitioner]-Main Contractor SUMMA KUMAGAI, INC., – KUMAGAI GUMI CO., LTD JOINT VENTURE and against the [respondent]-Sub Contractor ROMAGO, INC.

₱5,351,057.36 – on its counterclaim, for the unrecouped actual cost of Supplemental Manpower;

₱5,575,310.03 – on its counterclaim for the unrecouped actual cost of tools, materials and equipment.

₱25,729,263.86 – as the unrecouped balance of the cash advances given to the [Romago].

₱1,131,244.29 – as the deductions or backcharges admitted by the [respondent] to have been validly made.

₱37,786,875.04 – TOTAL DUE TO [SK-KG]

OFFSETTING the foregoing awards respectively made to the parties, there remains a balance of ₱29,786,916.912 in favor of [SK-KG].[3]

It is hereby DIRECTED that [SK-KG] shall release the sum of ₱7,375,400.39 being the balance of the Retention Sum after the warranty period on 10 June 2005.

Romago filed a Petition for Review with the Court of Appeals, which was docketed as CA-G.R. SP No. 89959. Meanwhile, SK-KG filed with the CIAC a Motion for Execution of the CIAC award. On 30 January 2006, CIAC granted the Motion. On 30 March 2006, CIAC issued a Writ of Execution.

On 12 May 2006, the Court of Appeals issued a Temporary Restraining Order enjoining the CIAC from implementing the appealed Decision.

After the Court of Appeals heard the oral arguments of the parties, it issued a Resolution dated 8 June 2006 requiring the CIAC to elevate the entire case records. In a Resolution dated 28 June 2006, the Court of Appeals resolved to issue a Writ of Preliminary Injunction. On 22 December 2006, the Court of Appeals rendered its assailed Decision, modifying the CIAC Decision, to wit:

WHEREFORE, the decision dated March 3, 2005 of the Construction Industry Arbitration Commission in CIAC Case No. 28-2004 is hereby MODIFIED. [Herein petitioner] Summa Kumagai, Inc. – Kumagai Gumi Co., Ltd., Inc. Joint Venture is hereby DIRECTED to pay Romago, Incorporated the following sums:

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[3] *Id.* at 384-386.

₱6,103,531.94	– representing the unpaid balance under the original contract;
₱6,251,394.00	– representing additional expenses incurred under Romago's crash program;
₱6,739,737.72	– representing additional manpower and materials under the Extended Preliminaries;
₱2,682,394.41	– for expenses in testing and commissioning electrical equipment;
₱700,000.00	– for improperly deducted savings from the use of local FABRIDUCT materials;
₱914,365.72	– representing price differential for Styline Model Hubbell devices;
₱711,633.51	– cost of supply and installation of extended bus bars;
₱498,813.34	– representing improper deduction for rental of temporary Alimak lifts;
₱262,500.00	– as compensation for As-built Drawings;
₱787,172.62	– representing material escalation;
₱854,923.28	– representing cost of ancilliary fittings for lighting fixtures;
₱7,375,400.39	– representing the balance of retention money due to Romago, Incorporated.
₱33,881,866.93	

The other awards in favor of Romago, Incorporated in CIAC Decision dated March 3, 2005 in CIAC Case No. 28-2004, the aggregate amount of ₱7,999,958.13, are AFFIRMED. All awards in favor of [SK-KG] in the same case are hereby NULLIFIED and SET ASIDE.

Attorney's fees in an amount equivalent to five percent (5%) of all awards in favor of Romago, Incorporated are AWARDED to the [Romago].

The writ of preliminary injunction issued pursuan to the Resolution of this Court dated June 28, 2006 is made PERMANENT.

The Division Clerk of Court is hereby ORDERED to return to the Construction Industry Arbitration Commission the records of CIAC Case No. 28-2004 as soon as possible.[4]

On 18 January 2007, SK-KG filed a Motion for Reconsideration of the aforementioned Decision, but the Motion was denied by the Court of Appeals in a Resolution dated 20 March 2007. SK-KG received a copy of the said Court of Appeals Resolution on 30 March 2007.

On 13 April 2007, SK-KG filed a motion before this Court requesting a 30-day extension within which to file a Petition for Review on *Certiorari*. On 16 May 2007, SK-KG filed the instant Petition.

Initially, this Court denied the Petition of SK-KG in a Resolution dated 4 July 2007 for being tardy. The last day of the original period for filing the said Petition was on 14 April 2007, 15 days from 30 March 2007 when SK-KG received a copy of the Court of Appeals Resolution denying its Motion for Reconsideration. Counting from 14 April 2007, the 30-day extension period would have ended on 14 May 2007. Counsel for SK-KG sought reconsideration of the denial of the Petition by the Court, averring stress and fatigue, which resulted in his miscalculation of the reglementary period. Since 14 April 2007 fell on a Saturday, SK-KG had until 16 April 2007, Monday, to file its Petition under the original period. Counsel for SK-KG counted the 30-day extension period from 16 April 2007 which ended on 16 May 2007, when he did actually file the Petition on behalf of his client. In a Resolution dated 19 September 2007, the Court reinstated the Petition of SK-KG.

SK-KG submits the following issues for the consideration of this Court:

I

WHETHER OR NOT THE DUE PROCESS RIGHTS OF [ROMAGO] WERE VIOLATED BY CIAC THAT WOULD WARRANT THE

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

REVERSAL BY THE COURT OF APPEALS OF THE MONETARY AWARDS OF CIAC RENDERED IN FAVOR OF [SK-KG].

II

WHETHER OR NOT THE COURT OF APPEALS CAN REVERSE A RULING BY THE CIAC A QUASI JUDICIAL BODY WITH SPECIALIZED SKILL OR EXPERTISE IN ADJUDICATING CONSTRUCTION RELATED DISPUTES BASED ON FINDINGS THAT ARE CONTRARY TO THE EVIDENCE ON RECORD, ADMISSIONS OF [ROMAGO], AND THE UNDISPUTED FACTS.

III

WHETHER OR NOT THE COURT OF APPEALS CAN RENDER MONETARY AWARDS BASED ON DOCUMENTS THAT WERE NOT PART OF THE EVIDENCE BEFORE THE CIAC AND WERE ONLY BELATEDLY SUBMITTED BY [ROMAGO] IN VIOLATION OF THE DUE PROCESS RIGHTS OF [SK-KG].

IV

WHETHER OR NOT THE COURT OF APPEALS CAN RENDER MONETARY AWARDS FOR RELIEF THAT WAS NOT PRAYED FOR OR RAISED AS AN ISSUE IN THE PETITION BY [ROMAGO], WAS NOT PART OF THE CLAIMS SOUGHT BY [ROMAGO] IN THE CIAC, AND WAS NOT EVEN ONE OF THE ISSUES DECIDED UPON IN THE CIAC THAT WAS THE SUBJECT OF THE APPEAL.

V

WHETHER OR NOT THE COURT OF APPEALS RENDERED MONETARY AWARDS BASED ON SPECULATION, SURMISE OR CONJECTURE, CONTRARY TO ADMISSIONS OF PARTY, BASED ON MANIFESTLY MISTAKEN AND THE EVIDENCE ON RECORD (sic), AND CONTRARY TO THE WELL ESTABLISHED LEGAL PRINCIPLES ON THE AWARD OF MORAL DAMAGES.[5]

Romago adds the following issues for our resolution:

I. WHETHER THE FINALITY OF THE CA DECISION SHOULD BE IGNORED FOR THE ADMITTED ERROR OF COUNSEL IN COMPUTING THE REGLEMENTARY PERIOD DUE TO ALLEGED STRESS AND FATIGUE IN PREPARING THE INSTANT PETITION.

[5] *Id.* at 3574-3577.

II. WHETHER THE INSTANT PETITION HAS ENOUGH MERIT TO OVERLOOK THE FINALITY OF THE CA DECISION.[6]

Before proceeding to the merits of the present Petition, the Court shall first tackle the objection of Romago to the reinstatement of the Petition for Review of SK-KG. Romago argues that the excuses of stress and fatigue proffered by the counsel for SK-KG are too convenient to inspire belief. Romago invokes A.M. No. 00-02-14-SC which provides that any extension of time to file the required pleading should be counted from the expiration of the period, regardless of the fact that said due date is a Saturday, Sunday or legal holiday.

It is, however, too late for Romago to assail the Resolution dated 19 September 2007 of this Court reinstating the Petition for Review of SK-KG, having failed to file a Motion for Reconsideration of the said Resolution. Moreover, considering the enormous amounts involved in the case at bar, it is only proper for the Court to determine the case on the merits. Time and again, this Court has stressed that the primordial concern of rules of procedure is to secure substantial justice. Otherwise stated, they are but a means to an end. Hence, a rigid and technical enforcement of these rules which overrides the ends of justice shall not be countenanced. Substance cannot be subordinated to procedure when to do so would deprive a party of his day in court on the basis solely of a technicality.[7]

We shall now go into the merits of the present petition.

SK-KG insists that there was no violation of due process on the part of the CIAC in granting its counterclaims against Romago, arguing that due process in administrative hearings require only that the parties be given an opportunity to be heard.[8] SK-KG then proceeds to enumerate the opportunities granted to Romago

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[6] *Id.* at 3499-3500.

[7] *City of Cebu v. Court of Appeals*, 327 Phil. 799, 809-810 (1996); *Alonso v. Villamor*, 16 Phil. 315, 321-322 (1910).

[8] *Rollo,* p. 3578.

in presenting its evidence, from the filing of the Complaint to the termination of the proceedings before the CIAC.

The Court does not agree.

The reason of the CIAC Panel of Arbitrators for disallowing the presentation of evidence by Romago against the counterclaims of SK-KG is evident in the following transcript of the proceedings:

ATTY. BAROQUE:

Your Honor, the point that I'm trying to make is that it was not allowed in the Terms of Reference, [it's] not one of the claims being made by the claimant and yet x x x.

PROF. A. F. TADIAR:

Which one?

ATTY. BAROQUE:

The unrecouped supplementary manpower cost x x x.

x x x x x x x x x

PROF. A. F. TADIAR:

Unrecouped expenses.

ATTY. BAROQUE:

Your honor, the [Romago] has already listed specifically all the back charges that they are questioning in this case and the back charges for the manpower and the tools and the materials were never raised in the complaint and were never cited in the Terms of Reference. So my clarification is, are we allowing them to produce evidence with respect to the x x x? But these back charges in effect questioning the back charges when, in fact, they did not raise in their claim in the complaint and were not discussed during the Terms of Reference.

x x x x x x x x x

ATTY. BAROQUE:

My clarification, your Honor, is can the [Romago] produce evidence with respect to claims that are not listed in their Complaint?

PROF. A. F. TADIAR:

He is refuting your entitlement to your counterclaim, not claim. This is a question in relation to refuting your counterclaim not establishing their claim.[9]

x x x x x x x x x

ENGR. J.J. MARCIANO:

Is this still part of this ₱10,702,000.00?

ATTY. VILLA:

Yes, your Honor.

MR. ABALORA:

Yes, Your Honor.

ENGR. J. J. MARCIANO:

That they are backcharging you?

MR. ABALORA:

Yes, Your Honor.

x x x x x x x x x

ATTY. BAROQUE:

But for clarification, your Honors, they already waived their rights with respect to backcharging of the supplemental manpower and materials. That's not listed in one of their claims so x x x.[10]

x x x x x x x x x

PROF. A. F. TADIAR:

I agree with the observation of [SK-KG's] counsel as to why he cannot understand why we are dwelling so much on this particular issue when you are not making any claim as to the validity of [the] backcharging and the supplemental manpower? So let's move on to some other point?[11]

x x x x x x x x x

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[9] TSN, 11 January 2005, pp. 15-17.

[10] *Id.* at 264-265.

[11] *Id.* at 286.

ENGR. J. J. MARCIANO:

I have a fundamental question, Counselor. Since you appear to be disputing all these backcharges, why did you not place this as [an] issue in your Complaint?

ATTY. M. L. VILLA:

Your Honor, again as we are saying, we are claiming only these amounts of money because these are the amounts that we feel [are] justly due [to] Romago [for the] works done.

PROF. A. F. TADIAR:

But are you not aware that if they win on their counterclaim, all your claims will be wiped out, is that not correct?

ATTY. M. L. VILLA:

Yes, Your Honor. But when we made the [Complaint], your Honor, we felt it was already jumping the [gun] that we will be defending [against] something [that] they're not claiming yet.

PROF. A. F. TADIAR:

Why did you not submit a Reply to the Answer? You know that you are entitled to make a Reply to the Answer, is it not correct?

ATTY. M. L. VILLA:

Yes, Your Honor.

PROF. A. F. TADIAR:

Earlier it is understandable [not] to mention that in your [Complaint], of course you cannot deny their countercharges because you don't know yet what is their counterclaim. But when you came to know when they filed their Answer that they contained counterclaims, why did you not make a Reply disputing all of their backcharges? That is the issue, ATTY. VILLA. Okay. Go ahead.[12]

The CIAC is completely mistaken in denying the attempt of Romago to present evidence against the counterclaims of the SK-KG on the ground that the failure of Romago to file a Reply to the Answer of SK-KG was deemed an admission of the counterclaims in said Answer.

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[12] *Id.* at 259-260.

There is no basis for such a conclusion.

Section 10, Rule 6 of the Rules of Court describes the effect of non-filing of a reply:

SEC. 10. *Reply*.—A reply is a pleading, the office or function of which is to deny, or allege facts in denial or avoidance of new matters alleged by way of defense in the answer and thereby join or make issue as to such new matters. **If a party does not file such reply, all the new matters alleged in the answer are deemed controverted**.

If the plaintiff whishes to interpose any claims arising out of the new matters so alleged such claims shall be set forth in an amended or supplemental complaint. (Emphasis supplied.)

It is true that the Rules of Procedure Governing Construction Arbitration (CIAC Rules) does not mention any suppletory application of the Rules of Court to CIAC proceedings. However, rules of procedure of courts are stricter than those of quasi-judicial bodies. Administrative tribunals exercising quasi-judicial powers are unfettered by the rigidity of certain procedural requirements, subject to the observance of fundamental and essential requirements of due process in justiciable cases presented before them. In administrative proceedings, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense.[13]

Hence, it is completely unreasonable for an administrative body such as CIAC to be even more severe than the courts when it comes to requiring the filing of a reply. It does well for the CIAC Arbitrators to remember that the CIAC Rules explicitly direct them to use every and all reasonable means to ascertain the facts in each case speedily and objectively **without regard to technicalities of law and procedure, all in the interest of substantive due process.**[14]

Accordingly, the Court of Appeals was correct in finding the judgment of the CIAC with respect to the counterclaims of

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[13] See *Samalio v. Court of Appeals*, G.R. No. 140079, 31 March 2005, 454 SCRA 462, 471.

[14] Section 3, Article I, CIAC Rules.

SK-KG to have been rendered in disregard of the right of Romago to due process. Considering the amounts involved in the case at bar, the CIAC should have been more circumspect in its admission or rejection of evidence presented before it. CIAC should not have taken the evidence of SK-KG hook, line and sinker, and should have used all means to ascertain the facts in the interest of substantial justice.

This Court has held that where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction.[15] In the case at bar, the Court is constrained to affirm the Decision of the Court of Appeals annulling the awards for the counterclaims of SK-KG granted by the CIAC for having been clearly rendered in disregard of the right of Romago to due process.

To the mind of this Court, however, and in the interest of substantial justice, SK-KG may still assert its claims against Romago, and Romago may still refute the same. Just as it is wrong to award the counterclaims of SK-KG without allowing Romago to submit contrary evidence, neither is it just to dismiss the counterclaims outright for the same reasons. Counsel for Romago himself has persistently argued that his client should have been allowed to present evidence on the counterclaims of SK-KG. And although counsel for SK-KG has actively argued that CIAC should not allow the presentation by Romago of evidence against the counterclaims of SK-KG, it is only to be expected of a counsel required by the Code of Professional Responsibility to represent his client with zeal.[16] Whether SK-KG should be awarded its counterclaims should depend on the merit thereof and the evidence of the parties.

The Court takes note that permissive counterclaims are considered as separate actions in themselves,[17] and may be

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[15] *People v. Judge Bocar*, 222 Phil. 468, 471 (1985).

[16] Canon 19 of the Code of Professional Responsibility provides:

CANON 19. — A LAWYER SHALL REPRESENT HIS CLIENT WITH ZEAL WITHIN THE BOUNDS OF THE LAW.

[17] *Zulueta v. Pan American World Airways, Inc.*, 151 Phil. 1, 32 (1973).

severed from the action on the Complaint. In the case at bar, the counterclaims of SK-KG rest on different provisions of the contract, and relate to amounts/obligations separate and distinct from those being claimed by SK-KG in its Complaint. The evidence required for SK-KG to prove its claims is different from that needed to establish the demands of Romago in its Complaint; thus, the counterclaim of SK-KG is merely permissive[18] and, consequently, may be severed from the main action.

As to the judgment of the Court of Appeals increasing the award in favor of Romago, the Court affirms the same. SK-KG questions the power and authority of the Court of Appeals to reverse the ruling of CIAC, on the ground that CIAC is specialized body with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or essentially factual matters. However, although CIAC findings are entitled to respect, the Court of Appeals is not always bound thereby. The Court of Appeals necessarily has the power to affirm, modify or reverse the findings of fact of the CIAC if the evidence so warrants; otherwise, appeals would be inutile. In *Metro Construction, Inc. v. Chatham Properties, Inc.*,[19] we held that review of the CIAC award may involve either questions of fact or of law, or of both fact and law.

WHEREFORE, the instant Petition for Review on *Certiorari* is *DENIED*. The Decision of the Court of Appeals dated 22 December 2006 in CA-G.R. SP No. 89959 and the Resolution dated 20 March 2007, which denied the Motion for Reconsideration, are hereby *AFFIRMED*. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio Morales,[*] *Nachura,* and *Peralta, JJ.,* concur.

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[18] See *Alday v. FGU Insurance Corporation*, 402 Phil. 962, 974 (2001).

[19] 418 Phil. 176, 204-205 (2001).

[*] Per Special Order No. 602, dated 20 March 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Conchita Carpio Morales to replace Associate Justice Ma. Alicia Austria-Martinez, who is on official leave.

SECOND DIVISION

[G.R. No. 177283. April 7, 2009]

DE LA SALLE UNIVERSITY and DR. CARMELITA I. QUEBENGCO, *petitioners, vs.* **DE LA SALLE UNIVERSITY EMPLOYEES ASSOCIATION (DLSUEA-NAFTEU),** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; JUDGMENTS; FINAL AND EXECUTORY; EFFECT THEREOF. —** It is thus clear that the appellate court's *Tenth* Division Decision declaring that the NLRC Third Division's order "subsuming" respondent's ULP complaint (then pending appeal before the NLRC Second Division) under the certified case pending before it (NLRC Third division) had become final and executory on July 11, 2004. Therefore, with respect to the herein challenged Decision of the appellate court's *First* Division ordering the NLRC Second Division to transmit the records of respondent's ULP complaint to the NLRC Third Division, the same can no longer be effected, the appellate court's *Tenth* Division ruling having, it bears repeating, become final. To still transmit to the NLRC Third Division respondent's ULP complaint on appeal which has already been resolved by the NLRC Second Division would lead to absurd consequences.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT (CBA); PENDING RESOLUTION OF THE INTRA-UNION DISPUTE, THE PARTIES ARE REQUIRED TO OBSERVE THE TERMS AND CONDITIONS OF THE CBA. —** Pending the final resolution of the intra-union dispute, respondent's officers remained duly authorized to conduct union affairs. The clarification letter of May 16, 2003 issued by BLR Director Hans Leo J. Cacdac enlightens: We take this opportunity to clarify that there is **no void** in the DLSUEA leadership. The 19 March 2001 Decision of DOLE-NCR **Regional Director should not be construed as an automatic termination of the incumbent officers' tenure** of office. As duly-elected officers of the DLSUEA, their leadership is not deemed

terminated by the expiration of their terms of office, for they shall continue their functions and enjoy the rights and privileges pertaining to their respective positions in a **hold-over capacity, until their successors shall have been elected and qualified**. It bears noting that at the time petitioners' questioned moves were adopted, a valid and existing CBA had been entered between the parties. It thus behooved petitioners to observe the terms and conditions thereof bearing on union dues and representation. It is axiomatic in labor relations that a CBA entered into by a legitimate labor organization and an employer becomes the law between the parties, compliance with which is mandated by express policy of the law.

3. **CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; MAY BE AWARDED ONLY UPON SHOWING OF PROOF OF ENTITLEMENT TO MORAL, TEMPERATE OR COMPENSATORY DAMAGES. —** Exemplary or corrective damages are imposed by way of example or correction for the public good in addition to the moral, temperate, liquidated or compensatory damages. While the amount of exemplary damages need not be proved, respondent must show proof of entitlement to moral, temperate or compensatory damages before the Court may consider awarding exemplary damages. No such damages were prayed for, however, hence, the Court finds no basis to grant the prayer for exemplary damages.

BRION, *J.*, *concurring and dissenting opinion:*

1. **LABOR AND SOCIAL LEGISLATIONS; NATIONAL LABOR RELATIONS COMMISSION; THE VARIOUS DIVISIONS THEREOF ARE CO-EQUAL. —** [T]he NLRC 3rd Division has no jurisdiction to order that the matter pending before the NLRC 2nd Division be "subsumed" in the certified case pending before it. The various divisions within the NLRC are co-equal bodies and one division cannot order another with binding effect.

2. **ID.; SECRETARY OF LABOR; POWER TO CERTIFY A CASE FOR COMPULSORY ARBITRATION. —** *[C]ertification for compulsory arbitration* is a power lodged by law in the Secretary of Labor and Employment, and is a power not shared with the NLRC or any of its divisions. Only the Labor Secretary can validly order that all pending cases bearing on or related to the notice of strike should be subsumed or consolidated

with the certified case. The decision on whether or not to include cases already pending with the certified case, is a matter within the Secretary's discretion. But even the Secretary must justify an order to consolidate by showing the relationships of the cases with one another, taking into account the degree of development of the cases to be consolidated with the strike or notice of strike case. As a matter of practice, cases already submitted for decision are not consolidated with the strike case, unless the resolution of the issues in these cases are ultimately related to and are necessary for the full settlement of the issues.

3. **ID.; LABOR CODE; UNFAIR LABOR PRACTICE (ULP); WHEN THE ULP CASE CANNOT BE DECIDED FOR PROCEDURAL/JURISDICTIONAL REASON. —** For clarity, the **assailed decision of the CA 1st Division set aside the decision of the NLRC 2nd Division that dismissed the ULP charge on appeal and effectively disregarded the NLRC 3rd Division order that the ULP charge be subsumed under the certified case pending with the NLRC 3rd Division; the CA 1st Division decision thus ordered the records of the ULP charge transmitted to the NLRC 3rd Division.** *The union did not appeal from the CA 1st Division decision.* Parenthetically, the union brought the ULP case to the CA 1st Division on a Rule 65 petition for *certiorari* that does not stop the running of the period for finality of the NLRC 2nd Division decision; its finality can be thwarted only by a CA 1st Divison finding that it was issued with grave abuse of discretion. While the CA 1st Division voided the NLRC 2nd Division decision, *the CA's action was based on a reason other than the merits of the NLRC 2nd Division's confirmation that the ULP case should be dismissed.* Based on these developments, the lone issue that is before the Court in this *Rule 45 petition for review on certiorari*, is the **legal correctness** of the CA 1st Division's ruling that **the ULP case should be referred back to the NLRC 3rd Division for decision.** No other aspect of the ULP case is before us and we will act outside our jurisdiction if we rule on the merits of the ULP charge against De La Salle. *Even the latter could not have brought the merits of the ULP charge before us since it was not a matter ruled upon in the CA decision under review.* If we rule on the merits of the ULP charge, we would effectively be directly passing upon the merits of the NLRC 2nd Division's decision affirming the dismissal

of the ULP charge. Even on a pure question of law, we cannot directly pass upon this decision since it has long since lapsed to finality. Thus, *if we deny the petition* (thus, confirming the legal correctness of the CA 1st Division decision), the legal effect is the return of the ULP complaint to the NLRC 3rd Division for its disposition. On the other hand, *if we grant the petition*, the effect is to recognize the finality of the NLRC 2nd division decision affirming the dismissal of the ULP complaint for lack of merit.

4. ID.; ID.; UNFAIR LABOR PRACTICE, NOT A CASE OF; CIRCUMSTANCES WARRANTING THE APPLICATION OF GOOD FAITH ON THE PART OF THE EMPLOYER IN NOT COMPLYING WITH THE CBA PROVISION. — The problem confronting De La Salle, however, was not one of outright violation of law and contract, but of how to balance its legitimate concerns with the limitations imposed by law and contract. In this regard, we cannot disregard its *good faith* in doing what it did. Good faith, incidentally, is a concept that is not unknown in labor relations, albeit mostly in cases involving the labor side, particularly in strike situations. There is no reason, however, why a concept that applies to labor cannot apply to management. The real question in every case is the basis of the act claimed to have been done in good faith — is there a rational basis supporting the claim? The De La Salle situation and its surrounding facts, I believe, provide an occasion for the application of good faith to management. A factor in De La Salle's favor is the nature of its move; when confronted with a dispute that threatened to involve it, it acted in a measured and calibrated manner; it complied with its CBA undertaking to enforce check-off but at the same time ensured that the checked-off fund would be preserved for those with the unquestioned authority to hold the fund. In other words, faced with a conflict on how to handle the funds it collected and held, it opted for the integrity and preservation of the fund. It should be considered in this regard that as the internal labor dispute was developing, all eyes were on De La Salle because the dispute, despite being labeled as internal, was happening within school premises; involved school employees; and was threatening to affect the continuity of school operations and classes. Anyway it turns, De La Salle could be blamed, if not on the basis of law, at least on the basis of its fairness in handling the situation, particularly of the union funds, as two disputing

groups took diametrically opposed and increasingly hardening positions. To be sure, De La Salle could have chosen not to act by viewing matters *solely* from the prism of its CBA commitments. When it chose to act, De La Salle apparently looked at all the circumstances and opted for the principled way of handling the situation. An important consideration in this regard is that De La Salle's act does not *per se* indicate anti-union animus. The letter itself that it sent to the union reflects its clear intent. It said — *"this is the only way that the University can maintain neutrality on this matter of grave concern,"* — thus indicating its intention to its relationship with all union and employee sectors on an even keel. Further, the records do not show any history of anti-union animus from De La Salle's labor relations record. In fact, it concluded a CBA with the Union in 2000. **Significantly, both the labor arbiter and the NLRC — the entities who actually examined the facts of the case — found no anti-union animus and thus confirmed that no unfair labor practice took place.** I bring this up in light of our established ruling that: *"[N]ecessarily, determining the validity of an employer's act involves an appraisal of his motives. In these cases motivations are seldom expressly avowed and avowals are not always candid. Thus, there must be a measure of reliance on the administrative agency. It is for the CIR (now NLRC), in the first instance, to weigh the employer's expressed motive in determining the effect on the employees of management's otherwise equivocal act."* Thus, from all the surrounding circumstances, there appears to be neither patent nor latent anti-union animus or any other circumstance supporting the conclusion that De La Salle committed unfair labor practice when it acted as it did.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala and Cruz for petitioners.
Kho Bustos Malcontento Argosino Law Offices for respondent.

DECISION

CARPIO MORALES, *J*.:

On challenge by the De La Salle University and its Executive Vice President Dr. Carmelita I. Quebengco (petitioners) via the present petition for review on *certiorari* is the Court of Appeals *First Division* Decision of September 16, 2005[1] in CA-G.R. No. SP No. 81220 which **SET ASIDE** the National Labor Relations Commission (NLRC) Second Division Orders of June 26, 2003 and September 30, 2003 affirming the dismissal of the complaint for Unfair Labor Practices (ULP) filed by De La Salle University Employees Association (respondent), and DIRECTED the NLRC Second Division to transmit the records of the said complaint to the NLRC Third Division.

The antecedent facts of the case are as follows:

In 2001, a splinter group of respondent led by one Belen Aliazas (Aliazas group) filed a petition for conduct of elections with the Department of Labor and Employment (DOLE), alleging that the then incumbent officers of respondent had failed to call for a regular election since 1985.

Disputing the Aliazas group's allegation, respondent claimed that an election was conducted in 1987 but by virtue of the enactment of Republic Act 6715,[2] which amended the Labor Code, the term of office of its officers was extended to five years or until 1992 during which a general assembly was held

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[1] Penned by former Presiding Justice Romeo A. Brawner with the concurrence of Associate Justices Edgardo P. Cruz and Jose C. Mendoza; CA *rollo*, pp. 488-496.

[2] An Act to Extend Protection to Labor, Strengthen the Constitutional Rights of Workers to Self Organization, Collective Bargaining and Peaceful Concerted Activities, Foster Industrial Peace and Harmony, Promote the Preferential Use of Voluntary Modes of Settling Labor disputes and reorganize the National Labor Relations Commission, amending for these purpose certain provisions of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, appropriating funds therefore and for other purposes.

affirming their hold-over tenure until the termination of collective bargaining negotiations; and that a collective bargaining agreement (CBA) was executed only on March 30, 2000.

Acting on the petition for the conduct of election filed by the Aliazas group, the DOLE-NCR held, by Decision of March 19, 2001, that the holdover authority of respondent's incumbent set of officers had been extinguished by virtue of the execution of the CBA. It accordingly ordered the conduct of elections to be placed under the control and supervision of its Labor Relations Division[3] and subject to pre-election conferences.

The conditions for the conduct of election imposed by the DOLE-NCR notwithstanding, respondent called for a regular election on July 9, 2001, without prior notice to the DOLE and without the conduct of pre-election conference, prompting the Aliazas group to file an Urgent Motion for Intervention with the Bureau of Labor Relations (BLR) of the DOLE. The BLR granted the Aliaza's group's motion for intervention three days before the intended date of election or on July 6, 2001 and thus disposed as follows:

> WHEREFORE, without necessarily resolving the merits of the appeal and considering the urgency of the issues raised by appellees and the limited time involved, the motion is hereby GRANTED. Consequently, appellants and or the members of the DLSUEA-COMELEC headed by Mr. Dominador Almodovar or any of their authorized representatives are hereby directed to **cease and desist from holding the general election of DLSUEA officers** on 9 July 2001, until further ordered by this Office.
>
> SO ORDERED.[4] (Emphasis and underscoring supplied)

The Aliazas group thereupon, via letter of August 7, 2001 to Brother Rolando Dizon, FSC, President of petitioner DLSU, requested the University "to please **put on escrow** all union dues/agency fees and whatever money considerations deducted from salaries of concerned co-academic personnel until such

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[3] Decision of March 19, 2001.

[4] NLRC records, p. 203.

time that an election of union officials has been scheduled and subsequent elections has been held."[5] (Underscoring in the original; emphasis supplied)

Responding to the Aliazas group's request, petitioners, citing the abovementioned DOLE and BLR Orders, advised respondent by letter of August 16, 2001 as follows:

> x x x By virtue of the 19 March 2001 Decision and the 06 July 2001 Order of the Department of Labor and Employment (DOLE), the hold-over authority of your incumbent set of officers has been considered extinguished and an election of new union officers, to be conducted and supervised by the DOLE has been directed to be held. Until the result of this election comes out and a declaration by the DOLE of the validly elected officers is made, a void in the Union leadership exists.
>
> In the light of these circumstances, the **University has no other alternative but to temporarily do the following**:
>
> 1. Establish a savings account for the Union where all collected union dues and agency fees will be deposited and held in trust; and
>
> 2. Discontinue normal relations with any group within the Union including the incumbent set of officers.
>
> We are informing you of this decision of the University not only for your guidance but also for the apparent reason that the University does not want itself to be unnecessarily involved in your intra-union dispute. This is the only way that the University can maintain neutrality on this matter of grave concern. (Emphasis and underscoring supplied)

Petitioners' above-quoted move drew respondent to file a complaint against petitioners for Unfair Labor Practice (ULP complaint), claiming that petitioners unduly interfered with its internal affairs and discriminated against its members. The ULP complaint was docketed as NLRC-NCR Case No. S-30-08-03757-01.

During the pendency of its ULP complaint or on March 7, 2002, respondent filed its First Notice of Strike with the Office of the Secretary of Labor (OSL), charging petitioners for 1) gross

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[5] *Id.* at p. 204.

violation of the CBA and 2) bargaining in bad faith which was certified for compulsory arbitration to the NLRC (certified case). The certified case, docketed as NLRC-NCR CC000222-02, was raffled to the NLRC Third Division.

In the meantime, Labor Arbiter Felipe Pati, by Decision of July 12, 2002, dismissed respondent's ULP complaint. Respondent appealed to the NLRC. The appeal was docketed as NLRC-NCR CA No. 033173-02 and lodged at the NLRC Second Division.

While the dismissal of its ULP complaint was pending appeal before the NLRC Second Division, respondent, on behalf of some of its members, filed four other cases against petitioners which were lodged at the NLRC Second Division.

Respondent thereafter filed in the certified case which was lodged at the NLRC Third Division a motion to have its four other cases and its ULP complaint then pending appeal before the NLRC Second Division to have these cases "subsumed" in the certified case. The NLRC Third Division granted respondent's motion by Order of April 30, 2003. Petitioners moved to reconsider this Order but it was denied, prompting petitioners to elevate the matter *via certiorari* to the Court of Appeals. This petition, docketed as CA G.R. No. SP-79798, was raffled to the appellate court's *Tenth* Division.

