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OF THE

PHILIPPINES

FROM

APRIL 29, 2009 TO MAY 15, 2009

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MANILA
2013

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by

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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. RTJ-06-1976. April 29, 2009]
(Formerly OCA IPI No. 03-1857)

PROVINCIAL PROSECUTOR MANUEL F. TORREVILLAS, *complainant, vs.* **JUDGE ROBERTO A. NAVIDAD,**[1] **REGIONAL TRIAL COURT, BRANCH 32, CALBAYOG CITY,** *respondent.*

[A.M. No. RTJ-06-1977. April 29, 2009]
(Formerly A.M. No. 04-2-110-RTC)

REPORT ON JUDICIAL AUDIT CONDUCTED IN THE REGIONAL TRIAL COURT, BRANCH 32, CALBAYOG CITY.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; RULE THAT COURTS CANNOT INTERFERE WITH THE PUBLIC PROSECUTOR'S DISCRETION THEREON; EXCEPTION.— While it is well-settled that the courts cannot interfere with the discretion of the public prosecutor to determine the specificity and adequacy of the offense charged, the judge may dismiss a complaint if he finds it to be insufficient in form or substance or without

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[1] By Memorandum of December 11, 2008, the Office of the Court Administrator informed the Court that Judge Roberto A. Navidad was shot dead by an unidentified assailant on January 14, 2008.

any ground; otherwise, he may proceed with the case if in his view it is sufficient and proper in form.

2. **LEGAL AND JUDICIAL ETHICS; JUDGES; DISCIPLINE OF JUDGES; GROSS IGNORANCE OF THE LAW; FAILURE OF A JUDGE TO KNOW A RULE OR LAW SO ELEMENTARY OR TO ACT AS IF HE DOES NOT KNOW IT, CASE AT BAR.—** In the discharge of a judge's duties, however, when the inefficiency springs from a failure to consider so basic and elemental a rule, a law or a principle, the judge is either too incompetent and undeserving of the position and title he holds, or is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority. If the rule or law is so elementary, as the above-quoted sections of Rule 114 are, not to know it or to act as if he does not know it constitutes gross ignorance of the law, without even the complainant having to prove malice or bad faith on the part of the judge.

3. **ID.; ID.; ID.; DELAY IN DISPOSITION OF CASES; UNDERMINES PEOPLE'S FAITH IN THE JUDICIARY.—** Judges have the sworn duty to administer justice without undue delay. A judge who fails to do so has to suffer the consequences of his omission, as any delay in the disposition of cases undermines the people's faith in the Judiciary.

4. **ID.; ID.; ID.; DISHONESTY; MISLEADS THE COURT AND TARNISHES THE IMAGE OF THE JUDICIARY; CASE AT BAR.—** Dishonesty, especially when committed by judges who are supposedly the visible representation of the law, not only tends to mislead the Court; it also tarnishes the image of the judiciary. xxx In the course of exculpating himself, respondent committed dishonesty, by falsely claiming, for instance, that Criminal Case Nos. 3440, 3093 and 3274 were not yet submitted for decision when the judicial audit was conducted, and that he conducted bail hearings, albeit the records do not show so. Likewise, among other things, in his Certificates of Service for May, 2007, respondent declared that he was on sick leave on May 16, 17, 18 and 21, and on vacation leave from May 22, 23, 24 and 25. Executive Judge Reynaldo Clemens declared, however, that respondent was absent for the entire month of May 2007.

5. **ID.; ID.; ID.; EFFICIENT COURT MANAGEMENT IS THE RESPONSIBILITY OF JUDGES; CASE AT BAR.—**

Respondent, on his inaction in 51 cases, ascribes it to the inefficiency of his staff and the failure of the police officers to make a return of the warrants of arrest. Judges cannot, however, take refuge in the inefficiency or mismanagement of his court personnel since proper and efficient court management is their responsibility. Court personnel are not the guardians of judges' responsibilities. It is the duty of judges to devise an efficient recording and filing system in their courts to enable them to monitor the flow of cases and to manage their speedy and timely disposition. And as correctly pointed out by the OCA, it is the judge's duty to see to it that the police officers assigned to execute the warrants comply with Section 4, Rule 113, requiring them to make a report to the judge who issued the warrant within ten days after the expiration of the period within which to execute the warrant.

D E C I S I O N

CARPIO MORALES, *J.*:

These two administrative cases at bar, **A.M. No. RTJ-06-1976** and **A.M. No. RTJ-06-1977**, were originally consolidated with two other cases: A.M. No. RTJ-06-1978, *Office of the Court Administrator v. Judge Roberto A. Navidad, RTC, Br. 32, Calbayog City, Samar*, and A.M. No. RTJ-06-1980, *Eric C. Isidoro and Atty. Anecio R. Guades v. Judge Roberto A. Navidad, RTC, Br. 32, Calbayog City.*

By Resolution of January 31, 2007,[2] this Court dismissed the complaint in A.M. No. RTJ-06-1978, while that in A.M. No. RTJ-06-1980 was also dismissed, Judge Roberto A. Navidad (Judge Navidad or respondent) was reminded to be more circumspect in the performance of his duties. This leaves for disposition the first and second cases.

Re: A.M. No. RTJ-06-1976

On July 16, 2003, Provincial Prosecutor Manuel Torrevillas, Jr. brought to the attention of then Chief Justice Hilario G.

[2] *Rollo*, A.M. No. RTJ-06-1977, pp. 60-61.

Davide, Jr. the "inapropriate actuation" of Judge Roberto A. Navidad of Branch 32, the RTC of Calabayog City in the handling of cases before his sala. The Chief Justice thus instructed the Provincial Prosecutor to submit a written report thereon to which he complied by letter-complaint dated August 15, 2003,[3] attaching thereto the reports[4] of the trial prosecutor in the sala of Judge Navidad.

By 1st Indorsement dated August 25, 2003,[5] the above-said August 15, 2003 letter-complaint was referred by the Chief Justice to then Court Administrator and now a member of this Court, Presbitero J. Velasco, Jr., for comment and recommendation.

By Resolution of September 23, 2003,[6] this Court acting on the recommendations of Justice Velasco in his September 8, 2003 Memorandum[7] to the Chief Justice, required Judge Navidad to comment on the complaint and directed the Court Management Office of the Office of the Court Administrator (OCA) to: (1) conduct a judicial audit on "all undecided criminal cases, which include cases that are pending, submitted for decision, archived, *etc*. for the purpose of determining any inappropriate actuation with respect to the issuance of court orders especially on matters pertaining to the grant of bail in non-bailable offenses"; and (2) coordinate with Trial Prosecutor Cicero T. Lampasa as regards the other cases that needed to be investigated.

By Resolution of March 8, 2006, the Court referred the complaint to Justice Isaias P. Dicdican of the Court of Appeals for investigation, report and recommendation.

Covered by A.M. No. RTJ-06-1976 are: (1) Criminal Case No. 4037, *"People of the Philippines v. Nestor Sandongan,"* for murder; (2) Criminal Cases No. 4023 and 4024, both entitled *"People of the Philippines v. Simproso Paghunasan,"* for

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[3] *Rollo*, A.M. No. RTJ-06-1976, pp. 7-8.

[4] Annexes "A", "B" and "C" and series, *id.* at 9-50.

[5] *Id.* at 6.

[6] *Id.* at 51-52.

[7] *Id.* at 1-5.

frustrated murder and murder, respectively; and (3) Criminal Case No. 4147, *"People of the Philippines v. Alfredo L. Tesoro, et al.,"* for murder.

Justice Dicdican synthesized the version of complainant in his October 25, 2006 Report of Investigation and Recommendation[8] as follows:

Criminal Case No. 4037 – *People of the Philippines v. Nestor Sandongan*

In this case, respondent allegedly improperly cited a witness, SPO2 Rolando Rebortura, in contempt of court for not telling the truth or for violating his oath. Complainant, through (then) Prosecutor Lampasa, alleged that SPO2 Rebortura was testifying on the matter of whether or not he recovered a shotgun from the crime scene. When the said witness first stated that he did not recover any shotgun, he was reminded by defense counsel, Atty. Sisenando Fiel, that he had already revealed to him (Atty. Fiel) in a conference earlier held that he had recovered a shotgun. After the respondent sought a clarification on the matter, SPO2 Rebortura replied to the effect that he might have said that he recovered a shotgun to Atty. Fiel but, because of the lapse of time, he could not anymore recall.

The respondent then adjudged SPO2 Rebortura in contempt of court and allegedly ordered the witness to be detained under the custody of the Clerk fo (sic) Court for two (2) days. This order of detention was not, however, stated in the order issued by the respondent.

After that session, SPO2 Rebortura allegedly pleaded with the respondent that he be not detained.[9]

Criminal Cases No. 4023 and 4024 - *People of the Philippines v. Simproso Paghunasan*

In these cases, the Office of the Provincial Prosecutor in Calbayog City, on July 1, 2002, a copy of a "Motion to Grant Accused Provisional Liberty" filed by the accused. On July 11, 2002, the prosecution then interposed its Opposition/Comments thereto, not knowing that, on July 2, 2002, the respondent had already issued an order granting

[8] *Id.* at 97-106.

[9] *Id.* at 98-99.

the accused provisional liberty and approving the bonds filed by the accused.

Complainant claims that the accused had been charged with the capital offense of murder which is a non-bailable offense. The respondent granted bail without conducting a hearing and without affording the prosecution the opportunity to prove the strength of its evidence.[10]

Criminal Case No. 4147 – *People of the Philippines v. Alfredo L. Tesoro, et al.*

An Information was filed against the accused in June 2002. The accused later on filed, on August 13, 2002, a Motion to Quash Warrant of Arrest and For Judicial Determination of Probable Cause. The prosecution filed an opposition to said motion, contending that the accused should first submit to the jurisdiction of the court before he could ask for any positive relief.

During the scheduled hearing of the case on December 4, 2002, counsel for the accused filed a Motion to Recall Warrant of Arrest and for Accused Alfredo L. Tesoro To Be Allowed To Be Placed Under the Custody of Counsel Pending Resolution of Motion for Judicial Determination of Probable Cause. The prosecution vehemently opposed such motion but the respondent recalled the warrant of arrest previously issued and allowed the accused to be places under the temporary custody of his counsel.

The December 4, 2002 order issued by the respondent was received by the prosecution only on August 7, 2003. Moreover, the recall of the warrant of arrest was not stated therein.

On December 10, 2002, the prosecution filed its Comments/ Opposition to the Motion for Judicial Determination of Probable Cause with Motion to Reinstate the Recalled Warrant of Arrest. Since the accused had not filed any opposition to the motion to reinstate the recalled arrest warrant, the prosecution filed, on March 11, 2003, a Motion to Submit Incident for Resolution.

However, the respondent granted the motion for judicial determination of probable cause filed by the accused without acting

[10] *Id.* at 99.

on the motion to reinstate recalled warrant of arrest filed by the prosecution.[11]

Justice Dicdican summarized respondent's defense as follows:

Regarding the alleged irregularities in his handling of Criminal Case No. 4037, respondent contends that he cited SPO2 Rebortura in direct contempt of court because he found the said witness lying and telling untruths at the witness chair. Respondent further contends that it was very evident then that the said witness was the one masterminding the "manufacture" or filing of trumped-up cases. At the behest of (then) Prosecutor Lampasa, the witness asked for forgiveness and admitted his wrongdoings and misconduct. Upon a sincere promise by the said witness, the citation for contempt was lifted and he was released from his detention at the office of the Clerk of Court.

As for Criminal Cases Nos. 4023 and 4024, respondent denies that the prosecution was not given the opportunity to prove the strength of its evidence and that the petition for bail was granted without a hearing.

Respondent claims that an oral petition for bail had been presented in open court which was duly heard and partially argued. In fact, the prosecution had allegedly energetically argued and suggested that the defense reduce its petition into writing so the matter can be brought up to the Provincial Prosecutor. The proceedings even revealed that there was an error on the part of the prosecution in not applying Article 48 of the Revised Penal Code and the petition for bail was granted only after the prosecution refused to rectify the error.

Finally, as to Criminal Case No. 4147, respondent said that he quashed the warrant of arrest for failure of the prosecution to adduce evidence. Furthermore, the preliminary investigation was allegedly improperly conducted with a "tutored" alleged sole eyewitness.

As for the grant of custodial rights to the counsel for accused who were charged with heinous crimes, respondent contends that this grant is given only to the said counsel as officer of the court. Respondent further contends that he followed certain parameters before granting such custodial rights.[12]

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

[12] *Id.* at 101-102.

Justice Dicdican thus came up with the following Evaluation:

From the totality of the evidence adduced by the parties, the undersigned investigator, after a judicious evaluation and scrutiny thereof, has come up with a finding that the **respondent had indeed committed irregularities and procedural lapses in the handling of the cases pending before his sala.**

Anent the charge that he granted the accused bail without a hearing in Criminal Cases Nos. 4023 and 4034, the record shows that, in reality, no hearing had been conducted by the respondent before he issued the order dated July 2, 2002 granting the accused provisional liberty and approving the bonds filed.

Respondent's claim that there had been an oral petition for bail which was extensively heard and argued during the pre-trial of the cases on June 20, 2002 is not supported by the record. x x x

While the respondent maintains that the stenographer failed to take down the discussion on the oral petition for bail, the undersigned finds this unsubstantiated and totally self-serving. The record speaks for itself and the transcript of the stenographic notes is wholly bereft of any reference to the oral petition for bail...

The motion filed by the accused for the grant of provisional liberty was dated June 27, 2002 and was received by the prosecution on July 1, 2002. On July 2, 2002 the respondent had issued an order granting said motion.

It was established by the undersigned that the July 2, 2002 order was based on the June 27, 2002 motion filed by the accused. Respondent contends that the motion filed by the accused was in compliance with an order by the court for the accused to file a formal petition for bail. However, no such order requiring the accused to file a formal petition for bail can be found in the record. The undersigned is thus convinced that the respondent did not conduct a hearing before he granted the motion filed by the accused for the grant of provisional liberty.

Jurisprudence is replete with decisions on the procedural necessity of a hearing, whether summary or otherwise, relative to the grant of bail, especially in cases involving offenses punishable by death, *reclusion perpetua*, or life imprisonment, whether bail is a matter of discretion. Under the present Rules, a hearing is mandatory in granting bail whether it is a matter of right or discretion. It must be

stressed that the grant or the denial of bail, in cases where bail is a matter of discretion, hinges on the issue of whether or not the evidence of guilt of the accused is strong, and the determination of whether or not the evidenceis strong is a matter of judicial discretion which remains with the judge. In order for the latter to properly exercise his discretion, he must first conduct a hearing to determine whether the evidence, he must first conduct a hearing to determine whether the evidence of guilt is strong. In fact, even in cases where there is no petition for bail, a hearing should still be held.

After the hearing, the court's order granting or refusing bail must contain a summary of the evidence of the prosecution and, based thereon, the judge should formulate his own conclusion as to whether the evidence so presented is strong enough to indicate the guilt of the accused. However, the July 2, 2002 order of the respondent judge does not contain such summary and conclusion.

Based on his investigation and on the evidence presented in this case, the undersigned concludes that **the respondent did not conduct the requisite hearing before he granted bail to the accused, in violation of Sections 8 and 18, Rule 114 of the Revised Rules of Criminal Procedure**...

xxx xxx xxx

It has been held that such error cannot be characterized as mere deficiency in prudence, discretion and judgment but a patent disregard of well-known rules and, therefore, constitutive of gross ignorance of the law. In line with existing jurisprudence, <u>the undersigned recommends that the respondent be fined ₱20,000.00</u> with a stern warning that the commission of the same or similar offense in the future will be dealt with more severely.

Similarly, in Criminal Case No. 4147, where accused Alfredo Tesoro is charged with murder, the respondent judge allowed the said accused to be placed in the custody of his counsel. The record shows that a warrant of arrest for the said accused had already been issued long before he filed a motion to quash warrant of arrest and for judicial determination of probable cause. Thus, at the time of the filing of the motion to place the said accused under the custody of counsel dated December 4, 2002, the accused was technically a fugitive in the eyes of the law. <u>In granting the said motion on the same day when it was filed, the respondent acted prematurely and incongruously in allowing the accused to be placed under the custody</u>

of counsel when, in fact, the freedom of the accused had yet to be curtailed.

The basic rule is that the right to bail, or in this case to be released on recognizance, can only be availed of by a person who is in the custody of the law or otherwise deprived of his liberty. The respondent also deprived the prosecution of the opportunity to prove that the evidence of guilt of said accused is strong, considering that the accused was charged with murder.

Likewise, in granting the motion to recall the warrant of arrest, the respondent did not allow the prosecution sufficient time to oppose said motion. There is no showing that respondent conducted a hearing to determine whether or not there was probable cause which respondent contends was made the basis of his recall of the warrant of arrest previously issued.

For this irregularity in the recall of the warrant of arrest and for allowing the accused to be placed in the custody of his counsel, the undersigned recommends that the respondent be fined ₱20,000.00

Anent the charge in Criminal Case No. 4037, the undersigned did not find any impropriety in the respondent's act of citing the witness in contemot (sic) of court. There is no showing that the respondent acted with malice and bad faith.[13] (Emphasis and underscoring supplied)

Accordingly, Justice Dicdican **recommended** that respondent be fined in the total amount of ₱40,000.[14]

Re: A.M. No. RTJ-06-1977

Per his October 25, 2006 Manifestation,[15] Justice Dicdican manifested his incompetency in passing upon the findings made by the judicial team that conducted the audit in Branch 32 and thus prayed that the matter be referred to the OCA.

As recommended and prayed for, the results of the judicial audit were referred to the OCA which, by Memorandum dated September 12, 2007,[16] came up with the following findings:

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[13] *Id.* at 102-106.

[14] *Id.* at 106.

[15] *Rollo*, A.M. No. RTJ-06-1977, pp. 50-51.

[16] *Rollo*, A.M. No. RTJ-06-1976, pp. 151-164.

The audit team found that Judge Navidad failed to decide Criminal Cases Nos. 3440, 3043 and 3274 within the reglementary periods. Instead of deciding these cases after the expiration of the period to file memorandum, respondent judge issued Orders similarly dated July 3, 2003 directing the parties to *"study their cases and submit the necessary pleadings so that the cases can be disposed of accordingly."*

There were **eleven (11) cases** with pending motions/incidents which Judge Navidad failed to resolve within the reglementary period. These are Criminal Cases Nos. 3585, 3586[,] 4248, 4312, 4373, 4350 and 4101; and Civil Cases Nos. 809, 846, 747 and 712. Moreover, fifty-one (51) cases had not been acted upon by Judge Navidad for a considerable length of time which have not moved since then, to wit: 3631, 4143, 4098, 4082, 4179, 4180, 4097, 4098, 4036, 4084, 4125, 4126, 4226, 3783, 4122, 3724, 3869, 3902, 3914, 3943, 3975, 4001, 4022, 4080, 4069, 4094, 4121, 4124, 4130, 4205, 4298, 3847, 4231 and 4214; and Civil Cases Nos. 845, SCA 050, SP 189, 394, 546, 722, 721, 527, 293, 209, 675, 755, 758, 766, SCA 051 and SP 171.

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Aside from [the] four (4) cases mentioned in the complaint of Prosecutor Torrevillas, **irregularities in other cases were also uncovered**. Judge Navidad released the accused under the custody of Atty. Fiel in Criminal Cases Nos. 3701, 4101, 4109 and 4110, despite the fact that they were all facing charges for murder and homicide. Respondent judge also granted bail to the accused in Criminal Cases Nos. 4109 for Murder, and 4110 for Murder, without conducting hearing. In Criminal Case No. 4350, Judge Navidad ruled that the offense committed was only homicide allegedly becuase (sic) the qualifying circumstances stated in the information were not supported by evidence, *despite the findings of Judge Salvador P. Jakosalem, Acting Presiding Judge, MCTC, Sta. Margarita, Samar of probable cause for the crime of murder*. In Criminal Case No. 3718, the information for murder was downgraded by Judge Navidad to homicide. Similarly, he dismissed Criminal Case No. 4373 on the ground that the qualifying circumstance of abuse of superior strength was not supported by any credible evidence, *despite the contrary.*

... On March 22, 2004, Judge Navidad was also directed to explain (a) his failure to decide Criminal Cases Nos. 3440, 3093 and 3274

within the reglementary period, (b) his inaction in fifty-one (51) cases, (c) why he allowed the accused in Criminal Cases Nos. 3701, 4101, 4109 and 4110 to be placed under the custody of Atty. Fiel, and (d) to inform the Court whether the pending incidents in Criminal Cases Nos. 3585, 3586, 4248, 4312, 4373, 4350 and 4101 and Civil Cases Nos. 850, 809, 846, 747 and 792 had already been resolved.

In his Comments, Judge Navidad claimed that Criminal Cases Nos. 3440, 3093 and 3274 were not yet submitted for decision when the audit was conducted. He said that the prosecution in Criminal Cases Nos. 3440 and 3093 had not yet formally offered evidence, while the parties in Criminal Case No. 3274 had not yet filed their respective memoranda. He also informed the Court that the incidents in Criminal Cases Nos. 3585, 3586, 4248, 4312, 4350, 4373 and 4101 and Civil Cases Nos. 850, 809, 846, 747 and 792 were already resolved.

Judge Navidad contended that some cases were left unacted upon because his court personnel failed to archive ten (10) cases, the police officers failed to make return of the warrants of arrest issued in eighteen (18) cases, and in other cases, the parties failed to submit the pleadings he required them to file.

Respondent judge explained that he released on recognizance to Atty. Fiel all the accused in four (4) criminal cases because the charges were mere fabrications and no preliminary investigation was conducted or if conducted, was improperly done...[17] (Italics in the original; emphasis supplied)

The OCA came up with the following Evaluation:

Judge Roberto A. Navidad should be held administratively liable for gross inefficiency. He failed to decide Criminal Cases Nos. 3440, 3093 and 3274 within the 90-day reglementary period. Judge Navidad's contention that the cases were not yet submitted for decison when the audit was conducted ***is an outright falsehood meant to mislead this Court.*** The audit was conducted on October 14-17, 2003, but Criminal Cases Nos. 3440, 3093 and 3274 were already submitted for decision on February 28, 2003, June 2, 2002 and April 30, 2002, respectively. The failure of the parties to file their memoranda within the period given them is not a valid reason for Judge Navidad not to decide the cases. A case is considered submitted for decision upon the admission of the parties' evidence

[17] *Id.* at 152-155.

at the termination of the trial and respondent is well aware of this. Should the court allow or require the submission of memorandum, the case is considered submitted for decision upon the filing of the last memorandum *or the expiration of the period to do so, whichever is earlier.*

The issuance of respondent judge of an Order in these cases requiring the parties "to file the necessary pleading so that the cases can be disposed of accordingly" was purposely done to subvert the 90-day mandatory period to decide cases. Respondent judge could have asked the Court for an extension of time to decide these cases instead of issuing this Order. If he honestly believed that he could not decide the cases within the reglementary period, all he had to do was to ask for an extension of time. The Court, cognizant of the caseload of judges and mindful of the difficulty encountered by them in the disposition of cases, usually grants the request.

Judge Navidad also failed to promptly resolve the incidents in Criminal Cases Nos. 3585, 3586, 4248, 4312, 4373, 4350 and 4101 and Civil Cases Nos. 809, 846, 747 and 792. The resolution of the petition for bail in Criminal Cases Nos. 3585 and 3586 was due on February 22, 2000, yet it remained pending in October 2003 (three years and eighth months since then) when the audit was conducted. In Civil Case No. 792, the Motion for Special Raffle was due for resolution on May 16, 2001 but was likewise not yet resolved as of audit date.

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Respondent judge ascribes his inaction in **fifty-one (51) cases** to the inadvertence of his court personnel and the failure of the police officers to make a return of the warrants of arrest. This is totally unacceptable. A judge cannot take refuge behind the inefficiency of his court personnel, for the latter are not guardians of the judge's responsibilities. Efficient court management is primarily the duty of the presiding judge. In this, he is found wanting. As regards the cases where there were no return of the warrants of arrest, Section 4, Rule 113, Revised Rules of Criminal Procedure requires the head of the office to whom the warrant of arrest was delivered for execution to cause the warrant to be executed within ten (10) days from its receipt. Within ten (10) days after the expiration of the period, the officer to whom it was assigned for execution shall make a report to the judge who issued the warrant. Thus, it is the duty of respondent judge to see to it that this is strictly complied with by

the police officers assigned to serve the warrants. His failure to faithfully comply with this duty has contributed to the delay in the disposition of cases in his court.

Judge Navidad should also [be] held liable for gross ignorance of the law. In granting bail without conducting any hearing to the accused in Criminal Cases Nos. 4023, 4024, 3701, 4109 and 4110 who were charged with murder and frustrated murder, respondent judge knowingly disregarded the well-established rule that no person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution. Under the present rule, a hearing on application for bail is mandatory. Whether bail is a matter of right or discretion, the prosecutor should be given reasonable notice of hearing, or at least his recommendation on the matter must be sought. These tasks were ignored by the judge.

Judge Navidad also erred in allowing the accused in Criminal Case No. 4147 through his counsel, to post bail notwithstanding that the accused was not yet in custody of the law. The right to bail or to be released on recognizance can only be availed of by a person who is in custody of the law or otherwise deprived of his liberty. An application for admission to bail of a person against whom a criminal action has been filed, but who is still at large is premature.

The judge likewise has no authority to conduct his own determination of probable cause and downgrade the offense charged or dismiss the complaint for insufficiency of evidence. Judges of the Regional Trial Courts no loner have the authority to conduct preliminary investigations. This authority was removed from them under the 1985 Rules on Criminal Procedure effective January 1, 1985. The determination of probable cause during a preliminary investigation is a function that belongs to the public prosecutor. Whether that function has been correctly discharged by the existence of probable cause in a case, is a matter the trial court itself cannot and may not be compelled to pass upon. As a general rule, if the information is valid on its face and there is no showing of manifest error, grave abuse of discretion or prejudice on the part of the public prosecutor, the courts should not dismiss the case for want of evidence.

Judge Navidad should also be sanctioned for placing the accused in Criminal Cases Nos. 3701, 4101, 4109 and 4110 who were charged with heinous crimes under the custody of Atty. Sisenando Y. Fiel, Jr. pending re-investigation of the cases. The grant of bail based on

recognizance in these cases are not among the instance the accused may be released on recognizance.

Section 15, Rule 114 of the Revised Rules of Criminal Procedure provides that "Whenever allowed by law or these Rules, the Court may release a person in custody on his own recognizance or that of a responsible person." The accused may be released on recognizance under Republic Act No. 6036[,] P.D. No. 603[,] and P.D. 968, as amended. Also, Section 16 of Rule 114, Revised Rules of Criminal Procedure explicitly provides, "A person in custody for a period equal to or more than the minimum of the principal penalty prescribed for the offense charged, without application of the Indeterminate Sentence Law or any modifying circumstance, shall be released on a reduced bail or on his own recognizance, at the discretion of the court."

It is clear that Judge Navidad not only failed to perform his duties in accordance with the Rules, but he has also been acting willfully, and grossly disregarding and defying the law and controlling jurisprudence. Verily, his actions indicate a blatant contempt for the law and the rules of procedure. This cannot be countenanced especially because the laws involved are simple and elementary for which he cannot claim ignorance. It is imperative that a judge be conversant with basic legal principles and be aware of well-settled authoritative doctrines. *When the inefficiency springs from a failure to consider a basic and elemental rule, law or principle in the discharge of his duties, a judge is either incompetent and undeserving of the position and title he holds or is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority.*

This is not the first time Judge Navidad has been charged administratively. Verification with the the Statistical Reports Division, CMO-OCA shows that from the time Judge Navidad was appointed to the judiciary (January 30, 1987), several cases had been filed against him[.]

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While several of the charges were dismissed, this however is not at all reflective of his innocence, because the issues raised in these cases were *judicial in nature,* hence, improper for an administrative charge, or respondent had already inhibited from the case, or complainants failed to attend the investigation conducted by

investigating justices/judges and failed to substantiate their charges. There were complaints though which even if dismissed, the Court nevertheless rebuked respondent judge and reminded him to be more circumspect in the performance of his duties, reprimanded him for improper conduct, advised him to refrain from the use of intemperate language or the use of the words "Supreme Court" in any of his judgments, orders, letters and correspondence presumably to show that these acts were authorized by or had the imprimatur of the Court, to avoid any misinterpretation and confusion by the public and directed him to couch his inhibition orders in clear and specific language.

Respondent judge's outrageous conduct was again exhibited recently when he stubbornly refused to inhibit himself in Civil Case No. 586 (*Ciriaco Tan vs. Emmanuel Lao*), despite the fact that he is residing in a building owned by plaintiff, in that case, a fact he has not denied, and which is of public knowledge in Calbayog City. Judges must maintain and preserve the trust and faith of the parties-litigants. They must hold themselves above reproach and suspicion. At the very first sign of lack of faith and trust in his actions, whether well-grounded or not, the judge has no alternative but to inhibit himself from the case. Judge Navidad's persistent refusal to recuse himself from the case has impaired the people's faith in the court and destroyed the ideal of impartial administration of justice.

Respondent judge's **comportment shows that he is not an upright man of the law who deserves to sit on the bench.** That an NGO, the Samarenos for Equity, Justice and Reform, saw it fit to file a case against him, shows how badly he has performed as member of the bench. Such reputation by itself has besmirched the integrity not only of his court but more omportantly (sic) of the entire juducial system which he represents. Respondent does not deserve to remain any further in the bench.

Informatively, Judge Navidad was absent for the whole month of May 2007 as reported to OCA by Executive Judge Reynaldo B. Clemens, RTC, Calbayog City, Samar., However, on July 30, 2007, the Leave Division, Office of the Administrative Services, OCA received a Certificate of Service of Judge Navidad for May 2007 stating that he had rendered the services required of him by the law for the period May 1, 2007 to May 31, 2007 except on May 16, 17, 18 and 21 when he was on sick leave and on May 22, 23, 24 and 25 when he was on vacation leave. He did not indicate therein that he was also absent from May 2-15, 2007....He was also absent on

June 1, 4, 5, 6, 7, 8, 12, 13, 14, 15, 18, 25, 27, 28, and 29, 2007, but he declares in his Certificate of Service for that month that he was absent only on June 6, 7, 8, 28 and 29. Likewise, his Certificate of Service for July 2007 showed that he was absent only on July 4, 5, 6, 9 and 10 but Judge Clemens reported that Judge Navidad did not render service on July 2, 3, 4, 5, 6, 9, 10, 11, 16, 19, 20, 23, 24, 25, 26, 27 and 30. Attached to Judge Navidad's Certificates of Service for June and July 4, 5, 6, 9 and 10, 2007. All his leave applications did not bear the signature and approval of his Executive Judge, Judge Clemens. **Simply put, he was absent without leave.**

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges. In the case at bar, respondent judge violated Sections 1 and 2 of Canon 2 of the New Code of Judicial Conduct for the Philippine Judiciary[.]

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Judge Navidad also violated Sections 1 and 2, Canon 4 of the same Code, which provides that "Judges shall avoid impropriety and the appearance of impropriety in all of their activities. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office."

Respondent judge likewise transgressed the Judge's Oath wherein he swore that he shall perform his judicial duties efficiently, fairly and to the best of his knowledge and ability.[18] (Italics in the original; Emphasis and underscoring supplied))

The OCA thereupon **recommended** respondent's dismissal from the service for gross ignorance of and contempt for the law, gross inefficiency and negligence and violations of the New Code of Judicial Conduct for the Philippine Judiciary and the Judge's Oath.[18]

The Court finds the respective recommendations of the Investigating Justice and the OCA well-taken.

Rule 114, on bail, of the Rules of Court reads

[18] *Id.* at 155-163.

Sec. 8. *Burdern of proof in bail application.* — At the hearing of an application for bail filed by a person who is in custody for the commission of an offense punishable by death, *reclusion perpetua,* or life imprisonment, the prosecution has the burdern of showing that evidence of guilt is strong. The evidence presented during the bail hearing shall be considered automatically reproduced at the trial but, upon motion of either party, the court may recall any witness for additional examination unless the latter is dead, outside the Philippines, or otherwise unable to testify.

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Sec. 18. *Notice of application to prosecutor.*— In the application for bail under section 8 of this Rule, the court must give reasonable notice of the hearing to the prosecutor or require him to submit his recommendation. (Italics in the original; underscoring supplied)

While it is well-settled that the courts cannot interfere with the discretion of the public prosecutor to determine the specificity and adequacy of the offense charged, the judge may dismiss a complaint if he finds it to be insufficient in form or substance or without any ground; otherwise, he may proceed with the case if in his view it is sufficient and proper in form.[20]

In the discharge of a judge's duties, however, when the inefficiency springs from a failure to consider so basic and elemental a rule, a law or a principle, the judge is either too incompetent and undeserving of the position and title he holds, or is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority. If the rule or law is so elementary, as the above-quoted sections of Rule 114 are, not to know it or to act as if he does not know it constitutes gross ignorance of the law, without even the complainant having to prove malice or bad faith on the part of the judge, as it can be clearly inferred from the error committed.[21] On this score, as reflected in the Investigating Justice's and the

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[19] *Id.* at 163-164.

[20] *Santos v. Go*, G.R. No. 156081, October 19, 2005, 473 SCRA 350, 362.

[21] *Janda v. Rojas*, A.M. No. RTJ-07-2054, August 23, 2007, 530 SCRA 796, 808.

OCA's separate reports, the Court finds respondent guilty of gross ignorance of the law.

Respondent also committed undue delay in disposing of the cases assigned to him. Judges have the sworn duty to administer justice without undue delay. A judge who fails to do so has to suffer the consequences of his omission, as any delay in the disposition of cases undermines the people's faith in the Judiciary.[22]

> Inability to decide a case within the required period is not excusable and constitutes gross inefficiency. The Court has constantly reminded judges to decide cases promptly. Delay not only results in undermining the people's faith in the judiciary from whom the prompt hearing of their applications is anticipated and expected; it also reinforces in the mind of the litigants the impression that the wheels of justice grind ever so slowly, and worse, it invites suspicion of ulterior motives on the part of the judge.
>
> Likewise, delay in resolving motions and incidents pending before a judge within the reglementary period of 90-days fixed by the constitution and the law is not excusable and constitutes gross inefficiency. We cannot countenance such undue delay by a judge, especially at a time when clogging of court dockets is still the bane of the judiciary, whose present leadership has launched an all out program to minimize, if not totally eradicate, docket congestion and undue delay in the disposition of cases. Prompt disposition of cases is attained basically through the efficiency and dedication to duty of judges. If they do not possess these traits, delay in the disposition of cases is inevitable, to the prejudice of litigants. Accordingly, judges should be imbued with a high sense of duty and responsibility in the discharge of their obligation to promptly administer justice.[23]

In the course of exculpating himself, respondent committed dishonesty, by falsely claiming, for instance, that Criminal Case Nos. 3440, 3093 and 3274 were not yet submitted for decision

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[22] *Galanza v. Trocino*, A.M. No RTJ-07-2057, August 7, 2007, 529 SCRA 200, 212.

[23] *Office of the Court Administrator v. Go*, A.M. No. MTJ-07-1667, September 27, 2007, 534 SCRA 156, 165-166 citing *De la Cruz v. Vallarta*, A.M. No. MTJ-04-1531, March 6, 2007, 517 SCRA 465.

when the judicial audit was conducted, and that he conducted bail hearings, albeit the records do not show so.

Likewise, among other things, in his Certificates of Service for May, 2007, respondent declared that he was on sick leave on May 16, 17, 18 and 21, and on vacation leave from May 22, 23, 24 and 25. Executive Judge Reynaldo Clemens declared, however, that respondent was absent for the entire month of May 2007.

Dishonesty, especially when committed by judges who are supposedly the visible representation of the law, not only tends to mislead the Court; it also tarnishes the image of the judiciary.

> Dishonesty is defined as the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. This is a grave offense that carries the extreme penalty of dismissal from the service, even for the first offense, with forefeiture of retirement benefits except accrued leave credits and perpetual disqualification from re-employment in government service.[24]

Respondent, on his inaction in 51 cases, ascribes it to the inefficiency of his staff and the failure of the police officers to make a return of the warrants of arrest.

Judges cannot, however, take refuge in the inefficiency or mismanagement of his court personnel since proper and efficient court management is their responsibility. Court personnel are not the guardians of judges' responsibilities. It is the duty of judges to devise an efficient recording and filing system in their courts to enable them to monitor the flow of cases and to manage their speedy and timely disposition.[25] And as correctly pointed out by the OCA, it is the judge's duty to see to it that the police officers assigned to execute the warrants comply with Section 4, Rule 113, requiring them to make a report to the judge who

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[24] *Cañada v. Suerte*, A.M. No. RTJ-04-1884, February 22, 2008, 546 SCRA 414, 424-425.

[25] *Supra* note 22 at 210-211.

issued the warrant within ten days after the expiration of the period within which to execute the warrant.

Respondent was felled by a bullet of an assassin on January 14, 2008, however, in view of which the penalty of dismissal that the proven charges against him call for can no longer be imposed. He could still be fined, however, in the amount of ₱40,000 each in A.M. No. RTJ-06-1976 and A.M. No. RTJ-06-1977, to be deducted from the benefits due him.

WHEREFORE, for Dishonesty, Gross Ignorance of and Contempt for the Law, Gross Inefficiency and Negligence, and Violations of the New Code of Judicial Conduct for the Philippine Judiciary and the Judge's Oath, respondent, Judge Roberto A. Navidad, who has, in the meantime died, is in each of these cases subject of this Decision *FINED* the amount of Forty Thousand (₱40,000) Pesos. The Financial Management Office, Office of the Court Administrator is authorized to deduct the total sum of Eighty Thousand (₱80,000) Pesos from the benefits due respondent and to release the remaining amount to his heirs unless there exists another lawful cause for withholding the same.

SO ORDERED.

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

Quisumbing, J., on official leave.

Velasco, Jr., J., no part.

SECOND DIVISION

[G.R. No. 152131. April 29, 2009]

FLORAIDA TERAÑA, *petitioner, vs.* **HON. ANTONIO DE SAGUN, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH XIV, NASUGBU, BATANGAS and ANTONIO B. SIMUANGCO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; REVISED RULE ON SUMMARY PROCEDURE; JUDGMENT; REMAND; A REMAND WOULD RUN COUNTER TO THE SPIRIT AND INTENT OF THE RULE ON SUMMARY PROCEDURE; CASE AT BAR.—** Where the Regional Trial Court, as well as the Court of Appeals, ordered the case remanded to the MTC after the plaintiff, herein respondent, failed to submit evidence in support of his complaint because his Position Paper, affidavit of witnesses and evidence, were not submitted on time and the extension of time to file the same was denied because it is prohibited under the Rules on Summary Procedure, the Court held a that remand of the case to the lower courts is no longer necessary, given the pleadings and submissions filed, and the records of the proceedings below. A remand would delay the overdue resolution of this case (originally filed with the MTC on April 16, 1997), and would run counter to the spirit and intent of the RSP.

2. **ID.; ID.; ID.; STRICT ADHERENCE TO PRESCRIBED; REGLEMENTARY PERIOD; RATIONALE; CASE AT BAR.—** The intent and terms of the RSP both speak against the liberality that the petitioner sees. By its express terms, the purpose of the RSP is to "achieve an expeditious and inexpensive determination" of the cases they cover, among them, forcible entry and unlawful detainer cases. To achieve this objective, the RSP expressly prohibit certain motions and pleadings that could cause delay, among them, a motion for extension of time to file pleadings, affidavits or any other paper. If the extension for the filing of these submissions cannot be allowed, we believe it illogical and incongruous to admit a pleading that is already filed late x x x. The strict adherence

to the reglementary period prescribed by the RSP is due to the essence and purpose of these rules. The law looks with compassion upon a party who has been illegally dispossessed of his property. Due to the urgency presented by this situation, the RSP provides for an expeditious and inexpensive means of reinstating the rightful possessor to the enjoyment of the subject property. This fulfills the need to resolve the ejectment case quickly. Thus, we cannot reward the petitioner's late filing of her position paper and the affidavits of her witnesses by admitting them now.

3. **ID.; ID.; NON-SUBMISSION OF POSITION PAPERS; MTC NOT BARRED FROM ISSUING A JUDGMENT ON AN EJECTMENT COMPLAINT.—** The failure of one party to submit his position paper does not bar at all the MTC from issuing a judgment on the ejectment complaint. Section 10 of the RSP states: Section 10. *Rendition of judgment*. — Within thirty (30) days after receipt of the last affidavits and position papers, or the expiration of the period for filing the same, the court shall render judgment. However, should the court find it necessary to clarify certain material facts, it may, during the said period, issue an order specifying the matters to be clarified, and require the parties to submit affidavits or other evidence on the said matters within ten (10) days from receipt of said order. Judgment shall be rendered within fifteen (15) days after the receipt of the last affidavit or the expiration of the period for filing the same. The court shall not resort to the foregoing procedure just to gain time for the rendition of the judgment. Thus, the situation obtaining in the present case has been duly provided for by the Rules; it was correct to render a judgment, as the MTC did, after one party failed to file their position paper and supporting affidavits. That a position paper is not indispensable to the court's authority to render judgment is further evident from what the RSP provides regarding a preliminary conference: "on the basis of the pleadings and the stipulations and admissions made by the parties, judgment may be rendered without the need for further proceedings, in which event the judgment shall be rendered within 30 days from the issuance of the order." Thus, the proceedings may stop at that point, without need for the submission of position papers. In such a case, what would be extant in the record and the bases for the judgment would be

the complaint, answer, and the record of the preliminary conference.

4. **ID.; CIVIL PROCEDURE; UNLAWFUL DETAINER; ESSENTIAL REQUISITES.—** The special civil action for unlawful detainer has the following essential requisites: 1) the fact of lease by virtue of a contract, express or implied; 2) the expiration or termination of the possessor's right to hold possession; 3) withholding by the lessee of possession of the land or building after the expiration or termination of the right to possess; 4) letter of demand upon lessee to pay the rental or comply with the terms of the lease and vacate the premises; and 5) the filing of the action within one year from the date of the last demand received by the defendant.

5. **ID.; ID.; ID.; ANSWER; MATERIAL ALLEGATIONS IN COMPLAINT NOT SPECIFICALLY DENIED IN THE ANSWER, DEEMED ADMITTED; CASE AT BAR.—** Pursuant to Section 10, Rule 8 of the 1997 Rules of Court the material allegations in a complaint must be specifically denied by the defendant in his answer. x x x Section 11, Rule 8 of the Rules of Court likewise provides that material allegations in the complaint which are not specifically denied, other than the amount of unliquidated damages, are deemed admitted. A denial made without setting forth the substance of the matters relied upon in support of the denial, even when to do so is practicable, does not amount to a specific denial. In the instant case, We do not find petitioner's denial in her answer to be specific as the petitioner failed to set forth the substance of the matters in which she relied upon to support her denial. The petitioner merely alleged that consent was given; how and why, she did not say. If indeed consent were given, it would have been easy to fill in the details. She could have stated in her pleadings that she verbally informed the respondent of the need for the repairs, or wrote him a letter. She could have stated his response, and how it was conveyed, whether verbally or in writing. She could have stated when the consent was solicited and procured. These, she failed to do. *Ergo,* the petitioner is deemed to have admitted the material allegations in the complaint.

6. **REMEDIAL LAW; EVIDENCE; WEIGHT; AFFIRMATIVE ASSERTION GIVEN MORE WEIGHT THAN GENERAL DENIAL ; CASE AT BAR.—** Both parties failed to present evidence other than the allegations in their pleadings. Thus,

the court may weigh the parties' allegations against each other. The petitioner presented a general denial, while the respondent set forth an affirmative assertion. This Court has time and again said that a general denial cannot be given more weight than an affirmative assertion.

7. **ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; DAMAGES; LIMITED TO RENTALS OR REASONABLE COMPENSATION FOR THE USE OF THE PROPERTY; CASE AT BAR.—** This Court has no jurisdiction to award the reimbursement prayed for by both parties. Both parties seek damages other than rentals or reasonable compensation for the use of the property, which are the only forms of damages that may be recovered in an unlawful detainer case. Rule 70, Section 17 of the Rules of Court authorizes the trial court to order *the award of an amount representing arrears of rent or reasonable compensation for the use and occupation of the premises if it finds that the allegations of the complaint are true.*

8. **ID.; ID.; ID.; ID.; ID.; RATIONALE.—** The rationale for limiting the kind of damages recoverable in an unlawful detainer case was explained in *Araos v. Court of Appeals*, wherein the Court held that: The rule is settled that in forcible entry or unlawful detainer cases, the only damage that can be recovered is the fair rental value or the reasonable compensation for the use and occupation of the leased property. The reason for this is that in such cases, the only issue raised in ejectment cases is that of rightful possession; hence, the damages which could be recovered are those which the plaintiff could have sustained as a mere possessor, or those caused by the loss of the use and occupation of the property, and not the damages which he may have suffered but which have no direct relation to his loss of material possession.

9. **ID.; ID.; JOINDER OF CAUSES OF ACTION; ACTION FOR REIMBURSEMENT MAY NOT BE JOINED WITH ACTION FOR EJECTMENT.—** An action for reimbursement or for recovery of damages may not be properly joined with the action for ejectment. The former is an ordinary civil action requiring a full-blown trial, while an action for unlawful detainer is a special civil action which requires a summary procedure. The joinder of the two actions is specifically enjoined by Section 5 of Rule 2 of the Rules of Court.

APPEARANCES OF COUNSEL

Aquino Law Office for private respondent.

D E C I S I O N

BRION, *J*.:

The petitioner Floraida Terana (*petitioner*) asks us to reverse and set aside, through this Petition for Review on *Certiorari*,[1] the September 7, 2001 Decision[2] of the Court of Appeals (*CA*), and its subsequent Resolution[3] denying the petitioner's motion for reconsideration.

THE FACTS

The respondent Antonio Simuangco (*respondent*) owned a house and lot at 138 J.P. Laurel St., Nasugbu, Batangas, which he leased to the petitioner.[4] Sometime in 1996, the petitioner demolished the leased house and erected a new one in its place.[5] The respondent alleged that this was done without his consent.[6] The Contract of Lease[7] defining the respective rights and obligations of the parties contained the following provisions, which the petitioner allegedly violated:

3. That the lessee obligated herself with the Lessor by virtue of this Lease, to do the following, to wit:

a) xxx

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

[2] Penned by Justice Cancio C. Garcia (retired member of this Court), with Justice Hilarion L. Aquino (also retired) and Justice Jose L. Sabio, concurring; *rollo*, pp. 23-32.

[3] *Id.*, pp. 34-35.

[4] *Id.,* p. 149.

[5] *Id.,* p. 150.

[6] *Id.,* p. 150.

[7] CA *rollo,* p. 57.

b) To keep the leased property in such repair and condition as it was in the commencement of the Lease with the exception of portions or parts which may be impaired due to reasonable wear and tear;

c) xxx

d) Not to make any alterations in the Leased property without the knowledge and consent of the Lessor; x x x

The petitioner allegedly also gave the materials from the demolished house to her sister, who built a house adjacent to the respondent's property.[8] When the respondent discovered what the petitioner did, he immediately confronted her and advised her to vacate the premises.[9] She refused. On February 3, 1997, the respondent sent a letter demanding the petitioner to vacate the leased property.[10] Despite this letter of demand, which the petitioner received on February 10,[11] she still refused to vacate the said property.

The respondent thus filed a complaint for unlawful detainer[12] against the petitioner on April 16, 1997 on the ground of the petitioner's violation of the terms of the Contract of Lease.[13] The respondent prayed for the petitioner's ejectment of the leased property, and for the award of ₱70,000.00, representing the cost of the materials from the demolished house, attorney's fees, and costs.[14]

The presiding judge of the Municipal Trial Court (*MTC*) of Nasugbu, Batangas, Hon. Herminia Lucas, inhibited from the case on the ground that she is related to the respondent.[15]

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[8] *Id.*, p. 34.

[9] *Ibid.*

[10] *Id.*

[11] *Id.*

[12] Docketed as Civil Case No. 1305 and entitled *Antonio B. Simuangco, versus Aida Terania;* CA *rollo*, pp. 33-36.

[13] *Id.*, p. 34.

[14] *Id.*, p. 35.

[15] *Rollo,* p. 25.

The petitioner denied allegations of the complaint in her "*Sagot.*"[16] She claimed that she demolished the old building and built a new one with the knowledge and consent of the respondent; that the original house was old and was on the verge of collapsing;[17] that without the timely repairs made by the petitioner, the house's collapse would have caused the death of the petitioner and her family. The petitioner prayed for the court to: 1) dismiss the ejectment case against her; and 2) award in her favor: a) ₱100,000.00 as moral damages, b) ₱200,000.00 as reimbursement for the expenses incurred in building the new house, c) ₱50,000.00 as attorney's fees, and d) ₱10,000.00 as costs incurred in relation to the suit.[18]

The trial court called for a preliminary conference under Section 7 of the Revised Rules of Summary Procedure (*RSP*) and Section 8 of Rule 70 of the Rules of Court, and required the parties to file their position papers and affidavits of their witnesses after they failed to reach an amicable settlement.[19] Instead of filing their position papers, both parties moved for an extension of time to file the necessary pleadings. The trial court denied both motions on the ground that the RSP and the Rules of Court, particularly Rule 70, Section 13(5), prohibit the filing of a motion for extension of time.[20]

The MTC framed the issues in the case as follows:

1. Whether or not there was a violation of the contract of lease when the old house was demolished and a new house was constructed by the defendant; and

2. Whether or not defendant is entitled to be reimbursed for her expenses in the construction of the new house.[21]

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[16] CA *rollo*, pp. 37-39.

[17] In her "*Sagot*," the petitioner alleged that the house was already 20 years old. However, in other parts of the record, she alleged that the structure was only 10 years old.

[18] CA *rollo,* p. 38.

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

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

[21] *Ibid.*

THE MTC'S DECISION[22]

The MTC rendered its decision on November 5, 1997[23] despite the parties' failure to timely file their respective position papers.[24] The decision stated that: according to the parties' Contract of Lease, the consent of the respondent must be obtained before any alteration or repair could be done on the leased property; that the petitioner failed to produce any evidence that the respondent had given her prior permission to demolish the leased house and construct a new one; that even in her answer, she failed to give specific details about the consent given to her; that in demolishing the old structure and constructing the new one, the petitioner violated the Contract of Lease; that this violation of the terms of the lease was a ground for judicial ejectment under Article 1673(3) of the Civil Code; and that since the demolition and construction of the new house was without the consent of the respondent, there was no basis to order the respondent to reimburse the petitioner.

The MTC thus ruled:

> IN VIEW OF THE FOREGOING, judgment is hereby rendered in favor of the plaintiff Antonio B. Simuangco and against the defendant Aida Terana as follows:
>
> 1. Ordering the defendant Aida Terana and all persons claiming right under her to vacate and surrender possession of the subject house to the plaintiff;
> 2. Ordering the said defendant to pay the amount of Five Thousand Pesos (₱5,000.00) as Attorney's fees; and
> 3. To pay the costs of suit.
>
> SO ORDERED.[25]

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[22] CA *rollo,* p. 59

[23] *Id.,* pp. 54-59.

[24] Petitioners' Motion for Extension of Time to File Position Paper was denied by the MTC in its Order dated October 28, 1997.

[25] CA *rollo,* p. 59.

Unaware that a decision had already been rendered, the petitioner filed a letter entitled *Kahilingan*,[26] to which she attached her position paper and the affidavits of her witnesses.[27] The submission was essentially a motion for reconsideration of the denial of motion for extension of time. On November 6, 1977, the MTC denied the petitioner's *Kahilingan* as follows:

> Defendant Aida Terania's "*KAHILINGAN*" dated November 5, 1997 is **DENIED** for being moot and academic on account of the decision on the merits rendered by this court dated November 4, 1997 relative to the instant case.
>
> SO ORDERED.[28]

Petitioner then filed a Notice of Appeal on November 12, 1997.[29] The records of the case were ordered elevated to the Regional Trial Court (*RTC*) where the case was docketed as Civil Case No. 439.

THE RTC'S DECISION[30]

The RTC rendered judgment affirming the decision of the MTC on February 26, 1998. The RTC ruled that: 1) the ruling of the MTC was supported by the facts on record; 2) although the respondent failed to submit his position paper and the affidavits of his witnesses, the MTC correctly rendered its decision on the basis of the pleadings submitted by the parties, as well as the evidence on record; 3) the petitioner failed to show enough reason to reverse the MTC's decision. The court further declared that its decision was immediately executory, without prejudice to any appeal the parties may take.

The petitioner filed a Motion for Reconsideration and/or for New Trial on March 3, 1998.[31] The petitioner argued that the

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[26] *Id.,* p. 43

[27] *Id.,* pp. 44-52

[28] *Id.,* p. 53.

[29] *Id.,* p. 60.

[30] *Id.,* pp. 67-74.

[31] *Id.,* pp. 75-83.

appealed MTC decision was not supported by any evidence, and that the respondent failed to substantiate the allegations of his complaint and to discharge the burden of proving these allegations after the petitioner denied them in her *Sagot*. In effect, the petitioner argued that the allegations of the complaint should not have been the sole basis for the judgment since she filed an answer and denied the allegations in the complaint; the RTC should have also appreciated her position paper and the affidavit of her witnesses that, although filed late, were nevertheless not expunged from the records.

In her motion for a new trial, the petitioner argued that her failure to submit her position paper and the affidavits of her witnesses within the 10-day period was due to excusable negligence. She explained that she incurred delay because of the distance of some of her witnesses' residence. The petitioner alleged that she had a good and meritorious claim against the respondent, and that aside from her position paper and the affidavits of her witnesses, she would adduce receipts and other pieces of documentary evidence to establish the costs incurred in the demolition of the old house and the construction of the new one.

On April 28, 1998, the RTC granted the motion for reconsideration, and thus reversed its February 26, 1998 judgment, as well as the November 5, 1997 decision of the MTC. It noted that: 1) the MTC rendered its decision before the petitioner was able to file her position paper and the affidavit of her witnesses; 2) the rule on the timeliness of filing pleadings may be relaxed on equitable considerations; and 3) the denial of the petitioner's motion for reconsideration and/or new trial will result to a miscarriage of justice. Thus, believing that it was equitable to relax the rules on the timeliness of the filing of pleadings, the RTC remanded the case to the MTC for further proceedings, after giving the respondent the opportunity to submit his position paper and the affidavits of his witnesses. The *fallo* reads:

WHEREFORE, on considerations of equity and substantial justice, and in the light of Section 6, Rule 135 of the Rules of Court, the judgment of this Court dated February 26, 1998, as well as the

Decision dated November 4, 1997 of the Lower Court in Civil Case No. 1305, are hereby both set aside. The lower court to which the records were heretofore remanded is hereby ordered to conduct further proceedings in this case, after giving the plaintiff-appellee an opportunity to file his position paper and affidavits of witnesses as required by Section 10, Rule 70, of the 1997 Rules of Civil Procedure. [Underscoring supplied.]

SO ORDERED.

On May 9, 1998, the petitioner challenged the order of remand through another motion for reconsideration.[32] The petitioner argued that since the original action for unlawful detainer had already been elevated from the MTC to the RTC, the RSP no longer governed the disposal of the case. Before the RTC, the applicable rule is the Rules of Court, particularly Section 6 of Rule 37, which reads:

Sec. 6. *Effect of granting of motion for new trial.* – If a new trial is granted in accordance with the provisions of this Rule, the original judgment or final order shall be vacated, and the action shall stand for trial *de novo*; but the recorded evidence taken upon the former trial, in so far as the same is material and competent to establish the issues, shall be used at the new trial without retaking the same.

Thus, the RTC should have conducted a trial *de novo* instead of remanding the case to the MTC. The petitioner further argued that a remand to the court *a quo* may only be ordered under Section 8, Rule 40[33] of the Rules of Court.

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[32] *Id.*, pp. 84-86.

[33] Rule 40 provides for the manner of appeal from the MTC to the RTC. The rule reads:

Sec. 8. *Appeal from orders dismissing case without trial; lack of jurisdiction.*— If an appeal is taken from an order of the lower court dismissing the case without a trial on the merits, the Regional Trial Court may affirm or reverse it, as the case may be. In case of affirmance and the ground of dismissal is lack of jurisdiction over the subject matter, the Regional Trial Court, if it has jurisdiction thereover, shall try the case on the merits as if the case was originally filed with it. In case of reversal, the case shall be remanded for further proceedings.

The RTC denied the motion noting that the petitioner missed the whole point of the reversal of the decision. *First*, the reversal was made in the interest of substantial justice and the RTC hewed more to the "spirit that vivifieth than to the letter that killeth,"[34] and that "a lawsuit is best resolved on its full merits, unfettered by the stringent technicalities of procedure." The RTC further emphasized that a remand is not prohibited under the Rules of Court and that Section 6 of Rule 135 allows it:

> Sec. 6. *Means to carry jurisdiction into effect* — When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer, and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules.

Second, Rule 40 governs appeals from the MTC to the RTC. Nowhere in Rule 40 is there a provision similar to Section 6 of Rule 37.

Third, Section 6 of Rule 37 contemplates a motion for new trial and for reconsideration filed before a trial court *a quo*. The RTC in this case was acting as an appellate court; the petitioner's motion for new trial and reconsideration was directed against the appellate judgment of the RTC, not the original judgment of the trial court.

Fourth, after Republic Act No. 6031 mandated municipal trial courts to record their proceedings, a trial *de novo* at the appellate level may no longer be conducted. The appellate courts may instead review the evidence and records transmitted to it by the trial court. Since the petitioner is asking the court to review the records of the MTC, inclusive of her position paper

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If the case was tried on the merits by the lower court without jurisdiction over the subject matter, the Regional Trial Court on appeal shall not dismiss the case if it has original jurisdiction thereof, but shall decide the case in accordance with the preceding section, without prejudice to the admission of amended pleadings and additional evidence in the interest of justice.

[34] CA *rollo,* p. 28.

and the affidavits of her witnesses, it is also important to give the respondent an opportunity to file his position paper and the affidavits of his witnesses before the MTC renders a judgment. It is the MTC or the trial court that has the jurisdiction to do that.

THE CA'S DECISION

The CA affirmed the RTC in a decision promulgated on September 7, 2001.[35] The CA noted that the RTC's order of remand was not just based on equity and substantial justice, but was also based on law, specifically Section 6 of Rule 135. Thus, the CA ruled that the RTC did not err in remanding the case to the MTC and ordering the conduct of further proceedings after giving the respondent an opportunity to present his position paper and the affidavits of his witnesses. This ruling did not satisfy petitioner, giving way to the present petition.

THE PETITION

Before this Court, the petitioner alleges: 1) that the respondent made a request for the petitioner to vacate the subject property because his nearest of kin needed it; 2) that she was only going to vacate the premises if she were reimbursed the actual cost incurred in building the said house;[36] 3) that the case be decided on the basis of the entire record of the proceedings in the court of origin, including memoranda and briefs submitted by the parties, instead of being remanded to the MTC.

In his Comment[37] and Memorandum,[38] the respondent joins the petitioner's prayer for a ruling based on the records instead of remanding the case to the MTC. He prays that, as the MTC ruled, the petitioner be ordered to vacate the leased property, and that the petitioner's claim for reimbursement be denied. The respondent argues that the MTC correctly ruled on the basis of the parties' pleadings, the stipulation of facts during the preliminary conference, and the records of the proceedings.

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[35] *Rollo,* pp. 24-33.

[36] *Ibid.* p. 129.

[37] *Id.,* pp. 102-109.

[38] *Id.,* pp. 147-155.

ISSUES

The petitioner submits the following as the issue to be decided:

> [W]hether under the Rules of Summary Procedure, the Regional Trial Court, as well as the Court of Appeals, may order the case remanded to the MTC after the plaintiff, herein respondent, failed to submit evidence in support of his complaint because his Position Paper, affidavit of witnesses and evidence, were not submitted on time and the extension of time to file the same was denied because it is prohibited under the Rules on Summary Procedure.[39]

which we break down into the following sub-issues: 1) whether a remand is proper; 2) whether the Court should appreciate the petitioner's position paper and the affidavits of her witnesses; and 3) whether the complaint for unlawful detainer should be dismissed.

THE COURT'S RULING

The petition is partly meritorious.

Remand Not Necessary

We find that a remand of the case to the lower courts is no longer necessary, given the pleadings and submissions filed, and the records of the proceedings below. A remand would delay the overdue resolution of this case (originally filed with the MTC on April 16, 1997), and would run counter to the spirit and intent of the RSP.[40]

Petitioner's Position Paper and the Affidavits of Her Witnesses Cannot Be Admitted

Should the Court admit the petitioner's position paper and the affidavits of her witnesses attached to her *Kahilingan*?

The intent and terms of the RSP both speak against the liberality that the petitioner sees. By its express terms, the purpose of the RSP is to "achieve an expeditious and inexpensive

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[39] *Id.,* p. 131.

[40] RSP, Preambulatory clause.

determination" of the cases they cover, among them, forcible entry and unlawful detainer cases.[41] To achieve this objective, the RSP expressly prohibit certain motions and pleadings that could cause delay, among them, a motion for extension of time to file pleadings, affidavits or any other paper. If the extension for the filing of these submissions cannot be allowed, we believe it illogical and incongruous to admit a pleading that is already filed late. Effectively, we would then allow indirectly what we prohibit to be done directly. It is for this reason that in *Don Tino Realty Development Corporation v. Florentino*,[42] albeit on the issue of late filing of an answer in a summary proceeding, we stated that *"[t]o admit a late answer is to put a premium on dilatory measures, the very mischief that the rules seek to redress."*

The strict adherence to the reglementary period prescribed by the RSP is due to the essence and purpose of these rules. The law looks with compassion upon a party who has been illegally dispossessed of his property. Due to the urgency presented by this situation, the RSP provides for an expeditious and inexpensive means of reinstating the rightful possessor to the enjoyment of the subject property.[43] This fulfills the need to resolve the ejectment case quickly. Thus, we cannot reward the petitioner's late filing of her position paper and the affidavits of her witnesses by admitting them now.

The failure of one party to submit his position paper does not bar at all the MTC from issuing a judgment on the ejectment complaint. Section 10 of the RSP states:

> Section 10. *Rendition of judgment*. — Within thirty (30) days after receipt of the last affidavits and position papers, or the expiration of the period for filing the same, the court shall render judgment. [Underscoring supplied.]

However, should the court find it necessary to clarify certain material facts, it may, during the said period, issue an order specifying

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[41] *Id.*, Rule I, Section 1 (A) (1).

[42] G.R. No. 134222, September 10, 1999, 314 SCRA 197.

[43] *Tubiano v. Razo*, G. R. No. 132598, July 13, 2000, 335 SCRA 531.

the matters to be clarified, and require the parties to submit affidavits or other evidence on the said matters within ten (10) days from receipt of said order. Judgment shall be rendered within fifteen (15) days after the receipt of the last affidavit or the expiration of the period for filing the same.

The court shall not resort to the foregoing procedure just to gain time for the rendition of the judgment.

Thus, the situation obtaining in the present case has been duly provided for by the Rules; it was correct to render a judgment, as the MTC did, after one party failed to file their position paper and supporting affidavits.

That a position paper is not indispensable to the court's authority to render judgment is further evident from what the RSP provides regarding a preliminary conference: "on the basis of the pleadings and the stipulations and admissions made by the parties, judgment may be rendered without the need for further proceedings, in which event the judgment shall be rendered within 30 days from the issuance of the order."[44] Thus, the proceedings may stop at that point, <u>without need for the submission of position papers</u>. In such a case, what would be extant in the record and the bases for the judgment would be the complaint, answer, and the record of the preliminary conference.

Unlawful detainer

The special civil action for unlawful detainer has the following essential requisites:

1) the fact of lease by virtue of a contract, express or implied;
2) the expiration or termination of the possessor's right to hold possession;
3) withholding by the lessee of possession of the land or building after the expiration or termination of the right to possess;

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[44] RSP, Rule II, Section 8(3); see also RULES OF COURT, Rule 70, Section 9 (3).

4) letter of demand upon lessee to pay the rental or comply with the terms of the lease and vacate the premises; and

5) the filing of the action within one year from the date of the last demand received by the defendant.[45]

Requisites 1, 4, and 5 have been duly established. The presence of the Contract of Lease is undisputed; the letter of demand was sent on February 3, 1997, and received by the petitioner on February 10, 1997; and the action was filed on April 16, 1997, well within the one-year period from the letter of demand. For our determination is whether the petitioner's right to possess the subject property may be terminated by virtue of her violation of the terms of the contract. If we answer in the affirmative, her continued detention of the property is illegal.

Section 1673(3) of the Civil Code answers this question by providing that the lessor may terminate the lease contract for violation of any of the conditions or terms agreed upon,[46] and may judicially eject the lessee.[47] One of the stipulated terms of the parties' Contract of Lease, as narrated above, is that no alterations may be made on the leased property without the knowledge and consent of the lessor. The issue in this case is beyond the fact of alteration since it is not disputed that the petitioner demolished the house under lease and built a new one. The crucial issue is whether the demolition was with or without the knowledge and consent of the respondent.

The petitioner contends that the Court should not give credence to the respondent's claim that he neither had knowledge of nor gave his consent to her acts. She argued that the respondent had the burden of proving this allegation with positive evidence

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[45] *Pasricha v. Don Luis Dison Realty, Inc.*, G.R. No. 136409, March 14, 2008, 22 SCRA 215.

[46] *Ramos v. Court of Appeals*, G.R. No. 119872, July 7, 1997, 275 SCRA 167.