The NLRC Second Division, in the meantime, affirmed by Decision of June 26, 2003, the dismissal by the Arbiter of respondent's ULP complaint. Respondent thus elevated the case to the Court of Appeals *via certiorari*, docketed as CA-G.R. No. 81220. This was raffled to the appellate court's *First Division.*

By Decision of June 17, 2004, the Court of Appeals *Tenth Division,* to which petitioners' *certiorari* petition in CA-G.R. No. SP-79798 challenging the April 30, 2003 NLRC Third Division Order "subsuming" respondent's complaints including the ULP Complaint under the certified case, REVERSED the said Order of the NLRC Third Division[6] with respect to the

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[6] Penned by Associate Justice Salvador J. Valdez, Jr. with the concurrence of Associate Justices Rebecca De Guia-Salvador and Aurora Santiago-Lagman; CA *rollo*, pp. 520-530.

"subsuming" of respondent's ULP complaint under the certified case, the ULP complaint having been, at the time the NLRC Third Division Order was issued, "already disposed of" (dismissed) by the Arbiter and was in fact pending appeal before the NLRC Second Division. Thus the *Tenth* Division of the appellate court held:

> Anent ULP case with docket No. *NLRC-NCR Case No. S-30-08-03757-01* raffled to Labor Arbiter Pati for resolution, private respondent gravely erred in including it among the cases to be consolidated with *NLRC NCR CC No. 000222-02*. The case is obviously **no longer under arbitration**.
>
> The records show that when complainant-appellee (respondent Union) **filed its motion** to consolidate the cases on January 28, 2003 and the **resolution of the said motion** by the Third Division of the NLRC on April 30, 2003 granting the desired consolidation, *NLRC-NCR Case No. S-30-08-03757-01* **had already been disposed of by Labor Arbiter Pati and was, in fact, already on appeal before the Second Division of the NLRC**, docketed therein as *NLRC-NCR CA No. 033173-02*. According to the Union itself, on June 26, 2003, the NLRC affirmed the decision of Labor Arbiter Pati and on September 30, 2003, it denied the Union's motion for reconsideration. x x x (Citation omitted)
>
> The NLRC had thus already exhausted its jurisdiction over *NLRC-NCR CA No. 033173-02*. Consequently, the same case is now removed from the ambit of compulsory arbitration and may only be subject of judicial review via the special civil action of *certiorari* in this Court. But we are not informed if such a judicial action has been taken.[7] (Emphasis and underscoring supplied)

The Court of Appeals *First Division* subsequently resolving respondent's petition for *certiorari* in CA-G.R. No. 81220 (which assailed the affirmance by the NLRC Second Division of the Arbiter's dismissal of its ULP complaint), upon the sole issue of "whether the NLRC [Second Division] committed grave abuse of discretion . . . in ignoring the order of the [NLRC] 3rd Division declaring subsumed or absorbed [herein respondent's ULP complaint] in the certified case," answered the same in the

[7] *Rollo* at pp. 393-394.

affirmative *via* the **herein challenged September 16, 2005 Decision**. It thus SET ASIDE the NLRC Second Division Order affirming the dismissal of respondent's ULP complaint and accordingly ordered said NLRC Second Division to transmit the entire records of the ULP complaint to the NLRC Third Division to which said ULP complaint had priorly been ordered consolidated by the latter Division with the certified case.

WHEREFORE, premises considered, the petition is granted. Accordingly, the Order dated June 26, 2003 of National Labor Relations Commission (NLRC) as well as the Order dated September 30, 2003 are hereby set aside. The 2nd Division of the NLRC is hereby directed to transmit the entire records of the case to the 3rd Division [of the NLRC] for its resolution.

SO ORDERED.[8] (Underscoring supplied)

Hence, petitioner's petition for review on *certiorari* at bar.

Petitioners contend that the *First* Division of the Court of Appeals disregarded the ruling of the appellate court's *Tenth* Division setting aside the NLRC Third Division Order "subsuming" respondent's ULP complaint, which was lodged at the NLRC Second Division, under the certified case pending with said NLRC Third Division. They fault the *First* Division of the appellate court for

I

. . . RULING THAT THE SECOND DIVISION OF THE NLRC COMMITTED SERIOUS ERROR OR GRAVE ABUSE OF DISCRETION WHEN IT AFFIRMED THE RULING OF LABOR ARBITER FELIPE P. PATI DATED 12 JULY 2002 (THROUGH ITS RESOLUTION AND ORDER DATED 26 JUNE 2003 AND 30 SEPTEMBER 2003, RESPECTIVELY) CONSIDERING THAT:

A. WHEN THE NLRC'S SECOND DIVISION RENDERED ITS 26 JUNE 2003 RESOLUTION, WHICH DISMISSED THE APPEAL FILED BY THE UNION AND AFFIRMED THE 12 JULY 2002 DECISION OF LABOR ARBITER FELIPE P. PATI IN NLRC NCR CASE NO. 30-08-0357-01 (NLRC

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[8] CA *rollo,* p. 495.

NCR CA NO. 033173-02), THE CONSOLIDATION ORDER OF THE NLRC THIRD DIVISION IN NCMB-NCR-NS NO. 03-093-02 (NLRC NCR CC NO. 000222-02) WHICH WAS ISSUED ON 30 APRIL 2003 HAD NOT YET ATTAINED FINALITY.

B. . . . [NOT] TAK[ING] COGNIZANCE OF THE DECISION RENDERED BY THE TENTH DIVISION OF THE SAME COURT DATED 17 JUNE 2004, ANNULLING AND SETTING ASIDE THE 30 APRIL 2003 AND 28 JULY 2003 RESOLUTIONS OF THE THIRD DIVISION, WHICH ORDERED THE CONSOLIDATION OF ALL CASES FILED BY THE UNION AGAINST THE UNIVERSITY.[9]

In any event, petitioners contend that

II

THE SECOND DIVISION OF THE NLRC DID NOT GRAVELY ABUSE ITS DISCRETION WHEN IT HELD THAT THE PETITIONERS WERE NOT GUILTY OF UNFAIR LABOR PRACTICE, CONSIDERING THAT THE TEMPORARY MEASURES IMPLEMENTED BY THE UNIVERSITY WERE UNDERTAKEN IN GOOD FAITH AND ONLY TO MAINTAIN ITS NEUTRALITY AMID THE INTRA-UNION DISPUTE."[10] (Underscoring supplied)

The petition is partly meritorious.

The June 17, 2004 Decision of the appellate court's *Tenth* Division SETTING ASIDE the order of consolidation issued by the NLRC Third Division became final and executory on July 11, 2004. The herein challenged appellate court's *First* Division Decision **REVERSING** the NLRC Second Division Order which affirmed the dismissal of respondent's ULP complaint and directing that the records of said complaint be transmitted to the NLRC Third Division was promulgated on September 16, 2005.

It is thus clear that the appellate court's *Tenth* Division Decision declaring that the NLRC Third Division's order "subsuming"

[9] *Rollo*, p. 22.

[10] *Ibid*.

respondent's ULP complaint (then pending appeal before the NLRC Second Division) under the certified case pending before it (NLRC Third division) had become final and executory on July 11, 2004. Therefore, with respect to the herein challenged Decision of the appellate court's *First* Division ordering the NLRC Second Division to transmit the records of respondent's ULP complaint to the NLRC Third Division, the same can no longer be effected, the appellate court's *Tenth* Division ruling having, it bears repeating, become final.

To still transmit to the NLRC Third Division respondent's ULP complaint on appeal which has already been resolved by the NLRC Second Division would lead to absurd consequences.

On the other matter raised by petitioners — that their acts of withholding union and agency dues and suspension of normal relations with respondent's incumbent set of officers pending the intra-union dispute did not constitute interference, the Court finds for respondent.

Pending the final resolution of the intra-union dispute, respondent's officers remained duly authorized to conduct union affairs. The clarification letter of May 16, 2003 issued by BLR Director Hans Leo J. Cacdac enlightens:

> We take this opportunity to clarify that there is **no void** in the DLSUEA leadership. The 19 March 2001 Decision of DOLE-NCR **Regional Director should not be construed as an automatic termination of the incumbent officers' tenure** of office. As duly-elected officers of the DLSUEA, their leadership is not deemed terminated by the expiration of their terms of office, for they shall continue their functions and enjoy the rights and privileges pertaining to their respective positions in a **hold-over capacity, until their successors shall have been elected and qualified**.[11] (Emphasis and underscoring supplied)

It bears noting that at the time petitioners' questioned moves were adopted, a valid and existing CBA had been entered between the parties. It thus behooved petitioners to observe the terms and conditions thereof bearing on union dues and representation.

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[11] *Rollo,* p. 286.

It is axiomatic in labor relations that a CBA entered into by a legitimate labor organization and an employer becomes the law between the parties, compliance with which is mandated by express policy of the law.[12]

Respecting the issue of damages, respondent, in its Position Paper before the Labor Arbiter, prayed for the award of exemplary damages, nominal damages, and attorney's fees.

Exemplary or corrective damages are imposed by way of example or correction for the public good in addition to the moral, temperate, liquidated or compensatory damages. While the amount of exemplary damages need not be proved, respondent must show proof of entitlement to moral, temperate or compensatory damages before the Court may consider awarding exemplary damages. No such damages were prayed for, however, hence, the Court finds no basis to grant the prayer for exemplary damages.

Nonetheless, the grant of nominal damages and attorney's fees to respondent under Article 2221[13] and Article 2208 (8)[14] of the Civil Code, respectively, is in order.

WHEREFORE, the petition, insofar as the challenged Court of Appeals *First* Division Decision ordering the transmittal by the NLRC Second Division of the records of respondent's ULP complaint to the NLRC Third Division is concerned, has become moot.

In so far as the petition involves the merits of the NLRC Second Division Decision is concerned, the same is *REVERSED*

[12] *TSPIC Corporation v. TSPIC Employees Union (FFW)*, G.R. No. 163419, February 13, 2008, 545 SCRA 215, 225 citing *Honda Phils., Inc. v. Samahan ng Malayang Manggagawa sa Honda*, G.R. No. 145561, June 15, 2005, 460 SCRA 186, 190-191.

[13] Article 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him. (Underscoring supplied)

[14] Article 2208 (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest. (Underscoring supplied)

and a *NEW* one is entered finding petitioners liable for Unfair Labor Practice, and ordering them to pay respondent nominal damages in the amount of ₱250,000 and attorney's fees in the amount of ₱50,000.

SO ORDERED.

Quisumbing (Chairperson) and *Tinga, JJ.,* concur.

Brion, J., with concurring and dissenting opinion.

Velasco, Jr., J., joins the concurring and dissenting opinion of *J*. Brion.

CONCURRING AND DISSENTING OPINION

BRION, *J.*:

I concur and dissent from the *ponencia* as explained below.

The Facts:

The labor dispute traces its roots to the 15-year delay in the holding of an election of officers of the De La Salle University Employees Association (*DLSU*) -NAFTEU (*union*). Allegedly, the delay was approved by the general union membership under the condition that the officers would have holdover status until a collective bargaining agreement (*CBA*) was signed with the employer, the De La Salle University (*De La Salle*).

A CBA was duly negotiated and signed on March 30, 2000, but no union election followed until a group within the Union led by Ms. Belen Aliazas (*Aliazas group*) filed a petition for union election in 2001 with the Department of Labor and Employment, National Capital Region (*DOLE-NCR*). In a decision dated March 19, 2001, the DOLE-NCR called for union election and pre-election conferences, plainly stating that the "*rationale for the holdover is already extinguished.*"

Despite the DOLE-NCR decision, the holdover union officers called for their own election and scheduled it for July 19, 2001, thereby effectively disregarding the mandate in the DOLE-NCR decision for a supervised election. With

this development, the Aliazas group filed an urgent motion for intervention with the Bureau of Labor Relations (*BLR*). The BLR responded by issuing a cease and desist order that effectively cancelled the Union election scheduled on July 19, 2001.

It was at this point that the Aliazas group wrote De La Salle to ask that the collected Union dues and agency fees be placed in escrow. De La Salle did as requested, citing the DOLE and BLR orders as justification for its action. It also outlined the mechanics of the escrow deposit of the collected union dues.

In reaction, the Union filed a complaint for unfair labor practice (*ULP complaint*) against De La Salle claiming that the University unduly interfered with its internal affairs. While this ULP complaint was pending, it filed a Notice of Strike with the Office of the Secretary of Labor and Employment **charging the University of (1) gross violation of the CBA, and (2) bargaining in bad faith.** The Notice of Strike was certified to the National Labor Relations Commission for compulsory arbitration and was assigned to the NLRC 3rd Division (NLRC-NCR CA 00222-02).

The Compulsory Arbitration Rulings

The **labor arbiter dismissed the ULP complaint** prompting the union to appeal to the NLRC (NLRC-NCR CA 033-173-02). The appeal was raffled to the NLRC 2nd Division. In the meantime, the union filed four (4) other cases against De La Salle, which were also referred to the NLRC 2nd Division.

With this development, the union filed a motion with the NLRC 3rd Division handling the certified case, to have the four new cases and the appeal in the ULP complaint pending with the NLRC 2nd Division, subsumed under the certified case. The NLRC 3rd Division granted the motion.

De La Salle elevated the NLRC 3rd Division ruling to the Court of Appeals (*CA*). The petition — CA G.R. No. SP-79798 — was raffled to the CA 10th Division.

In the meantime, **the NLRC 2nd Division dismissed the union's appeal on the ULP charge** in its decision dated June 26, 2003. The union questioned the decision before the CA on

a Rule 65 petition for *certiorari*. The petition was docketed as CA G.R. SP No. 81220 and assigned to the CA 1st Division.

The CA Decisions

On June 17, 2004, the CA 10th Division reversed the Order of the NLRC 3rd Division subsuming the ULP case under the certified case before it. According to the CA 10th Division, the ULP complaint had already been disposed of (on July 12, 2002) by the Arbiter and was in fact pending appeal before the NLRC 2nd Division when the NLRC 3rd Division issued its assailed Order (on April 20, 2003).

In its decision of September 16, 2005, the CA 1st Division (apparently unaware of the decision of the CA 10th Division) set aside the Order of the NLRC 2nd Division (that affirmed the dismissal of the ULP complaint), and ordered the transmittal of the records of the ULP complaint to the NLRC 3rd Division. **The sole issue the CA 1st Division resolved was "whether the NLRC [Second Division] committed grave abuse of discretion. . .in ignoring the order of the [NLRC] 3rd Division declaring subsumed or absorbed [herein respondent's ULP COMPLAINT] in the certified case."**

Since the decision would have revived a matter the NLRC had already ruled upon, De La Salle brought the CA 1st Division ruling to this Court for review through a Rule 45 petition for review on *certiorari.*

The Petition

Essentially, De La Salle faults the CA 1st Division for keeping alive the union's ULP complaint which the labor arbiter had dismissed and which dismissal the NLRC 2nd Division had affirmed. De La Salle submits that the CA 1st Division erred in ruling that the NLRC 2nd Division gravely abused its discretion when it ignored the NLRC 3rd Division Order subsuming the ULP complaint under the certified case.

Despite the absence of a ruling by the CA 1st Division on whether it had committed ULP, De La Salle also argues — dwelling on the substantive aspect of the ULP complaint —

that it was not guilty of unfair labor practice considering that the temporary measures it implemented were undertaken in good faith and to stay neutral in the face of the intra-union dispute.

The *Ponencia*

The *ponencia* nullifies the decision of the CA 1st Division in so far as it set aside the dismissal by the NLRC 2nd Division of the ULP complaint and ordered the ULP complaint subsumed under the certified case before the NLRC 3rd Division. It declares that "to transmit to the NLRC Third Division respondent's ULP complaint on appeal which has already been resolved by the NLRC Second Division would lead to absurd consequences."

On the merits of the ULP charge that the *ponencia* also ruled upon, it finds De La Salle liable for unfair labor practice and awards nominal damages and attorney's fees to the Union. It holds that De La Salle's interim measure of placing the collected union dues and agency fee in escrow deposit constituted interference in union affairs and, therefore, is an unfair labor practice act.

The Concurrence

I concur with the *ponencia* in striking down as **legally erroneous** the CA 1st Division decision that the ULP charge before the NLRC 2nd Division could be absorbed by the certified Notice of Strike case pending before the NLRC 3rd Division. **Separately from the reason stated in the Decision**, I believe the NLRC 3rd Division has no jurisdiction to order that the matter pending before the NLRC 2nd Division be "subsumed" in the certified case pending before it.

The various divisions within the NLRC are co-equal bodies and one division cannot order another with binding effect.[1] More importantly, *certification for compulsory arbitration* is a power lodged by law in the Secretary of Labor and Employment,[2] and is a power not shared with the NLRC or any of its divisions. Only the Labor Secretary can validly order that all pending

[1] Article 213, Labor Code, as amended by Republic Act No. 9347.

[2] *Id.,* Article 263(g).

cases bearing on or related to the notice of strike should be subsumed or consolidated with the certified case. The decision on whether or not to include cases already pending with the certified case, is a matter within the Secretary's discretion. But even the Secretary must justify an order to consolidate by showing the relationships of the cases with one another, taking into account the degree of development of the cases to be consolidated with the strike or notice of strike case. As a matter of practice, cases already submitted for decision are not consolidated with the strike case, unless the resolution of the issues in these cases are ultimately related to and are necessary for the full settlement of the issues.

The Dissent

I dissent from the finding that De La Salle committed unfair labor practice for two reasons. The **first reason** is procedural and jurisdictional. The **second reason** relates to the merits of the *ponencia's* finding of ULP.

a. The Procedural / Jurisdictional Reason.

A look at the root of the ULP complaint shows that it was originally filed with the labor arbiter **on the ground of interference with the union's right to self-organization**.[3] The labor arbiter found no ULP and the union appealed his ruling to the NLRC. The appeal was raffled to the NLRC 2nd Division.

At some point, complications set in because the union also filed a Notice of Strike with the Office of the Secretary of Labor **on the grounds of (1) gross violation of the CBA, and (2) bargaining in bad faith.** The Office of the Secretary of Labor certified the notice of strike to the NLRC for compulsory arbitration. The case was raffled to the 3rd Division.

The union moved before the NLRC 3rd Division that the ULP case with the NLRC 2nd Division be "subsumed" under the certified case. The NLRC 3rd Division granted the motion, prompting De La Salle to elevate the NLRC 3rd Division ruling

[3] Article 248(a), Labor Code, as amended.

to the Court of Appeals *(CA)*. De La Salle's petition for *certiorari* (under Rule 65) was raffled to the CA 10th Division.

In the meantime, the NLRC 2nd Division ruled on the ULP case on appeal before it, sustaining the Labor Arbiter's ruling that the case should be dismissed. The union questioned the NLRC 2nd Division decision before the CA through a Rule 65 petition for *certiorari*. The petition was docketed as CA G.R. SP No. 81220 and was raffled to the CA 1st Division. **This division's ruling on the petition is the decision now assailed in the present petition.**

For clarity, the **assailed decision of the CA 1st Division set aside the decision of the NLRC 2nd Division that dismissed the ULP charge on appeal and effectively disregarded the NLRC 3rd Division order that the ULP charge be subsumed under the certified case pending with the NLRC 3rd Division; the CA 1st Division decision thus ordered the records of the ULP charge transmitted to the NLRC 3rd Division.** *The union did not appeal from the CA 1st Division decision.* Parenthetically, the union brought the ULP case to the CA 1st Division on a Rule 65 petition for *certiorari* that does not stop the running of the period for finality of the NLRC 2nd Division decision; its finality can be thwarted only by a CA 1st Divison finding that it was issued with grave abuse of discretion. While the CA 1st Division voided the NLRC 2nd Division decision, *the CA's action was based on a reason other than the merits of the NLRC 2nd Division's confirmation that the ULP case should be dismissed.*

Based on these developments, the lone issue that is before the Court in this *Rule 45 petition for review on certiorari*, is the **legal correctness** of the CA 1st Division's ruling that **the ULP case should be referred back to the NLRC 3rd Division for decision.** No other aspect of the ULP case is before us and we will act outside our jurisdiction if we rule on the merits of the ULP charge against De La Salle. *Even the latter could not have brought the merits of the ULP charge before us since it was not a matter ruled upon in the CA decision under review.* If we rule on the merits of the ULP charge, we would effectively

be directly passing upon the merits of the NLRC 2nd Division's decision affirming the dismissal of the ULP charge. Even on a pure question of law, we cannot directly pass upon this decision since it has long since lapsed to finality.

Thus, *if we deny the petition* (thus, confirming the legal correctness of the CA 1st Division decision), the legal effect is the return of the ULP complaint to the NLRC 3rd Division for its disposition. On the other hand, *if we grant the petition*, the effect is to recognize the finality of the NLRC 2nd division decision affirming the dismissal of the ULP complaint for lack of merit.

b. On the Merits of the ULP Charge.

Despite the above position and to meet the *ponencia's* conclusions on the merits of the ULP charge, I am compelled to register this dissent. I am particularly concerned since ULP is the ultimate offense that can be committed in a labor-management relationship; a ULP strikes at the very heart of the relationship. It is the administrative equivalent of the capital penalty in a criminal case. An administrative finding of ULP, too, can lead to a criminal prosecution for ULP — a consequence the De La Salle management does not deserve under the circumstances of this case.[4]

Because of its nature and consequences, a finding of unfair labor practice charge is not made based alone on the cited ULP act *considered in isolation* or in the manner the *ponencia* did — by viewing De La Salle's act outside of the bigger context of the accompanying labor relations situation. Any perceived act of interference must be examined in terms of the act's inherent import and effects; in light of the surrounding circumstances; and weighed on the basis of the totality of the conduct of the entity charged. These circumstances include the factual setting of the alleged interference; the parties-in-interest or "players" whose interests should be considered in viewing the alleged ULP; the circumstances of the entity charged, particularly its record of anti-union animus; the circumstances of the accuser, particularly whether its own hands are clean; and the presence

[4] Article 247, Labor Code, as amended.

or absence of prejudice or real violation of employee rights to self-organization.

In viewing the "players" and their interests, consideration cannot be limited to a strictly bi-partite relationship between the union and management. While the Union represents the employees in a unionized setting, the latter — on their own — are live parties with rights to protect, not only against management, but even against their union. The law itself recognizes this employee role through provisions protecting them from their union.[5] The union, on the other hand, is merely the agent of the employees in their collective bargaining agreement with their employer.[6]

The interests of the employees in general, and those of the union as a representative entity, should be given particular attention when an internal dispute among union members exists on the issue of who should act for and in behalf of the union; these interests can be overlooked as the disputing groups' self-interests attain primacy in the heat of the internal dispute. *In a dispute such as the present case, it can be a gross misreading of the situation to equate the union to one group of employees to the exclusion of the employees questioning the union leadership. It would likewise be incorrect to conclude that prejudice to the union necessarily results if an intervening act balances the relationship between the two contending group of employees instead of giving one group primacy over the other.*

The setting of the alleged ULP must necessarily start from the root cause of the internal union dispute. In this case, a group of employees — the Aliazas group — sought *the holding of a union election* after the incumbent set of union officers had been in office for 15 years. The Aliazas petition is justified, not only by law, but by the union's own internal rules. To secure an election, the petitioning group went to the Department of Labor and Employment (*DOLE*) who, conformably with law, called for a supervised election. *The incumbent officers, however,*

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[5] *Id.,* Article 241.

[6] *Id.*, Article 255.

refused to follow the DOLE; they openly disregarded the official DOLE intervention and determined for themselves how and when the choice of union leaders would be held. This circumstance cannot be glossed over in considering the background facts as it left the incumbent officers with *dirty hands.* The defiance of DOLE and the mood that it fostered in the running of De La Salle's operations could not have escaped De La Salle management's attention. Labor relations-wise, this signified that a simple union election had become complicated as one side disregarded the regulatory authority whose presence and effectiveness would have ensured a trouble-free election process.

It was after these complications that the Aliazas group petitioned De La Salle, by letter, to place the collected union dues and agency fees in escrow. *This meant that union dues and agency fees would be collected as reflected in the CBA, but the funds would not be released to any specific officer or official until the union leadership issue had been determined.* In other words, the funds would be there for the Union, but its release was put on hold. Significantly, De La Salle did not undertake these arrangements out of the blue; its action was based on existing DOLE and BLR orders that recognized the state of uncertainty in the union leadership; the developing internal union situation as the incumbents defied the DOLE; its concern for the interests of its employees in general; and its concern as well and obligation to the De la Salle student population and the general public to ensure that classes are not disrupted however temporarily.

Two questions must have bothered De La Salle when it received the Aliazas group letter. First, did it have to act? And second, was it justified in acting as it did?

Unexpressed, but clearly underlying De La Salle's act, is its concern for its employees in general as parties with interests separate from the interests of the Union and its feuding leaders, as discussed above. In hindsight, it may be easy to say that the interest of the employees in general is outside of De La Salle's concern. In reality, however, hardly anything is outside of the

school's concern viewed from the prism of delivering its educational objectives. This is top and foremost. Employees are not far behind as the school's human resources at all levels are its greatest assets.

There, too, is De La Salle's concern to avoid being embroiled in a potentially explosive intra-union dispute that might affect the proper and effective administration of the school. De La Salle is an educational institution and as such must be particularly sensitive to the needs of its clientele — the students and their education; it is duty-bound to maintain stability and order in its operations, not primarily for its own sake, but for that of the students and their parents. For these reasons, no less than the DOLE itself accorded the notice of strike (the union subsequently filed) special treatment; the DOLE certified the notice of strike for compulsory arbitration and enjoined any planned or on-going strike to ensure that no work stoppage would disrupt the classes.

Inevitably, De La Salle's move must be viewed from the perspective of its inherent prerogative to manage its school operations. No less than the Philippine Constitution recognizes that both management and labor must receive protection from the law.[7] We have held as well that *"[E]ven as we are solicitous of the interests of the workers and their organizations, the Court has held that management is free to regulate all aspects of employment, including hiring, work assignments, supervision and transfer of employees, work methods, place and manner of work."*[8]

The exercise of management prerogative, of course, has its limits, both in the law and by contract, as in this case. The problem confronting De La Salle, however, was not one of outright violation of law and contract, but of how to balance its legitimate concerns with the limitations imposed by law and contract. In this regard, we cannot disregard its *good faith* in

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[7] Article XIII, Section 3, Philippine Constitution.

[8] *Philcom Employees Union v. Philippine Global Communications,* G.R. No. 144315, July 17, 2006, 495 SCRA 214.

doing what it did. Good faith, incidentally, is a concept that is not unknown in labor relations, albeit mostly in cases involving the labor side, particularly in strike situations.[9] There is no reason, however, why a concept that applies to labor cannot apply to management. The real question in every case is the basis of the act claimed to have been done in good faith — is there a rational basis supporting the claim?[10] The De La Salle situation and its surrounding facts, I believe, provide an occasion for the application of good faith to management.

A factor in De La Salle's favor is the nature of its move; when confronted with a dispute that threatened to involve it, it acted in a measured and calibrated manner; it complied with its CBA undertaking to enforce check-off but at the same time ensured that the checked-off fund would be preserved for those with the unquestioned authority to hold the fund. In other words, faced with a conflict on how to handle the funds it collected and held, it opted for the integrity and preservation of the fund. It should be considered in this regard that as the internal labor dispute was developing, all eyes were on De La Salle because the dispute, despite being labeled as internal, was happening within school premises; involved school employees; and was threatening to affect the continuity of school operations and classes. Anyway it turns, De La Salle could be blamed, if not on the basis of law, at least on the basis of its fairness in handling the situation, particularly of the union funds, as two disputing groups took diametrically opposed and increasingly hardening positions. To be sure, De La Salle could have chosen not to act by viewing matters *solely* from the prism of its CBA commitments. When it chose to act, De La Salle apparently looked at all the circumstances and opted for the principled way of handling the situation.

An important consideration in this regard is that De La Salle's act does not *per se* indicate anti-union animus. The letter itself

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[9] See: *People's Industrial & Commercial Employees and Workers Org. (FFW) v. PICC*, G.R. No. 37687, March 15, 1982, 112 SCRA 430.

[10] See: *Tiu, et al. v. NLRC, et al.*, G.R. No. 123276, August 18, 1997, 277 SCRA 680.

that it sent to the union reflects its clear intent. It said — *"this is the only way that the University can maintain neutrality on this matter of grave concern,"* — thus indicating its intention to its relationship with all union and employee sectors on an even keel. Further, the records do not show any history of anti-union animus from De La Salle's labor relations record. In fact, it concluded a CBA with the Union in 2000. **Significantly, both the labor arbiter and the NLRC — the entities who actually examined the facts of the case — found no anti-union animus and thus confirmed that no unfair labor practice took place.** I bring this up in light of our established ruling that:[11] *"[N]ecessarily, determining the validity of an employer's act involves an appraisal of his motives. In these cases motivations are seldom expressly avowed and avowals are not always candid. Thus, there must be a measure of reliance on the administrative agency. It is for the CIR (now NLRC), in the first instance, to weigh the employer's expressed motive in determining the effect on the employees of management's otherwise equivocal act."* Thus, from all the surrounding circumstances, there appears to be neither patent nor latent anti-union animus or any other circumstance supporting the conclusion that De La Salle committed unfair labor practice when it acted as it did.

A problem that has to be confronted in viewing De La Salle's balancing act, is the incumbent officers' loss of primacy and effective control over the funds — a reality that the *ponencia* capitalizes on as a prejudice caused to the union and to the employees' self-organization rights.

Viewed in isolation, particularly in light of the check-off provision of the existing collective bargaining agreement, it may be tempting at first blush to conclude that De La Salle had in fact favored one faction of the union against another. The background of the labor relations problem outlined above, however, shows that the situation is more complicated than that of one group of employees fighting another over union leadership. Nor

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[11] *Republic Savings Bank v. CIR,* No. L-20303, September 27, 1967, 21 SCRA 226, citing *NLRB v. M & B Headwear Co.,* 349 F2 170.

is it a labor *vs.* management issue since the core problem does not involve a direct union-management confrontation on an adversarial point. As already mentioned above, I do not believe that the interest of a group of employees, in an internal dispute with another group from the same union, should be equated with the interests of the union and of all the employees comprising the union or the bargaining unit. The larger concern should be about the interests of the union itself and the employees as a whole; from the perspective of the fund (that belongs to the union and not to any group of employees), these funds should be protected *for the union*. In this sense and under the background developments of the dispute, De La Salle's move offered the greatest amount of protection while at the same time causing the least interference in labor-management relations and in school operations. Thus, rather than the tendency to interfere with internal union affairs and the exercise of employee rights, De la Salle acted in a way protective of these rights. It collected and preserved the *corpus* of the collected funds pending the representation controversy, for the union and its members (the contending groups of employees included), for remittance to the duly elected union officials with appropriate authority to hold the funds. It therefore discharged its duty under the CBA and the law *to check-off union dues and agency fees and to deliver these to the union.* In due time after an authoritative ruling from the Secretary of Labor, it released the funds to the Union.

Another fault, in hindsight, was the unilateral character of De La Salle's move; it acted completely outside of the DOLE's authority when an internal union leadership issue was already pending before it (the DOLE). It should have taken cognizance of the official DOLE presence and duly notified it of the circumstances of the escrow deposit, holding the funds subject to DOLE disposition and action. I see this, however, as a problem in the application of the law and the handling of management affairs during the union's internal dispute. It was a matter traceable, more than anything else, to the quality of the legal advice the school secured when it was confronted with the Aliazas letter.

Thus, this aspect of De La Salle's move should not detract from the essential good faith that it exhibited.

A last point on the *ponencia's* finding of ULP is its reliance on a letter by Director Hans Cacdac of the BLR. The *ponencia* claims that De La Salle should have relinquished control over the union funds to the Union after the BLR Director Cacdac issued on May 16, 2003 his clarification on the matter of union dues.

I draw attention to the fact that at about the time of the Director's alleged clarification, the issue on the escrow deposit was a live issue already being arbitrated as an unfair labor practice case before the NLRC. The Labor Arbiter ruled on the case on July 12, 2002, but his ruling was appealed to the NLRC which affirmed the Labor Arbiter dismissing the case for lack of merit. There was also a pending case, a Notice of Strike, that was then before the Office of the Secretary of Labor. Among the live issues in that notice of strike was gross violation of the CBA — a ground that conceivably included the failure to abide by the CBA's check-off provision. Significantly, De La Salle released the funds in escrow when ordered to do so by the Secretary of Labor on November 25, 2003.

Considering that the above cited cases were brought by the union itself before the appropriate labor tribunals specifically on the matter of union dues, the BLR Director could not, by mere letter, have authoritatively spoken on the matter such that *ponencia* can rely on this letter as basis to label De La Salle's action as unfair labor practice.

In light of the foregoing, I vote to grant the petition.

THIRD DIVISION

[G.R. No. 177961. April 7, 2009]

LOURDES A. SABLE, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and HON. ENRIQUETA LOQUILLANO-BELARMINO, Presiding Judge, Branch 57, RTC, Cebu City,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; PROBATION LAW; APPLICATION FOR PROBATION MUST BE FILED WITHIN THE PERIOD FOR PERFECTING AN APPEAL; CASE AT BAR. — Probation is a special privilege granted by the state to a penitent qualified offender. It essentially rejects appeals and encourages an otherwise eligible convict to immediately admit his liability and save the state the time, effort and expenses to jettison an appeal. x x x It is quite clear from the afore-quoted provision that an application for probation must be made within the period for perfecting an appeal, and the filing of the application after the time of appeal has lapsed is injurious to the recourse of the applicant. In the present petition before Us, petitioner filed the application for probation on 25 August 2003, almost eight months from the time the assailed judgment of the RTC became final. Clearly, the application for probation was filed out of time pursuant to Rule 122, Sec. 6 of the Rules of Court, which states that an "appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from." In *Palo v. Militante,* this Court held that what the law requires is that the application for probation must be filed within the period for perfecting an appeal. The need to file it within such period is intended to encourage offenders, who are willing to be reformed and rehabilitated, to avail themselves of probation at the first opportunity.

2. ID.; ID.; ACCUSED MUST NOT HAVE APPEALED HIS CONVICTION BEFORE HE CAN AVAIL HIMSELF OF PROBATION; REASON. — The Probation Law is patently clear that "no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction." The law expressly requires that an

accused must not have appealed his conviction before he can avail himself of probation. This outlaws the element of speculation on the part of the accused — to wager on the result of his appeal — that when his conviction is finally affirmed on appeal, the moment of truth well nigh at hand and the service of his sentence inevitable, he now applies for probation as an "escape hatch," thus rendering nugatory the appellate court's affirmance of his conviction. Consequently, probation should be availed of at the first opportunity by convicts who are willing to be reformed and rehabilitated; who manifest spontaneity, contrition and remorse. This was the reason why the Probation Law was amended, precisely to put a stop to the practice of appealing from judgments of conviction even if the sentence is probationable, for the purpose of securing an acquittal and applying for the probation only if the accused fails in his bid.

3. **ID.; ID.; PROBATION AND APPEAL ARE MUTUALLY EXCLUSIVE REMEDIES. —** We also note that the petitioner is unable to make up her mind as to what recourse she will pursue, since in her petition for *Certiorari* she questioned the denial of her probation, while in her Memorandum she questioned the denial of her appeal. This just obviously manifests the intention of petitioner to benefit from the remedy of probation just in case the remedy of appeal is not given due course. Prevailing jurisprudence treats appeal and probation as mutually exclusive remedies because the law is unmistakable about it and, therefore, petitioner cannot avail herself of both.

4. **REMEDIAL LAW; APPEALS; RULE 45 PETITION, PROPER REMEDY; REMEDIES UNDER RULE 45 AND RULE 65, DISTINGUISHED. —** [W]e find that there is an error in the mode of appeal used by petitioner. x x x Here, petitioner elevated this petition *via* a Petition for *Certiorari* under Rule 65. Under the Rules, subject to the exceptions, appeal to the Supreme Court must be *via* a petition for Review under Rule 45. Since, this appeal is not within the exceptions, the proper mode of appeal should be a Petition for Review under Rule 45, not under Rule 65. It has been held that the proper remedy of the party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45, which is not identical with a petition for review 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 us 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 ground 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. One of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, *certiorari* will not prosper even if the ground therefor is grave abuse of discretion. Accordingly, when a party adopts an improper remedy, as in this case, his petition may be dismissed outright.

APPEARANCES OF COUNSEL

Law Firm of G.N. Abellana & Associates for petitioner.
The Solicitor General for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for *Certiorari*[1] under Rule 65 of the Revised Rules of Court filed by petitioner Lourdes A. Sable seeking the reversal and the setting aside of the Decision[2] dated 14 December 2006 and Resolution[3] dated 21 February 2007 of the Court of Appeals in CA-G.R. CEB-CR No. 81981. In its assailed Decision, the Court of Appeals affirmed the Order[4] dated 22 July 2003 of the Regional Trial Court (RTC) of Cebu, Branch 57, disallowing petitioner's application for probation in Criminal Case No. CBU-35455, and denied petitioner's Motion for Reconsideration thereof.

The undisputed facts are as follows:

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[1] *Rollo*, pp. 4-9.

[2] Penned by Associate Justice Romeo F. Barza with Associate Justices Isaias P. Dicdican and Priscilla Baltazar- Padilla, concurring. *Id.* at 37-43.

[3] *Id.* at 47-48.

[4] Penned by Hon. Enriqueta Loquillano-Belarmino; *id.* at 39.

Petitioner, together with Concepcion Abangan (Concepcion), Ildefonsa Anoba (Ildefonsa) and Valentine Abellanosa (Valentine), is accused in Criminal Case No. CBU-35455 of Falsification of Public Documents under Article 172(1) in relation to Article 171 of the Revised Penal Code.

Petitioner and co-accused Ildefonsa were arraigned on 20 July 1994 while co-accused Concepcion was never arrested. During the initial trial, Atty. Gines Abellana, counsel for all the accused, manifested that co-accused Valentine was already dead and requested that his name be dropped from the information.

Petitioner and co-accused Ildefonsa are the grand-daughters of Eleuteria Abangan, who is one of the registered owners of Lot No. 3608, which is registered under Original Certificate of Title (OCT) No. RO-2740 in the names of Andrea Abangan, Fabian Abangan, Sergio Abangan, Antonino Abangan, Perfecta Abangan and Eleuteria Abangan. Private complainant Gaspar Abangan (Gaspar) is the grandson of Lamberto Abangan, who is a brother of the registered owners of the lot. Petitioner, together with her co-accused Ildefonsa, allegedly falsified an Extrajudicial Declaration of Heirs with Waiver of Rights and Partition Agreement, as the signatures contained therein were not the signatures of the true owners of the land. Petitioner and Ildefonsa also allegedly caused it to appear that a certain Remedios Abangan, who was already dead, signed the document.

By virtue of the Extrajudicial Declaration of Heirs, Lot No. 3608 was subdivided into two lots, namely, 3608-A and 3608-B; and OCT No. RO-2740 was cancelled. Lot No. 3608-A was transferred to the name of co-accused Concepcion and was registered under Transfer Certificate of Title (TCT) No. 113266. With respect to Lot No. 3608-B, petitioner was able to execute a Deed of Absolute Sale in favor of one Perpetua Sombilon, and accordingly, the title to the lot was transferred to the name of the latter under TCT No. 113267.

On 28 November 2000, the RTC convicted petitioner of the crime of Falsification of Public Documents under Article 172(1) in relation to Article 171 of the Revised Penal Code, but acquitted Ildefonsa. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing, the court finds accused Ildefonsa Anoba not guilty. However, the court finds Lourdes Abellanosa Sable guilty beyond reasonable doubt of the crime charged and hereby sentences her to suffer an indeterminate penalty of FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY to SIX (6) YEARS.[5]

Thereafter, petitioner filed a Motion for Reconsideration[6] of said RTC Decision on 20 January 2001. After several postponements due to the vacancy in the court *a quo*, the motion was submitted for resolution only on 29 June 2001. The same was denied by respondent Judge Enriqueta Loquillano-Belarmino in an Order[7] dated 20 November 2003. On 13 December 2002, a copy of the Order denying reconsideration of the judgment was received by petitioner's counsel.

Due to petitioner's failure to interpose a timely appeal, an entry of judgment was issued on 5 June 2003. Petitioner, through counsel, filed Motions to Recall Warrant of Arrest and to Vacate Entry of Judgment with Reconsideration and Explanation[8] on 12 June 2003 alleging, among other things, that petitioner's counsel did not receive the Order because it was received by a certain Che who was undergoing practicum in her counsel's law office. On the day of receipt thereof, it was Che's last day at the office. Petitioner's counsel further alleged that he was of the belief that his Motion for Reconsideration of the judgment of conviction would be rescheduled for hearing after the same had been postponed due to the vacancy in the court *a quo*.

Pending resolution of the Motions to Recall Warrant of Arrest and to Vacate Entry of Judgment with Reconsideration, petitioner filed a Notice of Appeal on 17 June 2003.[9]

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[5] *Id.* at 16.

[6] *Id.* at 17-21.

[7] *Id.* at 22-23.

[8] *Id.* at 24-25.

[9] *Id.* at 39.

Subsequently, in an Order[10] dated 22 July 2003, respondent Judge denied the Motions to Recall Warrant of Arrest and to Vacate Entry of Judgment. Petitioner's Notice of Appeal was also denied for having been filed out of time.

On 25 August 2003, petitioner moved for the reconsideration of the 22 July 2003 Order and intimated her desire to apply for probation instead of appealing the judgment of conviction.[11] In a Motion[12] dated 15 October 2003, petitioner again prayed for the Recall of the Warrant of Arrest against her, while her Motion for Reconsideration and her application for probation were pending resolution before the RTC.

Finally, on 20 November 2003, the RTC issued the assailed Order, the dispositive portion of which reads as follows:

> WHEREFORE, accused's motion for reconsideration of the Order dated July 22, 2003, motion to recall warrant of arrest and motion to allow accused to avail of the benefits of the Probation Law, all are hereby denied.[13]

Petitioner filed a Petition for *Certiorari* under Rule 65 before the Court of Appeals docketed as CA-G.R. CEB-CR No. 81981, raising the sole issue of whether or not the respondent court acted with grave abuse of discretion in denying the application for probation.

In its Decision[14] dated 14 December 2006, the Court of Appeals denied the petition for lack of merit, stating that the alleged failure of petitioner's counsel to timely appeal the judgment of conviction following the denial of the reconsideration thereof could not amount to excusable negligence. It further enunciated that a notice of appeal of judgment filed six months after the denial of the motion for reconsideration was denied is filed out

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

[11] *Id.* at 40.

[12] *Id.* at 36.

[13] *Id.* at 23.

[14] *Id.* at 37-43.

of time and, as a result, the application for probation must necessarily fail because the remedies of appeal and probation are alternative and mutually exclusive of each other.

The Court of Appeals refused to reconsider its earlier Decision in a Resolution dated 21 February 2007.

Hence, this Petition for *Certiorari* under Rule 65 of the Rules of Court raising the sole issue:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AFFIRMING THE TRIAL COURT'S ORDER DENYING PETITIONER'S APPLICATION FOR PROBATION.[15]

The petitioner prays that the instant petition be granted by allowing her to apply for probation and ordering the RTC through respondent Judge to act on the application for probation by the petitioner, based upon the recommendation of the probationer who may be assigned to conduct the investigation of said application.

For the State, the Solicitor General argues that the Court of Appeals properly denied the petition before it because, first, it is procedurally flawed for being an improper recourse; and secondly, for non-compliance with the mandatory requirement of the law that an application for probation must be filed within the period for perfecting an appeal.

We find the Petition devoid of merit.

Probation is a special privilege granted by the state to a penitent qualified offender. It essentially rejects appeals and encourages an otherwise eligible convict to immediately admit his liability and save the state the time, effort and expenses to jettison an appeal.[16]

The pertinent provision of the Probation Law, as amended, reads:

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[15] *Id.* at 7.

[16] *Francisco v. Court of Appeals,* 313 Phil. 241, 254-255 (1995).

Sec. 4. **Grant of Probation**. — Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant and upon application by said defendant *within the period for perfecting an appeal,* suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best; Provided, That *no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction.*

Probation may be granted whether the sentence imposes a term of imprisonment or a fine only. An application for probation shall be filed with the trial court. The filing of the application shall be deemed a waiver of the right to appeal.[17] (Emphasis supplied.)

It is quite clear from the afore-quoted provision that an application for probation must be made within the period for perfecting an appeal, and the filing of the application after the time of appeal has lapsed is injurious to the recourse of the applicant.

In the present petition before Us, petitioner filed the application for probation on 25 August 2003, almost eight months from the time the assailed judgment of the RTC became final. Clearly, the application for probation was filed out of time pursuant to Rule 122, Sec. 6 of the Rules of Court, which states that an "appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from." In *Palo v. Militante,*[18] this Court held that what the law requires is that the application for probation must be filed within the period for perfecting an appeal. The need to file it within such period is intended to encourage offenders, who are willing to be reformed and rehabilitated, to avail themselves of probation at the first opportunity.

Furthermore, the application for probation must necessarily fail, because before the application was instituted, petitioner already filed a Notice of Appeal before the RTC on 17 June 2003. The Probation Law is patently clear that "no application

[17] Presidential Decree No. 968 as amended by Presidential Decree No. 1990.

[18] G.R. No. 76100, 18 April 1990, 184 SCRA 395, 400.

for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction."

The law expressly requires that an accused must not have appealed his conviction before he can avail himself of probation. This outlaws the element of speculation on the part of the accused — to wager on the result of his appeal — that when his conviction is finally affirmed on appeal, the moment of truth well nigh at hand and the service of his sentence inevitable, he now applies for probation as an "escape hatch," thus rendering nugatory the appellate court's affirmance of his conviction. Consequently, probation should be availed of at the first opportunity by convicts who are willing to be reformed and rehabilitated; who manifest spontaneity, contrition and remorse.[19]

This was the reason why the Probation Law was amended, precisely to put a stop to the practice of appealing from judgments of conviction even if the sentence is probationable, for the purpose of securing an acquittal and applying for the probation only if the accused fails in his bid.[20]

We also note that the petitioner is unable to make up her mind as to what recourse she will pursue, since in her petition for *Certiorari* she questioned the denial of her probation,[21] while in her Memorandum she questioned the denial of her appeal.[22] This just obviously manifests the intention of petitioner to benefit from the remedy of probation just in case the remedy of appeal is not given due course. Prevailing jurisprudence treats appeal and probation as mutually exclusive remedies because the law is unmistakable about it and, therefore, petitioner cannot avail herself of both.[23]

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[19] *Francisco v. Court of Appeals*, *supra* note 16 at 256-257.

[20] *People v. Judge Evangelista,* 324 Phil. 80, 86-87 (1996).

[21] *Rollo*, p. 7.

[22] *Id.* at 157.

[23] *Llamado v. Court of Appeals,* G.R. No. 84850, 29 June 1989, 174 SCRA 566, 572-573; *Bala v. Martinez,* G.R. No. 67301, 29 January 1990, 181 SCRA 459, 468-469.

The explanation given by petitioner as to the cause of the failure to appeal the judgment of conviction is flimsy. Petitioner's counsel claims that the Order of the RTC denying the Motion for Reconsideration dated 20 January 2001 was received by a certain Che, who was a student doing practicum in his law office, and he attributed the non-receipt of the Order to her and claimed that the mistake was excusable. We agree with the Court of Appeals that to constitute excusable negligence, such must be due to some unexpected or unavoidable event, and not due to petitioner counsel's self- admitted mistake or negligence in not giving proper instruction to his staff.

Time and again, the Court has admonished law firms to adopt a system of distributing pleadings and notices, whereby lawyers working therein promptly receive notices and pleadings intended for cases. The Court has also often repeated that clerk's negligence that adversely affects the cases handled by lawyers is binding upon the latter.[24]

Finally, we find that there is an error in the mode of appeal used by petitioner. Under Rule 122, Section 3(e) of the Rules of Court, "[e]xcept as provided in the last paragraph of Section 13, Rule 124, all other appeals to the Supreme Court shall be by petition for review on *certiorari* under Rule 45."

Here, petitioner elevated this petition *via* a Petition for *Certiorari* under Rule 65. Under the Rules, subject to the exceptions,[25] appeal to the Supreme Court must be *via* a petition for Review under Rule 45. Since, this appeal is not within the exceptions, the proper mode of appeal should be a Petition for Review under Rule 45, not under Rule 65.

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[24] *Negros Stevedoring Co., Inc. v. Court of Appeals,* G.R. No. L-36003, 21 June 1988, 162 SCRA 371, 375.

[25] Rule 124, Section 13 (2nd paragraph). Whenever the Court of Appeals finds that the penalty of death, *reclusion perpetua,* or life imprisonment should be imposed in a case, the court, after discussion of the evidence and the law involved, shall render judgment imposing the penalty of death, *reclusion perpetua,* or life imprisonment as the circumstances warrant. However, it shall refrain from entering the judgment and forthwith certify the case and elevate the entire record thereof to the Supreme Court for review.

It has been held that the proper remedy of the party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45, which is not identical with a petition for review 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 us 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 ground 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.[26] One of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, *certiorari* will not prosper even if the ground therefor is grave abuse of discretion.[27] Accordingly, when a party adopts an improper remedy, as in this case, his petition may be dismissed outright.[28]

Therefore, there is no abuse of discretion amounting to lack or excess of jurisdiction in the Court of Appeals' Decision and Resolution affirming the trial court's Orders denying petitioner's Notice of Appeal, Motions to Recall Warrant of Arrest and to Vacate Entry of Judgment, and the application for probation. There is nothing capricious in not granting an appeal after the time to file the same has lapsed, nor is there anything arbitrary in denying an application for probation after a notice of appeal has been filed.

WHEREFORE, premises considered, the instant Petition for *Certiorari* under Rule 65 is hereby *DISMISSED*. The Decision dated 14 December 2006 and Resolution dated 21 February 2007 of the Court of Appeals are *AFFIRMED*. No costs.

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[26] *Mercado v. Court of Appeals*, G.R. No. 150241, 4 November 2004, 441 SCRA 463, 469.

[27] *VMC Rural Electric Service Cooperative, Inc. v. Court of Appeals*, G.R. No. 153144, 16 October 2006, 504 SCRA 336, 352.

[28] *Mercado v. Court of Appeals, supra* note 26.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio Morales,[*] *Nachura,* and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 180165. April 7, 2009]

METROPOLITAN BANK & TRUST COMPANY, *petitioner, vs.* **HON. SECRETARY OF JUSTICE RAUL M. GONZALES, OLIVER T. YAO and DIANA T. YAO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE, DEFINED AND EXPLAINED. — Probable cause has been defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. Probable cause is a reasonable ground of presumption that a matter is, or may be, well founded on such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. The term does not mean "actual or positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense

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[*] Per Special Order No. 602, dated 20 March 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Conchita Carpio Morales to replace Associate Justice Ma. Alicia Austria-Martinez, who is on official leave.

charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.

2. **ID.; ID.; ID.; PURPOSE AND NATURE OF PRELIMINARY INVESTIGATION. —** To determine the existence of probable cause, there is need to conduct preliminary investigation. A preliminary investigation constitutes a realistic judicial appraisal of the merits of a case. Its purpose is to determine whether (a) a crime has been committed; and (b) whether there is a probable cause to believe that the accused is guilty thereof. It is a means of discovering which person or persons may be reasonably charged with a crime. The conduct of preliminary investigation is executive in nature. The Court may not be compelled to pass upon the correctness of the exercise of the public prosecutor's function **unless there is a showing of grave abuse of discretion or manifest error in his findings.** Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack or excess of jurisdiction. The exercise of power must have been done in an arbitrary or a despotic manner by reason of passion or personal hostility. It must have been so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

3. **ID.; ID.; ID.; PROBABLE CAUSE WARRANTING THE PROSECUTION FOR ESTAFA IN RELATION TO P.D. 115, PRESENT. —** [W]e conclude that there is ample evidence on record to warrant a finding that there is a probable cause to warrant the prosecution of private respondents for estafa. It must be once again stressed that probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. That private respondents did not sell the goods under the trust receipt but allowed it to be used by their sister company is of no moment. The offense punished under Presidential Decree No. 115 is in the nature of *malum prohibitum.* A mere failure to deliver the proceeds of the sale or the goods, if not sold, constitutes a criminal offense that causes prejudice not only to another, but more to the public interest. Even more incredible is the contention of private respondents that they did not give much significance to the documents they signed, considering the enormous value of the transaction involved. Thus, it is highly

improbable to mistake trust receipt documents for a contract of loan when the heading thereon printed in bold and legible letters reads: "Trust Receipts." We are not prejudging this case on the merits. However, by merely glancing at the documents submitted by petitioner entitled "Trust Receipts" and the arguments advanced by private respondents, we are convinced that there is probable cause to file the case and to hold them for trial. All told, the evidentiary measure for the propriety of filing criminal charges has been reduced and liberalized to a mere probable cause. As implied by the words themselves, "probable cause" is concerned with probability, not absolute or moral certainty.

4. **ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION COMMITTED BY JUSTICE SECRETARY AT THE PRELIMINARY INVESTIGATION. —** In the present case, the abuse of discretion is patent in the act of the Secretary of Justice holding that the contractual relationship forged by the parties was a simple loan, for in so doing, the Secretary of Justice assumed the function of the trial judge of calibrating the evidence on record, done only after a full-blown trial on the merits. The fact of existence or non-existence of a trust receipt transaction is evidentiary in nature, the veracity of which can best be passed upon after trial on the merits, for it is virtually impossible to ascertain the real nature of the transaction involved based solely on the self-serving allegations contained in the opposing parties' pleadings. Clearly, the Secretary of Justice is not in a competent position to pass judgment on substantive matters. The bases of a party's accusation and defenses are better ventilated at the trial proper than at the preliminary investigation. We need not overemphasize that in a preliminary investigation, the public prosecutor merely determines whether there is probable cause or sufficient ground to engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty thereof and should be held for trial. It does not call for the application of rules and standards of proof that a judgment of conviction requires after trial on the merits. The complainant need not present at this stage proof beyond reasonable doubt. A preliminary investigation does not require a full and exhaustive presentation of the parties' evidence. Precisely, there is a trial to allow the reception of evidence for both parties to substantiate their respective claims.

5. **CRIMINAL LAW; ESTAFA; A VIOLATION OF ANY OF THE UNDERTAKINGS UNDER THE TRUST RECEIPT AGREEMENT CONSTITUTES ESTAFA. —** An entrustee is one having or taking possession of goods, documents or instruments under a trust receipt transaction, and any successor in interest of such person for the purpose of payment specified in the trust receipt agreement. The entrustee is obliged to (1) hold the goods, documents or instruments in trust for the entruster and shall dispose of them strictly in accordance with the terms and conditions of the trust receipt; (2) receive the proceeds in trust for the entruster and turn over the same to the entruster to the extent of the amount owed to the entruster or as appears on the trust receipt; (3) insure the goods for their total value against loss from fire, theft, pilferage or other casualties; (4) keep said goods or the proceeds therefrom whether in money or whatever form, separate and capable of identification as property of the entruster; (5) return the goods, documents or instruments in the event of non-sale or upon demand of the entruster; and (6) observe all other terms and conditions of the trust receipt not contrary to the provisions of the decree. The entruster shall be entitled to the proceeds from the sale of the goods, documents or instruments released under a trust receipt to the entrustee to the extent of the amount owed to the entruster or as appears in the trust receipt; or to the return of the goods, documents or instruments in case of non-sale; and to the enforcement of all other rights conferred on him in the trust receipt, provided these are not contrary to the provisions of the document. A violation of any of these undertakings constitutes estafa defined under Article 315(1)(b) of the Revised Penal Code, as provided by Section 13 of Presidential Decree No. 115 x x x.

APPEARANCES OF COUNSEL

Perez Calima Suratos Maynigo & Roque Law Offices for petitioner.

Salva Salva and Salva for respondents.

DECISION

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court filed by petitioner Metropolitan Bank and Trust Company, seeking to reverse and set aside the Decision[1] dated 30 March 2007and the Resolution[2] dated 16 October 2007 of the Court of Appeals in CA-G.R. SP No. 91892. In its assailed Decision and Resolution, the appellate court affirmed the Resolution[3] of the Secretary of Justice directing the City Prosecutor of Manila to move for the withdrawal of the Informations for Estafa filed against private respondents Oliver T. Yao and Diana T. Yao.

The factual and procedural antecedents of this present petition are as follows:

Petitioner is a banking institution duly authorized to engage in the banking business under Philippine laws.

Private respondents were the duly authorized representatives of Visaland Inc. (Visaland), likewise a domestic corporation engaged in the real estate development business.

In order to finance the importation of materials necessary for the operations of its sister company, Titan Ikeda Construction and Development Corporation (TICDC), private respondents, on behalf of Visaland, applied with petitioner for 24 letters of credit, the aggregate amount of which reached the sum of ₱68,749,487.96. Simultaneous with the issuance of the letters of credit, private respondents signed trust receipts[4] in favor of

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[1] Penned by Associate Justice Normandie B. Pizzaro with Associate Justices Edgardo P. Cruz and Fernanda Lampas-Peralta, concurring. *Rollo,* pp. 61-70.

[2] *Id.* at 59-60.

[3] Records, pp. 268-274.

[4] *Rollo,* pp. 119-142. A commercial document whereby the bank releases the goods in the possession of the entrustee but retains ownership thereof while the entrustee shall sell the goods and apply the proceeds for the full payment of his liability with the bank. (Villanueva, *COMMERCIAL LAW REVIEW* [2004 Edition].)

petitioner. Private respondents bound themselves to sell the goods covered by the letters of credit and to remit the proceeds to petitioner, if sold, or to return the goods, if not sold, on or before their agreed maturity dates.

When the trust receipts matured, private respondents failed to return the goods to petitioner, or to return their value amounting to ₱68,749,487.96 despite demand. Thus, petitioner filed a criminal complaint[5] for estafa[6] against Visaland and private respondents with the Office of the City Prosecutor of Manila (City Prosecutor).[7]

In their Counter-Affidavit,[8] private respondents denied having entered into trust receipt transactions with petitioner. Instead, private respondents claimed that the contract entered into by the parties was a Contract of Loan secured by a Real Estate Mortgage over two parcels of land situated at Tagaytay City and registered under the name of the spouses Wilbert and Isabelita King (the spouses King).[9] According to private respondents, petitioner made them sign documents bearing fine prints without apprising them of the real nature of the transaction involved. Private respondents came to know of the trust receipt transaction only after they were served a copy of the Affidavit-Complaint of the petitioner.

After the requisite preliminary investigation, the City Prosecutor found that no probable cause existed and dismissed Information Sheet (I.S.) No. 02G-30918 in a Resolution[10] dated 23 January 2003. While the City Prosecutor was not persuaded by the defense proffered by private respondents that no trust receipt transaction

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[5] Records, pp. 102-128.

[6] Under Article 315 (1)(b) of the Revised Penal Code.

[7] Under Section 13 of Presidential Decree No. 115 (Trust Receipts Law), the failure of the entrustee to return the goods covered by the trust receipt or the proceeds from the sale thereof shall constitute the crime of estafa.

[8] Records, 117-128.

[9] The records do not show how the spouses King are related to private respondents or to Visaland.

[10] *Rollo*, pp. 271-278.

existed, it nonetheless, dismissed the case for lack of evidence that prior demand was made by petitioner. The City Prosecutor underscored that for a charge of estafa with grave abuse of confidence to prosper, previous demand is an indispensable requisite.

To prove that a demand was made prior to the institution of the criminal complaint, petitioner attached to its Motion for Reconsideration a copy of a letter-demand[11] dated 27 February 2001, addressed to private respondents.

After the element of prior demand was satisfied, the City Prosecutor issued a Resolution[12] dated 11 October 2004 finding probable cause for estafa under Article 315, paragraph 1(b)[13] of the Revised Penal Code, in relation to Presidential Decree No. 115.[14] Accordingly, 23 separate Informations[15] for estafa were filed before the Regional Trial Court (RTC) of Manila against private respondents. The cases were docketed as Criminal Cases No. 04231721-44 and raffled to Branch 17 of the said court.

In the interim, private respondents appealed the investigating prosecutor's Resolution to the Secretary of Justice. In a Resolution[16] dated 31 March 2005, the Secretary of Justice ruled that there was no probable cause to prosecute private respondents for estafa in relation to Presidential Decree No. 115. The Secretary of Justice declared that the legitimate transactional relationship between the parties being merely a

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[11] *Id.* at 186-188.

[12] *Id.* at 204.

[13] 1. With unfaithfulness or abuse of confidence, namely:

x x x x x x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

[14] Otherwise known as the Trust Receipts Law.

[15] *Rollo*, pp. 205-252.

[16] Records, pp. 268-274.

contract of loan, violations of the terms thereunder were not covered by Presidential Decree No. 115. Thus, the Secretary of Justice directed the City Prosecutor of Manila to move for the withdrawal of the Informations. In a subsequent Resolution[17] dated 30 August 2005, the Secretary of Justice denied petitioner's Motion for Reconsideration, for the matters raised therein had already been passed upon in his prior resolution.

Acting on the directive of the Secretary of Justice, the City Prosecutor moved for the withdrawal of the Informations which was granted by the RTC in an Order[18] dated 29 July 2005. Consequently, Criminal Cases No. 04-231721 to No. 04231744 were withdrawn. The RTC refused to reconsider its earlier resolution in an Order[19] dated 3 February 2006, thereby denying petitioner's Motion for Reconsideration.

From the adverse Resolutions of the Secretary of Justice, petitioner elevated its case before the Court of Appeals by filing a Petition for *Certiorari,*[20] which was docketed as CA-G.R. SP No. 91892. Petitioner averred in its Petition that the Secretary of Justice abused his discretion in ignoring the established facts and legal principles when he ruled that probable cause for the crime of estafa was absent.

The Court of Appeals, however, in its Decision[21] dated 30 March 2007, dismissed petitioner's Petition for *Certiorari* after finding that the Secretary of Justice committed no grave abuse of discretion in ruling against the existence of probable cause to prosecute private respondents. In arriving at its assailed decision, the appellate court recognized the authority of the Secretary of Justice to control and supervise the prosecutors, which includes the power to reverse or modify their decisions without committing grave abuse of discretion.

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[17] *Id.* at 301-302.

[18] *Id.* at 288.

[19] *Id.* at 360.

[20] CA *rollo*, pp. 1-28.

[21] *Rollo*, pp. 61-70.

Similarly ill-fated was Petitioner's Motion for Reconsideration in a Resolution[22] dated 16 October 2007.

Unfazed by the turn of events, petitioner now comes before this Court urging us to reverse the Court of Appeals Decision and Resolution and to direct the filing of Informations against private respondents. For the disposition of this Court is the sole issue of:

WHETHER OR NOT PROBABLE CAUSE EXISTS FOR THE PROSECUTION OF PRIVATE RESPONDENTS FOR THE CRIME OF ESTAFA IN RELATION TO P.D. NO. 115.

Petitioner impugns the findings of the appellate court sustaining the non-existence of probable cause as found by the Secretary of Justice. Petitioner insists that the allegations in its complaint, together with the pieces of evidence appended thereon, are sufficient to sustain a finding of probable cause in preliminary investigation.

Asserting their innocence, private respondents continue to argue that the agreement contracted by parties is one of loan, and not of trust receipt. To buttress their contention, private respondents aver that a contract of mortgage was executed by the spouses King to secure private respondents' loan obligation with petitioner, the proceeds of which were the ones utilized to finance the importation of materials.[23] Private respondents likewise defend the assailed Court of Appeals Decision and assert that the Secretary of Justice was justified in overruling the investigating prosecutor's findings, as sanctioned by Section 12 of DOJ Department Order No. 70.[24]

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[22] *Id.* at 59-60.

[23] A copy of the alleged Real Estate Mortgage, however, is not found in the records.

[24] Section 12 — Disposition of the appeal — The Secretary may reverse, affirm or modify the resolution. He may, *motu proprio* or upon motion, dismiss the petition for review on any of the following grounds:

- That the petition was filed beyond the period prescribed in Section 3 hereof;
- That the procedure or any of the requirements herein provided has not been complied with; x x x.

The present petition bears impressive merits.

Probable cause has been defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. Probable cause is a reasonable ground of presumption that a matter is, or may be, well founded on such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so.[25] The term does not mean "actual or positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.[26]

To determine the existence of probable cause, there is need to conduct preliminary investigation. A preliminary investigation constitutes a realistic judicial appraisal of the merits of a case.[27] Its purpose is to determine whether (a) a crime has been committed; and (b) whether there is a probable cause to believe that the accused is guilty thereof.[28] It is a means of discovering which person or persons may be reasonably charged with a crime.

The conduct of preliminary investigation is executive in nature. The Court may not be compelled to pass upon the correctness of the exercise of the public prosecutor's function **unless there is a showing of grave abuse of discretion or manifest error**

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[25] *Yu v. Sandiganbayan*, 410 Phil. 619, 627 (2001).

[26] *Pilapil v. Sandiganbayan,* G.R. No. 101978, 7 April 1993, 221 SCRA 349, 360.

[27] *Villanueva v. Ople*, G.R. No. 165125, 18 November 2005, 475 SCRA 539, 553.

[28] *Gonzalez v. Hongkong & Shanghai Banking Corporation*, G.R. No. 164904, 19 October 2007, 537 SCRA 255, 269.

in his findings.[29] Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack or excess of jurisdiction.[30] The exercise of power must have been done in an arbitrary or a despotic manner by reason of passion or personal hostility. It must have been so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[31]

In the present case, the abuse of discretion is patent in the act of the Secretary of Justice holding that the contractual relationship forged by the parties was a simple loan, for in so doing, the Secretary of Justice assumed the function of the trial judge of calibrating the evidence on record, done only after a full-blown trial on the merits. The fact of existence or non-existence of a trust receipt transaction is evidentiary in nature, the veracity of which can best be passed upon after trial on the merits, for it is virtually impossible to ascertain the real nature of the transaction involved based solely on the self-serving allegations contained in the opposing parties' pleadings. Clearly, the Secretary of Justice is not in a competent position to pass judgment on substantive matters. The bases of a party's accusation and defenses are better ventilated at the trial proper than at the preliminary investigation.