[47] *Dayao v. Shell Company of the Philippines*, G.R. No. L-32475, April 30, 1980, 97 SCRA 497; *Puahay Lao v. Suarez*, G.R. No. L-22468, 22 SCRA 215, January 29, 1968, 22 SCRA 215.

after she frontally denied it in her answer. Since the respondent failed to discharge this burden, she argues that she no longer needed to prove her defense that the demolition and construction were done with the respondent's knowledge and consent.[48]

The petitioner's contention is misplaced.

First, the material allegations in a complaint must be specifically denied by the defendant in his answer. Section 10, Rule 8 of the 1997 Rules of Court, provides:

> A defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial. Where a defendant desires to deny only a part of an averment, he shall specify so much of it as is true and material and shall deny the remainder. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the effect of a denial.

Section 11, Rule 8 of the Rules of Court likewise provides that material allegations in the complaint which are not specifically denied, other than the amount of unliquidated damages, are deemed admitted. A denial made without setting forth the substance of the matters relied upon in support of the denial, even when to do so is practicable, does not amount to a specific denial.[49]

The petitioner's denial in her answer consists of the following:

1. *Maliban sa personal na katangian at tirahan ng nasasakdal, ay walang katotuhanan ang mga isinasakdal ng nagsasakdal;*
2. *Na hindi lumabag sa kasunduan ng upahan ang nasasakdal;*
3. *Na, ang pagpapagawa ng bahay na inuupahan ng nasasakdal ay sa kaalaman at kapahintulutan ng nagsasakdal at higit*

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[48] *Rollo,* p. 131.

[49] *Republic of the Philippines v. Southside Homeowners Association, Inc. et al.,* G.R. Nos. 156951 and 173408, September 22, 2006, 502 SCRA 587. See generally: *Republic of the Philippines v. Sandiganbayan,* G.R. No. 152154, July 15, 2003, 406 SCRA 190.

> *na gumanda at tumibay ang bahay ng nagsasakdal sa pamamagitan ng pagpapagawa ng nasasakdal; xxx*[50]

We do not find this denial to be specific as the petitioner failed to set forth the substance of the matters in which she relied upon to support her denial. The petitioner merely alleged that consent was given; how and why, she did not say. If indeed consent were given, it would have been easy to fill in the details. She could have stated in her pleadings that she verbally informed the respondent of the need for the repairs, or wrote him a letter. She could have stated his response, and how it was conveyed, whether verbally or in writing. She could have stated when the consent was solicited and procured. These, she failed to do. *Ergo,* the petitioner is deemed to have admitted the material allegations in the complaint.

Second, both parties failed to present evidence other than the allegations in their pleadings. Thus, the court may weigh the parties' allegations against each other. The petitioner presented a general denial, while the respondent set forth an affirmative assertion. This Court has time and again said that a general denial cannot be given more weight than an affirmative assertion.[51]

Damages recoverable in an unlawful detainer action are limited to rentals or reasonable compensation for the use of the property

This Court has no jurisdiction to award the reimbursement prayed for by both parties. Both parties seek damages other than rentals or reasonable compensation for the use of the property, which are the only forms of damages that may be recovered in an unlawful detainer case.[52] Rule 70, Section 17

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[50] CA *rollo,* p. 37.

[51] See generally *Arboleda v. NLRC,* G.R. No. 119509, February 11, 1999, 303 SCRA 38; *Caca v. Court of Appeals,* G.R. No. 116962, July 7, 1997, 275 SCRA 123.

[52] *Araos v. Court of Appeals,* G.R. No. 107057, June 2, 1994, 232 SCRA 770; See also *Herrera v. Bollos*, G.R. No. 138258, January 18, 2002, 374 SCRA 107.

of the Rules of Court authorizes the trial court to order *the award of an amount representing arrears of rent or reasonable compensation for the use and occupation of the premises if it finds that the allegations of the complaint are true.*[53]

The rationale for limiting the kind of damages recoverable in an unlawful detainer case was explained in *Araos v. Court of Appeals*,[54] wherein the Court held that:

> The rule is settled that in forcible entry or unlawful detainer cases, the only damage that can be recovered is the fair rental value or the reasonable compensation for the use and occupation of the leased property. The reason for this is that in such cases, the only issue raised in ejectment cases is that of rightful possession; hence, the damages which could be recovered are those which the plaintiff could have sustained as a mere possessor, or those caused by the loss of the use and occupation of the property, and not the damages which he may have suffered but which have no direct relation to his loss of material possession.

An action for reimbursement or for recovery of damages may not be properly joined with the action for ejectment. The former is an ordinary civil action requiring a full-blown trial, while an action for unlawful detainer is a special civil action which requires a summary procedure. The joinder of the two actions is specifically enjoined by Section 5 of Rule 2 of the Rules of Court, which provides:

> Section 5. *Joinder of causes of action.* — A party may in one pleading assert, in the alternative or otherwise, as many causes of action as he may have against an opposing party, subject to the following conditions:

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[53] RULES OF COURT, Rule 70, Section 17 provides:

Sec. 17. *Judgment.*— If after trial the court finds that the allegations of the complaint are true, it shall render judgment in favor of the plaintiff for the restitution of the premises, the sum justly due as arrears of rent or as reasonable compensation for the use and occupation of the premises, attorney's fees and costs. If it finds that said allegations are not true, it shall render judgment for the defendant to recover his costs. If a counterclaim is established, the court shall render judgment for the sum found in arrears from either party and award costs as justice requires.

[54] *Supra* note 52.

(a) The party joining the causes of action shall comply with the rules on joinder of parties;

(b) The joinder shall not include special civil actions or actions governed by special rules;

(c) Where the causes of action are between the same parties but pertain to different venues or jurisdictions, the joinder may be allowed in the Regional Trial Court provided one of the causes of action falls within the jurisdiction of said court and the venue lies therein; and

(d) Where the claims in all the causes of action are principally for recovery of money, the aggregate amount claimed shall be the test of jurisdiction. [Underscoring supplied.]

WHEREFORE, the petition is *PARTIALLY GRANTED.* The decision of the Court of Appeals in CA-G.R. No. SP-48534 is *REVERSED AND SET ASIDE.* The petitioner FLORAIDA TERANA and all persons claiming right under her are ordered to vacate and surrender possession of the subject property to the respondent ANTONIO SIMUANGCO. No costs.

SO ORDERED.

Austria-Martinez, Corona, Tinga,[*] and *Velasco, Jr., JJ.,* concur.

Quisumbing (Chairperson) and *Carpio Morales, JJ.,* on official leave.

[*] Designated Acting Chairperson of the Second Divison per Special Order No. 592 dated March 19, 2009.

EN BANC

[G.R. No. 164785. April 29, 2009]

ELISEO F. SORIANO, *petitioner, vs.* **MA. CONSOLIZA P. LAGUARDIA, in her capacity as Chairperson of the Movie and Television Review and Classification Board, MOVIE AND TELEVISION REVIEW AND CLASSIFICATION BOARD, JESSIE L. GALAPON, ANABEL M. DELA CRUZ, MANUEL M. HERNANDEZ, JOSE L. LOPEZ, CRISANTO SORIANO, BERNABE S. YARIA, JR., MICHAEL M. SANDOVAL, and ROLDAN A. GAVINO,** *respondents.*

[G.R. No. 165636. April 29, 2009]

ELISEO F. SORIANO, *petitioner, vs.* **MOVIE AND TELEVISION REVIEW AND CLASSIFICATION BOARD, ZOSIMO G. ALEGRE, JACKIE AQUINO-GAVINO, NOEL R. DEL PRADO, EMMANUEL BORLAZA, JOSE E. ROMERO IV, and FLORIMONDO C. ROUS, in their capacity as members of the Hearing and Adjudication Committee of the MTRCB, JESSIE L. GALAPON, ANABEL M. DELA CRUZ, MANUEL M. HERNANDEZ, JOSE L. LOPEZ, CRISANTO SORIANO, BERNABE S. YARIA, JR., MICHAEL M. SANDOVAL, and ROLDAN A. GAVINO, in their capacity as complainants before the MTRCB,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; POWERS; DETERMINED FROM THE LAW ITSELF; ONCE DETERMINED, LIBERALLY CONSTRUED.—** Administrative agencies have powers and functions which may be administrative, investigatory, regulatory, quasi-legislative, or quasi-judicial, or a mix of the five, as may be conferred by the Constitution or by statute. They have in fine only such powers or authority as are granted or delegated,

expressly or impliedly, by law. And in determining whether an agency has certain powers, the inquiry should be from the law itself. But once ascertained as existing, the authority given should be liberally construed.

2. ID.; ID.; ID.; MTRCB; POWERS AND FUNCTIONS UNDER PD 1986.— Sec. 3 of PD 1986 pertinently provides the following: Section 3. Powers and Functions.— The BOARD shall have the following functions, powers and duties: x x x c) To approve or disapprove, delete objectionable portions from and/or prohibit the x x x production, x x x exhibition and/or television broadcast of the motion pictures, television programs and publicity materials subject of the preceding paragraph, which, in the judgment of the board applying contemporary Filipino cultural values as standard, are objectionable for being immoral, indecent, contrary to law and/or good customs, injurious to the prestige of the Republic of the Philippines or its people, or with a dangerous tendency to encourage the commission of violence or of wrong or crime such as but not limited to: xxx vi) Those which are libelous or defamatory to the good name and reputation of any person, whether living or dead; xxx (d) To **supervise, regulate**, and grant, deny or cancel, permits for the x x x production, copying, distribution, sale, lease, **exhibition, and/or television broadcast** of all motion pictures, television programs and publicity materials, **to the end that no such pictures, programs and materials** as are determined by the BOARD to be objectionable in accordance with paragraph (c) hereof shall be xxx produced, copied, reproduced, distributed, sold, leased, **exhibited and/or broadcast by television;** xxx k) To exercise such powers and functions as may be necessary or incidental to the attainment of the purposes and objectives of this Act xxx.

3. **ID.; ID.; ID.; ID.; ID.; POWER TO ISSUE PREVENTIVE SUSPENSION ORDER; IMPLIED FROM PD 1986; CASE AT BAR.—** The issuance of a preventive suspension comes well within the scope of the MTRCB's authority and functions expressly set forth in PD 1986, more particularly under its Sec. 3(d), as quoted above, which empowers the MTRCB to "supervise, regulate, and grant, deny or cancel, permits for the xxx exhibition, and/or television broadcast of all motion pictures, television programs and publicity materials, to the end that no such pictures, programs and materials as are

determined by the BOARD to be objectionable in accordance with paragraph (c) hereof shall be x x x exhibited and/or broadcast by television." Surely, the power to issue preventive suspension forms part of the MTRCB's express regulatory and supervisory statutory mandate and its investigatory and disciplinary authority subsumed in or implied from such mandate. Any other construal would render its power to regulate, supervise, or discipline illusory.

4. **ID.; ID.; ID.; ID.; ID.; ID.; A PRELIMINARY STEP IN AN ADMINISTRATIVE INVESTIGATION; NOT A PENALTY.—** Preventive suspension, xxx is not a penalty by itself, being merely a preliminary step in an administrative investigation. And the power to discipline and impose penalties, if granted, carries with it the power to investigate administrative complaints and, during such investigation, to preventively suspend the person subject of the complaint.

5. **ID.; ID.; ID.; ID.; ID.; ID.; 2004 IRR MERELY FORMALIZED POWER GRANTED.—** Contrary to petitioner's assertion, the aforequoted Sec. 3 of the IRR neither amended PD 1986 nor extended the effect of the law. Neither did the MTRCB, by imposing the assailed preventive suspension, outrun its authority under the law. Far from it. The preventive suspension was actually done in furtherance of the law, imposed pursuant, to repeat, to the MTRCB's duty of regulating or supervising television programs, pending a determination of whether or not there has actually been a violation. In the final analysis, Sec. 3, Chapter XIII of the 2004 IRR merely formalized a power which PD 1986 bestowed, albeit impliedly, on MTRCB. xxx While it is true that the matter of imposing preventive suspension is embodied only in the IRR of PD 1986. Sec. 3, Chapter XIII of the IRR x x x But the mere absence of a provision on preventive suspension in PD 1986, without more, would not work to deprive the MTRCB a basic disciplinary tool, such as preventive suspension.

6. **ID.; ID.; ID.; ID.; ID.; ID.; AS AN IMPLIED POWER OF MTRCB DISTINGUISHED FROM AN EXPRESS POWER.—** Indeed, the power to impose preventive suspension is one of the implied powers of MTRCB. As distinguished from express powers, implied powers are those that can be inferred or are implicit in the wordings or conferred by necessary or fair implication of the enabling act. As we held in *Angara v.*

Electoral Commission, when a general grant of power is conferred or a duty enjoined, every particular power necessary for the exercise of one or the performance of the other is also conferred by necessary implication. Clearly, the power to impose preventive suspension pending investigation is one of the implied or inherent powers of MTRCB.

7. **ID.; ID.; ID.; ID.; ID.; ID.; APPLICABLE NOT ONLY TO MOTION PICTURES.—** We cannot agree with petitioner's assertion that the aforequoted IRR provision on preventive suspension is applicable only to motion pictures and publicity materials. The scope of the MTRCB's authority extends beyond motion pictures. What the acronym MTRCB stands for would suggest as much. And while the law makes specific reference to the closure of a television network, the suspension of a television program is a far less punitive measure that can be undertaken, with the purpose of stopping further violations of PD 1986. Again, the MTRCB would regretfully be rendered ineffective should it be subject to the restrictions petitioner envisages.

8. **ID.; ID.; ID.; ID.; ID.; ID.; HEARING NOT REQUIRED; CASE AT BAR.—** Just as untenable is petitioner's argument on the nullity of the preventive suspension order on the ground of lack of hearing. As it were, the MTRCB handed out the assailed order after petitioner, in response to a written notice, appeared before that Board for a hearing on private respondents' complaint. No less than petitioner admitted that the order was issued after the adjournment of the hearing, proving that he had already appeared before the MTRCB. Under Sec. 3, Chapter XIII of the IRR of PD 1986, preventive suspension shall issue "[a]ny time during the pendency of the case." In this particular case, it was done after MTRCB duly apprised petitioner of his having possibly violated PD 1986 and of administrative complaints that had been filed against him for such violation. At any event, that preventive suspension can validly be meted out even without a hearing.

9. **ID.; CONSTITUTION; EQUAL PROTECTION CLAUSE; CASE AT BAR NOT A DEPRIVATION THEREOF.—** The equal protection clause demands that "all persons subject to legislation should be treated alike, under like circumstances and conditions both in the privileges conferred and liabilities imposed." It guards against undue favor and individual privilege as well as

hostile discrimination. Surely, petitioner cannot, under the premises, place himself in the same shoes as the INC ministers, who, for one, are not facing administrative complaints before the MTRCB. For another, he offers no proof that the said ministers, in their TV programs, use language similar to that which he used in his own, necessitating the MTRCB's disciplinary action. If the immediate result of the preventive suspension order is that petitioner remains temporarily gagged and is unable to answer his critics, this does not become a deprivation of the equal protection guarantee.

10. **ID.; ID.; BILL OF RIGHTS; RELIGIOUS FREEDOM; CASE AT BAR NOT A VIOLATION THEREOF.—** Sec. 5, Article III of the 1987 Constitution on religious freedom. The section reads as follows: No law shall be made respecting the establishment of a religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights. There is nothing in petitioner's statements subject of the complaints expressing any particular religious belief, nothing furthering his avowed evangelical mission. The fact that he came out with his statements in a televised bible exposition program does not automatically accord them the character of a religious discourse. Plain and simple insults directed at another person cannot be elevated to the status of religious speech. Even petitioner's attempts to place his words in context show that he was moved by anger and the need to seek retribution, not by any religious conviction.

11. **ID.; ID.; FREEDOM OF SPEECH, DEFINED.—** Freedom of speech and expression is guaranteed under Sec. 4, Art. III of the Constitution, which reads: No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievance. x x x It is settled that expressions by means of newspapers, radio, television, and motion pictures come within the broad protection of the free speech and expression clause. Each method though, because of its dissimilar presence in the lives of people and accessibility to children, tends to present its own problems in the area of free speech protection, with broadcast media, of all forms of communication, enjoying a lesser degree of protection. Just

as settled is the rule that restrictions, be it in the form of prior restraint, *e.g.,* judicial injunction against publication or threat of cancellation of license/franchise, or subsequent liability, whether in libel and damage suits, prosecution for sedition, or contempt proceedings, are anathema to the freedom of expression. **Prior restraint** means official government restrictions on the press or other forms of expression in advance of actual publication or dissemination.

12. ID.; ID.; ID.; NOT ABSOLUTE.— The freedom of expression, as with the other freedoms encased in the Bill of Rights, is, however, not absolute. It may be regulated to some extent to serve important public interests, some forms of speech not being protected. As has been held, the limits of the freedom of expression are reached when the expression touches upon matters of essentially private concern. In the oft-quoted expression of Justice Holmes, the constitutional guarantee "obviously was not intended to give immunity for every possible use of language." From *Lucas v. Royo* comes this line: "[T]he freedom to express one's sentiments and belief does not grant one the license to vilify in public the honor and integrity of another. Any sentiments must be expressed within the proper forum and with proper regard for the rights of others."

13. ID.; ID.; ID.; ID.; UNPROTECTED SPEECH, DEFINED.— A speech would fall under the unprotected type if the utterances involved are "no essential part of any exposition of ideas, and are of such slight social value as a step of truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." xxx It has been established in this jurisdiction that unprotected speech or low-value expression refers to libelous statements, obscenity or pornography, false or misleading advertisement, insulting or "fighting words," *i.e.,* those which by their very utterance inflict injury or tend to incite an immediate breach of peace and expression endangering national security.

14. ID.; ID.; ID.; ID.; ID.; OBSCENITY, DEFINED; CASE AT BAR.— Following the contextual lessons of the cited case of *Miller v. California*, a patently offensive utterance would come within the pale of the term *obscenity* should it appeal to the prurient interest of an average listener applying contemporary standards. A cursory examination of the utterances complained

of and the circumstances of the case reveal that to an average adult, the utterances "*Gago ka talaga x x x, masahol ka pa sa putang babae x x x. Yung putang babae ang gumagana lang doon yung ibaba, [dito] kay Michael ang gumagana ang itaas, o di ba!*" may not constitute obscene but merely indecent utterances. They can be viewed as figures of speech or merely a play on words. In the context they were used, they may not appeal to the prurient interests of an adult. The problem with the challenged statements is that they were uttered in a TV program that is rated "G" or for general viewership, and in a time slot that would likely reach even the eyes and ears of children.

15. **ID.; ID.; ID.; ID.; ID.; UNBRIDLED LANGUAGE COULD CORRUPT YOUNG MINDS; CASE AT BAR.—** In this particular case, where children had the opportunity to hear petitioner's words, when speaking of the average person in the test for obscenity, we are speaking of the average child, not the average adult. The average child may not have the adult's grasp of figures of speech, and may lack the understanding that language may be colorful, and words may convey more than the literal meaning. Undeniably the subject speech is very suggestive of a female sexual organ and its function as such. In this sense, we find petitioner's utterances obscene and not entitled to protection under the umbrella of freedom of speech.

16. **ID.; ID.; ID.; REGULATION OR RESTRICTION, DISTINGUISHED.—** The Court in *Chavez* [case] elucidated on the distinction between regulation or restriction of protected speech that is content-based and that which is content-neutral. A content-based restraint is aimed at the contents or idea of the expression, whereas a content-neutral restraint intends to regulate the time, place, and manner of the expression under well-defined standards tailored to serve a compelling state interest, without restraint on the message of the expression. Courts subject content-based restraint to strict scrutiny.

17. **ID.; ID.; ID.; ID.; SUSPENSION IMPOSED IN CASE AT BAR, PERMISSIBLE.—** The suspension MTRCB imposed under the premises was, in one perspective, permissible restriction. We make this disposition against the backdrop of the following interplaying factors: *First,* the indecent speech was made via television, a pervasive medium that, to borrow from *Gonzales v. Kalaw Katigbak,* easily "reaches every home where there

is a set [and where] [c]hildren will likely be among the avid viewers of the programs therein shown"; *second,* the broadcast was aired at the time of the day when there was a reasonable risk that children might be in the audience; and *third*, petitioner uttered his speech on a "G" or "for general patronage" rated program.

I8. ID.; ID.; ID.; INDECENT LANGUAGE IN A GENERAL PATRONAGE PROGRAM, A CASE OF UNPROTECTED SPEECH.— Under Sec. 2(A) of Chapter IV of the IRR of the MTRCB, a show for general patronage is "[s]uitable for all ages," meaning that the "material for television xxx in the judgment of the BOARD, does not contain anything unsuitable for children and minors, and may be viewed without adult guidance or supervision." The words petitioner used were, by any civilized norm, clearly not suitable for children. Where a language is categorized as indecent, as in petitioner's utterances on a general-patronage rated TV program, it may be readily proscribed as unprotected speech. xxx This particular case constitutes yet another exception, another instance of unprotected speech, created by the necessity of protecting the welfare of our children. As unprotected speech, petitioner's utterances can be subjected to restraint or regulation.

19. ID.; ID.; ID.; CLEAR AND PRESENT DANGER DOCTRINE, DEFINED.— The doctrine, first formulated by Justice Holmes, accords protection for utterances so that the printed or spoken words may not be subject to prior restraint or subsequent punishment unless its expression creates a clear and present danger of bringing about a substantial evil which the government has the power to prohibit. Under the doctrine, freedom of speech and of press is susceptible of restriction when and only when necessary to prevent grave and immediate danger to interests which the government may lawfully protect. As it were, said doctrine evolved in the context of prosecutions for rebellion and other crimes involving the overthrow of government. It was originally designed to determine the latitude which should be given to speech that espouses anti-government action, or to have serious and substantial deleterious consequences on the security and public order of the community.

20. ID.; ID.; ID.; ID.; AS APPLIED TO OUR JURISDICTION.— The clear and present danger rule has been applied to this

jurisdiction. As a standard of limitation on free speech and press, however, the clear and present danger test is not a magic incantation that wipes out all problems and does away with analysis and judgment in the testing of the legitimacy of claims to free speech and which compels a court to release a defendant from liability the moment the doctrine is invoked, absent proof of imminent catastrophic disaster. As we observed in *Eastern Broadcasting Corporation*, the clear and present danger test "does not lend itself to a simplistic and all embracing interpretation applicable to all utterances in all forums."

21. ID.; ID.; ID.; BALANCING OF INTERESTS TEST; WHEN APPLIED.— Former Chief Justice Fred Ruiz Castro, in *Gonzales v. COMELEC*, elucidated in his Separate Opinion that "where the legislation under constitutional attack interferes with the freedom of speech and assembly in a more generalized way and where the effect of the speech and assembly in terms of the probability of realization of a specific danger is not susceptible even of impressionistic calculation," then the "balancing of interests" test can be applied.

22. ID.; ID.; ID.; ID.; HOW APPLIED.— The Court explained [also] in *Gonzales v. COMELEC* the "balancing of interests" test: When particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional, partial abridgment of speech, the duty of the courts is to determine which of the two conflicting interests demands the greater protection under the particular circumstances presented. x x x We must, therefore, undertake the "delicate and difficult task x x x to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of rights x x x. This balancing of interests test, to borrow from Professor Kauper, rests on the theory that it is the court's function in a case before it when it finds public interests served by legislation, on the one hand, and the free expression clause affected by it, on the other, to balance one against the other and arrive at a judgment where the greater weight shall be placed. If, on balance, it appears that the public interest served by restrictive legislation is of such nature that it outweighs the abridgment of freedom, then the court will find the legislation valid.

23. ID.; ID.; ID.; ID.; ID.; FREEDOM RESTRICTED TO BE JUDGED IN THE CONCRETE.— In *Gonzales v. COMELEC*,

the Court ruled that the urgency of the public interest sought to be secured by Congressional power restricting the individual's freedom, and the social importance and value of the freedom so restricted, "are to be judged in the concrete, not on the basis of abstractions," a wide range of factors are necessarily relevant in ascertaining the point or line of equilibrium. Among these are (a) the social value and importance of the specific aspect of the particular freedom restricted by the legislation; (b) the specific thrust of the restriction, *i.e.*, whether the restriction is direct or indirect, whether or not the persons affected are few; (c) the value and importance of the public interest sought to be secured by the legislation––the reference here is to the nature and gravity of the evil which Congress seeks to prevent; (d) whether the specific restriction decreed by Congress is reasonably appropriate and necessary for the protection of such public interest; and (e) whether the necessary safeguarding of the public interest involved may be achieved by some other measure less restrictive of the protected freedom.

24. ID.; ID.; ID.; ID.; CASE AT BAR, A VALID RESTRAINT.— The balance-of-interests theory rests on the basis that constitutional freedoms are not absolute, not even those stated in the free speech and expression clause, and that they may be abridged to some extent to serve appropriate and important interests. x x x After a careful examination of the factual milieu and the arguments raised by petitioner in support of his claim to free speech, the Court rules that the government's interest to protect and promote the interests and welfare of the children adequately buttresses the reasonable curtailment and valid restraint on petitioner's prayer to continue as program host of *Ang Dating Daan* during the suspension period.

25. ID.; ID.; ID.; ID.; BALANCING OF RIGHT TO FREEDOM OF SPEECH AND RIGHT OF YOUTH TO PROTECTION.— No doubt, one of the fundamental and most vital rights granted to citizens of a State is the freedom of speech or expression, for without the enjoyment of such right, a free, stable, effective, and progressive democratic state would be difficult to attain. Arrayed against the freedom of speech is the right of the youth to their moral, spiritual, intellectual, and social being which the State is constitutionally tasked to promote and protect. Moreover, the State is also mandated to

recognize and support the vital role of the youth in nation building as laid down in Sec. 13, Art. II of the 1987 Constitution.

26. **ID.; ID; ID.; ID.; PROTECTION OF YOUTH; SACRED OBLIGATION OF STATE IMPOSED BY CONSTITUTION.—** The Constitution has, therefore, imposed the sacred obligation and responsibility on the State to provide protection to the youth against illegal or improper activities which may prejudice their general well-being. The Article on youth, approved on second reading by the Constitutional Commission, explained that the State shall "extend social protection to minors against all forms of neglect, cruelty, exploitation, **immorality**, and practices which may foster racial, religious or other forms of discrimination." Indisputably, the State has a compelling interest in extending social protection to minors against all forms of neglect, exploitation, and immorality which may pollute innocent minds.

27. **ID.; ID.; ID.; ID.; DUTY OF THE STATE TO HELP PARENTS PROTECT THEIR CHILDREN.—** [The State] has a compelling interest in helping parents, through regulatory mechanisms, protect their children's minds from exposure to undesirable materials and corrupting experiences. The Constitution, no less, in fact enjoins the State, as earlier indicated, to promote and protect the physical, moral, spiritual, intellectual, and social well-being of the youth to better prepare them fulfill their role in the field of nation-building. In the same way, the State is mandated to support parents in the rearing of the youth for civic efficiency and the development of moral character.

28. **ID.; ID.; ID.; ID.; DUTY OF GOVERNMENT TO ACT AS *PARENS PATRIAE* IN CASE AT BAR.—** Petitioner's offensive and obscene language uttered in a television broadcast, without doubt, was easily accessible to the children. His statements could have exposed children to a language that is unacceptable in everyday use. As such, the welfare of children and the State's mandate to protect and care for them, as *parens patriae*, constitute a substantial and compelling government interest in regulating petitioner's utterances in TV broadcast as provided in PD 1986.

29. **ID.; ID.; ID.; ID.; ID.; A LESS LIBERAL APPROACH SHOULD BE OBSERVED FOR TELEVISION.—** In *Gonzales*

v. Kalaw Katigbak, the Court stressed the duty of the State to attend to the welfare of the young: x x x It is the consensus of this Court that where television is concerned, a less liberal approach calls for observance. This is so because unlike motion pictures where the patrons have to pay their way, television reaches every home where there is a set. Children then will likely be among the avid viewers of the programs therein shown. As was observed by Circuit Court of Appeals Judge Jerome Frank, it is hardly the concern of the law to deal with the sexual fantasies of the adult population. It cannot be denied though that the State as *parens patriae* is called upon to manifest an attitude of caring for the welfare of the young.

30. **ID.; ID.; ID.; RESTRAINT ON TV BROADCAST OF OFFENSIVE AND INDECENT LANGUAGE IN CASE AT BAR, JUSTIFIED.—** *FCC* justified the restraint on the TV broadcast grounded on the following considerations: (1) the use of television with its unique accessibility to children, as a medium of broadcast of a patently offensive speech; (2) the time of broadcast; and (3) the "G" rating of the *Ang Dating Daan* program. xxx It is the kind of speech that PD 1986 proscribes necessitating the exercise by MTRCB of statutory disciplinary powers. It is the kind of speech that the State has the inherent prerogative, nay duty, to regulate and prevent should such action served and further compelling state interests.

31. **ID.; ID.; ID.; ID.; MTRCB; POWERS INCLUDE PRIOR RESTRAINT.—** To clarify, statutes imposing prior restraints on speech are generally illegal and presumed unconstitutional breaches of the freedom of speech. The exceptions to prior restraint are movies, television, and radio broadcast censorship in view of its access to numerous people, including the young who must be insulated from the prejudicial effects of unprotected speech. PD 1986 was passed creating the Board of Review for Motion Pictures and Television (now MTRCB) and which requires prior permit or license before showing a motion picture or broadcasting a TV program. The Board can classify movies and television programs and can cancel permits for exhibition of films or television broadcast. The power of MTRCB to regulate and even impose some prior restraint on radio and television shows, even religious programs, was upheld in *Iglesia Ni Cristo v. Court of Appeals* where the Court rejected petitioner's postulate that its religious program is *per se* beyond

review by the respondent Board x x x and in *MTRCB v. ABS-CBN Broadcasting Corporation*, [where] it was held that the power of review and prior approval of MTRCB extends to all television programs and is valid despite the freedom of speech guaranteed by the Constitution.

32. **ID.; ID.; ID.; ID.; ID.; REGULATORY SCHEME AGREED UPON BY STATION OWNERS AND BROADCASTERS.—** As lucidly explained by Justice Dante O. Tinga, government regulations through the MTRCB became "a necessary evil" with the government taking the role of assigning bandwidth to individual broadcasters. The stations explicitly agreed to this regulatory scheme; otherwise, chaos would result in the television broadcast industry as competing broadcasters will interfere or co-opt each other's signals. In this scheme, station owners and broadcasters in effect waived their right to the full enjoyment of their right to freedom of speech in radio and television programs and impliedly agreed that said right may be subject to prior restraint—denial of permit or subsequent punishment, like suspension or cancellation of permit, among others.

33. **ID.; ID.; ID.; SUSPENSION IN THE FORM OF PERMISSIBLE SUBSEQUENT PUNISHMENT; CASE AT BAR.—** The three (3) months suspension in this case is not a prior restraint on the right of petitioner to continue with the broadcast of *Ang Dating Daan* as a permit was already issued to him by MTRCB for such broadcast. Rather, the suspension is in the form of permissible administrative sanction or subsequent punishment for the offensive and obscene remarks he uttered on the evening of August 10, 2004 in his television program, *Ang Dating Daan*. It is a sanction that the MTRCB may validly impose under its charter without running afoul of the free speech clause. And the imposition is separate and distinct from the criminal action the Board may take pursuant to Sec. 3(i) of PD 1986 and the remedies that may be availed of by the aggrieved private party under the provisions on libel or tort, if applicable. As *FCC* teaches, the imposition of sanctions on broadcasters who indulge in profane or indecent broadcasting does not constitute forbidden censorship. Lest it be overlooked, the sanction imposed is not *per se* for petitioner's exercise of his freedom of speech via television,

but for the indecent contents of his utterances in a "G" rated TV program.

34. ID.; ID.; ID.; ID.; SUSPENSION IN THE NATURE OF AN INTERMEDIATE PENALTY; CASE AT BAR.— Neither can petitioner's virtual inability to speak in his program during the period of suspension be plausibly treated as prior restraint on future speech. For viewed in its proper perspective, the suspension is in the nature of an intermediate penalty for uttering an unprotected form of speech. It is definitely a lesser punishment than the permissible cancellation of exhibition or broadcast permit or license. In fine, the suspension meted was simply part of the duties of the MTRCB in the enforcement and administration of the law which it is tasked to implement.

35. ID.; ID.; SEPARATION OF POWERS; NO UNDUE DELEGATION OF LEGISLATIVE POWER IN PD 1986.— In *Edu v. Ericta*, the Court discussed the matter of undue delegation of legislative power in the following wise: It is a fundamental principle flowing from the doctrine of separation of powers that Congress may not delegate its legislative power to the two other branches of the government, subject to the exception that local governments may over local affairs participate in its exercise. What cannot be delegated is the authority under the Constitution to make laws and to alter and repeal them; the test is the completeness of the statute in all its term and provisions when it leaves the hands of the legislature. To determine whether or not there is an undue delegation of legislative power, the inquiry must be directed to the scope and definiteness of the measure enacted. The legislature does not abdicate its functions when it describes what job must be done, who is to do it, and what is the scope of his authority.

36. ID.; ID.; ID.; DELEGATION OF POWER TO MAKE LAWS AND DELEGATION OF AUTHORITY AS TO ITS EXECUTION, DISTINGUISHED.— A distinction has rightfully been made between delegation of power to make laws which necessarily involves a discretion as to what it shall be, which constitutionally may not be done, and delegation of authority or discretion as to its execution to be exercised under and in pursuance of the law, to which no valid objection can be made. The Constitution is thus not to be regarded as denying

the legislature the necessary resources of flexibility and practicability. To avoid the taint of unlawful delegation, there must be a standard, which implies at the very least that the legislature itself determines matters of principle and lays down fundamental policy. Otherwise, the charge of complete abdication may be hard to repel. A standard thus defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. It indicates the circumstances under which the legislative command is to be effected. It is the criterion by which legislative purpose may be carried out. Thereafter, the executive or administrative office designated may in pursuance of the above guidelines promulgate supplemental rules and regulations. Based on the foregoing pronouncements and analyzing the law in question, petitioner's protestation about undue delegation of legislative power for the sole reason that PD 1986 does not provide for a range of penalties for violation of the law is untenable.

37. ID.; ID.; ID.; MTRCB; POWER TO REGULATE AND SUPERVISE THE EXHIBITION OF TV PROGRAMS IMPLIES AUTHORITY TO TAKE PUNITIVE ACTION.— Petitioner's posture is flawed by the erroneous assumptions holding it together, the first assumption being that PD 1986 does not prescribe the imposition of, or authorize the MTRCB to impose, penalties for violators of PD 1986. As earlier indicated, however, the MTRCB, by express and direct conferment of power and functions, is charged with supervising and regulating, granting, denying, or canceling permits for the exhibition and/or television broadcast of all motion pictures, television programs, and publicity materials to the end that no such objectionable pictures, programs, and materials shall be exhibited and/or broadcasted by television. Complementing this provision is Sec. 3(k) of the decree authorizing the MTRCB "to exercise such powers and functions as may be necessary or incidental to the attainment of the purpose and objectives of [the law]." As earlier explained, the investiture of supervisory, regulatory, and disciplinary power would surely be a meaningless grant if it did not carry with it the power to penalize the supervised or the regulated as may be proportionate to the offense committed, charged, and proved. x x x Given the foregoing perspective, it stands to reason that the power of the MTRCB to regulate and supervise the exhibition of TV

programs carries with it or necessarily implies the authority to take effective punitive action for violation of the law sought to be enforced. And would it not be logical too to say that the power to deny or cancel a permit for the exhibition of a TV program or broadcast necessarily includes the lesser power to suspend?

38. **ID.; ID.; ID.; ID.; PD 1986 PROVIDES MTRCB WITH POWER TO PROMULGATE RULES AND REGULATIONS.—** The MTRCB promulgated the IRR of PD 1986 in accordance with Sec. 3(a) which, for reference, provides that agency with the power "[to] promulgate such rules and regulations as are necessary or proper for the implementation of this Act, and the accomplishment of its purposes and objectives x x x." And Chapter XIII, Sec. 1 of the IRR providing: Section 1. VIOLATIONS AND ADMINISTRATIVE SANCTIONS.—Without prejudice to the immediate filing of the appropriate criminal action and the immediate seizure of the pertinent articles pursuant to Section 13, **any violation of PD 1986 and its Implementing Rules and Regulations governing motion pictures, television programs, and related promotional materials shall be penalized with suspension or cancellation of permits and /or licenses issued by the Board** and/or with the imposition of fines and other administrative penalty/penalties x x x: This is, in the final analysis, no more than a measure to specifically implement the aforequoted provisions of Sec. 3(d) and (k). Contrary to what petitioner implies, the IRR does not expand the mandate of the MTRCB under the law or partake of the nature of an unauthorized administrative legislation. The MTRCB cannot shirk its responsibility to regulate the public airwaves and employ such means as it can as a guardian of the public.

39. **ID.; ID.; ID.; NON-DELEGATION OF LEGISLATIVE POWER; EXCEPTION; RULE MAKING POWER OF ADMINISTRATIVE AGENCIES.—** The lawmaking body cannot possibly provide for all the details in the enforcement of a particular statute. The grant of the rule-making power to administrative agencies is a relaxation of the principle of separation of powers and is an exception to the non-delegation of legislative powers. Administrative regulations or "subordinate legislation" calculated to promote the public interest are necessary because of "the growing complexity of modern life,

the multiplication of the subjects of governmental regulations, and the increased difficulty of administering the law."

40. **ID.; ID.; ID.; MTRCB; NO POWER TO SUSPEND THE PROGRAM HOST OR CERTAIN PEOPLE FROM APPEARING IN TELEVISION PROGRAMS.—** But even as we uphold the power of the MTRCB to review and impose sanctions for violations of PD 1986, its decision to suspend petitioner must be modified, for nowhere in that issuance, particularly the power-defining Sec. 3 nor in the MTRCB Schedule of Administrative Penalties effective January 1, 1999 is the Board empowered to suspend the program host or even to prevent certain people from appearing in television programs. The MTRCB, to be sure, may prohibit the broadcast of such television programs or cancel permits for exhibition, but it may not suspend television personalities, for such would be beyond its jurisdiction. The MTRCB cannot extend its exercise of regulation beyond what the law provides. Only persons, offenses, and penalties clearly falling clearly within the letter and spirit of PD 1986 will be considered to be within the decree's penal or disciplinary operation. And when it exists, the reasonable doubt must be resolved in favor of the person charged with violating the statute and for whom the penalty is sought. Thus, the MTRCB's decision in Administrative Case No. 01-04 dated September 27, 2004 and the subsequent order issued pursuant to said decision must be modified. The suspension should cover only the television program on which petitioner appeared and uttered the offensive and obscene language, which sanction is what the law and the facts obtaining call for.

TINGA, *J., concurring opinion:*

1. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; FREEDOM OF SPEECH; STATUTES LIMITING ITS UNFETTERED EXERCISE NOT REGARDED AS TYPE OF LAW PROSCRIBED BY THE BILL OF RIGHTS WHEN FOUND JUSTIFIED BY SUBORDINATING VALID GOVERNMENTAL INTERESTS.—** The Bill of Rights does not forbid abridging speech, but abridging the freedom of speech. The view that freedom of speech is an absolute freedom has never gained currency with this Court, or the United States

Supreme Court, which both have carved out exceptions relating to unprotected speech, such as obscenity. Constitutionally protected freedom of speech is narrower than an unlimited license to talk. General regulatory statutes not intended to control the content of speech but incidentally limiting its unfettered exercise have not been regarded as the type of law proscribed by the Bill of Rights, when they have been found justified by subordinating valid governmental interest, a prerequisite to constitutionality which has necessarily involved a weighing of the governmental interest involved.

2. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; MTRCB; FREEDOM OF EXPRESSION; THREE-MONTH SUSPENSION; PRIOR RESTRAINT; CLARIFICATION; CASE AT BAR.— Justice Carpio dissents as he feels that the three-month suspension of petitioner's TV program constitutes an unconstitutional prior restraint on freedom of expression. x x x. Let us assume instead that petitioner made the same exact remarks not on television, but from his pulpit. The MTRCB learns of such remarks, and accordingly suspends his program for three months. In that scenario, neither the MTRCB nor any arm of government has the statutory authority to suspend the program based on the off-camera remarks, even if such action were justified to prevent petitioner from making similar remarks on the air. In that scenario, the suspension unmistakably takes on the character of prior restraint, rather than subsequent punishment.

3. ID.; ID.; ID.; ID.; ID.; ID.; ID.; UNDER THE REVIEW AND APPROVAL SCHEME ESTABLISHED BY PD NO. 1986, ALL BROADCAST NETWORKS LABOR UNDER A REGIME OF PRIOR RESTRAINT.— Under this review and approval schematic established by Pres. Decree No. 1986, **all broadcast networks labor under a regime of prior restraint before they can exercise their right to free expression by airing the television programs they produce**. If the MTRCB were indeed absolutely inhibited from imposing "prior restraint," then the entire review and approval procedure under Pres. Decree No. 1986 would be unconstitutional. I am not sure whether Justice Carpio means to imply this.

4. ID.; ID.; ID.; ID.; ID.; ID.; ID.; ID.; RATIONALE.— All of broadcasting, whether radio or television, utilizes the airwaves, or the electromagnetic spectrum, in order to be received by

the listener or viewer. The airwaves, which are a scarce and finite resource, are not susceptible to physical appropriation, and therefore owned by the State. Each station relies on a particular bandwidth assignation which marks their slot on the spectrum where it can constantly broadcast its signal. Without government regulation, as was the case in the early days of radio in the United States, stations desiring to broadcast over the airwaves would not have a definitive right to an assigned bandwidth, and would have to fend off competing broadcasters who would try to interfere or co-opt each others signals. Thus, government regulation became a necessary evil, with the government taking the role of assigning bandwidth to individual broadcasters. However, since the spectrum is finite, not all stations desiring to broadcast over the airwaves could be accommodated. Therefore, in exchange for being given the privilege by the government to use the airwaves, station owners had to accede to a regime whereby those deemed most worthy by the government to operate broadcast stations would have to accede to regulations by the government, including the right to regulate content of broadcast media. These limitations of scarcity are peculiar to broadcast only, and do not apply to other mediums such as print media and the Internet. For that reason, the United States Supreme Court has acknowledged that media such as print and the Internet enjoy a higher degree of First Amendment protection than broadcast media. Indeed, nobody has the unimpedable right to broadcast on the airwaves. One needs to secure a legislative franchise from Congress, and thereafter the necessary permits and licenses from National Telecommunications Commission before a single word may be broadcast on air. Moreover, especially since they are regulated by the State, broadcasters are especially expected to adhere to the laws of the land, including Pres. Decree No. 1986. And under the said law, the legislative branch had opted to confer on the MTRCB the power to regulate and to penalize television broadcast stations in accordance with the terms of the said law.

5. **ID.; ID.; ID.; ID.; ID.; FINE; WOULD NOT TAKE FORM OF PRIOR RESTRAINT.—** Justice Carpio, to my understanding, believes that the MTRCB can never suspend a program despite its "guilt" because suspension is a prohibited prior restraint on future speech. Following that line of thought, the imposition of a fine in lieu of suspension would be

permissible because such fine would not take the form of prior restraint, even if it may constitute subsequent punishment. Curiously, Presidential Decree No. 1986 does not expressly confer on the MTRCB the power to levy a penalty other than imprisonment for between three months and a day to a year, a fine of between fifty to one hundred thousand pesos, and the revocation of the license of the television station.

6. **ID.; ID.; ID.; ID.; ID.; SUSPSENSION; PARTICULARLY APPROPRIATE TO INHERENT REGULATORY POWER OF THE STATE OVER BROADCAST MEDIA.—** I believe that suspension is a penalty that is part and parcel, if not particularly appropriate to, the inherent regulatory power of the State over broadcast media. After all, the right to broadcast involves the right to use the airwaves which State owns, and if the broadcaster offends any of the legislated prerogatives or priorities of the State when it comes to broadcasting, suspension is an apt penalty.

CORONA, ***J., separate opinion*:**

1. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; FREE SPEECH, A PREFERRED RIGHT; NOT ABSOLUTE.—** Free speech is a preferred right which has to be zealously guarded. Nonetheless, it is not absolute but limited by equally fundamental freedoms enjoyed by other members of society. It is also circumscribed by the basic principle of all human relations: every person must in the exercise of his rights and performance of his duties, act with justice, give everyone his due and observe honesty and good faith. For these reasons, free speech may be subjected to reasonable regulation by the State in certain circumstances when required by a higher public interest.

2. **ID.; ID.; ID.; ID.; MEDIUM IS RELEVANT AND MATERIAL.—** In free speech cases, the medium is relevant and material. Each medium of expression presents its own peculiar free speech problems. And in jurisprudence, broadcast media receive much less free speech protection from government regulation than do newspapers, magazines and other print media. The electromagnetic spectrum used by broadcast media is a scarce resource. As it is not available to all, unlike other modes or media of expression, broadcast media is subject to government regulation.

3. ID.; ID.; ID.; ID.; BROADCAST MEDIA, A PUBLIC TRUST.— The broadcast spectrum is a publicly-owned forum for communication that has been awarded to private broadcasters subject to a regulatory scheme that provides limited access to speakers and seeks to promote certain public interest goals. For this reason, broadcast media is a public trust and the broadcaster's role is that of "a public trustee charged with the duty of fairly and impartially informing the public audience."

4. ID.; ID.; ID.; ID.; BROADCASTING HAS THE MOST LIMITED FREE SPEECH PROTECTION.— Thus, **"of all forms of communication, it is broadcasting that has received the most limited [free speech] protection."** Indeed, an unabridgeable right to broadcast is not comparable to the right of the individual to speak, write or publish. Moreover, **it is the right of the viewers and listeners, not the right of the broadcasters, which is paramount.**

5. ID.; ID.; ID.; ID.; BROADCASTING IS A PRIVILEGE, NOT A RIGHT.— Therefore, the use of the public airwaves for broadcasting purposes (that is, broadcasting television programs over the public electromagnetic spectrum) is a privilege, not a right. With this privilege comes certain obligations and responsibilities, namely complying with the rules and regulations of the MTRCB or facing the risk of administrative sanctions and even the revocation of one's license to broadcast.

6. ID.; ID.; ID.; ID.; ID.; SPECIFIC RIGHTS OF VIEWERS *VIS-A-VIS* RIGHT OF BROADCASTERS TO SPEAK.— What specific rights of viewers are relevant *vis-à-vis* the right of broadcasters to speak? Considering the uniquely pervasive presence of broadcast media in the lives of Filipinos, these rights are as follows: (a) the right of every person to dignity; (b) the natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character; (c) the right of the youth to the promotion and protection by the State of their moral, spiritual, intellectual and social well-being and (d) the right to privacy.

7. ID.; ID.; ID.; ID.; ID.; ID.; RIGHT OF EVERY PERSON TO DIGNITY.— The ideal of the Filipino people is to build a just and humane society and a regime of truth, justice, freedom, love, equality and peace. In this connection, among the fundamental policies of the State is that it values the dignity

of every human person. The civil code provisions on human relations also include the duty of every person to respect the dignity, personality, privacy and peace of mind of his neighbors and other persons.

8. ID.; ID.; ID.; ID.; ID.; ID.; CONTROL JUSTIFIED OVER DEGRADING SPEECH.— A society which holds that egalitarianism, non-violence, consensualism, mutuality and good faith are basic to any human interaction is justified in controlling and prohibiting any medium of depiction, description or advocacy which violates these principles. Speech which degrades the name, reputation or character of persons is offensive and contributes to a process of moral desensitization. Free speech is not an excuse for subjecting anyone to the degrading and humiliating message inherent in indecent, profane, humiliating, insulting, scandalous, abusive or offensive statements and other forms of dehumanizing speech.

9. ID.; ID.; ID.; ID.; ID.; ID.; RIGHT OF PARENTS IN THE REARING OF YOUTH MUST BE SUPPORTED BY GOVERNMENT.— Many Filipino homes have television sets. Children have access to television and, in many cases, are unsupervised by parents. With their impressionable minds, they are very susceptible to the corrupting, degrading or morally desensitizing effect of indecent, profane, humiliating or abusive speech. x x x Parental interest in protecting children from exposure to indecent, scandalous, insulting or offensive speech must be supported by the government through appropriate regulatory schemes. Not only is this an exercise of the State's duty as *parens patriae*, it is also a constitutionally enshrined State policy.

10. ID.; ID.; ID.; ID.; ID.; ID.; LOUD AND PUBLIC INDECENT OR OFFENSIVE SPEECH UNDER CONTEMPORARY FILIPINO CULTURAL VALUES, SUBJECT TO REGULATION.— Loud and public indecent or offensive speech can be reasonably regulated or even prohibited if within the hearing of children. The potency of this rule is magnified where the same speech is spoken on national prime-time television and broadcast to millions of homes with children present and listening. x x x Even the most strained interpretation of free speech in the context of broadcast media cannot but lead to the conclusion that petitioner's statements were indecent and offensive under the general standard of contemporary Filipino

cultural values. Contemporary values of the Filipino community will not suffer the utterances of petitioner in the presence of children. Using contemporary values of the Filipino community as a standard, it cannot be successfully denied that the statements made by petitioner transcended the bounds of decency and even of righteous indignation.

11. **ID.; ID.; ID.; ID.; ID.; ID.; CHILDREN, AS CAPTIVE AUDIENCE, NEED PROTECTION.—** Moreover, children constitute a uniquely captive audience. The Constitution guarantees a society of free choice. Such a society presupposes the capacity of its members to choose. However, like someone in a captive audience, a child is not possessed of that full capacity for individual choice. Because of their vulnerability to external influence, not only are children more 'captive' than adults in the sense of not being as able to choose to receive or reject certain speech but they may also be harmed more by unwanted speech that is in fact received. Taken in the context of the constitutional stature that parental authority receives and given that the home is the domain for such authority, the government is justified in helping parents limit children's access to undesirable materials or experiences. As such, the government may properly regulate and prohibit the television broadcast of indecent or offensive speech.

12. **ID.; ID.; ID.; ID.; BROADCAST INDECENCY; PROTECTION OF RIGHT TO PRIVACY OF THE HOME, A COMPELLING GOVERNMENT INTEREST.—** Protecting the privacy of the home is a compelling government interest. *Carey v. Brown* emphatically declared that "[t]he State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society." Broadcast indecency is sinister. It has the capacity to intrude into the privacy of the home when least expected. Unconsenting adults may tune in a station without warning that offensive language is being or will be broadcast. x x x The right to privacy is intimately tied to the right to dignity which, in turn, hinges on individual choice.

13. **ID.; ID.; ID.; ID.; ID.; BROADCAST INDECENCY INVOLVES VIOLATIONS OF RIGHT TO PRIVACY, DIGNITY AND CHOICE.— Thus, in the context of broadcast indecency, the dominant constitutional principle at work is not free expression as indecency in and of itself has little**

or no value and is not protected. Instead, the key constitutional principle involves privacy, dignity and choice. No one has the right to force an individual to accept what they are entitled to exclude, including what they must listen to or view, especially in the privacy of the home. If a person cannot assert his authority at home, his self-worth is diminished and he loses a part of his sense of dignity. His inability to make personal decisions is simply the consequence of having no right of choice in what is supposed to be his private sanctuary.

14. **CIVIL LAW; CIVIL CODE; HUMAN RELATIONS; LAW CANNOT BE GIVEN AN ANTI-SOCIAL EFFECT.—** The objective of laws is to balance and harmonize as much as possible those competing and conflicting rights and interests. For amidst the continuous clash of interests, the ruling social philosophy should be that, in the ultimate ideal social order, the welfare of every person depends upon the welfare of all. Law cannot be given an anti-social effect. A person should be protected only when he acts in the legitimate exercise of his rights, that is, when he acts with prudence and good faith, not when he acts with negligence or abuse. The exercise of a right ends when the right disappears and it disappears when it is abused, especially to the prejudice of others. The mask of a right without the spirit of justice which gives it life is repugnant to the modern concept of law.

15. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; FREE SPEECH IN BROADCAST MEDIA; WHEN RIGHT TO BROADCAST IS ABUSED; MAY BE REASONABLY RESTRAINED OR SUBJECTED TO ADMINISTRATIVE SANCTIONS.—** As applied to the right to broadcast, the broadcaster must so use his right in accordance with his duties as a public trustee and with due regard to fundamental freedoms of the viewers. The right is abused when, contrary to the MTRCB rules and regulations, foul or filthy words are mouthed in the airwaves. x x x The confluence and totality of the fundamental rights of viewers and the proscription on abuse of rights significantly outweigh any claim to unbridled and unrestrained right to broadcast speech. These also justify the State in undertaking measures to regulate speech made in broadcast media including the imposition of appropriate and reasonable administrative sanctions.

16. **ID.; ID.; ID.; ID.; PREMISED ON A MARKETPLACE OF IDEAS.—**Free speech in broadcast media is premised on a marketplace of ideas that will cultivate a more deliberative democracy, not on a slaughterhouse of names and character of persons or on a butchery of all standards of decency and propriety. x x x Profanity and indecent talk and pictures, which do not form an essential part of any exposition of ideas, have a very slight social value as a step toward truth. Epithets that convey no ideas capable of being true or false are worthless in the marketplace of ideas. Even the "slight social value" of indecency is "outweighed by the social interests in order, morality, the training of the young and the peace of mind of those who hear and see." Moreover, indecency and profanity thwart the marketplace process because it allows "little opportunity for the usual process of counter-argument."

17. **ID.; ID.; ID.; ID.; MTRCB IS THE AGENCY MANDATED BY LAW TO REGULATE TELEVISION PROGRAMMING.—**The MTRCB is the agency mandated by law to regulate television programming. In particular, it has been given the following powers and functions under its charter, PD 1986: x x x To begin with, Section 3(d) of PD 1986 explicitly gives the MTRCB the power to supervise and regulate the television broadcast of all television programs. Under Section 3(e) the MTRCB is also specifically empowered to classify television programs. In the effective implementation of these powers, the MTRCB is authorized under Section 3 (a) "[t]o promulgate such rules and regulations as are necessary or proper for the implementation of [PD 1986]." Finally, under Section 3(k), the MTRCB is warranted "[t]o exercise such powers and functions as may be necessary or incidental to the attainment of the purposes and objectives of [PD 1986]."

18. **ID.; ID.; ID.; ID.; ID.; POWER TO SUSPEND TELEVISION PROGRAM OR A HOST THEREOF EXISTS THOUGH NOT CATEGORICALLY INCLUDED IN EXPRESS POWERS.—**The grant of powers to the MTRCB under Section 3 of PD 1986 does not categorically express the power to suspend a television program or a host thereof that violates the standards of supervision, regulation and classification of television programs provided under the law. Nonetheless, such silence on the part of the law does not negate the existence of such a power.

19. ID.; ID.; ID.; ID.; ID.; ID.; INFERRED IN THE WORDINGS OF THE ENABLING LAW.— A general grant of power is a grant of every particular and specific power necessary for the exercise of such general power. Other than powers expressly conferred by law on them, administrative agencies may lawfully exercise powers that can be reasonably inferred in the wordings of the enabling law. x x x Clearly, the law intends to give MTRCB all the muscle to carry out and enforce the law effectively. In consonance with this legislative intent, we uphold the implied and necessary power of the MTRCB to order the suspension of a program or a host thereof in case of violation of PD 1986 and rules and regulations that implement it.

20. ID.; ID.; ID.; ID.; ID.; ID.; POWER TO CANCEL PERMITS NECESSARILY INCLUDED IN THE POWER TO SUSPEND.— The grant of a greater power necessarily includes the lesser power. *In eo quod plus sit, semper inest et minus*. The MTRCB has the power to cancel permits for the exhibition or television broadcast of programs determined by the said body to be objectionable for being "immoral, indecent, contrary to law or good customs x x x." This power is a power to impose sanctions. x x x The MTRCB's power to cancel permits is a grant of authority to permanently and absolutely prohibit the showing of a television program that violates MTRCB rules and regulations. It necessarily includes the lesser power to temporarily and partially prohibit a television program that violates MTRCB rules and regulations by suspending either the showing of the offending program or the appearance of the program's offending host.

21. ID.; ID.; ID.; ID.; ID.; SANCTION, DEFINED.— A "sanction" in relation to administrative procedure is defined as follows: the whole or part of a prohibition, limitation or other condition affecting the liberty of any person; the withholding of relief; the imposition of penalty or fine; the destruction, taking, seizure or withholding of property; the assessment of damages, reimbursement, restitution, compensation, cost, charges or fees; **the revocation or suspension of license**; or the taking of other compulsory or restrictive action.

22. ID.; ID.; ID.; ID.; ID.; IMPOSITION OF SUSPENSION TO ERRING BROADCASTER FOR VIOLATION OF PD 1986 AND ITS IMPLEMENTING RULES, JUSTIFIED.— Broadcasters are public trustees. Hence, in a sense, they are

accountable to the public like public officers. Public accountability imposes a three-fold liability, criminal, civil and administrative. As such, the imposition of suspension as an administrative penalty is justified by the nature of the broadcaster's role *vis-à-vis* the public. The infraction of MTRCB rules and regulations through the showing of indecent, scandalous, insulting or offensive material constitutes a violation of various fundamental rights of the viewing public, including the right of every person to dignity; the right of parents to develop the moral character of their children; the right of the youth to the promotion and protection by the State of their moral well-being and the right to privacy.

23. ID.; ID.; ID.; ID.; ID.; ID.; CASE AT BAR.— The utterances which led to the suspension of petitioner from appearing in the show *Ang Dating Daan* were indisputably indecent and offensive considering the circumstances surrounding it. In particular, petitioner called private respondent Michael M. Sandoval "*demonyo,*" the personification of evil, twice. He also called Sandoval "*gago*" (or idiot) once in the portion of the show subject of the complaint against him. Immediately before that, however, the transcript of the August 10, 2004 program of *Ang Dating Daan* reveals that he had already hurled the same epithet at least five times against Sandoval. Worse, he uttered the patently offensive phrase "*putang babae*" in a context that referred to the sexual act four times. The repetitive manner by which he expressed the indecent and offensive utterances constituted a blatant violation of the show's classification as "G" rated. Another thing. Petitioner's use of the pejorative phrase *"putang babae"* was sexist. The context of his statement shows that he meant to convey that there is a substantial difference between a woman and a man engaged in prostitution, that a female prostitute is worse than a male prostitute. As such, not only did petitioner made degrading and dehumanizing remarks, he also betrayed a every low regard for women. x x x Clearly, therefore, in case of violation of PD 1986 and its implementing rules and regulations, it is within the authority of the MTRCB to impose the administrative penalty of suspension to the erring broadcaster. A contrary stance will emasculate the MTRCB and render illusory its supervisory and regulatory powers, make meaningless the public trustee character of broadcasting and afford no remedy to the infringed fundamental rights of viewers.

24. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MOTION FOR RECONSIDERATION INDISPENSABLE BEFORE RESORT TO *CERTIORARI*; CASE AT BAR.— The petitions should have been dismissed at the outset for being premature. Petitioner did not file a motion for reconsideration of the order preventively suspending *Ang Dating Daan* for 20 days as well as of the decision suspending petitioner for three months. As a rule, a motion for reconsideration is indispensable before resort to the special civil action for *certiorari* to afford the court or tribunal the opportunity to correct its error, if any.

25. ID.; ID.; *CERTIORARI* AND PROHIBITION; PROPER ONLY WHERE THERE IS NO APPEAL OR ANY OTHER PLAIN, SPEEDY AND ADEQUATE REMEDY; CASE AT BAR.— Moreover, the petition in G.R. No. 165636 (assailing the MTRCB decision suspending petitioner for three months) could have been denied from the start as it was an improper remedy. Not only did petitioner fail to file a motion for reconsideration, he also neglected to file an appeal. Recourse to petitions for *certiorari* and prohibition is proper only where there is no appeal or any other plain, speedy and adequate remedy available. In this case, petitioner had the remedy of appeal. His failure to file the requisite appeal proscribed this petition and rendered the decision of the MTRCB final and executory.

26. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION, DEFINED; ABSENCE IN CASE AT BAR.— Grave abuse of discretion is such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction. In this case, petitioner failed to show any capriciousness, whimsicality or arbitrariness which could have tainted the MTRCB decision.

27. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; FREEDOM OF SPEECH; A NEED TO PRESERVE THE DELICATE BALANCE BETWEEN POLICE POWER AND FREEDOM OF SPEECH.— There is a need to preserve the delicate balance between the inherent police power of the State to promote public morals and enhance human dignity and the fundamental freedom of the individual to speak out and express himself. In this case and in the context of the uniqueness of television as a medium, that balance may not be tilted in favor of a right to use the broadcast media to rant and rave without due regard to reasonable rules and

regulations governing that particular medium. Otherwise, the Court will promote (wittingly or unwittingly) the transformation of the "boob tube" to a "boor tube" dominated by rude and unmannerly shows and personalities that totally demean the precious guarantee of free speech and significantly erode other equally fundamental freedoms.

28.. **ID.; ID.; ID.; ID.; ID.; REGULATION OF BROADCAST MEDIA THROUGH THE MTRCB; STATE'S LEGITIMATE EXERCISE OF POLICE POWER.—** To hold that the State, through the MTRCB, is powerless to act in the face of a blatant disregard of its authority is not a paean to free speech. It is a eulogy for the State's legitimate exercise of police power as *parens patriae* to promote public morals by regulating the broadcast media. It is an indictment of long and deeply held community standards of decency and civility, an endorsement of indecorousness and indecency and of everything that is contrary to basic principles of human relations.

PUNO, *C.J., dissenting opinion:*

1. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; FREEDOM OF SPEECH; UNPROTECTED SPEECH.—Categories of unprotected speech** cover "utterances (that) are no essential part of any exposition of ideas (and) of . . . slight social value as a step to truth." They are **categories of speech** determined wholesale and in advance to be harmful. Their prevention and punishment have never been thought to raise constitutional problems. **Being of minimal or no value, their regulation does not require the application of the clear and present danger test or other balancing tests that weigh competing values or interests. Unprotected speech categories include defamation, "fighting words," and obscenity.**

2. **ID.; ID.; ID.; ID.; ID.; DEFAMATION; CASE AT BAR.—First, defamation.** At all outset, it should be stated that **private respondent Michael Sandoval is a public figure.** "Public figure" refers to "a person who, by his accomplishments, fame, or mode of living, or by adopting a profession or calling which gives the public a legitimate interest in his doings, his affairs, and his character, has become a 'public personage.' He is, in other words, a celebrity. . . to be included in this category are

those who have achieved some degree of reputation by appearing before the public, as in the case of an actor, a professional baseball player, a pugilist, or any other entertainer." By virtue of his profession as a minister of Iglesia ni Cristo and a regular host of the television program *Ang Tamang Daan*, private respondent Sandoval qualifies as a public figure whose actions, character and reputation are of legitimate interest to the public. The content of the subject speech pertains to private respondent Sandoval's alleged detestable conduct of splicing a video and airing it in his television program, *Ang Tamang Daan* — the video presenting petitioner asking for help from his congregation to shoulder the expenses required by his ministry in the amount of 37 trillion pesos instead of the true amount of 3.6 million pesos. **In accord with U.S. and Philippine jurisprudence, for the subject speech to fall within this unprotected category of defamatory speech, private respondent Sandoval has the burden of proving that such speech was made with actual malice or with knowledge that it was false or with reckless disregard of whether or not it was false. Private respondent has failed to discharged this burden.**

3. ID.; ID.; ID.; ID.; ID.; "FIGHTING WORDS."—Second, "fighting words." These are "words which , by their very utterance, inflict injury or tend to incite an immediate breach of the peace." In ***Chaplinsky v. New Hampshire,*** the U.S. Supreme Court held that a state may forbid the use in a public place of words that would be likely to cause an addressee to fight. Accordingly, it found that Chaplinsky's calling the city marshall a "damned fascist" and "damned racketeer" qualified as "fighting words." It is not sufficient, however, for the speech to stir anger or invite dispute, as these are precisely among the functions of free speech. **In the case at bar, as public respondent has not shown that the subject speech caused or would be likely to cause private respondent Sandoval to fight petitioner, the speech cannot be characterized as "fighting words."** Public respondents' statement that the subject speech constitutes "fighting words" is a **mere conclusion** bereft of well-grounded premises.

4. ID.; ID.; ID.; ID.; ID.; OBSCENITY.—Third, obscenity. The test to determine obscene speech was laid down in the U.S. case ***Roth v. United States*** and substantially adopted in the

Philippine case ***Gonzales v. Kalaw***, *viz:* " whether to the average person, applying contemporary community standards, the dominant theme of the material, taken as a whole, appeals to prurient interest." In a later U.S. case, ***Miller v. California,*** the test was modified to give room for serious value to accompany the speech. Thus, the **Miller test** is three-pronged: (1) whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to prurient interest; (2) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (3) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. Whether the **Roth** or the **Miller** test is used, at core, the test is whether the material appeals to prurient interest. While the subject speech speaks of or suggests sexual acts, a consideration of the context of the speech derived from a reading of the transcripts of the August 10, 2004 episode of *Ang Dating Daan* would easily yield the conclusion that the **subject speech does not appeal to prurient interest**. Petitioner admits having uttered the subject speech, but claims that it was provoked by the "detestable conduct of the ministers of Iglesia ni Cristo who are hosting a television program entitled *Ang Tamang Daan*." Allegedly, as aforementioned, said ministers played a video in which petitioner was asking for help from his congregation to shoulder the expenses required by his ministry, but they spliced the video to make it appear that he was asking for contributions to pay 37 trillion pesos instead of the true amount of 3.6 million pesos. As the subject speech, taken in context, does not appeal to prurient interest, I submit that the proposition that it is unprotected obscene speech should be jettisoned.

5. **ID.; ID.; ID.; ID.; MEDIUM OF SPEECH; TELEVISION BROADCAST; STRICTER SYSTEM OF CONTROLS.—**The unique regulation of broadcast speech is accepted for at least two reasons as articulated by the Court in ***Eastern Broadcasting Corporation v. Dans,*** citing **Pacifica**, *viz*; **First,** broadcast media have established a uniquely pervasive presence in the lives of all citizens. Material presented over the airwaves confronts the citizen, not only in public, but in the **privacy of his home. Second,** broadcasting is **uniquely accessible to children**. Bookstores and motion picture theaters may be prohibited from making certain material available to children,

but the same selectivity cannot be done in radio or television where the listener or viewer is constantly tuning in and out. In ***Chavez v. Gonzales,*** the Court acknowledged that broadcast media is subject to regulatory schemes including licensing, regulation by administrative bodies, and censorship not only in our country but also in other jurisdictions. We held, *viz*: The **reasons** behind treating broadcast and films differently from the print media differ in a number of respects, but have a common historical basis. **The stricter system of controls seems to have been adopted in answer to the view that owing to their particular impact on audiences films, videos and broadcasting require a system of prior restraints,** whereas it is now accepted that books and other printed media do not. **These media are viewed as beneficial to the public in a number of respects, but are also seen as possible sources of harm.**

6. ID.; ID.; ID.; ID.; CONTENT-BASED SPEECH.— A **content-based** regulation is based on the subject matter of the utterance or speech. It is the **communicative impact** of the speech or the reader's possible reaction to the ideas expressed that is being regulated. An example of a content-based regulation is a regulation prohibiting utilities from including, in monthly electric bills, inserts discussing the desirability of nuclear power or other political views, as the contents might inflame the sensibilities of the readers. It is irrelevant that the entire subject mater of nuclear power, and not just one particular viewpoint, is being regulated. To bring home the point, if the insert were blank or in an undecipherable language, it could not inflame the sensibilities of its readers because of its content and would thus not fall within the prohibition. Typically, **strict scrutiny** is applied to content-based regulations of speech and requires that laws "be narrowly tailored to promote a compelling Government interest." This test calls for "the least restrictive alternative" necessary to accomplish the objective of the regulation. The **test is very rigid** because it is the communicative impact of the speech that is being regulated. The regulation goes into the heart of the rationale for the right to free speech; that is, that there should be no prohibition of speech merely because public officials disapproved of the speaker's views. Instead, there should be a free trade in the marketplace of ideas, and only when the harm caused by the speech cannot be cured by more speech can the government bar the expression of ideas.

7. ID.; ID.; ID.; ID.; CONTENT-NEUTRAL SPEECH.— A **content-neutral** regulation, on the other hand, is merely concerned with the incidents of the speech; or merely controls the time, place or manner of the speech under well-defined standards, **independent of the content of the speech.** For example, a regulation forbidding the distribution of leaflets to prevent littering is a content-neutral regulation, since the harm sought to be prevented exists regardless of what information or content the leaflet contains. In fact, even a blank leaflet or a leaflet containing writings in undecipherable language can end up being littered and thus fall within the scope of the prohibition. For content-neutral regulation, an **intermediate test** is employed, which requires that the regulation be narrowly drawn to pursue a **substantial or significant government interest,** provided that the regulation of the time, place, or manner of speech does not mask discrimination based on the communicative content of the speech. The **test is not as rigid** as that used in content-based regulation, as the regulation does not seek to regulate the communicative impact of the speech, but only its incidents of time, place, or manner of expression.

8. ID.; ID.; ID.; ID.; INDECENT SPEECH; CASE AT BAR.—I respectfully submit that the words "*Yung putang babae, ang gumagana lang doon yung ibaba"* are not protected by the free speech clause. By Filipino community standards, the language is a patently offensive description of sexual activity. It expresses promiscuous sexual conduct of a prostitute, and indiscriminately expands the vocabulary and understanding— or misunderstanding — of impressionable children and minors. The language has the effect of debasing and brutalizing human beings by reducing them to their mere bodily functions. The subject speech uttered by petitioner constitutes **indecent speech unprotected in the particular context of a "G"-rated television program, which children and minors may be watching without adult guidance or supervision.** Given the value of indecent speech and the harm it inflicts on children and minors in this context, this kind of speech is a **category** that falls outside the protection of the free speech clause. The harm done to children, the immediate expansion of their vocabulary to include indecent speech, cannot be cured by more speech. **Thus, there is no room for the application of the clear and present danger test (or some other balancing test)** to determine in each case (including the case at bar)

whether "the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." There is a wholesale and advance determination that language characterized as indecent on a "G"-rated television broadcast is harmful and may be constitutionally proscribed.

9. ID.; ID.; CONGRESS; STATUTES; CONSTITUTIONALITY; "AS APPLIED" CHALLENGE.—An "as applied" challenge is an assertion that a statute cannot constitutionally be applied to a litigant **under the particular facts of a case.** A statute may be invalid as applied to one state of facts and yet valid as applied to another. Future litigation under the statute is still possible, and litigants may argue that their facts are similar to, or unlike, the facts under which the court upheld the "as applied" challenge to the statute. An "as applied" decision allows the law to operate where it might do so constitutionally and vindicates a claimant who shows hat his own speech is protected by the free speech clause and cannot be burdened in the manner attempted.

10. ID.; ID.; ID.; ID.; ID.; "FACIAL" CHALLENGE.—On the other hand, a "facial" challenge disputes the constitutionality of a statute as written or on its face. When a court upholds a facial challenge to a statue, the statute is held as invalid or void on its face; and future attempts at enforcement under any circumstance are futile, unless only parts of a statute are facially invalidated. Thus, rather than excising invalid applications of a statute one by one as they arise, the facial challenge invalidates the statute itself and puts it up to the legislature for redrafting. Facial challenges include disputing the significance or weight of the state interest pursued by the speech regulation and the fitness of the means used to pursue it, or asserting overbreadth of the statute, or claiming that the statute is void for vagueness.

11. ID.; ID.; BILL OF RIGHTS; FREEDOM OF SPEECH; "PRIOR RESTRAINT."—A "prior restraint exists when the enjoyment of protected expression is contingent upon the approval of government officials." In **Chavez**, we also defined prior restraints as "official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination." It is not the existence merely of a "restraint" that concerns the Court, as an individual ordinarily assumes the risk of subsequent punishment for speech that is

eventually found to be constitutionally unprotected. It is that the restraint is "prior" that makes it reprehensible. "Prior" means prior to a communication's expression or prior to an adequate determination that the speech is not protected by the free speech clause.

12. **ID.; ID.; ID.; ID.; ID.; EXCEPTIONS.—**But permissible prior restraints are narrowly limited, few and far between, such as restraint on dissemination of information that would compromise national security in time of war, obscene speech, and speech to incite a violent overthrow of government. Prior restraints admittedly reflect an "'(inversion of) the order of things;…instead of obliging the State to prove the guilt in order to inflict the penalty, it (is) to oblige the citizen to establish his own innocence to avoid the penalty.'"

13. **ID.; ID.; ID.; ID.; SUBSEQUENT PUNISHMENT.—** Proscription against prior restraint, however, is not sufficient as constitutionally protected speech can nevertheless be **chilled** by the sleight of hand of its **subsequent punishment. This voice-of-Jacob-but-hand–of-Esau situation thus calls for proscription, not only of prior restraint, but also of subsequent punishment to give full protection to speech traditionally regarded to be within the purview of the free speech clause;** Subsequent punishment shares the evils of prior restraint as explained, *viz.* The power of the licensor, against which John Milton directed his assault of his "Appeal for the Liberty of Unlicensed Printing:" is pernicious not merely by reason of the censure of particular comments but by reason of the treat to censure comments on matters of public concern. **It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion… A like threat is inherent in a penal statute (subsequent punishment), like that in question here, which does not aim specifically at evils within the allowable area of the state control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press.** The existence of such a statute, which readily lends it self to harsh and discriminatory enforcement by local prosecuting official, against particular groups deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom

of discussion that might reasonably be regarded as within its purview.

14. **ID.; ID.; ID.; ID.; PROCEDURAL IMPORTANCE OF THE DISTINCTION BETWEEN SPEECH BEING RESTRICTED THROUGH PRIOR RESTRAINT AND THAT THROUGH SUBSEQUENT PUNISHMENT.—**In the US., the Supreme Court has shown the procedural importance of the distinction between speech being restricted through prior restraint and that through subsequent punishment. In a subsequent criminal prosecution, the speaker is ordinarily free to assert that his or her speech is constitutionally protected. But when prior restraint operates, anyone who ignores it runs the risk of losing the right to claim this defense in a subsequent prosecution—for ignoring the restraint instead of obeying it, while challenging it judicially. The **distinction** rests on the deeply entrenched principle that a "free society prefers to punish the few who abuse rights of speech after they break the law than to throttle them and all others beforehand. It is always difficult to know in advance what an individual will say, and the line between legitimate and illegitimate speech is often so finely drawn that the risks of free-wheeling censorship are formidable."

15. **ID.; ID.; ID.; ID.; ID.; THE LANDMARK CASE OF *NEAR V. MINNESOTA*, 283 U.S. 697, MAY BE USED TO ILLUSTRATE SAID DISTINCTION.—**Applying the foregoing discussion, the landmark case **Near** may be used to illustrate the **distinction** between prior restraint and subsequent punishment. That case involved a 1925 Minnesota law that provided for the abatement as a public nuisance of any "malicious, scandalous, and defamatory newspaper, magazine, or other periodical." As a defense, the legislation permitted anyone charged with violating the law to show that the publication was true and was published with good motives and justifiable ends. The law allowed the prosecuting attorney of any county, where such a publication was produced or circulated, to seek an injunction abating the nuisance by preventing any further publication or distribution of the periodical. In clarifying that the case did not involve subsequent punishment but prior restraint, and that subsequent punishment was preferred over prior restraint to check abuses on press freedom, the U.S. Supreme Court held, *viz:* In the present case, **we have no occasion to inquire as to the permissible scope of subsequent punishment**. For whatever

wrong the appellant has committed or may commit, by his publications, **the state appropriately afford both public and private redress by its libel laws**. As has been noted, the statute in question does not deal with punishments: it provides for no punishment, except in case of contempt for violation of the court's order, for **suppression and injunction - that is, for restraint upon publication**. xxx xxx xxx …Madison, who was the leading spirit in the preparation of the First Amendment of the Federal Constitution, thus described the practice and sentiment which led to the guaranties of liberty of the press in State Constitutions: In every State, probably, in the Union, the press has exerted a freedom in canvassing the merits and measures of public men every description which has not been confined to the strict limits of the common law. On this footing the freedom of the press has stood; on this footing it yet stands. *** **Some degree of abuse is inseparable from the proper use of everything, and no instance is this more true than in that of the press. It has accordingly been decided by the practice of the States, that it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits**. xxx xxx xxx …The fact that the liberty of the press may be abused by miscreant purveyors of scandal does not make any the less necessary the immunity of the press from previous restraint in dealing with official misconduct. **Subsequent punishment for such abuses as may exist is the appropriate remedy, consistent with constitutional privilege.** The **preference** for subsequent punishment over prior restrain is **predicated** upon the precaution that speech subjected to prior restraint may turn out to be protected if it were allowed to enter the free market of ideas and subjected instead to a trial for possible subsequent punishment.

16. ID.; ID.; ID.; ID.; THE TASK OF DELINEATING SPEECH THAT IS CONSTITUTIONALLY PROSCRIBED FROM THAT WHICH IS PROTECTED, WHICH REQUIRES LASER-LIKE PRECISION, IS THE TASK OF THE MTRCB, INITIALLY AND OF THE COURT, WITH FINALITY.— Still and all, while the case at bar involves speech that is unprotected in its context and the subject to constitutional subsequent punishment, **it nevertheless Ought to be remembered—in every case involving free speech regulation—that free speech is a preferred freedom,** because it embodies

the notions of liberty that are at the core of a truly free and democratic society: freedom of thought and viewpoints, discussion, self realization, autonomy, and diversity. Thus, the task of delineating speech that is constitutionally proscribed from that which is protected, even if opprobrious, requires laser-like precision. As Plato pointed out in this dialogue between the stranger and young Socrates in *The Statesman,* the legislator in crafting the law cannot contemplate every possible scenario: Stranger: And now observe that the legislator who has to preside over the herd, and to enforce justice in their dealings with one another, will not be able, in enacting for the general good, to provide exactly what is suitable for each particular case. Young Socrates: He cannot do so. Stranger: He will lay down laws in a general from for the majority, roughly meeting the cases of individuals. . . Young Socrates: He will be right. Stranger: Yes, quite right; for how can he sit at every man's side all through his life, prescribing for him the exact particulars of his duty. It is thus the task of the MTRCB initially, and of the Court with finality, to define with precision the "particulars of the duty."

17. ID.; ID.; ID.; ID.; ID.; THE MTRCB SHOULD PROVIDE A SUFFICIENTLY IDENTIFIABLE, THOROUGHLY EXPLAINED, AND SOLIDLY GROUNDED BASIS IN LAW FOR THE PROSCRIPTION.—The challenged Decision of the MTRCB states that, "(a)s a tv host and religious leader, he (petitioner) is expected to speak and behave on a much higher level than a non-religious one." While this may be the belief of the members of the MTRCB, it finds no basis in law and should not be used as a standard for measuring whether petitioner's speech is constitutionally protected. **The calculus of review should not merely be the reaction of the censor.** In handing down decisions that proscribe or punish speech, the MTRCB should provide a sufficiently identifiable, thoroughly explained, and solidly grounded basis in law for the proscription. It should not only make a blanket conclusion that "the words uttered are objectionable for being immoral, indecent, contrary to law and/or good customs, or with dangerous tendency to encourage the commission of violence or of a wrong or a crime." **It should avoid simply casting such a wide net of speech control. The line to be drawn to separate protected from unprotected speech may sometimes be thin, but it should nevertheless be drawn on the sand.**

18. ID.; ID.; ID.; ID.; SUBSEQUENT PUNISHMENT; WORKS AS A PRIOR RESTRAINT; CASE AT BAR.—In the case at bar, however, the **records are bereft of basis** - through proof and reason – **for public respondent MTRCB to impose a prior restraint on petitioner's future speech for three months.** Thus, while there is no doubt in my mind that petitioner ought to be subsequently punished, I am equally certain that **in the absence of proof and reason, he should not be penalized with a three-month suspension that works as a prior restraint on his speech.**

19. ID.; ID.; ID.; ID.; ID.; ID.; ILLUSTRATION IN *ALEXANDER V. U.S.*, 509 U.S. 544.—By its nature, the penalty consisting of petitioner's three-month suspension from his program, not only subsequently punishes his past speech, but also restrains his future speech. In his Dissenting Opinion in ***Alexander v. U.S.,*** Justice Kennedy incisively pointed out that some governmental actions may have the characteristics of both a subsequent punishment and a prior restraint. To illustrate, he cited the historical example of the sentence imposed on Hugh Singleton in 1579 after he had enraged Elizabeth 1 by printing a certain tract. Singleton was condemned to lose his right hand, thus inflicting upon him both a punishment and a disability encumbering all further printing.

CARPIO, *J., dissenting opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; FREEDOM OF SPEECH; ALLOWS NO PRIOR RESTRAINT ON EXPRESSION; CASE AT BAR.— The well-settled rule is there can be no prior restraint on expression. This rule emanates from the constitutional command that "[n]o law shall be passed abridging the freedom of speech, of expression, or of the press x x x ." The history of freedom of expression has been a constant struggle against the censor's **prior restraint** on expression. The leading American case of *Near v. Minnesota* teaches us that **the primordial purpose of the Free Expression Clause is to prevent prior restraint on expression.** The three month suspension of petitioner *Ang Dating Daan* constitutes a prior restraint on freedom of expression.

2. **ID.; ID.; ID.; ID.; ID.; KINDS OF PRIOR RESTRAINT.—** Prior restraint on expression may be either content-based or content-neutral. Content-based prior restraint is aimed at suppressing the message or idea contained in the expression. Courts subject content-based restraint to strict scrutiny. Content-neutral restraint on expression is restraint that regulates the time, place or manner of expression in public places without any restraint on the content of the expression. Courts subject content-neutral restraint to intermediate scrutiny.

3. **ID.; ID.; ID.; ID.; ID.; EXCEPTIONS.—** This well-settled rule, however, is subject to exceptions narrowly carved out by courts over time because of necessity. In this jurisdiction, we recognize only four exceptions, namely: pornography, false or misleading advertisement, advocacy of imminent lawless action, and danger to national security. Only in these instances may expression be subject to prior restraint. **All other expression is not subject to prior restraint.**

4. **ID.; ID.; ID.; ID.; ID.; REQUISITES TO JUSTIFY PRIOR RESTRAINT; CLEAR AND PRESENT DANGER RULE.—** Although pornography, false or misleading advertisement, advocacy of imminent lawless action, and expression endangering national security may be subject to prior restraint, such prior restraint must hurdle a high barrier. *First,* such prior restraint is **strongly presumed as unconstitutional.** *Second,* the government bears a **heavy burden** of justifying such prior restraint. The test to determine the constitutionality of prior restraint on pornography, advocacy of imminent lawless action, and expression endangering national security is the **clear and present danger test.** The expression subject to prior restraint must present a clear and present danger of bringing about a substantive evil the State has a right and duty to prevent, and such danger must be **grave and imminent**. x x x

5. **ID.; ID.; ID.; ID.; ID.; EXPRESSION NOT SUBJECT TO SUBSEQUENT PUNISHMENT.—** The rule is also well-settled that expression cannot be subject to subsequent punishment. This rule also emanates from the constitutional command that "[n]o law shall be passed abridging the freedom of speech, of expression, or of the press x x x."

6. **ID.; ID.; ID.; ID.; ID.; ID.; EXCEPTIONS.—** The exceptions start with the four types of expression that may be subject to

prior restraint. If a certain expression is subject to prior restraint, its utterance or publication in violation of the lawful restraint naturally subjects the person responsible to subsequent punishment. Thus, acts of pornography, false or misleading advertisement, advocacy of imminent lawless action, and endangering national security, are all punishable under the law. x x x Defamation and tortious conduct, however, may be subject to subsequent punishment, civilly or criminally. x x x The remedy of any aggrieved person is to file a libel or tort case ***after*** the utterance or publication of such cusswords. Our libels laws punish with fine, imprisonment or damages libelous language ***already uttered or published***. Our tort laws also allow recovery of damages for tortious speech ***already uttered or published.*** However, both our libel and tort laws never impose a gag order on ***future expression*** because that will constitute prior restraint or censorship.

7. **ID.; ID.; ID.; ID.; ID.; ID.; FIGHTING WORDS NOT SUBJECT TO SUBSEQUENT PUNISHMENT.—** Fighting words are not subject to subsequent punishment unless they are defamatory or tortious. Fighting words refer to profane or vulgar words that are likely to provoke a violent response from an audience. Profane or vulgar words like "Fuck the draft," when not directed at any particular person, ethnic or religious group, are not subject to subsequent punishment. As aptly stated, "one man's vulgarity may be another man's lyric."

8. **ID.; ID.; ID.; ID.; ID.; ID.; PRIOR RESTRAINT MORE DELETERIOUS THAN SUBSEQUENT PUNISHMENT.—** Prior restraint is more deleterious to freedom of expression than subsequent punishment. Although subsequent punishment also deters expression, still the ideas are disseminated to the public. Prior restraint prevents even the dissemination of ideas to the public. Thus, the three-month suspension of petitioner's TV program, being a prior restraint on expression, has far graver ramifications than any possible subsequent punishment of petitioner.

9. **ID.; ID.; ID.; ID.; ID.; UTTERANCES THAT MAY BE SUBJECT TO PRIOR RESTRAINT; CASE AT BAR NOT A CASE OF.—** Obviously, what petitioner uttered does not fall under any of the four types of expression that may be subject to prior restraint. x x x No matter how offensive, profane or vulgar petitioner's words may be, they do not constitute pornography,

false or misleading advertisement, advocacy of imminent lawless action, or danger to national security. Thus, petitioner's offensive, profane or vulgar language cannot be subject to prior restraint but may be subject to subsequent punishment if defamatory or tortious.

10. ID.; ID.; ID.; ID.; CONGRESS CANNOT PASS LAWS ABRIDGING FREEDOM OF SPEECH AND EXPRESSION.— Even Congress cannot validly pass a law imposing a three-month preventive suspension on freedom of expression for offensive or vulgar language uttered in the past. Congress may punish such offensive or vulgar language, after their utterance, with damages, fine or imprisonment but Congress has no power to suspend or suppress the people's right to speak freely because of such past utterances. In short, Congress may pass a law punishing defamation or tortious speech but the punishment cannot be the suspension or suppression of the constitutional right to freedom of expression. **Otherwise, such law would be "abridging the freedom of speech, of expression, or of the press."**

APPEARANCES OF COUNSEL

De Vera Law Office for petitioner.

The Solicitor General for public respondent.

Lazaro Tuazon Santos & Associates Law Offices for private respondents.

D E C I S I O N

VELASCO, JR., *J.*:

In these two petitions for *certiorari* and prohibition under Rule 65, petitioner Eliseo F. Soriano seeks to nullify and set aside an order and a decision of the Movie and Television Review and Classification Board (MTRCB) in connection with certain utterances he made in his television show, *Ang Dating Daan*.

Facts of the Case

On August 10, 2004, at around 10:00 p.m., petitioner, as host of the program *Ang Dating Daan*, aired on UNTV 37,

made the following remarks:

Lehitimong anak ng demonyo; sinungaling;

Gago ka talaga Michael, masahol ka pa sa putang babae o di ba. Yung putang babae ang gumagana lang doon yung ibaba, [dito] kay Michael ang gumagana ang itaas, o di ba! O, masahol pa sa putang babae yan. Sabi ng lola ko masahol pa sa putang babae yan. Sobra ang kasinungalingan ng mga demonyong ito.[1] x x x

Two days after, before the MTRCB, separate but almost identical affidavit-complaints were lodged by Jessie L. Galapon and seven other private respondents, all members of the Iglesia ni Cristo (INC),[2] against petitioner in connection with the above broadcast. Respondent Michael M. Sandoval, who felt directly alluded to in petitioner's remark, was then a minister of INC and a regular host of the TV program *Ang Tamang Daan*.[3] Forthwith, the MTRCB sent petitioner a notice of the hearing on August 16, 2004 in relation to the alleged use of some cuss words in the August 10, 2004 episode of *Ang Dating Daan*.[4]

After a preliminary conference in which petitioner appeared, the MTRCB, by Order of August 16, 2004, preventively suspended the showing of *Ang Dating Daan* program for 20 days, in accordance with Section 3(d) of Presidential Decree No. (PD) 1986, creating the MTRCB, in relation to Sec. 3, Chapter XIII of the 2004 Implementing Rules and Regulations (IRR) of PD 1986 and Sec. 7, Rule VII of the MTRCB Rules of Procedure.[5] The same order also set the case for preliminary investigation.

The following day, petitioner sought reconsideration of the preventive suspension order, praying that Chairperson Consoliza P. Laguardia and two other members of the adjudication board

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[1] *Rollo* (G.R. No. 165636), p. 375.

[2] *Id.* at 923.

[3] *Id.* at 924, Private Respondents' Memorandum.

[4] *Id.* at 110.

[5] *Id.* at 112-113, Rules of Procedure in the Conduct of Hearing for Violations of PD 1986 and the IRR.

recuse themselves from hearing the case.[6] Two days after, however, petitioner sought to withdraw[7] his motion for reconsideration, followed by the filing with this Court of a petition for *certiorari* and prohibition,[8] docketed as G.R. No. 164785, to nullify the preventive suspension order thus issued.

On September 27, 2004, in Adm. Case No. 01-04, the MTRCB issued a decision, disposing as follows:

> WHEREFORE, in view of all the foregoing, a Decision is hereby rendered, finding respondent Soriano liable for his utterances and thereby imposing on him a penalty of three (3) months suspension from his program, "*Ang Dating Daan.*"
>
> Co-respondents Joselito Mallari, Luzviminda Cruz and UNTV Channel 37 and its owner, PBC, are hereby exonerated for lack of evidence.
>
> SO ORDERED.[9]

Petitioner then filed this petition for *certiorari* and prohibition with prayer for injunctive relief, docketed as G.R. No. 165636.

In a Resolution dated April 4, 2005, the Court consolidated G.R. No. 164785 with G.R. No. 165636.

In G.R. No. 164785, petitioner raises the following issues:

THE ORDER OF PREVENTIVE SUSPENSION PROMULGATED BY RESPONDENT [MTRCB] DATED 16 AUGUST 2004 AGAINST THE TELEVISION PROGRAM *ANG DATING DAAN* x x x IS NULL AND VOID FOR BEING ISSUED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION

A) BY REASON THAT THE [IRR] IS INVALID INSOFAR AS IT PROVIDES FOR THE ISSUANCE OF PREVENTIVE SUSPENSION ORDERS;

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[6] *Id.* at 141-151.

[7] *Id.* at 152-154.

[8] *Id.* at 166-252.

[9] *Id.* at 378.

(B) BY REASON OF LACK OF DUE HEARING IN THE CASE AT BENCH;

(C) FOR BEING VIOLATIVE OF EQUAL PROTECTION UNDER THE LAW;

(D) FOR BEING VIOLATIVE OF FREEDOM OF RELIGION; AND

(E) FOR BEING VIOLATIVE OF FREEDOM OF SPEECH AND EXPRESSION.[10]

In G.R. No. 165636, petitioner relies on the following grounds:

SECTION 3(C) OF [PD] 1986, IS PATENTLY UNCONSTITUTIONAL AND ENACTED WITHOUT OR IN EXCESS OF JURISDICTION x x x CONSIDERING THAT:

I

SECTION 3(C) OF [PD] 1986, AS APPLIED TO PETITIONER, UNDULY INFRINGES ON THE CONSTITUTIONAL GUARANTEE OF FREEDOM OF RELIGION, SPEECH, AND EXPRESSION AS IT PARTAKES OF THE NATURE OF A SUBSEQUENT PUNISHMENT CURTAILING THE SAME; CONSEQUENTLY, THE IMPLEMENTING RULES AND REGULATIONS, RULES OF PROCEDURE, AND OFFICIAL ACTS OF THE MTRCB PURSUANT THERETO, *I.E.* DECISION DATED 27 SEPTEMBER 2004 AND ORDER DATED 19 OCTOBER 2004, ARE LIKEWISE CONSTITUTIONALLY INFIRM AS APPLIED IN THE CASE AT BENCH;

II

SECTION 3(C) OF [PD] 1986, AS APPLIED TO PETITIONER, UNDULY INFRINGES ON THE CONSTITUTIONAL GUARANTEE OF DUE PROCESS OF LAW AND EQUAL PROTECTION UNDER THE LAW; CONSEQUENTLY, THE [IRR], RULES OF PROCEDURE, AND OFFICIAL ACTS OF THE MTRCB PURSUANT THERETO, *I.E.*, DECISION DATED 27 SEPTEMBER 2004 AND ORDER DATED 19 OCTOBER 2004, ARE LIKEWISE CONSTITUTIONALLY INFIRM AS APPLIED IN THE CASE AT BENCH; AND

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[10] *Id.* at 182.

III

[PD] 1986 IS NOT COMPLETE IN ITSELF AND DOES NOT PROVIDE FOR A SUFFICIENT STANDARD FOR ITS IMPLEMENTATION THEREBY RESULTING IN AN UNDUE DELEGATION OF LEGISLATIVE POWER BY REASON THAT IT DOES NOT PROVIDE FOR THE PENALTIES FOR VIOLATIONS OF ITS PROVISIONS. CONSEQUENTLY, THE [IRR], RULES OF PROCEDURE, AND OFFICIAL ACTS OF THE MTRCB PURSUANT THERETO, *I.E.* DECISION DATED 27 SEPTEMBER 2004 AND ORDER DATED 19 OCTOBER 2004, ARE LIKEWISE CONSTITUTIONALLY INFIRM AS APPLIED IN THE CASE AT BENCH.[11]

G.R. No. 164785

We shall first dispose of the issues in G.R. No. 164785, regarding the assailed order of preventive suspension, although its implementability had already been overtaken and veritably been rendered moot by the equally assailed September 27, 2004 decision.

It is petitioner's threshold posture that the preventive suspension imposed against him and the relevant IRR provision authorizing it are invalid inasmuch as PD 1986 does not expressly authorize the MTRCB to issue preventive suspension.

Petitioner's contention is untenable.

Administrative agencies have powers and functions which may be administrative, investigatory, regulatory, quasi-legislative, or quasi-judicial, or a mix of the five, as may be conferred by the Constitution or by statute.[12] They have in fine only such powers or authority as are granted or delegated, expressly or impliedly, by law.[13] And in determining whether an agency has certain powers, the inquiry should be from the law itself. But

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[11] *Id.* at 46.

[12] *Azarcon v. Sandiganbayan*, G.R. No. 116033, February 26, 1997, 268 SCRA 747.

[13] *Pimentel v. COMELEC*, Nos. 53581-83, December 19, 1980, 101 SCRA 769.

once ascertained as existing, the authority given should be liberally construed.[14]

A perusal of the MTRCB's basic mandate under PD 1986 reveals the possession by the agency of the authority, albeit impliedly, to issue the challenged order of preventive suspension. And this authority stems naturally from, and is necessary for the exercise of, its power of regulation and supervision.

Sec. 3 of PD 1986 pertinently provides the following:

Section 3. Powers and Functions.—The BOARD shall have the following functions, powers and duties:

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c) To approve or disapprove, delete objectionable portions from and/or prohibit the x x x production, x x x exhibition and/or television broadcast of the motion pictures, television programs and publicity materials subject of the preceding paragraph, which, in the judgment of the board applying contemporary Filipino cultural values as standard, are objectionable for being immoral, indecent, contrary to law and/ or good customs, injurious to the prestige of the Republic of the Philippines or its people, or with a dangerous tendency to encourage the commission of violence or of wrong or crime such as but not limited to:

xxx xxx xxx

vi) Those which are libelous or defamatory to the good name and reputation of any person, whether living or dead;

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(d) To **supervise, regulate**, and grant, deny or cancel, permits for the x x x production, copying, distribution, sale, lease, **exhibition, and/or television broadcast** of all motion pictures, television programs and publicity materials, **to the end that no such pictures, programs and materials** as are determined by the BOARD to be objectionable in accordance with paragraph (c) hereof shall be x x x produced, copied, reproduced, distributed, sold, leased, **exhibited and/or broadcast by television**;

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[14] Agpalo, *ADMINISTRATIVE LAW* (2005); citing *Matienzon v. Abellera*, G.R. No. 77632, June 8, 1988, 162 SCRA 1.

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k) To exercise such powers and functions as may be necessary or incidental to the attainment of the purposes and objectives of this Act x x x. (Emphasis added.)

The issuance of a preventive suspension comes well within the scope of the MTRCB's authority and functions expressly set forth in PD 1986, more particularly under its Sec. 3(d), as quoted above, which empowers the MTRCB to "supervise, regulate, and grant, deny or cancel, permits for the x x x exhibition, and/or television broadcast of all motion pictures, television programs and publicity materials, to the end that no such pictures, programs and materials as are determined by the BOARD to be objectionable in accordance with paragraph (c) hereof shall be x x x exhibited and/or broadcast by television."

Surely, the power to issue preventive suspension forms part of the MTRCB's express regulatory and supervisory statutory mandate and its investigatory and disciplinary authority subsumed in or implied from such mandate. Any other construal would render its power to regulate, supervise, or discipline illusory.

Preventive suspension, it ought to be noted, is not a penalty by itself, being merely a preliminary step in an administrative investigation.[15] And the power to discipline and impose penalties, if granted, carries with it the power to investigate administrative complaints and, during such investigation, to preventively suspend the person subject of the complaint.[16]

To reiterate, preventive suspension authority of the MTRCB springs from its powers conferred under PD 1986. The MTRCB did not, as petitioner insinuates, empower itself to impose preventive suspension through the medium of the IRR of PD 1986. It is true that the matter of imposing preventive suspension is embodied only in the IRR of PD 1986. Sec. 3, Chapter XIII of the IRR provides:

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[15] *Lastimoso v. Vasquez*, G.R. No. 116801, April 6, 1995, 243 SCRA 497.

[16] *Alonzo v. Capulong*, G.R. No. 110590, May 10, 1995, 244 SCRA 80; *Beja v. Court of Appeals*, G.R. No. 97149, March 31, 1992, 207 SCRA 689.

Sec. 3. PREVENTION SUSPENSION ORDER.—Any time during the pendency of the case, and in order to prevent or stop further violations or for the interest and welfare of the public, the Chairman of the Board may issue a Preventive Suspension Order mandating the preventive x x x suspension of the permit/permits involved, and/or closure of the x x x television network, cable TV station x x x provided that the temporary/preventive order thus issued shall have a life of not more than twenty (20) days from the date of issuance.

But the mere absence of a provision on preventive suspension in PD 1986, without more, would not work to deprive the MTRCB a basic disciplinary tool, such as preventive suspension. Recall that the MTRCB is expressly empowered by statute to regulate and supervise television programs to obviate the exhibition or broadcast of, among others, indecent or immoral materials and to impose sanctions for violations and, corollarily, to prevent further violations as it investigates. Contrary to petitioner's assertion, the aforequoted Sec. 3 of the IRR neither amended PD 1986 nor extended the effect of the law. Neither did the MTRCB, by imposing the assailed preventive suspension, outrun its authority under the law. Far from it. The preventive suspension was actually done in furtherance of the law, imposed pursuant, to repeat, to the MTRCB's duty of regulating or supervising television programs, pending a determination of whether or not there has actually been a violation. In the final analysis, Sec. 3, Chapter XIII of the 2004 IRR merely formalized a power which PD 1986 bestowed, albeit impliedly, on MTRCB.

Sec. 3(c) and (d) of PD 1986 finds application to the present case, sufficient to authorize the MTRCB's assailed action. Petitioner's restrictive reading of PD 1986, limiting the MTRCB to functions within the literal confines of the law, would give the agency little leeway to operate, stifling and rendering it inutile, when Sec. 3(k) of PD 1986 clearly intends to grant the MTRCB a wide room for flexibility in its operation. Sec. 3(k), we reiterate, provides, "To exercise such powers and functions as may be necessary or incidental to the attainment of the purposes and objectives of this Act x x x." Indeed, the power to impose preventive suspension is one of the implied powers of MTRCB. As distinguished from express powers, implied powers are those

that can be inferred or are implicit in the wordings or conferred by necessary or fair implication of the enabling act.[17] As we held in *Angara v. Electoral Commission*, when a general grant of power is conferred or a duty enjoined, every particular power necessary for the exercise of one or the performance of the other is also conferred by necessary implication.[18] Clearly, the power to impose preventive suspension pending investigation is one of the implied or inherent powers of MTRCB.

We cannot agree with petitioner's assertion that the aforequoted IRR provision on preventive suspension is applicable only to motion pictures and publicity materials. The scope of the MTRCB's authority extends beyond motion pictures. What the acronym MTRCB stands for would suggest as much. And while the law makes specific reference to the closure of a television network, the suspension of a television program is a far less punitive measure that can be undertaken, with the purpose of stopping further violations of PD 1986. Again, the MTRCB would regretfully be rendered ineffective should it be subject to the restrictions petitioner envisages.

Just as untenable is petitioner's argument on the nullity of the preventive suspension order on the ground of lack of hearing. As it were, the MTRCB handed out the assailed order after petitioner, in response to a written notice, appeared before that Board for a hearing on private respondents' complaint. No less than petitioner admitted that the order was issued after the adjournment of the hearing,[19] proving that he had already appeared before the MTRCB. Under Sec. 3, Chapter XIII of the IRR of PD 1986, preventive suspension shall issue "[a]ny time during the pendency of the case." In this particular case, it was done after MTRCB duly apprised petitioner of his having possibly

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[17] *Chavez v. National Housing Authority*, G.R. No. 164527, August 15, 2007, 530 SCRA 235, 295-296; citing *Azarcon*, *supra* note 12, at 761; *Radio Communications of the Philippines, Inc. v. Santiago*, Nos. L-29236 & 29247, August 21, 1974, 58 SCRA 493, 497.

[18] 63 Phil. 139, 177 (1936).

[19] *Rollo* (G.R. No. 164785), p. 12.

violated PD 1986[20] and of administrative complaints that had been filed against him for such violation.[21]

At any event, that preventive suspension can validly be meted out even without a hearing.[22]

Petitioner next faults the MTRCB for denying him his right to the equal protection of the law, arguing that, owing to the preventive suspension order, he was unable to answer the criticisms coming from the INC ministers.

Petitioner's position does not persuade. The equal protection clause demands that "all persons subject to legislation should be treated alike, under like circumstances and conditions both in the privileges conferred and liabilities imposed."[23] It guards against undue favor and individual privilege as well as hostile discrimination.[24] Surely, petitioner cannot, under the premises, place himself in the same shoes as the INC ministers, who, for one, are not facing administrative complaints before the MTRCB. For another, he offers no proof that the said ministers, in their TV programs, use language similar to that which he used in his own, necessitating the MTRCB's disciplinary action. If the immediate result of the preventive suspension order is that petitioner remains temporarily gagged and is unable to answer his critics, this does not become a deprivation of the equal protection guarantee. The Court need not belabor the fact that the circumstances of petitioner, as host of *Ang Dating Daan*, on one hand, and the INC ministers, as hosts of *Ang Tamang Daan*, on the other, are, within the purview of this case, simply too different to even consider whether or not there is a *prima facie* indication of oppressive inequality.

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[20] *Id.* at 94.

[21] *Id.* at 95.

[22] *Beja*, *supra* note 16; *Espiritu v. Melgar*, G.R. No. 100874, February 13, 1992, 206 SCRA 256.

[23] 1 De Leon, *PHILIPPINE CONSTITUTIONAL LAW* 274 (2003).

[24] *Tiu v. Guingona*, G.R. No. 127410, January 20, 1999, 301 SCRA 278; citing *Ichong v. Hernandez*, 101 Phil. 1155 (1957) and other cases.

Petitioner next injects the notion of religious freedom, submitting that what he uttered was religious speech, adding that words like "*putang babae*" were said in exercise of his religious freedom.

The argument has no merit.

The Court is at a loss to understand how petitioner's utterances in question can come within the pale of Sec. 5, Article III of the 1987 Constitution on religious freedom. The section reads as follows:

> No law shall be made respecting the establishment of a religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

There is nothing in petitioner's statements subject of the complaints expressing any particular religious belief, nothing furthering his avowed evangelical mission. The fact that he came out with his statements in a televised bible exposition program does not automatically accord them the character of a religious discourse. Plain and simple insults directed at another person cannot be elevated to the status of religious speech. Even petitioner's attempts to place his words in context show that he was moved by anger and the need to seek retribution, not by any religious conviction. His claim, assuming its veracity, that some INC ministers distorted his statements respecting amounts *Ang Dating Daan* owed to a TV station does not convert the foul language used in retaliation as religious speech. We cannot accept that petitioner made his statements in defense of his reputation and religion, as they constitute no intelligible defense or refutation of the alleged lies being spread by a rival religious group. They simply illustrate that petitioner had descended to the level of name-calling and foul-language discourse. Petitioner could have chosen to contradict and disprove his detractors, but opted for the low road.

Petitioner, as a final point in G.R. No. 164785, would have the Court nullify the 20-day preventive suspension order, being, as insisted, an unconstitutional abridgement of the freedom of

speech and expression and an impermissible prior restraint. The main issue tendered respecting the adverted violation and the arguments holding such issue dovetails with those challenging the three-month suspension imposed under the assailed September 27, 2004 MTRCB decision subject of review under G.R. No. 165636. Both overlapping issues and arguments shall be jointly addressed.

G.R. No. 165636

Petitioner urges the striking down of the decision suspending him from hosting *Ang Dating Daan* for three months on the main ground that the decision violates, apart from his religious freedom, his freedom of speech and expression guaranteed under Sec. 4, Art. III of the Constitution, which reads:

> No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievance.

He would also have the Court declare PD 1986, its Sec. 3(c) in particular, unconstitutional for reasons articulated in this petition.

We are not persuaded as shall be explained shortly. But first, we restate certain general concepts and principles underlying the freedom of speech and expression.

It is settled that expressions by means of newspapers, radio, television, and motion pictures come within the broad protection of the free speech and expression clause.[25] Each method though, because of its dissimilar presence in the lives of people and accessibility to children, tends to present its own problems in the area of free speech protection, with broadcast media, of all forms of communication, enjoying a lesser degree of protection.[26] Just as settled is the rule that restrictions, be it in the form of prior restraint, *e.g.*, judicial injunction against publication or

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[25] *US v. Paramount Pictures*, 334 U.S. 131; *Eastern Broadcasting Corporation v. Dans*, *Jr*., No. 59329, July 19, 1985, 137 SCRA 628.

[26] *Eastern Broadcasting Corporation v. Dans, Jr*., *supra* note 25; citing *FCC v. Pacifica Foundation*, 438 U.S. 726; *Gonzales v. Kalaw Katigbak*, No. 69500, July 22, 1985, 137 SCRA 717.

threat of cancellation of license/franchise, or subsequent liability, whether in libel and damage suits, prosecution for sedition, or contempt proceedings, are anathema to the freedom of expression. **Prior restraint** means official government restrictions on the press or other forms of expression in advance of actual publication or dissemination.[27] The freedom of expression, as with the other freedoms encased in the Bill of Rights, is, however, not absolute. It may be regulated to some extent to serve important public interests, some forms of speech not being protected. As has been held, the limits of the freedom of expression are reached when the expression touches upon matters of essentially private concern.[28] In the oft-quoted expression of Justice Holmes, the constitutional guarantee "obviously was not intended to give immunity for every possible use of language."[29] From *Lucas v. Royo* comes this line: "[T]he freedom to express one's sentiments and belief does not grant one the license to vilify in public the honor and integrity of another. Any sentiments must be expressed within the proper forum and with proper regard for the rights of others."[30]

Indeed, as noted in *Chaplinsky v. State of New Hampshire*,[31] "there are certain well-defined and narrowly limited classes of speech that are harmful, the prevention and punishment of which has never been thought to raise any Constitutional problems." In net effect, some forms of speech are not protected by the Constitution, meaning that restrictions on unprotected speech may be decreed without running afoul of the freedom of speech clause.[32] A speech would fall under the unprotected type if the utterances involved are "no essential part of any exposition of

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[27] J.G. Bernas, S.J., *THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 205 (1996).

[28] *Lagunsad v. Soto vda. De Gonzales*, No. L-32066, August 6, 1979, 92 SCRA 476.

[29] *Trohwerk v. United States,* 249 U.S. 204 (1919); cited in Bernas, *supra* at 218.

[30] G.R. No. 136185, October 30, 2000, 344 SCRA 481, 490.

[31] 315 U.S. 568 (1942).

[32] Agpalo, *PHILIPPINE CONSTITUTIONAL LAW* 358 (2006).

ideas, and are of such slight social value as a step of truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality."[33] Being of little or no value, there is, in dealing with or regulating them, no imperative call for the application of the clear and present danger rule or the balancing-of-interest test, they being essentially modes of weighing competing values,[34] or, with like effect, determining which of the clashing interests should be advanced.

Petitioner asserts that his utterance in question is a protected form of speech.

The Court rules otherwise. It has been established in this jurisdiction that unprotected speech or low-value expression refers to libelous statements, obscenity or pornography, false or misleading advertisement, insulting or "fighting words," *i.e.*, those which by their very utterance inflict injury or tend to incite an immediate breach of peace and expression endangering national security.

The Court finds that petitioner's statement can be treated as obscene, at least with respect to the average child. Hence, it is, in that context, unprotected speech. In *Fernando v. Court of Appeals*, the Court expressed difficulty in formulating a definition of **obscenity** that would apply to all cases, but nonetheless stated the ensuing observations on the matter:

> There is no perfect definition of "obscenity" but the latest word is that of *Miller v. California* which established basic guidelines, to wit: (a) whether to the average person, applying contemporary standards would find the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. But, it would be a serious misreading of *Miller* to conclude that the trier of facts has the unbridled discretion in determining what is "patently offensive." x x x What remains clear is that obscenity is an issue proper for

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[33] *Chaplinsky*, *supra* note 31; cited in Bernas, *supra* note 27, at 248.

[34] Bernas, *supra* note 27, at 248.

judicial determination and should be treated on a case to case basis and on the judge's sound discretion.[35]

Following the contextual lessons of the cited case of *Miller v. California*,[36] a patently offensive utterance would come within the pale of the term *obscenity* should it appeal to the prurient interest of an average listener applying contemporary standards.

A cursory examination of the utterances complained of and the circumstances of the case reveal that to an average adult, the utterances "*Gago ka talaga x x x, masahol ka pa sa putang babae x x x. Yung putang babae ang gumagana lang doon yung ibaba, [dito] kay Michael ang gumagana ang itaas, o di ba!*" may not constitute obscene but merely indecent utterances. They can be viewed as figures of speech or merely a play on words. In the context they were used, they may not appeal to the prurient interests of an adult. The problem with the challenged statements is that they were uttered in a TV program that is rated "G" or for general viewership, and in a time slot that would likely reach even the eyes and ears of children.

While adults may have understood that the terms thus used were not to be taken literally, children could hardly be expected to have the same discernment. Without parental guidance, the unbridled use of such language as that of petitioner in a television broadcast could corrupt impressionable young minds. The term "*putang babae*" means "a female prostitute," a term wholly inappropriate for children, who could look it up in a dictionary and just get the literal meaning, missing the context within which it was used. Petitioner further used the terms, "*ang gumagana lang doon yung ibaba*," making reference to the female sexual organ and how a female prostitute uses it in her trade, then stating that Sandoval was worse than that by using his mouth in a similar manner. Children could be motivated by curiosity and ask the meaning of what petitioner said, also without placing the phrase in context. They may be inquisitive as to why Sandoval is different from a female prostitute and the reasons for the

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[35] G.R. No. 159751, December 6, 2006, 510 SCRA 351, 360-361.

[36] 413 U.S. 15.

dissimilarity. And upon learning the meanings of the words used, young minds, without the guidance of an adult, may, from their end, view this kind of indecent speech as obscene, if they take these words literally and use them in their own speech or form their own ideas on the matter. In this particular case, where children had the opportunity to hear petitioner's words, when speaking of the average person in the test for obscenity, we are speaking of the average child, not the average adult. The average child may not have the adult's grasp of figures of speech, and may lack the understanding that language may be colorful, and words may convey more than the literal meaning. Undeniably the subject speech is very suggestive of a female sexual organ and its function as such. In this sense, we find petitioner's utterances obscene and not entitled to protection under the umbrella of freedom of speech.

Even if we concede that petitioner's remarks are not obscene but merely indecent speech, still the Court rules that petitioner cannot avail himself of the constitutional protection of free speech. Said statements were made in a medium easily accessible to children. With respect to the young minds, said utterances are to be treated as unprotected speech.

No doubt what petitioner said constitutes indecent or offensive utterances. But while a jurisprudential pattern involving certain offensive utterances conveyed in different mediums has emerged, this case is veritably one of first impression, it being the first time that indecent speech communicated via television and the applicable norm for its regulation are, in this jurisdiction, made the focal point. *Federal Communications Commission* (*FCC*) *v. Pacifica Foundation*,[37] a 1978 American landmark case cited in *Eastern Broadcasting Corporation v. Dans, Jr.*[38] and *Chavez v. Gonzales*,[39] is a rich source of persuasive lessons. Foremost of these relates to indecent speech without prurient appeal component coming under the category of protected speech

[37] 438 U.S. 726.

[38] *Supra* note 25.

[39] G.R. No. 168338, February 15, 2008, 545 SCRA 441.

depending on the context within which it was made, irresistibly suggesting that, within a particular context, such indecent speech may validly be categorized as unprotected, *ergo*, susceptible to restriction.

In *FCC*, seven of what were considered "filthy" words[40] earlier recorded in a monologue by a satiric humorist later aired in the afternoon over a radio station owned by Pacifica Foundation. Upon the complaint of a man who heard the pre-recorded monologue while driving with his son, FCC declared the language used as "**patently offensive**" and "**indecent**" under a prohibiting law, though not necessarily obscene. FCC added, however, that its declaratory order was issued in a "special factual context," referring, in gist, to an afternoon radio broadcast when children were undoubtedly in the audience. Acting on the question of whether the FCC could regulate the subject utterance, the US Supreme Court ruled in the affirmative, owing to two special features of the broadcast medium, to wit: (1) radio is a pervasive medium and (2) broadcasting is uniquely accessible to children. The US Court, however, hastened to add that the monologue would be protected speech in other contexts, albeit it did not expound and identify a compelling state interest in putting FCC's content-based regulatory action under scrutiny.

The Court in *Chavez*[41] elucidated on the distinction between regulation or restriction of protected speech that is content-based and that which is content-neutral. A content-based restraint is aimed at the contents or idea of the expression, whereas a content-neutral restraint intends to regulate the time, place, and manner of the expression under well-defined standards tailored to serve a compelling state interest, without restraint on the message of the expression. Courts subject content-based restraint to strict scrutiny.

With the view we take of the case, the suspension MTRCB imposed under the premises was, in one perspective, permissible restriction. We make this disposition against the backdrop of

[40] "Shit, piss, fuck, tits, *etc*."

[41] *Supra* note 39.

the following interplaying factors: *First*, the indecent speech was made via television, a pervasive medium that, to borrow from *Gonzales v. Kalaw Katigbak*,[42] easily "reaches every home where there is a set [and where] [c]hildren will likely be among the avid viewers of the programs therein shown"; *second*, the broadcast was aired at the time of the day when there was a reasonable risk that children might be in the audience; and *third*, petitioner uttered his speech on a "G" or "for general patronage" rated program. Under Sec. 2(A) of Chapter IV of the IRR of the MTRCB, a show for general patronage is "[s]uitable for all ages," meaning that the "material for television x x x in the judgment of the BOARD, does not contain anything unsuitable for children and minors, and may be viewed without adult guidance or supervision." The words petitioner used were, by any civilized norm, clearly not suitable for children. Where a language is categorized as indecent, as in petitioner's utterances on a general-patronage rated TV program, it may be readily proscribed as unprotected speech.

A view has been advanced that unprotected speech refers only to pornography,[43] false or misleading advertisement,[44] advocacy of imminent lawless action, and expression endangering national security. But this list is not, as some members of the Court would submit, exclusive or carved in stone. Without going into specifics, it may be stated without fear of contradiction that US decisional law goes beyond the aforesaid general exceptions. As the Court has been impelled to recognize exceptions to the rule against censorship in the past, this particular case constitutes yet another exception, another instance of unprotected speech, created by the necessity of protecting the welfare of our children. As unprotected speech, petitioner's utterances can be subjected to restraint or regulation.

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[42] *Supra* note 26.

[43] *Gonzales v. Kalaw Katigbak*, *supra*.

[44] *Pharmaceutical and Health Care Association of the Philippines v. Health Secretary Francisco T. Duque III*, G.R. No. 173034, October 9, 2007, 535 SCRA 265.

Despite the settled ruling in *FCC* which has remained undisturbed since 1978, petitioner asserts that his utterances must present a clear and present danger of bringing about a substantive evil the State has a right and duty to prevent and such danger must be grave and imminent.[45]

Petitioner's invocation of the clear and present danger doctrine, arguably the most permissive of speech tests, would not avail him any relief, for the application of said test is uncalled for under the premises. The doctrine, first formulated by Justice Holmes, accords protection for utterances so that the printed or spoken words may not be subject to prior restraint or subsequent punishment unless its expression creates a clear and present danger of bringing about a substantial evil which the government has the power to prohibit.[46] Under the doctrine, freedom of speech and of press is susceptible of restriction when and only when necessary to prevent grave and immediate danger to interests which the government may lawfully protect. As it were, said doctrine evolved in the context of prosecutions for rebellion and other crimes involving the overthrow of government.[47] It was originally designed to determine the latitude which should be given to speech that espouses anti-government action, or to have serious and substantial deleterious consequences on the security and public order of the community.[48] The clear and present danger rule has been applied to this jurisdiction.[49] As a standard of limitation on free speech and press, however, the clear and present danger test is not a magic incantation that wipes out all problems and does away with analysis and judgment in the testing of the legitimacy of claims to free speech and which compels a court to release a defendant from liability the

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[45] *Bayan v. Ermita*, G.R. No. 169838, April 25, 2006, 488 SCRA 226.

[46] 16A Am Jur. 2d Constitutional Law Sec. 493; *Schenck v. United States*, 249 U.S. 47.

[47] Bernas, *supra* note 27, at 219-220.

[48] *Gonzales v. COMELEC*, No. L-27833, April 18, 1969, 27 SCRA 835.

[49] *ABS-CBN Broadcasting Corp. v. COMELEC*, G.R. No. 133486, January 28, 2000, 323 SCRA 811; *Adiong v. COMELEC*, G.R. No. 103956, March 31, 1992, 207 SCRA 712.

moment the doctrine is invoked, absent proof of imminent catastrophic disaster.[50] As we observed in *Eastern Broadcasting Corporation*, the clear and present danger test "does not lend itself to a simplistic and all embracing interpretation applicable to all utterances in all forums."[51]

To be sure, the clear and present danger doctrine is not the only test which has been applied by the courts. Generally, said doctrine is applied to cases involving the overthrow of the government and even other evils which do not clearly undermine national security. Since not all evils can be measured in terms of "proximity and degree" the Court, however, in several cases—*Ayer Productions v. Capulong*[52] and *Gonzales v. COMELEC*,[53] applied the balancing of interests test. Former Chief Justice Fred Ruiz Castro, in *Gonzales v. COMELEC*, elucidated in his Separate Opinion that "where the legislation under constitutional attack interferes with the freedom of speech and assembly in a more generalized way and where the effect of the speech and assembly in terms of the probability of realization of a specific danger is not susceptible even of impressionistic calculation,"[54] then the "balancing of interests" test can be applied.

The Court explained also in *Gonzales v. COMELEC* the "balancing of interests" test:

> When particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional, partial abridgment of speech, the duty of the courts is to determine which of the two conflicting interests demands the greater protection under the particular circumstances presented. x x x We must, therefore, undertake the "delicate and difficult task x x x to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of rights x x x.

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[50] *Zaldivar v. Sandiganbayan*, G.R. Nos. 79690-707 & 80578, February 1, 1989, 170 SCRA 1.

[51] *Supra* note 25, at 635.

[52] No. 82380, April 29, 1988, 160 SCRA 861.

[53] *Supra* note 48.

[54] *Supra* at 898.

In enunciating standard premised on a judicial balancing of the conflicting social values and individual interests competing for ascendancy in legislation which restricts expression, the court in *Douds* laid the basis for what has been called the "balancing-of-interests" test which has found application in more recent decisions of the U.S. Supreme Court. Briefly stated, the "balancing" test requires a court to take conscious and detailed consideration of the interplay of interests observable in a given situation or type of situation.

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Although the urgency of the public interest sought to be secured by Congressional power restricting the individual's freedom, and the social importance and value of the freedom so restricted, "are to be judged in the concrete, not on the basis of abstractions," a wide range of factors are necessarily relevant in ascertaining the point or line of equilibrium. Among these are (a) the social value and importance of the specific aspect of the particular freedom restricted by the legislation; (b) the specific thrust of the restriction, *i.e.*, whether the restriction is direct or indirect, whether or not the persons affected are few; (c) the value and importance of the public interest sought to be secured by the legislation––the reference here is to the nature and gravity of the evil which Congress seeks to prevent; (d) whether the specific restriction decreed by Congress is reasonably appropriate and necessary for the protection of such public interest; and (e) whether the necessary safeguarding of the public interest involved may be achieved by some other measure less restrictive of the protected freedom.[55]

This balancing of interest test, to borrow from Professor Kauper,[56] rests on the theory that it is the court's function in a case before it when it finds public interests served by legislation, on the one hand, and the free expression clause affected by it, on the other, to balance one against the other and arrive at a judgment where the greater weight shall be placed. If, on balance, it appears that the public interest served by restrictive legislation is of such nature that it outweighs the abridgment of freedom,

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[55] *Supra* at 899-900.

[56] Kauper, *CIVIL LIBERTIES AND THE CONSTITUTION* 113 (1966); cited in *Gonzales v. COMELEC*, *supra* note 48; also cited in J.G. Bernas, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* (2003).

then the court will find the legislation valid. In short, the balance-of-interests theory rests on the basis that constitutional freedoms are not absolute, not even those stated in the free speech and expression clause, and that they may be abridged to some extent to serve appropriate and important interests.[57] To the mind of the Court, the balancing of interest doctrine is the more appropriate test to follow.

In the case at bar, petitioner used indecent and obscene language and a three (3)-month suspension was slapped on him for breach of MTRCB rules. In this setting, the assertion by petitioner of his enjoyment of his freedom of speech is ranged against the duty of the government to protect and promote the development and welfare of the youth.

After a careful examination of the factual milieu and the arguments raised by petitioner in support of his claim to free speech, the Court rules that the government's interest to protect and promote the interests and welfare of the children adequately buttresses the reasonable curtailment and valid restraint on petitioner's prayer to continue as program host of *Ang Dating Daan* during the suspension period.

No doubt, one of the fundamental and most vital rights granted to citizens of a State is the freedom of speech or expression, for without the enjoyment of such right, a free, stable, effective, and progressive democratic state would be difficult to attain. Arrayed against the freedom of speech is the right of the youth to their moral, spiritual, intellectual, and social being which the State is constitutionally tasked to promote and protect. Moreover, the State is also mandated to recognize and support the vital role of the youth in nation building as laid down in Sec. 13, Art. II of the 1987 Constitution.

The Constitution has, therefore, imposed the sacred obligation and responsibility on the State to provide protection to the youth against illegal or improper activities which may prejudice their general well-being. The Article on youth, approved on second reading by the Constitutional Commission, explained that the

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[57] *Id.*

State shall "extend social protection to minors against all forms of neglect, cruelty, exploitation, **immorality**, and practices which may foster racial, religious or other forms of discrimination."[58]

Indisputably, the State has a compelling interest in extending social protection to minors against all forms of neglect, exploitation, and immorality which may pollute innocent minds. It has a compelling interest in helping parents, through regulatory mechanisms, protect their children's minds from exposure to undesirable materials and corrupting experiences. The Constitution, no less, in fact enjoins the State, as earlier indicated, to promote and protect the physical, moral, spiritual, intellectual, and social well-being of the youth to better prepare them fulfill their role in the field of nation-building.[59] In the same way, the State is mandated to support parents in the rearing of the youth for civic efficiency and the development of moral character.[60]

Petitioner's offensive and obscene language uttered in a television broadcast, without doubt, was easily accessible to the children. His statements could have exposed children to a language that is unacceptable in everyday use. As such, the welfare of children and the State's mandate to protect and care for them, as *parens patriae*,[61] constitute a substantial and compelling government interest in regulating petitioner's utterances in TV broadcast as provided in PD 1986.

FCC explains the duty of the government to act as *parens patriae* to protect the children who, because of age or interest capacity, are susceptible of being corrupted or prejudiced by offensive language, thus:

> [B]roadcasting is uniquely accessible to children, even those too young to read. Although Cohen's written message, ["Fuck the Draft"], might have been incomprehensible to a first grader, Pacifica's broadcast could have enlarged a child's vocabulary in an instant. Other

[58] Bernas, *supra* note 27, at 81.

[59] CONSTITUTION, Art. II, Sec. 13.

[60] *Id.*, *id.*, Sec. 12.

[61] *Id.*

forms of offensive expression may be withheld from the young without restricting the expression at its source. Bookstores and motion picture theaters, for example, may be prohibited from making indecent material available to children. We held in *Ginsberg v. New York* that the government's interest in the "well-being of its youth" and in supporting "parents' claim to authority in their own household" justified the regulation of otherwise protected expression. The ease with which children may obtain access to broadcast material, coupled with the concerns recognized in *Ginsberg*, amply justify special treatment of indecent broadcasting.

Moreover, *Gonzales v. Kalaw Katigbak* likewise stressed the duty of the State to attend to the welfare of the young:

x x x It is the consensus of this Court that where television is concerned, a less liberal approach calls for observance. This is so because unlike motion pictures where the patrons have to pay their way, television reaches every home where there is a set. Children then will likely will be among the avid viewers of the programs therein shown. As was observed by Circuit Court of Appeals Judge Jerome Frank, it is hardly the concern of the law to deal with the sexual fantasies of the adult population. It cannot be denied though that the State as *parens patriae* is called upon to manifest an attitude of caring for the welfare of the young.[62]

The compelling need to protect the young impels us to sustain the regulatory action MTRCB took in the narrow confines of the case. To reiterate, *FCC* justified the restraint on the TV broadcast grounded on the following considerations: (1) the use of television with its unique accessibility to children, as a medium of broadcast of a patently offensive speech; (2) the time of broadcast; and (3) the "G" rating of the *Ang Dating Daan* program. And in agreeing with MTRCB, the court takes stock of and cites with approval the following excerpts from *FCC*:

It is appropriate, in conclusion, to emphasize the narrowness of our holding. This case does not involve a two-way radio conversation between a cab driver and a dispatcher, or a telecast of an Elizabethan comedy. We have not decided that an occasional expletive in either setting would justify any sanction. x x x The [FFC's] decision rested

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[62] *Supra* note 26, at 729.

entirely on a nuisance rationale under which context is all important. The concept requires consideration of a host of variables. The time of day was emphasized by the [FFC]. The content of the program in which the language is used will affect the composition of the audience x x x. As Mr. Justice Sutherland wrote a 'nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard.' We simply hold that when the [FCC] finds that a pig has entered the parlor, the exercise of its regulatory power does not depend on proof that the pig is obscene. (Citation omitted.)

There can be no quibbling that the remarks in question petitioner uttered on prime-time television are blatantly indecent if not outright obscene. It is the kind of speech that PD 1986 proscribes necessitating the exercise by MTRCB of statutory disciplinary powers. It is the kind of speech that the State has the inherent prerogative, nay duty, to regulate and prevent should such action served and further compelling state interests. One who utters indecent, insulting, or offensive words on television when unsuspecting children are in the audience is, in the graphic language of *FCC*, a "pig in the parlor." Public interest would be served if the "pig" is reasonably restrained or even removed from the "parlor."

Ergo, petitioner's offensive and indecent language can be subjected to prior restraint.

Petitioner theorizes that the three (3)-month suspension is either prior restraint or subsequent punishment that, however, includes prior restraint, albeit indirectly.

After a review of the facts, the Court finds that what MTRCB imposed on petitioner is an administrative sanction or subsequent punishment for his offensive and obscene language in *Ang Dating Daan*.

To clarify, statutes imposing prior restraints on speech are generally illegal and presumed unconstitutional breaches of the freedom of speech. The exceptions to prior restraint are movies, television, and radio broadcast censorship in view of its access to numerous people, including the young who must be insulated from the prejudicial effects of unprotected speech. PD 1986 was passed creating the Board of Review for Motion Pictures

and Television (now MTRCB) and which requires prior permit or license before showing a motion picture or broadcasting a TV program. The Board can classify movies and television programs and can cancel permits for exhibition of films or television broadcast.

The power of MTRCB to regulate and even impose some prior restraint on radio and television shows, even religious programs, was upheld in *Iglesia Ni Cristo v. Court of Appeals.* Speaking through Chief Justice Reynato S. Puno, the Court wrote:

> We thus reject petitioner's postulate that its religious program is *per se* beyond review by the respondent Board. Its public broadcast on TV of its religious program brings it out of the bosom of internal belief. Television is a medium that reaches even the eyes and ears of children. The Court iterates the rule that the exercise of religious freedom can be regulated by the State when it will bring about the clear and present danger of some substantive evil which the State is duty bound to prevent, *i.e.*, serious detriment to the more overriding interest of public health, public morals, or public welfare. x x x
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> xxx xxx xxx
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> While the thesis has a lot to commend itself, we are not ready to hold that [PD 1986] is unconstitutional for Congress to grant an administrative body quasi-judicial power to preview and classify TV programs and enforce its decision subject to review by our courts. As far back as 1921, we upheld this setup in *Sotto vs. Ruiz*, *viz*:
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> > "The use of the mails by private persons is in the nature of a privilege which can be regulated in order to avoid its abuse. Persons possess no absolute right to put into the mail anything they please, regardless of its character."[63]

Bernas adds:

> Under the decree a movie classification board is made the arbiter of what movies and television programs or parts of either are fit for public consumption. It decides what movies are "immoral, indecent, contrary to law and/or good customs, injurious to the prestige of the Republic of the Philippines or its people," and what "tend to

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[63] G.R. No. 119673, July 26, 1996, 259 SCRA 529, 544, 552.

incite subversion, insurrection, rebellion or sedition," or "tend to undermine the faith and confidence of the people in their government and/or duly constituted authorities," *etc*. Moreover, its decisions are executory unless stopped by a court.[64]

Moreover, in *MTRCB v. ABS-CBN Broadcasting Corporation*,[65] it was held that the power of review and prior approval of MTRCB extends to all television programs and is valid despite the freedom of speech guaranteed by the Constitution. Thus, all broadcast networks are regulated by the MTRCB since they are required to get a permit before they air their television programs. Consequently, their right to enjoy their freedom of speech is subject to that requirement. As lucidly explained by Justice Dante O. Tinga, government regulations through the MTRCB became "a necessary evil" with the government taking the role of assigning bandwidth to individual broadcasters. The stations explicitly agreed to this regulatory scheme; otherwise, chaos would result in the television broadcast industry as competing broadcasters will interfere or co-opt each other's signals. In this scheme, station owners and broadcasters in effect waived their right to the full enjoyment of their right to freedom of speech in radio and television programs and impliedly agreed that said right may be subject to prior restraint—denial of permit or subsequent punishment, like suspension or cancellation of permit, among others.