We need not overemphasize that in a preliminary investigation, the public prosecutor merely determines whether there is probable cause or sufficient ground to engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty thereof and should be held for trial. It does not call for the application of rules and standards of proof that a judgment of conviction requires after trial on the merits. The complainant need not present at this stage proof beyond reasonable doubt. A preliminary investigation does not require a full and exhaustive presentation of the parties' evidence.[32] Precisely,

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[29] *Ang v. Lucero*, G.R. No. 143169, 21 January 2005, 449 SCRA 157, 168.

[30] *Soria v. Desierto*, G.R. Nos. 153524-25, 31 January 2005, 450 SCRA 339, 345.

[31] *Id.*

[32] *Ang v. Lucero*, *supra* note 29.

there is a trial to allow the reception of evidence for both parties to substantiate their respective claims.

Having said the foregoing, this Court now proceeds to determine whether probable cause exists for holding private respondents liable for estafa in relation to Presidential Decree No. 115.

Trust receipt transactions are governed by the provisions of Presidential Decree No. 115 which defines such a transaction as follows:

Section 4. *What constitutes a trust receipt transaction.* — A trust receipt transaction, within the meaning of this Decree, is any transaction by and between a person referred to in this Decree as the entruster, and another person referred to in this Decree as the entrustee, whereby the entruster, who owns or holds absolute title or security interests over certain specified goods, documents or instruments, releases the same to the possession of the entrustee upon the latter's execution and delivery to the entruster of a signed document called a "trust receipt" wherein the entrustee binds himself to hold the designated goods, documents or instruments in trust for the entruster and to sell or otherwise dispose of the goods, documents or instruments with the obligation to turn over to the entruster the proceeds thereof to the extent of the amount owing to the entruster or as appears in the trust receipt or the goods, documents or instruments themselves if they are unsold or not otherwise disposed of, in accordance with the terms and conditions specified in the trust receipt, or for other purposes substantially equivalent to any one of the following:

1. In the case of goods or documents, (a) to sell the goods or procure their sale; or (b) to manufacture or process the goods with the purpose of ultimate sale: Provided, That, in the case of goods delivered under trust receipt for the purpose of manufacturing or processing before its ultimate sale, the entruster shall retain its title over the goods whether in its original or processed form until the entrustee has complied fully with his obligation under the trust receipt; or (c) to load, unload, ship or transship or otherwise deal with them in a manner preliminary or necessary to their sale; or

2. In the case of instruments, a) to sell or procure their sale or exchange; or b) to deliver them to a principal; or c) to effect the consummation of some transactions involving delivery to a depository or register; or d) to effect their presentation, collection or renewal.

The sale of goods, documents or instruments by a person in the business of selling goods, documents or instruments for profit who, at the outset of the transaction, has, as against the buyer, general property rights in such goods, documents or instruments, or who sells the same to the buyer on credit, retaining title or other interest as security for the payment of the purchase price, does not constitute a trust receipt transaction and is outside the purview and coverage of this Decree.

An entrustee is one having or taking possession of goods, documents or instruments under a trust receipt transaction, and any successor in interest of such person for the purpose of payment specified in the trust receipt agreement. The entrustee is obliged to (1) hold the goods, documents or instruments in trust for the entruster and shall dispose of them strictly in accordance with the terms and conditions of the trust receipt; (2) receive the proceeds in trust for the entruster and turn over the same to the entruster to the extent of the amount owed to the entruster or as appears on the trust receipt; (3) insure the goods for their total value against loss from fire, theft, pilferage or other casualties; (4) keep said goods or the proceeds therefrom whether in money or whatever form, separate and capable of identification as property of the entruster; (5) return the goods, documents or instruments in the event of non-sale or upon demand of the entruster; and (6) observe all other terms and conditions of the trust receipt not contrary to the provisions of the decree.[33]

The entruster shall be entitled to the proceeds from the sale of the goods, documents or instruments released under a trust receipt to the entrustee to the extent of the amount owed to the entruster or as appears in the trust receipt; or to the return of the goods, documents or instruments in case of non-sale; and to the enforcement of all other rights conferred on him in the trust receipt, provided these are not contrary to the provisions of the document.[34] A violation of any of these undertakings constitutes estafa defined under Article 315(1)(b) of the Revised

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[33] *Ching v. Secretary of Justice,* G.R. No. 164317, 6 February 2006, 481 SCRA 609, 631.

[34] *Id.*

Penal Code, as provided by Section 13 of Presidential Decree No. 115 *viz*:

Section 13. *Penalty Clause*. The failure of an entrustee to turn over the proceeds of the sale of the goods, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt shall constitute the crime of estafa, punishable under the provisions of Article Three hundred and fifteen, paragraph one (b) of Act Numbered Three thousand eight hundred and fifteen, as amended, otherwise known as the Revised Penal Code. If the violation or offense is committed by a corporation, partnership, association or other juridical entities, the penalty provided for in this Decree shall be imposed upon the directors, officers, employees or other officials or persons therein responsible for the offense, without prejudice to the civil liabilities arising from the criminal offense.

Apropos thereto, Article 315(1)(b) of the Revised Penal Code punishes estafa committed as follows:

ARTICLE 315. *Swindling (estafa)*. — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the 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 case, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* to *reclusion temporal*, as the case may be.

2nd. The penalty of *prision correccional* in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4th. By *arresto mayor* in its medium and maximum periods, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means; x x x.

As found in the Complaint-Affidavit of petitioner, private respondents were charged with failing to account for or turn over to petitioner the merchandise or goods covered by the trust receipts or the proceeds of the sale thereof in payment of their obligations thereunder. The following pieces of evidence adduced from the affidavits and documents submitted before the City Prosecutor are sufficient to establish the existence of probable cause, to wit:

First, the trust receipts[35] bearing the genuine signatures of private respondents; second, the demand letter[36] of petitioner addressed to respondents; and third, the initial admission by private respondents of the receipt of the imported goods from petitioner.[37]

Prescinding from the foregoing, we conclude that there is ample evidence on record to warrant a finding that there is a probable cause to warrant the prosecution of private respondents for estafa. It must be once again stressed that probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.

That private respondents did not sell the goods under the trust receipt but allowed it to be used by their sister company is of no moment. The offense punished under Presidential Decree No. 115 is in the nature of *malum prohibitum.* A mere failure to deliver the proceeds of the sale or the goods, if not sold, constitutes a criminal offense that causes prejudice not only to another, but more to the public interest.[38] Even more incredible is the contention of private respondents that they did not give

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[35] *Rollo*, pp. 119-142.

[36] *Id.* at 186-188.

[37] Paragraph h, Counter-Affidavit; CA *rollo*, p. 146.

[38] *Kilosbayan, Inc. v. Commission on Elections*, 345 Phil. 1141, 1174 (1997).

much significance to the documents they signed, considering the enormous value of the transaction involved. Thus, it is highly improbable to mistake trust receipt documents for a contract of loan when the heading thereon printed in bold and legible letters reads: "Trust Receipts." We are not prejudging this case on the merits. However, by merely glancing at the documents submitted by petitioner entitled "Trust Receipts" and the arguments advanced by private respondents, we are convinced that there is probable cause to file the case and to hold them for trial.

All told, the evidentiary measure for the propriety of filing criminal charges has been reduced and liberalized to a mere probable cause. As implied by the words themselves, "probable cause" is concerned with probability, not absolute or moral certainty.[39]

WHEREFORE, premises considered, the instant Petition is *GRANTED*. The Decision dated 30 March 2007 and the Resolution dated 16 October 2007 of the Court of Appeals in CA-G.R. SP No. 91892 are *REVERSED* and *SET ASIDE*. The Secretary of Justice is hereby *ORDERED* to direct the Office of the City Prosecutor of Manila to forthwith *FILE* Informations for estafa against private respondents Oliver T. Yao and Diana T. Yao before the appropriate court.

SO ORDERED.

Ynares-Santiago (Chairperson), Corona,[*] *Carpio Morales,*[**] and *Nachura, JJ.,* concur.

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[39] *Galario v. Office of the Ombudsman (Mindanao)*, G.R. No. 166797, 10 July 2007, 527 SCRA 190, 204.

[*] Associate Justice Renato C. Corona was designated to sit as additional member replacing Associate Justice Diosdado M. Peralta per Raffle dated 16 March 2008.

[**] Per Special Order No. 602, dated 20 March 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Conchita Carpio Morales to replace Associate Justice Ma. Alicia Austria-Martinez, who is on official leave.

SECOND DIVISION

[G.R. No. 180892. April 7, 2009]

UST FACULTY UNION, *petitioner, vs.* **UNIVERSITY OF SANTO TOMAS, REV. FR. ROLANDO DE LA ROSA, REV. FR. RODELIO ALIGAN, DOMINGO LEGASPI, and MERCEDES HINAYON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; THE PARTY MAKING AN ALLEGATION HAS THE BURDEN OF PROVING IT; IN LABOR CASES, IN ORDER TO SHOW THAT THE EMPLOYER COMMITTED UNFAIR LABOR PRACTICE, SUBSTANTIAL EVIDENCE IS REQUIRED TO SUPPORT THE CLAIM. — The general principle is that one who makes an allegation has the burden of proving it. While there are exceptions to this general rule, in the case of ULP, the alleging party has the burden of proving such ULP. Thus, we ruled in *De Paul/King Philip Customs Tailor v. NLRC* that "a party alleging a critical fact must support his allegation with substantial evidence. Any decision based on unsubstantiated allegation cannot stand as it will offend due process." While in the more recent and more apt case of *Standard Chartered Bank Employees Union (NUBE) v. Confesor*, this Court enunciated: **In order to show that the employer committed ULP under the Labor Code, substantial evidence is required to support the claim.** Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. In other words, whether the employee or employer alleges that the other party committed ULP, it is the burden of the alleging party to prove such allegation with substantial evidence. Such principle finds justification in the fact that ULP is punishable with both civil and/or criminal sanctions. x x x In sum, petitioner makes several allegations that UST committed ULP. The *onus probandi* falls on the shoulders of petitioner to establish or substantiate such claims by the requisite quantum of evidence. In labor cases as in other administrative proceedings, substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to

support a conclusion is required. In the petition at bar, petitioner miserably failed to adduce substantial evidence as basis for the grant of relief.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING AND ADMINISTRATION OF AGREEMENT; DUTY TO BARGAIN COLLECTIVELY; DEFINED; APPLICABILITY IN CASE AT BAR. —** Art. 252 of the Code defines the duty to bargain collectively as: ART. 252. **Meaning of duty to bargain collectively. — The duty to bargain collectively means the performance of a mutual obligation to meet and convene promptly and expeditiously in good faith** for the purpose of negotiating an agreement with respect to wages, hours of work and all other terms and conditions of employment including proposals for adjusting any grievances or questions arising under such agreement and executing a contract incorporating such agreements if requested by either party but such duty does not compel any party to agree to a proposal or to make any concession. In the instant case, until our Decision in G.R. No. 131235 that the Gamilla Group was not validly elected into office, there was no reason to believe that the members of the Gamilla Group were not the validly elected officers and directors of USTFU. To reiterate, the Gamilla Group submitted a Letter dated October 4, 1996 whereby it informed Fr. Rolando De La Rosa that its members were the newly elected officers and directors of USTFU. In the Letter, every officer allegedly elected was identified with the Letter signed by the alleged newly elected Secretary General and President, Ma. Lourdes Medina and Gamilla, respectively. More important though is the fact that the records are bereft of any evidence to show that the Mariño Group informed the UST of their objections to the election of the Gamilla Group. In fact, there is even no evidence to show that the scheduled elections on October 5, 1996 that was supposed to be presided over by the Mariño Group ever pushed through. Instead, petitioner filed a complaint with the med-arbiter on October 11, 1996 praying for the nullification of the election of the Gamilla Group. As such, there was no reason not to recognize the Gamilla Group as the new officers and directors of USTFU. And as stated in the above-quoted provisions of the Labor Code, the UST was obligated to deal with the USTFU, as the recognized representative of the bargaining unit, through the Gamilla Group. UST's failure to negotiate with the USTFU would have

constituted ULP. It is not the duty or obligation of respondents to inquire into the validity of the election of the Gamilla Group. Such issue is properly an intra-union controversy subject to the jurisdiction of the med-arbiter of the DOLE. Respondents could not have been expected to stop dealing with the Gamilla Group on the mere accusation of the Mariño Group that the former was not validly elected into office.

CARPIO MORALES, *J.*, *dissenting opinion:*

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; UNFAIR LABOR PRACTICES OF EMPLOYERS; INTERFERENCE, RESTRAINT OR COERCION; TEST; EMPLOYERS' ACTS IN CASE AT BAR ARE REEKING OF INTERFERENCE. —** Article 248(a) of the Labor Code considers it an Unfair Labor Practice (ULP) for an employer to interfere, restrain or coerce employees in the exercise of their right to self-organization or the right to form association. In *Insular Life Assurance Co., Ltd. Employees Association – NATU v. Insular Life Assurance Co. Ltd.,* this Court held that the test of whether an employer has interfered with and coerced employees in the exercise of their right to self-organization is whether the employer has engaged in conduct which, it may *reasonably* be said, **tends** to interfere with the free exercise of employees' rights; and that it is not necessary that there be direct evidence that any employee was in fact intimidated or coerced by statements of threats of the employer if there is a *reasonable* inference that anti-union conduct of the employer does have an adverse effect on self-organization and collective bargaining. Petitioners' questioned acts — allowing the conduct of the convocation which led to the election of the Gamilla Group; having its Chief Security Officer participate in the padlocking of the union office at the instance of the Gamilla Group; and significantly, entering into a new CBA while the old one was still subsisting and during the pendency of an intra-union dispute — reek of interference.
2. **ID.; ID.; ID.; TOTALITY OF CONDUCT DOCTRINE; THAT RESPONDENTS' QUESTIONED ACTS SHOULD BE EVALUATED *VIS-À-VIS* THE PRECEEDING AND SUBSEQUENT ATTENDING CIRCUMSTANCES, IN ACCORDANCE THEREWITH. —** While, indeed, the *onus*

probandi in ULP cases lies with the party making the charge, in this case the Mariño Group which was ultimately held to be the duly-elected officers of petitioner, contrary to the majority opinion that petitioner failed to discharge said burden, I find that it did prove that respondents were indeed guilty of ULP. It bears emphasis that respondents' questioned acts should be evaluated *vis-a-vis* the preceding and subsequent attending circumstances, in accordance with the totality of conduct doctrine.

3. **ID.; ID.; ID.; CASE OF. —** Respecting respondents' dealing with the Gamilla Group and executing a new CBA, the same is likewise a clear case of ULP. It bears noting that this Court's earlier finding in *Mariño, et al. v. Gamilla, et al*. that Case No. NCR-OD-M-9610-016, *"Eduardo J. Mariño, Jr., et al. v. Gil Gamilla, et al."* which was filed before the Bureau of Labor Relations was neither a labor nor an inter-union dispute, but clearly an intra-union dispute. For what was in question was not representation or composition of the bargaining unit but which, among the contending groups, are the true union officers. Art. 253 of the Labor Code thus applies, *viz*: **ART. 253. *Duty to bargain collectively when there exists a collective bargaining agreement.* — When there is a collective bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate nor modify such agreement during its lifetime**. However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties. Clearly, respondents' act of dealing with and subsequently executing a new CBA with the Gamilla Group, while the old CBA was still in force and effect is a violation of the above-quoted provision and constitutes ULP.

APPEARANCES OF COUNSEL

Eduardo J. Mariño, Jr. for petitioner.
Divina and Uy Law Offices for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This Petition for Review on *Certiorari* under Rule 45 seeks the reversal of the June 14, 2007 Decision[1] and November 26, 2007 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 92236. The CA Decision affirmed the November 28, 2003[3] and July 29, 2005[4] Resolutions of the Third Division of the National Labor Relations Commission (NLRC) in NLRC CA No. 037320-03. These Resolutions, in turn, affirmed the August 15, 2003 Decision of Labor Arbiter Edgardo M. Madriaga in NLRC NCR Case No. 10-06255-96. Entitled *University of Santo Tomas Faculty Union v. University of Santo Tomas, Rev. Fr. Rolando De La Rosa, Rev. Fr. Rodelio Aligan, Domingo Legaspi, and Mercedes Hinayon*, these decisions and resolutions were all in favor of respondents that were found not guilty of Unfair Labor Practice (ULP).

The Facts

On September 21, 1996, the University of Santo Tomas Faculty Union (USTFU) wrote a letter[5] to all its members informing them of a General Assembly (GA) that was to be held on October 5, 1996. The letter contained an agenda for the GA which included an election of officers. The then incumbent president of the USTFU was Atty. Eduardo J. Mariño, Jr.

On October 2, 1996, Fr. Rodel Aligan, O.P., Secretary General of the UST, issued a Memorandum[6] allowing the request of the

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[1] *Rollo*, pp. 42-50. Penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo P. Cruz and Hakim S. Abdulwahid.

[2] *Id.* at 52-53.

[3] *Id.* at 85-94.

[4] *Id.* at 95-96.

[5] *Id.* at 109.

[6] *Id.* at 110.

Faculty Clubs of the university to hold a convocation on October 4, 1996.

Members of the faculties of the university attended the convocation, including members of the USTFU, without the participation of the members of the UST administration. Also during the convocation, an election for the officers of the USTFU was conducted by a group called the Reformist Alliance. Upon learning that the convocation was intended to be an election, members of the USTFU walked out. Meanwhile, an election was conducted among those present, and Gil Gamilla and other faculty members (Gamilla Group) were elected as the president and officers, respectively, of the union. Such election was communicated to the UST administration in a letter dated October 4, 1996.[7] Thus, there were two (2) groups claiming to be the USTFU: the Gamilla Group and the group led by Atty. Mariño, Jr. (Mariño Group).

On October 8, 1996, the Mariño Group filed a complaint for ULP against the UST with the Arbitration Branch of the NLRC, docketed as NLRC NCR Case No. 10-06255-96. It also filed on October 11, 1996 a complaint with the Office of the Med-Arbiter of the Department of Labor and Employment (DOLE), praying for the nullification of the election of the Gamilla Group as officers of the USTFU. The complaint was docketed as Case No. NCR-OD-M-9610-016 and entitled *UST Faculty Union, Gil Y. Gamilla, Corazon Qui, et al., v. Eduardo J. Mariño, Jr., Ma. Melvyn Alamis, Norma Collantes, et al*.

On December 3, 1996, a Collective Bargaining Agreement[8] (CBA) was entered into by the Gamilla Group and the UST. The CBA superseded an existing CBA entered into by the UST and USTFU which was intended for the period of June 1, 1993 to May 31, 1998.[9]

On January 27, 1997, Gamilla, accompanied by the *barangay* captain in the area, Dupont E. Aseron, and Justino Cardenas,

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[7] *Id.* at 111-112.

[8] *Id.* at 173-210.

[9] *Id.* at 108.

Chief Security Officer of the UST, padlocked the office of the USTFU. Afterwards, an armed security guard of the UST was posted in front of the USTFU office.

On February 11, 1997, the med-arbiter issued a Resolution, declaring the election of the Gamilla group as null and void and ordering that this group cease and desist from performing the duties and responsibilities of USTFU officers. This Resolution was appealed to the Director of the Bureau of Labor Relations (BLR), docketed as BLR Case No. A-8-49-97 and entitled *UST Faculty Union, Gil Y. Gamilla, Corazon Qui, et al. v. Med-Arbiter Tomas F. Falconitin of the National Capital Region, Department of Labor and Employment (DOLE), Eduardo J. Mariño, Jr., et al*. Later, the director issued a Resolution dated August 15, 1997 affirming the Resolution of the med-arbiter. His Resolution was then appealed to this Court which rendered its November 16, 1999 Decision[10] in G.R. No. 131235 upholding the ruling of the BLR.

Thus, on January 21, 2000, USTFU filed a Manifestation[11] with the Arbitration Branch of the NLRC in NLRC Case No. 10-06255-96, informing it of the Decision of the Court. Thereafter, on August 15, 2003, the Arbitration Branch of the NLRC issued a Decision[12] dismissing the complaint for lack of merit.

The complaint was dismissed on the ground that USTFU failed to establish with clear and convincing evidence that indeed UST was guilty of ULP. The acts of UST which USTFU complained of as ULP were the following: (1) allegedly calling for a convocation of faculty members which turned out to be an election of officers for the faculty union; (2) subsequently dealing with the Gamilla Group in establishing a new CBA; and (3) the assistance to the Gamilla Group in padlocking the USTFU office.

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[10] *Id.* at 146-172. 318 SCRA 185.

[11] *Id.* at 144-145.

[12] *Id.* at 212-225.

In his Decision, the labor arbiter explained that the alleged Memorandum dated October 2, 1996 merely granted the request of faculty members to hold such convocation. Moreover, by USTFU's own admission, no member of the UST administration attended or participated in the convocation.

As to the CBA, the labor arbiter ruled that when the new CBA was entered into, (1) the Gamilla Group presented more than sufficient evidence to establish that they had been duly elected as officers of the USTFU; and (2) the ruling of the med-arbiter that the election of the Gamilla Group was null and void was not yet final and executory. Thus, UST was justified in dealing with and entering into a CBA with the Gamilla Group, including helping the Gamilla Group in securing the USTFU office.

The USTFU appealed the labor arbiter's Decision to the Third Division of the NLRC which rendered a Resolution dated November 28, 2003 affirming the Decision of the labor arbiter. USTFU's Motion for Reconsideration of the NLRC's November 28, 2003 Resolution was denied in a Resolution dated July 29, 2005.

The case was then elevated to the CA which rendered the assailed Decision affirming the Resolutions of the NLRC. The CA also denied the Motion for Reconsideration of USTFU in the assailed resolution.

Hence, we have this petition.

The Issues

1. The Honorable Court of Appeals committed serious and reversible error when it dismissed the Petition for *Certiorari* in CA-G.R. SP No. 92236 and sustained the National Labor Relations Commission's ruling that the herein respondents are not guilty of Unfair Labor Practice despite abundance of evidence showing that Unfair Labor Practices were indeed committed.

2. The Honorable Court of Appeals committed serious and reversible error when it manifestly overlooked relevant facts not disputed by the parties which, if properly considered, would justify

a different conclusion and in rendering a judgment that is based on a misapprehension of facts.[13]

The Court's Ruling

The petition must be denied.

UST Is Not Guilty of ULP

Petitioner claims that given the factual circumstances attendant to the instant case, the labor arbiter, NLRC, and CA should have found that UST is guilty of ULP. Petitioner enumerates the acts constituting ULP as follows: (1) Atty. Domingo Legaspi, the legal counsel for the UST, conducted a faculty meeting in his office, supplying derogatory information about the Mariño Group; (2) respondents provided the Gamilla Group with the facilities and forum to conduct elections, in the guise of a convocation; and (3) respondents transacted business with the Gamilla Group such as the processing of educational and hospital benefits, deducting USTFU dues from the faculty members without turning over the dues to the Mariño Group, and entering into a CBA with them.

Additionally, petitioner claims that the CA, NLRC, and labor arbiter ignored vital pieces of evidence. These were the Affidavit dated January 21, 2000 of Edgar Yu, the Certification dated January 27, 1997 of Alexander Sibug, and the picture of a security guard posted outside the USTFU office purportedly to "prevent entry into and exit from the union office."

The concept of ULP is contained in Article 247 of the Labor Code which states:

> Article 247. *Concept of unfair labor practice and procedure for prosecution thereof.* –– **Unfair labor practices violate the constitutional right of workers and employees to self-organization**, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations. (Emphasis supplied.)

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[13] *Id.* at 24.

Notably, petitioner claims that respondents violated paragraphs (a) and (d) of Art. 248 of the Code which provide:

> Article 248. *Unfair labor practices of employers*.––It shall be unlawful for an employer to commit any of the following unfair labor practices:
>
> (a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;
>
> x x x x x x x x x
>
> (d) To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or its organizers or supporters.

The general principle is that one who makes an allegation has the burden of proving it. While there are exceptions to this general rule, in the case of ULP, the alleging party has the burden of proving such ULP.

Thus, we ruled in *De Paul/King Philip Customs Tailor v. NLRC* that "a party alleging a critical fact must support his allegation with substantial evidence. Any decision based on unsubstantiated allegation cannot stand as it will offend due process."[14]

While in the more recent and more apt case of *Standard Chartered Bank Employees Union (NUBE) v. Confesor*, this Court enunciated:

> **In order to show that the employer committed ULP under the Labor Code, substantial evidence is required to support the claim.** Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[15] (Emphasis supplied.)

In other words, whether the employee or employer alleges that the other party committed ULP, it is the burden of the

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[14] G.R. No. 129824, March 10, 1999, 304 SCRA 448, 459.

[15] G.R. No. 114974, June 16, 2004, 432 SCRA 308, 323.

alleging party to prove such allegation with substantial evidence. Such principle finds justification in the fact that ULP is punishable with both civil and/or criminal sanctions.[16]

Given the above rulings of this Court, we shall now examine the acts of respondents which allegedly constitute ULP.

With regard to the alleged derogatory remarks of Atty. Legaspi, the three tribunals correctly ruled that there was no evidence to support such allegation. The alleged evidence to support petitioner's claim, the Affidavit dated January 21, 2000 of Yu, is unacceptable. In the Affidavit it is stated that: "6. That in the said meeting, Atty. Legaspi gave the participants information that are derogatory to the officers of the UST Faculty Union."[17]

It may be observed that the information allegedly provided during the meeting as "derogatory" is a conclusion of law and not of fact. What may be derogatory to Yu may not be punishable under the law. There was, therefore, no fact that was established by the Affidavit. Hence, petitioner failed to present evidence in support of its claim that respondents committed ULP through alleged remarks of Atty. Legaspi.

As to the convocation, petitioner avers that: "Indeed, Respondents, under the guise of a faculty convocation, ordered the suspension of classes and required the faculty members to attend the supposed faculty convocation which was to be held at the Education Auditorium of the University of Santo Tomas."[18] An examination of the Memorandum dated October 2, 1996[19] would, however, rebut such allegation. It stated:

MEMORANDUM TO

THE DEANS, REGENTS, PRINCIPALS
AND HEADS OF DEPARTMENTS

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[16] LABOR CODE, Art. 247.

[17] *Rollo*, p. 211.

[18] *Id.* at 25.

[19] *Supra* note 6.

Re: Convocation of Faculty Club

As per request of the Faculty Clubs of the different Faculties, Colleges, Schools and Institutes in the University through their Presidents, we are allowing them to hold a convocation on Friday, October 4, 1996 at 9:00 in the morning to 12:00 noon at the Education Auditorium.

The officers and members of said faculty clubs are, therefore, excused from their classes on Friday from 9:00 to 12:00 noon to allow them to attend.

Regular classes shall resume at 1:00 in the afternoon. Please be guided accordingly.

Thank you.

FR. RODEL ALIGAN, O.P. (Sgd.)
Secretary General

In no way can the contents of this memorandum be interpreted to mean that faculty members were required to attend the convocation. Not one coercive term was used in the memorandum to show that the faculty club members were compelled to attend such convocation. And the phrase "we are allowing them to hold a convocation" negates any idea that the UST would participate in the proceedings.

Moreover, the CA ruled properly:

More importantly, USTFU itself even admitted that during the October [4], 1996 convocation/election, not a single University Official was present. And the Faculty Convocation was held without the overt participation of any UST Administrator or Official.[20]

In other words, the Memorandum dated October 2, 1996 does not support a claim that UST organized the convocation in connivance with the Gamilla Group.

Anent UST's dealing with the Gamilla Group, including the processing of faculty members' educational and hospitalization benefits, the labor arbiter ruled that:

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[20] *Rollo*, p. 48.

Neither are We persuaded by complainant's stand that respondents' acquiescence to bargain with USTFU, through Gamilla's group, constitutes unfair labor practice. x x x Such conduct alone, uncorroborated by other overt acts leading to the commission of ULP, does not conclusively show and establish the commission of such unlawful acts.[21]

The fact of the matter is, the Gamilla Group represented itself to respondents as the duly elected officials of the USTFU.[22] As such, respondents were bound to deal with them.

Art. 248(g) of the Labor Code provides that:

ART. 248. *Unfair labor practices of employers.*––It shall be unlawful for an employer to commit any of the following unfair labor practice:

x x x x x x x x x

(g) To violate the duty to bargain collectively as prescribed by this Code.

Correlatively, Art. 250(a) of the Code provides:

ART. 250. *Procedure in collective bargaining*. –– The following procedures shall be observed in collective bargaining:

(a) When a party desires to negotiate an agreement, it shall serve a written notice upon the other party with a statement of its proposals. The other party shall make a reply thereto not later than ten (10) calendar days from receipt of such notice;

Moreover, Art. 252 of the Code defines the duty to bargain collectively as:

ART. 252. *Meaning of duty to bargain collectively*. — **The duty to bargain collectively means the performance of a mutual obligation to meet and convene promptly and expeditiously in good faith** for the purpose of negotiating an agreement with respect to wages, hours of work and all other terms and conditions of employment including proposals for adjusting any grievances or

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[21] *Id.* at 222.

[22] *Id.* at 111-112.

questions arising under such agreement and executing a contract incorporating such agreements if requested by either party but such duty does not compel any party to agree to a proposal or to make any concession. (Emphasis ours.)

In the instant case, until our Decision in G.R. No. 131235 that the Gamilla Group was not validly elected into office, there was no reason to believe that the members of the Gamilla Group were not the validly elected officers and directors of USTFU. To reiterate, the Gamilla Group submitted a Letter dated October 4, 1996 whereby it informed Fr. Rolando De La Rosa that its members were the newly elected officers and directors of USTFU. In the Letter, every officer allegedly elected was identified with the Letter signed by the alleged newly elected Secretary General and President, Ma. Lourdes Medina and Gamilla, respectively.

More important though is the fact that the records are bereft of any evidence to show that the Mariño Group informed the UST of their objections to the election of the Gamilla Group. In fact, there is even no evidence to show that the scheduled elections on October 5, 1996 that was supposed to be presided over by the Mariño Group ever pushed through. Instead, petitioner filed a complaint with the med-arbiter on October 11, 1996 praying for the nullification of the election of the Gamilla Group.

As such, there was no reason not to recognize the Gamilla Group as the new officers and directors of USTFU. And as stated in the above-quoted provisions of the Labor Code, the UST was obligated to deal with the USTFU, as the recognized representative of the bargaining unit, through the Gamilla Group. UST's failure to negotiate with the USTFU would have constituted ULP.

It is not the duty or obligation of respondents to inquire into the validity of the election of the Gamilla Group. Such issue is properly an intra-union controversy subject to the jurisdiction of the med-arbiter of the DOLE. Respondents could not have been expected to stop dealing with the Gamilla Group on the mere accusation of the Mariño Group that the former was not validly elected into office.

The subsequent ruling of this Court in G.R. No. 131235 that the Gamilla Group was not validly elected into office cannot support petitioner's allegation of ULP. Had respondents dealt with the Gamilla Group after our ruling in G.R. No. 131235 had become final and executory, it would have been a different story. As the CA ruled correctly, until the validity of the election of the Gamilla Group is resolved with finality, respondents could not be faulted for negotiating with said group.

Petitioner further alleges that respondents are guilty of ULP when on January 27, 1997, "Justino Cardenas, Detachment Commander of the security agency contracted by the UST to provide security services to the university, led a group of persons, including Dr. Gil Gamilla, who padlocked the door leading to the USTFU."[23] Petitioner claims that "Gamilla who was and is still being favored by the employer, had no right whatsoever to padlock the union office. And, yet the Administrators of the University of Santo Tomas aided him in performing an unlawful act." Petitioner adds that an armed security guard was posted at the USTFU office in order to prevent the Mariño Group from performing its duties.[24] To support such contention, petitioner provides as evidence a Certification dated January 27, 1997[25] of Sibug, a messenger of the USTFU, and a photograph[26] of a security guard standing before the USTFU office.

These pieces of evidence fail to support petitioner's conclusions.

As to the padlocking of the USTFU office, it must be emphasized that based on the Certification of Sibug, Cardenas was merely present, with Brgy. Captain Aseron of Brgy. 470, Zone 46, at the padlocking of the USTFU office. The Certification also stated that Sibug himself also padlocked the USTFU office and that he was neither harassed nor coerced by the padlocking group. Clearly, Cardenas' mere presence cannot be equated to

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[23] *Id.* at 21.

[24] *Id.* at 31.

[25] *Id.* at 135.

[26] *Id.* at 136.

a positive act of "aiding" the Gamilla Group in securing the USTFU office.

With regard to the photograph, while it evidences that there was indeed a guard posted at the USTFU office, such cannot be used to claim that the guard prevented the Mariño Group from performing its duties.

Petitioner again failed to present evidence to support its contention that UST committed acts amounting to ULP.

In any event, it bears stressing that at the time of these events, the legitimacy of the Gamilla Group as the valid officers and directors of the USTFU was already submitted to the med-arbiter and no decision had yet been reached on the matter. Having been shown evidence to support the legitimacy of the Gamilla Group with no counter-evidence from the Mariño Group, UST had to recognize the Gamilla Group and negotiate with it. Thus, the acts of UST in support of the USTFU as the legitimate representative of the bargaining unit, albeit through the Gamilla Group, cannot be considered as ULP.