The three (3) months suspension in this case is not a prior restraint on the right of petitioner to continue with the broadcast of *Ang Dating Daan* as a permit was already issued to him by MTRCB for such broadcast. Rather, the suspension is in the form of permissible administrative sanction or subsequent punishment for the offensive and obscene remarks he uttered on the evening of August 10, 2004 in his television program, *Ang Dating Daan*. It is a sanction that the MTRCB may validly impose under its charter without running afoul of the free speech clause. And the imposition is separate and distinct from the criminal action the Board may take pursuant to Sec. 3(i) of PD

[64] *Supra* note 56, at 235.

[65] G.R. No. 155282, January 17, 2005, 448 SCRA 575.

1986 and the remedies that may be availed of by the aggrieved private party under the provisions on libel or tort, if applicable. As *FCC* teaches, the imposition of sanctions on broadcasters who indulge in profane or indecent broadcasting does not constitute forbidden censorship. Lest it be overlooked, the sanction imposed is not *per se* for petitioner's exercise of his freedom of speech via television, but for the indecent contents of his utterances in a "G" rated TV program.

More importantly, petitioner is deemed to have yielded his right to his full enjoyment of his freedom of speech to regulation under PD 1986 and its IRR as television station owners, program producers, and hosts have impliedly accepted the power of MTRCB to regulate the broadcast industry.

Neither can petitioner's virtual inability to speak in his program during the period of suspension be plausibly treated as prior restraint on future speech. For viewed in its proper perspective, the suspension is in the nature of an intermediate penalty for uttering an unprotected form of speech. It is definitely a lesser punishment than the permissible cancellation of exhibition or broadcast permit or license. In fine, the suspension meted was simply part of the duties of the MTRCB in the enforcement and administration of the law which it is tasked to implement. Viewed in its proper context, the suspension sought to penalize past speech made on prime-time "G" rated TV program; it does not bar future speech of petitioner in other television programs; it is a permissible subsequent administrative sanction; it should not be confused with a prior restraint on speech. While not on all fours, the Court, in *MTRCB*,[66] sustained the power of the MTRCB to penalize a broadcast company for exhibiting/airing a pre-taped TV episode without Board authorization in violation of Sec. 7 of PD 1986.

Any simplistic suggestion, however, that the MTRCB would be crossing the limits of its authority were it to regulate and even restrain the prime-time television broadcast of indecent or obscene speech in a "G" rated program is not acceptable. As

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[66] *Supra* note 65.

made clear in *Eastern Broadcasting Corporation*, "the freedom of television and radio broadcasting is somewhat lesser in scope than the freedom accorded to newspaper and print media." The MTRCB, as a regulatory agency, must have the wherewithal to enforce its mandate, which would not be effective if its punitive actions would be limited to mere fines. Television broadcasts should be subject to some form of regulation, considering the ease with which they can be accessed, and violations of the regulations must be met with appropriate and proportional disciplinary action. The suspension of a violating television program would be a sufficient punishment and serve as a deterrent for those responsible. The prevention of the broadcast of petitioner's television program is justified, and does not constitute prohibited prior restraint. It behooves the Court to respond to the needs of the changing times, and craft jurisprudence to reflect these times.

Petitioner, in questioning the three-month suspension, also tags as unconstitutional the very law creating the MTRCB, arguing that PD 1986, as applied to him, infringes also upon his freedom of religion. The Court has earlier adequately explained why petitioner's undue reliance on the religious freedom cannot lend justification, let alone an exempting dimension to his licentious utterances in his program. The Court sees no need to address anew the repetitive arguments on religious freedom. As earlier discussed in the disposition of the petition in G.R. No. 164785, what was uttered was in no way a religious speech. Parenthetically, petitioner's attempt to characterize his speech as a legitimate defense of his religion fails miserably. He tries to place his words in perspective, arguing evidently as an afterthought that this was his method of refuting the alleged distortion of his statements by the INC hosts of *Ang Tamang Daan*. But on the night he uttered them in his television program, the word simply came out as profane language, without any warning or guidance for undiscerning ears.

As to petitioner's other argument about having been denied due process and equal protection of the law, suffice it to state that we have at length debunked similar arguments in G.R. No. 164785. There is no need to further delve into the fact

that petitioner was afforded due process when he attended the hearing of the MTRCB, and that he was unable to demonstrate that he was unjustly discriminated against in the MTRCB proceedings.

Finally, petitioner argues that there has been undue delegation of legislative power, as PD 1986 does not provide for the range of imposable penalties that may be applied with respect to violations of the provisions of the law.

The argument is without merit.

In *Edu v. Ericta*, the Court discussed the matter of undue delegation of legislative power in the following wise:

It is a fundamental principle flowing from the doctrine of separation of powers that Congress may not delegate its legislative power to the two other branches of the government, subject to the exception that local governments may over local affairs participate in its exercise. What cannot be delegated is the authority under the Constitution to make laws and to alter and repeal them; the test is the completeness of the statute in all its term and provisions when it leaves the hands of the legislature. To determine whether or not there is an undue delegation of legislative power, the inquiry must be directed to the scope and definiteness of the measure enacted. The legislature does not abdicate its functions when it describes what job must be done, who is to do it, and what is the scope of his authority. For a complex economy, that may indeed be the only way in which the legislative process can go forward. A distinction has rightfully been made between delegation of power to make laws which necessarily involves a discretion as to what it shall be, which constitutionally may not be done, and delegation of authority or discretion as to its execution to be exercised under and in pursuance of the law, to which no valid objection can be made. The Constitution is thus not to be regarded as denying the legislature the necessary resources of flexibility and practicability.

To avoid the taint of unlawful delegation, there must be a standard, which implies at the very least that the legislature itself determines matters of principle and lays down fundamental policy. Otherwise, the charge of complete abdication may be hard to repel. A standard thus defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. It indicates the

circumstances under which the legislative command is to be effected. It is the criterion by which legislative purpose may be carried out. Thereafter, the executive or administrative office designated may in pursuance of the above guidelines promulgate supplemental rules and regulations.[67]

Based on the foregoing pronouncements and analyzing the law in question, petitioner's protestation about undue delegation of legislative power for the sole reason that PD 1986 does not provide for a range of penalties for violation of the law is untenable. His thesis is that MTRCB, in promulgating the IRR of PD 1986, prescribing a schedule of penalties for violation of the provisions of the decree, went beyond the terms of the law.

Petitioner's posture is flawed by the erroneous assumptions holding it together, the first assumption being that PD 1986 does not prescribe the imposition of, or authorize the MTRCB to impose, penalties for violators of PD 1986. As earlier indicated, however, the MTRCB, by express and direct conferment of power and functions, is charged with supervising and regulating, granting, denying, or canceling permits for the exhibition and/or television broadcast of all motion pictures, television programs, and publicity materials to the end that no such objectionable pictures, programs, and materials shall be exhibited and/or broadcast by television. Complementing this provision is Sec. 3(k) of the decree authorizing the MTRCB "to exercise such powers and functions as may be necessary or incidental to the attainment of the purpose and objectives of [the law]." As earlier explained, the investiture of supervisory, regulatory, and disciplinary power would surely be a meaningless grant if it did not carry with it the power to penalize the supervised or the regulated as may be proportionate to the offense committed, charged, and proved. As the Court said in *Chavez v. National Housing Authority*:

x x x [W]hen a general grant of power is conferred or duty enjoined, every particular power necessary for the exercise of the one or the performance of the other is also conferred. x x x [W]hen the statute

[67] No. L-32096, October 24, 1970, 35 SCRA 481, 496-497.

does not specify the particular method to be followed or used by a government agency in the exercise of the power vested in it by law, said agency has the authority to adopt any reasonable method to carry out its function.[68]

Given the foregoing perspective, it stands to reason that the power of the MTRCB to regulate and supervise the exhibition of TV programs carries with it or necessarily implies the authority to take effective punitive action for violation of the law sought to be enforced. And would it not be logical too to say that the power to deny or cancel a permit for the exhibition of a TV program or broadcast necessarily includes the lesser power to suspend?

The MTRCB promulgated the IRR of PD 1986 in accordance with Sec. 3(a) which, for reference, provides that agency with the power "[to] promulgate such rules and regulations as are necessary or proper for the implementation of this Act, and the accomplishment of its purposes and objectives x x x." And Chapter XIII, Sec. 1 of the IRR providing:

> Section 1. VIOLATIONS AND ADMINISTRATIVE SANCTIONS.—Without prejudice to the immediate filing of the appropriate criminal action and the immediate seizure of the pertinent articles pursuant to Section 13, **any violation of PD 1986 and its Implementing Rules and Regulations governing motion pictures, television programs, and related promotional materials shall be penalized with suspension or cancellation of permits and/or licenses issued by the Board** and/or with the imposition of fines and other administrative penalty/penalties. The Board recognizes the existing Table of Administrative Penalties attached without prejudice to the power of the Board to amend it when the need arises. In the meantime the existing revised Table of Administrative Penalties shall be enforced. (Emphasis added.)

This is, in the final analysis, no more than a measure to specifically implement the aforequoted provisions of Sec. 3(d) and (k). Contrary to what petitioner implies, the IRR does not

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[68] *Supra* note 17; citing *Angara v. Electoral Commission*, 63 Phil. 139 (1936); *Provident Tree Farms, Inc. v. Batario, Jr.*, G.R. No. 92285, March 28, 1994, 231 SCRA 463.

expand the mandate of the MTRCB under the law or partake of the nature of an unauthorized administrative legislation. The MTRCB cannot shirk its responsibility to regulate the public airwaves and employ such means as it can as a guardian of the public.

In Sec. 3(c), one can already find the permissible actions of the MTRCB, along with the standards to be applied to determine whether there have been statutory breaches. The MTRCB may evaluate motion pictures, television programs, and publicity materials "applying contemporary Filipino cultural values as standard," and, from there, determine whether these audio and video materials "are objectionable for being immoral, indecent, contrary to law and/or good customs, [*etc.*] x x x" and apply the sanctions it deems proper. The lawmaking body cannot possibly provide for all the details in the enforcement of a particular statute.[69] The grant of the rule-making power to administrative agencies is a relaxation of the principle of separation of powers and is an exception to the non-delegation of legislative powers.[70] Administrative regulations or "subordinate legislation" calculated to promote the public interest are necessary because of "the growing complexity of modern life, the multiplication of the subjects of governmental regulations, and the increased difficulty of administering the law."[71] Allowing the MTRCB some reasonable elbow-room in its operations and, in the exercise of its statutory disciplinary functions, according it ample latitude in fixing, by way of an appropriate issuance, administrative penalties with due regard for the severity of the offense and attending mitigating or aggravating circumstances, as the case may be, would be consistent with its mandate to effectively and efficiently regulate the movie and television industry.

But even as we uphold the power of the MTRCB to review and impose sanctions for violations of PD 1986, its decision to suspend petitioner must be modified, for nowhere in that issuance,

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[69] *People v. Maceren*, No. L-32166, October 18, 1977, 79 SCRA 450, 458.

[70] *Id.*

[71] *Id.*

particularly the power-defining Sec. 3 nor in the MTRCB Schedule of Administrative Penalties effective January 1, 1999 is the Board empowered to suspend the program host or even to prevent certain people from appearing in television programs. The MTRCB, to be sure, may prohibit the broadcast of such television programs or cancel permits for exhibition, but it may not suspend television personalities, for such would be beyond its jurisdiction. The MTRCB cannot extend its exercise of regulation beyond what the law provides. Only persons, offenses, and penalties clearly falling clearly within the letter and spirit of PD 1986 will be considered to be within the decree's penal or disciplinary operation. And when it exists, the reasonable doubt must be resolved in favor of the person charged with violating the statute and for whom the penalty is sought. Thus, the MTRCB's decision in Administrative Case No. 01-04 dated September 27, 2004 and the subsequent order issued pursuant to said decision must be modified. The suspension should cover only the television program on which petitioner appeared and uttered the offensive and obscene language, which sanction is what the law and the facts obtaining call for.

In ending, what petitioner obviously advocates is an unrestricted speech paradigm in which absolute permissiveness is the norm. Petitioner's flawed belief that he may simply utter gutter profanity on television without adverse consequences, under the guise of free speech, does not lend itself to acceptance in this jurisdiction. We repeat: freedoms of speech and expression are not absolute freedoms. To say "any act that restrains speech should be greeted with furrowed brows" is not to say that any act that restrains or regulates speech or expression is *per se* invalid. This only recognizes the importance of freedoms of speech and expression, and indicates the necessity to carefully scrutinize acts that may restrain or regulate speech.

WHEREFORE, the decision of the MTRCB in Adm. Case No. 01-04 dated September 27, 2004 is hereby *AFFIRMED* with the *MODIFICATION* of limiting the suspension to the program *Ang Dating Daan*. As thus modified, the *fallo* of the MTRCB shall read as follows:

WHEREFORE, in view of all the foregoing, a Decision is hereby rendered, imposing a penalty of **THREE (3) MONTHS SUSPENSION on the television program, *Ang Dating Daan***, subject of the instant petition.

Co-respondents Joselito Mallari, Luzviminda Cruz, and UNTV Channel 37 and its owner, PBC, are hereby exonerated for lack of evidence.

Costs against petitioner.

SO ORDERED.

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

Austria-Martinez, J., joins Justice Tinga in his concurring opinion.

Corona, J., see separate opinion.

Tinga, J., see concurring opinion.

Brion, J., joins separate opinion of Justice Renato Corona.

Puno, C.J., and *Carpio, J*., see separate dissenting opinions.

Quisumbing, J., the C.J. certifies that Quisumbing, *J*., joined *Carpio, J*., in his dissent.

Carpio Morales, J., joins Puno, *C.J*. and Carpio, *J*., in their separate dissents.

CONCURRING OPINION

TINGA, *J*.:

While I concur in the *ponencia*, I write separately to offer some observations on the dissent of our esteemed colleague, Justice Antonio T. Carpio as well as to briefly explain my views.

The Bill of Rights does not forbid abridging speech, but abridging the freedom of speech.[1] The view that freedom of

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[1] See A. MEKLEJOHN, *FREE SPEECH AND ITS RELATION TO SELF GOVERNMENT* (1948), p. 19.

speech is an absolute freedom has never gained currency with this Court, or the United States Supreme Court, which both have carved out exceptions relating to unprotected speech, such as obscenity. Constitutionally protected freedom of speech is narrower than an unlimited license to talk.[2] General regulatory statutes not intended to control the content of speech but incidentally limiting its unfettered exercise have not been regarded as the type of law proscribed by the Bill of Rights, when they have been found justified by subordinating valid governmental interests, a prerequisite to constitutionality which has necessarily involved a weighing of the governmental interest involved.[3]

Justice Carpio dissents as he feels that the three-month suspension of petitioner's TV program constitutes an unconstitutional prior restraint on freedom of expression. However, said suspension is, much more so, a form of subsequent punishment, levied petitioner in response to the blatantly obscene remarks he had uttered on his television program on the night of 10 August 2004. The primary intent of the suspension is to punish petitioner for such obscene remarks he had made on the broadcast airwaves, and not to restrain him from exercising his right to free expression.

That the assailed subsequent punishment aside from being such also takes on the character of a prior restraint (unlike, *e.g.*, if the punishment levied is a fine) somewhat muddles the issue. But to better clarify the point, let us assume instead that petitioner made the same exact remarks not on television, but from his pulpit. The MTRCB learns of such remarks, and accordingly suspends his program for three months. In that scenario, neither the MTRCB nor any arm of government has the statutory authority to suspend the program based on the off-camera remarks, even if such action were justified to prevent petitioner from making similar remarks on the air. In that scenario, the suspension unmistakably takes on the character of prior restraint, rather than subsequent punishment.

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[2] *Konigsberg v. State Bar of California*, 366 U.S. 36, 49-51 (1961).

[3] *Id.*

It is clear that the MTRCB is vested under its organic law with ample powers to impose prior restraint on television programs. Section 7 of Pres. Decree No. 1986 declares it unlawful to air any television program unless it had been duly reviewed and approved by the MTRCB. As emphasized in the recent case of *MTRCB v. ABS-CBN*,[4] penned by Justice Angelina Sandoval-Gutierrez, such power of review and prior approval of the MTRCB extends to all television programs–even news and public affairs programs–and is valid notwithstanding the constitutional guarantee to free expression. Moreover, in conducting its prior review of all television programs, the MTRCB has the power to approve or disapprove, or to delete "objectionable" portions of such television programs submitted for its approval, based on the standards set forth in Section 3 of Pres. Decree No. 1986.

Under this review and approval schematic established by Pres. Decree No. 1986, **all broadcast networks labor under a regime of prior restraint before they can exercise their right to free expression by airing the television programs they produce.** If the MTRCB were indeed absolutely inhibited from imposing "prior restraint," then the entire review and approval procedure under Pres. Decree No. 1986 would be unconstitutional. I am not sure whether Justice Carpio means to imply this.

I do take it though that Justice Carpio wishes to bring forth as a core issue whether or not the MTRCB can impose the penalty of suspension in a television program, an issue which necessarily takes for granted that the program had violated the matters enumerated as objectionable under Section 3 of Pres. Decree No. 1986. Justice Carpio, to my understanding, believes that the MTRCB can never suspend a program despite its "guilt" because suspension is a prohibited prior restraint on future speech. Following that line of thought, the imposition of a fine in lieu of suspension would be permissible because such fine would not take the form of prior restraint, even if it may constitute subsequent punishment.

Curiously, Presidential Decree No. 1986 does not expressly confer on the MTRCB the power to levy a penalty other than

[4] G.R. No. 155282, 17 January 2005.

imprisonment for between three months and a day to a year, a fine of between fifty to one hundred thousand pesos, and the revocation of the license of the television station.[5] The less draconian penalties, such as suspension, are provided for instead in the implementing rules of the MTRCB, particularly Chapter XII, Section 1 thereof. The *ponencia* justifies the adoption of such penalties not specified in Pres. Decree No. 1986 through the conferment by the same law on the MTRCB of the authority "to supervise [and] regulate xxx television broadcast of all xxx television programs"[6] and "[t]o exercise such power and functions as may be necessary or incidental to the attainment of the purposes and objectives of this Act."[7]

I have no doubt that suspending the petitioner will inhibit his speech, even if such ban is enforced in the name of subsequent punishment rather than prior restraint. Such a penalty must endure strict scrutiny since it is related to the exercise of that fundamental guarantee of free speech. However, it is extremely material to my view the fact that the obscene utterances were made on television, and that the penalty imposed relates to the right of petitioner to broadcast on television. If the current concern pertained to speech in a different medium, such as the print media or the Internet, then I would be much less tolerant over the penalties imposed corresponding to the exercise of speech. Yet the fact is, broadcast media enjoys a lesser degree of protection

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[5] See Section 11, Pres. Decree No. 1986, which states: "*Penalty.* —Any person who violates the provisions of this Decree and/or the implementing rules and regulations issued by the BOARD, shall, upon conviction, be punished by a mandatory penalty of three (3) months and one day to one (1) year imprisonment plus a fine of not less than fifty thousand pesos but not more than one hundred thousand pesos. The penalty shall apply whether the person shall have committed the violation either as principal, accomplice or accessory. If the offender is an alien, he shall be deported immediately. The license to operate the movie house, theater, or television station shall also be revoked. Should the offense be committed by a juridical person, the chairman, the president, secretary, treasurer, or the partner responsible therefore, shall be the persons penalized."

[6] See P.D. No. 1986, Sec. 3(d).

[7] See P.D. No. 1986, Sec. 3(k).

than expression in other mediums, owing to the unique nature of broadcasting itself.

Petitioner's program is broadcast over UNTV-37, which operates from the UHF band. All of broadcasting, whether radio or television, utilizes the airwaves, or the electromagnetic spectrum, in order to be received by the listener or viewer. The airwaves, which are a scarce and finite resource, are not susceptible to physical appropriation, and therefore owned by the State.[8] Each station relies on a particular bandwidth assignation which marks their slot on the spectrum where it can constantly broadcast its signal. Without government regulation, as was the case in the early days of radio in the United States, stations desiring to broadcast over the airwaves would not have a definitive right to an assigned bandwidth, and would have to fend off competing broadcasters who would try to interfere or co-opt each others signals. Thus, government regulation became a necessary evil, with the government taking the role of assigning bandwidth to individual broadcasters. However, since the spectrum is finite, not all stations desiring to broadcast over the airwaves could be accommodated. Therefore, in exchange for being given the privilege by the government to use the airwaves, station owners had to accede to a regime whereby those deemed most worthy by the government to operate broadcast stations would have to accede to regulations by the government, including the right to regulate content of broadcast media.

These limitations of scarcity are peculiar to broadcast only, and do not apply to other mediums such as print media and the Internet. For that reason, the United States Supreme Court[9] has acknowledged that media such as print and the Internet enjoy a higher degree of First Amendment protection than broadcast media. If the same utterances made by petitioner were made instead in print media, it would be difficult to justify on constitutional grounds any punishment that proscribed his exercise of free speech, even if his language might run afoul of

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[8] See *Telecommunications & Broadcast Attorneys of the Philippines v. COMELEC*, G.R. No. 132922, 21 April 1998.

[9] See *Reno v. ACLU,* 521 U.S. 844 (1997).

the relevant anti-obscenity laws. But because these were made on broadcast television, the inherent and idiosyncratic ability of the State to regulate content of broadcast media would justify corresponding duly legislated sanctions. Moreover, since the ultimate consideration of the State in regulating broadcast media is whether such broadcaster should be entitled to use the broadcast spectrum in the first place, a sanction corresponding to suspension from the airwaves which the State owns, is commensurate, even if it may not be so in the case of other media where the State has no inherent regulatory right.

Indeed, nobody has the unimpedable right to broadcast on the airwaves. One needs to secure a legislative franchise from Congress, and thereafter the necessary permits and licenses from the National Telecommunications Commission before a single word may be broadcast on air. Moreover, especially since they are regulated by the State, broadcasters are especially expected to adhere to the laws of the land, including Pres. Decree No. 1986. And under the said law, the legislative branch had opted to confer on the MTRCB the power to regulate and to penalize television broadcast stations in accordance with the terms of the said law.

It is a legitimate question for debate whether the proper sanction on petitioner should be suspension from broadcast, or a less punitive penalty such as a fine. Yet Justice Carpio is proceeding from the premise that suspension can never be an appropriate penalty the MTRCB can impose, because it is a prior restraint. On the other hand, I believe that suspension is a penalty that is part and parcel, if not particularly appropriate to, the inherent regulatory power of the State over broadcast media. After all, the right to broadcast involves the right to use the airwaves which the State owns, and if the broadcaster offends any of the legislated prerogatives or priorities of the State when it comes to broadcasting, suspension is an apt penalty.

With respect to the merits of these petitions, my views are simply this. There is no question that petitioner's remarks are inherently obscene, and certainly potential cause for a libel suit. These remarks were made on broadcast media, which the State

inherently has the right to regulate. The State has the right to prevent the sort of language used by petitioner on the airwaves that it owns, as well as the right to punish broadcasters who do make such remarks. Pres. Decree No. 1986, as it stands, accommodates these particular concerns and imposes corresponding sanctions which I deem appropriate on broadcasters whose transgressions are as grave as that of petitioner. While I may have serious reservations on several other aspects of Pres. Decree No. 1986, a relic of the dictatorship era, that law as applied to this particular case operates in a way that I believe is constitutionally permissible.

SEPARATE OPINION

CORONA, *J.*:

Free speech is a preferred right which has to be zealously guarded. Nonetheless, it is not absolute but limited by equally fundamental freedoms enjoyed by other members of society. It is also circumscribed by the basic principle of all human relations: every person must in the exercise of his rights and performance of his duties, act with justice, give everyone his due and observe honesty and good faith.[1] For these reasons, free speech may be subjected to reasonable regulation by the State in certain circumstances when required by a higher public interest.

FACTUAL BACKDROP

Petitioner Eliseo F. Soriano was one of the hosts of *Ang Dating Daan*, a television program aired on UNTV 37. The program was given a "G" rating by the Movie and Television Review and Classification Board (MTRCB).

On August 10, 2004, at around 10:00 in the evening, petitioner uttered the following statements in his program:

Lehitimong anak ng demonyo[!] [*S*]*inungaling*[!]

Gago ka talaga[,] Michael[!] [M]asahol ka pa sa putang babae o di ba[?] [']Yung putang babae ang gumagana lang doon [']yung

[1] Article 19, Civil Code.

ibaba, dito kay Michael ang gumagana ang itaas, o di ba? O, masahol pa sa putang babae [']yan. Sabi ng lola ko masahol pa sa putang babae [']yan. Sobra ang kasinungalingan ng mga demonyong ito.[2]

Acting on complaints arising from the said statements, the MTRCB preventively suspended the airing of the program for 20 days.[3] Subsequently, the MTRCB found petitioner liable for his utterances and suspended him from his program for three months.[4]

Petitioner now assails his suspension as a violation of his right to free speech.

FREE SPEECH AND THE UNIQUENESS OF BROADCAST MEDIA

In free speech cases, the medium is relevant and material. Each medium of expression presents its own peculiar free speech problems.[5] And in jurisprudence,[6] broadcast media receive much less free speech protection from government regulation than do newspapers, magazines and other print media.[7] The electromagnetic spectrum used by broadcast media is a scarce resource. As it is not available to all, unlike other modes or media of expression, broadcast media is subject to government regulation.[8]

The broadcast spectrum is a publicly-owned forum for communication that has been awarded to private broadcasters subject to a regulatory scheme that provides limited access to

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[2] *Rollo*, G.R. No. 164785, p. 258; *id.,* G.R. No. 165636, p. 375.

[3] Order dated August 16, 2004.

[4] Decision dated September 27, 2004. *Rollo*, G.R. No. 165636, p. 378.

[5] *Joseph Burstyn, Inc. v. Wuilson*, 343 U.S. 495 (1952).

[6] See *Eastern Broadcasting Corporation v. Dans, Jr.*, G.R. No. 59329, 19 July 1985, 137 SCRA 628; See also *Chavez v. Gonzales*, G.R. No. 168338, 15 February 2008, 545 SCRA 441.

[7] *Id.*

[8] *Id.* See also *National Broadcasting Co. v. United States*, 319 U.S. 190 (1943).

speakers and seeks to promote certain public interest goals.[9] For this reason, broadcast media is a public trust and the broadcaster's role is that of "a public trustee charged with the duty of fairly and impartially informing the public audience."[10] Thus, "**of all forms of communication, it is broadcasting that has received the most limited [free speech] protection**."[11] Indeed, an unabridgeable right to broadcast is not comparable to the right of the individual to speak, write or publish.[12] Moreover, **it is the right of the viewers and listeners, not the right of the broadcasters, which is paramount**.[13]

Therefore, the use of the public airwaves for broadcasting purposes (that is, broadcasting television programs over the public electromagnetic spectrum) is a privilege, not a right.[14] With this privilege comes certain obligations and responsibilities, namely complying with the rules and regulations of the MTRCB or facing the risk of administrative sanctions and even the revocation of one's license to broadcast.

EQUALLY FUNDAMENTAL RIGHTS AS LIMIT OF SPEECH IN BROADCAST MEDIA

U.S. President Herbert Hoover (who was then Secretary of Commerce) stated that "[t]he ether is a public medium and its

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[9] Logan, Charles Jr., *Getting Beyond Scarcity: A New Paradigm for Assessing the Constitutionality of Broadcast Regulation*, 85 Cal. L. Rev. 1687 (1997).

[10] *Columbia Broadcasting System v. Democratic National Committee*, 412 U.S. 94 (1973).

[11] *Federal Communications Commission [FCC] v. Pacifica Foundation*, 438 U.S. 726 (1978). This rule has also been recognized here in our jurisdiction. (See *Eastern Broadcasting Corporation v. Dans, Jr.*, *supra* and *Chavez v. Gonzales*, *supra*.)

[12] *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969).

[13] *Id.*

[14] Quale, Courtney Livingston, *Hear an [Expletive], There an [Expletive], But[t]... The Federal Communications Commission Will Not Let You Say an [Expletive]*, 45 Williamette L. Rev. 207 (Winter 2008).

use must be for a public benefit."[15] The dominant element for consideration in broadcast media is therefore the great body of viewing public, millions in number, countrywide in distribution.[16] To reiterate, **what is paramount is the right of viewers, not the right of broadcasters**.

What specific rights of viewers are relevant *vis-à-vis* the right of broadcasters to speak? Considering the uniquely pervasive presence of broadcast media in the lives of Filipinos, these rights are as follows:

(a) the right of every person to dignity;[17]

(b) the natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character;[18]

(c) the right of the youth to the promotion and protection by the State of their moral, spiritual, intellectual and social well-being[19] and

(d) the right to privacy.

Right to dignity

The ideal of the Filipino people is to build a just and humane society and a regime of truth, justice, freedom, love, equality

[15] Cited in Varona, Anthony, *Out of Thin: Using First Amendment Public Forum Analysis to Redeem American Broadcasting Regulation*, 39 U. Mich. J.L. Reform 149 (Winter 2006).

[16] *Id.*

[17] Section 11, Article II, Constitution:

SEC. 11. The State values the dignity of every human person and guarantees full respect for human rights.

[18] Section 12, Article II, Constitution:

SEC. 12. x xx The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the government.

[19] Section 13, Article II, Constitution:

SEC. 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual and social well-being. x x x

and peace.[20] In this connection, among the fundamental policies of the State is that it values the dignity of every human person.[21] The civil code provisions on human relations also include the duty of every person to respect the dignity, personality, privacy and peace of mind of his neighbors and other persons.[22]

A society which holds that egalitarianism, non-violence, consensualism, mutuality and good faith are basic to any human interaction is justified in controlling and prohibiting any medium of depiction, description or advocacy which violates these principles.[23] Speech which degrades the name, reputation or character of persons is offensive and contributes to a process of moral desensitization. Free speech is not an excuse for subjecting anyone to the degrading and humiliating message inherent in indecent, profane, humiliating, insulting, scandalous, abusive or offensive statements and other forms of dehumanizing speech.

Right of parents to develop the moral character of their children; right of the youth to the promotion and protection by the State of their moral well-being

Many Filipino homes have television sets. Children have access to television and, in many cases, are unsupervised by parents. With their impressionable minds, they are very susceptible to the corrupting, degrading or morally desensitizing effect of indecent, profane, humiliating or abusive speech.

FCC v. Pacifica Foundation[24] elaborates:

[B]roadcasting is uniquely accessible to children, even those too young to read. Although Cohen's written message, ["Fuck the Draft"],

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[20] Preamble, Constitution.

[21] Section 11, Article II, Constitution.

[22] Article 26, Civil Code.

[23] *Regina v. Butler*, [1992] 2 W.W.R. 577, [1992] 1 S.C.R. 452.

[24] *Supra* note 11.

might have been incomprehensible to a first grader, Pacifica's broadcast could have enlarged a child's vocabulary in an instant. Other forms of offensive expression may be withheld from the young without restricting the expression at its source. Bookstores and motion picture theaters, for example, may be prohibited from making indecent material available to children. We held in *Ginsberg v. New York* that the government's interest in the "well-being of its youth" and in supporting "parents' claim to authority in their own household" justified the regulation of otherwise protected expression. The ease with which children may obtain access to broadcast material, coupled with the concerns recognized in *Ginsberg*, amply justify special treatment of indecent broadcasting.[25]

Parental interest in protecting children from exposure to indecent, scandalous, insulting or offensive speech must be supported by the government through appropriate regulatory schemes. Not only is this an exercise of the State's duty as *parens patriae*, it is also a constitutionally enshrined State policy.[26] In this connection, the MTRCB is mandated by law to classify television programs. In particular, a "G" rating indicates that, in its judgment, a particular program is suitable for all ages and without "anything unsuitable for children and minors and may be viewed without adult guidance or supervision."[27] A "PG" rating means that, in the judgment of the MTRCB, parental guidance is suggested as it "may contain some adult material [which] may be permissible for children to watch under the guidance and supervision of a parent or an adult."[28]

Loud and public indecent or offensive speech can be reasonably regulated or even prohibited if within the hearing of children. The potency of this rule is magnified where the same speech is spoken on national prime-time television and broadcast to millions of homes with children present and listening.[29]

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[25] *Id.* (Citations omitted)

[26] Section 12, Article II, Constitution.

[27] Section 2(A), 2004 MTRCB Implementing Rules and Regulations.

[28] Section 2(B), *id.*

[29] Carter, Edward *et al.*, *Broadcast Profanity and the "Right to be Let Alone": Can the FCC Regulate Non-Indecent Fleeting Expletives Under a Privacy Model*, 31 Hastings Comm. & Ent. L.J. 1 (Fall 2008).

Moreover, children constitute a uniquely captive audience.[30] The Constitution guarantees a society of free choice.[31] Such a society presupposes the capacity of its members to choose.[32] However, like someone in a captive audience, a child is not possessed of that full capacity for individual choice.[33] Because of their vulnerability to external influence, not only are children more 'captive' than adults in the sense of not being as able to choose to receive or reject certain speech but they may also be harmed more by unwanted speech that is in fact received.[34]

Taken in the context of the constitutional stature that parental authority receives and given that the home is the domain for such authority, the government is justified in helping parents limit children's access to undesirable materials or experiences.[35] As such, the government may properly regulate and prohibit the television broadcast of indecent or offensive speech.

Right to privacy

Protecting the privacy of the home is a compelling government interest. *Carey v. Brown*[36] emphatically declared that "[t]he State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society."[37]

Broadcast indecency is sinister. It has the capacity to intrude into the privacy of the home when least expected. Unconsenting adults may tune in a station without warning that offensive language is being or will be broadcast.[38]

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[30] *Id.*

[31] *Ginsberg v. New York*, 390 U.S. 629 (1968) (Stewart, *J.*, concurring).

[32] *Id.*

[33] *Id.*

[34] Araiza, William D., *Captive Audiences, Children and the Internet*, 41 Brandeis L.J. 397 (2003).

[35] *Id.*

[36] 447 U.S. 455 (1980).

[37] *Id.*

[38] *FCC v. Pacifica Foundation*, *supra* note 11.

Pacifica Foundation has this to say on the matter:

Patently offensive, indecent material presented over the airwaves confronts the citizen, not only in public, but also in the privacy of the home, where the individual's right to be left alone plainly outweighs the [free speech] rights of an intruder.[39]

The right to privacy is intimately tied to the right to dignity which, in turn, hinges on individual choice.[40] **Thus, in the context of broadcast indecency, the dominant constitutional principle at work is not free expression as indecency in and of itself has little or no value and is not protected.[41] Instead, the key constitutional principle involves privacy, dignity and choice.** No one has the right to force an individual to accept what they are entitled to exclude, including what they must listen to or view,[42] especially in the privacy of the home. If a person cannot assert his authority at home, his self-worth is diminished and he loses a part of his sense of dignity.[43] His inability to make personal decisions is simply the consequence of having no right of choice in what is supposed to be his private sanctuary.

BASIC PRINCIPLE OF HUMAN RELATIONS *VIS-À-VIS* THE RIGHT TO BROADCAST

The exercise of the right to broadcast touches upon and inevitably clashes with various rights and interests of the viewing public. Public interest, the ideal end of broadcast media, is entirely different from what usually interests the public which is the common fare of everyday programming.[44]

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[39] *Id.*

[40] Miller, Jeremy, *Dignity as a New Framework, Replacing the Right to Privacy*, 30 T. Jefferson L. Rev. 1 (2007).

[41] Carter, Edward *et al.*, *supra* note 29. The exception is in the case of certain political messages expressed in public.

[42] Miller, Jeremy, *supra* note 40.

[43] *Id.*

[44] Sunstein, Cass R., *Television and the Public Interest*, 88 Cal. L. Rev. 499 (March 2000).

The objective of laws is to balance and harmonize as much as possible those competing and conflicting rights and interests. For amidst the continuous clash of interests, the ruling social philosophy should be that, in the ultimate ideal social order, the welfare of every person depends upon the welfare of all.[45]

Law cannot be given an anti-social effect.[46] A person should be protected only when he acts in the legitimate exercise of his rights, that is, when he acts with prudence and good faith, not when he acts with negligence or abuse.[47] The exercise of a right ends when the right disappears and it disappears when it is abused, especially to the prejudice of others.[48] The mask of a right without the spirit of justice which gives it life is repugnant to the modern concept of law.[49]

As applied to the right to broadcast, the broadcaster must so use his right in accordance with his duties as a public trustee and with due regard to fundamental freedoms of the viewers. The right is abused when, contrary to the MTRCB rules and regulations, foul or filthy words are mouthed in the airwaves.

Someone who utters indecent, scandalous, insulting or offensive words in television is a proverbial pig in the parlor. Public interest requires that he be reasonably restrained or even removed from that venue. Nonetheless, the no-pig-in-the-parlor rule does not mean that the government will be allowed either to keep the pig from enjoying life in its pen or to apply the rule to non-pigs attempting to enter the parlor.[50]

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[45] Tolentino, Arturo, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Volume I (1990 edition), p. 59.

[46] *Id.*, p. 61.

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] Carter, Edward *et al.*, *supra* note 29. "The law of nuisance does not say, for example, that no one shall maintain a pigsty; it simply says that no one shall maintain a pigsty in an inappropriate place, such as a residential neighborhood." FCC, *In the Matter of a Citizen's Complaint Against Pacifica Foundation Station WBAI (FM)*, 56 F.C.C.2d 94 (1975) cited in Carter. Edward *et al.*, *id.*

Free speech in broadcast media is premised on a marketplace of ideas that will cultivate a more deliberative democracy, not on a slaughterhouse of names and character of persons or on a butchery of all standards of decency and propriety.

The confluence and totality of the fundamental rights of viewers[51] and the proscription on abuse of rights significantly outweigh any claim to unbridled and unrestrained right to broadcast speech. These also justify the State in undertaking measures to regulate speech made in broadcast media including the imposition of appropriate and reasonable administrative sanctions.

STATE REGULATION OF BROADCAST MEDIA THROUGH THE MTRCB

The MTRCB is the agency mandated by law to regulate television programming. In particular, it has been given the following powers and functions under its charter, PD[52] 1986:

Section 3. *Powers and Functions.*— The BOARD shall have the following functions, powers and duties:

(a) **To promulgate such rules and regulations as are necessary or proper for the implementation of this Act, and the accomplishment of its purposes and objectives, including guidelines and standards for production, advertising and titles**. Such rules and regulations shall take effect after fifteen (15) days following their publication in newspapers of general circulation in the Philippines;

xxx xxx xxx

(c) To approve or disapprove, delete objectionable portions from and/or prohibit the x x x production, copying, distribution, sale, lease, exhibition and/or television broadcast of the motion pictures, television programs and publicity materials subject of the preceding paragraph, which, in the judgment of the board applying

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[51] Namely, the right of every person to dignity; the right of parents to develop the moral character of their children; the right of the youth to the promotion and protection by the State of their moral well-being and the right to privacy.

[52] Presidential Decree.

> contemporary Filipino cultural values as standard, are objectionable for being immoral, indecent, contrary to law and/or good customs, injurious to the prestige of the Republic of the Philippines or its people, or with a dangerous tendency to encourage the commission of violence or of wrong or crime, such as but not limited to:
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> xxx xxx xxx
>
> (vi) Those which are libelous or defamatory to the good name and reputation of any person, whether living or dead;
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> xxx xxx xxx
>
> (d) **To supervise, regulate, and grant, deny or cancel, permits for the** importation, exportation, production, copying, distribution, sale, lease, **exhibition**, **and/or television broadcast** of all motion pictures, **television programs** and publicity materials, **to the end that no such pictures, programs and materials as are determined by the BOARD to be objectionable in accordance with paragraph (c) hereof shall be** imported, exported, produced, copied, reproduced, distributed, sold, leased, **exhibited and/or broadcast by television**;
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> e) **To classify motion pictures, television programs and similar shows into categories** such as "G" or "For General Patronage" (all ages admitted), "P" or "Parental Guidance Suggested", "R" or "Restricted" (for adults only), "X" or "Not for Public Viewing", or such other categories as the BOARD may determine **for the public interest**;
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> xxx xxx xxx
>
> (k) To exercise such powers and functions as may be necessary or incidental to the attainment of the purposes and objectives of this Act, and to perform such other related duties and responsibilities as may be directed by the President of the Philippines. (emphasis supplied)

The grant of powers to the MTRCB under Section 3 of PD 1986 does not categorically express the power to suspend a television program or a host thereof that violates the standards of supervision, regulation and classification of television programs provided under the law. Nonetheless, such silence on the part of the law does not negate the existence of such a power.

First, a general grant of power is a grant of every particular and specific power necessary for the exercise of such general power.[53] Other than powers expressly conferred by law on them, administrative agencies may lawfully exercise powers that can be reasonably inferred in the wordings of the enabling law.[54]

To begin with, Section 3(d) of PD 1986 explicitly gives the MTRCB the power to supervise and regulate the television broadcast of all television programs. Under Section 3(e) the MTRCB is also specifically empowered to classify television programs. In the effective implementation of these powers, the MTRCB is authorized under Section 3(a) "[t]o promulgate such rules and regulations as are necessary or proper for the implementation of [PD 1986]." Finally, under Section 3(k), the MTRCB is warranted "[t]o exercise such powers and functions as may be necessary or incidental to the attainment of the purposes and objectives of [PD 1986]."

Clearly, the law intends to give the MTRCB all the muscle to carry out and enforce the law effectively. In consonance with this legislative intent, we uphold the implied and necessary power of the MTRCB to order the suspension of a program or a host thereof in case of violation of PD 1986 and rules and regulations that implement it.

Second, the grant of a greater power necessarily includes the lesser power. *In eo quod plus sit, semper inest et minus*.

The MTRCB has the power to cancel permits for the exhibition or television broadcast of programs determined by the said body to be objectionable for being "immoral, indecent, contrary to law or good customs x x x."[55] This power is a power to impose sanctions.

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[53] See *Chavez v. National Housing Authority*, G.R. No. 164527, 15 August 2007, 530 SCRA 235.

[54] *Id.*

[55] *See* paragraph (d), Section 3 of PD 1986 in relation to paragraph (c) thereof.

A "sanction" in relation to administrative procedure is defined as follows:

> the whole or part of a prohibition, limitation or other condition affecting the liberty of any person; the withholding of relief; the imposition of penalty or fine; the destruction, taking, seizure or withholding of property; the assessment of damages, reimbursement, restitution, compensation, cost, charges or fees; **the revocation or suspension of license**; or the taking of other compulsory or restrictive action.[56] (emphasis supplied)

The MTRCB's power to cancel permits is a grant of authority to permanently and absolutely prohibit the showing of a television program that violates MTRCB rules and regulations. It necessarily includes the lesser power to temporarily and partially prohibit a television program that violates MTRCB rules and regulations by suspending either the showing of the offending program or the appearance of the program's offending host.

Third, broadcasters are public trustees. Hence, in a sense, they are accountable to the public like public officers. Public accountability imposes a three-fold liability, criminal, civil and administrative. As such, the imposition of suspension as an administrative penalty is justified by the nature of the broadcaster's role *vis-à-vis* the public.

Finally, the infraction of MTRCB rules and regulations through the showing of indecent, scandalous, insulting or offensive material constitutes a violation of various fundamental rights of the viewing public, including the right of every person to dignity; the right of parents to develop the moral character of their children; the right of the youth to the promotion and protection by the State of their moral well-being and the right to privacy.

Equity will not suffer a wrong to be without a remedy. *Ubi jus ibi remedium*. Where there is a right, there must be an effective remedy. While civil damages may be awarded to the particular person who is the object of indecent, scandalous, insulting or offensive material and imprisonment or fine may

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[56] Section 2(12), Chapter 1, Book VII, Administrative Code of 1987.

be imposed to ensure the State's interest in enforcing penal laws, these remedies fail to address the violation of the fundamental rights of the viewing public. Yet their interest is supposed to be of paramount importance.

Clearly, therefore, in case of violation of PD 1986 and its implementing rules and regulations, it is within the authority of the MTRCB to impose the administrative penalty of suspension to the erring broadcaster. A contrary stance will emasculate the MTRCB and render illusory its supervisory and regulatory powers, make meaningless the public trustee character of broadcasting and afford no remedy to the infringed fundamental rights of viewers.

NO GRAVE ABUSE OF DISCRETION ON THE PART OF MTRCB

I have so far focused my discussion on the abstract, the theoretical foundations and limitations of free speech in broadcast media. I will now discuss the application of these concepts on petitioner's case.

The petitions should have been dismissed at the outset for being premature. Petitioner did not file a motion for reconsideration of the order preventively suspending *Ang Dating Daan* for 20 days as well as of the decision suspending petitioner for three months. As a rule, a motion for reconsideration is indispensable before resort to the special civil action for *certiorari* to afford the court or tribunal the opportunity to correct its error, if any.[57]

Moreover, the petition in G.R. No. 165636 (assailing the MTRCB decision suspending petitioner for three months) could have been denied from the start as it was an improper remedy. Not only did petitioner fail to file a motion for reconsideration, he also neglected to file an appeal. Recourse to petitions for *certiorari* and prohibition is proper only where there is no appeal or any other plain, speedy and adequate remedy available.[58] In

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[57] *Salinas v. Digital Telecommunications Philippines, Inc.*, G.R. No. 148628, 28 February 2007, 517 SCRA 67.

[58] *See* Sections 1 and 2, Rule 65 Rules of Court.

this case, petitioner had the remedy of appeal. His failure to file the requisite appeal proscribed this petition and rendered the decision of the MTRCB final and executory.[59]

In any event, the MTRCB did not commit a grave abuse of discretion when it rendered its decision. On the contrary, the decision was proper as it was supported by both the facts and the law.

Grave abuse of discretion is such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction.[60] In this case, petitioner failed to show any capriciousness, whimsicality or arbitrariness which could have tainted the MTRCB decision.

Profanity and indecent talk and pictures, which do not form an essential part of any exposition of ideas, have a very slight social value as a step toward truth.[61] Epithets that convey no ideas capable of being true or false are worthless in the marketplace of ideas.[62] Even the "slight social value" of indecency is "outweighed by the social interests in order, morality, the training of the young and the peace of mind of those who hear and see."[63] Moreover, indecency and profanity thwart the marketplace process because it allows "little opportunity for the usual process of counter-argument."[64]

The utterances which led to the suspension of petitioner from appearing in the show *Ang Dating Daan* were indisputably indecent

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[59] Section 6, Chapter XIII of the Rules and Regulations Implementing PD 1986 provides:

Section 6. Finality of decision of the Board.— Decisions of the Board (including that of the Chairman and the Hearing and Adjudication Committee) shall become final and executory after the lapse of the period for appeal without any appeal having been perfected.

[60] *Republic v. Hidalgo*, G.R. No. 161657, 4 October 2007, 534 SCRA 619.

[61] Carter, Edward *et al.*, *supra* note 29 citing Zechariah Chafee, Jr., Free Speech in the United States 150 (1941).

[62] *Id.*

[63] *Id.*

[64] *Id.*

and offensive considering the circumstances surrounding it. In particular, petitioner called private respondent Michael M. Sandoval "*demonyo*," the personification of evil, twice. He also called Sandoval "*gago*" (or idiot) once in the portion of the show subject of the complaint against him. Immediately before that, however, the transcript of the August 10, 2004 program of *Ang Dating Daan* reveals that he had already hurled the same epithet at least five times against Sandoval. Worse, he uttered the patently offensive phrase "*putang babae*" in a context that referred to the sexual act four times. The repetitive manner by which he expressed the indecent and offensive utterances constituted a blatant violation of the show's classification as "G" rated.

Another thing. Petitioner's use of the pejorative phrase "*putang babae*" was sexist. The context of his statement shows that he meant to convey that there is a substantial difference between a woman and a man engaged in prostitution, that a female prostitute is worse than a male prostitute. As such, not only did petitioner made degrading and dehumanizing remarks, he also betrayed a very low regard for women.

Even the most strained interpretation of free speech in the context of broadcast media cannot but lead to the conclusion that petitioner's statements were indecent and offensive under the general standard of contemporary Filipino cultural values. Contemporary values of the Filipino community will not suffer the utterances of petitioner in the presence of children. Using contemporary values of the Filipino community as a standard, it cannot be successfully denied that the statements made by petitioner transcended the bounds of decency and even of righteous indignation.

Nonetheless, **where fundamental freedoms are involved, resort to the least restrictive approach is called for**. Steps should be taken and sanctions should be imposed with an abundance of caution and with the least possible collateral damage. No measure that is more than what is necessary to uphold public interest may be taken. In this context, the least restrictive approach was that taken by the MTRCB, to suspend the offending host

rather than the show (in which case the other innocent hosts would have been unduly penalized as well). The lesser power of suspending the offending host should be preferred over the greater power of suspending the show and all its hosts regardless of who uttered the indecent and offensive remarks.

Under the circumstances obtaining in this case, therefore, and considering the adverse effect of petitioner's utterances on the viewers' fundamental rights as well as petitioner's clear violation of his duty as a public trustee, the MTRCB properly suspended him from appearing in *Ang Dating Daan* for three months.

Furthermore, it cannot be properly asserted that petitioner's suspension was an undue curtailment of his right to free speech either as a prior restraint or as a subsequent punishment. Aside from the reasons given above (*re* the paramountcy of viewers rights, the public trusteeship character of a broadcaster's role and the power of the State to regulate broadcast media), a requirement that indecent language be avoided has its primary effect on the form, rather than the content, of serious communication.[65] There are few, if any, thoughts that cannot be expressed by the use of less offensive language.[66]

A FINAL WORD

There is a need to preserve the delicate balance between the inherent police power of the State to promote public morals and enhance human dignity and the fundamental freedom of the individual to speak out and express himself. In this case and in the context of the uniqueness of television as a medium, that balance may not be tilted in favor of a right to use the broadcast media to rant and rave without due regard to reasonable rules and regulations governing that particular medium. Otherwise, the Court will promote (wittingly or unwittingly) the transformation of the "boob tube" to a "boor tube" dominated by rude and unmannerly shows and personalities that totally demean the precious guarantee of free speech and significantly erode other equally fundamental freedoms.

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[65] *FCC v. Pacifica Foundation*, *supra* note 11.

[66] *Id.*

To hold that the State, through the MTRCB, is powerless to act in the face of a blatant disregard of its authority is not a paean to free speech. It is a eulogy for the State's legitimate exercise of police power as *parens patriae* to promote public morals by regulating the broadcast media. It is an indictment of long and deeply held community standards of decency and civility, an endorsement of indecorousness and indecency and of everything that is contrary to basic principles of human relations.

Accordingly, I vote to *DISMISS* these petitions.

DISSENTING OPINION

PUNO, *C.J.*:

As a mature society, we have to come to terms with our conceptions of indecent speech, as it is a reality in our midst and it will not go away. [1] The case at bar confronts the Court with the question of whether regulation as a medicine for indecent speech is poison to the freedom of expression guaranteed by our Constitution.

In its September 27, 2004 Decision, public respondent Movie and Television Review and Classification Board (MTRCB) suspended the petitioner for three months from his television program, *Ang Dating Daan*, for uttering the following words on said show:

Lehitimong anak ng demonyo; sinungaling;

Gago ka talaga Michael; masahol ka pa sa putang babae o di ba. Yung putang babae ang gumagana lang doon yung ibaba, dito kay Michael ang gumagana ang itaas, o di ba! O, masahol pa sa putang babae iyan. Sabi ng lola ko masahol pa sa putang babae yan. Sobra ang kasinungalingan ng mga demonyong ito.[2]

Petitioner contends that the decision of the MTRCB runs afoul of his freedom of speech.

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[1] See Corcos, C., "*George Carlin, Constitutional Law Scholar,*" 37 Stetson Law Review 899, 940 (2008).

[2] *Rollo*, G.R. No. 164785, p. 258.

I shall focus my disquisition on the categorization of the subject speech as "indecent speech" conveyed through the medium of television broadcast and on the applicable test for its regulation, **as this category of speech has not previously figured in our "freedom of speech" jurisprudence.**

Let me begin by discussing the authority cited by the *ponencia*,[3] *Federal Communications Commission (FCC) v. Pacifica Foundation,*[4] the landmark U.S. Supreme Court decision on regulation of indecent speech in broadcast. In **Pacifica**, the U.S. Supreme Court was confronted with FCC regulation of a **radio broadcast** of "Filthy Words," a 12-minute monologue of satiric humorist George Carlin. [5] Carlin recorded the monologue before a live audience in a California theater. He started by referring to his thoughts about "the words you couldn't say on the public, ah, airwaves, um, the ones you definitely wouldn't say, ever." He then went on to list those words and said them over and over again in a variety of colloquialisms. The transcript of the recording shows frequent laughter from the audience.[6]

At about 2:00 p.m. on Tuesday, October 30, 1973, a New York radio station, owned by Pacifica Foundation, broadcast the "Filthy Words" monologue. A few weeks later, the FCC received a complaint letter from a man, who stated that he had heard the broadcast **while driving with his young son**. He wrote that, although he could perhaps understand the "record's being sold for private use, I certainly cannot understand the broadcast of same over the air that, supposedly, you control."[7]

Specifically, at issue in **Pacifica** was Carlin's use of seven curse words — "shit, piss, fuck, cunt, cocksucker, motherfucker, and tits."[8] The U.S. Supreme Court did not characterize the

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[3] *Ponencia*, p. 16.

[4] 438 U.S. 726 (1978).

[5] *Id.*, at 729.

[6] *Id.*

[7] *Id.* at 729-730.

[8] *Id.* at 751.

utterance as unprotected obscene speech.[9] Instead it characterized the seven words as **indecent speech** according to the definition given by the FCC: "language that describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs, when there is a reasonable risk that children may be in the audience." [10] Rejecting the argument of **Pacifica**, the US. Supreme Court held that prurient appeal, an element of obscene speech, was not a requisite for a finding of indecent broadcast speech.[11]

Noting that there were two statutes prohibiting "obscene, indecent, or profane language by means of radio communications," the U.S. High Court held that the FCC could regulate the subject indecent speech because of **two special features of the broadcast medium**: (1) it is a "uniquely pervasive" medium, capable of invading the privacy of the home; and (2) it is "uniquely accessible to children."[12] Holding that these characteristics warranted broadcast receiving "the most limited First Amendment protection,"[13] the U.S. Supreme Court upheld the FCC finding that the seven words in the Carlin monologue were indecent, and that the FCC could constitutionally regulate indecent speech under a context-based standard, [14] *i.e.*, **that the indecent words were deliberately and repeatedly said in a radio program that was broadcast at 2:00 p.m. when children were in the audience.**

The U.S. Supreme Court emphasized the importance of the context of its ruling, *viz*: ". . . (T)his monologue would be protected in other contexts. Nonetheless, the constitutional protection accorded to a communication containing such patently offensive sexual and excretory language **need not be the same in every context**. It is a characteristic of speech such as this that both its capacity to offend and its "social value," to use

[9] *Id.* at 750.

[10] *Id.* at 742.

[11] *Id.* at 739-741.

[12] *Id.* at 748-750.

[13] *Id.* at 748.

[14] *Id.* at 750.

Mr. Justice Murphy's term, **vary with the circumstances**. Words that are commonplace in one setting are shocking in another. To paraphrase Mr. Justice Harlan, one occasion's lyric is another's vulgarity." [15] In conclusion, the U.S. High Court expressed caution on the **narrowness of its ruling**, *viz*:

> It is appropriate, in conclusion, to emphasize the narrowness of our holding. This case does not involve a two-way radio conversation between a cab driver and a dispatcher, or a telecast of an Elizabethan comedy. We have not decided that an occasional expletive in either setting would justify any sanction or, indeed, that this broadcast would justify a criminal prosecution. The Commission's decision rested entirely on a nuisance rationale under which **context is all-important**. The concept requires consideration of a host of variables. **The time of day was emphasized by the Commission**. The content of the program in which the language is used will also affect the composition of the audience, and differences between radio, television, and perhaps closed-circuit transmissions, may also be relevant.[16] (emphases supplied) (footnote omitted)

After Pacifica, the FCC pursued a lax enforcement policy of indecent speech with only the seven filthy words in the Carlin monologue being considered as actionable indecency. [17] **In 1987**, however, the FCC announced that determinations of indecency would be made without regard for whether they contained one of the "seven filthy words" and would instead be evaluated using the definition in **Pacifica**: "language that describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs, when there is a reasonable risk that children may be in the audience."[18] In ***Action for Children's Television v. FCC***,[19] the FCC also settled on a policy in which such indecency could

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[15] *Id.* at 750.

[16] *Id.*

[17] Winquist, J. "*Arbitrary and F^@#$*! Capricious: An Analysis of the Second Circuit's Rejection of the FCC's Fleeting Expletive Regulation in Fox Television Station, Inc. v. FCC* (2007)," 57 American University Law Review 723, 729 (2008).

[18] *Id.*

[19] 58 F.3d 654.

be sanctioned if aired within the period between 6:00 a.m. and 10:00 p.m. when children were presumptively in the audience, **but could be broadcasted during the "safe harbor"** period between 10:00 p.m. and 6:00 a.m.[20] As in **Pacifica**, the FCC likewise considered "**deliberate and repetitive use**" of offensive words a prerequisite for finding them actionable when the words were mere expletives not describing sexual or excretory functions.[21]

The FCC policy saw a significant change beginning in 2003. During the 2003 live broadcast of the **Golden Globe Awards, Bono**, a singer in the popular band U2, exclaimed in his acceptance speech for best original song award, "(T)his is really, really fucking brilliant."[22] The FCC received hundreds of complaints that the "F-word" was obscene and indecent, but the FCC Enforcement Bureau initially ruled that because of the **fleeting use** of the word and the context — it was used as an intensifier rather than a sexual description — it was not an actionable indecency.[23] Succumbing to congressional pressure, however, the FCC reversed the Bureau's decision.[24] It held

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[20] The United States Court of Appeals, District of Columbia Circuit balanced the First Amendment rights of adults to see and hear indecent broadcast material with the government's interest in protecting children from such content. It required the FCC to limit its ban on indecent programming to between 6:00 a.m. and 10:00 p.m.

[21] See *In the Matter of Pacifica Foundation,Inc.*, 2 F.C.C.R. 2698, 2699 (1987).

[22] *In the Matter of Complaints against Various Broadcast Licensees Regarding Their Airing of the "Golden Globe Awards" Program*, 19 F.C.C.R. 4975, 4976 n.4. (2004).

[23] See *Complaints Against Various Broadcast Licensees Regarding their Airing of the "Golden Globes Awards" Program (Enforcement Bureau Golden Gloves),* 18 F.C.C.R. 19859, 19861 (2003) (noting that the word "fuck" in the Bono context was fleeting and did not describe sexual or excretory activity or organs, but was instead used as an "adjective or expletive").

[24] *In the Matter of Complaints against Various Broadcast Licensees Regarding Their Airing of the "Golden Globe Awards" Program, supra* at 4982 (explaining the holding and indicating that the decision is consistent with *Pacifica*). *See* Winquist, J., *supra* at 732, citing House Resolution. 500, 108th Cong. (2004) ("[T]he Federal Communications Commission should make every reasonable and lawful effort and use all of its available authority to

that "given the core meaning of the 'F-word,' any use of that word or a variation, in any context, inherently has a sexual connotation, and therefore falls within the first prong of our indecency definition." [25] The FCC thus ruled that Bono's specific use of the "F-word," even without repetition, met its definition of "patently offensive" as measured by contemporary community standards for the broadcast medium,[26] and put broadcasters on notice that they could be made liable in the future for even "fleeting" expletives such as that in the Bono Incident.[27]

Following the Golden Globe decision, the FCC found two other television broadcast incidents indecent. In the **Billboard Music Awards**, Cher in 2002 and Nicole Richie in 2003 each used a variant of the word "fuck"; and Richie said "shit" in reference to cow excrement in her reality show, "The Simple Life."[28] These FCC decisions were questioned and eventually found their way to the U.S. Supreme Court after the Second Circuit Court of Appeals ruled that the FCC had been arbitrary and capricious in applying the **"fleeting standard**" without sufficient notice or explanation after years of practice to the contrary.[29] **These cases are pending decision in the U.S. Supreme Court. On November 4, 2008, they were heard on oral argument.**[30]

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protect children from the degrading influences of indecent and profane programming.") and Senate Resolution 283, 108th Cong. (2003) ("resolving that the FCC should reverse the finding of no indecency violation in the Golden Globes complaint and heighten enforcement of decency standards").

[25] *In the Matter of Complaints against Various Broadcast Licensees Regarding Their Airing of the "Golden Globe Awards" Program, supra* at 4978.

[26] *Id.* at 4979.

[27] *Id.*

[28] See *In the Matter of Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005 (Omnibus Order),* 21 F.C.C.R. 13299 (2006).

[29] *Fox Television Stations v. FCC*, 489 F.3d 444 (2d Cir. 2007).

[30] http://www.supremecourtus.gov/docket/07-582.htm.

The checkered history of indecent broadcast speech regulation in the U.S., **after the Court concluded its decision in Pacifica,** leaves no doubt that the Pacifica Court provided not a beginning to the end of the debate on regulation of indecent broadcast speech, but merely an end to the beginning.[31] It thus cannot be gainsaid that **caution ought to be exercised in adopting doctrines enunciated in Pacifica** lock, stock and barrel, as the U.S. High Court explicitly stated that its ruling was peculiar to the facts and circumstances of the case. **Pacifica** ruled that **indecent speech, even in broadcast, does not fall within the same category of unprotected obscene speech**. This is a good place to begin the analysis of the regulation of the subject speech in the case at bar, as the categorization of the speech will bear upon the validity of its regulation.

Protected and unprotected speech

Our **first task** in assessing the validity of speech regulation is to categorize whether the subject speech falls within the domain of protected speech or under the established categories of unprotected speech. The free speech clause supports the proposition that truth will emerge from a "free trade of ideas" through the "competition of the market." [32] In this free marketplace of ideas, any harm that speech may cause can be avoided or addressed by more speech; [33] hence, speech should be protected and not suppressed or punished. Aside from being a tool to ascertain truth, free speech is also valuable in a democracy to assure individual self-fulfillment and participation by the people in social and political decision-making, and to maintain a balance between stability and change.[34] **However, there are recognized**

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[31] See Churchill, W., "The End of the Beginning." http://www.winstonchurchill.org/i4a/pages/index.cfm?pageid=388.

[32] *Abrams v. U.S.,* 250 U.S. 616, 630 (1919), Dissenting Opinion of Justice Holmes.

[33] See *Iglesia ni Cristo v. Court of Appeals*, G.R. No. 119673, July 26, 1996, 259 SCRA 529.

[34] *Gonzales v. Commission on Elections*, 137 Phil. 471, 493 (1969), citing Thomas I. Emerson, *Toward a General Theory of the First Amendmen*t, 72 Yale Law Journal 877 (1963).

categories of speech that are harmful — such harm not curable by more speech — and are thus not protected by the free speech clause or classified as unprotected speech.

Categories of unprotected speech cover "utterances (that) are no essential part of any exposition of ideas (and) of . . . slight social value as a step to truth."[35] They are **categories of speech** determined wholesale and in advance to be harmful. Their prevention and punishment have never been thought to raise constitutional problems.[36] **Being of minimal or no value, their regulation does not require the application of the clear and present danger test or other balancing tests that weigh competing values or interests.** Speech, however, may also be said to be unprotected if, after applying a balancing test to a traditionally protected speech, the government interest being pursued by a regulation outweighs the interest in exercising the right to free speech. This type of unprotected speech, however, is determined by using a **case-to-case balancing test** as differentiated from unprotected speech that falls under established **categories**.

Unprotected speech categories include defamation,[37] **"fighting words**,"[38] **and obscenity**.[39] Let me make short shrift of these categories of unprotected speech, as private respondents assert that the subject speech constitutes defamation and obscenity[40] and public respondents claim that it qualifies as "fighting words,"[41] while the ***ponencia*** **also classifies the subject speech as obscene**.[42]

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[35] *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942).

[36] *Id.* at 571-572.

[37] *New York Times v. Sullivan*, 376 U.S. 254 (1964); *Borjal v. Court of Appeals*, G.R. No. 126466, January 14, 1999, 301 SCRA 1 (1999).

[38] *Chaplinsky v. New Hampshire*, *supra* note 35.

[39] *Miller v. California*, 413 U.S. 15 (1973); *Gonzales v. Kalaw,* G.R. No. 69500, July 22, 1985, 137 SCRA 717 (1985).

[40] *Rollo*, G.R. No. 164785, p. 613.

[41] *Rollo*, G.R. No. 165636, p. 1061.

[42] *Ponencia*, p. 14.

I submit that the subject speech does not fall under any of the above categories of unprotected speech.

First, defamation. At the outset, it should be stated that **private respondent Michael Sandoval is a public figure**. "Public figure" refers to "a person who, by his accomplishments, fame, or mode of living, or by adopting a profession or calling which gives the public a legitimate interest in his doings, his affairs, and his character, has become a 'public personage'. He is, in other words, a celebrity . . . to be included in this category are those who have achieved some degree of reputation by appearing before the public, as in the case of an actor, a professional baseball player, a pugilist, or any other entertainer."[43] By virtue of his profession as a minister of Iglesia ni Cristo and a regular host of the television program *Ang Tamang Daan*, private respondent Sandoval qualifies as a public figure whose actions, character and reputation are of legitimate interest to the public. The content of the subject speech pertains to private respondent Sandoval's alleged detestable conduct of splicing a video and airing it in his television program, *Ang Tamang Daan* — the video presenting petitioner asking for help from his congregation to shoulder the expenses required by his ministry in the amount of 37 trillion pesos instead of the true amount of 3.6 million pesos.[44] **In accord with U.S. and Philippine jurisprudence, for the subject speech to fall within this unprotected category of defamatory speech, private respondent Sandoval has the burden of proving that such speech was made with actual malice or with knowledge that it was false or with reckless disregard of whether or not it was false.**[45] **Private respondent has failed to discharge this burden.**

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[43] *Ayer Productions Pty. Ltd. and McElroy & McElroy Film Productions v. Hon. Ignacio M. Capulong and Juan Ponce Enrile*, G.R. No. 82380, April 29, 1988, 160 SCRA 861.

[44] *Rollo*, G.R. No. 164785, pp. 470-471.

[45] *New York Times Co. v. Sullivan*, 388 U.S. 130 (1967); *Curtis Publishing Company v. Butts*, 388 U.S. 130 (1967); *Borjal v. Court of Appeals*, *supra*.

Second, "fighting words." These are "words which, by their very utterance, inflict injury or tend to incite an immediate breach of the peace."[46] In ***Chaplinsky v. New Hampshire***,[47] the U.S. Supreme Court held that a state may forbid the use in a public place of words that would be likely to cause an addressee to fight. Accordingly, it found that Chaplinsky's calling the city marshall a "damned fascist" and "damned racketeer" qualified as "fighting words." It is not sufficient, however, for the speech to stir anger or invite dispute, as these are precisely among the functions of free speech.[48] **In the case at bar, as public respondent has not shown that the subject speech caused or would be likely to cause private respondent Sandoval to fight petitioner**, **the speech cannot be characterized as "fighting words."** Public respondents' statement that the subject speech constitutes "fighting words" is a **mere conclusion** bereft of well-grounded premises, *viz*:

> Finally, to erase any lingering doubt on the propriety of the MTRCB's action *vis-a-vis* petitioner's case, it is respectfully submitted that the words used by petitioner in his program *Ang Dating Daan*, were unmistakably provocative and indecent. They were provocative because "their very utterance inflict injury or tend to incite an immediate breach of the peace." This can be deduced from the fact that they were directed at a particular person, *i.e.,* respondent Michael Sandoval of the rival Iglesia ni Cristo, whose enraged feeling could have spurred immediate retaliation and violence. Acrimonious word-wars among religious advocates, as history would show, are among the provocateurs of vicious reactions. As such, petitioner's expressions fall within certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. In constitutional law, they are referred to as "fighting words" and are definitely subject to the MTRCB's power under Sec. 3 (c) of P.D. 1986.[49]

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[46] *Chaplinsky v. New Hampshire*, *supra* note 35; *Social Weather Stations v. COMELEC*, G.R. No. 147571, May 5, 2001, 357 SCRA 496.

[47] 315 U.S. 568 (1942).

[48] *Terminiello v. Chicago*, 337 U.S. 1 (1949).

[49] *Rollo*, G.R. No. 165636, pp. 1060-1061.

Third, obscenity. The test to determine obscene speech was laid down in the U.S. case ***Roth v. United States***[50] and substantially adopted in the Philippine case ***Gonzales v. Kalaw***,[51] *viz.*: "whether to the average person, applying contemporary community standards, the dominant theme of the material, taken as a whole, appeals to prurient interest." In a later U.S. case, ***Miller v. California***,[52] the test was modified to give room for serious value to accompany the speech. Thus, the **Miller test** is three-pronged: (1) whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to prurient interest; (2) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (3) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. Whether the **Roth** or the **Miller** test is used, at core, the test is whether the material appeals to prurient interest.

While the subject speech speaks of or suggests sexual acts, a consideration of the context of the speech derived from a reading of the transcripts[53] of the August 10, 2004 episode of

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[50] 354 U.S. 476 (1957).

[51] G.R. No. 69500, July 22, 1985, 137 SCRA 717.

[52] 413 U.S. 15 (1973).

[53] *Rollo*, G.R. No. 164785, pp. 148-153. The transcripts of an excerpt from the August 10, 2004 episode of *Ang Dating Daan* read, *viz*:

> Bro. Manny Catangay Jusay:
>
> *. . . 'Yung pinapakita nila sa telebisyon e, paano mo pang paniniwalaan 'yung ipinapakita sa kabila e edited lahat iyon, pati 'yung meron pa silang trilyon na sinasabi. Wala pa ngang isang milyon tayo, hihingi si Bro. Eli ng milyon? Ano ba naman iyon?*
>
> Bro. Josel Mallari:
>
> *'Yung tagpo na iyon, kapatid na Manny, nabanggit n'yo din lang ano, kaanib na kayo, hindi ba no?*
>
> *Bro. Manny Catangay Jusay:*
>
> *Opo.*

Bro. Josel Mallari:

So 'yung sinasabing trilyon na iyon, alam n'yo kung ano iyon actual e, 'yung usapan nun. Naka-attend ba kayo sa pagkakatipon natin nuon nung banggitin 'yung ah, pangangailangan na bayaran natin sa telebisyon?

Bro. Manny Catangay Jusay:

Nasubaybayan ko ho 'yung mga pangyayari na iyon.

Bro. Josel Mallari:

Ano pong naging reaksyon n'yo nung iplay nila'y naiba na 'yung kanilang ipinlay dahil walang sinasabing humihingi si Bro. Eli ng trilyon-trilyon, kung ilang . . . six trilyon na para daw sa sarili niya. E samantalang doon mismo sa pagkakatipon (sic) nung pinag-uusapan ng kapatiran e ang tungkol sa problema na iyan, 'yung ipambabayad natin sa TV, iyan po'y bantad sa ating lahat e.

Bro. Manny Catangay Jusay:

Open iyan e. At saka sabihin pa natin hindi ko napanood 'yung mga naunang anong iyon, para humingi ang (sic)Bro. Eli ng trilyon sa isang samahan na wala pa yatang isang milyon, naku naman, napakaimposible naman nun. Saan naman naming kukunin 'yung ibibigay naming kay Bro. Eling trilyon? Kaya hindi totoo iyon. Hindi totoo iyon. Alam kong meron na naman silang hinocus pocus. Iyon ho ang unang reaksyon ko doon.

Bro. Josel Mallari:

E, ang introduction nila roon e, nanghihingi daw ng para sa kaniyang sarili, pakinggan ang wika ninyo ito't trilyon. Pakinggan natin mabuti pa, Kapatid na Mel . . .

(PLAYBACK) *ANG TAMANG DAAN NET 25 MARCH 16, 2004* 9-10 PM

Michael:

Pero kapatid na Pol, gaya ng ipinangako natin sa kanila, ano ang katibayan na talagang ugali, ugali nitong pinuno, ni Mr. Kontradiksyon na manghingi sa kanyang miyembro ng kanyang pangangailangan.

Pol:

Ibig sabihin para makahingi sa miyembro sinasabi 'yung pangangailangan.

Michael:

At iyong hiningi nitong kamakailan lang . . .

Pol:

Ay mabuti'y pakinggan po natin siya. Kumapit kayo sa inyong upuan. Ito po . . .

(PLAYBACK)

Bro. Eli F. Soriano:

Bago po tayo lubusang maghiwa-hiwalay ngayong hapon at dumulog sa Dios sa pananalangin, pagsama-samahin nating ihandog sa Dios ang ating mga tulong sa Pasalamat na ito. Para po sa mga kapatid, magbabayad ng THREE MILLION SIX HUNDRED THOUSAND sa UNTV 37, tulungan n'yo naman ako. Napakalaki ng binabayaran natin. Trillion. Six trillion 'yung bayad natin nitong nakaraang buwan. Tapos sa SBN pa, tulungan n'yo naman ako mga kapatid.

Pol:

Kapatid na Michael. Mga kababayan, nagulat ba kayo? Kami rin ho, nagulat sa laki ng hinihingi nito.

Michael:

Baka 'yung ibang nanonood sa atin, nahulog sa upuan kapatid na Pol.

Pol.

Oo, isipin ho ninyo, balikan nga natin, baka sabihin nila nagkariringgan lang tayo.

Michael:

E kasi malaki ho e.

Pol:

Oo

Michael:

Six trillion! Six trillion!

Pol:

Balikan po natin uli . . .

(PLAYBACK)

Bro. Eli F. Soriano:

Para po, mga kapatid, magbabayad ng THREE MILLION SIX HUNDRED THOUSAND sa UNTV 37, tulungan n'yo naman ako. Napakalaki ng binabayaran natin. Trillion. Six trillion yung bayad natin nitong nakaraang buwan. Tapos sa SBN pa, tulungan n'yo naman ako mga kapatid.

Michael:

Mga kababayan, kapatid na Pol, talagang maliwanag po e, trillion ang hinihingi, hindi milyon, hindi bilyon. Trillion, six trillion pesos.

Pol:

Iyon daw . . .

Bro. Josel Mallari:

O ayan, iyang kalokohan nitong mga ito.

Bro. Eli F. Soriano:

Tingnan mo ha. 'Yung 3.6 milyon, ginawa nila 'yung (sic) 3 pinutol nila iyon, tapos inedit nila, idinugtong nila 'yung "llion" kaya naging trilyon, di ba 'no, kapatid na Josel? Tingnan mo 'yung kawalanghiyaan niyang mga iyan. Ipakita natin ngayon ang original.

Bro. Josel Mallari:

Sige po.

(PLAYBACK) PASALAMAT SA DIOS January 10, 2004

Bro. Eli F. Soriano:

Bago po tayo lubusang maghiwa-hiwalay ngayong hapon at dumulog sa Dios sa pananalangin, pagsama-samahin nating ihandog sa Dios ang ating mga tulong sa Pasalamat na ito. Para po sa mga kapatid, magbabayad ng THREE MILLION SIX HUNDRED THOUSAND sa UNTV 37, tulungan n'yo naman ako. Napakalaki ng binabayaran natin 3.6 million 'yung bayad natin nitong nakaraang buwan. Tapos sa SBN pa, tulungan n'yo naman ako, mga kapatid. . . .

Bro. Eli F. Soriano:

Iyan ang original, di ba? Pinutol nila 'yung 3.6 milyon, idinugtong nila 'yung three tapos "llion". Ang husay na kademonyuhan niyang mga tao na iyan. Wala na ngang dapat balikan si kapatid na Manny diyan. E, demonyong talaga e . . .

Bro. Willy Santiago:

Opo.

Bro. Josel Mallari:

Opo. Aba'y kung hindi po ba talagang mga demonyo Bro. Eli, iyan po ay hindi broadcast material.

Bro. Eli Soriano:

Oo. Hindi broadcast material iyan, wala lang talagang natutunang broadcasting ethics iyang mga tao na iyan. At pati 'yung television station nila, walang broadcast ethics na alam 'yung mga tao na iyon, dahil iyan e, alam nilang iyan e ninakaw na tape, Bro. Josel. That is not intended for broadcast. Iyan ay sa samahan natin. Pero inaano ng . . . 'Yung pamahalaan nung kanilang UNTV na iyon, walang natutunang ethics iyon.

Bro. Willy Santiago:

Net 25 po.

Bro. Eli F. Soriano:

Kung gusto nila idemanda nila ako. Walang natuto ng ethics doon, kahit anong ethics pa. Hindi na broadcasting ethics, pati Good Manners and Right Conduct, walang natutunan iyang mga taga-television na iyan. Alam mo kung bakit?

Bro. Josel Mallari:

Bakit po?

Bro. Eli F. Soriano:

E, nagbroabroadcast ng walang pahintulot ng may-ari ng tape e. Ninakaw pa 'yung tape e.

Bro. Josel Mallari:

At nung gamitin na, Bro. Eli, tinanggal po 'yung video para hindi mahalata 'yung kanilang pandodoktor.

Bro. Eli F. Soriano:

Oo, para hindi mahalata 'yung gagawin nilang hocus pocus. Gago talaga. Mga gago talaga.

Bro. Josel Mallari:

E di mga walanghiya iyan.

Bro. Eli F. Soriano:

Iyan iyang mga dapat tawagin ng P.I. di ba Kapatid na Manny? Sa ere, dapat i-PI mo iyan sa ere, lahat ng mga iyan. Gago talaga iyang mga iyan.

Bro. Josel Mallari:

Dahil nga kitang-kita mo ang motibo nila. Tinanggal nila 'yung video, pinutol-putol nila 'yung audio para patunuging 'yung 3.6 milyon ay maging 6 trilyon. Sis. Luz. Nilagyan nila ng caption. Hindi mo nga naman mahahalata hindi mo nakikita 'yung nagsasalita e. Kung mahina-hina kang humalata, matatangay ka ng panloloko nitong mga walanghiya na ito e.

Bro. Eli F. Soriano:

Gago talaga iyan. Iyang si Michael, gago iyan. Sino pa?

Bro. Josel Mallari:

Si Pol Guevarra.

Bro. Eli F. Soriano:

Mga demonyo iyan. Mga sinungaling iyan. Alan mo sa korte, hindi nila susumpaan iyang ginagawa nila na iyan e. They will not swear to that. Alam nilang makukulong sila pagka sinumpaan nila iyan e. Kaya gusto ko dalhin nila sa korte iyan e. At baka gusto ng channel 25, dalhin n'yo sa korte iyang kawalan n'yong etiketa moral. Lahat kayo diyan, walang etiketa moral, sa pagpalabas n'yo ng ganyang mga uri ng palabas. Bakit? Iya'y pagnanakaw. Ayan. Di n'yo ba nakita nagdemanda ang channel 2, o ang channel 7 sa channel 2 dahil pinagbintangan nagnakaw ng video. Ayan, hindi ako nagbibintang. Patutunayan ko, ninakaw ninyo iyan dahil hindi iyan for broadcast, di ba? Sige, idemanda n'yo ako taga-channel 25. Magharap tayo sa korte para malaman ng buong Pilipinas kung gaano kayo kagago diyan sa Iglesia ni Manalo. Makapanira lang kayo kahit na ang tape ay iedit n'yo, halatang-halata kayo, mga anak kayo ng demonyo mula sa editor n'yo hanggang sa manager ninyo diyan. Mga anak kayo ng demonyo. Sino ang may sabi? Si Cristo. Pakinggan n'yo, 8:44 . . .

Sis. Luz Cruz:

Kayo's sa inyong amang diablo, at ang mga nais ng inyong ama ang ibig ninyong gawin. Siya's isang mamamatay-tao buhat pa nang una, at hindi nananatili sa katotohanan, sapagka't walang katotohanan sa kaniya. Pagka nagsasalita siya ng kasinungalingan, ay nagsasalita siya ng sa ganang kaniya: sapagka't siya'y isang sinungaling, at ama nito.

Bro. Eli F. Soriano:

At ama ni Michael. Diba, siya'y ama ng sinungaling at ama ni Michael at ni Pol Guevarra. Mga anak iyan, lehitimong anak ni Satanas iyang mga demonyo na iyan kapatid na Manny. O sige, subukan nilang magdemanda, kahit sa Supreme Court, haharapin ko kayo mga gago kayo. Mga ministro kayong gago. Bakit? E, biro mong panloloko sa kapwa-tao iyan, ieere mo, ieedit mo, aalisin mo 'yung video para lang makapanira ka. Malaking kademonyuhan iyan. Iyan ba kinukunsinte ng pamunuan n'yo? Kayo ba ang mga sugo ng Dios? Kapal ng pagmumukha n'yo. Kayo ba ang sugo ng Dios niyan? "yun bang erdie n'yo at saka 'yung Eduardo n'yo, sugo ba ng Dios iyan?

Mga kababayang Iglesia ni Manalo, maghunos-dili kayo. Layasan n'yo iyang relihiyon na iyan dahil sa impiyerno kayo dadalhin niyang mga iyan. Sa impiyerno kayo diyan. Walang Iglesia ni Manalong naniniwala kay Manalong makakarating sa langit. Impyerno ang bagsak n'yo. Bakit? Kinukunsinte ni Manalo yung kademonyuhan nung mga pastor niya e. Kung hindi niya kinukunsinte, this is not the first time na pinasama tayo niyang mga demonyo na iyan. And this is not the second time. This is . . . they are practicing propensity about telling the public a big lie as big and even bigger than their central office. Di ba ganyan iyan? Propensity na iyan Kapatid na ano e, Kapatid na Pacing di ho ba?

Atty. Pacing Rosal:

Repeated

Bro. Josel Mallari:

Ulit-ulit na iyang talagang kawalanghiyaan na iyan, naku. E, markado nang masyado at saka branded na itong mga ito anong klase po sila. Wala kayong babalikan diyan Kapatid na Manny. Iyang klase ng mga ministro na iyan, pasamain lamang si Kapatid na Eli e pati mga ninakaw na tape, pati mga audio na pinag-edit edit, lalagyan ng caption para makita nila, maipakita nilang malinaw 'yung panloloko nila. Kasi Sis. Luz, puwede mo nang hindi lagyan ng caption e, patunugin mo na lang na ganun ang sinasabi. Pero talagang para mai-emphasize nila 'yung kanilang kawalanghiyaan, lalagyan pa nila ng caption na hindi naman talagang sinabi ni Bro. Eli kundi pinagdugtong lang 'yung audio.

Bro. Eli F. Soriano:

At saka ang malisyoso. Kitang-kita malisyoso e. Paninirang-puri e. Alam mo kung bakit? Mahilig daw ako talagang manghingi para sa aking pangangailangan. Pangangailangan ko ba 'yung pambayad sa UNTV e ang mga kontrata diyan ay hindi naman ako kapatid na Josel.

Bro. Josel Mallari:

Ay, opo.

Bro. Eli F. Soriano:

Hindi ko kontrata iyang babayaran na iyan. I am not even a signatory to that contract. Pagkatapos para pagbintangan mo ako na humingi ako para sa pangangailangan ko, gago ka talaga Michael. ***Masahol ka pa sa putang babae. O, di ba? "yung putang babae ang gumagana lang doon 'yung ibaba. Dito kay Michael ang gumagana 'yung itaas, diba? O, masahol pa sa putang babae iyan. Sobra ang kasinungalingan nitong mga demonyong ito. Sige, sumagot kayo. At habang ginaganyan ninyo***

Ang Dating Daan would easily yield the conclusion that the **subject speech does not appeal to prurient interest**. Petitioner admits having uttered the subject speech, but claims that it was provoked by the "detestable conduct of the ministers of Iglesia ni Cristo who are hosting a television program entitled *Ang Tamang Daan*." Allegedly, as aforementioned, said ministers played a video in which petitioner was asking for help from his congregation to shoulder the expenses required by his ministry, but they spliced the video to make it appear that he was asking for contributions to pay 37 trillion pesos instead of the true amount of 3.6 million pesos.[54] As the subject speech, taken in context, does not appeal to prurient interest, I submit that the proposition that it is unprotected obscene speech should be jettisoned.

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ako, ang mga miyembro ninyo unti-unting maliliwanagan. Makikita n'yo rin, magreresulta ng maganda iyan.

Bro. Manny Catangay Jusay:

Bro. Eli, ay, iyan nga po ang sinasabi ko e, habang gumagawa sila ng ganyan, gaya nung sinabi nung Kapatid natin kagabi dahil napanood 'yung kasinungalingan ni Pol Guevarra, ay, lumuluha 'yung Kapatid, inaanyayahan 'yung mag-anak niya. Magsialis na kayo diyan. Lipat na kayo rito. Kasi kung nag-iisip lang ang isang Iglesia ni Cristo matapos ninyong mapanood itong episode na ito, iiwanan ninyo e, kung mahal ninyo ang kaluluwa ninyo. Hindi kayo paaakay sa ganyan, nagpafabricate ng mga kasinungalingan. Sabi ko nga lahat ng paraan ng pakikipagbaka nagawa na nila e, isa na lang ang hindi 'yung pakikipagdebate at patunayan na sila ang totoo. Iyon na lang ang hindi nila nagagawa. Pero demanda, paninirang-puri — nagtataka nga ako e, tayo, kaunting kibot, nakademanda sila e. 'yung ginagawa nila, ewan ko, idinedemanda n'yo ba Bro. Eli?

Bro. Eli F. Soriano:

E, papaano ka pa magdedemanda e sa piskalya pa lang ay may nakaharang na. At ang dadahilanin pa ng piskalya'y nakikiusap daw ay malacañan. Kahit hindi totoo'y nakakapasa demanda e, di ba? Kaya nga naidaing ko iyan kay Presidente e. Idinadahilan kako nung piskal e ang malacañan ang nakaano e. Kaya naman malakas ang loob kong sahibin kay Presidente iyan, may ebidensiya ako kung sinong piskal iyan. Hawak ni Atty. Pacing ang ebidensya ko e. (emphasis supplied)

[54] *Rollo*, G.R. No. 164785, pp. 470-471.

Instead, petitioner's utterance, "*Yung putang babae ang gumagana lang doon yung ibaba*," constitutes **indecent speech** according to the definition of the term in **Pacifica**. The utterance falls under the category of **indecent speech that is protected depending on the context in which it is spoken** as held in that case. In ***Cohen v. California***,[55] the U.S. Supreme Court held that the words "**Fuck the Draft**" came within the purview of constitutionally protected speech as a political statement in a public place. In that case, Paul Cohen entered a Los Angeles courthouse wearing a jacket emblazoned with the words "Fuck the Draft." After entering the courtroom, he quietly took off his jacket and folded it. **The evidence showed that no one in the courthouse was offended by his jacket**. But when he left the courtroom, he was arrested and convicted of disturbing the peace and sentenced to 30 days in prison. **The U.S. High Court rejected the argument that his speech would offend unwilling viewers and reversed his conviction.**

Unlike in **Cohen**, however, the indecent speech in the case at bar was uttered in a **television broadcast**. This fact is **crucial** in determining the standard to regulate it. Let me thus focus on this fact.

Television broadcast as a medium of speech

In ***Joseph Burstyn, Inc. v. Wilson***,[56] the U.S. Supreme Court emphasized that it had long recognized that each medium of expression presents special First Amendment[57] problems. It is also acknowledged that among all forms of communication, it is broadcasting that has received the most limited First Amendment protection.[58] The unique regulation of broadcast

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[55] 403 U.S. 15.

[56] 343 U.S. 495, 502-503 (1952).

[57] The First Amendment of the U.S. Constitution provides in relevant part, *viz*:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press . . .

[58] *Chavez v. Gonzales*, G.R. No. 168338, February 15, 2008, 545 SCRA 497.

speech is accepted for at least two reasons as articulated by the Court in ***Eastern Broadcasting Corporation v. Dans***, citing **Pacifica**, *viz*:

> **First**, broadcast media have established a uniquely pervasive presence in the lives of all citizens. Material presented over the airwaves confronts the citizen, not only in public, but in the **privacy of his home**. **Second**, broadcasting is **uniquely accessible to children**. Bookstores and motion picture theaters may be prohibited from making certain material available to children, but the same selectivity cannot be done in radio or television, where the listener or viewer is constantly tuning in and out.[59] (emphases supplied)

In ***Chavez v. Gonzales***,[60] the Court acknowledged that broadcast media is subject to regulatory schemes including licensing, regulation by administrative bodies, and censorship not only in our country but also in other jurisdictions. We held, *viz.*:

> The **reasons** behind treating broadcast and films differently from the print media differ in a number of respects, but have a common historical basis. **The stricter system of controls seems to have been adopted in answer to the view that owing to their particular impact on audiences, films, videos and broadcasting require a system of prior restraints**, whereas it is now accepted that books and other printed media do not. **These media are viewed as beneficial to the public in a number of respects, but are also seen as possible sources of harm.**[61] (emphases supplied)

In the Philippines, television broadcast is regulated by the MTRCB created under Presidential Decree (P.D.) No. 1986 issued in 1985.

Section 3 (b), (c), and (d) of the law, in relevant part, provides for the powers and duties of the MTRCB, *viz*:

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[59] *Eastern Broadcasting Corp. v. Dans*, G.R. No. 59329, July 19, 1985, 137 SCRA 628.

[60] *Supra* note 58 at 441.

[61] *Id.* at 506, citing Fenwick, H., *CIVIL LIBERTIES AND HUMAN RIGHTS* 296 (3rd ed. 2002).

b) **To screen, review and examine . . . television programs** . . . for television broadcast or for general viewing, imported or produced in the Philippines, and in the latter case, whether they be for local viewing or for export;

c) To **approve or disapprove**, delete objectionable portions from and/or **prohibit** the importation, exportation, production, copying, distribution, sale, lease, **exhibition and/or television broadcast** of the motion pictures, **television programs** and publicity materials subject of the preceding paragraph, which, **in the judgment of the board applying contemporary Filipino cultural values as standard, are objectionable for being . . . indecent . . .**

d) To classify motion pictures, **television programs** and similar shows into categories such as **"G" or "For General Patronage" (all ages admitted),** "P" or "Parental Guidance Suggested", "R" or "Restricted" (for adults only), "X" or "Not for Public Viewing", or such other categories as the BOARD may determine for the public interest. (emphases supplied)

Section 3 (a) of P.D. No. 1986 also authorizes the MTRCB "to promulgate such rules and regulations as are necessary or proper for the implementation of this Act, and the accomplishment of its purposes and objectives." The 2004 MTRCB Implementing Rules and Regulations provides for television classification under Section 2, *viz*:

SECTION. 2. Television Classification. — All television programs, motion pictures, and publicity/promotional materials for or pertaining to television broadcast are to be classified as GENERAL PATRONAGE ("G"); PARENTAL GUIDANCE ("PG"); and NOT FOR PUBLIC VIEWING ("X"). The BOARD may consider the time slot, purpose and venue of the program in determining the proper rating for it.

A. GENERAL PATRONAGE ("G") — Suitable for all ages. Material for television which, in the judgment of the BOARD, does not contain anything unsuitable for children and minors, and may be viewed without adult guidance or supervision.

B. PARENTAL GUIDANCE ("PG") — Parental guidance suggested. Material for television which, in the judgment

> of the BOARD, may contain some adult material but may be permissible for children to watch under the guidance and supervision of a parent or adult.

The "PG" classification advises parents to exercise parental responsibility in their children's viewing of the program. An advisory to the effect that the program requires Parental Guidance and the reason for such a classification (*e.g.* language, violence, *etc.*) shall be shown immediately before the opening credits of the particular television material classified as such. The phrase "Parental Guidance" shall be superimposed throughout the showing of the television material classified as such. (emphasis supplied)

With the acknowledged need for regulation of broadcast speech, let me now turn to the regulation specifically of indecent speech in television broadcast.

Indecent speech in television broadcast

In **Chavez**, the Court explained the distinction between content-neutral and content-based speech. **Let me expound on this distinction, as it spells a difference in the tests to use for regulation.**

A **content-based** regulation is based on the subject matter of the utterance or speech. It is the **communicative impact** of the speech or the reader's possible reaction to the ideas expressed that is being regulated. An example of a content-based regulation is a regulation prohibiting utilities from including, in monthly electric bills, inserts discussing the desirability of nuclear power or other political views, as the contents might inflame the sensibilities of the readers. It is irrelevant that the entire subject matter of nuclear power, and not just one particular viewpoint, is being regulated. To bring home the point, if the insert were blank or in an undecipherable language, it could not inflame the sensibilities of its readers because of its content and would thus not fall within the prohibition.[62] Typically, **strict scrutiny** is applied to content-based regulations of speech and requires that

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[62] *Consolidated Edison v. Public Service Commission,* 447 U.S. 530 (1980). The U.S. Supreme Court ruled that such a regulation was invalid.

laws "be narrowly tailored to promote a compelling Government interest."[63] This test calls for "the least restrictive alternative" necessary to accomplish the objective of the regulation.[64] The **test is very rigid** because it is the communicative impact of the speech that is being regulated. The regulation goes into the heart of the rationale for the right to free speech; that is, that there should be no prohibition of speech merely because public officials disapprove of the speaker's views.[65] Instead, there should be a free trade in the marketplace of ideas, and only when the harm caused by the speech cannot be cured by more speech can the government bar the expression of ideas.

A **content-neutral** regulation, on the other hand, is merely concerned with the incidents of the speech; or merely controls the time, place or manner of the speech under well-defined standards, **independent of the content of the speech**. For example, a regulation forbidding the distribution of leaflets to prevent littering is a content-neutral regulation, since the harm sought to be prevented exists regardless of what information or content the leaflet contains. In fact, even a blank leaflet or a leaflet containing writings in undecipherable language can end up being littered and thus fall within the scope of the prohibition.[66] For content-neutral regulation, an **intermediate test** is employed, which requires that the regulation be narrowly drawn to pursue a **substantial or significant government interest**, provided that the regulation of the time, place, or manner of speech does not mask discrimination based on the communicative content of the speech.[67] The **test is not as rigid** as that used in content-

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[63] *United States v. Playboy Entertainment Group, Inc.,* 529 U.S. 803, 813 (2000); *Consolidated Edison Co. of New York, Inc. v. Public Service Commission, supra* at 540; Zacharias, F., "*Rethinking Confidentiality: Is Confidentiality Constitutional*?" 75 Iowa Law Review 601, 612-613 (March, 1990).

[64] See *Widmar v. Vincent*, 454 U.S. 263, 269-70 (1981).

[65] *Consolidated Edison v. Public Service Commission*, *supra* at 536.

[66] See *Schneider v. State*, 308 U.S. 147 (1939).

[67] *United States v. O'Brien*, 391 U.S. 367 (1968); *Schneider v. State*, 308 U.S. 147 (1939); *Chavez v. Gonzales, supra* note 58.

based regulation, as the regulation does not seek to regulate the communicative impact of the speech, but only its incidents of time, place, or manner of expression.

The **Pacifica Court**, however, **did not articulate the standard** of review it was employing nor did it identify a compelling state interest in putting the FCC's content-based regulation under scrutiny. Neither did it conduct the typical weighing of the government interests and the narrowness of the means of achieving them. Nonetheless, it is clear that the **Pacifica Court** approved the governmental interest in protecting children and deemed regulation of broadcast speech an acceptable way to achieve that goal, at least in the specific circumstances of the case. Despite the regulation being content-based, it would appear that a less than strict scrutiny or intermediate scrutiny was acceptable to the U.S. High Court, considering the unique characteristics of broadcasting and the nature of the subject words in the Carlin monologue. The Court found that the "words offend for the same reasons that obscenity offends,"[68] but "they are not entirely outside the protection of the First Amendment . . . [as] [s]ome uses of even the most offensive words are unquestionably protected."[69] An intermediate scrutiny of a content-based regulation such as that in **Pacifica** would require that the regulation further a substantial or significant government interest through means that are not more extensive than necessary to directly serve that interest.[70]

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[68] *FCC v. Pacifica*, *supra* note 4 at 746.

[69] *Id.*

[70] See *Young v. American Mini Theatres, Inc*., 427 U.S., 50, 63 n.18 (1976); Zacharias, F., "*Rethinking Confidentiality: Is Confidentiality Constitutional*?" 75 Iowa Law Review 601, 631-632 (March, 1990). Commercial speech, in comparison to political speech, is also a low-level protected speech that may be restricted in furtherance of only a substantial government interest and only through means that is not more extensive than necessary to directly serve that interest. *(Central Hudson Gas & Electric Corp. v. Public Service Commission of New York,* 447 U.S. 557, 566). See Concurring and Separate Opinion of Chief Justice Reynato S. Puno in *Pharmaceutical and Health Care Association of the Philippines v. Health Secretary Francisco T. Duque III, et al*. G.R. No. 173034, October 9, 2007, 535 SCRA 265.

It is my considered view that the characteristic of broadcasting that is decisive in the regulation of indecent broadcast speech is the **risk of presence of children in the audience, considering the pervasiveness of broadcast media.** Indeed, in ***Iglesia ni Cristo v. Court of Appeals***,[71] the Court took note of the fact that "television is a medium that reaches even the eyes and ears of children." Hence, the FCC's concept of "indecent" on television as stated in Pacifica is a good guide for the Court to adopt: "[**T]he concept of 'indecent' is intimately connected with the exposure of children to language that describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs at times of the day when there is a reasonable risk that children may be in the audience."**[72] The context is all-important. Thus, in **Pacifica**, "the FCC characterized the language used in the Carlin monologue as 'patently offensive,' though not necessarily obscene, and expressed the opinion that it should be regulated by principles analogous to those found in the law of nuisance where the 'law generally speaks to ***channeling*** **behavior** more than actually prohibiting it.'"[73] (emphasis supplied)

In the U.S., as shown in **Pacifica** in which the Court deemed as crucial the broadcast of Carlin's monologue at 2:00 p.m., "time of day" is used as a guide for assessing the risk of children being in the audience and "channeling" the speech. As aforementioned, the FCC has adopted a "safe harbor" period between 10:00 p.m. and 6:00 a.m. when indecent speech may be aired and has set the period between 6:00 a.m. and 10:00 p.m. for broadcast to be clear of indecent speech. In the Philippines, a classification or rating scheme is employed to determine the language suitable to the audience of a television program. Thus, the afore-quoted Section 2 of the 2004 MTRCB Implementing Rules and Regulations in relation to Section 3 (d) of P.D. No. 1986 provides that television programs with a "G"

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[71] G.R. No. 119673, July 26, 1996, 259 SCRA 529.

[72] *FCC v. Pacifica*, *supra* note 4 at 731-32.

[73] *Id.*

rating should "not contain anything unsuitable for children and minors" and "may be viewed without adult guidance or supervision." Petitioner's television program *Ang Dating Daan* is a "G"-rated program,[74] and as such, should conform to the standards of its classification. Petitioner does not challenge the "G" rating of his program.

As in **Pacifica**, the welfare of children and the state's performance of its *parens patriae* duty to take care of them constitute a substantial government interest in regulating indecent speech in television broadcast as provided under P.D. No. 1986. In ***Gonzales v. Katigbak***,[75] the Court took note that "television reaches every home where there is a set. Children then will likely be among the avid viewers of the programs therein shown . . . It cannot be denied . . . that the State as *parens patriae* is called upon to manifest an attitude of caring for the welfare of the young." As stated in Chapter 1, Section 5 of the MTRCB Rules and Regulations, the "review and classification system rests on the doctrine of *PARENS PATRIAE*."

With vulnerable and impressionable children and minors in the audience of a "G"-rated television program, I respectfully submit that the words "*'Yung putang babae, ang gumagana lang doon yung ibaba"* are not protected by the free speech clause. By Filipino community standards, the language is a patently offensive description of sexual activity. It expresses promiscuous sexual conduct of a prostitute, and indiscriminately expands the vocabulary and understanding — or misunderstanding — of impressionable children and minors. The language has the effect of debasing and brutalizing human beings by reducing them to their mere bodily functions.[76]

The subject speech uttered by petitioner constitutes **indecent speech unprotected in the particular context of a "G"-rated television program, which children and minors may be watching without adult guidance or supervision.** Given the

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[74] *Rollo*, G.R. No. 164785, p. 261.

[75] G.R. No. 69500, July 22, 1985, 137 SCRA 717.

[76] *FCC v. Pacifica*, *supra* note 4 at 746, footnote 43.

value of indecent speech and the harm it inflicts on children and minors in this context, this kind of speech is a **category** that falls outside the protection of the free speech clause. The harm done to children, the immediate expansion of their vocabulary to include indecent speech, cannot be cured by more speech. **Thus, there is no room for the application of the clear and present danger test (or some other balancing test)** to determine in each case (including the case at bar) whether "the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."[77] There is a wholesale and advance determination that language characterized as indecent on a "G"-rated television broadcast is harmful and may be constitutionally proscribed. This narrow proscription is a **unique** content regulation (indecent content) using a context standard (when children and minors may be watching television unsupervised) and fashioned specifically for the unique, pervasive characteristic of television broadcast. The prohibition in this particular context is not more extensive than necessary to directly serve the government interest in protecting impressionable and vulnerable children in the audience. **In cases involving this established category of unprotected indecent speech, what is crucial in determining whether a particular speech comes within the purview of the free speech clause is the characterization of the speech as falling within or outside of the category, and not the case-to-case balancing of interests.**

Petitioner disputes the narrowness of the standards provided by Section 3 (c) of P.D. No. 1986 in prohibiting the subject speech. He questions the constitutionality of this provision **as applied** to him as shown by the following portions of his pleadings, *viz*:

As applied to the circumstances attendant in the case at Bench, both Section 3(c) of P.D. No. 1986 and the challenged Decision and Order should be struck down as unconstitutional for being an

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[77] *Schenck v. United States*, 249 U.S. 47, 52 (1919), cited in *Cabansag v. Fernandez*, 102 Phil. 152 (1957); *ABS-CBN Broadcasting Corp. v. COMELEC,* G.R. No. 133486, January 28, 2000, 323 SCRA 811.

undue restriction on the constitutionally-guaranteed right to religious speech and exercise and free speech and expression . . .[78]

xxx xxx xxx

By saying that Sec. 3(c) of P.D. No. 1986 is unconstitutional **as applied, Petitioner is precisely questioning the statute in its application to the case at Bench**.[79]

xxx xxx xxx

The **cases at Bench involve subsequent punishment for certain words uttered by Petitioner in during** (sic) **the 10 August episode of his program Ang Dating Daan . . .**

By reason of the fact that it deals with the curtailment of most cherished freedoms, the standards governing subsequent punishment should be narrowly drawn so as not to unnecessarily censor **legitimate** speech, wither (sic) religious or non-religious. Section 3(c) of P.D. No. 1986, however, does not furnish a **narrowly drawn** standard for subsequent punishment. As such, it should be struck down as unconstitutional.[80] (emphases supplied)

Petitioner's argument — that Section 3 (c) of P.D. No. 1986, **as applied to him**, fails to furnish a **narrowly drawn standard for subsequent punishment** — does not hold water. Let me put under the lens of scrutiny these constitutional concepts of "as applied" challenge to the constitutionality of the subject law and "subsequent punishment" of speech.

"Facial" and "as applied" challenges to the constitutionality of a statute

A challenge to the constitutionality of a statute may be "as applied" or "facial." An "as applied" challenge is an assertion that a statute cannot constitutionally be applied to a litigant

[78] *Rollo*, G.R. No. 165636, p. 88; Petition, G.R. No. 165636, p. 86; *rollo*, G.R. Nos. 164785 and 165636, pp. 493-493. Memorandum, G.R. Nos. 164785 and 165636, p. 25.

[79] *Rollo*, G.R. No. 164785, p. 438; Memorandum, G.R. Nos. 164785 and 165636, p. 25.

[80] *Rollo*, G.R. No. 164785, pp. 456-457; Memorandum, G.R. Nos. 164785 and 165636, pp. 43-44.

under the particular facts of a case.[81] A statute may be invalid as applied to one state of facts and yet valid as applied to another.[82] Future litigation under the statute is still possible, and litigants may argue that their facts are similar to, or unlike, the facts under which the court upheld the "as applied" challenge to the statute.[83] An "as applied" decision allows the law to operate where it might do so constitutionally and vindicates a claimant who shows that his own speech is protected by the free speech clause and cannot be burdened in the manner attempted.[84]

On the other hand, a "facial" challenge disputes the constitutionality of a statute as written or on its face. When a court upholds a facial challenge to a statute, the statute is held as invalid or void on its face; and future attempts at enforcement under any circumstance are futile,[85] unless only parts of a statute are facially invalidated.[86] Thus, rather than excising invalid applications of a statute one by one as they arise, the facial challenge invalidates the statute itself and puts it up to the legislature for redrafting.[87] Facial challenges include disputing the significance or weight of the state interest pursued by the speech regulation and the fitness of the means used to pursue it, or asserting overbreadth of the statute, or claiming that the statute is void for vagueness.[88]

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[81] Meier, L., "*A Broad Attach on Overbreadth*," 40 Valparaiso University Law Review 113, 125-126 (2005).

[82] *Dahnke-Walker Milling Co. v. Bondurant*, 257 U.S. 282, 289 (1921).

[83] Meier, L., *supra* note 81.

[84] Note, "*The First Amendment Overbreadth Doctrine*," 83 Harvard Law Review 844 (1970).

[85] Meier, L., *supra* note 81.

[86] Hill, A., "*Some Realism about Facial Invalidation of Statutes*," 30 Hofstra Law Review 647, 650 (2002), citing *Boos v. Barry*, 485 U.S. 312, 334 (1988) ("We conclude that the display clause of [the statute at issue] is unconstitutional on its face."); *Stromberg v. California*, 283 U.S. 359, 369-70 (1931) ("The first clause of the statute [is] invalid upon its face . . .").

[87] Note, "*The First Amendment Overbreadth Doctrine*," 83 Harvard Law Review 844, 845 (1970).

[88] Meier, L., *supra* note 81 at 118.

In sum, a person charged with violating a statute has the choice of one or both of two substantive defenses: (1) facial challenge, *i.e*., that the statute is unconstitutional as written; and (2) as-applied challenge, *i.e*., that the conduct involved is not constitutionally punishable. Thus, it could be contended that a statute outlawing obscenity, for example, is so worded as to unconstitutionally embrace protected expression. It could also be contended that, even if the statute is properly worded, the expression sought to be punished is, in fact, constitutionally protected or otherwise beyond the reach of the statute.[89] "As applied" and "facial" challenges refer to litigation choices and the effects of the decision of the court.[90]

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[89] Hill, A., *supra* note 86 at 648-650.

[90] Meier, L., *supra* note 81 at 126-127. *Gooding v. Wilson,* 405 U.S. 518 (1972) is illustrative of the difference and relationship between "as applied" and "facial" challenges to the validity of a statute on grounds of overbreadth and vagueness. In that case, the defendant challenged the facial validity of a Georgia statute that punished "(a)ny person who shall, without provocation, use to or of another, and in his presence . . . opprobrious words or abusive language, tending to cause a breach of the peace. . . ." The Court held that even if the statute may be constitutional as applied to the subject speech, which constituted "fighting words," the statute may be struck down as unconstitutional on its face for being overly broad, *viz*:

> . . . It matters not that the words appellee used might have been constitutionally prohibited under a narrowly and precisely drawn statute. At least when statutes regulate or proscribe speech and when "no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution," *Dombrowski v. Pfister*, 380 U.S. 479, 491, 85 S.Ct. 1116, 1123, 14 L.Ed.2d 22 (1965), the transcendent value to all society of constitutionally protected expression is deemed to justify allowing "attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity," *Id.*, at 486, 85 S.Ct. at 1121; . . . This is deemed necessary because persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions provided by a statute susceptible of application to protected expression.
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> Although a statute may be neither vague, overbroad, nor otherwise invalid **as applied** to the conduct charged against a particular defendant, he is permitted to raise its vagueness or unconstitutional overbreadth as applied to others. And if the law is found deficient in one of these respects, it may not be applied to him either, until and unless a satisfactory

Petitioner's assertion that Section 3 (c) of P.D. No. 1986 **as applied** to him is not sufficiently narrow fails to consider Section 3 (d) of this same law, which classifies his television program *Ang Dating Daan* as a "G"-rated program suitable for children and minors watching without adult guidance. **As applied to his program and the subject speech**, Section 3(d), in conjunction with Section 3 (c), in fact, makes the proscription of indecent speech **narrow**, because the provision speaks of indecent speech **unsuitable particularly to children and minors watching without adult guidance or supervision**. As explained previously, in this particular context of the case at bar to which Section 3(c) of P.D. No. 1986 is applied, indecent speech falls outside the protection of the free speech clause.

Whether the subject speech is constitutionally protected in a program rated "PG" whereby parental guidance is suggested, and whether a television classification should be added to the "G" and the "PG" ratings of programs in which indecent speech may be uttered, are not within the context of the case at bar and are beyond its purview. Nor does this case make any pronouncement on whether Section 3(c) of P.D. No. 1986 can survive a facial challenge to its constitutional validity on grounds such as overbreadth[91] for bringing speech that is contrary to "good customs" or "injurious to the prestige of the Republic of the Philippines or its people" within its sweep of speech that the MTRCB has the power to prohibit. The power of the MTRCB to review television programs was affirmed by the Court thirteen

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limiting construction is placed on the statute. The statute, in effect, is stricken *down on its face*. This result is deemed justified since the otherwise continued existence of the statute in unnarrowed form would tend to suppress constitutionally protected rights. *Coates v. City of Cincinatti*, *supra*, 402 U.S., at 619-620, 91 S.Ct., at 1691 (opinion of White, J.) (citation omitted). (emphases supplied) (*Gooding v. Wilson*, 405 U.S 518, 520-521).

[91] "A statute is considered void for overbreadth when 'it offends the constitutional principle that a governmental purpose to control or prevent activities constitutionally subject to state regulations may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.'" *Adiong v. COMELEC*, G.R. No. 103956, March 31, 1992, 207 SCRA 712, citing *Zwickler v. Koota*, 19 L ed 444 (1967).

years ago in ***Iglesia ni Cristo v. Court of Appeals***, but that case involved an "as applied" decision on the constitutionality of the power of the MTRCB to **review the religious program *Ang Tamang Daan,* in particular**,[92] and classify it as "X"-rated. The Court did not rule on the facial validity of Section 3(c) of P.D. No. 1986, much less of the entire law.[93]

Having cleared the air of questions on the nature and effect of petitioner's "as applied" constitutional challenge, **let me now proceed to the concept of "subsequent punishment" of speech**.

Prior restraint and subsequent punishment of speech.

Petitioner asserts that the penalty of suspension from his program *Ang Dating Daan* constitutes an unconstitutional subsequent punishment. **The concept of "subsequent punishment" is best understood in relation to the notion of "prior restraint."** Lest these constitutional doctrines be reduced to a deeply felt chorus, but unexamined rhetoric,[94] let us take a closer look at these free speech principles.

A "prior restraint exists when the enjoyment of protected expression is contingent upon the approval of government

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[92] In *Iglesia ni Cristo v. Court of Appeals*, *supra* note 71, the Court identified the first issue to be resolved and held, *viz*:

> The basic issues can be reduced into two: (1) first, whether the respondent Board has the power to review petitioner's TV program "Ang Iglesia ni Cristo" . . .
>
> xxx xxx xxx
>
> We thus reject petitioner's postulate that its religious program is *per se* beyond review by the respondent Board.

[93] Similarly, in an "as applied" decision in *MTRCB v. ABS-CBN,* G.R. No. 155282, January 17, 2005, 448 SCRA 575, the Court ruled that the episode "Prostitution" of ABS-CBN's *The Inside Story* was subject to review by the MTRCB. The Court also ruled that "Muro Ami: The Making" was subject to review by the MTRCB in an "as applied" decision in *GMA Network, Inc. v. MTRCB*, G.R. No. 148579, February 5, 2007, 514 SCRA 191.

[94] See Subin, "*The Lawyer as Superego: Disclosure of Client Confidences to Prevent Harm*," 70 Iowa Law Review 1091, 1097 (1985).

officials."[95] In **Chavez**, we also defined prior restraints as "official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination."[96] It is not the existence merely of a "restraint" that concerns the Court, as an individual ordinarily assumes the risk of subsequent punishment for speech that is eventually found to be constitutionally unprotected. It is that the restraint is "prior" that makes it reprehensible. "Prior'' means prior to a communication's expression[97] or prior to an adequate determination[98] that the speech is not protected by the free speech clause.[99]

Prior restraints are historically abhorred, as they serve to preclude speech from entering the public arena before the discussion can even begin.[100] They suppress speech directly or indirectly by inducing caution in the speaker prior to an adequate determination that the targeted speech is not protected by the free speech clause.[101] Prior restraints include administrative orders

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[95] *Baby Tam & Company, Inc. v. City of Las Vegas*, 154 F.3d 1097, 1100 (9th Cir. 1998) (citing *Near v. Minnesota*, 283 U.S. at 713).

[96] *Chavez v. Gonzales*, *supra* note 58.

[97] See *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 559 (1975).

[98] *Pittsburgh Press Co. v. Pittsburgh Commission on Human Relations*, 413 U.S. 376, 390 (1973). In this case, the U.S. Supreme Court held that an administrative order requiring a newspaper to cease placing employment advertisements in gender-designated columns, while the judicial proceedings were pending, did not constitute a prior restraint, as it was not put into effect until the court had authoritatively ruled that the practice was unprotected speech.

In Philippine jurisdiction, however, an "adequate determination" of whether speech is unprotected and may be subject to prior restraint may be made by a quasi-judicial body such as the MTRCB, observing due process, and subject to review by the court. (See *Iglesia ni Cristo v. Court of Appeals, supra* note 71)

[99] Tribe, L., *AMERICAN CONSTITUTIONAL LAW 725 (1975).*

[100] Kellum N., "*Permit Schemes: Under Current Jurisprudence, What Permits are Permitted*?" 56 Drake Law Review 381, 388 (2008).

[101] *Alexander v. U.S.*, 509 U.S. 544 (1993), Dissent of Justice Kennedy, pp. 574-575; *Pittsburgh Press Co. v. Pittsburgh Commission on Human Relations, supra.*

and judicial orders of injunction to refrain from engaging in speech,[102] and physical restraints to prevent speech, such as the padlocking of a newspaper office[103] or the seizure of materials for publication.[104] But permit and licensing schemes are considered the most egregious, and perhaps the most popular, version of a prior restraint, which requires speakers to secure government permission in order to speak.[105]

It is well-known that the historical basis of the modern "prior restraint" doctrine is England's pervasive system of licensing, which was used to contain learning that was made widely available by the dangerous advent of the printing press.[106] The licenser was at the core of an administrative system employed to prevent seditious libel, protect copyright interests, and preserve monopolies.[107] The licensing system was maintained under the Parliament's "Regulation of Printing Acts," which prescribed what could be printed, who could print, and who could sell.[108] These Acts, however, did not sufficiently circumscribe the authority of the bureaucratic licensers. Thus, they enjoyed broad and vague powers to suppress the "many false . . . scandalous, seditious and libelous works . . . published 'to the great defamation of Religion and government.'"[109] These licensers exercised

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[102] *Near v. Minnesota*, 283 U.S. 697 (1931); *Ayer Productions Pty. Ltd. and McElroy & McElroy Film Productions v. Hon. Ignacio M. Capulong and Juan Ponce Enrile,* G.R. No. 82380, April 29, 1988, 160 SCRA 861.

[103] *Burgos v. Chief of Staff*, G.R. No. 64261, December 26, 1984, 133 SCRA 800.

[104] *David, et al. v. Macapagal-Arroyo, et al.,* G.R. No. 171396, May 3, 2006, 489 SCRA 160.

[105] See *Cox v. City of Charleston*, 416 F.3d 281, 284 (4th Cir. 2005).

[106] Mayton, W., "*Toward a Theory of First Amendment Process: Injunctions of Speech, Subsequent Punishment, and the Costs of the Prior Restraint Doctrine*," 67 Cornell Law Review 245, 247 (1982).

[107] *Id.* at 248, citing Siebert, F., *FREEDOM OF THE PRESS IN ENGLAND* (1476-1770) 239-41 (1965).

[108] *Id.*, citing Siebert, F., *supra* at 249-60.

[109] *Id.*, citing Milton, J., *AREOPAGITICA & OTHER PROSE WORKS 1* (1927).

unfettered discretion without due regard for political and literary value and the monetary costs to publishers affected by censorship.[110]

Members of the printing trade were thus prompted to petition Parliament, complaining that the licensing scheme "subjects all Learning and true Information to the arbitrary Will and Pleasure of a mercenary, and perhaps ignorant, Licenser; destroys the Properties of Authors in their Copies; and sets up many Monopolies."[111] Eventually, the licensing system yielded to the pressure of its own weight. In 1694, licensing saw its end with the refusal of the House of Commons to renew the Regulation of Printing Acts.[112] Pointing out the evil of licensing, Sir William Blackstone[113] stated: "To subject the press to the restrictive power of a *licenser*, as was formerly done, . . . is to subject the freedom of sentiment to the prejudices of one man."[114]

Proscription against prior restraint, however, is not sufficient as constitutionally protected speech can nevertheless be **chilled** by the sleight of hand of its **Subsequent punishment**. **This voice-of-Jacob-but-hand-of-Esau situation thus calls for proscription, not only of prior restraint, but also of subsequent punishment to give full protection to speech traditionally regarded to be within the purview of the free speech clause.** Subsequent punishment shares the evils of prior restraint[115] as explained, *viz*:

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[110] *Id.*, citing Siebert, F., *supra* at 261-62.

[111] *Id.*, citing Siebert, F., *supra* at 260.

[112] *Id.*, citing Levy, L., *LEGACY OF SUPPRESSION* 104 (1960).

[113] "An eighteenth century English barrister, judge, and law professor who penned the Commentaries on the Laws of England, adopted, in large part, from his own lectures on the same subject matter at All Souls College in Oxford, England." Kellum, N., "*Permit Schemes: Under Current Jurisprudence, What Permits are Permitted*?" 56 Drake Law Review 381 (2008), footnote 25.

[114] Mayton, W., *supra* note 106 at 247, citing 4 BLACKSTONE'S COMMENTARIES 151, 152 (Tucker ed. 1803) (emphasis in original).

[115] *Thornhill v. Alabama*, 310 U.S. 88, 97 (1940).

The power of the licensor, against which John Milton directed his assault by his "Appeal for the Liberty of Unlicensed Printing," is pernicious not merely by reason of the censure of particular comments but by reason of the threat to censure comments on matters of public concern. **It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion . . . . A like threat is inherent in a penal statute (subsequent punishment), like that in question here, which does not aim specifically at evils within the allowable area of state control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press.** The existence of such a statute, which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview.[116] (emphasis supplied)

Still and all, there are constitutionally permissible prior restraints and subsequent punishments because freedom of expression is not an absolute,[117] nor is it an "unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom."[118] But permissible prior restraints are narrowly limited, few and far between, such as restraint on dissemination of information that would compromise national security in time of war, obscene speech, and speech to incite a violent overthrow of government.[119] Prior restraints

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[116] *Id.*, at 97-98. At issue in this case was the constitutionality of a criminal conviction for labor picketing in violation of a state statute. The U.S. Supreme Court overturned the conviction because it found that the subsequent punishment, coupled with an overly vague statute, worked in the same manner as an unconstitutional administrative licensing.

[117] *Gonzales v. COMELEC*, 137 Phil. 471, 494 (1969).

[118] *Chavez v. Gonzales*, *supra* note 58 at 486.

[119] In *Near v. Minnesota*, 283 U.S. 697 (1931), the Court, dictum, gave three examples of exceptional cases in which prior restraint is permissible: (1) actual obstruction of recruitment of the armed forces and publication of the sailing dates of transport or the number and location of troops; (2) enforcement of obscenity laws; and (3) endorsement of laws against incitement to acts of violence or overthrow by force of orderly government.

admittedly reflect an "'(inversion of) the order of things; . . . instead of obliging the State to prove the guilt in order to inflict the penalty, it (is) to oblige the citizen to establish his own innocence to avoid the penalty.'"[120] Consequently, and necessarily, there is a "**heavy presumption**" against the validity of a prior restraint.[121]

The presumption against prior restraint is heavier and the degree of protection broader compared to limits on expression imposed by subsequent punishment through criminal penalties. The **distinction** rests on the deeply entrenched principle that a "free society prefers to punish the few who abuse rights of speech after they break the law than to throttle them and all others beforehand. It is always difficult to know in advance what an individual will say, and the line between legitimate and illegitimate speech is often so finely drawn that the risks of free-wheeling censorship are formidable."[122] Compared to subsequent punishment, prior restraint is more inhibiting, because it shuts off communication before it takes place and allows less opportunity for public appraisal and criticism.[123]

In the U.S., the Supreme Court has shown the procedural importance of the distinction between speech being restricted through prior restraint and that through subsequent punishment. In a subsequent criminal prosecution, the speaker is ordinarily

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Also, in the U.S., movie censorship, which requires a license or permit before a particular type of expression may be engaged in, is an accepted form of prior restraint. (*Times Film Corp. v. Chicago*, 365 U.S. 43 (1961); *Freedman v. Maryland*, 380 U.S. 51 (1965).

[120] *Speiser v. Randall*, 357 U.S. 513, 534 (1958), Concurring Opinion of Justice Black.

[121] *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963), *New York Times Company v. U.S.* 403 U.S 713 (1971).

[122] *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 559 (1975).

[123] Feinberg, J., "*The Clash Between Safety and Freedom of Association in the Regulation of Prom Dates*," 17 Kansas Journal of Law and Public Policy 168, 180 (2007-2008), citing Emerson, T., *THE SYSTEM OF FREEDOM OF EXPRESSION 506 (1970)*.

free to assert that his or her speech is constitutionally protected. But when prior restraint operates, anyone who ignores it runs the risk of losing the right to claim this defense in a subsequent prosecution — for ignoring the restraint instead of obeying it, while challenging it judicially.[124]

Applying the foregoing discussion, the landmark case **Near** may be used to illustrate the **distinction** between prior restraint and subsequent punishment. That case involved a 1925 Minnesota law that provided for the abatement as a public nuisance of any "malicious, scandalous, and defamatory newspaper, magazine, or other periodical." As a defense, the legislation permitted anyone charged with violating the law to show that the publication was true and was published with good motives and justifiable ends. The law allowed the prosecuting attorney of any county, where such a publication was produced or circulated, to seek an injunction abating the nuisance by preventing any further publication or distribution of the periodical.

Under this statute, the county attorney of Hennepin county brought suit to enjoin the publication of what was described as a "malicious, scandalous and defamatory newspaper, magazine or other periodical," known as *The Saturday Pres*s, published by defendants including Near, in the city of Minneapolis. The complaint alleged that the defendants on September 24, 1927, and on eight subsequent dates in October and November 1927, published and circulated editions of that periodical that were "largely devoted to malicious, scandalous and defamatory articles."

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[124] Tribe, L., *AMERICAN CONSTITUTIONAL LAW* 727 (1978). See discussion on facial and as-applied challenges to the constitutional validity of a statute or regulation, *supra*. In *Poulos v. New Hampshire,* 345 U.S. 395 (1958), the U.S. Supreme Court held that, because the subject licensing law was **constitutional on its face**, an applicant who had been improperly refused a permit to hold religious services in a public park should have sought available judicial relief instead of holding the services without a permit and attempting to defend against the subsequent criminal prosecution by pointing to the unlawful refusal of the permit. In contrast, if a statute is **void on its face** because it is constitutionally overbroad or impermissibly vague or both, an individual may refuse to comply with the law's requirements and still raise the law's facial validity as a defense in a subsequent prosecution under it. (emphases supplied) (*Staub v. City of Baxley*, 355 U.S. 313 (1968)) *Id.* at 726-727.

The articles "charged, in substance, that a Jewish gangster was in control of gambling, bootlegging, and racketeering in Minneapolis and that law enforcing officers and agencies were not energetically performing their duties."[125] The complaint imputed various charges, including dereliction of duty, complicity, participation in graft, and inefficiency against the mayor, the county attorney and the chief of police.

The trial court issued an injunction preventing further publication of the newspaper. On appeal, the Minnesota Supreme Court affirmed the constitutionality of the statute over Near's argument that the statute violated the freedom of the press clause, prompting him to appeal to the U.S. Supreme Court.

The U.S. Supreme Court noted that the object of the statute was not punishment, but suppression of the offending periodical.[126] The continued publication of scandalous and defamatory matter constituted the business to be declared as a nuisance to be abated. With respect to the public officers, it was the reiteration of charges of official misconduct and the fact that the periodical was principally devoted to that purpose that exposed the periodical to suppression. The publisher thus faced not only the possibility of a verdict against him for libel, but the determination that his periodical was a public nuisance to be abated, and that this abatement would follow unless he could prove the truth of the charges and satisfy the court that the matter was published with good motives and justifiable ends. The suppression was accomplished by enjoining publication, and this restraint was the object and effect of the legislation.[127]

Moreover, the law did not only operate to suppress the periodical, it also effectively put the publisher under a censorship, because resumption of publication was punishable as a contempt of court by a fine or imprisonment. In effect, there was a permanent restraint upon the publisher, a restraint that he could only escape if he satisfied the court by giving his publication a

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[125] *Near v. Minnesota*, *supra* note 119 at 704.

[126] *Id.* at 711.

[127] *Id.* at 711-712.

new character of not being "malicious, scandalous and defamatory." The judgment of the lower court restrained the defendants from "publishing, circulating, having in their possession, and selling or giving away any publication whatsoever which is a malicious, scandalous or defamatory newspaper," as defined by law.[128] The statute thus operated as a censorship, for it was incumbent upon the publisher to prove truth, good motive and justifiable ends to publish matters consisting of charges of official dereliction against public officers; otherwise, the publication would be suppressed.[129] The U.S. Supreme Court ruled that the Minnesota statute constituted an unconstitutional prior restraint that infringed press freedom.

In clarifying that the case did not involve subsequent punishment but prior restraint, and that subsequent punishment was preferred over prior restraint to check abuses on press freedom, the U.S. Supreme Court held, *viz*:

> In the present case, **we have no occasion to inquire as to the permissible scope of subsequent punishment.** For whatever wrong the appellant has committed or may commit, by his publications, **the state appropriately affords both public and private redress by its libel laws.** As has been noted, the statute in question does not deal with punishments; it provides for no punishment, except in case of contempt for violation of the court's order, but for **suppression and injunction — that is, for restraint upon publication.**[130]
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>
> . . . Madison, who was the leading spirit in the preparation of the First Amendment of the Federal Constitution, thus described the practice and sentiment which led to the guaranties of liberty of the press in State Constitutions:
>
> > In every State, probably, in the Union, the press has exerted a freedom in canvassing the merits and measures of public men of every description which has not been confined to the strict

[128] *Id.* at 712.

[129] *Id.* at 712-713.

[130] *Id.* at 715.

limits of the common law. On this footing the freedom of the press has stood; on this footing it yet stands. * * * *Some degree of abuse is inseparable from the proper use of everything, and in no instance is this more true than in that of the press. It has accordingly been decided by the practice of the States, that it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits*.[131]

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. . . The fact that the liberty of the press may be abused by miscreant purveyors of scandal does not make any the less necessary the immunity of the press from previous restraint in dealing with official misconduct. **Subsequent punishment for such abuses as may exist is the appropriate remedy, consistent with constitutional privilege.** (emphases supplied) (footnotes omitted)[132]

Thus, constituting prior restraint is a speech regulation that allows an executive officer, like a county attorney, to seek a court injunction to enjoin the further publication of a newspaper found to have repeatedly published malicious, scandalous and defamatory material; and that conditions the publication of material upon showing of proof that it is true and published with good motives and justifiable ends. **The proper remedy for such possible abuse of free speech should instead be subsequent punishment consisting in the filing of charges like those for defamation, a determination that the publisher engaged in such unprotected speech, and his consequent conviction and punishment.**

In sum, both constitutionally permissible prior restraints and subsequent punishments can proscribe only **unprotected speech**. Otherwise, if speech is protected, it should not be proscribed — whether prior or subsequent to its expression — and allowed instead to enter the free market of ideas; precisely, the free speech clause shields from incursion the right to express it. **If the valid government interest pursued by the free speech**

[131] *Id.* at 717-718.

[132] *Id.* at 720.

regulation can be upheld through subsequent punishment, this punishment ought to be preferred over prior restraint. Prior restraint should be resorted to only in the very limited instances in which the entry of the speech into the free market of ideas would precisely thwart the government interest sought to be achieved, such as the disclosure of the number and location of troops at war as cited in **Near**. The **preference** for subsequent punishment over prior restraint is **predicated** upon the precaution that speech subjected to prior restraint may turn out to be protected if it were allowed to enter the free market of ideas and subjected instead to a trial for possible subsequent punishment. **Subsequent punishment reduces the risk of muting speech to which the Constitution affords a decibel.** Thus, the scope of permissible prior restraints is smaller than the breadth of valid subsequent punishments.

Given the facts of the case at bar, I shall now focus on prior restraint and subsequent punishment with respect to the television broadcast medium, in particular. Admittedly, the MTRCB, a regulatory body that reviews and classifies speech in movies and television, engages in prior restraint through review and censorship and in subsequent punishment of unprotected speech.

In the case at bar, petitioner was subsequently punished with a three-month suspension from his program *Ang Dating Daan* for the indecent speech he uttered therein. There should be no quarrel that the subject speech is indecent and unprotected in the context in which it was uttered. It could thus be subsequently punished without running afoul of the free speech protection of the Constitution. There are other examples of constitutionally valid laws that mete out subsequent punishment of unprotected speech such as the laws on libel,[133] obscenity,[134] and infringement

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[133] Act No. 3815, entitled "An Act Revising the Penal Code and other Penal Laws (The Revised Penal Code)," Title Thirteen, Chapter One on Libel.

[134] The Revised Penal Code, Article 201 on immoral doctrines, obscene publications and exhibitions, and indecent shows.

of intellectual property rights under the Intellectual Property Code of the Philippines.[135]

Still and all, while the case at bar involves speech that is unprotected in its context and subject to constitutional subsequent punishment, **it nevertheless ought to be remembered — in every case involving free speech regulation — that free speech is a preferred freedom,** because it embodies the notions of liberty that are at the core of a truly free and democratic society: freedom of thought and viewpoints, discussion, self-realization, autonomy, and diversity.[136] Thus, the task of delineating speech that is constitutionally proscribed from that which is protected, even if opprobrious, requires laser-like precision. As Plato pointed out in this dialogue between the stranger and young Socrates in *The Statesman*, the legislator in crafting the law cannot contemplate every possible scenario:

> Stranger: And now observe that the legislator who has to preside over the herd, and to enforce justice in their dealings with one another, will not be able, in enacting for the general good, to provide exactly what is suitable for each particular case.
>
> Young Socrates: He cannot do so.
>
> Stranger: He will lay down laws in a general form for the majority, roughly meeting the cases of individuals . . . .
>
> Young Socrates: He will be right.
>
> Stranger: Yes, quite right; for how can he sit at every man's side all through his life, prescribing for him the exact particulars of his duty.[137]

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[135] Rep. Act No. 8293, entitled "An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for Its Powers and Functions, and for Other Purposes."