Finally, petitioner claims that "despite the ruling of this Honorable Court, the University of Santo Tomas still entertains the interlopers whose claim to the leadership of the USTFU has been rejected by the [DOLE] and the Highest Tribunal."[27] Petitioner, however, fails to enumerate such objectionable actions of the UST. Again, petitioner fails to present substantial evidence in support of its claim.

In sum, petitioner makes several allegations that UST committed ULP. The *onus probandi* falls on the shoulders of petitioner to establish or substantiate such claims by the requisite quantum of evidence. In labor cases as in other administrative proceedings, substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion is required. In the petition at bar, petitioner miserably failed to adduce substantial evidence as basis for the grant of relief.

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[27] *Id.* at 35-36.

WHEREFORE, the petition is hereby *DENIED*. The June 14, 2007 Decision and November 26, 2007 Resolution of the CA in CA-G.R. SP No. 92236 are hereby *AFFIRMED*.

No costs.

SO ORDERED.

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

Carpio Morales, J., see dissenting opinion.

DISSENTING OPINION

CARPIO MORALES, *J.*:

The majority opinion holds that respondents' acts did not amount to unfair labor practice (ULP) primarily because petitioner failed to adduce substantial evidence to support the charge and that in negotiating and eventually concluding a new collective bargaining agreement (CBA) with the Gamilla Group, respondents merely performed their duty to bargain collectively.

I dissent.

Article 248(a) of the Labor Code considers it an Unfair Labor Practice (ULP) for an employer to interfere, restrain or coerce employees in the exercise of their right to self-organization or the right to form association.

In *Insular Life Assurance Co., Ltd. Employees Association – NATU v. Insular Life Assurance Co. Ltd.,*[1] this Court held that the test of whether an employer has interfered with and coerced employees in the exercise of their right to self-organization is whether the employer has engaged in conduct which, it may *reasonably* be said, **tends** to interfere with the free exercise of employees' rights; and that it is not necessary that there be direct evidence that any employee was in fact intimidated or coerced by statements of threats of the employer if there is a *reasonable* inference that anti-union conduct of the employer

[1] G.R. No. L-25291, January 30, 1971, 37 SCRA 244.

does have an adverse effect on self-organization and collective bargaining.

Petitioners' questioned acts — allowing the conduct of the convocation which led to the election of the Gamilla Group; having its Chief Security Officer participate in the padlocking of the union office at the instance of the Gamilla Group; and significantly, entering into a new CBA while the old one was still subsisting and during the pendency of an intra-union dispute — reek of interference.

While, indeed, the *onus probandi* in ULP cases lies with the party making the charge, in this case the Mariño Group which was ultimately held to be the duly-elected officers of petitioner, contrary to the majority opinion that petitioner failed to discharge said burden, I find that it did prove that respondents were indeed guilty of ULP. It bears emphasis that respondents' questioned acts should be evaluated *vis-a-vis* the preceding and subsequent attending circumstances, in accordance with the **totality of conduct** doctrine.

Albeit the October 2, 1996 Memorandum issued by respondent Rev. Fr. Aligan allowing the conduct of the convocation of the University faculty clubs, on which occasion the questioned election of the Gamilla Group was held, did not contain coercive words or terms that would call for mandatory attendance, still, the official suspension of classes to give way to the convocation *tended* to favor the Gamilla Group. For the convergence of the faculty members gave said group the "captive audience" and opportunity to conduct the ambush election of union officers, the prior scheduling by the incumbent Mariño group of a General Assembly for such election on October 5, 1996 notwithstanding,

In fine, although the Memorandum employed the word "may" to imply that attendance was merely discretionary, that the faculty members were excused from holding their classes and classes were even suspended gave the insinuation that attendance was mandatory and official in nature.

If the Memorandum was not issued by Rev. Fr. Aligan, would the faculty members have attended the "convocation" and would

enough votes have been supposedly mustered to elect the Gamilla Group, a procedure which violate the union's by-laws as the Court found in G.R. No. 131235?[2]

Respecting respondents' dealing with the Gamilla Group and executing a new CBA, the same is likewise a clear case of ULP.

It bears noting that this Court's earlier finding in *Mariño, et al. v. Gamilla, et al*.[3] that Case No. NCR-OD-M-9610-016, *"Eduardo J. Mariño, Jr., et al. v. Gil Gamilla, et al*." which was filed before the Bureau of Labor Relations was neither a labor nor an inter-union dispute, but clearly an intra-union dispute. For what was in question was not representation or composition of the bargaining unit but which, among the contending groups, are the true union officers. Art. 253 of the Labor Code thus applies, *viz*:

> **ART. 253.** ***Duty to bargain collectively when there exists a collective bargaining agreement.*** **— When there is a collective bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate nor modify such agreement during its lifetime.** However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties. (Emphasis supplied)

Clearly, respondents' act of dealing with and subsequently executing a new CBA with the Gamilla Group, while the old CBA was still in force and effect is a violation of the above-quoted provision and constitutes ULP.

The majority holds that respondents had no reason not to recognize the Gamilla Group and deal with it because records are bereft of a showing that the Mariño Group informed them of its (Mariño Group's) objection to said election and the holding of the General Assembly on October 5, 1996. More particularly,

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[2] *UST Faculty v. Bitonio, Jr.,* November 16, 1999.

[3] *Mariño, Jr. v. Gamila*, G.R. No. 132400, January 31, 2005.

the majority holds that "it is not the duty or obligation of respondents to inquire into the validity of the election of the Gamilla Group" and, therefore, "there was no reason not to recognize the Gamilla Group as the new officers and directors of USTFU."

Two observations, to my mind, militate against this majority ruling. *First*, whenever a complaint involving intra-union disputes is filed before the DOLE-Bureau of Labor Relations, the petitioner is required to furnish copy thereof to the employer, hence, respondents could not have been unaware that there was a pending controversy on the union leadership as they would have been given a copy of Case No. NCR-OD-M-9610-016, *"Eduardo J. Mariño, Jr., et al. v. Gil Gamilla, et al."* (not *UST Faculty Union, et al. v. Mariño, et al.* as stated in the *ponencia*) filed by the Mariño Group (for nullification of the election of the Gamilla Group) which case was eventually settled in this Court's Decision in G.R. 131235 promulgated on November 16, 1999 in favor of the therein petitioner. In fact, even much earlier, the Gamilla Group filed a petition with the BLR to stop the scheduled October 5, 1996 elections,[4] a copy of which petition respondents must have been furnished.

Second, the Mariño Group filed the ULP complaint subject of the present petition against respondents as early as October 8, 1996 — a mere four days after the controversial "convocation/ election," hence, respondents were already put on guard of the pendency of several actions before the labor tribunals, months before the new CBA was concluded on December 4, 1996, and hence, should have proceeded with caution in dealing with the Gamilla Group.

Evidently, in executing the new CBA with the splinter group despite knowledge of the intra-union dispute, respondents favored said group — an act which cannot be condoned by simply invoking respondents' duty to bargain collectively. Verily, respondent University is mandated under the law to bargain, but only with the *legitimate* bargaining representative and, generally, not when there is an existing and valid CBA.

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[4] *Vide Mariño v. Gamilla, supra.*

As for the majority opinion that the Mariño group failed to inform respondent University of its objection as "[i]n fact, there was no evidence to show that the scheduled elections on October 5, 1996 even pushed through," a perusal of this Court's Decision in G.R. No. 132400 (*Mariño v. Gamilla*) would show that said election "did not push through by virtue of the TRO,"[5] hence, the Mariño Group could not be faulted.

Respecting the padlocking incident, that respondent University's Chief Security Officer/Detachment Commander of the security force was then present lent a color of authority and legality to it, thus, again, tending to favor the Gamilla Group. The same holds true with the detail or presence of a guard to secure the USTFU office and deter the Mariño group from entering the premises.

In light of all the foregoing, and applying the **totality of conduct** doctrine, I submit that respondents' acts — issuing the assailed Memorandum, dealing with and entering into a CBA with the Gamilla Group despite knowledge of the pending questions on union leadership and the existence of CBA, and authorizing/allowing the presence of the Chief of Security during the padlocking of the USTFU premises and posting a guard thereat — amount to interference under Article 248 (a) of the Labor Code which constitutes ULP.

I, therefore, vote to grant the petition.

[5] Vide, *Mariño*, *supra*.

SECOND DIVISION

[G.R. No. 181475. April 7, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **LARRY "LAURO" DOMINGO,** *appellant.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; RECRUITMENT AND PLACEMENT OF WORKERS; ILLEGAL RECRUITMENT IN LARGE SCALE; ELEMENTS; PROVEN IN CASE AT BAR. —** To prove *illegal recruitment* in large scale, the prosecution must prove three essential elements, to wit: (1) the person charged undertook a recruitment activity under Article 13(b) or any prohibited practice under Article 34 of the Labor Code; (2) he/she did not have the license or the authority to lawfully engage in the recruitment and placement of workers; and (3) he/she committed the prohibited practice against three or more persons individually or as a group. The Court finds that the prosecution ably discharged its onus of proving the guilt beyond reasonable doubt of appellant of the crimes charged. That no receipt or document in which appellant acknowledged receipt of money for the promised jobs was adduced in evidence does not free him of liability. For even if at the time appellant was promising employment no cash was given to him, he is still considered as having been engaged in recruitment activities, since Article 13(b) of the Labor Code states that the act of recruitment may *be for profit or not*. It suffices that appellant promised or offered employment for a fee to the complaining witnesses to warrant his conviction for illegal recruitment.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; AN AFFIDAVIT OF RECANTATION EXECUTED THREE YEARS AFTER THE COMPLAINT WAS FILED SHOULD BE DENIED ITS PROBATIVE VALUE; CASE AT BAR. —** That one of the original complaining witnesses, Cabigao, later recanted, via an affidavit and his testimony in open court, does not necessarily cancel an earlier declaration. Like any other testimony, the same is subject to the test of credibility and should be received with caution. For a testimony solemnly given

in court should not be set aside lightly, least of all by a mere affidavit executed after the lapse of considerable time. In the case at bar, the Affidavit of Recantation was executed three years after the complaint was filed. It is thus not unreasonable to consider his retraction an afterthought to deny its probative value.

3. CRIMINAL LAW; CRIMES AGAINST PROPERTY;ESTAFA; CONVICTION OF THE APPELLANT FOR TWO COUNTS OF ESTAFA IS PROPER BECAUSE A PERSON MAY BE CHARGED AND CONVICTED OF BOTH ILLEGAL RECRUITMENT AND ESTAFA; ELUCIDATED. — As to the conviction of appellant for two counts of *estafa*, it is well established that a person may be charged and convicted of both *illegal recruitment* and *estafa*. *People v. Comila,* enlightens: x x x The reason therefor 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.* ***Estafa*** **under Article 315, paragraph 2, of the Revised Penal Code, is committed by any person who defrauds another by using fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of similar deceits executed prior to or simultaneously with the commission of fraud**. x x x Appellant, who did not have the authority or license to recruit and deploy, misrepresented to the complaining witnesses that he had the capacity to send them abroad for employment. This misrepresentation, which induced the complaining witnesses to part off with their money for placement and medical fees, constitutes *estafa* under Article 315, par. 2(a) of the Revised Penal Code.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO MORALES, *J.*:

On appeal via Petition for Review on *Certiorari* is the Court of Appeals Decision[1] dated September 28, 2007 affirming the Joint Decision[2] dated October 19, 2004 of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 11 which convicted Larry Domingo (appellant) of *Illegal Recruitment* (Large Scale) in Criminal Case No. 1224-M-2001 and *Estafa* in Criminal Case Nos. 1243-M-2001 and 1246-M-2001, and acquitting him in Criminal Case Nos. 1225-M-2001 to 1242-M-2001 and 1244-M-2001, 1245-M-2001 and 1247-M-2001, also for *Estafa*.

The Information[3] in Criminal Case No. 1224-M-2001 reads:

The undersigned Asst. Provincial Prosecutor accuses Larry "Lauro" Domingo *y* Cruz of the crime of illegal recruitment, defined and penalized under the provisions of Article 38 in relation to Articles 34 and 39 of the Labor Code of the Philippines, as amended by presidential Decree Nos. 1920 and 2018, committed as follows:

That in or about the month of November 1999 to January 20, 2000, in the Municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being a non-licensee or non-holder of authority from the Department of Labor and Employment to recruit and/or place workers under local or overseas employment, did then and there willfully and feloniously, with false pretenses, undertake illegal recruitment, placement or deployment of Wilson A. Manzo, Florentino M. Ondra, Feliciano S. del Rosario, Leo J. Cruz, Norberto S. Surio, Genaro B. Rodriguez, Mariano Aguilar, Dionisio Aguilar, Mario J. Sorel, Marcial "Boy" A. dela Cruz, Edgardo P. Jumaquio, Midel Clara Buensuceso, Remigio S. Carreon, Jr., Romeo Manasala, Magno D. Balatbat, Jose Armen F. Sunga, Rogelio M. Cambay, Junior

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[1] *Rollo*, pp. 2-12. Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso.

[2] Records I, pp. 318-330. Penned by Judge Basilio R. Gabo, Jr.

[3] Records I, pp. 1-3.

Balisbis, Ma. Leah Vivas, Simeon S. Cabigao, Edcil P. Mariano, Juanito C. Bartolome, Angelito R. Acevedo, Godofredo P. Samson, Eugenio del Rosario *y* Tolentino, William B. Bautista, Rodolfo M. Marcelino, Roberto B. Bohol, Felipe H. Cunanan, Carlos P. Dechavez, Carlos J. Cruz, Reynaldo C. Chico, Renato D. Jumaquio, Narciso F. Sunga, Enrico R. Espiritu, Leonardo C. Sunga, Jr., and Iglecerio H. Perez. This offense involved economic sabotage, as it was committed in large scale.

Contrary to law. (Underscoring supplied)

The Informations[4] for 23 counts of *Estafa*, all of which were similarly worded but varying with respect to the name of each complainant and the amount which each purportedly gave to appellant, read:

That in or about the month of November, 1999 to January, 2000, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of deceit, false pretenses and fraudulent manifestations, and with intent of gain, did then and there willfully, unlawfully and feloniously defraud one [Wilson A. Manzo] by then and there falsely representing that he has the power and capacity to recruit and employ persons in Saipan and could facilitate the necessary papers in connection therewith if given the necessary amount, and by means of deceit of similar import, when in truth and in fact, as the accused knew fully well his representation was false and fraudulent and designed to inveigle [Wilson A. Manzo] to give, as in fact the latter gave and delivered the amount of [₱14,000.00] to him, which the accused misappropriated to himself, to the damage and prejudice of Wilson A. Manzo in the said amount of [₱14,000.00].

Contrary to law.

Of the 23 complainants, only five testified, namely: Rogelio Cambay, Florentino Ondra, Dionisio Aguilar, Ma. Leah Vivas, and Simeon Cabigao. The substance of their respective testimonies follows:

Rogelio Cambay: Appellant recruited him for a painting job in Marianas Island for which he paid him the amount of ₱15,000

[4] Records II, pp. 1-2.

in two installments — ₱2,500 during his medical examination at Newton Clinic in Makati City, and the balance of ₱12,500 before the scheduled departure on January 25, 2000.

On his scheduled departure, appellant did not show up at their meeting place in Malolos, Bulacan, hence, the around one hundred people who waited for him organized a search party to look for him in Zambales. Appellant was arrested on February 25, 2000 at the Balintawak tollgate.

A verification[5] with the Department of Labor and Employment showed that appellant was not a licensed recruiter.

Florentino Ondra: He was recruited by appellant for employment as laborer in Saipan, for which he gave ₱14,700 representing expenses for passporting, NBI clearance, and medical examination.

Dionisio Aguilar: In September, 1999, he met appellant thru a friend whereupon he was interviewed, tested for a hotel job, and scheduled for medical examination. He gave ₱30,000 to appellant inside the latter's car on November, 1999 after his medical examination. While he was twice scheduled for departure, it did not materialize.

Ma. Leah Vivas: After meeting appellant thru Eddie Simbayan on October 19, 1999, she applied for a job as a domestic helper in Saipan, for which she paid appellant ₱10,000, but like the other complainants, she was never deployed.

Simeon Cabigao: He was recruited by appellant in September, 1999 for employment as carpenter in Saipan with a guaranteed salary of $375 per month. For the promised employment, he paid appellant ₱3,000 for medical fee, and an additional ₱9,000, supposedly to bribe the examining physician because, per information of appellant, he (Cabigao) was found to have an ailment. He was scheduled for departure on February 23, 2000, but the same never took place.

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[5] See Exh. "B", Certification of Atty. Napoleon V. Fernando, DOLE RO III Director, records I, p. 5.

He was among those who looked for appellant in Zambales.

Private complainant Cabigao later recanted this testimony, per his affidavit[6] dated March 3, 2003. Testifying anew, this time for the defense, he averred that the one who actually recruited him and his co-complainants and received their money was Danilo Gimeno (Gimeno), and that they only agreed among themselves to file a case against appellant because Gimeno was nowhere to be found.

Appellant, denying all the accusations against him, claimed as follows: He was a driver hired by the real recruiter, Gimeno, whom he met inside the Victory Liner Bus bound for Manila in September, 2000. It was Gimeno who undertakes recruitment activities in Dakila, Malolos, Bulacan at the residence of Eddie Simbayan, and that the other cases for illegal recruitment filed against him before other courts have all been dismissed.

Appellant likewise presented as witnesses private complainants Enrico Espiritu and Roberto Castillo who corroborated his claim that it was Gimeno who actually recruited them, and that the filing of the complaint against appellant was a desperate attempt on their part to get even because Gimeno could not be located.

By Joint Decision dated October 19, 2004, the trial court found appellant guilty beyond reasonable doubt of *Illegal Recruitment* (Large Scale) and of 2 counts of *Estafa*, *viz*:

WHEREFORE, in Criminal case No. 1224-M-2001, for Illegal Recruitment (Large Scale), this Court finds the accused LARRY DOMINGO GUILTY beyond reasonable doubt of violation of Article 38(b) of the Labor Code, as amended, in relation to Article 13 (b) and 34 of the same Code (Illegal Recruitment in Large Scale) and hereby sentences him to suffer the penalty of life imprisonment and pay a fine of ₱100,000.00.

Accused is further ordered to pay the following complainants the amounts opposite their names as actual or compensatory damages, to wit:

1. Rogelio Cambay – ₱15,000.00
2. Dionisio Aguilar – ₱30,000.00

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[6] Exh. 2, records I, pp. 295-296.

3. Florentino Ondra – ₱14,700.00
4. Ma. Lea Vivas – ₱10,000.00

In Criminal Case No. 1243-M-2001 for *Estafa*, this Court finds the accused LARRY DOMINGO GUILTY beyond reasonable doubt of *Estafa* under Article 315 par. 2(a) of the Revised Penal Code and hereby sentences him to a prison term ranging from Two (2) Years, Eleven (11) Months and Eleven (11) Days of *prision correcional* as minimum up to Eight (8) Years of *prision mayor* as maximum.

In Criminal Case No. 1246-M-2001 for *Estafa*, this Court finds the accused LARRY DOMINGO GUILTY beyond reasonable doubt of *Estafa* under Article 315 par. 2(a) of the Revised Penal Code and hereby sentences him to a prison term ranging from Two (2) Years, Eleven (11) Months and eleven (11) Days of *prision correcional* as minimum up to Nine (9) Years of *prision mayor* as maximum.

In Criminal Cases Nos. 1225-M-2001 to 1242-M-2001 and 1244-M-2001, 1245-M-2001 and 1247-M-2001, accused is hereby ACQUITTED for lack of evidence.

SO ORDERED.

On appeal to the Court of Appeals, appellant maintained that the trial court erred in finding him guilty beyond reasonable doubt, no receipts to show that he actually received money from private complainant having been submitted in evidence. And he faulted the trial court for failing to give weight to Cabigao's retraction.

The appellate court affirmed the trial court's decision by the challenged Decision dated September 28, 2007, holding that the straightforward and consistent testimonies of the complaining witnesses sufficiently supported the trial court's conclusion that appellant undertook recruitment activities beginning September up to December 1999 in Dakila, Malolos, Bulacan without the license therefor, and failed to deploy those he recruited.

Respecting the non-presentation of receipts of payment to appellant in consideration of the promised jobs, the appellate court affirmed the trial court's ruling that the same had no bearing on his culpability in light of the categorical assertions

of the complaining witnesses that appellant was the one who recruited them.

As for Cabigao's recantation, the appellate court found it immaterial as was the other complainants' failure to prosecute their claims. The appellate court held that the mere retraction by a prosecution witness does not necessarily vitiate his original testimony and that, in any event, the prosecution had proven beyond reasonable doubt that at least three were illegally recruited by the accused — Cambay, Ondra, Aguilar and Ma. Leah.

As for the *estafa* cases, the appellate court held that the elements constituting the crime, as penalized under Article 315 paragraph 2(a) of the Revised Penal Code, were sufficiently established, *viz*: Appellant deceived the complainants by assuring them of employment abroad provided that they submit certain documents and pay the required placement fee; complainants paid appellant the amount he asked on account of appellant's representations which turned out to be false; and complainants suffered damages when appellant failed to return the amounts they paid and the papers they submitted, despite demand.

Hence, the present appeal, appellant raising the same contentions as those he raised in the appellate court.

The appeal is bereft of merit.

The term "recruitment and placement" is defined under Article 13(b) of the Labor Code of the Philippines as follows:

> (b) "Recruitment and placement" **refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not**. Provided, That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement. (Emphasis supplied)

On the other hand, Article 38, paragraph (a) of the Labor Code, as amended, under which the accused stands charged, provides:

Art. 38. Illegal Recruitment. — (a) **Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority shall be deemed illegal and punishable under Article 39 of this Code**. The Ministry of Labor and Employment or any law enforcement officer may initiate complaints under this Article.

(b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under the first paragraph hereof. **Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group**. (Emphasis supplied)

From the foregoing provisions, it is clear that any recruitment activities to be undertaken by non-licensee or non-holder of authority shall be deemed illegal and punishable under Article 39 of the Labor Code of the Philippines. *Illegal recruitment* is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

To prove *illegal recruitment* in large scale, the prosecution must prove three essential elements, to wit: (1) the person charged undertook a recruitment activity under Article 13(b) or any prohibited practice under Article 34 of the Labor Code; (2) he/she did not have the license or the authority to lawfully engage in the recruitment and placement of workers; and (3) he/she committed the prohibited practice against three or more persons individually or as a group.[7]

The Court finds that the prosecution ably discharged its onus of proving the guilt beyond reasonable doubt of appellant of the crimes charged.

That no receipt or document in which appellant acknowledged receipt of money for the promised jobs was adduced in evidence

[7] *People v. Jamilosa*, G.R. No. 169076, January 23, 2007, 512 SCRA 340, 351.

does not free him of liability. For even if at the time appellant was promising employment no cash was given to him, he is still considered as having been engaged in recruitment activities, since Article 13(b) of the Labor Code states that the act of recruitment may *be for profit or not*. It suffices that appellant promised or offered employment for a fee to the complaining witnesses to warrant his conviction for illegal recruitment.

That one of the original complaining witnesses, Cabigao, later recanted, via an affidavit and his testimony in open court, does not necessarily cancel an earlier declaration. Like any other testimony, the same is subject to the test of credibility and should be received with caution.[8] For a testimony solemnly given in court should not be set aside lightly, least of all by a mere affidavit executed after the lapse of considerable time. In the case at bar, the Affidavit of Recantation was executed three years after the complaint was filed. It is thus not unreasonable to consider his retraction an afterthought to deny its probative value.[9]

AT ALL EVENTS, and even with Cabigao's recantation, the Court finds that the prosecution evidence consisting of the testimonies of the four other complainants, whose credibility has not been impaired, has not been overcome.

As to the conviction of appellant for two counts of *estafa*, it is well established that a person may be charged and convicted of both *illegal recruitment* and *estafa. People v. Comila,*[10] enlightens:

> x x x The reason therefor 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**. ***Estafa* under Article 315, paragraph 2, of the Revised Penal Code, is committed by any person who defrauds another by using fictitious**

[8] *People v. Davatos*, G.R. No. 93322, February 4, 1994, 229 SCRA 647, 651.

[9] *Vide People v. Dalabajan*, G.R. No. 105668, October 16, 1997, 280 SCRA 696, 707.

[10] G.R. No. 171448, February 28, 2007, 517 SCRA 153, 167.

name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of similar deceits executed prior to or simultaneously with the commission of fraud. x x x (Emphasis supplied)

Appellant, who did not have the authority or license to recruit and deploy, misrepresented to the complaining witnesses that he had the capacity to send them abroad for employment. This misrepresentation, which induced the complaining witnesses to part off with their money for placement and medical fees, constitutes *estafa* under Article 315, par. 2(a) of the Revised Penal Code.

WHEREFORE, the petition is *DENIED.*

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 182296. April 7, 2009]

SUSAN SALES *Y* JIMENA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DRUGS; PEDDLING PROHIBITED OR DANGEROUS DRUGS IS A "NEFARIOUS" BUSINESS WHICH IS CARRIED ON WITH UTMOST SECRECY OR WHISPERS TO AVOID DETECTION. — By PO1 Teresita's claim, her

informant had told her that "that is the place where [petitioner is] selling drugs." Why PO1 Teresita took the word of the informant whom she admitted having met for the first time on that occasion is strange. At any rate, if, indeed, petitioner was a peddler, she would know the perils inherent in her illegal trade and would not simply peddle prohibited drugs **openly** along a **busy street**, Scout Tobias, in **broad daylight**. For carrying out illicit business under these circumstances is contrary to common experience, given the clandestine nature of illegal-drug dealings. As this Court stressed in *People v. Pagaura*, peddling prohibited or dangerous drugs is a "nefarious" business which is "carried on with utmost secrecy or whispers to avoid detection."

2. **REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION; CHAIN OF CUSTODY RULE IN DANGEROUS DRUGS CASES; ELUCIDATED.** — In all prosecutions for violation of the Dangerous Drugs Act, the existence of all dangerous drugs is a *sine qua non* for conviction. The dangerous drug is the very *corpus delicti* of the crime of violation of the said Act. It is thus essential that the prohibited drug confiscated or recovered from the suspect is *the very same substance* offered in court as exhibit; and that the identity of said drug be established with the same unwavering exactitude as that requisite to make a finding of guilt. The "chain of custody" requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed. As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. The Court finds that neither

was physical inventory nor photograph of the sachet and buy-bust money taken in the presence of petitioner, or her representative or counsel, a representative from the media and the Department of Justice, as required by law, was taken. No justification whatsoever was proffered by the apprehending team for its failure to observe the legal safeguards.

APPEARANCES OF COUNSEL

Edgardo B. Valbuena for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Upon her arrest during an alleged drug buy-bust operation conducted on November 5, 2002, Susan J. Sales (petitioner) was charged for violation of Section 5, Article II of Republic Act (R.A.) No. 9165[1] before the Regional Trial Court (RTC) of Quezon City in Criminal Case No. Q-02-113122-3.

The accusatory portion of the Information[2] dated November 7, 2002 filed against petitioner reads:

That on or about the 5th day of November, 2002 in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, zero point one four (0.14) gram of white crystalline substance containing methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW. (Underscoring supplied)

Danilo D. Sanchez, who was also allegedly buying a prohibited drug from petitioner on the same occasion, was charged separately

[1] Otherwise known as "The Comprehensive Dangerous Drugs Act of 2002," which took effect on July 4, 2002.

[2] *Rollo*, pp. 20-21.

but tried jointly with petitioner. He was acquitted on reasonable doubt. Hence, the present appeal pertains only to petitioner.

Culled from the evidence for the prosecution consisting of, in the main, the testimony of PO1 Teresita B. Reyes (PO1 Teresita), a police officer assigned at the District Drug Enforcement Unit (DDEU), Camp Karingal, Sikatuna Village, Quezon City, is the following version:

On November 5, 2002, an informant[3] reported to the chief[4] of the DDEU that one named "Susan," who was later identified by PO1 Teresita to be petitioner, was peddling prohibited drugs along Scout Tobias Street, Barangay South Triangle, Quezon City. The DDEU chief at once formed a police team to conduct a buy-bust operation with PO1 Teresita as poseur buyer, PO1 Roberto Manalo as team leader, and PO1 Gerry Pacheco and PO1 Filnar Mutia as members. PO1 Teresita was given a ₱500.00 bill to be used as buy-bust money which she marked with her initials "TBR" (Exhibits "A" & "A-1").[5]

At past 4:00 p.m. that same day of November 5, 2002, the team, together with the informant, proceeded to Barangay South Triangle. On reaching Scout Tobias Street at around 5:00 p.m., PO1 Teresita, together with the informant, started walking along the street as the team members strategically deployed themselves in the vicinity.

Upon seeing petitioner standing at the side of the street, the informant approached her and introduced PO1 Teresita as a "*kaibigan ko i-iscore daw sya*."[6] Petitioner thereupon asked PO1 Teresita how much she would buy, to which she replied "₱500.00," at the same time handing to petitioner the ₱500 bill. Petitioner in turn, gave PO1 Teresita a small plastic sachet.[7]

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[3] His name was not disclosed by prosecution witness SPO1 Teresita B. Reyes.

[4] He was not also named by SPO1 Teresita Reyes.

[5] Transcript of Stenographic Notes (TSN), May 22, 2003, p. 10.

[6] *Id.* at 12, 48.

[7] *Id.* at 13-14, 48-51.

At that instant, another person, who turned out to be Danilo D. Sanchez (Sanchez), appeared from nowhere and told petitioner that he also wanted to "score"[8] (buy). Almost simultaneously PO1 Teresita carried out the pre-arranged hand signal to her colleagues and embraced petitioner as she introduced herself as a police officer.[9] The team members rushed towards them, and PO1 Roberto Manalo immediately searched petitioner from whom he recovered the buy-bust money. Sanchez was searched too and a sachet was recovered from him.[10] The team arrested the two.

On their way back to Camp Karingal, PO1 Teresita marked the plastic sachet recovered from petitioner with her initials "TBR." She too marked the plastic sachet taken from Sanchez with her initials.[11] The team later turned over the buy-bust money to the desk officer, and transmitted the sachets to the PNP Crime Laboratory for examination.[12]

In Chemistry Report No. D-1324-02 dated November 8, 2002 (Exhibit "E"),[13] the contents of the sachets were found positive for methylamphetamine hydrochloride or *shabu.* The sachet taken from petitioner weighed 0.14 gram (that from Sanchez weighed 0.09 gram).

The defense proffered an entirely different version.

Petitioner, a real estate consultant residing at No. 547 Kundiman Street, Sampaloc, Manila, and her witness Edwin Isaguirre (Isaguirre), denying PO1 Teresita's tale, gave the following account.

On November 4, 2002, at past 9 o'clock in the evening, petitioner was at Isaguirre's house located at No. 65 K-7th Street,

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[8] *Id.* at 53.

[9] *Id.* at 57.

[10] *Id.* at 17. See also assailed Court of Appeals Decision dated December 17, 2007, *rollo*, pp. 115-116.

[11] *Id.* at 55.

[12] *Id.* at 18-19; RTC Decision dated August 28, 2006, *rollo*, p. 26.

[13] RTC Order dated November 24, 2003; records, p. 75.

Kamias, Quezon City to visit Agnes, Isaguirre's sister-in-law and petitioner's high school classmate and close friend, who just arrived from the USA. While there, petitioner, together with Isaguirre, his wife, and Teresa, played *pusoy* and *tong-its* at the library when armed men, who turned out to be policemen, barged into the house by passing through the open main door adjacent to the library. Without any search and arrest warrant, the armed men searched the house and arrested petitioner together with Isaguirre and Teresa, but not after they (armed men) took petitioner's cellular phone, jewelry and cash of over ₱3,000.

Petitioner, Isaguirre and Teresa were invited for questioning bearing on drugs. Despite their protestation of innocence, they were forcibly brought to Camp Karingal where they were detained separately.

While on detention, petitioner was prevented from contacting her lawyer or any person and was constantly asked if she knew of any drug pusher, but she denied any knowledge. Petitioner remained on detention, while Isaguirre and Teresa were released.

By Joint Decision[14] dated August 28, 2006, the trial court, crediting the version of the prosecution and finding that "[t]he police followed the normal and regular procedure in conducting the entrapment operation, x x x,"[15] convicted petitioner, as charged, and imposed upon her life imprisonment and a fine of ₱500,000. Thus it disposed:

ACCORDINGLY, judgment is hereby rendered as follows:

1. In Criminal Case No. Q-02-113122, accused **SUSAN SALES *y* JIMENA** is hereby found **GUILTY** beyond reasonable doubt of violation of Section 5 of R.A. 9165 (for drug pushing) as charged and she is hereby sentenced to suffer a jail term of **LIFE IMPRISONMENT** and to pay a fine of **₱500,000.00**; and

2. In Criminal Case No. Q-02-113123, accused **DANILO SANCHEZ *y* DISTAJO** is hereby **ACQUITTED** of violation of Section 11 of R.A. 9165 (possession of *shabu*) as charged due to reasonable doubt.

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[14] Penned by Judge Jaime N. Salazar, Jr.; records, pp. 199-206.

[15] *Id.* at 202.

The *shabu* involved in each of these cases in two sachets (A & B) weighing 0.14 gram and 0.09 gram, respectively, are ordered transmitted to the PDEA thru the DDB for proper disposition per R.A. 9165.

SO ORDERED. (Emphasis in the original)

On appeal, the Court of Appeals, by Decision[16] dated December 17, 2007, affirmed the trial court's decision. Her motion for reconsideration having been denied, petitioner filed the present petition for review on *certiorari*.

Petitioner faults the Court of Appeals in relying on the improbable and incredible testimony of PO1 Teresita that she (petitioner) was arrested during a buy-bust operation.[17] Assuming there was such a buy-bust operation, petitioner posits, the police team did not comply with the guidelines required by law concerning her arrest and the confiscation and custody of the illegal drugs.[18]

The Office of the Solicitor General (OSG) in its Comment prays that the petition be denied for lack of merit.

This Court, aware that in some instances law enforcers resort to the practice of planting evidence to extract information or even to harass civilians,[19] has been issuing cautionary warnings to courts to exercise extra vigilance in trying drug cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses.

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[16] Penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justice Vicente S.E. Veloso and Associate Justice Ramon M. Bato, Jr.; CA *rollo*, pp. 150-158.

[17] Petition, *rollo*, pp. 15-17.

[18] See petitioner's Appellant's Brief filed before the Court of Appeals (*rollo*, pp. 33-55; 58-80) and her Memorandum presented before the trial court (records, pp. 187-189).

[19] *People v. Que Ming Kha*, G.R. No. 133265, May 29, 2002; *People v. Sevilla*, G.R. No. 124077, September 5, 2000, 339 SCRA 625, 653; *People v. Pagaura*, G.R. No. 95352, January 28, 1997, 267 SCRA 17, 24, 382 SCRA 480, 490.

After a considered examination of the records of the case, the Court finds that a reversal of the challenged Court of Appeals decision is in order.

PO1 Teresita's testimony is not only improbable but also incredible. Consider her following testimony, quoted *verbatim*:

CROSS EXAMINATION:

ATTY. GARLITOS:

Q: Mrs. Witness, do you know personally the informant in this case x x x?

WITNESS:

A: He just came to our office.

x x x x x x x x x

Q: So that was the first time that you saw the informant?

A: Yes, sir.

x x x x x x x x x

Q: And did the informant actually tell where in Scout Tobias made this target area of operation x x x?

A: The informant said that is where this *alias* Susan doing.

Q: In a house?

A: Outside, sir.

Q: And did your informant mention that she will be riding in a car?

A: Not he was mentioning about that, sir.

Q: So the informant told you that this Susan is walking along Scout Tobias?

A: He said "*Makikita naming nakatayo si Susan*."

x x x x x x x x x

Q: Did the informant tell you why she was standing there, Mrs. Witness?

A: According to the informant that is the place where she's selling drugs, sir.[20] (Underscoring supplied)

By PO1 Teresita's claim, her informant had told her that "that is the place where [petitioner is] selling drugs." Why PO1 Teresita took the word of the informant whom she admitted having met for the first time on that occasion is strange. At any rate, if, indeed, petitioner was a peddler, she would know the perils inherent in her illegal trade and would not simply peddle prohibited drugs **openly** along a **busy street**, Scout Tobias, in **broad daylight**. For carrying out illicit business under these circumstances is contrary to common experience, given the clandestine nature of illegal-drug dealings. As this Court stressed in *People v. Pagaura*,[21] peddling prohibited or dangerous drugs is a "nefarious" business which is "carried on with utmost secrecy or whispers to avoid detection."

As for PO1 Teresita's following account, quoted *verbatim,* of what transpired upon her introduction to petitioner, the same must be received with caution:

CROSS-EXAMINATION:

ATTY. GARLITOS:

Q How were you introduced Mrs. Witness?

WITNESS:

A She said "*San, kaibigan ko i-iscor daw sya*."

Q And then what did Susan ask you?

A She asked me how much I am going to buy.

Q And then what did you answer?

A Five Hundred Pesos sir.

Q And then?

A And she came out immediately from his pocket the five hundred worth of shabu and she got the five hundred pesos sir.

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[20] TSN, May 22, 2003, pp. 26-27, 29-32.

[21] *Supra*, note 19 at 23.

Q What did she get?

A The five hundred pesos and gave me the sachet.[22] (Underscoring supplied)

For the ease and readiness with which petitioner had acceded to PO1 Teresita's request to buy *shabu*, without even the slightest hesitation, even if they are complete strangers, and absent a showing that the informant had had previous dealings with petitioner, is contrary to common experience. That is why the Court, in *Pagaura*, found it "rather foolish that one who peddles illegal drugs would boldly and unashamedly present his wares to total strangers lest he be caught in *flagrante*."[23]

But even granting *arguendo* that petitioner was indeed arrested during a buy-bust operation, the police team failed to follow the legal procedure and guidelines on her arrest and the confiscation of the illegal drug, which omission is fatal to warrant her acquittal.

In all prosecutions for violation of the Dangerous Drugs Act, the existence of all dangerous drugs is a *sine qua non* for conviction. The dangerous drug is the very *corpus delicti* of the crime of violation of the said Act.[24] It is thus essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug be established with the same unwavering exactitude as that requisite to make a finding of guilt. The "chain of custody" requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[25]

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what

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

[23] *Supra* note 19.

[24] *People v. Kimura,* G.R. No. 130805, April 27, 2004, 428 SCRA 51, 61, citing *People v. Mendiola*, 235 SCRA 116, 120. See also *People of the Philippines v. Salvador Sanchez y Espiritu*, G.R. No. 175832, October 15, 2008.

[25] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[26] (Underscoring supplied)

The Court finds that neither was physical inventory nor photograph of the sachet and buy-bust money taken in the presence of petitioner, or her representative or counsel, a representative from the media and the Department of Justice, as required by law, was taken. No justification whatsoever was proffered by the apprehending team for its failure to observe the legal safeguards.

IN FINE, the prosecution failed to establish petitioner's guilt beyond reasonable doubt. Her acquittal is thus in order.

WHEREFORE, the assailed Decision of the Court of Appeals dated December 17, 2007 and Resolution of March 10, 2008 in CA-G.R. CR-HC No. 02546 are *REVERSED* and *SET ASIDE.* Petitioner Susan Sales *y* Jimena is *ACQUITTED* of the crime charged and her immediate release from custody is ordered, unless she is being lawfully held for another cause.

SO ORDERED.

Quisumbing (Chairperson), Tinga, Velasco, Jr., and *Peralta,*[*] *JJ.,* concur.

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[26] *Ibid.*

[*] Additional member per Special Order No. 587 dated March 16, 2009 in lieu of the leave of absence due to sickness of Justice Arturo D. Brion.

2) TWO MILLION FIVE HUNDRED THOUSAND PESOS (₱2,500,000.00) as exemplary damages;

3) Attorney's fees equivalent to ten percent (10%) of the total monetary award; and,

4) Costs of suit.

SO ORDERED.

Carpio Morales,[*] *Chico-Nazario, Nachura,* and *Peralta, JJ.,* concur.

SECOND DIVISION

[G.R. No. 184174. April 7, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **REYNALDO CAPALAD *y* ESTO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; 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 THE FINDINGS. — The accused in a prosecution for drug pushing or possession has to contend with the credibility contest that ensues between the accused and the police. In scrutinizing this issue, we are guided by the rule that findings of the trial courts, which are factual in nature

[*] In lieu of Associate Justice Ma. Alicia Austria-Martinez, per Special Order No. 602 dated March 20, 2009.

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 is applied more rigorously where said findings are sustained by the CA.

2. **ID.; ID.; BURDEN OF PROOF AND PRESUMPTIONS; DISPUTABLE PRESUMPTIONS; REGULARITY IN THE PERFORMANCE OF THE POLICE OFFICERS' DUTIES; TO OVERCOME SUCH PRESUMPTION, EVIDENCE MUST SHOW THAT THE MEMBERS OF THE BUY-BUST TEAM WERE INSPIRED BY ANY IMPROPER MOTIVE OR WERE NOT PROPERLY PERFORMING THEIR DUTY; CASE AT BAR. —** Charges of extortion and frame-up are frequently made in this jurisdiction. Courts are, thus, cautious in dealing with such accusations, which are quite difficult to prove in light of the presumption of regularity in the performance of the police officers' duties. To substantiate such defense, which can be easily concocted, the evidence must be clear and convincing and should show that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty. Otherwise, the police officers' testimonies on the operation deserve full faith and credit. In the instant case, the defense of frame-up has not been substantiated by accused-appellant. No clear and convincing evidence has been adduced showing the police officers' alleged extortion. As we have previously held, against the positive testimonies of the prosecution witnesses, accused-appellant's plain denial of the offenses charged, unsubstantiated by any credible and convincing evidence, must simply fail.

3. **ID.; ID.; CREDIBILITY OF WITNESSES; A CHILD WITNESS' TESTIMONY IS CREDIBLE DUE TO HIS UNLIKELY PROPENSITY TO BE DISHONEST; NOT APPLICABLE IN CASE AT BAR. —** Indeed, as the defense asserts, a child witness' testimony should normally be found credible due to his unlikely propensity to be dishonest. This Court, however, finds the credibility of accused-appellant's nine-year old son, Reymel, to be doubtful. His testimony is necessarily suspect, as he is accused-appellant's close relative. Furthermore, Reymel allegedly heard the police officers barge in and claim that they had a warrant of arrest for accused-appellant. Yet on cross-

examination, he admitted having only heard the words "warrant of arrest" on television.

4. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DRUGS; ELEMENTS; ESTABLISHED IN CASE AT BAR. — All told, the elements necessary for the prosecution of illegal sale of drugs have been established by the prosecution. These are (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment for it. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*. These two elements were sufficiently established in court. Anent the first element, an examination of the records shows that the chain of custody over the drugs was unbroken. The prosecution was able to account for the drugs' handling from the time it was seized until it was offered into evidence. Following the seizure of the three plastic sachets from accused-appellant, PO1 Manansala turned over the specimens to PO3 Moran, who marked the items "RCE-1" to "RCE-3," "RCE" being the initials of accused-appellant "Reynaldo Capalad *y* Esto." The specimens were turned over to the PNP Crime Laboratory per request of Inspector Cruz. The examination was assigned to Forensic Chemical Officer Dela Rosa who disclosed in his Physical Sciences Report No. D-1384-03 that the specimens tested positive for *shabu*. The second element was likewise established through PO1 Pacis and PO1 Manansala's testimonies and the presentation of the buy-bust money recovered from accused-appellant.

5. ID.; ID.; PENALTIES; PROPERLY IMPOSED BY THE TRIAL COURT. — As to the penalties imposed, Sec. 5 of Art. II, RA 9165 provides that any person who sells any dangerous drug shall be punished with life imprisonment to death and a fine ranging from five hundred thousand pesos (PhP 500,000) to ten million pesos (PhP 10,000,000). Sec. 11, Art. II of the same law punishes possession of *shabu* of quantities less than five (5) grams with imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from three hundred thousand pesos (PhP 300,000) to four hundred thousand pesos (PhP 400,000). The RTC, thus, meted the correct penalties in Criminal Case Nos. C-69458 and C-69459.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the September 27, 2007 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02108 entitled *People of the Philippines v. Reynaldo Capalad* which affirmed the March 16, 2006 Decision in Criminal Case Nos. C-69458-59 of the Regional Trial Court (RTC), Branch 127 in Caloocan City. The RTC convicted accused-appellant Reynaldo Capalad of violations of Sections 5 and 11 of Article II, Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

Accused-appellant was charged under the following Informations:

Criminal Case No. C-69458
(Violation of Sec. 5 [Sale] of Art. II, RA 9165)

That on or about the 29th day of October 2003, in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell and deliver to PO1 JEFFRED PACIS one (1) small sealed transparent plastic sachet of '*Shabu*' Methamphethamine Hydrochloride, with a weight of 0.04 [gram] x x x, a dangerous drug, without being authorized by law in violation of said cited law.

Contrary to law.

Criminal Case No. C-69459
(Violation of Sec. 11 [Possession] of Art. II, RA 9165)

That on or about the 29th of October 2003, in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously have in his possession,

custody and control three (3) heat-sealed transparent plastic sachets containing 0.04, 0.05 and 0.05 [gram], with the total 0.14 [gram] of white crystalline substance Methamphetamine Hydrochloride known as '*SHABU*,' a dangerous drug and knowing the same to be such.

Contrary to law.[1]

On January 15, 2004, accused-appellant entered a plea of "not guilty" to both charges against him.

At the trial, the prosecution presented PO3 Fernando Moran, PO1 Jeffred Pacis, and PO1 Victor Manansala as witnesses. The defense witnesses consisted of accused-appellant and his son, Reymel Capalad.

According to the prosecution, an informant arrived at the SAID-SOU Office on October 29, 2003 and relayed to the desk officer that one "Buddha" was selling *shabu* along Bulusan Street. The desk officer then passed on the report to PO3 Rangel, who informed Police Inspector Cesar Gonzales Cruz of it. A buy-bust team was formed shortly thereafter and was composed of PO3 Rangel, PO2 Caragdag, PO2 Tayag, PO1 Perillo, PO1 Paras, PO1 Manansala, and PO1 Pacis, with the latter as poseur-buyer and PO1 Manansala as his back-up. The others formed the perimeter security. Inspector Cruz then sent a Request for Detection of Ultra Violet Powder addressed to the NPD PNP Crime Laboratory Office for the dusting of a PhP 100 bill with Serial Number BB945809. The bill was to be used by PO1 Pacis as buy-bust money.[2]

The buy-bust team was dispatched to the target area at midnight. They arrived at around 1:00 a.m. and instructed their informant to look for "Buddha." When the informant spotted "Buddha," a fat man with a bulging stomach, PO1 Pacis and the informant proceeded to where he was while the rest of the team hid in strategic places. PO1 Pacis approached "Buddha" and told him, "*Pare, pakuha ng piso panggamit lang*."[3] He then handed the

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[1] *Rollo*, pp. 3-4.

[2] *Id.* at 5.

[3] CA *rollo*, p. 16. According to the RTC, the statement means "he will buy *Shabu* for his use only."

powder-dusted hundred peso bill. "Buddha" reached for the garter of his underwear and gave him a plastic sachet upon receiving the money. He remarked to PO1 Pacis, "*Ayan, maganda yan*." When PO1 Pacis got hold of the plastic sachet he gave the pre-arranged signal by scratching his head. He introduced himself as a police officer and held on to "Buddha's" arm. PO1 Manansala joined the two men and assisted in holding on to "Buddha," who turned out to be accused-appellant. PO1 Pacis recovered the dusted hundred peso bill from accused-appellant while PO1 Manansala retrieved three (3) pieces of plastic sachets from the garter of accused-appellant's underwear.[4]

Accused-appellant was later brought to PO3 Moran along with the seized items. PO3 Moran then marked the seized items "RCE-1" to "RCE-3," the letters standing for accused-appellant's initials. The items were referred for chemical analysis to the PNP Crime Laboratory per request of Inspector Cruz. Forensic Chemical Officer Jesse Abadilla Dela Rosa subsequently conducted an examination. He documented the results in Physical Sciences Report No. D-1384-03, which showed the following entries:

SPECIMEN SUBMITTED:

Four (4) heat-sealed transparent plastic sachets each containing white crystalline substance with the following markings and recorded net weights:

A (JP/RCE-BUY-BUST 10-29-03) = 0.04 gram
B (JP/RCE-1 10-29-03) = 0.04 gram
C (JP/RCE-2 10-29-03) = 0.05 gram
D (JP/RCE-3 10-29-03) = 0.05 gram

x x x x x x x x x

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of dangerous drugs. x x x

FINDINGS:

Qualitative examination conducted on the above-stated specimen gave POSITIVE result to the tests for Methylamphetamine hydrochloride, a dangerous drug.

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[4] *Rollo*, p. 5.

x x x x x x x x x

CONCLUSION:

Specimen A through D contain Methylamphetamine hydrochloride, a dangerous drug.[5] x x x

In his defense, accused-appellant adamantly denied he was arrested following a buy-bust operation. He testified that he was suddenly arrested between 8:00 and 9:00 in the evening of October 29, 2003 and not past midnight as the police stated. He was then with his son, who had been playing video games with him. While he was being taken into custody, he was handcuffed and was told, "*Sumama ka sa amin dahil may nagrereklamo patungkol sa iyo*." Accused-appellant asked, "*Bakit ninyo ako hinuhuli?*" and inquired on the charges against him. The police officers, however, just told him not to answer and to provide his defense at the precinct.[6]

Upon reaching the police headquarters he was led to a detention cell where he was asked if he knew a certain "Taba," to which he replied in the affirmative. PO3 Rangel then told him, "*Hindi pala ikaw yung Arnel Taba*." He then proposed to accused-appellant, "*Sige ganito na lang meron ka bang isandaang libo?*" Accused-appellant responded with "*Saan ako kukuha ng ganyang kalaking pera samantalang nagka-karpintero lang ako*." Negotiating with accused-appellant, PO3 Rangel retorted, "*O sige singkwenta na lang*." When accused-appellant answered that he did not have such a big amount of money, PO3 Rangel warned him, "*Hindi mo ba alam na kakasuhan ka ng pagtutulak at pagbebenta ng droga?*" Accused-appellant then asked how he can be charged with any offense when he was only playing a video game with his son in front of his brother's house. To this, PO3 Rangel replied, "*Sige para matapos na tayo magbigay ka na lang ng kinse tatanggalin ko na lang yung tulak*." Finally, accused-appellant told him, "Sir, I don't have that big an amount, if you want to incarcerate me I can do nothing."[7]

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[5] *Id.* at 6.

[6] *Id.* at 7.

[7] *Id.* 7.

After the interrogation, PO1 Pacis took from his pocket PhP 100 and told accused-appellant, "*Bro mag-softdrinks muna tayo*" and handed over to him the money to be given to his companions. After accused-appellant held the money, PO1 Pacis retrieved it and told him, "*Ay teka muna ipasok muna natin si Buda doon tayo mag-softdrinks sa canteen*."[8]

The other defense witness, nine-year old Reymel, testified that accused-appellant was God-fearing and knew right from wrong. He recalled that accused-appellant, his father, was arrested around 8:00 in the evening since he was beside him playing a video game and he happened to look at the time. After finishing a game, accused-appellant dropped a coin so that they could play again. Before they could continue, however, police officers arrived and handcuffed accused-appellant. They alleged having a warrant for accused-appellant's arrest. Reymel ran after accused-appellant while he was being boarded in a stainless steel jeep but his mother stopped him and sent him home. From then on accused-appellant was unable to go back to their house as he was detained at the Caloocan City Jail.[9]

On cross-examination, Reymel admitted that he had twice heard the words "warrant of arrest" only on television. The video game he was playing with his father at the time the latter was arrested was "Top Gear," a car racing challenge which could be played at one peso per game and lasts five minutes. After their game ended, his father dropped a few more coins so they could play again. They were playing in a room adjacent to his uncle Lito's house. After his father was boarded in a vehicle, his mother, who had been cleaning, ran towards the house of his uncle Lito. After his father was detained, he heard nothing about the circumstances of the arrest being discussed in their house. He visited his father in jail and asked him when he would be coming home and the latter simply said "*Balang araw*."[10]

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[8] *Id.* at 7-8.

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

[10] CA *rollo*, pp. 19-20.

After trial, the RTC convicted accused-appellant of both charges. The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, and the prosecution having established to a moral certainty the guilt of Accused REYNALDO CAPALAD *y* ESTO, this Court hereby renders judgment as follows:

1. In Criminal Case No. C-69458 for Violation of Section 5, Art. II of RA 9165, this Court in the absence of any aggravating circumstance hereby sentences said Accused to LIFE IMPRISONMENT, and to pay the fine of Five Hundred Thousand Pesos (₱500,000.00) with subsidiary imprisonment in case of insolvency; and

2. In Criminal Case No. C-69459 for Violation of Section 11, Art. II of the same Act, this Court in the absence of any aggravating circumstance hereby sentences said Accused to a prison term of twelve (12) years, eight (8) months and one (1) day to seventeen (17) years and eight (8) months and to pay the fine of Three Hundred Thousand Pesos (₱300,000.00), with subsidiary imprisonment in case of insolvency.

It is noteworthy to state that this Court considers the penalty of LIFE IMPRISONMENT meted upon the Accused in Criminal Case No. C-69458 for selling 0.04 [gram] of Methylamphetamine hydrochloride to be too stiff but that is the penalty imposable under R.A. 9165. Thus, this Court has no option but to apply the same. *DURA LEX SED LEX*.

Subject drug in both cases are declared confiscated and forfeited in favor of the government to be dealt with in accordance with law.[11]

On appeal before the CA, accused-appellant questioned the legality of his arrest. He disputed the prosecution witnesses' claim that an entrapment operation took place. He also argued that the testimony of his son, Reymel, should have been given more weight.

The CA affirmed the lower court's judgment. It ruled that all the elements for the successful prosecution of drugs were

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[11] *Id.* at 23-24. Penned by Acting Presiding Judge Oscar P. Barrientos.

proved with moral certainty: (1) PO1 Pacis testified that the sale took place; (2) the illicit drug seized was identified, marked, and presented as evidence; and (3) PO1 Pacis testified that accused-appellant was the seller and he was the buyer. The CA agreed with the Solicitor General in finding the testimony of PO1 Pacis categorical, straightforward, and corroborated on its material points. It dismissed the allegation of frame-up as there was no clear and convincing proof that the police officers did not properly perform their duties or were motivated by ill will.

The CA, thus, disposed of the case as follows:

> WHEREFORE, the assailed Joint Decision dated March 16, 2006 of the Regional Trial Court of Caloocan City, Branch 127, is hereby AFFIRMED *in toto*. No costs.
>
> SO ORDERED.[12]

Accused-appellant filed a timely Notice of Appeal of the CA Decision.

On September 29, 2008, this Court required the parties to submit supplemental briefs if they so desired. The parties manifested their willingness to submit the case on the basis of the records already submitted.

The Issue

WHETHER THE COURT OF APPEALS ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT

Accused-appellant stresses that no entrapment took place. He places emphasis on his son's testimony corroborating his version of events. He argues that the principle that a child is the best witness should have been applied to his case. Another matter he puts forth is the non-refutation of his charge of extortion. He laments that the trial court disregarded his accusation that

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[12] *Rollo*, p. 26. Penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison.

the police officers tried to extort money from him in exchange for his freedom.

Our Ruling

We sustain accused-appellant's conviction.

The accused in a prosecution for drug pushing or possession has to contend with the credibility contest that ensues between the accused and the police.[13] In scrutinizing this issue, we are guided by the 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 is applied more rigorously where said findings are sustained by the CA.[14]

In the instant case, both the RTC and CA found the prosecution witnesses' testimonies to be credible and corroborative on its material points. In contrast, the defenses proffered by accused-appellant have been found wanting, as underscored in the discussion below.

Extortion

Accused-appellant provides the following story to back up his claim of extortion: Police officers were looking for one "Arnel Taba." They mistook accused for "Arnel Taba" and he was unjustly arrested and brought to the police headquarters. Upon realizing their mistake, the police officers, particularly PO3 Rangel, offered to release accused upon his payment of PhP 100,000. He then replied that he did not have such a huge sum of money as he was merely a carpenter. The sum was allegedly lowered to PhP 50,000 and then to PhP 15,000 but accused-appellant still could not come up with the amount.

The question now is whether accused-appellant's version of what happened is believable in the face of the evidence presented against him.

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[13] *People v. Cabacaba*, G.R. No. 171310, July 9, 2008, 557 SCRA 475, 484.

[14] *People v. Encila*, G.R. No. 182419, February 10, 2009.

Charges of extortion and frame-up are frequently made in this jurisdiction. Courts are, thus, cautious in dealing with such accusations, which are quite difficult to prove in light of the presumption of regularity in the performance of the police officers' duties. To substantiate such defense, which can be easily concocted, the evidence must be clear and convincing[15] and should show that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty. Otherwise, the police officers' testimonies on the operation deserve full faith and credit.[16]

In the instant case, the defense of frame-up has not been substantiated by accused-appellant. No clear and convincing evidence has been adduced showing the police officers' alleged extortion. As we have previously held, against the positive testimonies of the prosecution witnesses, accused-appellant's plain denial of the offenses charged, unsubstantiated by any credible and convincing evidence, must simply fail.[17] What is more, if accused-appellant were truly aggrieved, he could have filed a complaint against the arresting officers.[18] We are, thus, constrained to uphold the presumption of regularity in the performance of duties by the police officers.

Alibi

Indeed, as the defense asserts, a child witness' testimony should normally be found credible due to his unlikely propensity to be dishonest. This Court, however, finds the credibility of accused-appellant's nine-year old son, Reymel, to be doubtful. His testimony is necessarily suspect, as he is accused-appellant's close relative.[19] Furthermore, Reymel allegedly heard the police officers barge in and claim that they had a warrant of arrest for

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[15] *People v. Bayani*, G.R. No. 179150, June 17, 2008, 554 SCRA 741, 753.

[16] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 454.

[17] *People v. Concepcion*, G.R. No. 178876, June 27, 2008, 556 SCRA 421, 443.

[18] *People v. Divina*, G.R. No. 174067, August 29, 2007, 531 SCRA 631, 638.

[19] *Naquita*, *supra* note 16, at 445.

accused-appellant. Yet on cross-examination, he admitted having only heard the words "warrant of arrest" on television. Besides, even if accused-appellant and his son were actually playing a video game around 8:00 in the evening of October 29, 2003, this does not refute the police officers' testimonies that he was arrested at 1:00 a.m. the following morning after an entrapment operation. He could have very well finished playing with Reymel when the buy-bust operation took place.

All told, the elements necessary for the prosecution of illegal sale of drugs have been established by the prosecution. These are (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment for it.[20] What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.[21] These two elements were sufficiently established in court. Anent the first element, an examination of the records shows that the chain of custody over the drugs was unbroken. The prosecution was able to account for the drugs' handling from the time it was seized until it was offered into evidence.[22]

Chain of Custody

Following the seizure of the three plastic sachets from accused-appellant, PO1 Manansala turned over the specimens to PO3 Moran, who marked the items "RCE-1" to "RCE-3," "RCE" being the initials of accused-appellant "Reynaldo Capalad *y* Esto." The specimens were turned over to the PNP Crime Laboratory per request of Inspector Cruz. The examination was assigned to Forensic Chemical Officer Dela Rosa who disclosed in his Physical Sciences Report No. D-1384-03 that the specimens tested positive for *shabu*. The second element was likewise established through PO1 Pacis and PO1 Manansala's testimonies

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[20] *Id.* at 449.

[21] *People v. Del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627, 638.

[22] See *Jones v. State*, 172 Md.App. 444, 915 A.2d 1010, January 30, 2007.

and the presentation of the buy-bust money recovered from accused-appellant.

Based on the above findings, we sustain accused-appellant's conviction.

As to the penalties imposed, Sec. 5 of Art. II, RA 9165 provides that any person who sells any dangerous drug shall be punished with life imprisonment to death and a fine ranging from five hundred thousand pesos (PhP 500,000) to ten million pesos (PhP 10,000,000). Sec. 11, Art. II of the same law punishes possession of *shabu* of quantities less than five (5) grams with imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from three hundred thousand pesos (PhP 300,000) to four hundred thousand pesos (PhP 400,000). The RTC, thus, meted the correct penalties in Criminal Case Nos. C-69458 and C-69459.

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 02108 finding accused-appellant guilty of the crimes charged is *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 182978-79. April 7, 2009]

BECMEN SERVICE EXPORTER AND PROMOTION, INC., *petitioner, vs.* **SPOUSES SIMPLICIO and MILA CUARESMA (for and in behalf of their daughter, Jasmin G. Cuaresma), WHITE FALCON SERVICES, INC. and JAIME ORTIZ (President, White Falcon Services, Inc.),** *respondents.*

[G.R. Nos. 184298-99. April 7, 2009]

SPOUSES SIMPLICIO and MILA CUARESMA (for and in behalf of their daughter, Jasmin G. Cuaresma), *petitioners, vs.* **WHITE FALCON SERVICES, INC. and BECMEN SERVICE EXPORTER AND PROMOTION, INC.,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; BINDING EFFECT THEREOF; AS A RULE, STIPULATIONS IN AN EMPLOYMENT CONTRACT NOT CONTRARY TO STATUTES, PUBLIC POLICY, PUBLIC ORDER OR MORALS HAVE THE FORCE OF LAW BETWEEN THE CONTRACTING PARTIES; CASE AT BAR. — The terms and conditions of Jasmin's 1996 Employment Agreement which she and her employer Rajab freely entered into constitute the law between them. As a rule, stipulations in an employment contract not contrary to statutes, public policy, public order or morals have the force of law between the contracting parties. An examination of said employment agreement shows that it provides for no other monetary or other benefits/privileges than the following: 1. 1,300 rials (or US$247.00) monthly salary; 2. Free air tickets to KSA at the start of her contract and to the Philippines at the end thereof, as well as for her vacation at the end of each twenty four-month service; 3. Transportation to and from work; 4. Free living accommodations; 5. Free medical treatment, except for optical and dental operations, plastic surgery charges and lenses, and medical treatment obtained outside of KSA;

6. Entry visa fees will be shared equally between her and her employer, but the exit/re-entry visa fees, fees for Iqama issuance, renewal, replacement, passport renewal, sponsorship transfer and other liabilities shall be borne by her; 7. Thirty days paid vacation leave with round trip tickets to Manila after twenty four-months of continuous service; 8. Eight days public holidays per year; 9. The indemnity benefit due her at the end of her service will be calculated as per labor laws of KSA. Thus, the agreement does not include provisions for insurance, or for accident, death or other benefits that the Cuaresmas seek to recover, and which the labor tribunals and appellate court granted variably in the guise of compensatory damages.

2. **LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; DEATH OF AN EMPLOYEE WHICH IS NOT WORK-CONNECTED IS NOT COMPENSABLE; CASE AT BAR. —** Our next inquiry is, should Jasmin's death be considered as work-connected and thus compensable? The evidence indicates that it is not. At the time of her death, she was not on duty, or else evidence to the contrary would have been adduced. Neither was she within hospital premises at the time. Instead, she was at her dormitory room on personal time when she died. Neither has it been shown, nor does the evidence suggest, that at the time she died, Jasmin was performing an act reasonably necessary or incidental to her employment as nurse, because she was at her dormitory room. It is reasonable to suppose that all her work is performed at the Al-birk Hospital, and not at her dormitory room. We cannot expect that the foreign employer should ensure her safety even while she is not on duty. It is not fair to require employers to answer even for their employees' personal time away from work, which the latter are free to spend of their own choosing. Whether they choose to spend their free time in the pursuit of safe or perilous undertakings, in the company of friends or strangers, lovers or enemies, this is not one area which their employers should be made accountable for. While we have emphasized the need to observe official work time strictly, what an employee does on free time is beyond the employer's sphere of inquiry.

3. **ID.; ID.; "EMPLOYER'S PREMISES", DEFINED. —** While the "employer's premises" may be defined very broadly not only to include premises owned by it, but also premises it leases, hires, supplies or uses, we are not prepared to rule that the

dormitory wherein Jasmin stayed should constitute employer's premises as would allow a finding that death or injury therein is considered to have been incurred or sustained in the course of or arose out of her employment. There are certainly exceptions, but they do not appear to apply here. Moreover, a complete determination would have to depend on the unique circumstances obtaining and the overall factual environment of the case, which are here lacking.

4. **ID.; ID.; REPUBLIC ACT NO. 8042 (MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995); OBJECTIVES; RECRUITMENT AGENCIES ARE MANDATED TO PROTECT THE RIGHTS AND INTEREST OF THEIR DEPLOYED OVERSEAS FILIPINO WORKERS, ESPECIALLY THOSE IN DISTRESS. —** Under Republic Act No. 8042 (R.A. 8042), or the Migrant Workers and Overseas Filipinos Act of 1995, the State shall, at all times, uphold the dignity of its citizens whether in country or overseas, in general, and Filipino migrant workers, in particular. The State shall provide adequate and timely social, economic and legal services to Filipino migrant workers. The rights and interest of *distressed* overseas Filipinos, in general, and Filipino migrant workers, in particular, documented or undocumented, are adequately protected and safeguarded. Becmen and White Falcon, as licensed local recruitment agencies, miserably failed to abide by the provisions of R.A. 8042. Recruitment agencies are expected to extend assistance to their deployed OFWs, especially those in distress. Instead, they abandoned Jasmin's case and allowed it to remain unsolved to further their interests and avoid anticipated liability which parents or relatives of Jasmin would certainly exact from them. They willfully refused to protect and tend to the welfare of the deceased Jasmin, treating her case as just one of those unsolved crimes that is not worth wasting their time and resources on. The evidence does not even show that Becmen and Rajab lifted a finger to provide legal representation and seek an investigation of Jasmin's case. Worst of all, they unnecessarily trampled upon the person and dignity of Jasmin by standing pat on the argument that Jasmin committed suicide, which is a grave accusation given its un-Christian nature.