[136] Feinberg, J., "*The Clash between Safety and Freedom of Association in the Regulations of Prom Dates*," 17 Kansas Journal of Law and Public Policy 168, 180 (2007-2008).

[137] Plato, *THE STATESMAN* (Joseph Bright Skemp, trans. 1952).

It is thus the task of the MTRCB initially, and of the Court with finality, to define with precision the "particulars of the duty."

Especially in the broadcast medium in which regulation and censorship of speech are permissible within constitutional limits, a heedful eye should guard against the possibility of individual impressions of the members of the MTRCB becoming the yardstick of action; regulation should not be in accordance with the beliefs of the individual censor, **but in accordance with law**.[138] The challenged Decision of the MTRCB states that, "(a)s a tv host and religious leader, he (petitioner) is expected to speak and behave on a much higher level than a non-religious one."[139] While this may be the belief of the members of the MTRCB, it finds no basis in law and should not be used as a standard for measuring whether petitioner's speech is constitutionally protected. **The calculus of review should not merely be the reaction of the censor**. In handing down decisions that proscribe or punish speech, the MTRCB should provide a sufficiently identifiable, thoroughly explained, and solidly grounded basis in law for the proscription. It should not only make a blanket conclusion that "the words uttered are objectionable for being immoral, indecent, contrary to law and/or good customs, or with dangerous tendency to encourage the commission of violence or of a wrong or a crime."[140] **It should avoid simply casting such a wide net of speech control. The line to be drawn to separate protected from unprotected speech may sometimes be thin, but it should nevertheless be drawn and not drawn on the sand.**

That petitioner should be subsequently punished for the indecent speech he uttered is not, however, the end of the story. By its nature, the penalty consisting of petitioner's three-month suspension from his program, not only

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[138] See *Interstate Circuit, Inc. v. City of Dallas*, 390 U.S. 676, 685 (1968) (quoting *Kingsley Int'l. Pictures Corp. v. Regents*, 360 U.S. 684, 701 (1959) (Clark, J., concurring in result).

[139] *Rollo*, G.R. No. 164785, p. 261.

[140] *Id.*

subsequently punishes his past speech, but also restrains his future speech. In his Dissenting Opinion in ***Alexander v. U.S.,***[141] Justice Kennedy incisively pointed out that some governmental actions may have the characteristics of both a subsequent punishment and a prior restraint. To illustrate, he cited the historical example of the sentence imposed on Hugh Singleton in 1579 after he had enraged Elizabeth I by printing a certain tract. Singleton was condemned to lose his right hand, thus inflicting upon him both a punishment and a disability encumbering all further printing.[142]

As aforementioned, it cannot be gainsaid that the instances of constitutionally permissible prior restraints are **very limited** such as the disclosure of the number and location of troops at war. They are allowed only when the entry of the subject speech into the free market of ideas would precisely thwart the government interest sought to be achieved. **In the case at bar,** however, the **records are bereft of basis** — through proof and reason — **for public respondent MTRCB to impose a prior restraint on petitioner's future speech for three months.** Thus, while there is no doubt in my mind that petitioner ought to be subsequently punished, I am equally certain that **in the absence of proof and reason, he should not be penalized with a three-month suspension that works as a prior restraint on his speech.**

Even as this humble Opinion establishes a category of unprotected indecent speech, the propriety of a subsequent punishment for petitioner's speech is determined against the backdrop of the particular facts of the instant case — the subject speech was uttered by the regular host of a "G"-rated program aired live over the publicly accessible UHF Channel UN Television 37,[143] in violation of the provisions of P.D. No. 1986, which grants the MTRCB the power to prohibit indecent speech.

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[141] 509 U.S. 544 (1993).

[142] *Id.* at 567, citing Siebert, F., *FREEDOM OF THE PRESS IN ENGLAND*, 1476-1776, pp. 91-92 (1952).

[143] *Rollo*, G.R. No. 164785, p. 258.

This Opinion does not purport to settle all questions with respect to liability of program producers or broadcast licensees in other situations in which, for instance, indecent language is spoken by a person interviewed in a live news broadcast or by an athlete or a spectator in the live coverage of sports events.[144] Neither does this Opinion cover indecent speech aired over cable channels that are not publicly accessible. A context-cautious approach[145] is necessary in indecent speech adjudication to determine whether indeed a "pig that belongs to the barnyard has entered the parlor,"[146] and if the farmer or the doorkeeper ought to be held responsible.

I vote to **GRANT** the petition.

DISSENTING OPINION

CARPIO, *J.*:

Freedom of expression is always under threat even in a democracy. Those who wish to enjoy freedom of expression must steadfastly defend it whenever and wherever it is threatened. The lesson that history teaches us is clear – defend freedom of expression, or lose it.

I dissent because the three-month suspension of petitioner's TV program *Ang Dating Daan* constitutes an unconstitutional **prior restraint** on freedom of expression. **The suspension prevents petitioner from even reciting the Lord's Prayer, or even saying "hello" to viewers, in his TV program**. The suspension bars the public airing of petitioner's TV program regardless of whatever subject matter petitioner, or anyone else, wishes to discuss in petitioner's TV program.

This is like suspending the publication of the *Philippine Daily Inquirer* for three months if its editorial describes a private

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[144] See Conrad, M., "*Fleeting Expletives and Sports Broadcasts: A Legal Nightmare Needs a Safe Harbor*," 18 Journal of Legal Aspects of Sport 175 (2008).

[145] *FCC v. Pacifica*, *supra* note 4 and 742.

[146] *Id.,* at 750.

person as "*masahol pa sa putang babae*." This is also similar to suspending for three months the column of a newspaper columnist for using the expletive "*putang ina mo*" in his column. Such suspension is the censorship that the Constitution outlaws when it states that "[n]o law shall be passed abridging the freedom of speech, of expression, or of the press x x x."[1]

The remedy of any aggrieved person is to file a libel or tort case ***after*** the utterance or publication of such cusswords. Our libels laws punish with fine, imprisonment or damages libelous language ***already uttered or published***.[2] Our tort laws also allow recovery of damages for tortious speech ***already uttered or published***.[3] However, both our libel and tort laws never impose a gag order on ***future expression*** because that will constitute prior restraint or censorship. Thus, our libel and tort laws do not allow the filing of a suit to enjoin or punish an expression that has yet to be uttered or written.

Indeed, there can never be a ***prior restraint*** on future expression, whether for fear of possible libelous utterance or publication, or as a punishment for past libelous utterance or publication. Otherwise, many of the radio and TV political programs will have to be banned for the frequent use of cusswords and other libelous language. Even politicians will have to be barred from addressing political rallies, or the rallies themselves will have to be banned, because politicians often use cusswords and other profanities during political rallies.

In the present case, the three-month preventive suspension of petitioner's TV program bars petitioner from talking about the weather, or from talking about the birds and the bees, or even from talking about nothingness, in his TV program. The public airing of the entire TV program, regardless of its content, is totally suppressed for three months. The Government has no power under the Constitution to so brazenly suppress freedom of expression. This Court should never give its imprimatur to

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[1] Section 4, Article III, Constitution.

[2] Article 353-359, Revised Penal Code; Article 33, Civil Code.

[3] Article 26, Civil Code.

such a blatant violation of a fundamental constitutional right, which has been described as the one basic right that makes all other civil, human and political rights possible.

Prior Restraint on Expression

The well-settled rule is there can be no prior restraint on expression. This rule emanates from the constitutional command that "[n]o law shall be passed abridging the freedom of speech, of expression, or of the press x x x." The history of freedom of expression has been a constant struggle against the censor's **prior restraint** on expression. The leading American case of *Near v. Minnesota*[4] teaches us that **the primordial purpose of the Free Expression Clause is to prevent prior restraint on expression**.

This well-settled rule, however, is subject to exceptions narrowly carved out by courts over time because of necessity. In this jurisdiction, we recognize only four exceptions, namely: pornography,[5] false or misleading advertisement,[6] advocacy of imminent lawless action,[7] and danger to national security.[8] Only in these instances may expression be subject to prior restraint. **All other expression is not subject to prior restraint.**

Although pornography, false or misleading advertisement, advocacy of imminent lawless action, and expression endangering national security may be subject to prior restraint, such prior restraint must hurdle a high barrier. *First*, such prior restraint is **strongly presumed as unconstitutional**. *Second*, the government bears a **heavy burden** of justifying such prior restraint.[9]

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[4] 283 U.S. 697 (1931).

[5] *Gonzales v. Kalaw-Katigbak*, 222 Phil. 225 (1985).

[6] *Pharmaceutical and Health Care Association of the Philippines v. Duque III*, G.R. No. 173034, 9 October 2007, 535 SCRA 265.

[7] *Eastern Broadcasting Corporation v. Dans*, No. 222 Phil. 151 (1985).

[8] *Id*.

[9] *Iglesia ni Cristo (INC) v. Court of Appeals*, G.R. No. 119673, 26 July 1996, 259 SCRA 529; *New York Times v. United States*, 403 U.S. 713 (1971).

The test to determine the constitutionality of prior restraint on pornography, advocacy of imminent lawless action, and expression endangering national security is the **clear and present danger test**. The expression subject to prior restraint must present a clear and present danger of bringing about a substantive evil the State has a right and duty to prevent, and such danger must be **grave and imminent**.[10]

The power of Congress to impose prior restraint on false or misleading advertisements emanates from the constitutional provision that the "advertising industry is impressed with public interest, and shall be regulated by law for the protection of consumers and the promotion of the general welfare."[11]

Prior restraint on expression may be either content-based or content-neutral. Content-based prior restraint is aimed at suppressing the message or idea contained in the expression. Courts subject content-based restraint to strict scrutiny. Content-neutral restraint on expression is restraint that regulates the time, place or manner of expression in public places without any restraint on the content of the expression. Courts subject content-neutral restraint to intermediate scrutiny.

Subsequent Punishment of Expression

The rule is also well-settled that expression cannot be subject to subsequent punishment. This rule also emanates from the constitutional command that "[n]o law shall be passed abridging the freedom of speech, of expression, or of the press x x x." However, courts again have carved out narrow exceptions to this rule out of necessity.

The exceptions start with the four types of expression that may be subject to prior restraint. If a certain expression is subject to prior restraint, its utterance or publication in violation of the lawful restraint naturally subjects the person responsible to

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[10] *Bayan v. Ermita*, G.R. Nos. 169838, 169848 and 169881, 25 April 2006, 488 SCRA 226.

[11] Section 11(2), Article XVI, Constitution.

subsequent punishment. Thus, acts of pornography,[12] false or misleading advertisement,[13] advocacy of imminent lawless action,[14] and endangering national security,[15] are all punishable under the law.

Two other exceptions are defamation,[16] which includes libel and slander, and tortious speech.[17] Defamatory and tortious speech, *per se*, are not subject to prior restraint because by definition they do not constitute a clear and present danger to the State that is grave and imminent. Once defamatory or tortuous speech rises to the level of advocacy of imminent lawless action, then it may be subject to prior restraint because it is seditious[18] but not because it is defamatory or tortious. Defamation and tortious conduct, however, may be subject to subsequent punishment, civilly or criminally.

Fighting words are not subject to subsequent punishment unless they are defamatory or tortious. Fighting words refer to profane or vulgar words that are likely to provoke a violent response from an audience. Profane or vulgar words like "Fuck the draft," when not directed at any particular person, ethnic or religious group, are not subject to subsequent punishment.[19] As aptly stated, "one man's vulgarity may be another man's lyric."[20]

If profane or vulgar language like "Fuck the draft" is not subject to subsequent punishment, then with more reason it cannot be subject to prior restraint. Without a law punishing the actual utterance or publication of an expression, an expression

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[12] Article 201, Revised Penal Code.

[13] Section 6(a), Milk Code.

[14] Article 142, Revised Penal Code.

[15] Article 138, Revised Penal Code.

[16] See note 2.

[17] See note 3.

[18] Articles 138 and 142, Revised Penal Code.

[19] *Cohen v. California*, 403 U.S. 15 (1971).

[20] *Id*.

cannot be subject to prior restraint because such expression is not unlawful or illegal.

Prior restraint is more deleterious to freedom of expression than subsequent punishment. Although subsequent punishment also deters expression, still the ideas are disseminated to the public. Prior restraint prevents even the dissemination of ideas to the public. Thus, the three-month suspension of petitioner's TV program, being a prior restraint on expression, has far graver ramifications than any possible subsequent punishment of petitioner.

Three-Month Suspension is a Prohibited Prior Restraint

The three-month suspension of petitioner's TV program is indisputably a prior restraint on expression. During the three-month suspension, petitioner cannot utter a single word in his TV program because the program is totally suppressed. A prior restraint may be justified only if the expression falls under any of the four types of expression that may be subject to prior restraint, namely, pornography, false or misleading advertisement, advocacy of imminent lawless action, and danger to national security.

Obviously, what petitioner uttered does not fall under any of the four types of expression that may be subject to prior restraint. What respondents assail is the following ranting of petitioner:

Lehitimong anak ng demonyo; sinungaling;

Gago ka talaga Michael, masahol ka pa sa putang babae o di ba. Yung putang babae ang gumagana lang doon yung ibaba, [dito] kay Michael ang gumagana ang itaas, o di ba! O, masahol pa sa putang babae yan. Sabi ng lola ko masahol pa sa putang babae yan. Sobra ang kasinungalingan ng mga demonyong ito...

No matter how offensive, profane or vulgar petitioner's words may be, they do not constitute pornography, false or misleading advertisement, advocacy of imminent lawless action, or danger to national security. Thus, petitioner's offensive, profane or vulgar language cannot be subject to prior restraint but may be subject to subsequent punishment if defamatory or tortious.

Any prior restraint is strongly presumed to be unconstitutional and the government bears a heavy burden of justifying such prior restraint.[21] Such prior restraint must pass the clear and present danger test. **The majority opinion, which imposes a prior restraint on expression, is totally bereft of any discussion that petitioner's ranting poses a clear and present danger to the State that is grave and imminent.** The respondents have not presented any credible justification to overcome the strong presumption of unconstitutionality accorded to the three-month suspension order.

The three-month suspension cannot be passed off merely as a preventive suspension that does not partake of a penalty. The actual and real effect of the three-month suspension is a prior restraint on expression in violation of a fundamental constitutional right. Even Congress cannot validly pass a law imposing a three-month preventive suspension on freedom of expression for offensive or vulgar language uttered in the past. Congress may punish such offensive or vulgar language, after their utterance, with damages, fine or imprisonment but Congress has no power to suspend or suppress the people's right to speak freely because of such past utterances.

In short, Congress may pass a law punishing defamation or tortious speech but the punishment cannot be the suspension or suppression of the constitutional right to freedom of expression. **Otherwise, such law would be "abridging the freedom of speech, of expression, or of the press."** If Congress cannot pass such a law, neither can respondent MTRCB promulgate a rule or a decision suspending for three months petitioner's constitutional right to freedom of expression. And of course, neither can this Court give its stamp of imprimatur to such an unconstitutional MTRCB rule or decision.

Conclusion

In conclusion, petitioner's ranting may constitute, at most, defamatory or tortious speech. Even then, such expression can never be subject to prior restraint like a three-month suspension

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[21] See note 9.

of petitioner's TV program. The remedy of private respondents is to seek subsequent punishment, that is, file complaints for defamation or tortious speech against petitioner.

Any prior restraint on expression is strongly presumed to be unconstitutional and the Government bears a heavy burden of justifying such imposition of prior restraint. Such prior restraint can be justified only on four narrow grounds— pornography, false or misleading advertisement, advocacy of imminent lawless action, and danger to national security. Here, the Government does not even claim that petitioner's ranting falls under any of these four types of unprotected speech.

The majority opinion does not also make any finding that petitioner's ranting poses a clear and present danger to the State that is grave and imminent. In fact, the majority opinion even declares that the clear and present danger rule is irrelevant in the present case. The majority opinion dismantles in one sweep the clear and present danger rule as applied to freedom of expression, a rule painstakingly built over almost a century of jurisprudence here and abroad.[22] The ramification of the majority's ruling can only be catastrophic to freedom of expression, which jurists have even elevated to a preferred constitutional right.

There is simply an utter lack of legal basis to impose a prior restraint – three-month suspension— on petitioner's TV program. Any such prior restraint is glaringly unconstitutional for violation of the fundamental right to freedom of expression.

Television and radio commentators, broadcasters and their guests will now tremble in fear at this new censorship power of the MTRCB. The majority opinion has invested the MTRCB with the broadest censorship power since William Blackstone wrote in 1765 that "the liberty of the press x x x consists in laying no previous restraints upon publications." This is one of the saddest and darkest days for freedom of expression in this country.

Accordingly, I vote to *GRANT* the petition.

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[22] See *Schenck v. United States*, 249 U.S. 47 (1919).

EN BANC

[G.R. No. 166510. April 29, 2009]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **BENJAMIN "KOKOY" ROMUALDEZ and SANDIGANBAYAN,** *respondents.*

SYLLABUS

1. **CRIMINAL LAW; VIOLATION OF REPUBLIC ACT NO. 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT); FIFTEEN-YEAR PRESCRIPTIVE PERIOD; CANNOT BE TOLLED BY THE FILING OF AN INFORMATION RESULTING FROM *A VOID AB INITIO* PROCEEDING; CASE AT BAR. –** Private respondent was charged with violations of Rep. Act No. 3019, or the Anti-Graft and Corrupt Practices Act, committed "on or about and during the period from 1976 to February 1986." However, the subject criminal cases were filed with the Sandiganbayan only on 5 November 2001, following a preliminary investigation that commenced only on 4 June 2001. The time span that elapsed from the alleged commission of the offense up to the filing of the subject cases is clearly beyond the fifteen (15) year prescriptive period provided under Section 11 of Rep. Act No. 3019. Admittedly, the Presidential Commission on Good Government (PCGG) had attempted to file similar criminal cases against private respondent on 22 February 1989. However, said cases were quashed based on prevailing jurisprudence that informations filed by the PCGG and not the Office of the Special Prosecutor/ Office of the Ombudsman are null and void for lack of authority on the part of the PCGG to file the same. This made it necessary for the Office of the Ombudsman as the competent office to conduct the required preliminary investigation to enable the filing of the present charges. The initial filing of the complaint in 1989 or the preliminary investigation by the PCGG that preceded it could not have interrupted the fifteen (15)-year prescription period under Rep. Act No. 3019. As held in *Cruz, Jr. v. Sandiganbayan,* the investigatory power of the PCGG extended only to alleged ill-gotten wealth cases, absent previous authority from the President for the PCGG to investigate such

graft and corruption cases involving the Marcos cronies. Accordingly, the preliminary investigation conducted by the PCGG leading to the filing of the first information is *void ab initio*, and thus could not be considered as having tolled the fifteen (15)-year prescriptive period, notwithstanding the general rule that the commencement of preliminary investigation tolls the prescriptive period. After all, a *void ab initio* proceeding such as the first preliminary investigation by the PCGG could not be accorded any legal effect by this Court.

2. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION OR COMPLAINT; AMENDMENT; CANNOT CURE *A VOID AB INITIO* INFORMATION; CASE AT BAR.–** The rule is that for criminal violations of Rep. Act No. 3019, the prescriptive period is tolled only when the Office of the Ombudsman receives a complaint or otherwise initiates its investigation. As such preliminary investigation was commenced more than fifteen (15) years after the imputed acts were committed, the offenses had already prescribed as of such time. Further, the flaw was so fatal that the information could not have been cured or resurrected by mere amendment, as a new preliminary investigation had to be undertaken, and evidence had again to be adduced before a new information could be filed. The rule may well be that the amendment of a criminal complaint retroacts to the time of the filing of the original complaint. Yet such rule will not apply when the original information is *void ab initio,* thus incurable by amendment.

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

1. **CRIMINAL LAW; ARTICLE 91 OF THE REVISED PENAL CODE; COMPUTATION OF PRESCRIPTION OF OFFENSES; APPLICATION TO SPECIAL LAWS OF ARTICLE 91 REGARDING THE TOLLING OF THE PRESCRIPTIVE PERIOD DURING THE ABSENCE OF THE OFFENDER FROM PHILIPPINE JURISDICTION, ALLOWED; CASE AT BAR. –** It is conceded that both RA 3019 and Act No. 3326 are silent on whether the absence of the offender from the Philippines bar the running of the prescriptive period. Ineluctably, this silence calls for the suppletory application of related provisions of the RPC, pursuant

to Article 10 thereof. Article 10 is clear: *"This Code (RPC) shall be supplementary to such laws (special laws), unless the latter should specially provide the contrary."* Thus, RPC provisions which are applicable shall supplement or supply what is lacking in the special law unless prohibited by the latter. In this regard, it must be emphasized that nothing in RA 3019 or in Act No. 3326 prohibits the suppletory application of Article 91 of the RPC. Hence, there is no bar to the application to these special laws of Article 91 regarding the tolling of the prescriptive period during the absence of the offender from Philippine jurisdiction. The "silence" of Act No. 3326 should not be interpreted as that law restricting itself to its own provisions in determining when the prescriptive period should be considered interrupted. The rule of *expressio unius est exclusio alterius* is no more than an auxiliary rule of interpretation which may be ignored where other circumstances indicate that the enumeration was not intended to be exclusive. This maxim may be disregarded if adherence thereto would cause inconvenience, hardship, and injury to public interest. Certainly, to consider the absence of an offender from the Philippine jurisdiction as not a bar to the running of prescriptive period would inevitably cause injury to public interest, and thus, warrants a disregard of this auxiliary rule. I believe that more befitting in this case is the rule that where an interpretation of law would endanger or sacrifice great public interest, such interpretation should be avoided. The court should presume that such construction was not intended by the makers of the law, unless required by clear and unequivocal words.

2. **ID.; ID.; ID.; THE TERM OF PRESCRIPTION SHALL NOT RUN WHEN THE OFFENDER IS ABSENT FROM THE PHILIPPINE ARCHIPELAGO; ELUCIDATED. –** A more exacting rule on prescription was embodied in the Code, Article 91 of which was plain and categorical: "The term of prescription shall not run when the offender is absent from the Philippine Archipelago." Besides, it must be noted that even the cases involving liberal interpretation of the statute of limitations in favor of the accused relate only to the following issues: (1) retroactive or prospective application of laws providing or extending the prescriptive period; (2) the determination of the nature of the felony committed *vis a vis* the applicable prescriptive period; and (3) the reckoning of when the prescriptive period runs. Thus, contrary to the opinion of the

majority in *Romualdez*, these cases are no authority to support the conclusion that the prescriptive period in a special law runs while the accused is abroad. I reiterate my dissenting opinion in the *Romualdez* case: "There is good reason for the rule freezing the prescriptive period while the accused is abroad. The accused should not have the sole discretion of preventing his own prosecution by the simple expedient of escaping from the State's jurisdiction. This should be the rule even in the absence of a law tolling the running of the prescriptive period while the accused is abroad and beyond the State's jurisdiction. An accused cannot acquire legal immunity by being a fugitive from the State's jurisdiction. In this case, there is even a law – Article 91 of the RPC, which Article 10 of the RPC expressly makes applicable to special laws like RA 3019 – tolling the running of the prescriptive period while the accused is abroad. **To allow an accused to prevent his prosecution by simply leaving this jurisdiction unjustifiably tilts the balance of criminal justice in favor of the accused to the detriment of the State's ability to investigate and prosecute crimes.** In this age of cheap and accessible global travel, this Court should not encourage individuals facing investigation or prosecution for violation of special laws to leave Philippine jurisdiction to sit-out abroad the prescriptive period. he majority opinion unfortunately chooses to lay the basis for such anomalous practice." I maintain that an accused cannot acquire legal immunity by fleeing from the State's jurisdiction. To allow such a loophole will make a mockery of our criminal laws.

BRION, *J., dissenting opinion*:

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NATURE. – A Rule 65 petition is a ***very narrow and focused remedy*** that solely addresses cases involving lack or want of jurisdiction. x x x Our jurisdiction to issue a writ of *certiorari* is conferred by Article VIII, Section 5(2) of the Constitution whose full details are provided under Rule 65 of the Rules of Court. This is a limited grant that is very precise in its terms; it applies only in cases involving lack or excess of jurisdiction. Negatively stated, it does not refer to a mere error of law committed after jurisdiction had been lawfully acquired. Related to our *certiorari* jurisdiction is the duty imposed on us by Article VIII, Section 1 of the Constitution "to determine whether

or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or intrumentality of the Government." This provision fully rounds off the grant of jurisdiction to this Court under Article VIII, Section 5(2) and the procedural methodology and details that Rule 65 of the Rules of Court provides, by stressing that – separately from the grant of authority under Article VIII of the Constitution – there is a duty that this Court must discharge. **Collectively, these provisions show that "*certiorari*" and "grave abuse of discretion" are firmly established concepts that this Court should fully respect and enforce if only because of their constitutional moorings.**

2. **ID.; CIVIL PROCEDURE; PLEADINGS; COMPLAINT; ALLEGATION MADE BY THE PLAINTIFF IN THE COMPLAINT DETERMINES THE NATURE OF THE ACTION, AS WELL AS THE COURT WHICH HAS JURISDICTION OVER THE CASE. –** It is basic procedural law that what determines the nature of the action, as well as the court which has jurisdiction over the case, is the allegation made by the plaintiff in the complaint. The defenses asserted in the answer or in the motion to dismiss are not to be considered in resolving the issue of jurisdiction, otherwise the question of jurisdiction could depend entirely upon the defendant. This is particularly true in a special civil action for *certiorari* where the grounds – *lack or excess of jurisdiction* – are specific and circumscribed by the Constitution and the Rules of Court.

3. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ISSUE OF PRESCRIPTION CANNOT BE RESOLVED IN THE PETITION FOR CERTIORARI IN CASE AT BAR. – The legal reality we have to live with, for jurisdictional purposes, is that the respondent did not question the Sandiganbayan ruling before us; thus, the prescription issue is beyond our jurisdiction to rule upon in the present petition for *certiorari*.** Another legal reality that the respondent does not appear to have appreciated is that the prescription issue is not a dead issue; it is simply an issue that is not before us and, hence, one that we cannot rule upon. The Sandiganbayan's denial of the respondent's claim of prescription was an interlocutory ruling that did not fully and finally settle the issue of prescription x x x.

4. ID.; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; PROHIBITION AGAINST A SECOND MOTION FOR RECONSIDERATION; DISCUSSED; CASE AT BAR. – Section 2, Rule 52 (made applicable to original actions in the Supreme Court pursuant to Section 2, Rule 56) of the Rules of Court provides that **the filing of a second motion for reconsideration cannot be entertained and, in this sense, is a prohibited pleading**. x x x A glaring feature of the majority's ruling that cannot simply be dismissed is that the majority ruled in favor of an exception to a prohibition against a Second Motion for Reconsideration. The prohibition is an ***express rule*** in the Rules of Court, not one that has been derived from another rule by implication. ***Basic fairness*** alone demands that exceptions from the prohibition should likewise be express, not merely implied. Any exception that is merely implied and without the benefit of any specific standard is tantamount to an ***exception at will*** *that is prone to abuse and even to an attack on substantive due process grounds.* **This case and its short-cut in ruling on the prescription issue is the best example of the application of an *exception at will.* x x x [T]he majority ruling does not clearly show *how* and *why* the exception to the prohibition against second motions for reconsideration was allowed.** A separate problematic area in the suspension of the rules is the Court's approach of suspending the prohibition against a second motion for reconsideration on a case-to-case basis – a potential ground for a substantive due process objection by the party aggrieved by the suspension of the rules. Given what we discussed above about the lack of clear standards and the resulting *exception at will* situation, the litigating public may ask: ***is the Court's declaration of the suspension of the rules an infallible ex cathedra determination that a litigant has to live with simply because the Highest Court in the land said so?*** Without doubt, it cannot be debatable that the due process that the Constitution guarantees can be invoked even against this Court; we cannot also be immune from the grave abuse of discretion that Section 1, Article VIII speaks of, despite being named as the entity with the power to inquire into the existence of this abuse. In light of the plain terms of Rule 52, Section 2, of the Rules of Court, the litigating public can legitimately rephrase its question and ask: ***what is to control the discretion of the Supreme Court when it decides to act contrary to the plain terms* of**

the prohibition against second motions for reconsideration? If we in this Court are the guardians of the Constitution with the power to inquire into grave abuse of discretion in Government, the litigating public may ask as a follow-up question: **are the guardians also subject to the rules on grave abuse of discretion that they are empowered to inquire into; if so, *who will guard the guardians?*** The *ideal* short and quick answer is: ***the rule of law.*** But for now, in the absence of any clearcut exception to the prohibition against a second motion for reconsideration, the guardians can only police themselves and tell the litigating public: **trust us**. In this sense, the burden is on this Court to ensure that any action in derogation of the express prohibition against a second motion for reconsideration is a legitimate and completely defensible action that will not lessen the litigating public's trust in this Court and the whole judiciary as guardians of the Constitution.

5. ID.; ID.; JUDGMENTS; PRINCIPLE OF IMMUTABILITY OF JUDGMENTS; BEDROCK PRINCIPLE OF THE PROHIBITION AGAINST A SECOND MOTION FOR RECONSIDERATION. – Hand in hand with the prohibition on second motion for reconsideration and underlying it, is the bedrock principle of immutability of judgments. The judiciary contributes to the harmony and well-being of society by sitting in judgment over all controversies, and by rendering rulings that the whole society – by law, practice and convention – accepts as the final word settling a disputed matter. The Rules of Court express and reinforce this arrangement by ensuring that at some point all litigation must cease: a party is given ***one and only one chance*** to ask for a reconsideration; thereafter, the decision becomes final, unchangeable and must be enforced.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Otilia Dimayuga-Molo for private respondent.

RESOLUTION

TINGA, *J.*:

The relevant antecedent facts are stated in the Decision of the Court dated 23 July 2008.[1] We reproduce them, to wit:

The Office of the Ombudsman (Ombudsman) charged Romualdez before the Sandiganbayan with violation of Section 3 (e) of Republic Act No. 3019 (R.A. 3019), as amended, otherwise known as the Anti-Graft and Corrupt Practices Act. The Information reads:

> That on or about and during the period from 1976 to February 1986 or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused Benjamin "Kokoy" Romualdez, a public officer being then the Provincial Governor of the Province of Leyte, while in the performance of his official function, committing the offense in relation to his Office, did then and there willfully, unlawfully and criminally with evident bad faith, cause undue injury to the Government in the following manner: accused public officer being then the elected Provincial Governor of Leyte and without abandoning said position, and using his influence with his brother-in-law, then President Ferdinand E. Marcos, had himself appointed and/or assigned as Ambassador to foreign countries, particularly the People's Republic of China (Peking), Kingdom of Saudi Arabia (Jeddah), and United States of America (Washington D.C.), knowing fully well that such appointment and/or assignment is in violation of the existing laws as the Office of the Ambassador or Chief of Mission is incompatible with his position as Governor of the Province of Leyte, thereby enabling himself to collect dual compensation from both the Department of Foreign Affairs and the Provincial Government of Leyte in the amount of Two Hundred Seventy-six Thousand Nine Hundred Eleven Dollars and 56/100 (US $276,911.56), US Currency or its equivalent amount of Five Million Eight Hundred Six Thousand Seven Hundred Nine Pesos and 50/100 (₱5,806,709.50) and Two Hundred Ninety-three Thousand Three Hundred Forty-eight Pesos and 86/100 (₱293,348.86) both Philippine Currencies,

[1] See *People v. Romualdez*, G.R. No. 166510, 23 July 2008, 559 SCRA 492.

respectively, to the damage and prejudice of the Government in the aforementioned amount of ₱5,806,709.50.

CONTRARY TO LAW.

Romualdez moved to quash the information on two grounds, namely: (1) that the facts alleged in the information do not constitute the offense with which the accused was charged; and (2) that the criminal action or liability has been extinguished by prescription. He argued that the acts imputed against him do not constitute an offense because: (a) the cited provision of the law applies only to public officers charged with the grant of licenses, permits, or other concessions, and the act charged — receiving dual compensation — is absolutely irrelevant and unrelated to the act of granting licenses, permits, or other concessions; and (b) there can be no damage and prejudice to the Government considering that he actually rendered services for the dual positions of Provincial Governor of Leyte and Ambassador to foreign countries.

To support his prescription argument, Romualdez posited that the 15-year prescription under Section 11 of R.A. 3019 had lapsed since the preliminary investigation of the case for an offense committed on or about and during the period from 1976 to February 1986 commenced only in May 2001 after a Division of the Sandiganbayan referred the matter to the Office of the Ombudsman. He argued that there was no interruption of the prescriptive period for the offense because the proceedings undertaken under the 1987 complaint filed with the Presidential Commission on Good Government (PCGG) were null and void pursuant to the Supreme Court's ruling in *Cojuangco, Jr. v. PCGG and Cruz*, *Jr*. [sic]. He likewise argued that the Revised Penal Code provision that prescription does not run when the offender is absent from the Philippines should not apply to his case, as he was charged with an offense not covered by the Revised Penal Code; the law on the prescription of offenses punished under special laws (Republic Act No. 3326) does not contain any rule similar to that found in the Revised Penal Code.

The People opposed the motion to quash on the argument that Romualdez is misleading the court in asserting that Section 3 (e) of R.A. 3019 does not apply to him when Section 2 (b) of the law states that corrupt practices may be committed by public officers who include "elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt

service receiving compensation, even nominal, from the government." On the issue of prescription, the People argued that Section 15, Article XI of the Constitution provides that the right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches or estoppel, and that prescription is a matter of technicality to which no one has a vested right. Romualdez filed a Reply to this Opposition.

The Sandiganbayan granted Romualdez' motion to quash in the first Resolution assailed in this petition. The Sandiganbayan stated:

> We find that the allegation of damage and prejudice to the Government in the amount of ₱5,806,709.50 representing the accused's compensation is without basis, absent a showing that the accused did not actually render services for his two concurrent positions as Provincial Governor of the Province of Leyte and as Ambassador to the People's Republic of China, Kingdom of Saudi Arabia, and United States of America. The accused alleges in the subject Motion that he actually rendered services to the government. To receive compensation for actual services rendered would not come within the ambit of improper or illegal use of funds or properties of the government; nor would it constitute unjust enrichment tantamount to the damage and prejudice of the government.
>
> Jurisprudence has established what "evident bad faith" and "gross negligence" entail, thus:
>
>> In order to be held guilty of violating Section 3 (e), R.A. No. 3019, the act of the accused that caused undue injury must have been done with evident bad faith or with gross inexcusable negligence. But bad faith per se is not enough for one to be held liable under the law, the "bad faith" must be "evident".
>>
>> xxx xxx xxx
>>
>> . . . . "Gross negligence" is characterized by the want of even slight care, acting or omitting to act in a willful or omitting to act in a willful or intentional manner displaying a conscious indifference to consequences as far as other persons may be affected. (Emphasis supplied)

> The accused may have been inefficient as a public officer by virtue of his holding of two concurrent positions, but such inefficiency is not enough to hold him criminally liable under the Information charged against him, given the elements of the crime and the standards set by the Supreme Court quoted above. At most, any liability arising from the holding of both positions by the accused may be administrative in nature.
>
> xxx xxx xxx
>
> However, as discussed above, the Information does not sufficiently aver how the act of receiving dual compensation resulted to undue injury to the government so as to make the accused liable for violation of Section 3 (e) of R.A. No. 3019.

The Sandiganbayan found no merit in Romualdez' prescription argument.

The People moved to reconsider this Resolution, citing "reversible errors" that the Sandiganbayan committed in its ruling. Romualdez opposed the People's motion, but also moved for a partial reconsideration of the Resolution's ruling on prescription. The People opposed Romualdez' motion for partial reconsideration.

Thereafter, the Sandiganbayan denied via the second assailed Resolution the People's motion for reconsideration under the following terms —

> The Court held in its Resolution of June 22, 2004, and so maintains and sustains, that assuming the averments of the foregoing information are hypothetically admitted by the accused, it would not constitute the offense of violation of Section 3 (e) of R.A. 3019 as the elements of (a) causing undue injury to any party, including the government, by giving unwarranted benefits, advantage or preference to such parties, and (b) that the public officer acted with manifest partiality, evident bad faith or gross inexcusable negligence, are wanting.
>
> As it is, a perusal of the information shows that pertinently, accused is being charged for: (a) having himself appointed as ambassador to various posts while serving as governor of the Province of Leyte and (b) for collecting dual compensation for said positions. As to the first, the Court finds that accused

cannot be held criminally liable, whether or not he had himself appointed to the position of the ambassador while concurrently holding the position of provincial governor, because the act of appointment is something that can only be imputed to the appointing authority.

Even assuming that the appointee influenced the appointing authority, the appointee only makes a passive participation by entering into the appointment, unless it is alleged that he acted in conspiracy with his appointing authority, which, however, is not so claimed by the prosecution in the instant case. Thus, even if the accused's appointment was contrary to law or the constitution, it is the appointing authority that should be responsible therefor because it is the latter who is the doer of the alleged wrongful act. In fact, under the rules on payment of compensation, the appointing authority responsible for such unlawful employment shall be personally liable for the pay that would have accrued had the appointment been lawful. As it is, the appointing authority herein, then President Ferdinand E. Marcos has been laid to rest, so it would be incongruous and illogical to hold his appointee, herein accused, liable for the appointment.

Further, the allegation in the information that the accused collected compensation in the amounts of Five Million Eight Hundred Six Thousand Seven Hundred Nine Pesos and 50/100 (₱5,806,709.50) and Two Hundred Ninety-three Thousand Three Hundred Forty Eight Pesos and 86/100 (₱293,348.86) cannot sustain the theory of the prosecution that the accused caused damage and prejudice to the government, in the absence of any contention that receipt of such was tantamount to giving unwarranted benefits, advantage or preference to any party and to acting with manifest partiality, evident bad faith or gross inexcusable negligence. Besides receiving compensation is an incident of actual services rendered, hence it cannot be construed as injury or damage to the government.

It likewise found no merit in Romualdez' motion for partial reconsideration.[2]

Petitioner filed a Petition for *Certiorari* under Rule 65, imputing grave abuse of discretion on the part of the Sandiganbayan in

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[2] *Id.* at 496-500.

quashing the subject information. Private respondent responded with a Motion to Dismiss with Comment *Ad Cautelam*, wherein he argued that the proper remedy to an order granting a motion to quash a criminal information is by way of appeal under Rule 45 since such order is a final order and not merely interlocutory. Private respondent likewise raised before this Court his argument that the criminal action or liability had already been extinguished by prescription, which argument was debunked by the Sandiganbayan.

The Court granted the petition in its 23 July 2008 Decision. While the Court acknowledged that the mode for review of a final ruling of the Sandiganbayan was by way of a Rule 45 petition, it nonetheless allowed the Rule 65 petition of petitioners, acceding that such remedy was available on the claim that grave abuse of discretion amounting to lack or excess of jurisdiction had been properly and substantially alleged. The Decision then proceeded to determine that the quashal of the information was indeed attended with grave abuse of discretion, the information having sufficiently alleged the elements of Section 3(e) of Rep. Act No. 3019, the offense with which private respondent was charged. The Decision concluded that the Sandiganbayan had committed grave abuse of discretion by premising its quashal of the information "on considerations that either not appropriate in evaluating a motion to quash; are evidentiary details not required to be stated in an Information; are matters of defense that have no place in an Information; or are statements amounting to rulings on the merits that a court cannot issue before trial."

Private respondent filed a Motion for Reconsideration, placing renewed focus on his argument that the criminal charge against him had been extinguished on account of prescription. In a Minute Resolution dated 9 September 2008, the Court denied the Motion for Reconsideration. On the argument of prescription, the Resolution stated:

> We did not rule on the issue of prescription because the Sandiganbayan's ruling on this point was not the subject of the People's petition for *certiorari*. While the private respondent asserted in his Motion to Dismiss *Ad Cautelam* filed with us that prescription had set in, he did not file his own petition to assail this aspect of the

Sandiganbayan ruling, he is deemed to have accepted it; he cannot now assert that in the People's petition that sought the nullification of the Sandiganbayan ruling on some other ground, we should pass upon the issue of prescription he raised in his motion.

Hence this second motion for reconsideration, which reiterates the argument that the charges against private respondent have already prescribed. The Court required the parties to submit their respective memoranda on whether or not prescription lies in favor of respondent.

The matter of prescription is front and foremost before us. It has been raised that following our ruling in *Romualdez v. Marcelo,*[3] the criminal charges against private respondent have been extinguished by prescription. The Court agrees and accordingly grants the instant motion.

Private respondent was charged with violations of Rep. Act No. 3019, or the Anti-Graft and Corrupt Practices Act, committed "on or about and during the period from 1976 to February 1986." However, the subject criminal cases were filed with the Sandiganbayan only on 5 November 2001, following a preliminary investigation that commenced only on 4 June 2001. The time span that elapsed from the alleged commission of the offense up to the filing of the subject cases is clearly beyond the fifteen (15) year prescriptive period provided under Section 11 of Rep. Act No. 3019.[4]

Admittedly, the Presidential Commission on Good Government (PCGG) had attempted to file similar criminal cases against

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[3] G.R. Nos. 165510-33, 28 July 2006, 497 SCRA 89.

[4] "*Prescription of offenses.* – All offenses punishable under this Act shall prescribe in fifteen years."

Applying *People v. Pacificador*, G.R. No. 139405, 13 March 2001, 354 SCRA 310, any offenses involving violation of Rep. Act No. 3019 which respondent might have committed from 1976 to 1982, the latter year being that prescribed in 10 years under the law in effect at the time. In 1982, the law was amended by setting the period of prescription at 15 years but the new period only applies to offenses committed after 1982. Nonetheless, this point is moot in this case since the preliminary investigation by the Ombudsman commenced more than fifteen years after February, 1986.

private respondent on 22 February 1989. However, said cases were quashed based on prevailing jurisprudence that informations filed by the PCGG and not the Office of the Special Prosecutor/ Office of the Ombudsman are null and void for lack of authority on the part of the PCGG to file the same. This made it necessary for the Office of the Ombudsman as the competent office to conduct the required preliminary investigation to enable the filing of the present charges.

The initial filing of the complaint in 1989 or the preliminary investigation by the PCGG that preceded it could not have interrupted the fifteen (15)-year prescription period under Rep. Act No. 3019. As held in *Cruz, Jr. v. Sandiganbayan,*[5] the investigatory power of the PCGG extended only to alleged ill-gotten wealth cases, absent previous authority from the President for the PCGG to investigate such graft and corruption cases involving the Marcos cronies. Accordingly, the preliminary investigation conducted by the PCGG leading to the filing of the first information is *void ab initio*, and thus could not be considered as having tolled the fifteen (15)-year prescriptive period, notwithstanding the general rule that the commencement of preliminary investigation tolls the prescriptive period. After all, a *void ab initio* proceeding such as the first preliminary investigation by the PCGG could not be accorded any legal effect by this Court.

The rule is that for criminal violations of Rep. Act No. 3019, the prescriptive period is tolled only when the Office of the Ombudsman receives a complaint or otherwise initiates its investigation.[6] As such preliminary investigation was commenced more than fifteen (15) years after the imputed acts were committed, the offense had already prescribed as of such time.

Further, the flaw was so fatal that the information could not have been cured or resurrected by mere amendment, as a new preliminary investigation had to be undertaken, and evidence had again to be adduced before a new information could be filed. The rule may well be that the amendment of a criminal

[5] G.R. No. 94595, 26 February 1991, 194 SCRA 474.

[6] See *Salvador v. Desierto*, G.R. No. 135249, 16 January 2004.

complaint retroacts to the time of the filing of the original complaint. Yet such rule will not apply when the original information is *void ab initio*, thus incurable by amendment.

The situation herein differs from that in the recent case of *SEC v. Interport,*[7] where the Court had occasion to reexamine the principles governing the prescription of offenses punishable under special laws. Therein, the Court found that the investigative proceedings conducted by the Securities and Exchange Commission had tolled the prescriptive period for violations of the Revised Securities Act, even if no subsequent criminal cases were instituted within the prescriptive period. The basic difference lies in the fact that no taint of invalidity had attached to the authority of the SEC to conduct such investigation, whereas the preliminary investigation conducted herein by the PCGG is simply *void ab initio* for want of authority.

Indeed the Court in 2006 had the opportunity to favorably rule on the same issue of prescription on similar premises raised by the same respondent. In *Romualdez v. Marcelo*,[8] as in this case, the original preliminary investigation was conducted by the PCGG, which then acted as complainant in the complaint filed with the Sandiganbayan. Given that it had been settled that such investigation and information filed by the PCGG was null and void, the Court proceeded to rule that "[i]n contemplation of the law, no proceedings exist that could have merited the suspension of the prescriptive periods." As explained by Justice Ynares-Santiago:

> Besides, the only proceeding that could interrupt the running of prescription is that which is filed or initiated by the offended party before the appropriate body or office. Thus, in the case of *People v. Maravilla*, this Court ruled that the filing of the complaint with the municipal mayor for purposes of preliminary investigation had the effect of suspending the period of prescription. Similarly, in the case of *Llenes v. Dicdican*, this Court held that the filing of a complaint against a public officer with the Ombudsman tolled the running of the period of prescription.

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[7] G.R. No. 135808, 6 October 2008.

[8] G.R. Nos. 165510-33, 28 July 2006, 497 SCRA 89.

In the case at bar, however, the complaint was filed with the wrong body, the PCGG. Thus, the same could not have interrupted the running of the prescriptive periods.[9]

Clearly, following *stare decisis*, private respondent's claim of prescription has merit, similar in premises as it is to the situation in *Marcelo*. Unfortunately, such argument had not received serious consideration from this Court. The Sandiganbayan had apparently rejected the claim of prescription, but instead quashed the information on a different ground relating to the elements of the offense. It was on that point which the Court, in its 23 July 2008 Decision, understandably focused. However, given the reality that the arguments raised after the promulgation of the Decision have highlighted the matter of prescription as well as the precedent set in *Marcelo*, the earlier quashal of the information is, ultimately, the correct result still.

It would be specious to fault private respondent for failing to challenge the Sandiganbayan's pronouncement that prescription had not arisen in his favor. The Sandiganbayan quashed the information against respondent, the very same relief he had sought as he invoked the prescription argument. Why would the private respondent challenge such ruling favorable to him on motion for reconsideration or in a separate petition before a higher court? Imagine, for example, that the People did not anymore challenge the Sandiganbayan rulings anymore. The dissent implies that respondent in that instance should nonetheless appeal the Sandiganbayan's rulings because it ruled differently on the issue of prescription. No lawyer would conceivably give such advise to his client. Had respondent indeed challenged the Sandiganbayan's ruling on that point, what enforceable relief could he have obtained other than that already granted by the Anti-Graft Court?

Our 2004 ruling in *Romualdez v. Sandiganbayan*[10] cannot be cited against the position of private respondent's. The Sandiganbayan in that case denied the Motion to Quash filed based on prescription, and so it was incumbent on petitioner

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[9] *Id.*, at 104.

[10] G.R. No. 152259, 29 July 2004.

therein to file an appropriate remedial action to reverse that ruling and cause the quashal of the information. Herein, even as the Sandiganbayan disagreed with the prescription argument, it nonetheless granted the Motion to Quash, and it would be ridiculous for the petitioner to object to such action.

Notably, private respondent had already raised the issue of prescription in the very first responsive pleading he filed before the Court – the Motion to Dismiss with Comment *Ad Cautelam*[11] dated 14 April 2005. The claim that private respondent should be deemed as having accepted the Sandiganbayan's ruling on prescription would have been on firmer ground had private respondent remained silent on that point at the first opportunity he had before the Court.

The fact that prescription lies in favor of private respondent posed an additional burden on the petitioner, which had opted to file a Rule 65 petition for *certiorari* instead of the normal recourse to a Rule 45. Prescription would have been considered in favor of private respondent whether this matter was raised before us in a Rule 45 or a Rule 65 petition. Yet the bar for petitioner is markedly higher under Rule 65 than under Rule 45, and its option to resort to Rule 65 instead in the end appears needlessly burdensome for its part, a burden not helped by the fact that prescription avails in favor of private respondent.

WHEREFORE, the Second Motion for Reconsideration is *GRANTED*. The Decision dated 23 July 2008 and the Resolution dated 9 September 2008 in the instant case are *REVERSED* and *SET ASIDE*. The Petition is *HEREBY DISMISSED*. No pronouncements as to costs.

Puno, C.J., Ynares-Santiago, Austria-Martinez, Velasco, Jr., Nachura, and *Bersamin, JJ.,* concur.

Corona, J., concurs in the result.

Carpio, J., see dissenting opinion.

Carpio Morales and *Chico-Nazario, JJ.,* join the dissenting opinions of *J*. Carpio and *J*. Brion.

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[11] *Rollo,* pp. 174-197.

Brion, J., see dissenting opinion.

Leonardo-de Castro and *Peralta, JJ.*, took no part.

Quisumbing, J., on official business.

DISSENTING OPINION

CARPIO, *J.*:

I dissent. I reiterate my view on the matter of prescription, as expressed in my dissenting opinion in *Romualdez v. Marcelo.*[1]

Private respondent cannot claim that prescription has set in in his favor despite his voluntary absence from this jurisdiction from 1986 to April 2000 or for a period of nearly fourteen (14) years. A person who commits a crime cannot simply flee from this jurisdiction, wait out for the prescriptive period to expire, then come back to move for the dismissal of the charge against him on the ground of prescription.

First, there is a law, Article 91 of the Revised Penal Code (RPC), which clearly provides that "**[t]he term of prescription shall not run when the offender is absent from the Philippine Archipelago.**"

Both *Romualdez v. Marcelo* and the present case involve a violation of a special law, *i.e*., Republic Act No. 3019 (RA 3019), otherwise known as the "Anti-Graft and Corrupt Practices Act." Section 11 of RA 3019 provides that, "All offenses punishable under this Act shall prescribe in fifteen years." This special law, however, does not specifically provide for a procedure for computing the prescriptive period.

In *People v. Pacificador,*[2] the Court held that Section 2 of Act No. 3326[3] governs the computation of prescriptive period

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[1] G.R. Nos. 165510-33, 28 July 2006, 497 SCRA 89.

[2] 406 Phil. 774 (2001).

[3] An Act To Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances and To Provide When Prescription Shall Begin To Run.

of offenses defined and penalized by special laws. Accordingly, in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto,*[4] the Court ruled that since the law involved, RA 3019, is a special law, the applicable rule in the computation of the prescriptive period is that provided in Section 2 of Act No. 3326, to wit:

> Sec. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
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> The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

In this connection, although the Revised Penal Code (RPC) expressly states in Article 10 thereof that "[o]ffenses which are or in the future may be punishable under special laws are not subject to the provisions of [the RPC]," it likewise provides that the RPC "**shall be supplementary to such laws, unless the latter should specially provide the contrary**." Verily, in a long line of court decisions,[5] provisions of the RPC have

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[4] 415 Phil. 723, 729 (2001).

[5] In *People v. Parel* [44 Phil. 437 (1923)], Article 22 of the RPC, which concerns the retroactive effect of penal laws if they favor the accused, was applied suppletorily by the Court to violations of Act No. 3030, the Election Law; In *U.S. v. Ponte* [20 Phil. 379 (1911)], Article 17 of the RPC, regarding the participation of principals in the commission of a crime, was applied suppletorily in the case of misappropriation of public funds as defined and penalized under Act No. 1740; In *U.S. v. Bruhez* [28 Phil. 305 (1914)], Article 45 of the RPC, which concerns the confiscation of the instruments used in a crime, was applied in the case for violation of Act No. 1461, the Opium Law; In *People v. Moreno* [60 Phil. 712 (1934)], the Court applied suppletorily Article 39 of the RPC on subsidiary penalty to cases of violations of Act No. 3992, or the "Revised Motor Vehicle Law"; In *People v. Li Wai* Cheung [G.R. Nos. 90440-42, 13 October 1992, 214 SCRA 504], the Court applied suppletorily the rules on the service of sentences provided in Article 70 of the RPC in favor of the accused who was found guilty of multiple violations of R.A. No. 6425, or the "Dangerous Drugs Act of 1972"; In *People v. Chowdury* [382 Phil. 459 (2000)], the Court applied suppletorily Articles 17, 18 and 19 of the RPC to define the words "principal," "accomplices" and "accessories"

been applied suppletorily to resolve cases where special laws are silent on the matters in issue. The law on the applicability of Article 10 of the RPC is thus well-settled.

In computing the prescription of offenses, Article 91 of the RPC provides:

> ART. 91. *Computation of prescription of offenses*.— The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.
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> **The term of prescription shall not run when the offender is absent from the Philippine Archipelago.** (Emphasis supplied)

Applying Article 10 of the RPC, the provisions of Article 91 may be applied suppletorily to cases involving violations of special laws where the latter are silent on the matters in issue. The only exception supplied by Article 10 is "unless the [special laws] should specially provide the contrary."

As can be gleaned from Section 2 of Act No. 3326, said provision is "silent" as to whether the absence of the offender from the Philippines bars the running of the prescriptive period fixed in the special law, RA 3019 in this case. This silence has been interpreted by the majority in *Romualdez v. Marcelo* to

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under R.A. No. 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995," because said words were not defined therein, although the special law referred to the same terms in enumerating the persons liable for the crime of illegal recruitment; In *Yu v. People* [G.R. No. 134172, 20 September 2004, 438 SCRA 431], the Court applied suppletorily the provisions on subsidiary imprisonment under Article 39 of the RPC to *Batas Pambansa (B.P.) Blg*. 22, otherwise known as the "Bouncing Checks Law"; In *Ladonga v. People* [G.R. No. 141066, 17 February 2005, 451 SCRA 673], the Court applied suppletorily the principle of conspiracy under Article 8 of the RPC to *B.P. Blg*. 22 in the absence of a contrary provision therein; In the more recent case of *Go-Tan v. Tan* [G.R. No. 168852, 30 September 2008], the principle of conspiracy under Article 8 of the RPC was applied suppletorily to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004."

mean that Section 2 of Act No. 3326 did not intend an interruption of the prescription by the absence of the offender from Philippine soil, unlike the explicit mandate of Article 91 of the RPC. Further, the majority concluded that "the legislature, in enacting Act No. 3326, did not consider the absence of the accused from the Philippines as a hindrance to the running of the prescriptive period. *Expressio unius est exclusio alterius*. x x x Had the legislature intended to include the accused's absence from the Philippines as a ground for the interruption of the prescriptive period in special laws, the same could have been expressly provided in Act No. 3326."

I cannot subscribe to this view.

It is conceded that both RA 3019 and Act No. 3326 are silent on whether the absence of the offender from the Philippines bar the running of the prescriptive period. Ineluctably, this silence calls for the suppletory application of related provisions of the RPC, pursuant to Article 10 thereof. Article 10 is clear: *"This Code (RPC) shall be supplementary to such laws (special laws), unless the latter should specially provide the contrary."* Thus, RPC provisions which are applicable shall supplement or supply what is lacking in the special law unless prohibited by the latter. In this regard, it must be emphasized that nothing in RA 3019 or in Act No. 3326 prohibits the suppletory application of Article 91 of the RPC. Hence, there is no bar to the application to these special laws of Article 91 regarding the tolling of the prescriptive period during the absence of the offender from Philippine jurisdiction.

The "silence" of Act No. 3326 should not be interpreted as that law restricting itself to its own provisions in determining when the prescriptive period should be considered interrupted. The rule of *expressio unius est exclusio alterius*[6] is no more than an auxiliary rule of interpretation which may be ignored where other circumstances indicate that the enumeration was

[6] The express mention of one person, thing or consequence implies the exclusion of all others.

not intended to be exclusive.[7] This maxim may be disregarded if adherence thereto would cause inconvenience, hardship, and injury to public interest.[8] Certainly, to consider the absence of an offender from the Philippine jurisdiction as not a bar to the running of prescriptive period would inevitably cause injury to public interest, and thus, warrants a disregard of this auxiliary rule.

I believe that more befitting in this case is the rule that where an interpretation of law would endanger or sacrifice great public interest, such interpretation should be avoided.[9] The courts should presume that such construction was not intended by the makers of the law, unless required by clear and unequivocal words.[10]

Second, the accused should not have the sole discretion of preventing his own prosecution by the simple expedient of fleeing from the State's jurisdiction.

The majority opinion in *Romualdez v. Marcelo* cited the 1923 case of *People v. Moran*,[11] which in turn quoted from Wharton's 1889 Criminal Pleading and Practice, to justify its "liberal interpretation of the law on prescription in criminal cases." The majority emphasized this excerpt from the *Moran* ruling:

> x x x The statute is not a statute of process, to be scantily and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offence; that the offender shall be at liberty to return to his country, and resume his immunities as a citizen and that from henceforth he may cease to preserve the proofs of his innocence, for the proofs of his guilt are blotted out.[12]

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[7] *Escribano v. Avila*, 174 Phil. 490 (1978), citing *Manabat v. De Aquino*, 92 Phil. 1025, 1027 (1953).

[8] *Javellano v. Tayo,* G.R. No. L-18919, 29 December 1962, 6 SCRA 1042, 1050.

[9] *Co Kim Cham v. Valdez Tan Keh*, 75 Phil. 113, 134 (1945).

[10] *Id*.

[11] 44 Phil. 387 (1923).

[12] *Id*. at 405.

This Court's position was soundly rejected by the legislature when it enacted the Revised Penal Code in 1930. A more exacting rule on prescription was embodied in the Code, Article 91 of which was plain and categorical: "The term of prescription shall not run when the offender is absent from the Philippine Archipelago." Besides, it must be noted that even the cases involving liberal interpretation of the statute of limitations in favor of the accused relate only to the following issues: (1) retroactive[13] or prospective[14] application of laws providing or extending the prescriptive period; (2) the determination of the nature of the felony committed *vis a vis* the applicable prescriptive period;[15] and (3) the reckoning of when the prescriptive period runs.[16] Thus, contrary to the opinion of the majority in *Romualdez*, these cases are no authority to support the conclusion that the prescriptive period in a special law runs while the accused is abroad.

I reiterate my dissenting opinion in the *Romualdez* case:

> There is good reason for the rule freezing the prescriptive period while the accused is abroad. The accused should not have the sole discretion of preventing his own prosecution by the simple expedient of escaping from the State's jurisdiction. This should be the rule even in the absence of a law tolling the running of the prescriptive period while the accused is abroad and beyond the State's jurisdiction. An accused cannot acquire legal immunity by being a fugitive from the State's jurisdiction. In this case, there is even a law — Article 91 of the RPC, which Article 10 of the RPC expressly makes applicable to special laws like RA 3019 — tolling the running of the prescriptive period while the accused is abroad.

To allow an accused to prevent his prosecution by simply leaving this jurisdiction unjustifiably tilts the balance of criminal justice in favor of the accused to the detriment of the State's ability to investigate and prosecute crimes. In this age of cheap and accessible global travel, this Court should not encourage

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[13] *People v. Parel*, *supra* note 5.

[14] *People v. Pacificador, supra* note 2.

[15] *People v. Yu Hai,* 99 Phil. 725 (1956).

[16] *People v. Reyes,* G.R Nos. 74226-27, 27 July 1989, 175 SCRA 597.

individuals facing investigation or prosecution for violation of special laws to leave Philippine jurisdiction to sit-out abroad the prescriptive period. The majority opinion unfortunately chooses to lay the basis for such anomalous practice. (Emphasis supplied)

I maintain that an accused cannot acquire legal immunity by fleeing from the State's jurisdiction. To allow such a loophole will make a mockery of our criminal laws. Contrary to private respondent's claim, prescription has not set in.

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

DISSENTING OPINION

BRION, *J.*:

I vote to deny the admission of the respondent's (*Benjamin "Kokoy" T. Romualdez*) second motion for reconsideration of our Decision dated July 23, 2008 on the following grounds –

I. The Court has no jurisdiction to rule on the issue of prescription.

   a. The issue of prescription is irrelevant and outside this Court's authority to rule upon as it was not an issue raised in the Rule 65 petition for *certiorari* that the People of the Philippines filed.

   b. The respondent's comment on the petition for *certiorari* is not legally sufficient to vest jurisdiction on this Court over the issue of prescription.

   c. The Sandiganbayan ruling on the issue of prescription is an interlocutory order that, under the present circumstances, is within the authority of the Sandiganbayan, not of this Court, to rule upon.

II. A second motion for reconsideration, under the combined application of Section 2, Rule 52 and Section 2, Rule 56 of the Rules of Court, is a prohibited pleading that this Court could and should not have entertained.

a. There is absolutely no basis, either legal or factual, to suspend the operation of the express and categorical prohibition against a second motion for reconsideration.

b. The suspension is doubly objectionable since it opened the way for the disregard of rules on jurisdiction – a substantive law that Court cannot disregard and is outside of the Court's competence to suspend.

c. The Court's admission and grant of the prohibited second motion for reconsideration gnaw at basic principles on which effective administration of justice depends.

I. *Background*

The present case involves the petition for *certiorari* filed under Rule 65 of the Rules of Court by the People of the Philippines. The petition seeks to nullify – on jurisdictional grounds – the Sandiganbayan's rulings (dated June 22, 2004 and November 23, 2004 in Crim. Case No. 26916[1]) on the respondent's motion to quash the information, **insofar** as this ruling ordered the quashal of the information on the ground that the facts alleged do not constitute the offense charged. **The other component of the assailed Sandiganbayan ruling is the denial of the respondent's motion to quash on the ground of prescription. This component was never questioned before this Court, either by way of appeal under Rule 45 or *via* a Rule 65 petition for *certiorari*, under the Rules of Court.**

II. The Court's *Certiorari* Jurisdiction

Our Decision of July 23, 2008 has painstakingly explained why we admitted the petitioner's Rule 65 petition. We admitted the petitioner's Rule 65 petition in light of the grave abuse of

[1] Entitled *People of the Philippines versus Benjamin "Kokoy" Romualdez,* for violation of Section 3 (e) of Republic Act No. 3019 (*RA 3019*), as amended, otherwise known as the Anti-Graft and Corrupt Practices Act.

discretion we found and in the interest of substantial justice, taking into account that we have a ***DUTY – not merely a power*** – to intervene under Article VIII, Section 1, paragraph 2 of the Constitution where grave abuse of discretion exists. No directive in addressing grave abuse of discretion can rise higher than this constitutional command, and this Court has to act if we are to be true to our constitutional duty. Thus, the authority of this Court is granted under, *and at the same time circumscribed by*, the Constitution as implemented by Rule 65 of the Rules of Court.

To be sure, we pointedly admitted in our Decision that the recourse provided in the Rules of Court from the assailed ruling of the Sandiganbayan was a Rule 45 petition for review on *certiorari*. We allowed a Rule 65 petition for *certiorari* for the following quoted reason:

> [I]f the Sandiganbayan merely legally erred while acting within the confines of its jurisdiction, then its ruling, even if erroneous, is properly the subject of a petition for review on *certiorari* under Rule 45, and any Rule 65 petition subsequently filed will be for naught. The Rule 65 petition brought under these circumstances is then being used as a substitute for lost appeal. If on the other hand, the Sandiganbayan ruling is *attended by grave abuse of discretion amounting to lack or excess of jurisdiction,* then this ruling is fatally defective on jurisdictional ground and we should allow it to be questioned within the period for filing a petition for *certiorari* under Rule 65, notwithstanding the lapse of the period of appeal under Rule 45. To reiterate, the ruling's jurisdictional defect and the demands of substantial justice that we believe should receive primacy over the strict application of rules of procedure, require that we so act.

To reiterate, grave abuse of discretion is a fatal defect that renders a ruling void. No Sandiganbayan ruling on the quashal of the Information, therefore, lapsed to finality.

A. The Limits of our *Certiorari* Jurisdiction; ***Who Invoked and What Provoked*** our ***Certiorari*** Jurisdiction; ***Consequence of the majority's present ruling.***

A Rule 65 petition is ***a very narrow and focused remedy*** that solely addresses cases involving lack or want of jurisdiction.[2] In the present case, the lack of jurisdiction is based on the grave abuse of discretion that attended the Sandiganbayan's grant of the private respondent's motion to quash. The petition we ruled upon was not a Rule 45 petition for review on *certiorari* – an **appeal** that would have opened up the whole case for review.[3] Hence, we touched only on the grave abuse of discretion that attended the Sandiganbayan's assailed ruling.

The only aspect of the Sandiganbayan ruling properly before us –***under our narrowly focused and inflexible certiorari jurisdiction*** – is the quashal of the information on the ground that the facts alleged therein do not constitute an offense. We could not have ruled on the issue of prescription in our Decision for jurisdictional reasons; had we done so, that aspect of our ruling would have been void for want or excess of jurisdiction.

In this regard, what the majority should not have forgotten is that jurisdiction is conferred by the Constitution and by law,[4] not by mere acquiescence of this Court,[5] nor by the

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[2] See Section 1, Rule 65 of the Rules of Court; see also *Heirs of Hinog v. Melicor*, G.R. No. 140954, April 12, 2005, 455 SCRA 460 (citing *Land Bank of the Philippines v. Court of Appeals,* 409 SCRA 455, 479 [2003]); *San Miguel Foods, Inc.-Cebu B-Meg Feed Plant v. Laguesma,* 263 SCRA 68, 84-85 [1996]) which describes ***certiorari*** **under Rule 65 as a remedy narrow in scope and inflexible in character; that it is not a general utility tool in the legal workshop**.

[3] See *People v. Court of Appeals*, G.R. No. 144332, June 10, 2004, 431 SCRA 610, which explained the interplay between a Rule 65 and a Rule 45 petition as review modes.

[4] *Victorias Milling Corporation v. Intermediate Appellate Court,* G.R. No. 66880, August 2, 1991, 200 SCRA 1; *Municipality of Sogod v Rosal,* G.R. No. L-38204, September 24, 1991, 201 SCRA 632.