5. **CIVIL LAW; DAMAGES; AWARD OF MORAL DAMAGES IS PROPER BY REASON OF THE ACTS AND OMISSIONS**

OF THE RECRUITMENT AGENCY WHICH ARE AGAINST PUBLIC POLICY. — x x x Article 21 of the Code states that any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage. And, lastly, Article 24 requires that 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. Clearly, Rajab, Becmen and White Falcon's acts and omissions are against public policy because they undermine and subvert the interest and general welfare of our OFWs abroad, who are entitled to full protection under the law. They set an awful example of how foreign employers and recruitment agencies should treat and act with respect to their distressed employees and workers abroad. Their shabby and callous treatment of Jasmin's case; their uncaring attitude; their unjustified failure and refusal to assist in the determination of the true circumstances surrounding her mysterious death, and instead finding satisfaction in the unreasonable insistence that she committed suicide just so they can conveniently avoid pecuniary liability; placing their own corporate interests above of the welfare of their employee's — all these are contrary to morals, good customs and public policy, and constitute taking advantage of the poor employee and her family's ignorance, helplessness, indigence and lack of power and resources to seek the truth and obtain justice for the death of a loved one. x x x The relations between capital and labor are so impressed with public interest, and neither shall act oppressively against the other, or impair the interest or convenience of the public. In case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer. The grant of moral damages to the employee by reason of misconduct on the part of the employer is sanctioned by Article 2219 (10) of the Civil Code, which allows recovery of such damages in actions referred to in Article 21. Thus, in view of the foregoing, the Court holds that the Cuaresmas are entitled to moral damages.

6. **ID.; OBLIGATIONS AND CONTRACTS; JOINT AND SOLIDARY OBLIGATIONS; THE JOINT AND SOLIDARY LIABILITY IMPOSED BY LAW AGAINST RECRUITMENT AGENCIES AND FOREIGN EMPLOYERS FOR ANY**

VIOLATION OF THE RECRUITMENT AGREEMENT OR CONTRACT OF EMPLOYMENT IS MEANT TO ASSURE THE AGGRIEVED WORKER OF IMMEDIATE AND SUFFICIENT PAYMENT OF WHAT IS DUE HIM. — Private employment agencies are held jointly and severally liable with the foreign-based employer for any violation of the recruitment agreement or contract of employment. This joint and solidary liability imposed by law against recruitment agencies and foreign employers is meant to assure the aggrieved worker of immediate and sufficient payment of what is due him. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

7. ID.; ID.; EXTINGUISHMENT OF OBLIGATIONS; PAYMENT OR PERFORMANCE; THE SOLIDARY LIABILITY OF RECRUITMENT AGENCY AND FOREIGN EMPLOYER IS WITHOUT PREJUDICE TO EACH HAVING THE RIGHT TO BE REIMBURSED IN CASE OF ASSUMPTION OF LIABILITY. — White Falcon's assumption of Becmen's liability does not automatically result in Becmen's freedom or release from liability. This has been ruled in *ABD Overseas Manpower Corporation v. NLRC*. Instead, both Becmen and White Falcon should be held liable solidarily, without prejudice to each having the right to be reimbursed under the provision of the Civil Code that whoever pays for another may demand from the debtor what he has paid.

APPEARANCES OF COUNSEL

Gregorio V. De Lima for Sps. Cuaresma.

V.Y. Eleazar and Associates for Becmen Service Exporter & Promotions, Inc.

Angelo Palana and Batino Law Offices for White Falcon Services, Inc.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

These consolidated petitions assail the Amended Decision[1] of the Court of Appeals dated May 14, 2008 in CA-G.R. SP No. 80619 and CA-G.R. SP No. 81030 finding White Falcon Services, Inc. and Becmen Service Exporter and Promotion, Inc. solidarily liable to indemnify spouses Simplicio and Mila Cuaresma the amount of US$4,686.73 in actual damages with interest.

On January 6, 1997, Jasmin Cuaresma (Jasmin) was deployed by Becmen Service Exporter and Promotion, Inc.[2] (Becmen) to serve as assistant nurse in Al-Birk Hospital in the Kingdom of Saudi Arabia (KSA), for a contract duration of three years, with a corresponding salary of US$247.00 per month.

Over a year later, she died allegedly of poisoning.

Jessie Fajardo, a co-worker of Jasmin, narrated that on June 21, 1998, Jasmin was found dead by a female cleaner lying on the floor inside her dormitory room with her mouth foaming and smelling of poison.[3]

Based on the police report and the medical report of the examining physician of the Al-Birk Hospital, who conducted an autopsy of Jasmin's body, the likely cause of her death was poisoning. Thus:

According to letter No. 199, dated 27.2.1419H, issued by Al-Birk Police Station, for examining the corpse of Jasmin Cuaresma, 12.20 P.M. 27.2.1419H, Sunday, at Al-Birk Hospital.

1. The Police Report on the Death
2. The Medical Diagnosis

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[1] *Rollo*, pp. 53-68; penned by Associate Justice Jose Catral Mendoza and concurred in by Associate Justices Amelita G. Tolentino and Arturo G. Tayag.

[2] A Philippine corporation engaged in the business of recruitment of workers for overseas employment.

[3] *Rollo*, p. 70.

Sex: Female Age: 25 years Relg: Christian

The said person was brought to the Emergency Room of the hospital; time 12.20 P.M. and she was unconscious, blue, no pulse, no respiration and the first aid esd undertaken but without success.

3. Diagnosis and Opinion: Halt in blood circulation respiratory system and brain damage due to an **apparent poisoning which is under investigation**.[4]

Name: Jasmin Cuaresma
Sex: Female

Marital Status: Single	Nationality: Philipino (sic)
Religion: Christian	Profession: Nurse
Address: Al-Birk Genrl. Hospital	Birth Place: The Philippines

On 27.2.1419H, Dr. Tariq Abdulminnem and Dr. Ashoki Komar, both have examined the dead body of Jasmin Cuaresma, at 12.20 P.M., Sunday, 22.2.14189H, and the result was:

1. Report of the Police on the death
2. Medical Examination: Blue skin and paleness on the Extrimes (sic), total halt to blood circulation and respiratory system and brain damage. There were no external injuries. **Likely poisoning** by taking poisonous substance, **yet not determined**. There was a bad smell in the mouth and unknown to us.[5] (Emphasis supplied)

Jasmin's body was repatriated to Manila on September 3, 1998. The following day, the City Health Officer of Cabanatuan City conducted an autopsy and the resulting medical report indicated that Jasmin died under violent circumstances, and not poisoning as originally found by the KSA examining physician. The City Health Officer found that Jasmin had abrasions at her inner lip and gums; lacerated wounds and abrasions on her left and right ears; lacerated wounds and hematoma (contusions) on her elbows; abrasions and hematoma on her thigh and legs; intra-muscular hemorrhage at the anterior chest; rib fracture; puncture wounds; and abrasions on the labia minora of the vaginal area.[6]

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[4] CA *rollo*, CA-G.R. SP No. 80619, pp. 344-345.

[5] *Id.* at 345.

[6] *Id.* at 68-69; Autopsy Report of the Cabanatuan City Health Office dated September 4, 1998.

On March 11, 1999, Jasmin's remains were exhumed and examined by the National Bureau of Investigation (NBI). The toxicology report of the NBI, however, tested negative for non-volatile, metallic poison and insecticides.[7]

Simplicio and Mila Cuaresma (the Cuaresmas), Jasmin's parents and her surviving heirs, received from the Overseas Workers Welfare Administration (OWWA) the following amounts: ₱50,000.00 for death benefits; ₱50,000.00 for loss of life; ₱20,000.00 for funeral expenses; and ₱10,000.00 for medical reimbursement.

On November 22, 1999, the Cuaresmas filed a complaint against Becmen and its principal in the KSA, Rajab & Silsilah Company (Rajab), claiming death and insurance benefits, as well as moral and exemplary damages for Jasmin's death.[8]

In their complaint, the Cuaresmas claim that Jasmin's death was work-related, having occurred at the employer's premises;[9] that under Jasmin's contract with Becmen, she is entitled to "iqama insurance" coverage; that Jasmin is entitled to compensatory damages in the amount of US$103,740.00, which is the sum total of her monthly salary of US$247.00 per month under her employment contract, multiplied by 35 years (or the remaining years of her productive life had death not supervened at age 25, assuming that she lived and would have retired at age 60).

The Cuaresmas assert that as a result of Jasmin's death under mysterious circumstances, they suffered sleepless nights and mental anguish. The situation, they claim, was aggravated by findings in the autopsy and exhumation reports which evidently show that a grave injustice has been committed against them and their daughter, for which those responsible should likewise be made to pay moral and exemplary damages and attorney's fees.

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[7] *Id.* at 70; NBI Toxicology Report No. T-99-220 (Gx) dated April 8, 1999.

[8] The case was docketed as NLRC NCR OFW (L)99-11-00088-99.

[9] Jasmin was staying at a dormitory provided and paid for by her employer Rajab Silsilah Co.

In their position paper, Becmen and Rajab insist that Jasmin committed suicide, citing a prior unsuccessful suicide attempt sometime in March or April 1998 and relying on the medical report of the examining physician of the Al-Birk Hospital. They likewise deny liability because the Cuaresmas already recovered death and other benefits totaling ₱130,000.00 from the OWWA. They insist that the Cuaresmas are not entitled to "*iqama* insurance" because this refers to the "issuance" — not insurance — of *iqama*, or residency/work permit required in the KSA. On the issue of moral and exemplary damages, they claim that the Cuaresmas are not entitled to the same because they have not acted with fraud, nor have they been in bad faith in handling Jasmin's case.

While the case was pending, Becmen filed a manifestation and motion for substitution alleging that Rajab terminated their agency relationship and had appointed White Falcon Services, Inc. (White Falcon) as its new recruitment agent in the Philippines. Thus, White Falcon was impleaded as respondent as well, and it adopted and reiterated Becmen's arguments in the position paper it subsequently filed.

On February 28, 2001, the Labor Arbiter rendered a Decision[10] dismissing the complaint for lack of merit. Giving weight to the medical report of the Al-Birk Hospital finding that Jasmin died of poisoning, the Labor Arbiter concluded that Jasmin committed suicide. In any case, Jasmin's death was not service-connected, nor was it shown that it occurred while she was on duty; besides, her parents have received all corresponding benefits they were entitled to under the law. In regard to damages, the Labor Arbiter found no legal basis to warrant a grant thereof.

On appeal, the National Labor Relations Commission (Commission) reversed the decision of the Labor Arbiter. Relying on the findings of the City Health Officer of Cabanatuan City and the NBI as contained in their autopsy and toxicology report, respectively, the Commission, via its November 22, 2002 Resolution[11]

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[10] *Rollo*, pp. 69-80.

[11] *Id.* at 103-115; penned by Commissioner Tito F. Genilo and concurred in by Commissioners Lourdes C. Javier and Ireneo B. Bernardo.

declared that, based on substantial evidence adduced, Jasmin was the victim of compensable work-connected criminal aggression. It disregarded the Al-Birk Hospital attending physician's report as well as the KSA police report, finding the same to be inconclusive. It declared that Jasmin's death was the result of an "accident" occurring within the employer's premises that is attributable to her employment, or to the conditions under which she lived, and thus arose out of and in the course of her employment as nurse. Thus, the Cuaresmas are entitled to actual damages in the form of Jasmin's lost earnings, including future earnings, in the total amount of US$113,000.00. The Commission, however, dismissed all other claims in the complaint.

Becmen, Rajab and White Falcon moved for reconsideration, whereupon the Commission issued its October 9, 2003 Resolution[12] reducing the award of US$113,000.00 as actual damages to US$80,000.00.[13] The NLRC likewise declared Becmen and White Falcon as solidarily liable for payment of the award.

Becmen and White Falcon brought separate petitions for *certiorari* to the Court of Appeals.[14] On June 28, 2006, the appellate court rendered its Decision,[15] the dispositive portion of which reads, as follows:

> WHEREFORE, the subject petitions are DENIED but in the execution of the decision, it should first be enforced against White Falcon Services and then against Becmen Services when it is already impossible, impractical and futile to go against it (White Falcon).
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> SO ORDERED.[16]

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[12] *Id.* at 116-125.

[13] *Id.* at 124.

[14] Entitled *"White Falcon Services, Inc. v. NLRC, Becmen Service Exporter, Inc. and Spouses Simplicio and Mila Cuaresma"* and *"Becmen Service Exporter and Promotions, Inc. v. NLRC, Mila Cuaresma, White Falcon Services, Inc., and Jaime Ortiz (President of White Falcon Services, Inc.)"* and docketed as CA-G.R. SP No. 80619 and CA-G.R. SP No. 81030, respectively.

[15] *Rollo*, pp. 126-139; *Rollo*, pp. 53-68; penned by Associate Justice Jose Catral Mendoza and concurred in by Associate Justices Elvi John Asuncion and Arturo G. Tayag.

[16] *Id.* at 138.

The appellate court affirmed the NLRC's findings that Jasmin's death was compensable, the same having occurred at the dormitory, which was contractually provided by the employer. Thus her death should be considered to have occurred within the employer's premises, arising out of and in the course of her employment.

Becmen and White Falcon moved for reconsideration. On May 14, 2008, the appellate court rendered the assailed Amended Decision, the dispositive portion of which reads, as follows:

> WHEREFORE, the motions for reconsideration are GRANTED. Accordingly, the award of US$80,000.00 in actual damages is hereby reduced to US$4,686.73 plus interest at the legal rate computed from the time it became due until fully paid. Petitioners are hereby adjudged jointly and solidarily liable with the employer for the monetary awards with Becmen Service Exporter and Promotions, Inc. having a right of reimbursement from White Falcon Services, Inc.
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> SO ORDERED.[17]

In the Amended Decision, the Court of Appeals found that although Jasmin's death was compensable, however, there is no evidentiary basis to support an award of actual damages in the amount of US$80,000.00. Nor may lost earnings be collected, because the same may be charged only against the perpetrator of the crime or quasi-delict. Instead, the appellate court held that Jasmin's beneficiaries should be entitled only to the sum equivalent of the remainder of her 36-month employment contract, or her monthly salary of US$247.00 multiplied by nineteen (19) months, with legal interest.

Becmen filed the instant petition for review on *certiorari* (G.R. Nos. 182978-79). The Cuaresmas, on the other hand, moved for a reconsideration of the amended decision, but it was denied. They are now before us via G.R. Nos. 184298-99.

On October 6, 2008, the Court resolved to consolidate G.R. Nos. 184298-99 with G.R. Nos. 182978-79.

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[17] *Id.* at 67.

In G.R. Nos. 182978-79, Becmen raises the following issues for our resolution:

(THE COURT OF APPEALS) GRAVELY ERRED WHEN IT GAVE MORE CREDENCE AND WEIGHT TO THE AUTOPSY REPORT CONDUCTED BY THE CABANATUAN CITY HEALTH OFFICE THAN THE MEDICAL AND POLICE REPORTS ISSUED BY THE MINISTRY OF HEALTH OF KINGDOM OF SAUDI ARABIA AND AL-BIRK HOSPITAL.

(THE COURT OF APPEALS) GRAVELY ERRED WHEN ON THE BASIS OF THE POSITION PAPERS AND ANNEXES THERETO INCLUDING THE AUTOPSY REPORT, IT CONCLUDED THAT THE DEATH OF JASMIN CUARESMA WAS CAUSED BY CRIMINAL AGGRESSION.

(THE COURT OF APPEALS) GRAVELY ERRED WHEN IT HELD THAT THE DEATH OF JASMIN CUARESMA WAS COMPENSABLE PURSUANT TO THE RULING OF THE SUPREME COURT IN *TALLER VS. YNCHAUSTI*, G.R. NO. 35741, DECEMBER 20, 1932, WHICH IT FOUND TO BE STILL GOOD LAW.

(THE COURT OF APPEALS) GRAVELY ERRED WHEN IT HELD BECMEN LIABLE FOR THE DEATH OF JASMIN CUARESMA NOTWITHSTANDING ITS ADMISSIONS THAT "IQAMA INSURANCE" WAS A TYPOGRAPHICAL ERROR SINCE "IQAMA" IS NOT AN INSURANCE.

(THE COURT OF APPEALS) GRAVELY ERRED WHEN IT CONCLUDED THAT THE DEATH OF JASMIN WAS WORK RELATED.

(THE COURT OF APPEALS) GRAVELY ERRED WHEN IT HELD BECMEN LIABLE TO JASMIN'S BENEFICIARIES FOR THE REMAINDER OF HER 36-MONTH CONTRACT COMPUTED IN THIS MANNER: MONTHLY SALARY OF US$246.67 MULTIPLIED BY 19 MONTHS, THE REMAINDER OF THE TERM OF JASMIN'S EMPLOYMENT CONTRACT, IS EQUAL TO US$4,686.73.

(THE COURT OF APPEALS) GRAVELY ERRED WHEN IT HELD BECMEN LIABLE TO PAY INTEREST AT THE LEGAL RATE FROM THE TIME IT WAS DUE UNTIL FULLY PAID.

(THE COURT OF APPEALS) GRAVELY ERRED WHEN IT HELD BECMEN AND WHITE FALCON JOINTLY AND SEVERALLY LIABLE WITH THE EMPLOYER NOTWITHSTANDING THE

ASSUMPTION OF LIABILITY EXECUTED BY WHITE FALCON IN FAVOR OF BECMEN.

On the other hand, in G.R. Nos. 184298-99, the Cuaresmas raise the following issues:

(THE COURT OF APPEALS) GRAVELY ERRED IN APPLYING THE PROVISIONS OF THE CIVIL CODE CONSIDERED GENERAL LAW DESPITE THE CASE BEING COVERED BY E.O. 247, R.A. 8042 AND LABOR CODE CONSIDERED AS SPECIAL LAWS.

(THE COURT OF APPEALS) GRAVELY ERRED IN NOT APPLYING THE DECEASED'S FUTURE EARNINGS WHICH IS (AN) INHERENT FACTOR IN THE COMPUTATION OF DEATH BENEFITS OF OVERSEAS FILIPINO CONTRACT WORKERS.

(THE COURT OF APPEALS) GRAVELY ERRED IN REDUCING THE DEATH BENEFITS AWARDED BY NLRC CONSIDERED FINDINGS OF FACT THAT CANNOT BE DISTURBED THROUGH *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT.

The issue for resolution is whether the Cuaresmas are entitled to monetary claims, by way of benefits and damages, for the death of their daughter Jasmin.

The terms and conditions of Jasmin's 1996 Employment Agreement which she and her employer Rajab freely entered into constitute the law between them. As a rule, stipulations in an employment contract not contrary to statutes, public policy, public order or morals have the force of law between the contracting parties.[18] An examination of said employment agreement shows that it provides for no other monetary or other benefits/privileges than the following:

1. 1,300 rials (or US$247.00) monthly salary;
2. Free air tickets to KSA at the start of her contract and to the Philippines at the end thereof, as well as for her vacation at the end of each twenty four-month service;
3. Transportation to and from work;

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[18] *Delos Santos v. Jebsen Maritime, Inc.*, G.R. No. 154185, November 22, 2005, 475 SCRA 656.

4. Free living accommodations;
5. Free medical treatment, except for optical and dental operations, plastic surgery charges and lenses, and medical treatment obtained outside of KSA;
6. Entry visa fees will be shared equally between her and her employer, but the exit/re-entry visa fees, fees for Iqama issuance, renewal, replacement, passport renewal, sponsorship transfer and other liabilities shall be borne by her;
7. Thirty days paid vacation leave with round trip tickets to Manila after twenty four-months of continuous service;
8. Eight days public holidays per year;
9. The indemnity benefit due her at the end of her service will be calculated as per labor laws of KSA.

Thus, the agreement does not include provisions for insurance, or for accident, death or other benefits that the Cuaresmas seek to recover, and which the labor tribunals and appellate court granted variably in the guise of compensatory damages.

However, the absence of provisions for social security and other benefits does not make Jasmin's employment contract infirm. Under KSA law, her foreign employer is not obliged to provide her these benefits; and neither is Jasmin entitled to minimum wage — unless of course the KSA labor laws have been amended to the opposite effect, or that a bilateral wage agreement has been entered into.

Our next inquiry is, should Jasmin's death be considered as work-connected and thus compensable? The evidence indicates that it is not. At the time of her death, she was not on duty, or else evidence to the contrary would have been adduced. Neither was she within hospital premises at the time. Instead, she was at her dormitory room on personal time when she died. Neither has it been shown, nor does the evidence suggest, that at the time she died, Jasmin was performing an act reasonably necessary or incidental to her employment as nurse, because she was at her dormitory room. It is reasonable to suppose that all her work is performed at the Al-birk Hospital, and not at her dormitory room.

We cannot expect that the foreign employer should ensure her safety even while she is not on duty. It is not fair to require employers to answer even for their employees' personal time away from work, which the latter are free to spend of their own choosing. Whether they choose to spend their free time in the pursuit of safe or perilous undertakings, in the company of friends or strangers, lovers or enemies, this is not one area which their employers should be made accountable for. While we have emphasized the need to observe official work time strictly,[19] what an employee does on free time is beyond the employer's sphere of inquiry.

While the "employer's premises" may be defined very broadly not only to include premises owned by it, but also premises it leases, hires, supplies or uses,[20] we are not prepared to rule that the dormitory wherein Jasmin stayed should constitute employer's premises as would allow a finding that death or injury therein is considered to have been incurred or sustained in the course of or arose out of her employment. There are certainly exceptions,[21] but they do not appear to apply here.

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[19] *Aquino-Simbulan v. Zabat*, A.M. No. P-05-1993, April 26, 2005, 457 SCRA 23.

[20] *Iloilo Dock & Engineering Co. v. Workmen's Compensation Commission*, G.R. No. L-26341, November 27, 1968, 26 SCRA 102, citing Samuel B. Horovitz' *Injury and Death under Workmen's Compensation Laws* (1944).

[21] *Id.* at 109-110, stating that —

> The narrow rule that a worker is not in the course of his employment until he crosses the employment threshold is itself subject to many exceptions, off-premises injuries to or from work, in both liberal and narrow states, are compensable (1) if the employee is on the way to or from work in a vehicle owned or supplied by the employer, whether in a public (e.g., the employer's street car) or private conveyance; (2) if the employee is subject to call at all hours or at the moment of injury; (3) if the employee is traveling for the employer, *i.e.* traveling workers; (4) if the employer pays for the employee's time from the moment he leaves his home to his return home; (5) if the employee is on his way to do further work at home, even though on a fixed salary; (6) where the employee is required to bring his automobile to his place of business for use there. Other exceptions undoubtedly are equally justified, dependent on their own peculiar circumstances.

Moreover, a complete determination would have to depend on the unique circumstances obtaining and the overall factual environment of the case, which are here lacking.

But, did Jasmin commit suicide? Rajab, Becmen and White Falcon vehemently insist that she did; thus, her heirs may not claim benefits or damages based on criminal aggression. On the other hand, the Cuaresmas do not believe so.

The Court cannot subscribe to the idea that Jasmin committed suicide while halfway into her employment contract. It is beyond human comprehension that a 25-year old Filipina, in the prime of her life and working abroad with a chance at making a decent living with a high-paying job which she could not find in her own country, would simply commit suicide for no compelling reason.

The Saudi police and autopsy reports — which state that Jasmin is a *likely/or apparent* victim of poisoning — are **patently inconclusive**. They are thus unreliable as evidence.

On the contrary, the autopsy report of the Cabanatuan City Health Officer and the exhumation report of the NBI categorically and unqualifiedly show that Jasmin sustained external and internal injuries, specifically **abrasions at her inner lip and gums**; **lacerated wounds and abrasions on her left and right ears**; **lacerated wounds and hematoma (contusions) on her elbows**; **abrasions and hematoma on her thigh and legs**; **intra-muscular hemorrhage at the anterior chest**; **a fractured rib**; **puncture wounds**; and **abrasions on the labia minora of the vaginal area**. The NBI toxicology report came up **negative on the presence of poison**.

All these show that Jasmin was manhandled — and possibly raped — prior to her death.

Even if we were to agree with the Saudi police and autopsy reports that indicate Jasmin was poisoned to death, we do not believe that it was self-induced. If ever Jasmin was poisoned, the assailants who beat her up — and possibly raped her — are certainly responsible therefor.

We are not exactly ignorant of what goes on with our OFWs. Nor is the rest of the world blind to the realities of life being suffered by migrant workers in the hands of some foreign employers. It is inconceivable that our Filipina women would seek employment abroad and face uncertainty in a foreign land, only to commit suicide for unexplained reasons. Deciding to leave their family, loved ones, and the comfort and safety of home, to work in a strange land requires unrivaled strength and courage. Indeed, many of our women OFWs who are unfortunate to end up with undesirable employers have been there more times than they care to, beaten up and broken in body — yet they have remained strong in mind, refusing to give up the will to live. Raped, burned with cigarettes, kicked in the chest with sharp high-heeled shoes, starved for days or even weeks, stabbed, slaved with incessant work, locked in their rooms, forced to serve their masters naked, grossly debased, dehumanized and insulted, their spirits fought on and they lived for the day that they would once again be reunited with their families and loved ones. Their bodies surrendered, but their will to survive remained strong.

It is surprising, therefore, that Rajab, Becmen and White Falcon should insist on suicide, without even lifting a finger to help solve the mystery of Jasmin's death. Being in the business of sending OFWs to work abroad, Becmen and White Falcon should know what happens to some of our OFWs. It is impossible for them to be completely unaware that cruelties and inhumanities are inflicted on OFWs who are unfortunate to be employed by vicious employers, or upon those who work in communities or environments where they are liable to become victims of crime. By now they should know that our women OFWs do not readily succumb to the temptation of killing themselves even when assaulted, abused, starved, debased and, worst, raped.

Indeed, what we have seen is Rajab and Becmen's revolting scheme of conveniently avoiding responsibility by clinging to the absurd theory that Jasmin took her own life. Abandoning their legal, moral and social obligation (as employer and recruiter) to assist Jasmin's family in obtaining justice for her death, they immediately gave up on Jasmin's case, which has remained

under investigation as the autopsy and police reports themselves indicate. Instead of taking the cudgels for Jasmin, who had no relative or representative in the KSA who would naturally demand and seek an investigation of her case, Rajab and Becmen chose to take the most convenient route to avoiding and denying liability, by casting Jasmin's fate to oblivion. It appears from the record that to this date, no follow up of Jasmin's case was ever made at all by them, and they seem to have expediently treated Jasmin's death as a closed case. Despite being given the lead via the autopsy and toxicology reports of the Philippine authorities, they failed and refused to act and pursue justice for Jasmin's sake and to restore honor to her name.

Indeed, their nonchalant and uncaring attitude may be seen from how Jasmin's remains were repatriated. No official representative from Rajab or Becmen was kind enough to make personal representations with Jasmin's parents, if only to extend their condolences or sympathies; instead, a mere colleague, nurse Jessie Fajardo, was designated to accompany Jasmin's body home.

Of all life's tragedies, the death of one's own child must be the most painful for a parent. Not knowing why or how Jasmin's life was snuffed out makes the pain doubly unbearable for Jasmin's parents, and further aggravated by Rajab, Becmen, and White Falcon's baseless insistence and accusation that it was a self-inflicted death, a mortal sin by any religious standard.

Thus we categorically hold, based on the evidence; the actual experiences of our OFWs; and the resilient and courageous spirit of the Filipina that transcends the vilest desecration of her physical self, that Jasmin did not commit suicide but a victim of murderous aggression.

Rajab, Becmen, and White Falcon's indifference to Jasmin's case has caused unfathomable pain and suffering upon her parents. They have turned away from their moral obligation, as employer and recruiter and as entities laden with social and civic obligations in society, to pursue justice for and in behalf of Jasmin, her parents and those she left behind. Possessed with the resources to determine the truth and to pursue justice, they chose to stand

idly for the sake of convenience and in order that they may avoid pecuniary liability, turning a blind eye to the Philippine authorities' autopsy and toxicology reports instead of taking action upon them as leads in pursuing justice for Jasmin's death. They have placed their own financial and corporate interests above their moral and social obligations, and chose to secure and insulate themselves from the perceived responsibility of having to answer for and indemnify Jasmin's heirs for her death.

Under Republic Act No. 8042 (R.A. 8042), or the Migrant Workers and Overseas Filipinos Act of 1995,[22] the State shall, at all times, uphold the dignity of its citizens whether in country or overseas, in general, and Filipino migrant workers, in particular.[23] The State shall provide adequate and timely social, economic and legal services to Filipino migrant workers.[24] The rights and interest of *distressed* [25] overseas Filipinos, in general, and Filipino migrant workers, in particular, documented or undocumented, are adequately protected and safeguarded.[26]

Becmen and White Falcon, as licensed local recruitment agencies, miserably failed to abide by the provisions of R.A. 8042. Recruitment agencies are expected to extend assistance to their deployed OFWs, especially those in distress. Instead, they abandoned Jasmin's case and allowed it to remain unsolved to further their interests and avoid anticipated liability which parents or relatives of Jasmin would certainly exact from them. They willfully refused to protect and tend to the welfare of the

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[22] The law took effect on July 15, 1995.

[23] R.A. 8042, Sec. 2a.

[24] *Id.* Sec. 2b.

[25] As defined under the Rules and Regulations Implementing R.A. 8042:

(c) **Overseas Filipino in distress** — Overseas Filipinos as defined in Sec.3(c) of the Act shall be deemed in distress in cases where they have valid medical, psychological or legal assistance problems requiring treatment, hospitalization, counseling, legal representation as specified in Sections 24 and 26 or any other kind of intervention with the authorities in the country where they are found.

[26] R.A. 8042, Sec. 2e.

deceased Jasmin, treating her case as just one of those unsolved crimes that is not worth wasting their time and resources on. The evidence does not even show that Becmen and Rajab lifted a finger to provide legal representation and seek an investigation of Jasmin's case. Worst of all, they unnecessarily trampled upon the person and dignity of Jasmin by standing pat on the argument that Jasmin committed suicide, which is a grave accusation given its un-Christian nature.

We cannot reasonably expect that Jasmin's parents should be the ones to actively pursue a just resolution of her case in the KSA, unless they are provided with the finances to undertake this herculean task. Sadly, Becmen and Rajab did not lend any assistance at all in this respect. The most Jasmin's parents can do is to coordinate with Philippine authorities as mandated under R.A. 8042, obtain free legal assistance and secure the aid of the Department of Foreign Affairs, the Department of Labor and Employment, the POEA and the OWWA in trying to solve the case or obtain relief, in accordance with Section 23[27] of

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[27] SEC. 23. ROLE OF GOVERNMENT AGENCIES. — The following government agencies shall perform the following to promote the welfare and protect the rights of migrant workers and, as far as applicable, all overseas Filipinos:

(a) Department of Foreign Affairs. — The Department, through its home office or foreign posts, shall take priority action its home office or foreign posts, shall take priority action or make representation with the foreign authority concerned to protect the rights of migrant workers and other overseas Filipinos and extend immediate assistance including the repatriation of distressed or beleaguered migrant workers and other overseas Filipinos;

(b) Department of Labor and Employment — The Department of Labor and Employment shall see to it that labor and social welfare laws in the foreign countries are fairly applied to migrant workers and whenever applicable, to other overseas Filipinos including the grant of legal assistance and the referral to proper medical centers or hospitals:

(b.1) Philippine Overseas Employment Administration — Subject to deregulation and phase out as provided under Sections 29 and 30 herein, the Administration shall regulate private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system. It shall also formulate and implement, in coordination with appropriate entities concerned, when necessary employment of Filipino workers taking into consideration their welfare and the domestic manpower requirements.

R.A. 8042. To our mind, the Cuaresmas did all that was within their power, short of actually flying to the KSA. Indeed, the Cuaresmas went even further. To the best of their abilities and capacities, they ventured to investigate Jasmin's case on their own: they caused another autopsy on Jasmin's remains as soon as it arrived to inquire into the true cause of her death. Beyond that, they subjected themselves to the painful and distressful experience of exhuming Jasmin's remains in order to obtain another autopsy for the sole purpose of determining whether or not their daughter was poisoned. Their quest for the truth and justice is equally to be expected of all loving parents. All this time, Rajab and Becmen — instead of extending their full cooperation to the Cuaresma family — merely sat on their laurels in seeming unconcern.

In *Interorient Maritime Enterprises, Inc. v. NLRC*,[28] a seaman who was being repatriated after his employment contract expired, failed to make his Bangkok to Manila connecting flight as he began to wander the streets of Bangkok aimlessly. He was shot to death by Thai police four days after, on account of running amuck with a knife in hand and threatening to harm anybody within sight. The employer, sued for death and other benefits as well as damages, interposed as defense the provision in the seafarer agreement which provides that "no compensation shall be payable in respect of any injury, incapacity, disability or death resulting from a willful act on his own life by the seaman." The Court rejected the defense on the view, among others, that the recruitment agency should have observed some precautionary measures and should not have allowed the seaman, who was later on found to be mentally ill, to travel home alone, and its

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(b.2) Overseas Workers Welfare Administration — The Welfare Officer or in his absence, the coordinating officer shall provide the Filipino migrant worker and his family all the assistance they may need in the enforcement of contractual obligations by agencies or entities and/or by their principals. In the performance of this functions, he shall make representation and may call on the agencies or entities concerned to conferences or conciliation meetings for the purpose of settling the complaints or problems brought to his attention.

[28] G.R. No. 115497, September 16, 1996, 261 SCRA 757.

failure to do so rendered it liable for the seaman's death. We ruled therein that —

> The foreign employer may not have been obligated by its contract to provide a companion for a returning employee, but it cannot deny that it was expressly tasked by its agreement to assure the safe return of said worker. **The uncaring attitude displayed by petitioners who, knowing fully well that its employee had been suffering from some mental disorder, nevertheless still allowed him to travel home alone, is appalling to say the least. Such attitude harks back to another time when the landed gentry practically owned the serfs, and disposed of them when the latter had grown old, sick or otherwise lost their usefulness**.[29] (Emphasis supplied)

Thus, more than just recruiting and deploying OFWs to their foreign principals, recruitment agencies have equally significant responsibilities. In a foreign land where OFWs are likely to encounter uneven if not discriminatory treatment from the foreign government, and certainly a delayed access to language interpretation, legal aid, and the Philippine consulate, the recruitment agencies should be the **first** to come to the rescue of our distressed OFWs since they know the employers and the addresses where they are deployed or stationed. Upon them lies the primary obligation to protect the rights and ensure the welfare of our OFWs, whether distressed or not. Who else is in a better position, if not these recruitment agencies, to render immediate aid to their deployed OFWs abroad?

Article 19 of the Civil Code provides that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith. Article 21 of the Code states that any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage. And, lastly, Article 24 requires that in all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral

[29] *Id.* at 772.

dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection.

Clearly, Rajab, Becmen and White Falcon's acts and omissions are against public policy because they undermine and subvert the interest and general welfare of our OFWs abroad, who are entitled to full protection under the law. They set an awful example of how foreign employers and recruitment agencies should treat and act with respect to their distressed employees and workers abroad. Their shabby and callous treatment of Jasmin's case; their uncaring attitude; their unjustified failure and refusal to assist in the determination of the true circumstances surrounding her mysterious death, and instead finding satisfaction in the unreasonable insistence that she committed suicide just so they can conveniently avoid pecuniary liability; placing their own corporate interests above of the welfare of their employee's — all these are contrary to morals, good customs and public policy, and constitute taking advantage of the poor employee and her family's ignorance, helplessness, indigence and lack of power and resources to seek the truth and obtain justice for the death of a loved one.

Giving in handily to the idea that Jasmin committed suicide, and adamantly insisting on it just to protect Rajab and Becmen's material interest — despite evidence to the contrary — is against the moral law and runs contrary to the good custom of not denouncing one's fellowmen for alleged grave wrongdoings that undermine their good name and honor.[30]

Whether employed locally or overseas, all Filipino workers enjoy the protective mantle of Philippine labor and social legislation, contract stipulations to the contrary notwithstanding. This pronouncement is in keeping with the basic public policy of the State to 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. This ruling is likewise rendered imperative by Article 17 of the Civil

[30] See *Tiongco v. Deguma*, G.R. No. 133619, October 26, 1999, 317 SCRA 527.

Code which states that laws which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country.[31]

The relations between capital and labor are so impressed with public interest,[32] and neither shall act oppressively against the other, or impair the interest or convenience of the public.[33] In case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer.[34]

The grant of moral damages to the employee by reason of misconduct on the part of the employer is sanctioned by Article 2219 (10)[35] of the Civil Code, which allows recovery of such damages in actions referred to in Article 21.[36]

Thus, in view of the foregoing, the Court holds that the Cuaresmas are entitled to moral damages, which Becmen and White Falcon are jointly and solidarily liable to pay, together

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[31] *Royal Crown Internationale v. NLRC*, G.R. No. 78085, October 16, 1989, 178 SCRA 569, 580-581, cited in *Philippine National Bank v. Cabansag*, G.R. No. 157010, June 21, 2005, 460 SCRA 514.

[32] Civil Code, Article 1700.

[33] *Id.*, Article 1701.

[34] *Id.*, Article 1702.

[35] Art. 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;
(2) Quasi-delicts causing physical injuries;
(3) Seduction, abduction, rape, or other lascivious acts;
(4) Adultery or concubinage;
(5) Illegal or arbitrary detention or arrest;
(6) Illegal search;
(7) Libel, slander or any other form of defamation;
(8) Malicious prosecution;
(9) Acts mentioned in Article 309;
(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

[36] *Maneja v. National Labor Relations Commission*, G.R. No. 124013, June 5, 1998, 290 SCRA 603.

with exemplary damages for wanton and oppressive behavior, and by way of example for the public good.

Private employment agencies are held jointly and severally liable with the foreign-based employer for any violation of the recruitment agreement or contract of employment. This joint and solidary liability imposed by law against recruitment agencies and foreign employers is meant to assure the aggrieved worker of immediate and sufficient payment of what is due him.[37] If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.[38]

White Falcon's assumption of Becmen's liability does not automatically result in Becmen's freedom or release from liability. This has been ruled in *ABD Overseas Manpower Corporation v. NLRC*.[39] Instead, both Becmen and White Falcon should be held liable solidarily, without prejudice to each having the right to be reimbursed under the provision of the Civil Code that whoever pays for another may demand from the debtor what he has paid.[40]

WHEREFORE, the Amended Decision of the Court of Appeals dated May 14, 2008 in CA-G.R. SP No. 80619 and CA-G.R. SP No. 81030 is *SET ASIDE*. *Rajab & Silsilah Company, White Falcon Services, Inc., Becmen Service Exporter and Promotion, Inc., and their corporate directors and officers* are found jointly and solidarily liable and *ORDERED* to indemnify the heirs of Jasmin Cuaresma, spouses Simplicio and Mila Cuaresma, the following amounts:

1) TWO MILLION FIVE HUNDRED THOUSAND PESOS (₱2,500,000.00) as moral damages;

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[37] *Sevillana v. I.T. (International) Corp*., G.R. No. 99047, April 16, 2001, 356 SCRA 451.

[38] R.A. 8042, Section 10.

[39] G.R. No. 117056, February 24, 1998, 286 SCRA 454.

[40] Civil Code, Article 1236.

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Grave abuse of discretion — Committed by the Secretary of Justice when he assumed the function of a judge of calibrating the evidence on record, done only after a full-blown trial on the merits. (Metropolitan Bank & Trust Co. *vs*. Sec. Gonzales, G.R. No. 180165, April 07, 2009) p. 1000

Petition for — Distinguished from petition for review on *certiorari*. (Sable *vs*. People, G.R. No. 177961, April 07, 2009) p. 989

— Not a proper remedy to assail a judgment of conviction. (De Vera *vs*. De Vera, G.R. No. 172832, April 07, 2009) p. 877

— Not a proper remedy where appeal is available even if the ground availed of is grave abuse of discretion. (Tejano, Jr. *vs*. Sandiganbayan, G.R. No. 161778, April 07, 2009) p. 604

CIVIL SERVICE LAW

Compensation, allowances and bonus — When received in good faith and under the honest belief that the same are authorized, they need not be refunded. (Tagaro *vs*. Hon. Garcia, G.R. No. 173931, April 02, 2009) p. 294

Gross neglect of duty — May be punishable by dismissal even if committed for the first time. (Report on Financial Audit Conducted on the Books of Accounts of Mr. Balles, MTCC-OCC, Tacloban City, A.M. No. P-05-2065, April 02, 2009) p. 1

Leave of absence — The taking and approval of leave must be duly approved by the authorized officer. (Atty. Estardo-Teodoro *vs*. Segismundo, A.M. No. P-08-2523, April 07, 2009) p. 435

Position in the Civil Service — Classes; cited. (National Transmission Corp. *vs*. Hamoy, Jr., G.R. No. 179255, April 02, 2009) p. 325

Reassignment of employees — Distinguished from detail of employees. (National Transmission Corp. *vs*. Hamoy, Jr., G.R. No. 179255, April. 02, 2009) p. 325

— Employees reassigned with station-specific place of work indicated in their respective appointments cannot exceed one (1) year. *(Id.)*

Retirement benefits — All employees of the government are covered by P.D. No. 1146; exceptions. (Santos *vs*. Committee on Claims Settlement, G.R. No. 158071, April 02, 2009) p. 84

— All service credited for retirement, resignation or separation for which corresponding benefits have been awarded shall be excluded in the computation of service in case of re-employment. *(Id.)*

Upgrading and reclassification of positions — Defined. (Tagaro *vs*. Hon. Garcia, G.R. No. 173931, April 02, 2009) p. 294

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*Duty to bargain collec*tively — Defined. (UST Faculty Union *vs*. UST, G.R. No. 180892, April 07, 2009) p. 1016

COLLECTIVE BARGAINING AGREEMENT

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COMMISSION ON HIGHER EDUCATION

Functions — Cannot be amended by the President without prior legislation. (Review Center Assn. of the Phils. *vs*. Exec. Sec. Ermita, G.R. No. 180046, April 02, 2009) p. 342

Jurisdiction over institutions of higher learning — Review center is not an institution of higher learning. (Review Center Assn. of the Phils. *vs*. Exec. Sec. Ermita, G.R. No. 180046, April 02, 2009) p. 342

COMPLAINTS

Dismissal of — Not proper despite the seeming error in the prayer. (Heirs of Tomas Dolleton *vs*. Fil-Estate Management, Inc., G.R. No. 170750, April 07, 2009) p. 781

— Not warranted by mere allegation of prescription. *(Id.)*

COMPREHENSIVE DANGEROUS DRUGS ACT (R.A. NO. 9165)

Chain of custody rule — Elucidated. (Sales *vs*. People, G.R. No. 182296, April 07, 2009) p. 1047

CONDONATION

Contract of — Construed. (United Planters Sugar Milling Co., Inc. *vs*. CA, G.R. No. 126890, April 02, 2009; *Velasco, J., concurring opinion*) p. 13

— Distinguished from contract of compromise. *(Id.; Carpio, J., dissenting opinion)*

CONSPIRACY

Existence of — Elucidated. (People *vs*. Amodia, G.R. No. 173791, April 07, 2009) p. 889

(Asetre *vs*. Asetre, G.R. No. 171536, April 07, 2009) p. 840

— Manifested from the chain of events showing commonality of purpose in killing the victim. (People *vs*. Amodia, G.R. No. 173791, April 07, 2009) p. 889

— Must be supported by any evidence on record. (Asetre *vs*. Asetre, G.R. No. 171536, April 07, 2009) p. 840

CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC)

Factual findings of — May be affirmed, modified, or reversed by the Court of Appeals. (Summa Kumagai Inc.-Kumagai, Gumi Co., Ltd. Joint Venture *vs*. Romago, Inc., G.R. No. 177210, April 07, 2009) p. 945

CONTRACTS

Binding effect — As a rule, stipulations in an employment contract not contrary to statutes, public policy, public order or morals have the force of law between the contracting parties. (Becmen Service Exporter Promotion, Inc. *vs*. Sps. Cuaresma, G.R. Nos. 182978-79, April 07, 2009) p. 1058

Interpretation of — An agreement must be construed and enforced according to the terms employed. (United Planters Sugar Milling Co., Inc. *vs*. CA, G.R. No. 126890, April 02, 2009; *Velasco, J., concurring opinion*) p. 13

Ordinary commercial contracts — The terms of the contract are the law between the parties. (United Planters Sugar Milling Co., Inc. *vs*. CA, G.R. No. 126890, April 02, 2009; *Carpio, J., dissenting opinion*) p. 13

COUNTERCLAIM

Permissive counterclaim — May be severed from the main action. (Summa Kumagai Inc.-Kumagai, Gumi Co., Ltd. Joint Venture *vs*. Romago, Inc., G.R. No. 177210, April 07, 2009) p. 945

COURT OF APPEALS

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Conduct — They shall at all times perform official duties properly and with diligence. (Atty. Estardo-Teodoro *vs*. Segismundo, A.M. No. P-08-2523, April 07, 2009) p. 435

Confidential information — Defined. (Mah-Arevalo *vs*. Mape, A.M. No. P-09-2622, April 07, 2009) p. 451

Confidentiality rule — Construed. (Mah-Arevalo *vs*. Mape, A.M. No. P-09-2622, April 07, 2009) p. 451

Dishonesty — Defined. (Atty. Estardo-Teodoro *vs*. Segismundo, A.M. No. P-08-2523, April 07, 2009) p. 435

— Imposable penalty. *(Id.)*

Gross dishonesty and gross misconduct — Committed by a clerk of court for his failure to remit funds in due time. (Report on Financial Audit Conducted on the Books of Accounts of Mr. Balles, MTCC-OCC, Tacloban City, A.M. No. P-05-2065, April 02, 2009) p. 1

Violation of office rules — Imposable penalty. (Atty. Estardo-Teodoro *vs.* Segismundo, A.M. No. P-08-2523, April 07, 2009) p. 435

DAMAGES

Attorney's fees — May be granted when a party is compelled to litigate or incur expenses to protect his interest by reason of an unjustified act of the other party. (Heirs of George Y. Poe *vs.* Malayan Ins. Co., Inc., G.R. No. 156302, April 07, 2009) p. 564

Award of — Not proper when the victim's own negligence was the immediate and proximate cause of his death. (Gaid *vs.* People, G.R. No. 171636, April 07, 2009) p. 858

Civil indemnity for death due to a crime — Increased from ₱50,000.00 to ₱75,000.00. (People *vs.* Amodia, G.R. No. 173791, April 07, 2009) p. 889

Exemplary damages — Can be awarded when temperate damages are available. (Newsounds Broadcasting Network, Inc. *vs.* Hon. Dy, G.R. Nos. 170270 & 179411, April 02, 2009) p. 255

— May be awarded only upon showing of proof of entitlement to moral, temperate or compensatory damages. (DLSU *vs.* DLSU Employees Assn., G.R. No. 177283, April 07, 2009) p. 961

Indemnity for loss of earnings — Guidelines. (Heirs of George Y. Poe *vs.* Malayan Ins. Co., Inc., G.R. No. 156302, April 07, 2009) p. 564

Moral damages — Proper by reason of the acts and omissions of the recruitment agency which are against public policy. (Becmen Service Exporter Promotion, Inc. *vs.* Sps. Cuaresma, G.R. Nos. 182978-79, April 07, 2009) p. 1058

Temperate damages — Granted when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. (Newsounds Broadcasting Network, Inc. *vs*. Hon. Dy, G.R. Nos. 170270 & 179411, April 02, 2009) p. 255

DANGEROUS DRUGS

Chain of custody rule — Elucidated. (Sales *vs*. People, G.R. No. 182296, April 07, 2009) p. 1047

Illegal sale of dangerous drugs — Considered a "nefarious" business which is carried on with utmost secrecy or whispers to avoid detection. (Sales *vs*. People, G.R. No. 182296, April 07, 2009) p. 1047

— Elements. (People *vs*. Capalad, G.R. No. 184174, April 07, 2009) p. 1083

— Imposable penalty. *(Id.)*

DUE PROCESS

"Ample" opportunity to be heard and defend themselves" — Application in dismissal of employees' cases. (Perez *vs*. PTT Co., G.R. No. 152048, Apr. 07, 2009; *Velasco, J., separate concurring and dissenting opinion*) p. 522

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— Elucidated. *(Id.; Id.)*

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Rights of the owner of dominant estate — Restrictions; cited. (Goldcrest Realty Corp. *vs*. Cypress Gardens Condominium Corp., G.R. No. 171072, April 07, 2009) p. 807

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Disposition of contested election returns — Before a Board of Canvassers could validly proclaim a candidate as winner, it must first be authorized by the COMELEC. (Abayon *vs*. COMELEC, G.R. No. 181295, April 02, 2009) p. 385

Election contest — Nature. (Abayon *vs*. COMELEC, G.R. No. 181295, April 02, 2009; *Nachura, J., dissenting opinion*) p. 385

Petition to annul or suspend proclamation — Effect of filing such petition. (Abayon *vs*. COMELEC, G.R. No. 181295, April 02, 2009; *Nachura, J., dissenting opinion*) p. 385

Pre-proclamation controversy — Exclusive original jurisdiction to hear a pre-proclamation controversy is vested with the COMELEC. (Abayon *vs*. COMELEC, G.R. No. 181295, April 02, 2009; *Nachura, J., dissenting opinion*) p. 385

— The nullity of premature proclamation should not be made to rest on the outcome of the pre-proclamation controversy. *(Id.; Id.)*

ELECTION PROTEST

Prescriptive period for filing — Not suspended by the mere filing of a petition denominated as a pre-proclamation case or one seeking the annulment of a proclamation. (Abayon *vs*. COMELEC, G.R. No. 181295, April 02, 2009) p. 385

EMINENT DOMAIN

Just compensation — Determination thereof should be in accordance with R.A. No. 6657 (Comprehensive Agrarian Reform Law of 1988). (LBP *vs*. *Vda. de* Abello, G.R. No. 168631, April 07, 2009) p. 710

EMPLOYEES' COMPENSATION LAW (P.D. NO. 626)

Death benefits — Not warranted if death of an employee is not work-connected. (Becmen Service Exporter Promotion, Inc. *vs*. Sps. Cuaresma, G.R. Nos. 182978-79, April 07, 2009) p. 1058

Employer's premises — Defined. (Becmen Service Exporter Promotion, Inc. *vs*. Sps. Cuaresma, G.R. Nos. 182978-79, April 07, 2009) p. 1058

Funeral benefits — Filing of a claim only for funeral benefits serves as constructive notice for SSS/ECC that the claimant was also claiming compensation benefits. (Mesa *vs*. SSS, G.R. No. 160467, April 07, 2009) p. 597

EMPLOYMENT CONTRACT

Binding effect of — As a rule, stipulations in an employment contract not contrary to statutes, public policy, public order or morals have the force of law between the contracting parties. (Becmen Service Exporter Promotion, Inc. *vs*. Sps. Cuaresma, G.R. Nos. 182978-79, April 07, 2009) p. 1058

EMPLOYMENT, TERMINATION OF

Dismissal of employees — Due process requirement does not require an actual or formal hearing. (Perez *vs*. PTT Co., G.R. No. 152048, April 07, 2009) p. 522

(*Id.*; *Brion, J., concurring opinion*)

— Guiding principles in connection with the hearing requirement in dismissal cases. *(Id.)*

— Mandatory two (2) written notices to meet the requirements of due process; cited. *(Id.)*

(Id.; Brion, J., concurring opinion)

Loss of trust and confidence as a ground — Should be adequately proven by substantial evidence. (Perez *vs*. PTT Co., G.R. No. 152048, April 07, 2009) p. 522

Necessity of hearing prior to termination — Significance. (Perez *vs*. PTT Co., G.R. No. 152048, April 07, 2009; *Velasco, J., separate concurring and dissenting opinion)* p. 522

ESTAFA

Commission of — Established in case of violation of any of the undertakings under the Trust Receipt Agreement. (Metropolitan Bank & Trust Co. *vs*. Sec. Gonzales, G.R. No. 180165, April 07, 2009) p. 1000

Conviction — Accused may be convicted for two counts of estafa because a person may be charged and convicted

of both illegal recruitment and estafa. (People *vs*. Domingo, G.R. No. 181475, April 07, 2009) p. 1037

ESTOPPEL

Principle — The State cannot be put in estoppel by mistake or errors of its officials or agents. (Newsounds Broadcasting Network, Inc. *vs*. Hon. Dy, G.R. Nos. 170270 & 179411, April 02, 2009) p. 255

EVIDENCE

Burden of proof — In labor cases, in order to show that the employer committed an unfair labor practice, substantial evidence is required to support the claim. (UST Faculty Union *vs*. UST, G.R. No. 180892, April 07, 2009) p. 1016

— The party asserting its limited liability has the burden of evidence to establish its claim. (Heirs of George Y. Poe *vs*. Malayan Ins. Co., Inc., G.R. No. 156302, April 07, 2009) p. 564

— The party making the allegation has the burden of proving it. (UST Faculty Union *vs*. UST, G.R. No. 180892, April 07, 2009) p. 1016

Chain of custody rule in dangerous drugs case — Elucidated. (Sales *vs*. People, G.R. No. 182296, April 07, 2009) p. 1047

Identification of the accused — Mistake in the name of the accused is not equivalent to a mistake in his identity. (People *vs*. Amodia, G.R. No. 173791, April 07, 2009) p. 889

Substantial evidence — The quantum of proof necessary for a finding of guilt in administrative disciplinary cases. (Atty. Estardo-Teodoro *vs*. Segismundo, A.M. No. P-08-2523, April 07, 2009) p. 435

Suppression of evidence — Evidence willfully suppressed would be adverse if produced, applied. (Heirs of George Y. Poe *vs*. Malayan Ins. Co., Inc., G.R. No. 156302, April 07, 2009) p. 564

EXEMPLARY DAMAGES

Award of — Can be awarded when temperate damages are available. (Newsounds Broadcasting Network, Inc. *vs*.

Hon. Dy, G.R. Nos. 170270 & 179411, April 02, 2009) p. 255

— May be awarded only upon showing of proof of entitlement to moral, temperate or compensatory damages. (DLSU *vs.* DLSU Employees Assn., G.R. No. 177283, April 07, 2009) p. 961

EXPANDED VALUE-ADDED TAX LAW (R.A. NO. 7716)

Coverage — Cited. (Fort Bonifacio Dev't. Corp. *vs.* Commissioner of Internal Revenue, G.R. No. 158885, April 02, 2009) p. 100

— Includes real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business. *(Id.)*

Presumptive input tax credit — Requires a transaction where a tax had been imposed by law. (Fort Bonifacio Dev't. Corp. *vs.* Commissioner of Internal Revenue, G.R. No. 158885, April 02, 2009; *Carpio, J., dissenting opinion*) p. 100

— When applicable. *(Id.)*

— When the law says presumptive input tax credit, the presumption is that there exists a law imposing the input tax and such tax is presumed to have been paid. *(Id.; Carpio, J., dissenting opinion)*

Transitional input tax credit — Intended to apply to a situation where a taxpayer, in the course of trade or business, transits from a non-value-added tax status to a value-added tax status. (Fort Bonifacio Dev't. Corp. *vs.* Commissioner of Internal Revenue, G.R. No. 158885, April 02, 2009; *Ynares-Santiago, J., concurring opinion*) p. 100

— Purpose. *(Id.)*

— Requires a transaction where a tax had been imposed by law. *(Id.; Carpio, J., dissenting opinion)*

— The beginning inventory of "goods" forms part of the valuation thereof. *(Id.)*

— The common standard for the application thereof is that the taxpayer has become liable to value-added tax or has elected to be a value-added tax-registered person. *(Id.)*

— The eight percent (8%) applies only to improvements on land, but not on the land itself. *(Id.; Carpio, J., dissenting opinion)*

— When available. *(Id.)*

— When the law says transitional input tax credit, the presumption is that there exists a law imposing the input tax and such tax is presumed to have been paid. *(Id.; Carpio, J., dissenting opinion)*

FORUM SHOPPING

Case of — Elucidated. (Tagaro *vs*. Hon. Garcia, G.R. No. 173931, April 02, 2009) p. 294

— The dismissal occasioned by breach of the anti-forum shopping rule does not permeate the merits of the case. *(Id.)*

GOVERNMENT

Government instrumentality — Defined. (MIAA *vs*. City of Pasay, G.R. No. 163072, April 02, 2009) p. 160

— Exempt from any kind of tax from the local government. *(Id.)*

— Includes the Manila International Airport Authority that does not qualify as a government-owned or controlled corporation. *(Id.)*

Government-owned or controlled corporation — Defined. (MIAA *vs*. City of Pasay, G.R. No. 163072, April. 02, 2009) p. 160

GRAVE ABUSE OF DISCRETION

Concept — Elucidated. (Cong. Garcia *vs*. Exec. Secretary, G.R. No. 157584, April 02, 2009) p. 64

HOMESTEAD PATENT

Proscription against alienation or encumbrance within five years — One who contracts with a patentee is charged with knowledge of the law's proscriptive provision that must necessarily be read into the terms of any agreement involving the homestead. (PNB *vs.* Banatao, G.R. No. 149221, April 07, 2009) p. 508

— Rationale. *(Id.)*

ILLEGAL RECRUITMENT IN LARGE SCALE

Commission of — Elements. (People *vs.* Domingo, G.R. No. 181475, April 07, 2009) p. 1037

ILLEGAL USE OF ALIASES (C.A. NO. 142)

Requirement of publicity — The intent to publicly use the alias must be manifest. (People *vs.* Ejercito Estrada, G.R. Nos. 164368-69, April 02, 2009) p. 226

Violation of — The mode is the same whoever the accused may be. (People *vs.* Ejercito Estrada, G.R. Nos. 164368-69, April 02, 2009) p. 226

INSURANCE

Third-party liability under indemnity contract — Explained. (Heirs of George Y. Poe *vs.* Malayan Ins. Co., Inc., G.R. No. 156302, April 07, 2009) p. 564

INTERLOCUTORY ORDER

Effect of — It carries no res adjudicata effects. (People *vs.* Ejercito Estrada, G.R. Nos. 164368-69, April 02, 2009) p. 226

INTERVENTION

Motion for — Effect of failure to avail of any remedy from the denial of a motion for intervention. (Asia's Emerging Dragon Corp. *vs.* Sec. Mendoza, G.R. Nos. 169914 & 174166, April 07, 2009) p. 722

— There must be an interest and legal standing to intervene. *(Id.)*

JUDGES

Conduct — A judge must be the embodiment of competence, integrity and independence. (Prosecutor Visbal *vs*. Judge Vanilla, A.M. No. MTJ-06-1651, April 07, 2009) p. 428

Duties — Judges must be conversant with the law and basic legal principles. (Bago *vs*. Judge Pagayatan, A.M. No. RTJ-07-2058, April 07, 2009) p. 459

Error of judgment — The defense that judges cannot be held to account for erroneous judgments rendered in good faith does not apply where the issues and applicable legal principles are simple and basic. (Bago *vs*. Judge Pagayatan, A.M. No. RTJ-07-2058, April 07, 2009) p. 459

Gross ignorance of the law — Committed in case a judge allowed the archiving of a criminal case after the issuance of the warrant of arrest and the accused remains at large. (Prosecutor Visbal *vs*. Judge Vanilla, A.M. No. MTJ-06-1651, April 07, 2009) p. 428

— Imposable penalty. (Bago *vs*. Judge Pagayatan, A.M. No. RTJ-07-2058, April 07, 2009) p. 459

(Prosecutor Visbal *vs*. Judge Vanilla, A.M. No. MTJ-06-1651, April 07, 2009) p. 428

JUDGMENT

Final and executory judgment — Effect. (DLSU *vs*. DLSU Employees Assn., G.R. No. 177283, April 07, 2009) p. 961

Judgment based on compromise agreement — Binds only the parties to the compromise. (PNB *vs*. Banatao, G.R. No. 149221, April 07, 2009) p. 508

Modification of — Consent of the accused is necessary before a judgment of conviction may be modified. (De Vera *vs*. De Vera, G.R. No. 172832, April 07, 2009) p. 877

— Significant changes on the rule on modification of judgment. *(Id.)*

JUDICIAL DEPARTMENT

Judicial hierarchy rule — Elucidated. (Review Center Assn. of the Phils. *vs*. Exec. Sec. Ermita, G.R. No. 180046, April 02, 2009) p. 342

— Purpose. *(Id.)*

Power of judicial review — Defined. (Cong. Garcia *vs*. Exec. Secretary, G. R. No. 157584, April 02, 2009) p. 64

— Requirements for the exercise of this power. *(Id.)*

— The court refrains from touching on the issue of constitutionality except when it is unavoidable and is the very lis mota of the controversy. (Romero II *vs*. Sen. Estrada, G.R. No. 174105, April 02, 2009) p. 312

JUDICIAL REVIEW

Actual controversy — Defined. (Cong. Garcia *vs*. Exec. Secretary, G.R. No. 157584, April 02, 2009) p. 64

Political questions — Defined. (Cong. Garcia *vs*. Exec. Secretary, G.R. No. 157584, April 02, 2009) p. 64

— In case thereof, the Constitution limits the determination as to whether the executive or the legislative department acted with grave abuse of discretion. *(Id.)*

LABOR CODE

Construction — The Code should be construed to promote social justice and full protection to labor. (Perez *vs*. PTT Co., G.R. No. 152048, April 07, 2009; *Velasco, J., separate concurring and dissenting opinion*) p. 522

LABOR RELATIONS

Suspension of employees — Shall only be for a period of 30 days, after which the employees shall either be reinstated or paid his wages during the extended period. (Perez *vs*. PTT Co., G.R. No. 152048, April 07, 2009) p. 522

LACHES

Concept — Elements. (Heirs of Tomas Dolleton *vs*. Fil-Estate Management, Inc., G.R. No. 170750, April 07, 2009) p. 781

LAND REGISTRATION

Purchaser in good faith — A person who deals with registered property in good faith will acquire good title from a forger and be absolutely protected by a torrens title. (Sps. Villamil *vs*. Villarosa, G.R. No. 177187, April 07, 2009) p. 932

— Circumstances showing good faith. *(Id.)*

— Defined. *(Id.)*

LEGISLATIVE DEPARTMENT

Legislative investigation in aid of legislation — On-going judicial proceedings do not preclude congressional hearing in aid of legislation. (Romero II *vs*. Sen. Estrada, G.R. No. 174105, April 02, 2009) p. 312

— The court has no authority to prohibit a Senate Committee from requiring persons to appear and testify before it in connection with an inquiry in aid of legislation in accordance with its duly published rules of procedure. *(Id.)*

LIS MOTA

Definition — The Court will not pass upon a question of unconstitutionality, although properly presented, if the case can be disposed of on some other ground. (Cong. Garcia *vs*. Exec. Secretary, G. R. No. 157584, April 02, 2009) p. 64

LOCAL GOVERNMENT CODE (R.A. NO. 7160)

Municipal license — Essentially a government restriction upon private rights and is valid only if based upon an exercise by the municipality of its police or taxing powers. (Newsounds Broadcasting Network, Inc. *vs*. Hon. Dy, G.R. Nos. 170270 & 179411, April 02, 2009) p. 255

MALVERSATION OF PUBLIC FUNDS

Commission of — Elements. (Estino *vs*. People, G.R. Nos. 163957-58, April 07, 2009) p. 671

Presumption of conversion — For presumption to apply, demand on the accountable officer is necessary. (Estino *vs*. People, G.R. Nos. 163957-58, April 07, 2009) p. 671

MANDAMUS

Petition for — When considered a proper relief. (Newsounds Broadcasting Network, Inc. *vs*. Hon. Dy, G.R. Nos. 170270 & 179411, April 02, 2009) p. 255

METROPOLITAN/MUNICIPAL TRIAL COURT

Jurisdiction over unlawful detainer cases — In order that MTC may acquire jurisdiction in an action for unlawful detainer, it is essential that the complaint specifically allege the facts constitutive of unlawful detainer. (Estate of Soledad Manantan *vs*. Somera, G.R. No. 145867, April 07, 2009) p. 495

MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. NO. 8042)

Objectives — Recruitment agencies are mandated to protect the rights and interest of their deployed overseas Filipino workers, especially those in distress. (Becmen Service Exporter Promotion, Inc. *vs*. Sps. Cuaresma, G.R. Nos. 182978-79, April 07, 2009) p. 1058

MITIGATING CIRCUMSTANCES

Voluntary surrender — Mere filing of information and/or issuance of warrant of arrest will not automatically make the surrender involuntary. (De Vera *vs*. De Vera, G.R. No. 172832, April 07, 2009) p. 877

— Requisites. *(Id.)*

MOOT AND ACADEMIC CASE

Nature — An issue or a case becomes moot and academic when it ceases to present a justiciable controversy, so that a

determination of the issue would be without practical use and value. (Romero II *vs*. Sen. Estrada, G.R. No. 174105, April 02, 2009) p. 312

MORAL DAMAGES

Award of — Proper by reason of the acts and omissions of the recruitment agency which are against public policy. (Becmen Service Exporter Promotion, Inc. *vs*. Sps. Cuaresma, G.R. Nos. 182978-79, April 07, 2009) p. 1058

MOTION FOR RECONSIDERATION

Pro forma motion — Not a sufficient reason to reverse a decision. (Asia's Emerging Dragon Corp. *vs*. Sec. Mendoza, G.R. Nos. 169914 & 174166, April 07, 2009) p. 722

MURDER

Commission of — Accused liable for moral and exemplary damages. (People *vs*. Amodia, G.R. No. 173791, April 07, 2009) p. 889

— Imposable penalty. *(Id.)*

Liability for damages — Cited. (People *vs*. Honor, G.R. No. 175945, April 7, 2009) p. 917

NATIONAL ECONOMY AND PATRIMONY

Regulation and prohibition of monopolies — Elements. (Cong. Garcia *vs*. Exec. Secretary, G. R. No. 157584, April 02, 2009) p. 64

NATIONAL LABOR RELATIONS COMMISSION

Divisions of — Considered co-equal bodies and one division cannot order another with binding effect. (DLSU *vs*. DLSU Employees Assn., G.R. No. 177283, April 07, 2009; *Brion, J., concurring and dissenting opinion*) p. 961

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— Complexities of dual franchise/license requirement for broadcasting media; explained. *(Id.)*

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— Elements. *(Id.)*

— It must be shown that the proximate cause of the victim's death was the accused's negligence. *(Id.)*

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— Nature. *(Id.; Tinga, J., dissenting opinion)*

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Complaint or information — Generally, an information must charge only one offense and failure of the accused to file a motion to quash information warrants waiver of right to be tried for only one crime. (People *vs*. Honor, G.R. No. 175945, April 07, 2009) p. 917

— Once it is filed in court, any disposition of the case rests on the sound discretion of the said court. (Bago *vs*. Judge Pagayatan, A.M. No. RTJ-07-2058, April 07, 2009) p. 459

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— Nature. *(Id.)*

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