[5] *De Jesus v. Garcia*, G.R. No. L-26816, February 28, 1967, 19 SCRA 554, citing *Molina v. de la Riva*, 6 Phil. 12, and *Manila Railroad Company v. Attorney-General*, 20 Phil. 523; see also Concurring opinion of Justice Pablo in Resolution on Motion for Reconsideration in *Avelino v. Cuenco*, 83 Phil. 17, 74 (1949); *Squillantini v. Republic*, 88 Phil. 135, 137 (1951); *Cruzcosa v. Concepcion*, 101 Phil. 146, 150 (1957); *Lumpay v. Moscoso*, 105 Phil. 968 (1959); *Espiritu v. David*, 2 SCRA 350.

subjectively-held notions of justice of its individual members.[6] Our jurisdiction to issue a writ of *certiorari* is conferred by Article VIII, Section 5(2) of the Constitution[7] whose full details are provided under Rule 65 of the Rules of Court.[8] This is a limited grant that is very precise in its terms; it applies only in

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[6] See in this regard *Furman v. Georgia,* 408 U.S. 308 (1972), where the US Supreme Court ruled on the issue of the constitutionality of death penalty, and where Justice Harry Blackmun struggled between *his personal belief* that the death penalty should not be imposed and *what the Constitution itself provides* with respect to death penalty (*Becoming Justice Blackmun* by Linda Greenhouse, 2005).

[7] **Section 5.** The Supreme Court shall have the following powers:

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1. Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

a. All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

b. All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

c. All cases in which the jurisdiction of any lower court is in issue.

d. All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.

e. All cases in which only an error or question of law is involved. [Emphasis supplied.]

[8] **Section 1.** *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. (1a)

cases involving lack or excess of jurisdiction. Negatively stated, it does not refer to a mere error of law committed after jurisdiction had been lawfully acquired.

Related to our *certiorari* jurisdiction is the duty imposed on us by Article VIII, Section 1 of the Constitution "to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." This provision fully rounds off the grant of jurisdiction to this Court under Article VIII, Section 5(2) and the procedural methodology and details that Rule 65 of the Rules of Court provides, by stressing that – separately from the grant of authority under Article VIII of the Constitution – there is a duty that this Court must discharge. **Collectively, these provisions show that "*certiorari*" and "grave abuse of discretion" are firmly established concepts that this Court should fully respect and enforce if only because of their constitutional moorings.**

Under these clear terms, we have no jurisdiction over the issue of prescription because **it was never even brought to us on a petition for *certiorari*; it was an issue that was never alleged before this Court to have been attended by grave abuse of discretion amounting to lack or excess of jurisdiction. Its mere allegation, by way of comment to a properly-brought petition, never amounted to the required allegation of grave abuse of discretion and, hence, does not sufficiently confer jurisdiction to this Court over the issue.** It is basic procedural law that what determines the nature of the action, as well as the court which has jurisdiction over the case, is the allegation made by the plaintiff in the complaint.[9] The defenses asserted in the answer or in the motion to dismiss are not to be considered in resolving the issue of jurisdiction, otherwise the question of jurisdiction could depend entirely upon the defendant.[10] This is particularly true in a special civil action for *certiorari* where

[9] See O. Herrera, *Remedial Law Annotated*, 2000 Ed., Volume I, p. 62; *Cadimas v. Carrion,* G.R. No. 180394, September 29, 2008.

[10] *Serrano v. Munoz Motors, Inc.,* G.R. No. L-25547, November 27, 1967, citing *Perez Cardenas vs. Camus*, 5 SCRA 639 (1962).

the grounds – *lack or excess of jurisdiction* – are specific and circumscribed by the Constitution and the Rules of Court.

In ruling on this limited issue, we found that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of discretion (not merely an error of law), because it grossly violated the basic rules for evaluating a motion to quash, namely: that the decision maker should *only* consider the facts alleged in the Information, as matters *aliunde* cannot be alleged; and that these facts, hypothetically admitted, should establish the essential elements of the offense as defined by law.

As shown and discussed in our Decision of July 23, 2008, the Sandiganbayan's ***"conclusions are based on considerations that either are not appropriate in evaluating a motion to quash; are evidentiary details not required to be stated in an Information; are matters of defense that have no place in an Information; or are statements amounting to rulings on the merits that a court cannot issue before trial."*** These are amply demonstrated in our **unanimous** Decision,[11] and cannot be simply negated by a plain claim that they do not meet the higher bar for review of grave abuse of discretion under Rule 65 (compared to the standard of review for a reversible error under Rule 45).[12]

A significant point to note in reading and analyzing the majority Resolution of April 30, 2009, is that – despite the above observation in the Resolution regarding the standard of review – it has not at all challenged the unanimous finding of grave abuse of discretion in our July 23, 2008 Decision. The majority ruling, in fact, sidestepped the issue and proceeded to rule on the issue of prescription – a matter outside our jurisdiction in the present petition.

In so doing, the majority accepted that the petition before us is indeed a Rule 65 petition for *certiorari*, but at the same time proceeded to rule on an issue that is not appropriate, *for jurisdictional reasons*, for a Rule 65 petition to consider and rule upon. **This is a fatal infirmity, affecting as it does our**

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[11] See: pages 17 to 21 of our Decision of July 23, 2008.

[12] See: page 12 of the majority Resolution of April 30, 2009.

core authority to rule, and is a defect that necessarily renders the majority's ruling void.[13] For this reason, our Decision of July 23, 2008 and its supporting Resolution of September 8, 2008, should stand.

B. Unlike the People, the respondent failed to invoke our *certiorari* jurisdiction

The majority ruling turns a blind eye to the fact that the respondent failed to invoke our *certiorari* jurisdiction by simply saying that –

> It would be specious to fault private respondent for failing to challenge the Sandiganbayan's pronouncement that prescription had not arisen in his favour. The Sandiganbayan quashed the Information against respondent, the very same relief he had sought as he invoked the prescription argument. Why would the private respondent challenge such ruling favourable to him on motion for reconsideration or in a separate petition before a higher court? Imagine, for example, that the People did not anymore challenge the Sandiganbayan rulings anymore. The dissent implies that respondent in that instance should nonetheless appeal the Sandiganbayan's rulings because it ruled differently on the issue of prescription. No lawyer would conceivably give such advice to his client. Had respondent indeed challenged the Sandiganbayan's ruling on that point, what enforceable relief could he have obtained other than that already granted by the Anti-Graft Court?

To be sure, what the majority says is not untrue as a practical matter. But we are here concerned with actual legal reality, not with any practical *what could have been,* nor with the advice that the respondent's counsel could have given. **The legal reality we have to live with, for jurisdictional purposes, is that the respondent did not question the Sandiganbayan ruling before us; thus, the prescription issue is beyond our jurisdiction to rule upon in the present petition for *certiorari*.**

Another legal reality that the respondent does not appear to have appreciated is that the prescription issue is not a dead issue; it is simply an issue that is not before us and, hence, one

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[13] *Roces v. House of Representatives Electoral Tribunal,* G.R. No. 167499, September 15, 2005, 469 SCRA 681.

that we cannot rule upon. The Sandiganbayan's denial of the respondent's claim of prescription was an interlocutory ruling that did not fully and finally settle the issue of prescription (unlike the grant of a motion to quash which assumes a character of finality because of the termination of the proceeding that follows a grant).[14] With the option of filing its own petition for *certiorari* gone, the respondent thus has to fall back on its next recourse – to resurrect the prescription issue when and if the Sandiganbayan's quashal of the Information is reversed, since the Sandiganbayan ruling is interlocutory. If the private respondent misread the legal situation, he has only himself and his counsel to blame, and should not transfer to this Court the burden of freeing him from whatever mistake he and his counsel might have committed.

II. The Respondent's Second Motion for Reconsideration is a Prohibited Pleading

The present case is now before this Court on a **Second Motion for Reconsideration**. Section 2, Rule 52 (made applicable to original actions in the Supreme Court pursuant to Section 2, Rule 56) of the Rules of Court provides that **the filing of a second motion for reconsideration cannot be entertained and, in this sense, is a prohibited pleading.** To quote the rule:

> Sec. 2. *Second Motion for Reconsideration.* No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

The majority ruling disregarded this rule and chose to rule on the respondent's Second Motion for Reconsideration *without even rendering a separate specific ruling on the respondent's prior Motion for Leave to Admit Second Motion for*

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[14] See *Santos v. People of the Philippines*, G.R. No. 173176, August 26, 2008 and *Tan, Jr. v. Sandiganbayan*, G.R. No. 128764, July 10, 1998, 292 SCRA 452; for authority to the effect that a grant of a motion to quash terminates the criminal proceedings, see ***People v. Sandiganbayan***, G.R. No. 156394, January 21, 2005, 449 SCRA 205, 216, citing ***People v. Sandiganbayan,*** 408 SCRA 672, 674 (2003) and ***Africa v. Sandiganbayan*** 287 SCRA 408, 417 (1998).

Reconsideration. In its present ruling, the majority after reciting how the case came to the Second Motion for Reconsideration stage, merely stated:

Hence, this second motion for reconsideration which reiterates the argument that the charges against private respondent have already prescribed. The Court required the parties to submit their respective memoranda on whether or not prescription lies in favor of respondent.

The matter of prescription is front and foremost before us. It has been raised that following our ruling in *Romualdez v. Marcelo*, the criminal charges against private respondent have been extinguished by prescription. The Court agrees and accordingly grants the instant motion.[15]

At page 10 of its Resolution, the majority added that:[16]

Clearly, following *stare decisis*, private respondent's claim of prescription has merit, similar in premises as it is to the situation of *Marcelo*. Unfortunately, such argument had not received serious consideration from this Court. The Sandiganbayan had apparently rejected the claim of prescription, but instead quashed the information on a different ground relating to the elements of the offense. It was on that point which the Court in its 23 July 2008 Decision, understandably focused. *However, given the reality that the arguments raised after the promulgation of the Decision have highlighted the matter of prescription as well as the other precedents set in Marcelo, the earlier quashal of the information is, ultimately, the correct result still.* [Italics supplied].

Based on these justifications, the majority then proceeded to grant the motion to admit the second motion for reconsideration and to dismiss the petition. In this manner, the majority – *after twice considering the petition and the issue of prescription, and deciding that this is a matter for the Sandiganbayan to rule upon* – saw it fit to reverse itself and recognize that "the criminal charges against private respondent have been extinguished by prescription."

Submerged in this majority ruling is the jurisdictional question earlier raised: *even assuming that a suspension of the prohibition*

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[15] Resolution of April 30, 2009, p. 7.

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

was proper, what happened to the jurisdictional rules affecting the issues the Court can rule upon in a petition for certiorari? To the majority, the bare claim of *stare decisis* and the mere allegation of prescription in "the arguments raised after the promulgation of the Decision"[17] appeared to be enough justification for the Court to rule on the prescription issue. They glossed over the fact that *stare decisis* is a consideration on the merits that is appropriate to make only when the issue to which it applies is properly before the Court. Apparently, too, the rules on second motions for reconsideration and the jurisdictional rules have been confused with one another and intermingled, and then conveniently jettisoned overboard based solely on the individual sentiments of the members of the majority, as expressed in their conclusion that *"the earlier quashal of the information is, ultimately, the correct result still."*[18] Very revealing in this majority statement is the sentiment that at the end of the day (*i.e., ultimately*), the respondent will anyway prevail because of prescription. Because of this, the majority, *in the meanwhile*, forgot and overlooked other existing and applicable laws and rules. This is how shallow and rash the justifications have been for the suspension of the prohibition on second motions for reconsideration and the consequent use of prescription as the reason for the denial of the People's petition. **The majority ruling, in short, has not shown any valid reason for admitting a prohibited second motion for reconsideration, much less any compelling reason explaining *how* and *why* it ruled on an issue not legitimately encompassed by the petition for *certiorari* before us.**

If indeed the majority considered the ultimate result of the issue of prescription, then it must have engaged – without expressly saying so – in a weighing of values in reconsidering its decision and immediately recognizing that prescription had set it. My fear in this regard is that the majority may have considered the wrong values and preferred them at the expense of the rule of law and the basic principles on which effective

[17] *Ibid.*

[18] *Ibid.*

judicial operations depend. The majority may have even placed at risk the integrity of this Court.

In a weighing exercise in this case, a value that can easily be confused and thought to be at risk is the liberty of the individual. The question in this case, however, is not whether the right to liberty shall be granted or denied to the accused. The case is far from the stage where guilt or innocence is to be decided. The present question is only on the validity of the Sandiganbayan's quashal of the Information on the issue of its sufficiency and cannot be addressed with a concern for individual liberty.

A second important point to consider is that the issue of prescription, admittedly one that can be brought even at the motion to quash stage, as Rule 117 of the Rules of Court clearly provides, is not a dead issue. Under the unique circumstances of this case, the Court has simply not been placed in the position to rule on this issue; it has not been properly presented this issue as a matter that had been ruled upon with grave abuse of discretion. Thus, prescription is an issue that will be resolved if needed and at the proper time, not immediately and not in the abbreviated but extra-jurisdictional manner the majority undertook.

A third and a very weighty point to consider is the effect of an arbitrary admission of a prohibited second motion for consideration and of the disregard of jurisdictional rules. I cannot speculate on this point and for now can only point out the concerns discussed below. But, on the whole, I believe that, as against the values embodied by rule of law and the principles on which judicial power and effectiveness depend, any preference for the immediate recognition of prescription at this stage of the case is misplaced, and is a ruling that can exact a heavy toll on the Court, on the rule of law, and on the principles on which the exercise of judicial power are anchored.

A glaring feature of the majority's ruling that cannot simply be dismissed is that the majority ruled in favor of an exception to a prohibition against a Second Motion for Reconsideration. The prohibition is an ***express rule*** in the Rules of Court, not one that has been derived from another rule by implication. ***Basic fairness*** alone demands that exceptions from the prohibition

should likewise be express, not merely implied. Any exception that is merely implied and without the benefit of any specific standard is tantamount to an ***exception at will*** *that is prone to abuse and even to an attack on substantive due process grounds.* **This case and its short-cut in ruling on the prescription issue is the best example of the application of an *exception at will.* To repeat a statement already made above, the majority ruling does not clearly show *how* and *why* the exception to the prohibition against second motions for reconsideration was allowed.**

A separate problematic area in the suspension of the rules is the Court's approach of suspending the prohibition against a second motion for reconsideration on a case-to-case basis – a potential ground for a substantive due process objection by the party aggrieved by the suspension of the rules. Given what we discussed above about the lack of clear standards and the resulting *exception at will* situation, the litigating public may ask: ***is the Court's declaration of the suspension of the rules an infallible ex cathedra determination that a litigant has to live with simply because the Highest Court in the land said so?*** Without doubt, it cannot be debatable that the due process that the Constitution guarantees can be invoked even against this Court; we cannot also be immune from the grave abuse of discretion that Section 1, Article VIII speaks of, despite being named as the entity with the power to inquire into the existence of this abuse.

In light of the plain terms of Rule 52, Section 2, of the Rules of Court, the litigating public can legitimately rephrase its question and ask: ***what is to control the discretion of the Supreme Court when it decides to act contrary to the plain terms of the prohibition against second motions for reconsideration?*** If we in this Court are the guardians of the Constitution with the power to inquire into grave abuse of discretion in Government, the litigating public may ask as a follow-up question**: are the guardians also subject to the rules on grave abuse of discretion that they are empowered to inquire into; if so, *who will guard the guardians?***

The *ideal* short and quick answer is: ***the rule of law***. But for now, in the absence of any clearcut exception to the prohibition

against a second motion for reconsideration, the guardians can only police themselves and tell the litigating public: **trust us.** In this sense, the burden is on this Court to ensure that any action in derogation of the express prohibition against a second motion for reconsideration is a legitimate and completely defensible action that will not lessen the litigating public's trust in this Court and the whole judiciary as guardians of the Constitution. ***Have we discharged this burden in the present case?*** After our previous unanimous rulings and under the terms of the present majority's ruling, I sadly conclude that we have not.

Hand in hand with the prohibition on second motion for reconsideration and underlying it, is the bedrock principle of immutability of judgments. The judiciary contributes to the harmony and well-being of society by sitting in judgment over all controversies, and by rendering rulings that the whole society – by law, practice and convention – accepts as the final word settling a disputed matter. The Rules of Court express and reinforce this arrangement by ensuring that at some point all litigation must cease: a party is given ***one and only one chance*** to ask for a reconsideration; thereafter, the decision becomes final, unchangeable and must be enforced.

The majority's ruling, sad to state, ***gnawed*** at this sensible and indispensable rule when it lifted the prohibition on second motions for reconsideration without fully explaining its grounding in reason, in jurisprudence and in the law. It rendered uncertain the state of final decisions of this Court if only because *exceptions at will* may now be possible and one has in fact been applied to the present case. Thus, we cannot blame an adversely affected litigant who asks: ***why was Benjamin "Kokoy" Romualdez given an exceptional treatment when I was not?*** Lest the issues be enlarged in the public's mind to encompass the very integrity of this Court, we owe it to the litigating public to explain why or why not; the majority did not.

For these reasons, I dissent from the majority's resolution that dismisses, ***to the People's prejudice***, the Rule 65 petition for *certiorari* before this Court.

EN BANC

[G.R. No. 170093. April 29, 2009]

JOSE PEPITO M. AMORES, M.D., *petitioner, vs.* **CIVIL SERVICE COMMISSION, BOARD OF TRUSTEES OF THE LUNG CENTER OF THE PHILIPPINES, as represented by Hon. MANUEL M. DAYRIT, and FERNANDO A. MELENDRES, M.D.,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CIVIL SERVICE; PERMANENT AND TEMPORARY APPOINTMENTS, DISTINGUISHED; IN THE ABSENCE OF CES-ELIGIBLES, NON-CES ELIGIBLES MAY BE TEMPORARILY APPOINTED TO CES-POSITIONS.—** As firmly established by law and jurisprudence, a permanent appointment in the civil service is issued to a person who has met the requirements of the position to which the appointment is made in accordance with law and the rules issued pursuant thereto. An appointment is permanent where the appointee meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed, and it is temporary where the appointee meets all the requirements for the position except only the appropriate civil service eligibility. x x x The law permits, on many occasions, the appointment of non-CES eligibles to CES positions in the government in the absence of appropriate eligibles and when there is necessity in the interest of public service to fill vacancies in the government. But in all such cases, the appointment is at best merely temporary as it is said to be conditioned on the subsequent obtention of the required CES eligibility. This rule, according to *De Leon v. Court of Appeals, Dimayuga v. Benedicto, Caringal v. Philippine Charity Sweepstakes Office*, and *Achacoso v. Macaraig*, is invariable even though the given appointment may have been designated as permanent by the appointing authority.

2. **ID.; ID.; POSITIONS IN CAREER SERVICE.—** Under Section 7 of the Civil Service Law, positions in the civil service are classified into open career positions, closed career positions and positions in the career service. In turn, positions in the

career service are tiered in three levels as follows: SECTION 8. *Classes of Positions in the Career Service*. — (1) Classes of positions in the career service appointment to which requires examinations which shall be grouped into three major levels as follows: (a) The first level shall include the clerical, trades, crafts and custodial service positions which involve non-professional or subprofessional 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 the Division Chief level; and (c) The third level shall cover positions in the Career Executive Service.

3. **ID.; ID.; ID.; POSITIONS IN THE CAREER EXECUTIVE SERVICE; REQUIRES CIVIL SERVICE ELIGIBILITY FOR A PERMANENT APPOINTMENT THEREIN; CASE AT BAR.—** With particular reference to positions in the career executive service (CES), the requisite civil service eligibility is acquired upon passing the CES examinations administered by the CES Board and the subsequent conferment of such eligibility upon passing the examinations. Once a person acquires eligibility, he either earns the status of a permanent appointee to the CES position to which he has previously been appointed, or he becomes qualified for a permanent appointment to that position provided only that he also possesses all the other qualifications for the position. Verily, it is clear that the possession of the required CES eligibility is that which will make an appointment in the career executive service a permanent one. Petitioner does not possess such eligibility, however, it cannot be said that his appointment to the position was permanent.

4. **ID.; ID.; ID.; ID.; SECURITYOF TENURE IN THE CAREER EXECUTIVE SERVICE (CES); NECESSITY OF PASSING THE CES EXAMINATION ADMINISTERED BY THE CES BOARD.—** Security of tenure in the career executive service, which presupposes a permanent appointment, takes place upon passing the CES examinations administered by the CES Board. It is that which entitles the examinee to conferment of CES eligibility and the inclusion of his name in the roster of CES eligibles. Under the rules and regulations promulgated by the

CES Board, conferment of the CES eligibility is done by the CES Board through a formal board resolution after an evaluation has been done of the examinee's performance in the four stages of the CES eligibility examinations. Upon conferment of 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 Board's recommendation. It is this process which completes the official's membership in the CES and confers on him security of tenure in the CES. Petitioner does not seem to have gone through this definitive process.

APPEARANCES OF COUNSEL

Baterina Baterina and Nerpio-Casalas for petitioner.

The Solicitor General for public respondent.

Macam Larcia Ulep and Borge Law Offices for Dr. Fernando A. Melendrez.

D E C I S I O N

PERALTA, *J.*:

In this petition for review under Rule 45 of the Rules of Court, petitioner Jose Pepito M. Amores assails the Decision[1] of the Court of Appeals in CA-G.R. SP No. 80971, dated September 23, 2004, as well as its Resolution[2] dated September 20, 2005 which denied reconsideration. The assailed Decision affirmed the October 14, 2003 Resolution[3] of the Civil Service Commission which, in turn, ordered petitioner's separation from service as Deputy Director for Hospital Support Services at the Lung Center of the Philippines on account of his lack of the necessary civil service eligibility.

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[1] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Mario L. Guariña III and Hakim S. Abdulwahid, concurring; *rollo*, pp. 51-58.

[2] *Id.* at 49.

[3] The Resolution was signed by CSC Chairman Karina Constantino-David and Commissioners Jose Erestain, Jr. and J.Waldemar Valmores; *rollo,* pp. 174-181.

Well established are the facts of the case.

Petitioner Jose Pepito M. Amores was the Deputy Director for Hospital Support Services at the Lung Center of the Philippines (LCP). His civil service career began in 1982 when he was initially engaged at the LCP as a resident physician.[4] In the course of his service, he had been promoted to the position of Medical Specialist,[5] then to Department Manager,[6] and finally to Deputy Director. Dr. Calixto Zaldivar was then the Executive Director of the LCP and when he retired from service in 1999, petitioner was designated as officer-in-charge of the LCP by the Department of Health (DOH) Secretary Alberto Romualdez, Jr.[7]

Petitioner had taken charge of the LCP in the interim that the DOH selection board was in the process of selecting a new executive director. In the meantime, Dr. Fernando Melendres (Melendres), one of the respondents in this case, was appointed by then President Joseph Estrada as Executive Director of the LCP. Melendres was holding the office of the Deputy Director for Medical Support Services before his appointment as Executive Director, and although petitioner claims that he was not challenging Melendres' right to the office, he nevertheless believed that he himself was the rightful person to be appointed as executive director inasmuch as he had top-billed the evaluation results of the DOH Selection Board, with Melendres tailing behind in second place.[8]

It seems that the controversy started when petitioner and the other doctors and rank-and-file employees at the LCP drafted a manifesto[9] which supposedly ventilated their collective dismay

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[4] Records, pp. 57-59, 73-74.

[5] *Id.*; *id.* at 71-72.

[6] *Id.*; *id.* at 65-68.

[7] See Department Order No. 344, s. 1999, dated August 26, 1999; *rollo*, p. 100.

[8] Records, p. 76.

[9] The manifesto was signed by Jose Pepito Amores, Vincent Balanag, Rey Desales, David Geollegue, Cynthia Habaluyas, Ma. Victoria Idolor, Theresa Alcantara, Guillermo Barroa, Jr., Norberto Francisco, Benilda Galvez, Luisito Idolor, Buenaventura Medina, Jr., Raoul Villarete and Guillermo Madlang-awa; records, pp. 78-85.

and demoralization at Melendres' appointment and leadership, and at some of his "unjustified and questionable acts" as Executive Director of the LCP. In a nutshell, the said manifesto boldly exposed the alleged anomalous circumstances surrounding Melendres' appointment; the reassignment of some of the members of the LCP personnel which amounted to demotion in their rank and status; the anomalies in the procurement of property and supplies; his abusive conduct in publicly accusing some of the doctors of having caused the fire that gutted the center in May 1998; in accusing Zaldivar of having entered into anomalous contracts and negotiations with the DPWH relative to certain projects; and in practicing favoritism and nepotism. The tenor of the manifesto even went as far as to be deeply personal as it likewise questioned Melendres' fitness to act as executive director on the ground of his previous brush with substance abuse and the fact that he could no longer keep his marriage from failing.[10]

The seriousness of these allegations led the DOH to create a Fact-finding Committee to conduct an investigation.[11] But at the proceedings before the said Committee, Melendres filed charges of dishonesty and double compensation against petitioner alleging that the latter had been engaging in the private practice of medicine within the LCP's premises during official hours.[12] At the close of the investigation, the Fact-finding Committee issued a report declaring Melendres guilty of the charges against him.[13] As for petitioner, the Committee absolved him of the charge of receiving double compensation, but nevertheless found him guilty of having committed dishonesty by engaging in the private practice of his profession during the hours that he should be engaging in public service in violation of the Civil Service Law.[14]

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[10] Records, pp. 78-85.

[11] *Id.* at 87-88.

[12] See Affidavit-Complaint of Fernando Melendres, dated April 12, 2002; *id.* at 91-92.

[13] Records, pp. 154-155.

[14] *Id.* at 155-156.

Petitioner was caught by surprise when, on August 27, 2002, he received a letter from the LCP Board of Trustees informing him of his separation from service as Deputy Director effective September 30, 2002.[15] To the said letter was attached a copy of the Board's Resolution[16] dated August 23, 2002, principally directing petitioner's termination from service after consultation with the Career Executive Service Board (CES Board).[17] Petitioner brought an appeal from the resolution to the Civil Service Commission (CSC).[18]

Resolving the appeal, the CSC declared that the LCP Board of Trustees had properly and validly separated petitioner from his post as Deputy Director. In its Resolution No. 031050,[19] the CSC declined to pass upon the charge of dishonesty on the ground of pre-maturity as the issue had not yet been finally determined in a proper proceeding and the Board had not yet in fact made a definite finding of guilt from which petitioner might as a matter of course appeal.[20] However, it pointed out that petitioner's separation from service was anchored on his lack of a CES eligibility which is required for the position of deputy director and, as such, he enjoyed no security in his tenure.[21]

Petitioner lodged an Appeal[22] with the Court of Appeals. However, it was dismissed and CSC Resolution No. 031050 was affirmed.[23]

This present petition for review imputes error to the Court of Appeals. First, in missing the fact that petitioner had been

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[15] *Id.* at 172.

[16] *Id.* at 173-177.

[17] The Resolution likewise recommended the filing of administrative charges against Melendres; *id.* at 176.

[18] Records, pp. 37-50.

[19] *Supra* note 3.

[20] Records, p. 12.

[21] *Id.* at 12-13.

[22] Under Rule 43 of the Rules of Court; CA *rollo*, pp. 2-13.

[23] CA *rollo*, p. 277.

denied due process when his separation from office was ordered on a ground not raised before the DOH Fact-finding Committee[24] and, second, in failing to appreciate the fact that his rights to equal protection had likewise been violated inasmuch as he was similarly situated with other department managers in the LCP who had no CES eligibility but who, however, had not been separated from service.[25] He theorizes that his right to security of tenure had been breached and that he was entitled to remain as deputy director because his promotion to the said position supposedly issued by Zaldivar — which was a recognition of his competence — was permanent in character.[26]

The LCP, the CSC and the DOH, all represented by the Office of the Solicitor General, and Melendres, are one in asserting that there can be no question as to the validity of petitioner's removal from office for the basic fact that he enjoyed no security of tenure on account of his lack of eligibility. In his Comment[27] on the petition, Melendres capitalizes on the fact that the LCP Board of Trustees arrived at the resolution to separate petitioner from service upon consultation with the CES Board and the CSC; thus, concludes Melendres, it can only be surmised that the cause for the removal of petitioner from office is actually his lack of eligibility and not his commission of dishonesty. The LCP, for its part, is more to the point. It posits that petitioner's separation from office did not result from an administrative disciplinary action, but rather from his failure to qualify for the office of Deputy Director on account of lack of eligibility. For their part, the CSC and the DOH characterizes petitioner as a third-level appointee who, again, must be in possession of the corresponding third-level eligibility; but since petitioner has none, then he enjoys no security of tenure and may thus be removed at a moment's notice even without cause.

There is merit in the arguments of respondents.

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[24] *Rollo*, p. 33.

[25] *Id.* at 38-40.

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

[27] *Id.* at 215-223.

What at the outset weighs heavily on petitioner's case is the fact that the position of Deputy Director for Hospital Support Services at the LCP belongs to the career executive service appointments to which by law require that the appointees possess the corresponding CES eligibility. Petitioner, however, does not profess that at any time he was holding the said position he was able to acquire the required eligibility therefor by taking the CES examinations and, subsequently, conferred such eligibility upon passing the said examinations. In fact, no slightest suggestion can be derived from the records of this case which would tend to show that in his entire tenure at the LCP he, at any given point, had been conferred a CES eligibility. It is thus as much surprising as it is absurd why petitioner, despite the limitations in his qualifications known to him, would insist that he had served as Deputy Director at the LCP in a permanent capacity.

We begin with the precept, firmly established by law and jurisprudence, that a permanent appointment in the civil service is issued to a person who has met the requirements of the position to which the appointment is made in accordance with law and the rules issued pursuant thereto.[28] An appointment is permanent where the appointee meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed, and it is temporary where the appointee meets all the requirements for the position except only the appropriate civil service eligibility.[29]

Under Section 7[30] of the Civil Service Law,[31] positions in the civil service are classified into open career positions, closed

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[28] *Caringal v. Philippine Charity Sweepstakes Office*, G.R. No. 161942, October 13, 2005, 472 SCRA 577, 578, citing *Abella v. Civil Service Commission*, 442 SCRA 507 (2004) and *Achacoso v. Macaraig*, 195 SCRA 235 (1991).

[29] Section 27 of the Civil Service Law.

[30] SECTION 7. x x x The Career Service shall include:

(1) Open Career positions for appointment to which prior qualification in an appropriate examination is required;

(2) Closed Career positions which are scientific, or highly technical in nature; these include the faculty and academic staff of state colleges and

career positions and positions in the career service. In turn, positions in the career service are tiered in three levels as follows:

SECTION 8. ***Classes of Positions in the Career Service.***— (1) Classes of positions in the career service appointment to which requires examinations which shall be grouped into three major levels as follows:

> (a) The first level shall include the clerical, trades, crafts and custodial service positions which involve non-professional or subprofessional 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 the Division Chief level; and
>
> (c) The third level shall cover positions in the Career Executive Service.

With particular reference to positions in the career executive service (CES), the requisite civil service eligibility is acquired upon passing the CES examinations administered by the CES Board and the subsequent conferment of such eligibility upon passing the examinations.[32] Once a person acquires eligibility, he either earns the status of a permanent appointee to the CES position to which he has previously been appointed, or he becomes qualified for a permanent appointment to that position provided only that he also possesses all the other qualifications for the

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universities, and scientific and technical positions in scientific or research institutions which shall establish and maintain their own merit systems;

(3) Positions in the Career Executive Service, namely, Undersecretary, Assistant Secretary, Bureau Director, Assistant Regional 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.

[31] The Civil Service Law is found in Book V, Title I, Subtitle A of Executive Order No. 292, otherwise known as the Revised Administrative Code of 1987.

[32] *Caringal v. Philippine Charity Sweepstakes Office*, *supra* note 28, at 585.

position.[33] Verily, it is clear that the possession of the required CES eligibility is that which will make an appointment in the career executive service a permanent one. Petitioner does not possess such eligibility, however, it cannot be said that his appointment to the position was permanent.

Indeed, the law permits, on many occasions, the appointment of non-CES eligibles to CES positions in the government[34] in the absence of appropriate eligibles and when there is necessity in the interest of public service to fill vacancies in the government.[35] But in all such cases, the appointment is at best merely temporary[36] as it is said to be conditioned on the subsequent obtention of the required CES eligibility.[37] This rule, according to *De Leon v. Court of Appeals,*[38] *Dimayuga v. Benedicto,*[39] *Caringal v. Philippine Charity Sweepstakes Office*,[40] and *Achacoso v. Macaraig*,[41] is invariable even though the given appointment may have been designated as permanent by the appointing authority.

We now come to address the issue of whether petitioner's separation from service violated his right to security of tenure.

Security of tenure in the career executive service, which presupposes a permanent appointment, takes place upon passing the CES examinations administered by the CES Board. It is that which entitles the examinee to conferment of CES eligibility

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[33] *Cuevas v. Bacal*, G.R. No. 139382, December 6, 2000, 347 SCRA 338, 351.

[34] *General v. Roco*, G.R. No. 143366 & 143524, January 29, 2001, 350 SCRA 528, 536.

[35] See Section 27 of the Civil Service Law.

[36] See *Erasmo v. Home Insurance & Guaranty Corporation*, G.R. No. 139251, August 29, 2002, 388 SCRA 112.

[37] *General v. Roco*, *supra* note 34, at 536.

[38] G.R. No. 127182, January 22, 2001, 350 SCRA 1.

[39] G.R. No. 144153, January 16, 2002, 373 SCRA 652.

[40] *Supra* note 28, at 585-586.

[41] *Supra* note 28, at 239-240.

and the inclusion of his name in the roster of CES eligibles.[42] Under the rules and regulations promulgated by the CES Board, conferment of the CES eligibility is done by the CES Board through a formal board resolution after an evaluation has been done of the examinee's performance in the four stages of the CES eligibility examinations. Upon conferment of 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 Board's recommendation. It is this process which completes the official's membership in the CES and confers on him security of tenure in the CES.[43] Petitioner does not seem to have gone through this definitive process.

At this juncture, what comes unmistakably clear is the fact that because petitioner lacked the proper CES eligibility and therefore had not held the subject office in a permanent capacity, there could not have been any violation of petitioner's supposed right to security of tenure inasmuch as he had never been in possession of the said right at least during his tenure as Deputy Director for Hospital Support Services. Hence, no challenge may be offered against his separation from office even if it be for no cause and at a moment's notice.[44] Not even his own self-serving claim that he was competent to continue serving as Deputy Director may actually and legally give even the slightest semblance of authority to his thesis that he should remain in office. Be that as it may, it bears emphasis that, in any case, the mere fact that an employee is a CES eligible does not automatically operate to vest security of tenure on the appointee inasmuch as the security of tenure of employees in the career executive service, except first and second-level employees, pertains only to rank and not to the office or position to which they may be appointed.[45]

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[42] *Caringal v. Philippine Charity Sweepstakes Office*, *supra* note 28, at 584.

[43] CES Handbook, pp. 5-6.

[44] *Cuevas v. Bacal*, *supra* note 33, at 347.

[45] *Ignacio v. Civil Service Commission*, G.R. No. 163573, July 27, 2005, 464 SCRA 220, 227.

Anent the other issues raised in this petition, we find the same to be merely petitioner's last-ditch attempts, futile as they are, to remain in office. Suffice it to say that no further good may be served in needlessly expounding on them.

All told, we reiterate the long-standing rule that the mere fact that a particular position belongs to the career service does not automatically confer security of tenure on its occupant. Such right will have to depend on the nature of his appointment, which in turn depends on his eligibility or lack of it. A person who does not have the requisite qualifications for the position cannot be appointed to it in the first place or, only as an exception to the rule, may be appointed to it in an acting capacity in the absence of appropriate eligibles.[46]

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. SP No. 80971, dated September 23, 2004, affirming Resolution No. 031050 of the Civil Service Commission, dated October 14, 2003, is *AFFIRMED*.

SO ORDERED.

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

Quisumbing, J., on leave.

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[46] *Achacoso v. Macaraig*, *supra* note 28, at 239-240.

EN BANC

[G.R. No. 179987. April 29, 2009]

HEIRS OF MARIO MALABANAN, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; POSSESSOR OF LAND UNDER *BONA FIDE* CLAIM OF OWNERSHIP SINCE JUNE 12, 1945 OR EARLIER HAS ACQUIRED OWNERSHIP OF, AND REGISTRABLE TITLE THERETO.— In connection with Section 14(1) of the Property Registration Decree, Section 48(b) of the Public Land Act recognizes and confirms that "those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a bona fide claim of acquisition of ownership, since June 12, 1945" have acquired ownership of, and registrable title to, such lands based on the length and quality of their possession.

2. ID.; ID.; ID.; THE POSSESSOR IS ENTITLED TO SECURE JUDICIAL CONFIRMATION OF HIS TITLE THERETO AS SOON AS IT IS DECLARED ALIENABLE AND DISPOSABLE.— Since Section 48(b) merely requires possession since 12 June 1945 and does not require that the lands should have been alienable and disposable during the entire period of possession, the possessor is entitled to secure judicial confirmation of his title thereto as soon as it is declared alienable and disposable, subject to the timeframe imposed by Section 47 of the Public Land Act. There is another limitation to the right granted under Section 48(b). Section 47 of the Public Land Act limits the period within which one may exercise the right to seek registration under Section 48. The provision has been amended several times, most recently by Rep. Act No. 9176 in 2002. It currently reads thus: Section 47. The persons specified in the next following section are hereby granted time, not to extend beyond December 31, 2020 within which to avail of the benefits of this Chapter: Provided, That this period shall apply only where the area applied for does not exceed twelve

(12) hectares: Provided, further, That the several periods of time designated by the President in accordance with Section Forty-Five of this Act shall apply also to the lands comprised in the provisions of this Chapter, but this Section shall not be construed as prohibiting any said persons from acting under this Chapter at any time prior to the period fixed by the President. Accordingly under the current state of the law, the substantive right granted under Section 48(b) may be availed of only until 31 December 2020.

3. **ID.; ID.; ID.; ID.; SECTION 14(1) OF THE PROPERTY REGISTRATION DECREE OPERATIONALIZES THE REGISTRATION OF SUCH LANDS OF THE PUBLIC DOMAIN.—** It bears further observation that Section 48(b) of Com. Act No. 141 is virtually the same as Section 14(1) of the Property Registration Decree. Said Decree codified the various laws relative to the registration of property, including lands of the public domain. It is Section 14(1) that operationalizes the registration of such lands of the public domain. The provision reads: SECTION 14. Who may apply.— The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives: (1) those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

4. **ID.; CIVIL CODE; PATRIMONIAL PROPERTY; REGISTRATION IS PURSUANT TO SECTION 14(2) OF THE PROPERTY REGISTRATION DECREE.—** Patrimonial property is private of the government. The identification what consists of patrimonial property is provided by Article 420 and 421, which we quote in full: 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.

5. **ID.; ID.; ID.; ID.; THERE MUST ALSO BE AN EXPRESS GOVERNMENT MANIFESTATION THAT THE PROPERTY IS INDEED PATRIMONIAL AS IT HAS NO LONGER BEEN RETAINED FOR PUBLIC SERVICE OR THE DEVELOPMENT OF NATIONAL WEALTH.—** However, public domain lands become only patrimonial property not only with a declaration that these are alienable or disposable. There must also be an express government manifestation that the property is already patrimonial or no longer retained for public service or the development of national wealth, under Article 422 of the Civil Code. And only when the property has become patrimonial can the prescriptive period for the acquisition of property of the public dominion begin to run.

6. **ID.; ID.; ID.; TWO KINDS OF PRESCRIPTION BY WHICH PATRIMONIAL PROPERTY MAY BE ACQUIRED.—** There are two kinds of prescription by which patrimonial property may be acquired, one ordinary and other extraordinary. Under ordinary acquisitive prescription, a person acquires ownership of a patrimonial property through possession for at least ten (10) years, in good faith and with just title. Under extraordinary acquisitive prescription, a person's uninterrupted adverse possession of patrimonial property for at least thirty (30) years, regardless of good faith or just title, ripens into ownership.

CHICO-NAZARIO, *J., concurring and dissenting opinion:*

SYLLABUS

1. **CIVIL LAW; LAND TITLES AND DEEDS; PROPERTY REGISTRATION DECREE; SECTION 14(2) OF THE PROPERTY REGISTRATION DECREE CLEARLY AND EXPLICITLY REFERS TO "PRIVATE LANDS" WITHOUT MENTION AT ALL OF PUBLIC LANDS.—**Section 14(2) of the Property Registration Decree allows "those who have acquired ownership of **private lands** by prescription under the provisions of existing laws," to apply for registration of their title to the lands. Section 14(2) of the Property Registration Decree clearly and explicitly refers to "private lands," without mention at all of public lands. There is no other way to understand the plain language of Section 14(2) of the Property Registration Decree except that the land was already

private when the applicant for registration acquired ownership thereof by prescription. The prescription therein was not the means by which the public land was converted to private land; rather, it was the way the applicant acquired title to what is already private land, from another person previously holding title to the same. The provision in question is very clear and unambiguous. Well-settled is the rule that when the law speaks in clear and categorical language, there is no reason for interpretation or construction, but only for application.

2. ID.; ID.; PUBLIC LAND ACT; AGRICULTURAL PUBLIC LANDS MAY BE DISPOSED BY THE STATE BY THE SPECIFIED MODES IN ITS SECTION 11.— Section 11 of Commonwealth Act No. 141, otherwise known as the Public Land Act, as amended, reads: Section 11. Public lands suitable for agricultural purposes **can be disposed of only as follows:** 1) For homestead settlement; (2) By sale; (3) By lease; and (4) By confirmation of imperfect or incomplete titles; (a) By judicial legalization; or (b) By administrative legalization (free patent). The afore-quoted provision recognizes that agricultural public lands may be disposed of by the State, and at the same time, mandates that the latter can **only** do so by the modes identified in the same provision. Thus, the intent of the legislature to make **exclusive** the enumeration of the modes by which agricultural public land may be disposed of by the State in Section 11 of the Public Land Act, as amended, is not only readily apparent, but **explicit**. And, undeniably, the enumeration of the modes for acquiring agricultural public land in the said provision does not include prescription, in the concepts described and periods prescribed by the Civil Code.

3. ID.; ID.; ID.; ITS SECTION 48(B) WAS AMENDED SEVERAL TIMES CHANGING THE PERIOD OF POSSESSION REQUIRED FOR ACQUIRING AN IMPERFECT TITLE.— Section 48(b) of the Public Land Act was amended several times, changing the period of possession required for acquiring an imperfect title to alienable and disposable land of the public domain: Under the public land act, judicial confirmation of imperfect title required possession *en concepto de dueño* **since time immemorial, or since July 26, 1894.** Under C.A. No. 141, this requirement was retained. However, on June 22, 1957, Republic Act No. 1942 was enacted amending C.A. No. 141. This later enactment required adverse possession for **a period**

of only thirty (30) years. On January 25, 1977, the President enacted P.D. No. 1073, further amending C.A. No 141, extending the period for filing applications for judicial confirmation of imperfect or incomplete titles to December 31, 1987. Under this decree, "the provisions of Section 48 (b) and Section 48 (c), Chapter V111, of the Public Land Act are hereby amended in the sense that these provisions shall apply only to alienable and disposable land of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant himself or thru his predecessor-in-interest under a bona fide claim of acquisition of ownership, **since June 12, 1945**." Prior to Presidential Decree No. 1073, imperfect title to agricultural land of the public domain could be acquired by adverse possession of 30 years. Presidential Decree No. 1073, issued on 25 January 1977, amended Section 48(b) of the Public Land Act by requiring possession and occupation of alienable and disposable land of the public domain since 12 June 1945 or earlier for an imperfect title. Hence, by virtue of Presidential Decree No. 1073, the requisite period of possession for acquiring imperfect title to alienable and disposable land of the public domain is no longer determined according to a **fixed term** *(i.e.,* 30 years); instead, it shall be reckoned from a **fixed date** (*i.e*., 12 June 1945 or earlier) from which the possession should have commenced. Stringency and prudence in interpreting and applying Section 48(b) of the Public Land Act, as amended, is well justified by the significant consequences arising from a finding that a person has an imperfect title to agricultural land of the public domain. Not just any lengthy occupation of an agricultural public land could ripen into an imperfect title. **An imperfect title can only be acquired by occupation and possession of the land by a person and his predecessors-in-interest for the period required and considered by law sufficient as to have segregated the land from the mass of public land. When a person is said to have acquired an imperfect title, by operation of law, he acquires a right to a grant, a government grant to the land, without the necessity of a certificate of title being issued. As such, the land ceased to be part of the public domain and goes beyond the authority of the State to dispose of. An application for confirmation of title, therefore, is but a mere formality.**

4. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; *OBITER DICTUM,* DEFINED.— An *obiter dictum* has been defined as an opinion expressed by a court upon some question of law which is not necessary to the decision of the case before it. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause, "by the way," that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. Such are not binding as precedent. Of particular relevance herein is the following discourse in *Villanueva v. Court of Appeals* on what constitutes, or more appropriately, what doe*s* **not** constitute *obiter dictum:* It has been held that an adjudication on any point within the issues presented by the case cannot be considered as *obiter dictum*, and this rule applies to all pertinent questions, although only incidentally involved, which are presented and decided in the regular course of the consideration of the case, and led up to the final conclusion, and to any statement as to matter on which the decision is predicated. Accordingly, a point expressly decided does not lose its value as a precedent because the disposition of the case is, or might have been, made on some other ground, or even though, by reason of other points in the case, the result reached might have been the same if the court had held, on the particular point, otherwise than it did. A decision which the case could have turned on is not regarded as *obiter dictum* merely because, owing to the disposal of the contention, it was necessary to consider another question, nor can an additional reason in a decision, brought forward after the case has been disposed of on one ground, be regarded as *dicta*. So, also, where a case presents two (2) or more points, any one of which is sufficient to determine the ultimate issue, but the court actually decides all such points, the case as an authoritative precedent as to every point decided, and none of such points can be regarded as having the status of a *dictum,* and one point should not be denied authority merely because another point was more dwelt on and more fully argued and considered, nor does a decision on one proposition make statements of the court regarding other propositions *dicta.*

5. CIVIL LAW; LAND TITLES AND DEEDS; REQUISITES FOR GRANT OF JUDICIAL CONFIRMATION AND REGISTRATION OF AN IMPERFECT TITLE.— Given the

foregoing, judicial confirmation and registration of an imperfect title, under Section 48(b) of the Public Land Act, as amended, and Section 14(1) of the Property Registration Decree, respectively, should only be granted when: (1) a Filipino citizen, by himself or through his predecessors-in-interest, have been in open, continuous, exclusive, and notorious possession and occupation of agricultural land of the public domain, under a *bona fide* claim of acquisition of ownership, since 12 June 1945, or earlier; and (2) the land in question, necessarily, was already declared alienable and disposable also by 12 June 1945 or earlier. There can be no other interpretation of Section 48(b) of the Public Land Act, as amended, and Section 14(1) of the Property Registration Decree, which would not run afoul of either the clear and unambiguous provisions of said laws or binding judicial precedents.

BRION, *J., concurring and dissenting opinion*:

SYLLABUS

1. **CIVIL LAW; LAND TITLES AND DEEDS; LAWS RELEVANT TO PETITION AT BAR AND DISSENT.—** Critical to the position taken in this Dissent is the reading of the hierarchy of laws that govern public lands to fully understand and appreciate the grounds for dissent. **In light of our established hierarchy of laws, particularly the supremacy of the Philippine Constitution, any consideration of lands of the public domain should start with the Constitution and its Regalian doctrine; all lands belong to the State, and he who claims ownership carries the burden of proving his claim. Next in the hierarchy is the PLA for purposes of the terms of the grant, alienation and disposition of the lands of the public domain, and the PRD for the registration of lands. The PLA and the PRD are special laws supreme in their respective spheres, subject only to the Constitution. The Civil Code, for its part, is the general law on property and prescription and should be accorded respect as such. In more concrete terms, where alienable and disposable lands of the public domain are involved. The PLA is the primary law that should govern, and the Civil Code provisions on property and prescription must yield in case of conflict.**

2. ID.; ID.; ID.; REGALIAN DOCTRINE.— In the area of public law, foremost in this hierarchy is the *Philippine Constitution,* whose Article X11 (entitled *National Economy and Patrimony*) establishes and fully embraces the regalian doctrine as a first and overriding principle. This doctrine postulates that all lands belong to the State, and that no public land can be acquired by private persons without any grant, express or implied, from the State. Otherwise expressed, all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State. **Thus, all lands that have not been acquired from the government, either by purchase or by grant, belong to the State as part of the inalienable public domain.**

3. ID.; ID.; ID.; ID.; INTERPLAY OF THE PUBLIC LAND ACT, PROPERTY REGISTRATION DECREE (PRD) AND THE CIVIL CODE.— The hierarchy of laws governing the lands of the public domain is clear from Article X11, Section 3 of the Constitution. There are matters that the Constitution itself provides for, and some that are left for Congress to deal with. Thus, under Section 3, the Constitution took it upon itself to classify lands of the public domain, and to state that only agricultural lands may be alienable lands of the public domain. It also laid down the terms under which lands of the public domain may be leased by corporations and individuals. At the same time, it delegated to Congress the authority to classify agricultural lands of the public domain according to the uses to which they may be devoted. Congress likewise determines, by law, the size of the lands of the public domain that may be acquired, developed, held or leased, and the conditions therefor. In acting on the delegation, Congress is given the choice on how it will act, specifically, whether it will pass a general or a special law. On alienable and disposable lands of the public domain, Congress has, from the very beginning, *acted through the medium of a special law*, specifically, through the Public Land Act that by its terms "shall apply to the lands of the public domain; but timber and mineral lands shall be governed by special laws." Notably, the Act goes on to provide that nothing in it "shall be understood or construed to change or modify the administration and disposition of the lands commonly called 'friar lands' and those which, being privately owned, have reverted to or become property of the Commonwealth of the Philippines, which administration and disposition shall be

governed by laws at present in force or which may hereafter be enacted." Under these terms, the PLA can be seen to be a very specific act whose coverage extends only to lands of the public domain; in this sense, it is a special law on that subject. In contrast, the Civil Code is a general law that covers general rules on the effect and application of laws and human relations; persons and family relations; property and property relations; the different modes of acquiring ownership; and obligations and contracts. Its general nature is best appreciated when in its Article 18, it provides that: "In matters which are governed by the Code of Commerce and **special laws**, their deficiency shall be supplied by the provisions of this Code." The Civil Code has the same relationship with the PRD with respect to the latter's special focus — land registration — and fully applies civil law provisions in so far only as they are allowed by the PRD. One such case where the Civil Code is expressly allowed to apply is in the case of Section 14(2) of the PRD which calls for the application of prescription under existing laws. As already explained above, the PLA and the PRD have their own specific purposes and are supreme within their own spheres, subject only to what the higher Constitution provides. Thus, the PRD must defer to what the PLA provides when the matter to be registered is an alienable and disposable land of the public domain. **To reiterate, the PLA applies as a special and primary law when a public land is classified as alienable and disposable, and remains fully and exclusively applicable until the State itself expressly declares that the land now qualifies as a patrimonial property. At that point, the application of the Civil Code and its law on prescription are triggered. The application of Section 14(2) of the PRD follows.**

4. ID.; ID.; ID.; PUBLIC LAND ACT (PLA); BASIC FEATURES.— The PLA has undergone many revisions and changes over time, starting from the first PLA, Act No. 926; the second public land law that followed, Act No. 2874; and the present CA 141 and its amendments. Act No. 926 was described in the following terms: The law governed the disposition of lands of the public domain. It prescribed rules and regulations for the homesteading, selling and leasing of portions of the public domain of the Philippine Islands, and prescribed the terms and conditions to enable persons to perfect their titles to public lands in the Islands. It also provided for the "issuance of patents to certain

native settlers upon public lands," for the establishment of town sites and sale of lots therein, for the completion of imperfect titles, and for the cancellation or confirmation of Spanish concessions and grants in the Islands." **In short, the Public Land Act operated on the assumption that title to public lands in the Philippine Islands remained in the government; and that the government's title to public land sprung from the Treaty of Paris and other subsequent treaties between Spain and the United States.** The term "public land" referred to all lands of the public domain whose title still remained in the government and are thrown open to private appropriation and settlement, and excluded the patrimonial property of the government and the friar lands. This basic essence of the law has not changed and has been carried over to the present PLA and its amendments. Another basic feature, the requirement for open, continuous, exclusive, and notorious possession and occupation of the alienable and disposable public land under a *bona fide* claim of ownership also never changed. Still another consistent public land feature is the concept that once a person has complied with the requisite possession and occupation in the manner provided by law, he is automatically given a State grant that may be asserted against State ownership; the land, in other words, *ipso jure* becomes private land. The application for judicial confirmation of imperfect title shall then follow, based on the procedure for land registration. It is in this manner that the PLA ties up with the PRD.

5. ID.; ID.; ID.; ID.; ID.; PERIOD FOR RECKONING THE REQUIRED POSSESSION.— A feature that has changed over time has been the period for reckoning the required occupation or possession. In the first PLA, the required occupation/possession to qualify for judicial confirmation of imperfect title was 10 years preceding the effectivity of Act No. 926 — July 26, 1904 (or since July 26, 1894 or earlier). This was retained up to CA 141, until this law was amended by Republic Act (*RA*) No. 1942 (enacted on June 22, 1957), which provided for a simple 30-year prescriptive period for judicial confirmation of imperfect title. This period did not last; on January 25, 1977, Presidential Decree No. 1073 (*PD 1073*) changed the required 30-year possession and occupation period provision, to possession and occupation of the land applied

for **since June 12, 1945, or earlier.** PD 1073 likewise changed the lands subject of imperfect title, from agricultural lands of the public domain to alienable and disposable lands of the public domain. PD 1073 also extended the period for applications for free patents and judicial confirmation of imperfect titles to December 31, 1987.

6. **ID.; ID.; ID.; ID.; ID.; ID.; THE JUNE 12, 1945 CUT-OFF DATE RAISED LEGAL CONCERNS.—** The June 12, 1945 cut-off date raised legal concerns; vested rights acquired under the old law (CA 141, as amended by RA 1942) providing for a 30-year possession period could not be impaired by the PD 1073 amendment. We recognized this legal dilemma in *Abejaron v. Nabasa*, when we said: **However, as petitioner Abejaron's 30-year period of possession and occupation required by the Public Land Act, as amended by R.A. 1942 ran from 1945 to 1975, prior to the effectivity of P.D. No. 1073 in 1977, the requirement of said P.D. that occupation and possession should have started on June 12, 1945 or earlier, does not apply to him.** As the *Susi* doctrine holds that the grant of title by virtue of Sec. 48(b) takes place by operation of law, then upon Abejaron's satisfaction of the requirements of this law, he would have already gained title over the disputed land in 1975. **This follows the doctrine laid down in** *Director of Lands v. Intermediate Court, et al.,* **that the law cannot impair vested rights such as a land grant. More clearly stated, "Filipino citizens who by themselves or their predecessors-in-interest have been, prior to the effectivity of P.D. 1073 on January 25, 1977, in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition of ownership, for at least 30 years, <u>or at least since January 24, 1947</u>" may apply for judicial confirmation of their imperfect or incomplete title under Sec. 48(b) of the Public Land Act.** From this perspective, PD 1073 should have thus provided January 24, 1947 and not June 12, 1945 as its cut-off date, yet the latter date is the express legal reality. The reconciliation, as properly defined by jurisprudence, is that where an applicant has satisfied the requirements of Section 48 (b) of CA 141, as amended by RA 1942, *prior to the effectivity of PD 1073,* the applicant is entitled to perfect his or her title, even if

possession and occupation does not date back to June 12, 1945. **For purposes of the present case, a discussion of the cut-off date has been fully made to highlight that it is a date whose significance and import cannot be minimized nor glossed over by mere judicial interpretation or by judicial social policy concerns; the full legislative intent must be respected.**

7. ID.; ID.; ID; ID.; ID.; ID.; ID.; INSPITE OF THE JUNE 12, 1945 CUT-OFF DATE FOR THE DECLARATION OF INALIENABILITY, THE ACQUISITION OF OWNERSHIP AND TITLE MAY STILL BE OBTAINED BY OTHER MODES UNDER THE PUBLIC LAND ACT (PLA).— The use of June 12, 1945 as cut-off date for the declaration of alienability will not render the grant of alienable public lands out of reach. The acquisition of ownership and title may still be obtained by other modes under the PLA. Among other laws, **RA 6940*,*** mentioned above, now allows the use of free patents. It was approved on March 28, 1990; hence, counting 30 years backwards, possession since April 1960 or thereabouts may qualify a possessor to apply for a free patent. The administrative modes provided under Section 11 of the PLA are also open, particularly, homestead settlement and sales.

8. ID.; ID.; ID.; ID.; THIS LAW WILL NOT APPLY UNTIL A CLASSIFICATION INTO ALIENABLE AND DISPOSABLE LAND OF THE PUBLIC DOMAIN IS MADE.— The Constitution classifies public lands into agricultural, mineral, and timber. Of these, only agricultural lands can be alienated. Without the requisite classification, there can be no basis to determine which lands of the public domain are alienable and which are not; hence, **classification is a constitutionally-required step whose importance should be given full legal recognition and effect.** Otherwise stated, without classification into disposable agricultural land, the land forms part of the mass of the public domain that, not being agricultural, must be mineral or timber land that are completely inalienable and as such cannot be possessed with legal effects. To allow effective possession is to do violence to the regalian doctrine; the ownership and control that the doctrine denotes will be less than full if the possession that should be with the State as owner, but is elsewhere without any authority, can anyway be recognized. **From the perspective of the PLA under which**

grant can be claimed under its Section 48(b), it is very important to note that this law does not apply until a classification into alienable and disposable land of the public domain is made. If the PLA does not apply prior to a public land's classification as alienable and disposable, how can possession under its Section 48(b) be claimed prior such classification? There can simply be no imperfect title to be confirmed over lands not yet classified as disposable or alienable because, in the absence of such classification, the land remains unclassified public land that fully belongs to the State. This is fully supported by Sections 6, 7, 8, 9, and 10 of CA 141. If the land is either mineral or timber and can never be the subject of administration and disposition, it defies legal logic to allow the possession of these unclassified lands to produce legal effect. Thus, the classification of public land as alienable and disposable is inextricably linked to effective possession that can ripen into a claim under Section 48(b) of the PLA.

9. ID.; ID.; ID.; ID.; PRIOR TO THE DECLARATION OF ALIENABILITY, A LAND OF THE PUBLIC DOMAIN CAN NOT BE APPROPRIATED; HENCE ANY CLAIMED POSSESSION CAN NOT HAVE LEGAL EFFECTS.— Possession is essentially a civil law term that can best be understood in terms of the Civil Code in the absence of any specific definition in the PLA other than in terms of time of possession. Article 530 of the Civil Code provides that "*[O]nly things and rights which are susceptible of being appropriated may be the object of possession.*" Prior to the declaration of alienability, a land of the public domain cannot be appropriated; hence, any claimed possession cannot have legal effects. This perspective fully complements what has been said above under the constitutional and PLA reasons. It confirms, too, that the critical difference the *ponencia* saw in the *Bracewell* and *Naguit* situations does not really exist. Whether an application for registration is filed before or after the declaration of alienability becomes immaterial if, in one as in the other, no effective possession can be recognized prior to the declaration of alienability.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioners.
The Solicitor General for respondent.

D E C I S I O N

TINGA, *J.*:

One main reason why the informal sector has not become formal is that from Indonesia to Brazil, 90 percent of the informal lands are not titled and registered. This is a generalized phenomenon in the so-called Third World. And it has many consequences.

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The question is: How is it that so many governments, from Suharto's in Indonesia to Fujimori's in Peru, have wanted to title these people and have not been able to do so effectively? One reason is that none of the state systems in Asia or Latin America can gather proof of informal titles. In Peru, the informals have means of proving property ownership to each other which are not the same means developed by the Spanish legal system. The informals have their own papers, their own forms of agreements, and their own systems of registration, all of which are very clearly stated in the maps which they use for their own informal business transactions.

If you take a walk through the countryside, from Indonesia to Peru, and you walk by field after field—in each field a different dog is going to bark at you. Even dogs know what private property is all about. The only one who does not know it is the government. The issue is that there exists a "common law" and an "informal law" which the Latin American formal legal system does not know how to recognize.

- Hernando De Soto[1]

This decision inevitably affects all untitled lands currently in possession of persons and entities other than the Philippine

[1] "Hernando de Soto Interview" by Reason Magazine dated 30 November 1999, at http://www.reason.com/news/show/32213.html (Last visited, 21 April 2009).

government. The petition, while unremarkable as to the facts, was accepted by the Court *en banc* in order to provide definitive clarity to the applicability and scope of original registration proceedings under Sections 14(1) and 14(2) of the Property Registration Decree. In doing so, the Court confronts not only the relevant provisions of the Public Land Act and the Civil Code, but also the reality on the ground. The countrywide phenomenon of untitled lands, as well as the problem of informal settlement it has spawned, has unfortunately been treated with benign neglect. Yet our current laws are hemmed in by their own circumscriptions in addressing the phenomenon. Still, the duty on our part is primarily to decide cases before us in accord with the Constitution and the legal principles that have developed our public land law, though our social obligations dissuade us from casting a blind eye on the endemic problems.

I.

On 20 February 1998, Mario Malabanan filed an application for land registration covering a parcel of land identified as Lot 9864-A, Cad-452-D, Silang Cadastre,[2] situated in Barangay Tibig, Silang Cavite, and consisting of 71,324 square meters. Malabanan claimed that he had purchased the property from Eduardo Velazco,[3] and that he and his predecessors-in-interest had been in open, notorious, and continuous adverse and peaceful possession of the land for more than thirty (30) years.

The application was raffled to the Regional Trial Court of (RTC) Cavite-Tagaytay City, Branch 18. The Office of the Solicitor General (OSG) duly designated the Assistant Provincial Prosecutor of Cavite, Jose Velazco, Jr., to appear on behalf of the State.[4] Apart from presenting documentary evidence, Malabanan himself and his witness, Aristedes Velazco, testified at the hearing. Velazco testified that the property was originally belonged to a twenty-two hectare property owned by his great-

[2] More particularly described and delineated in Plan CSD-04-017123. Records, p. 161.

[3] But see note 5.

[4] *Id.*

grandfather, Lino Velazco. Lino had four sons– Benedicto, Gregorio, Eduardo and Esteban–the fourth being Aristedes' grandfather. Upon Lino's death, his four sons inherited the property and divided it among themselves. But by 1966, Esteban's wife, Magdalena, had become the administrator of all the properties inherited by the Velazco sons from their father, Lino. After the death of Esteban and Magdalena, their son Virgilio succeeded them in administering the properties, including Lot 9864-A, which originally belonged to his uncle, Eduardo Velazco. It was this property that was sold by Eduardo Velazco to Malabanan.[5]

Assistant Provincial Prosecutor Jose Velazco, Jr. did not cross-examine Aristedes Velazco. He further manifested that he "also [knew] the property and I affirm the truth of the testimony given by Mr. Velazco."[6] The Republic of the Philippines likewise did not present any evidence to controvert the application.

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[5] The trial court decision identified Eduardo Velazco as the vendor of the property, notwithstanding the original allegation in the application that Malabanan purchased the same from Virgilio Velazco. See note 3. In his subsequent pleadings, including those before this Court, Malabanan or his heirs stated that the property was purchased from Eduardo Velazco, and not Virgilio. On this point, the appellate court made this observation:

"More importantly, Malabanan failed to prove his ownership over Lot 9864-A. In his application for land registration, Malabanan alleged that he purchased the subject lot from Virgilio Velazco. During the trial of the case, however, Malabanan testified that he purchased the subject lot from Eduardo Velazco, which was corroborated by his witness, Aristedes Velazco, a son of Virgilio Velazco, who stated that Eduardo was a brother of his grandfather. As aptly observed by the Republic, no copy of the deed of sale covering Lot 9864-A, executed either by Virgilio or Eduardo Velazco, in favor of Malabanan was marked and offered in evidence. In the appealed Decision, the court *a quo* mentioned of a deed of sale executed in 1995 by Eduardo Velazco in favor of Malabanan which was allegedly marked as Exhibit "I." It appears, however, that what was provisionally marked as Exhibit "I" was a photocopy of the deed of sale executed by Virgilio Velazco in favor of Leila Benitez and Benjamin Reyes. Section 34, Rule 132 of the Rules of Court provides that the court shall consider no evidence which has not been formally offered. The offer is necessary because it is the duty of a judge to rest his findings of facts and his judgment only and strictly upon the evidence offered by the parties at the trial. Thus, Malabanan has not proved that Virgilio or Eduardo Velazco was his predecessor-in-interest." *Rollo*, pp. 39-40.

[6] *Rollo*, p. 74.

Among the evidence presented by Malabanan during trial was a Certification dated 11 June 2001, issued by the Community Environment & Natural Resources Office, Department of Environment and Natural Resources (CENRO-DENR), which stated that the subject property was "verified to be within the Alienable or Disposable land per Land Classification Map No. 3013 established under Project No. 20-A and approved as such under FAO 4-1656 **on March 15, 1982.**"[7]

On 3 December 2002, the RTC rendered judgment in favor of Malabanan, the dispositive portion of which reads:

> WHEREFORE, this Court hereby approves this application for registration and thus places under the operation of Act 141, Act 496 and/or P.D. 1529, otherwise known as Property Registration Law, the lands described in Plan Csd-04-0173123-D, Lot 9864-A and containing an area of Seventy One Thousand Three Hundred Twenty Four (71,324) Square Meters, as supported by its technical description now forming part of the record of this case, in addition to other proofs adduced in the name of MARIO MALABANAN, who is of legal age, Filipino, widower, and with residence at Munting Ilog, Silang, Cavite.
>
> Once this Decision becomes final and executory, the corresponding decree of registration shall forthwith issue.
>
> SO ORDERED.

The Republic interposed an appeal to the Court of Appeals, arguing that Malabanan had failed to prove that the property belonged to the alienable and disposable land of the public domain, and that the RTC had erred in finding that he had been in possession of the property in the manner and for the length of time required by law for confirmation of imperfect title.

On 23 February 2007, the Court of Appeals rendered a Decision[8] reversing the RTC and dismissing the application of Malabanan. The appellate court held that under Section 14(1)

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[7] *Id.* at 38. Emphasis supplied.

[8] Penned by Associate Justice Marina Buzon of the Court of Appeals Fifth Division, and concurred in by Associate Justices Edgardo Sundiam and Monina Arevalo-Zenarosa.

of the Property Registration Decree any period of possession prior to the classification of the lots as alienable and disposable was inconsequential and should be excluded from the computation of the period of possession. Thus, the appellate court noted that since the CENRO-DENR certification had verified that the property was declared alienable and disposable only on 15 March 1982, the Velazcos' possession prior to that date could not be factored in the computation of the period of possession. This interpretation of the Court of Appeals of Section 14(1) of the Property Registration Decree was based on the Court's ruling in *Republic v. Herbieto*.[9]

Malabanan died while the case was pending with the Court of Appeals;[10] hence, it was his heirs who appealed the decision of the appellate court. Petitioners, before this Court, rely on our ruling in *Republic v. Naguit*,[11] which was handed down just four months prior to *Herbieto*. Petitioners suggest that the discussion in *Herbieto* cited by the Court of Appeals is actually *obiter dictum* since the Metropolitan Trial Court therein which had directed the registration of the property had no jurisdiction in the first place since the requisite notice of hearing was published only after the hearing had already begun. *Naguit*, petitioners argue, remains the controlling doctrine, especially when the property in question is agricultural land. Therefore, with respect to agricultural lands, any possession prior to the declaration of the alienable property as disposable may be counted in reckoning the period of possession to perfect title under the Public Land Act and the Property Registration Decree.

The petition was referred to the Court *en banc*,[12] and on 11 November 2008, the case was heard on oral arguments. The Court formulated the principal issues for the oral arguments, to wit:

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[9] G.R. No. 156117, 26 May 2005, 459 SCRA 183.

[10] See *rollo*, p. 11.

[11] G.R. No. 144507, 17 January 2005, 448 SCRA 442.

[12] Through a Resolution dated 5 December 2007. See *rollo*, p. 141.

1. In order that an alienable and disposable land of the public domain may be registered under Section 14(1) of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, should the land be classified as alienable and disposable as of June 12, 1945 or is it sufficient that such classification occur at any time prior to the filing of the applicant for registration provided that it is established that the applicant has been in open, continuous, exclusive and notorious possession of the land under a *bona fide* claim of ownership since June 12, 1945 or earlier?

2. For purposes of Section 14(2) of the Property Registration Decree may a parcel of land classified as alienable and disposable be deemed private land and therefore susceptible to acquisition by prescription in accordance with the Civil Code?

3. May a parcel of land established as agricultural in character either because of its use or because its slope is below that of forest lands be registrable under Section 14(2) of the Property Registration Decree in relation to the provisions of the Civil Code on acquisitive prescription?

4. Are petitioners entitled to the registration of the subject land in their names under Section 14(1) or Section 14(2) of the Property Registration Decree or both?[13]

Based on these issues, the parties formulated their respective positions.

With respect to Section 14(1), petitioners reiterate that the analysis of the Court in *Naguit* is the correct interpretation of the provision. The seemingly contradictory pronouncement in *Herbieto*, it is submitted, should be considered *obiter dictum*, since the land registration proceedings therein was void *ab initio* due to lack of publication of the notice of initial hearing. Petitioners further point out that in *Republic v. Bibonia*,[14] promulgated in June of 2007, the Court applied *Naguit* and adopted the same observation that the preferred interpretation by the OSG of Section 14(1) was patently absurd. For its part, the OSG remains insistent that for Section 14(1) to apply, the land should have been classified as alienable and disposable as of 12 June 1945.

[13] *Id.* at 186-187.

[14] G.R. No. 157466, 21 June 2007, 525 SCRA 268.

Apart from *Herbieto*, the OSG also cites the subsequent rulings in *Buenaventura v. Republic*,[15] *Fieldman Agricultural Trading v. Republic*[16] and *Republic v. Imperial Credit Corporation*,[17] as well as the earlier case of *Director of Lands v. Court of Appeals*.[18]

With respect to Section 14(2), petitioners submit that open, continuous, exclusive and notorious possession of an alienable land of the public domain for more than 30 years *ipso jure* converts the land into private property, thus placing it under the coverage of Section 14(2). According to them, it would not matter whether the land sought to be registered was previously classified as agricultural land of the public domain so long as, at the time of the application, the property had already been "converted" into private property through prescription. To bolster their argument, petitioners cite extensively from our 2008 ruling in *Republic v. T.A.N. Properties*.[19]

The arguments submitted by the OSG with respect to Section 14(2) are more extensive. The OSG notes that under Article 1113 of the Civil Code, the acquisitive prescription of properties of the State refers to "patrimonial property," while Section 14(2) speaks of "private lands." It observes that the Court has yet to decide a case that presented Section 14(2) as a ground for application for registration, and that the 30-year possession period refers to the period of possession under Section 48(b) of the Public Land Act, and not the concept of prescription under the Civil Code. The OSG further submits that, assuming that the 30-year prescriptive period can run against public lands, said period should be reckoned from the time the public land was declared alienable and disposable.

Both sides likewise offer special arguments with respect to the particular factual circumstances surrounding the subject

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[15] G.R. No. 166865, 2 March 2007, 459 SCRA 271.

[16] G.R. No. 147359, 28 March 2008, 550 SCRA 92.

[17] G.R. No. 173088, 25 June 2008, 555 SCRA 314.

[18] G.R. No. 85322, 30 April 1991, 178 SCRA 708.

[19] G.R. No. 154953, 16 June 2008.

property and the ownership thereof.

II.

First, we discuss Section 14(1) of the Property Registration Decree. For a full understanding of the provision, reference has to be made to the Public Land Act.

A.

Commonwealth Act No. 141, also known as the Public Land Act, has, since its enactment, governed the classification and disposition of lands of the public domain. The President is authorized, from time to time, to classify the lands of the public domain into alienable and disposable, timber, or mineral lands.[20] Alienable and disposable lands of the public domain are further classified according to their uses into (a) agricultural; (b) residential, commercial, industrial, or for similar productive purposes; (c) educational, charitable, or other similar purposes; or (d) reservations for town sites and for public and quasi-public uses.[21]

May a private person validly seek the registration in his/her name of alienable and disposable lands of the public domain? Section 11 of the Public Land Act acknowledges that public lands suitable for agricultural purposes may be disposed of "by confirmation of imperfect or incomplete titles" through "judicial legalization."[22] Section 48(b) of the Public Land Act, as amended by P.D. No. 1073, supplies the details and unmistakably grants that right, subject to the requisites stated therein:

> Sec. 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such land or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

[20] Section 6, Com. Act No. 141, as amended.

[21] Section 9, Com. Act No. 141, as amended.

[22] Section 11, Com. Act No. 141, as amended.

xxx xxx xxx

(b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a bona fide claim of acquisition of ownership, since June 12, 1945, or earlier, immediately preceding the filing of the application for confirmation of title except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

Section 48(b) of Com. Act No. 141 received its present wording in 1977 when the law was amended by P.D. No. 1073. Two significant amendments were introduced by P.D. No. 1073. *First*, the term "agricultural lands" was changed to "alienable and disposable lands of the public domain." The OSG submits that this amendment restricted the scope of the lands that may be registered.[23] This is not actually the case. Under Section 9 of the Public Land Act, "agricultural lands" are a mere subset of "lands of the public domain alienable or open to disposition." Evidently, alienable and disposable lands of the public domain are a larger class than only "agricultural lands."

Second, the length of the requisite possession was changed from possession for "thirty (30) years immediately preceding the filing of the application" to possession "since June 12, 1945 or earlier." The Court in *Naguit* explained:

When the Public Land Act was first promulgated in 1936, the period of possession deemed necessary to vest the right to register their title to agricultural lands of the public domain commenced from July 26, 1894. However, this period was amended by R.A. No. 1942, which provided that the *bona fide* claim of ownership must have been for at least thirty (30) years. Then in 1977, Section 48(b) of the Public Land Act was again amended, this time by P.D. No. 1073, which pegged the reckoning date at June 12, 1945. xxx

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[23] OSG Memorandum, p. 13.

It bears further observation that Section 48(b) of Com. Act No. 141 is virtually the same as Section 14(1) of the Property Registration Decree. Said Decree codified the various laws relative to the registration of property, including lands of the public domain. It is Section 14(1) that operationalizes the registration of such lands of the public domain. The provision reads:

SECTION 14. Who may apply.— The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

Notwithstanding the passage of the Property Registration Decree and the inclusion of Section 14(1) therein, the Public Land Act has remained in effect. Both laws commonly refer to persons or their predecessors-in-interest who "have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier." That circumstance may have led to the impression that one or the other is a redundancy, or that Section 48(b) of the Public Land Act has somehow been repealed or mooted. That is not the case.

The opening clauses of Section 48 of the Public Land Act and Section 14 of the Property Registration Decree warrant comparison:

Sec. 48 [of the Public Land Act]. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such land or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

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Sec. 14 [of the Property Registration Decree]. Who may apply.—The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

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It is clear that Section 48 of the Public Land Act is more descriptive of the nature of the right enjoyed by the possessor than Section 14 of the Property Registration Decree, which seems to presume the pre-existence of the right, rather than establishing the right itself for the first time. It is proper to assert that it is the Public Land Act, as amended by P.D. No. 1073 effective 25 January 1977, that has primarily established the right of a Filipino citizen who has been "in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a bona fide claim of acquisition of ownership, since June 12, 1945" to perfect or complete his title by applying with the proper court for the confirmation of his ownership claim and the issuance of the corresponding certificate of title.

Section 48 can be viewed in conjunction with the afore-quoted Section 11 of the Public Land Act, which provides that public lands suitable for agricultural purposes may be disposed of by confirmation of imperfect or incomplete titles, and given the notion that both provisions declare that it is indeed the Public Land Act that primarily establishes the substantive ownership of the possessor who has been in possession of the property since 12 June 1945. In turn, Section 14(a) of the Property Registration Decree recognizes the substantive right granted under Section 48(b) of the Public Land Act, as well provides the corresponding original registration procedure for the judicial confirmation of an imperfect or incomplete title.

There is another limitation to the right granted under Section 48(b). Section 47 of the Public Land Act limits the period within which one may exercise the right to seek registration under Section 48. The provision has been amended several times,

most recently by Rep. Act No. 9176 in 2002. It currently reads thus:

Section 47. The persons specified in the next following section are hereby granted time, not to extend beyond December 31, 2020 within which to avail of the benefits of this Chapter: Provided, That this period shall apply only where the area applied for does not exceed twelve (12) hectares: Provided, further, That the several periods of time designated by the President in accordance with Section Forty-Five of this Act shall apply also to the lands comprised in the provisions of this Chapter, but this Section shall not be construed as prohibiting any said persons from acting under this Chapter at any time prior to the period fixed by the President.[24]

Accordingly under the current state of the law, the substantive right granted under Section 48(b) may be availed of only until 31 December 2020.

B.

Despite the clear text of Section 48(b) of the Public Land Act, as amended and Section 14(a) of the Property Registration Decree, the OSG has adopted the position that for one to acquire the right to seek registration of an alienable and disposable land of the public domain, it is not enough that the applicant and his/her predecessors-in-interest be in possession under a *bona fide* claim of ownership since 12 June 1945; the alienable and disposable character of the property must have been declared also as of 12 June 1945. Following the OSG's approach, all lands certified as alienable and disposable after 12 June 1945 cannot be registered either under Section 14(1) of the Property Registration Decree or Section 48(b) of the Public Land Act as amended. The absurdity of such an implication was discussed in *Naguit*.

Petitioner suggests an interpretation that the alienable and disposable character of the land should have already been established since June 12, 1945 or earlier. This is not borne out by the plain meaning of Section 14(1). "Since June 12, 1945," as used in the provision, qualifies its antecedent phrase "under a bonafide claim

[24] Section 47, Public Land Act, as amended by Rep. Act No. 9176.

of ownership." Generally speaking, qualifying words restrict or modify only the words or phrases to which they are immediately associated, and not those distantly or remotely located.[25] *Ad proximum antecedents fiat relation nisi impediatur sentencia.*

Besides, we are mindful of the absurdity that would result if we adopt petitioner's position. Absent a legislative amendment, the rule would be, adopting the OSG's view, that all lands of the public domain which were not declared alienable or disposable before June 12, 1945 would not be susceptible to original registration, no matter the length of unchallenged possession by the occupant. Such interpretation renders paragraph (1) of Section 14 virtually inoperative and even precludes the government from giving it effect even as it decides to reclassify public agricultural lands as alienable and disposable. The unreasonableness of the situation would even be aggravated considering that before June 12, 1945, the Philippines was not yet even considered an independent state.

Accordingly, the Court in *Naguit* explained:

> [T]he more reasonable interpretation of Section 14(1) is that it merely requires the property sought to be registered as already alienable and disposable at the time the application for registration of title is filed. If the State, at the time the application is made, has not yet deemed it proper to release the property for alienation or disposition, the presumption is that the government is still reserving the right to utilize the property; hence, the need to preserve its ownership in the State irrespective of the length of adverse possession even if in good faith. However, if the property has already been classified as alienable and disposable, as it is in this case, then there is already an intention on the part of the State to abdicate its exclusive prerogative over the property.

The Court declares that the correct interpretation of Section 14(1) is that which was adopted in *Naguit*. The contrary pronouncement in *Herbieto*, as pointed out in *Naguit*, absurdly limits the application of the provision to the point of virtual inutility since it would only cover lands actually declared alienable and disposable prior to 12 June 1945, even if the current possessor is able to establish open, continuous, exclusive and notorious

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[25] R. Agpalo, *STATUTORY CONSTRUCTION* (3rd ed., 1995) at 182.

possession under a *bona fide* claim of ownership long before that date.

Moreover, the *Naguit* interpretation allows more possessors under a *bona fide* claim of ownership to avail of judicial confirmation of their imperfect titles than what would be feasible under *Herbieto*. This balancing fact is significant, especially considering our forthcoming discussion on the scope and reach of Section 14(2) of the Property Registration Decree.

Petitioners make the salient observation that the contradictory passages from *Herbieto* are *obiter dicta* since the land registration proceedings therein is void *ab initio* in the first place due to lack of the requisite publication of the notice of initial hearing. There is no need to explicitly overturn *Herbieto*, as it suffices that the Court's acknowledgment that the particular line of argument used therein concerning Section 14(1) is indeed *obiter*.

It may be noted that in the subsequent case of *Buenaventura*,[26] the Court, citing *Herbieto*, again stated that "[a]ny period of possession prior to the date when the [s]ubject [property was] classified as alienable and disposable is inconsequential and should be excluded from the computation of the period of possession…" That statement, in the context of Section 14(1), is certainly erroneous. Nonetheless, the passage as cited in *Buenaventura* should again be considered as *obiter*. The application therein was ultimately granted, citing Section 14(2). The evidence submitted by petitioners therein did not establish any mode of possession on their part prior to 1948, thereby precluding the application of Section 14(1). It is not even apparent from the decision whether petitioners therein had claimed entitlement to original registration following Section 14(1), their position being that they had been in exclusive possession under a bona fide claim of ownership for over fifty (50) years, but not before 12 June 1945.

Thus, neither *Herbieto* nor its principal discipular ruling *Buenaventura* has any precedental value with respect to Section 14(1). On the other hand, the ratio of *Naguit* is embedded

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[26] See note 3.

in Section 14(1), since it precisely involved situation wherein the applicant had been in exclusive possession under a *bona fide* claim of ownership prior to 12 June 1945. The Court's interpretation of Section 14(1) therein was decisive to the resolution of the case. Any doubt as to which between *Naguit* or *Herbieto* provides the final word of the Court on Section 14(1) is now settled in favor of *Naguit*.

We noted in *Naguit* that it should be distinguished from *Bracewell v. Court of Appeals*[27] since in the latter, the application for registration had been filed **before** the land was declared alienable or disposable. The dissent though pronounces *Bracewell* as the better rule between the two. Yet two years after *Bracewell*, its *ponente*, the esteemed Justice Consuelo Ynares-Santiago, penned the ruling in *Republic v. Ceniza*,[28] which involved a claim of possession that extended back to 1927 over a public domain land that was declared alienable and disposable only in 1980. *Ceniza* cited *Bracewell*, quoted extensively from it, and following the mindset of the dissent, the attempt at registration in *Ceniza* should have failed. Not so.

> To prove that the land subject of an application for registration is alienable, an applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute.
>
> In this case, private respondents presented a certification dated November 25, 1994, issued by Eduardo M. Inting, the Community Environment and Natural Resources Officer in the Department of Environment and Natural Resources Office in Cebu City, stating that the lots involved were "found to be within the alienable and disposable (sic) Block-I, Land Classification Project No. 32-A, per map 2962 4-I555 dated December 9, 1980." This is sufficient evidence to show the real character of the land subject of private respondents' application. Further, the certification enjoys a presumption of regularity in the absence of contradictory evidence, which is true in this case. Worth noting also was the observation of

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[27] 380 Phil. 156 (2000).

[28] Also known as *Republic v. Court of Appeals*, 440 Phil. 697 (2002).

the Court of Appeals stating that:

> [n]o opposition was filed by the Bureaus of Lands and Forestry to contest the application of appellees on the ground that the property still forms part of the public domain. Nor is there any showing that the lots in question are forestal land....

Thus, while the Court of Appeals erred in ruling that mere possession of public land for the period required by law would entitle its occupant to a confirmation of imperfect title, it did not err in ruling in favor of private respondents as far as the first requirement in Section 48(b) of the Public Land Act is concerned, for they were able to overcome the burden of proving the alienability of the land subject of their application.

As correctly found by the Court of Appeals, private respondents were able to prove their open, continuous, exclusive and notorious possession of the subject land even before the year 1927. As a rule, we are bound by the factual findings of the Court of Appeals. Although there are exceptions, petitioner did not show that this is one of them.[29]

Why did the Court in *Ceniza*, through the same eminent member who authored *Bracewell*, sanction the registration under Section 48(b) of public domain lands declared alienable or disposable thirty-five (35) years and 180 days after 12 June 1945? The telling difference is that in *Ceniza*, the application for registration was filed nearly six (6) years **after** the land had been declared alienable or disposable, while in *Bracewell*, the application was filed nine (9) years **before the land was declared alienable or disposable.** That crucial difference was also stressed in *Naguit* to contradistinguish it from *Bracewell*, a difference which the dissent seeks to belittle.

III.

We next ascertain the correct framework of analysis with respect to Section 14(2). The provision reads:

SECTION 14. Who may apply. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

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[29] *Id.* at 710-712.

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(2) Those who have acquired ownership over private lands by prescription under the provisions of existing laws.

The Court in *Naguit* offered the following discussion concerning Section 14(2), which we did even then recognize, and still do, to be an *obiter dictum,* but we nonetheless refer to it as material for further discussion, thus:

> Did the enactment of the Property Registration Decree and the amendatory P.D. No. 1073 preclude the application for registration of alienable lands of the public domain, possession over which commenced only after June 12, 1945? It did not, considering Section 14(2) of the Property Registration Decree, which governs and authorizes the application of "those who have acquired ownership of private lands by prescription under the provisions of existing laws."
>
> Prescription is one of the modes of acquiring ownership under the Civil Code.[30] There is a consistent jurisprudential rule that properties classified as alienable public land may be converted into private property by reason of open, continuous and exclusive possession of at least thirty (30) years.[31] With such conversion, such property may now fall within the contemplation of "private lands" under Section 14(2), and thus susceptible to registration by those who have acquired ownership through prescription. Thus, even if possession of the alienable public land commenced on a date later than June 12, 1945, and such possession being been open, continuous and exclusive, then the possessor may have the right to register the land by virtue of Section 14(2) of the Property Registration Decree.

Naguit did not involve the application of Section 14(2), unlike in this case where petitioners have based their registration bid primarily on that provision, and where the evidence definitively establishes their claim of possession only as far back as 1948. It is in this case that we can properly appreciate the nuances of the provision.

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[30] *See* CIVIL CODE, Art. 1113.

[31] See *e.g., Director of Lands v. IAC*, G.R. No. 65663, 16 October 1992, 214 SCRA 604, 611; *Republic v. Court of Appeals*, G.R. No. 108998, 24 August 1994, 235 SCRA 567, 576; *Group Commander, Intelligence and Security Group v. Dr. Malvar*, 438 Phil. 252, 275 (2002).

A.

The *obiter* in Naguit cited the Civil Code provisions on prescription as the possible basis for application for original registration under Section 14(2). Specifically, it is Article 1113 which provides legal foundation for the application. It reads:

All things which are within the commerce of men are susceptible of prescription, unless otherwise provided. Property of the State or any of its subdivisions not patrimonial in character shall not be the object of prescription.

It is clear under the Civil Code that where lands of the public domain are patrimonial in character, they are susceptible to acquisitive prescription. On the other hand, among the public domain lands that are not susceptible to acquisitive prescription are timber lands and mineral lands. The Constitution itself proscribes private ownership of timber or mineral lands.

There are in fact several provisions in the Civil Code concerning the acquisition of real property through prescription. Ownership of real property may be acquired by ordinary prescription of ten (10) years,[32] or through extraordinary prescription of thirty (30) years.[33] Ordinary acquisitive prescription requires possession in good faith,[34] as well as just title.[35]

When Section 14(2) of the Property Registration Decree explicitly provides that persons "who have acquired ownership over private lands by prescription under the provisions of existing laws," it unmistakably refers to the Civil Code as a valid basis for the registration of lands. The Civil Code is the only existing law that specifically allows the acquisition by prescription of private lands, including patrimonial property belonging to the State. Thus, the critical question that needs affirmation is whether Section 14(2) does encompass original registration proceedings

[32] See Article 1134, CIVIL CODE.

[33] See Article 1137, CIVIL CODE.

[34] See Article 1117 in relation to Article 1128, Civil Code. See also Articles 526, 527, 528 & 529, Civil Code on the conditions of good faith required.

[35] See Article 1117, in relation to Article 1129, Civil Code.

over patrimonial property of the State, which a private person has acquired through prescription.

The Naguit *obiter* had adverted to a frequently reiterated jurisprudence holding that properties classified as alienable public land may be converted into private property by reason of open, continuous and exclusive possession of at least thirty (30) years.[36] Yet if we ascertain the source of the "thirty-year" period, additional complexities relating to Section 14(2) and to how exactly it operates would emerge. For **there are in fact two distinct origins of the thirty (30)-year rule**.

The first source is Rep. Act No. 1942, enacted in 1957, which amended Section 48(b) of the Public Land Act by granting the right to seek original registration of alienable public lands through possession in the concept of an owner for at least thirty years.

The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

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(b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition of ownership, **for at least thirty years immediately preceding the filing of the application for confirmation of title**, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this Chapter. (emphasis supplied)[37]

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[36] Citing *Director of Lands v. IAC*, G.R. No. 65663, 16 October 1992, 214 SCRA 604, 611; *Republic v. Court of Appeals*, G.R. No. 108998, 24 August 1994, 235 SCRA 567, 576; *Group Commander, Intelligence and Security Group v. Dr. Malvar*, 438 Phil. 252, 275 (2002).

[37] Section 48(b) of the Public Land Act, immediately before its amendment by Rep. Act No. 1942, reads as follows:

This provision was repealed in 1977 with the enactment of P.D. 1073, which made the date 12 June 1945 the reckoning point for the first time. Nonetheless, applications for registration filed prior to 1977 could have invoked the 30-year rule introduced by Rep. Act No. 1942.

The second source is Section 14(2) of P.D. 1529 itself, at least by implication, as it applies the rules on prescription under the Civil Code, particularly Article 1113 in relation to Article 1137. Note that there are two kinds of prescription under the Civil Code–ordinary acquisitive prescription and extraordinary acquisitive prescription, which, under Article 1137, is completed "through uninterrupted adverse possession… for thirty years, without need of title or of good faith."

Obviously, the first source of the thirty (30)-year period rule, Rep. Act No. 1942, became unavailable after 1977. At present, the only legal basis for the thirty (30)-year period is the law on prescription under the Civil Code, as mandated under Section 14(2). However, there is a material difference between how the thirty (30)-year rule operated under Rep. Act No. 1942 and how it did under the Civil Code.

Section 48(b) of the Public Land Act, as amended by Rep. Act No. 1942, did not refer to or call into application the Civil Code provisions on prescription. It merely set forth a requisite thirty-year possession period immediately preceding the application for confirmation of title, without any qualification as to whether the property should be declared alienable at the beginning of, and continue as such, throughout the entire thirty-(30) years. There is neither statutory nor jurisprudential basis to assert

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"Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition of ownership, except as against the Government, since July twenty-sixth, eighteen hundred and ninety-four, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this Chapter."

Rep. Act No. 1942 had mandated such a requirement,[38] similar to our earlier finding with respect to the present language of Section 48(b), which now sets 12 June 1945 as the point of reference.

Then, with the repeal of Rep. Act No. 1942, the thirty-year possession period as basis for original registration became Section 14(2) of the Property Registration Decree, which entitled those "who have acquired ownership over private lands by prescription under the provisions of existing laws" to apply for original registration. Again, the thirty-year period is derived from the rule on extraordinary prescription under Article 1137 of the Civil Code. At the same time, Section 14(2) puts into operation the entire regime of prescription under the Civil Code, a fact which does not hold true with respect to Section 14(1).

B.

Unlike Section 14(1), Section 14(2) explicitly refers to the principles on prescription under existing laws. Accordingly, we are impelled to apply the civil law concept of prescription, as set forth in the Civil Code, in our interpretation of Section 14(2). There is no similar demand on our part in the case of Section 14(1).

The critical qualification under Article 1113 of the Civil Code is thus: "[p]roperty of the State or any of its subdivisions not patrimonial in character shall not be the object of prescription." The identification what consists of patrimonial property is provided by Articles 420 and 421, which we quote in full:

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;

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[38] Again, Section 48(b) of the Public Land Act, as amended by Rep. Act No. 1942, was superseded by P.D. No. 1073, which imposed the 12 June 1945 reckoning point, and which was then incorporated in Section 14(1) of the Property Registration Decree.

(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.

It is clear that property of public dominion, which generally includes property belonging to the State, cannot be the object of prescription or, indeed, be subject of the commerce of man.[39] Lands of the public domain, whether declared alienable and disposable or not, are property of public dominion and thus insusceptible to acquisition by prescription.

Let us now explore the effects under the Civil Code of a declaration by the President or any duly authorized government officer of alienability and disposability of lands of the public domain. Would such lands so declared alienable and disposable be converted, under the Civil Code, from property of the public dominion into patrimonial property? After all, by connotative definition, alienable and disposable lands may be the object of the commerce of man; Article 1113 provides that all things within the commerce of man are susceptible to prescription; and the same provision further provides that patrimonial property of the State may be acquired by prescription.

Nonetheless, Article 422 of the Civil Code states that "[p]roperty of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State." It is this provision that controls how public dominion property may be converted into patrimonial property susceptible to acquisition by prescription. After all, Article 420 (2) makes clear that those property "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" are public dominion property. For as long as the property belongs to the State, although already classified as alienable or disposable, it remains property of the public dominion if when it is "intended

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[39] See *Vllarico v. Sarmiento*, G.R. No. 136438, 11 November 2004, 442 SCRA 110.

for some public service or for the development of the national wealth."

Accordingly, there must be an express declaration by the State that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial. Without such express declaration, the property, even if classified as alienable or disposable, remains property of the public dominion, pursuant to Article 420(2), and thus incapable of acquisition by prescription. It is only when such alienable and disposable lands are expressly declared by the State to be no longer intended for public service or for the development of the national wealth that the period of acquisitive prescription can begin to run. Such declaration shall be in the form of a law duly enacted by Congress or a Presidential Proclamation in cases where the President is duly authorized by law.

It is comprehensible with ease that this reading of Section 14(2) of the Property Registration Decree limits its scope and reach and thus affects the registrability even of lands already declared alienable and disposable to the detriment of the *bona fide* possessors or occupants claiming title to the lands. Yet this interpretation is in accord with the Regalian doctrine and its concomitant assumption that all lands owned by the State, although declared alienable or disposable, remain as such and ought to be used only by the Government.

Recourse does not lie with this Court in the matter. The duty of the Court is to apply the Constitution and the laws in accordance with their language and intent. The remedy is to change the law, which is the province of the legislative branch. Congress can very well be entreated to amend Section 14(2) of the Property Registration Decree and pertinent provisions of the Civil Code to liberalize the requirements for judicial confirmation of imperfect or incomplete titles.

The operation of the foregoing interpretation can be illustrated by an actual example. Republic Act No. 7227, entitled "An Act Accelerating The Conversion Of Military Reservations Into Other

Productive Uses, *etc*.," is more commonly known as the BCDA law. Section 2 of the law authorizes the sale of certain military reservations and portions of military camps in Metro Manila, including Fort Bonifacio and Villamor Air Base. For purposes of effecting the sale of the military camps, the law mandates the President to transfer such military lands to the Bases Conversion Development Authority (BCDA)[40] which in turn is authorized to own, hold and/or administer them.[41] The President is authorized to sell portions of the military camps, in whole or in part.[42] Accordingly, the BCDA law itself declares that the military lands subject thereof are "alienable and disposable pursuant to the provisions of existing laws and regulations governing sales of government properties."[43]

From the moment the BCDA law was enacted the subject military lands have become alienable and disposable. However, said lands did not become patrimonial, as the BCDA law itself expressly makes the reservation that these lands are to be sold in order to raise funds for the conversion of the former American bases at Clark and Subic.[44] Such purpose can be tied to either "public service" or "the development of national wealth" under Article 420(2). Thus, at that time, the lands remained property of the public dominion under Article 420(2), notwithstanding their status as alienable and disposable. It is upon their sale as authorized under the BCDA law to a private person or entity that such lands become private property and cease to be property of the public dominion.

C.

Should public domain lands become patrimonial because they are declared as such in a duly enacted law or duly promulgated proclamation that they are no longer intended for public service

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[40] Rep. Act No. 7227, Sec.7.

[41] Rep. Act No. 7227, Sec. 4(a).

[42] Rep. Act No. 7227, Sec. 7.

[43] *Id.*

[44] Section 2, Rep. Act No. 7227.

or for the development of the national wealth, would the period of possession prior to the conversion of such public dominion into patrimonial be reckoned in counting the prescriptive period in favor of the possessors? We rule in the negative.

The limitation imposed by Article 1113 dissuades us from ruling that the period of possession before the public domain land becomes patrimonial may be counted for the purpose of completing the prescriptive period. Possession of public dominion property before it becomes patrimonial cannot be the object of prescription according to the Civil Code. As the application for registration under Section 14(2) falls wholly within the framework of prescription under the Civil Code, there is no way that possession during the time that the land was still classified as public dominion property can be counted to meet the requisites of acquisitive prescription and justify registration.

Are we being inconsistent in applying divergent rules for Section 14(1) and Section 14(2)? There is no inconsistency. **Section 14(1) mandates registration on the basis of possession, while Section 14(2) entitles registration on the basis of prescription**. **Registration under Section 14(1) is extended under the aegis of the Property Registration Decree and the Public Land Act while registration under Section 14(2) is made available both by the Property Registration Decree and the Civil Code.**

In the same manner, we can distinguish between the thirty-year period under Section 48(b) of the Public Land Act, as amended by Rep. Act No. 1472, and the thirty-year period available through Section 14(2) of the Property Registration Decree in relation to Article 1137 of the Civil Code. **The period under the former speaks of a thirty-year period of possession, while the period under the latter concerns a thirty-year period of extraordinary prescription**. **Registration under Section 48(b) of the Public Land Act as amended by Rep. Act No. 1472 is based on thirty years of possession alone without regard to the Civil Code, while the registration under Section 14(2) of the Property Registration Decree is founded on extraordinary prescription under the Civil Code**.

It may be asked why the principles of prescription under the Civil Code should not apply as well to Section 14(1). Notwithstanding the vaunted status of the Civil Code, it ultimately is just one of numerous statutes, neither superior nor inferior to other statutes such as the Property Registration Decree. The legislative branch is not bound to adhere to the framework set forth by the Civil Code when it enacts subsequent legislation. Section 14(2) manifests a clear intent to interrelate the registration allowed under that provision with the Civil Code, but no such intent exists with respect to Section 14(1).

IV.

One of the keys to understanding the framework we set forth today is seeing how our land registration procedures correlate with our law on prescription, which, under the Civil Code, is one of the modes for acquiring ownership over property.

The Civil Code makes it clear that patrimonial property of the State may be acquired by private persons through prescription. This is brought about by Article 1113, which states that "[a]ll things which are within the commerce of man are susceptible to prescription," and that [p]roperty of the State or any of its subdivisions not patrimonial in character shall not be the object of prescription."

There are two modes of prescription through which immovables may be acquired under the Civil Code. The first is ordinary acquisitive prescription, which, under Article 1117, requires possession in good faith and with just title; and, under Article 1134, is completed through possession of ten (10) years. There is nothing in the Civil Code that bars a person from acquiring patrimonial property of the State through ordinary acquisitive prescription, nor is there any apparent reason to impose such a rule. At the same time, there are indispensable requisites–good faith and just title. The ascertainment of good faith involves the application of Articles 526, 527, and 528, as well as Article 1127 of the Civil Code,[45] provisions that more or less speak for themselves.

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[45] See CIVIL CODE, Art. 1128.

On the other hand, the concept of just title requires some clarification. Under Article 1129, there is just title for the purposes of prescription "when the adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership or other real rights, but the grantor was not the owner or could not transmit any right." Dr. Tolentino explains:

> Just title is an act which has for its purpose the transmission of ownership, and which would have actually transferred ownership if the grantor had been the owner. This vice or defect is the one cured by prescription. Examples: sale with delivery, exchange, donation, succession, and *dacion* in payment.[46]

The OSG submits that the requirement of just title necessarily precludes the applicability of ordinary acquisitive prescription to patrimonial property. The major premise for the argument is that "the State, as the owner and grantor, could not transmit ownership to the possessor before the completion of the required period of possession."[47] It is evident that the OSG erred when it assumed that the grantor referred to in Article 1129 is the State. The grantor is the one from whom the person invoking ordinary acquisitive prescription derived the title, whether by sale, exchange, donation, succession or any other mode of the acquisition of ownership or other real rights.

Earlier, we made it clear that, whether under ordinary prescription or extraordinary prescription, the period of possession preceding the classification of public dominion lands as patrimonial cannot be counted for the purpose of computing prescription. But after the property has been become patrimonial, the period of prescription begins to run in favor of the possessor. Once the requisite period has been completed, two legal events ensue: (1) the patrimonial property is *ipso jure* converted into private land; and (2) the person in possession for the periods prescribed under the Civil Code acquires ownership of the property by operation of the Civil Code.

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[46] A. TOLENTINO, IV *CIVIL CODE OF THE PHILIPPINES* (1991 ed.) at 26; citing 2 Castan 175.

[47] Memorandum of the OSG, p. 21.

It is evident that once the possessor automatically becomes the owner of the converted patrimonial property, the ideal next step is the registration of the property under the Torrens system. It should be remembered that registration of property is not a mode of acquisition of ownership, but merely a mode of confirmation of ownership.[48]

Looking back at the registration regime prior to the adoption of the Property Registration Decree in 1977, it is apparent that the registration system then did not fully accommodate the acquisition of ownership of patrimonial property under the Civil Code. What the system accommodated was the confirmation of imperfect title brought about by the completion of a period of possession ordained under the Public Land Act (either 30 years following Rep. Act No. 1942, or since 12 June 1945 following P.D. No. 1073).

The Land Registration Act[49] was noticeably silent on the requisites for alienable public lands acquired through ordinary prescription under the Civil Code, though it arguably did not preclude such registration.[50] Still, the gap was lamentable, considering that the Civil Code, by itself, establishes ownership over the patrimonial property of persons who have completed the prescriptive periods ordained therein. The gap was finally closed with the adoption of the Property Registration Decree in 1977, with Section 14(2) thereof expressly authorizing original registration in favor of persons who have acquired ownership over private lands by prescription under the provisions of existing laws, that is, the Civil Code as of now.

V.

We synthesize the doctrines laid down in this case, as follows:

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[48] See *Angeles v. Samia*, 66 Phil. 44 (1938).

[49] Act No. 496.

[50] See Section 19, Land Registration Act, which allowed application for registration of title by "person or persons claiming, singly or collectively, to own the legal estate in fee simple."

(1) In connection with Section 14(1) of the Property Registration Decree, Section 48(b) of the Public Land Act recognizes and confirms that "those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a bona fide claim of acquisition of ownership, since June 12, 1945" have acquired ownership of, and registrable title to, such lands based on the length and quality of their possession.

(a) Since Section 48(b) merely requires possession since 12 June 1945 and does not require that the lands should have been alienable and disposable during the entire period of possession, the possessor is entitled to secure judicial confirmation of his title thereto as soon as it is declared alienable and disposable, subject to the timeframe imposed by Section 47 of the Public Land Act.[51]

(b) The right to register granted under Section 48(b) of the Public Land Act is further confirmed by Section 14(1) of the Property Registration Decree.

(2) In complying with Section 14(2) of the Property Registration Decree, consider that under the Civil Code, prescription is recognized as a mode of acquiring ownership of patrimonial property. However, public domain lands become only patrimonial property not only with a declaration that these are alienable or disposable. There must also be an express government manifestation that the property is already patrimonial or no longer retained for public service or the development of national wealth, under Article 422 of the Civil Code. And only when the property has become patrimonial can the prescriptive period for the acquisition of property of the public dominion begin to run.

(a) Patrimonial property is private property of the government. The person acquires ownership of patrimonial property by prescription under the Civil Code is entitled to secure registration thereof under Section 14(2) of the Property Registration Decree.

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[51] See note 24.

(b) There are two kinds of prescription by which patrimonial property may be acquired, one ordinary and other extraordinary. Under ordinary acquisitive prescription, a person acquires ownership of a patrimonial property through possession for at least ten (10) years, in good faith and with just title. Under extraordinary acquisitive prescription, a person's uninterrupted adverse possession of patrimonial property for at least thirty (30) years, regardless of good faith or just title, ripens into ownership.

B.

We now apply the above-stated doctrines to the case at bar.

It is clear that the evidence of petitioners is insufficient to establish that Malabanan has acquired ownership over the subject property under Section 48(b) of the Public Land Act. There is no substantive evidence to establish that Malabanan or petitioners as his predecessors-in-interest have been in possession of the property since 12 June 1945 or earlier. The earliest that petitioners can date back their possession, according to their own evidence—the Tax Declarations they presented in particular—is to the year 1948. Thus, they cannot avail themselves of registration under Section 14(1) of the Property Registration Decree.

Neither can petitioners properly invoke Section 14(2) as basis for registration. While the subject property was declared as alienable or disposable in 1982, there is no competent evidence that is no longer intended for public use service or for the development of the national evidence, conformably with Article 422 of the Civil Code. The classification of the subject property as alienable and disposable land of the public domain does not change its status as property of the public dominion under Article 420(2) of the Civil Code. Thus, it is insusceptible to acquisition by prescription.

VI.

A final word. The Court is comfortable with the correctness of the legal doctrines established in this decision. Nonetheless, discomfiture over the implications of today's ruling cannot be

discounted. For, every untitled property that is occupied in the country will be affected by this ruling. The social implications cannot be dismissed lightly, and the Court would be abdicating its social responsibility to the Filipino people if we simply levied the law without comment.

The informal settlement of public lands, whether declared alienable or not, is a phenomenon tied to long-standing habit and cultural acquiescence, and is common among the so-called "Third World" countries. This paradigm powerfully evokes the disconnect between a legal system and the reality on the ground. The law so far has been unable to bridge that gap. Alternative means of acquisition of these public domain lands, such as through homestead or free patent, have proven unattractive due to limitations imposed on the grantee in the encumbrance or alienation of said properties.[52] Judicial confirmation of imperfect title has emerged as the most viable, if not the most attractive means to regularize the informal settlement of alienable or disposable lands of the public domain, yet even that system, as revealed in this decision, has considerable limits.

There are millions upon millions of Filipinos who have individually or exclusively held residential lands on which they have lived and raised their families. Many more have tilled and made productive idle lands of the State with their hands. They have been regarded for generation by their families and their communities as common law owners. There is much to be said about the virtues of according them legitimate states. Yet such virtues are not for the Court to translate into positive law, as the law itself considered such lands as property of the public dominion. It could only be up to Congress to set forth a new phase of land reform to sensibly regularize and formalize the settlement of such lands which in legal theory are lands of the public domain before the problem becomes insoluble. This could be accomplished, to cite two examples, by liberalizing the standards for judicial confirmation of imperfect title, or amending the Civil Code itself to ease the requisites for the conversion of public dominion property into patrimonial.

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[52] See Section 118, Com. Act No. 141, as amended.

One's sense of security over land rights infuses into every aspect of well-being not only of that individual, but also to the person's family. Once that sense of security is deprived, life and livelihood are put on stasis. It is for the political branches to bring welcome closure to the long pestering problem.

WHEREFORE, the Petition is *DENIED*. The Decision of the Court of Appeals dated 23 February 2007 and Resolution dated 2 October 2007 are *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, Carpio, Austria-Martinez, Carpio Morales, Velasco, Jr., Nachura, Peralta, and *Bersamin, JJ.,* concur.

Puno, C.J. and *Leonardo-de Castro, J.,* join the concurring and dissenting opinion of *Nazario, J.*

Chico-Nazario, J., see concurring & dissenting opinion.

Corona, J., joins the dissent of Mr. Justice Brion.

Brion, J., dissents — see opinion.

Quisumbing, J., on official business.

"Except in favor of the Government or any of its branches, units, or institutions, 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 Commerce, which approval shall not be denied except on constitutional and legal grounds."

CONCURRING AND DISSENTING OPINION

CHICO-NAZARIO, *J*.:

I **concur** in the majority opinion in dismissing the application for registration of a piece of land originally filed by the late Mario Malabanan (Malabanan), petitioners' predecessor-in-interest. The land subject of the instant Petition, being alienable and disposable land of the public domain, may not be acquired by prescription under the provisions of the Civil Code, nor registered pursuant to Section 14(2) of the Property Registration Decree.

At the outset, it must be made clear that the Property Registration Decree governs registration of land under the Torrens system. It can only identify which titles, already existing or vested, may be registered under the Torrens system; but it cannot be the source of any title to land. It merely confirms, but does not confer ownership.[1]

Section 14(2) of the Property Registration Decree allows "those who have acquired ownership of **private lands** by prescription under the provisions of existing laws," to apply for registration of their title to the lands.

Petitioners do not fall under such provision, taking into account that the land they are seeking to register is **alienable and disposable land of the public domain**, a fact which would have several substantial implications.

First, Section 14(2) of the Property Registration Decree clearly and explicitly refers to "private lands," without mention at all of public lands. There is no other way to understand the plain language of Section 14(2) of the Property Registration Decree except that the land was already private when the applicant for registration acquired ownership thereof by prescription. The prescription therein was not the means by which the public land was converted to private land; rather, it was the way the applicant acquired title to what is already private land, from

[1] *Republic v. Court of Appeals*, G.R. No. 108998, 24 August 1994.

another person previously holding title to the same.[2] The provision in question is very clear and unambiguous. Well-settled is the rule that when the law speaks in clear and categorical language, there is no reason for interpretation or construction, but only for application.[3]

With the understanding that Section 14(2) of the Property Registration Decree applies only to what are already private lands, then, there is no question that the same can be acquired by prescription under the provisions of the Civil Code, because, precisely, it is the Civil Code which governs rights to private lands.

Second, Section 11 of Commonwealth Act No. 141, otherwise known as the Public Land Act, as amended, reads:

> Section 11. Public lands suitable for agricultural purposes **can be disposed of only as follows**:
>
> (1) For homestead settlement;
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> (2) By sale;
>
> (3) By lease; and
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> (4) By confirmation of imperfect or incomplete titles;
>
> (a) By judicial legalization; or
>
> (b) By administrative legalization (free patent). (Emphasis ours.)

The afore-quoted provision recognizes that agricultural public lands may be disposed of by the State, and at the same time, mandates that the latter can **only** do so by the modes identified in the same provision. Thus, the intent of the legislature to make **exclusive** the enumeration of the modes by which

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[2] As in the case where the land was already the subject of a grant by the State to a private person, but the latter failed to immediately register his title, thus, allowing another person to acquire title to the land by prescription under the provisions of the Civil Code.

[3] *Department of Agrarian Reform v. Court of Appeals,* 327 Phil. 1052 (1996).

agricultural public land may be disposed of by the State in Section 11 of the Public Land Act, as amended, is not only readily apparent, but **explicit**. And, undeniably, the enumeration of the modes for acquiring agricultural public land in the said provision does not include prescription, in the concepts described and periods prescribed by the Civil Code.

Neither the Civil Code nor the Property Registration Decree can overcome the express restriction placed by the Public Land Act, as amended, on the modes by which the State may dispose of agricultural public land.

The Public Land Act, as amended, is a special law specifically applying to lands of the public domain, except timber and mineral lands. The Public Land Act, as amended, being a special law, necessarily prevails over the Civil Code, a general law. Basic is the rule in statutory construction that "where two statutes are of equal theoretical application to a particular case, the one designed therefor specially should prevail." *Generalia specialibus non derogant*.[4]

As for the Property Registration Decree, it must be stressed that the same cannot confer title to land and can only confirm title that already exists or has vested. As has already been previously discussed herein, title to agricultural public land vests or is acquired only by any of the modes enumerated in Section 11 of the Public Land Act, as amended.

And, *third*, Section 48(b) of the Public Land Act was amended several times, changing the period of possession required for acquiring an imperfect title to agricultural alienable and disposable land of the public domain:

> Under the public land act, judicial confirmation of imperfect title required possession *en concepto de dueño* **since time immemorial, or since July 26, 1894**. Under C.A. No. 141, this requirement was retained. However, on June 22, 1957, Republic Act No. 1942 was enacted amending C.A. No. 141. This later enactment required adverse possession for **a period of only thirty (30) years**. On January 25, 1977, the President enacted P. D. No. 1073, further amending C.A.

[4] See *De Guzman v. Court of Appeals*, 358 Phil. 397, 408 (1998).

No. 141, extending the period for filing applications for judicial confirmation of imperfect or incomplete titles to December 31, 1987. Under this decree, "the provisions of Section 48 (b) and Section 48 (c), Chapter VIII, of the Public Land Act are hereby amended in the sense that these provisions shall apply only to alienable and disposable land of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant himself or thru his predecessor-in-interest under a bona fide claim of acquisition of ownership, **since June 12, 1945**."[5] (Emphasis ours.)

Prior to Presidential Decree No. 1073, imperfect title to agricultural land of the public domain could be acquired by adverse possession of 30 years. Presidential Decree No. 1073, issued on 25 January 1977, amended Section 48(b) of the Public Land Act by requiring possession and occupation of alienable and disposable land of the public domain since 12 June 1945 or earlier for an imperfect title. Hence, by virtue of Presidential Decree No. 1073, the requisite period of possession for acquiring imperfect title to alienable and disposable land of the public domain is no longer determined according to a **fixed term** (*i.e.*, 30 years); instead, it shall be reckoned from a **fixed date** (*i.e.*, 12 June 1945 or earlier) from which the possession should have commenced.

If the Court allows the acquisition of alienable and disposable land of the public domain by prescription under the Civil Code, and registration of title to land thus acquired under Section 14(2) of the Property Registration Decree, it would be sanctioning what is effectively a circumvention of the amendment introduced by Presidential Decree No. 1073 to Section 48(b) of the Public Land Act. Acquisition of alienable and disposable land of the public domain by possession would again be made to depend on a fixed term (*i.e.*, 10 years for ordinary prescription and 30 years for extraordinary prescription), rather than being reckoned from the fixed date presently stipulated by Section 48(b) of the Public Land Act, as amended.

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[5] *Public Estates Authority v. Court of Appeals,* 398 Phil. 901, 900-910 (2000).

There being no basis for petitioners' application for registration of the public agricultural land in question, accordingly, the same must be dismissed.

I, however, must express my **dissent** to the discussion in the majority opinion concerning the contradictory pronouncements of the Court in *Republic v. Court of Appeals*[6] and *Republic v. Herbieto*,[7] on imperfect titles to alienable and disposable lands of the public domain, acquired in accordance with Section 48(b) of the Public Land Act, as amended, and registered pursuant to Section 14(1) of the Property Registration Decree.

According to *Naguit*, a person seeking judicial confirmation of an imperfect title under Section 48(b) of the Public Land Act, as amended, need only prove that he and his predecessors-in-interest have been in possession and occupation of the subject land since 12 June 1945 or earlier, and that the subject land is alienable and disposable **at the time of filing** of the application for judicial confirmation and/or registration of title. On the other hand, it was held in *Herbieto* that such a person must establish that he and his predecessors-in-interest have been in possession and occupation of the subject land since 12 June 1945 or earlier, and that the subject land was likewise already declared alienable and disposable **since 12 June 1945 or earlier**. The majority opinion upholds the ruling in *Naguit*, and declares the pronouncements on the matter in *Herbieto* as mere *obiter dictum.*

As the *ponente* of *Herbieto*, I take exception to the dismissive treatment of my elucidation in said case on the acquisition of imperfect title to alienable and disposable land of the public domain, as mere *obiter dictum*.

An *obiter dictum* has been defined as an opinion expressed by a court upon some question of law which is not necessary to the decision of the case before it. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause, "by the way," that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily

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[6] G.R. No. 144057, 17 January 2005, 448 SCRA 442.

[7] G.R. No. 156117, 26 May 2005, 459 SCRA 183.

involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. Such are not binding as precedent.[8]

To recall, the Republic of the Philippines opposed in *Herbieto* the registration of certain parcels of land of the public domain in the names of Jeremias and David Herbieto, based on two grounds, one substantive and the other procedural, *i.e.*, (1) the applicants for registration failed to prove that they possessed the subject parcels of land for the period required by law; and (2) the application for registration suffers from fatal infirmity as the subject of the application consisted of two parcels of land individually and separately owned by two applicants.

The Court, in *Herbieto*, addressed the procedural issue first, and held that the alleged infirmity in the application constituted a misjoinder of causes of action which did not warrant a dismissal of the case, only the severance of the misjoined causes of action so that they could be heard by the court separately. The Court though took note of the belated publication of the notice of hearing on the application for registration of Jeremias and David Herbieto, the hearing was already held before the notice of the same was published. Such error was not only procedural, but jurisdictional, and was fatal to the application for registration of Jeremias and David Herbieto.

The Court then proceeded to a determination of the substantive issue in *Herbieto*, particularly, whether Jeremias and David Herbieto possessed the parcels of land they wish to register in their names for the period required by law. The Court ruled in the negative. Section 48(b) of the Public Land Act, as amended, on judicial confirmation of imperfect title, requires possession of alienable and disposable land of the public domain since 12 June 1945 or earlier. Given that the land sought to be registered was declared alienable and disposable only on 25 June 1963, and the period of possession prior to such declaration should not be counted in favor of the applicants for registration, then

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[8] *Delta Motors Corporation v. Court of Appeals*, 342 Phil. 173, 186 (1997).

Jeremias and David Herbieto could not be deemed to have possessed the parcels of land in question for the requisite period as to acquire imperfect title to the same.

The discussion in *Herbieto* on the acquisition of an imperfect title to alienable and disposable land of the public domain, which could be the subject of judicial confirmation, was **not** unnecessary to the decision of said case. It was **not** a mere remark made or opinion expressed upon a cause, "by the way," or only incidentally or collaterally, and not directly upon a question before the Court; or upon a point not necessarily involved in the determination of the cause; or introduced by way of illustration, or analogy or argument, as to constitute *obiter dictum*.

It must be emphasized that the acquisition of an imperfect title to alienable and disposable land of the public domain under Section 48(b) of the Public Land Act, as amended, was directly raised as an issue in the Petition in *Herbieto* and discussed extensively by the parties in their pleadings. That the application of Jeremias and David Herbieto could already be dismissed on the ground of lack of proper publication of the notice of hearing thereof, did not necessarily preclude the Court from resolving the other issues squarely raised in the Petition before it. Thus, the Court dismissed the application for registration of Jeremias and David Herbieto on two grounds: (1) the lack of jurisdiction of the land registration court over the application, in light of the absence of proper publication of the notice of hearing; **and** (2) the evident lack of merit of the application given that the applicants failed to comply with the requirements for judicial confirmation of an imperfect title under Section 48(b) of the Public Land Act, as amended. This is only in keeping with the duty of the Court to expeditiously and completely resolve the cases before it and, once and for all, settle the dispute and issues between the parties. Without expressly discussing and categorically ruling on the second ground, Jeremias and David Herbieto could have easily believed that they could re-file their respective applications for registration, just taking care to comply with the publication-of-notice requirement.

Of particular relevance herein is the following discourse in *Villanueva v. Court of Appeals*[9] on what constitutes, or more appropriately, what does **not** constitute *obiter dictum*:

> It has been held that an adjudication on any point within the issues presented by the case cannot be considered as *obiter dictum*, and this rule applies to all pertinent questions, although only incidentally involved, which are presented and decided in the regular course of the consideration of the case, and led up to the final conclusion, and to any statement as to matter on which the decision is predicated. Accordingly, a point expressly decided does not lose its value as a precedent because the disposition of the case is, or might have been, made on some other ground, or even though, by reason of other points in the case, the result reached might have been the same if the court had held, on the particular point, otherwise than it did. A decision which the case could have turned on is not regarded as *obiter dictum* merely because, owing to the disposal of the contention, it was necessary to consider another question, nor can an additional reason in a decision, brought forward after the case has been disposed of on one ground, be regarded as *dicta*. So, also, where a case presents two (2) or more points, any one of which is sufficient to determine the ultimate issue, but the court actually decides all such points, the case as an authoritative precedent as to every point decided, and none of such points can be regarded as having the status of a dictum, and one point should not be denied authority merely because another point was more dwelt on and more fully argued and considered, nor does a decision on one proposition make statements of the court regarding other propositions *dicta*.

An adjudication on any point within the issues presented by the case cannot be considered a dictum; and this rule applies as to all pertinent questions, although only incidentally involved, which are presented and decided in the regular course of the consideration of the case, and lead up to the final conclusion, and to any statement in the opinion as to a matter on which the decision is predicated. Accordingly, a point expressly decided does not lose its value as a precedent because the disposition of the case is or might have been made on some other ground, or even though, by reason of other points in the case, the result

[9] 429 Phil. 194, 203-204 (2002).

reached might have been the same if the court had held, on the particular point, otherwise than it did.[10]

I submit that *Herbieto* only applied the clear provisions of the law and established jurisprudence on the matter, and is binding as a precedent.

Section 14(b) of the Public Land Act, as amended, explicitly requires for the acquisition of an imperfect title to alienable and disposable land of the public domain, possession by a Filipino citizen of the said parcel of land since 12 June 1945 or earlier, to wit:

Section. 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title thereafter, under the Land Registration Act, to wit:

xxx xxx xxx

(b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a *bona fide* claim of acquisition of ownership, **since June 12, 1945, or earlier**, immediately preceding the filing of the applications for confirmation of title, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter. (Emphasis ours.)

Section 14(1) of the Property Registration Decree, by substantially reiterating Section 48(b) of the Public Land Act, as amended, recognizes the imperfect title thus acquired and allows the registration of the same, *viz*:

Section 14. *Who may apply*. – The following persons may file in the proper Court of First Instance an application for registration

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[10] 1 C. J. S. 314-315, as quoted in the dissenting opinion of Tuason, *J*., in *Primicias v. Fugoso*, 80 Phil. 71, 125 (1948).

of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership **since June 12, 1945, or earlier**. (Emphasis ours.)

Meanwhile, jurisprudence has long settled that possession of the land by the applicant for registration prior to the reclassification of the land as alienable and disposable cannot be credited to the applicant's favor.[11]

Given the foregoing, judicial confirmation and registration of an imperfect title, under Section 48(b) of the Public Land Act, as amended, and Section 14(1) of the Property Registration Decree, respectively, should only be granted when: (1) a Filipino citizen, by himself or through his predecessors-in-interest, have been in open, continuous, exclusive, and notorious possession and occupation of agricultural land of the public domain, under a *bona fide* claim of acquisition of ownership, since 12 June 1945, or earlier; and (2) the land in question, necessarily, was already declared alienable and disposable also by 12 June 1945 or earlier.

There can be no other interpretation of Section 48(b) of the Public Land Act, as amended, and Section 14(1) of the Property Registration Decree, which would not run afoul of either the clear and unambiguous provisions of said laws or binding judicial precedents.

I do not agree in the observation of the majority opinion that the interpretation of Section 48(b) of the Public Land Act, as

[11] See *Almeda v. Court of Appeals*, G.R. No. 85322, 30 April 1991, 196 SCRA 476; *Vallarta v. Intermediate Appellate Court*, 235 Phil. 680, 695-696 (1987); and *Republic v. Court of Appeals*, 232 Phil. 444, 457 (1987), cited in *Republic v. Herbieto* (*supra* note 2). See also *Republic v. Court of Appeals*, 238 Phil. 475, 486-487 (1987); *Republic v. Bacus*, G.R. No. 73261, 11 August 1989, 176 SCRA 376-380; *Republic v. Court of Appeals*, G.R. No.38810, 7 May 1992, 208 SCRA 428, 434; *De la Cruz v. Court of Appeals*, 349 Phil. 898, 904 (1998), *Republic v. De Guzman*, 383 Phil. 479, 485 (2000).

amended, adopted in *Herbieto*, would result in absurdity. Indeed, such interpretation forecloses a person from acquiring an imperfect title to a parcel of land declared alienable and disposable only after 12 June 1945, which could be judicially confirmed. Nonetheless, it must be borne in mind that the intention of the law is to dispose of agricultural public land to **qualified individuals** and not simply to dispose of the same. It may be deemed a strict interpretation and application of both law and jurisprudence on the matter, but it certainly is not an absurdity.

Stringency and prudence in interpreting and applying Section 48(b) of the Public Land Act, as amended, is well justified by the significant consequences arising from a finding that a person has an imperfect title to agricultural land of the public domain. Not just any lengthy occupation of an agricultural public land could ripen into an imperfect title. **An imperfect title can only be acquired by occupation and possession of the land by a person and his predecessors-in-interest for the period required and considered by law sufficient as to have segregated the land from the mass of public land. When a person is said to have acquired an imperfect title, by operation of law, he acquires a right to a grant, a government grant to the land, without the necessity of a certificate of title being issued. As such, the land ceased to be part of the public domain and goes beyond the authority of the State to dispose of. An application for confirmation of title, therefore, is but a mere formality.**[12]

In addition, as was emphasized in *Herbieto*, Section 11 of the Public Land Act, as amended, has identified several ways by which agricultural lands of the public domain may be disposed of. Each mode of disposing of agricultural public land has its own specific requirements which must be complied with. If a person is not qualified for a judicial confirmation of an imperfect title, because the land in question was declared alienable and disposable only after 12 June 1945, he is not totally without recourse for he could still acquire the same by any of the other

[12] See *National Power Corporation v. Court of Appeals*, G.R. No. 45664, 29 January 1993, 218 SCRA 41, 54.

modes enumerated in the afore-quoted provision.

Regardless of my dissent to the affirmation by the majority of the ruling in *Naguit* on Section 48(b) of the Public Land Act, as amended, and Section 14(1) of the Property Registration Decree, I cast my vote with the majority, to **DENY** the Petition at bar and **AFFIRM** the Decision dated 23 February 2007 and Resolution dated 2 October 2000 of the Court of Appeals dismissing, for absolute lack of basis, petitioners' application for registration of alienable and disposable land of the public domain.

CONCURRING AND DISSENTING OPINION

BRION, *J.*:

I **concur** with the *ponencia's* modified positions on the application of prescription under Section 14(2) of the Property Registration Decree (*PRD*), and on the denial of the petition of the Heirs of Mario Malabanan.

I **dissent** in the strongest terms from the ruling that the classification of a public land as alienable and disposable can be made after June 12, 1945, in accordance with this Court's ruling in *Republic v. Court of Appeals and Naguit* (*Naguit*).[1] Effectively, what results from this decision is a new law, crafted by this Court, going beyond what the Constitution ordains and beyond the law that the Legislature passed. Because the majority has not used the standards set by the Constitution and the Public Land Act (*PLA*),[2] its conclusions are based on a determination on what the law ought to be – an exercise in policy formulation that is beyond the Court's authority to make.

The discussions of these grounds for dissent follow, not necessarily in the order these grounds are posed above.

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[1] G.R. No. 144507, January 17, 2005, 442 SCRA 445.

[2] Commonwealth Act No. 141, as amended (*CA 141*).

Prefatory Statement

Critical to the position taken in this Dissent is the reading of the hierarchy of laws that govern public lands to fully understand and appreciate the grounds for dissent.

In the area of public law, foremost in this hierarchy is the *Philippine Constitution,* whose Article XII (entitled *National Economy and Patrimony*) establishes and fully embraces the regalian doctrine as a first and overriding principle.[3] This doctrine postulates that all lands belong to the State,[4] and that no public land can be acquired by private persons without any grant, express or implied, from the State.[5]

In the statutory realm, the PLA governs the classification, grant, and disposition of alienable and disposable lands of the public domain and, other than the Constitution, is the country's primary law on the matter. *Section 7* of the PLA delegates to the President the authority to administer and dispose of alienable public lands. *Section 8* sets out the public lands open to disposition or concession, and the requirement that they should be officially delimited and classified and, when practicable, surveyed. *Section 11*, a very significant section, states that —

Public lands suitable for agricultural purposes can be disposed of ***only*** as follows and ***not otherwise***:

(1) For homestead settlement;

(2) By sale;

(3) By lease;

(4) By confirmation of imperfect or incomplete title;

(5) By judicial legalization;

(6) By administrative legalization (free patent)

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[3] See *Collado v. Court of Appeals*, G. R. No. 107764, October 4, 2002, 390 SCRA 343.

[4] CONSTITUTION, Article XII, Section 2.

[5] See *Republic v. Herbieto*, G. R. No. 156117, May 26, 2005, 459 SCRA 182.

Section 48 covers confirmation of imperfect title, and embodies ***a grant of title*** to the qualified occupant or possessor of an alienable public land. This section provides:

> SECTION 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:
>
> (a) Those who prior to the transfer of sovereignty from Spain to the United States have applied for the purchase, composition or other form of grant of lands of the public domain under the laws and royal decrees then in force and have instituted and prosecuted the proceedings in connection therewith, but have, with or without default upon their part, or for any other cause, not received title therefor, if such applicants or grantees and their heirs have occupied and cultivated said lands continuously since the filing of their applications.
>
> (b) Those who by themselves or through their predecessors in interest have been in the open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or ownership, except as against the Government, since July twenty-sixth, eighteen hundred and ninety-four, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

Significantly, subsection (a) has now been deleted, while subsection (b) has been amended by PD 1073 as follows:

> SECTION 4. The provisions of Section 48(b) and Section 48(c), Chapter VIII of the Public Land Act are hereby amended in the sense that *these provisions shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant himself or thru his predecessor-in-interest, under a bona fide claim of acquisition of ownership, since June 12, 1945.*

Complementing the PLA is the PRD.[6] It was enacted to codify the various laws relating to property registration. It governs the registration of lands under the Torrens System, as well as unregistered lands, including chattel mortgages. Section 14 of the PRD provides:

SECTION 14. *Who May Apply*. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) **Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.**

(2) Those who have acquired ownership of private lands by prescription under the provisions of existing laws.

(3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.

(4) Those who have acquired ownership of land in any other manner provided for by law.

Subsection (1) of Section 14 is a copy of, and appears to have been lifted from, Section 48(b) of the PLA. The two provisions, however, differ in intent and legal effect based on the purpose of the law that contains them. **The PLA is a substantive law that classifies and provides for the disposition of alienable lands of the public domain. The PRD, on the other hand, specifically refers to the manner of bringing registerable lands, among them alienable public lands, within the coverage of the Torrens system.** Thus, the first is a substantive law, while the other is *essentially* procedural, so that in terms of substantive content, the PLA should prevail.[7]

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[6] Presidential Decree (*PD*) No. 1529, amending Act No. 496 that originally brought the Torrens system into the Philippines in 1903.

[7] Substantive law is that which creates, defines and regulates rights, or which regulates the rights and duties which give rise to a cause of action, that

Significantly bearing on the matter of lands *in general* is the Civil Code and its provisions on Property[8] and Prescription.[9] The law on property assumes importance because land, whether public or private, is property. Prescription, on the other hand, is a mode of acquiring ownership of land, although it is not one of the modes of disposition mentioned in the PLA.

Chapter 3, Title I of Book II of the Civil Code is entitled *"Property in Relation to the Person to Whom it Belongs."* On this basis, Article 419 classifies property to be property of public dominion or of private ownership. Article 420 proceeds to further classify property of public dominion into those intended for public use, for public service, and for the development of the national wealth. Article 421 states that all other properties of the State not falling under Article 420 are patrimonial property of the State, and Article 422 adds that property of public dominion, no longer intended for public use or for public service, shall form part of the patrimonial property of the State. Under Article 425, property of private ownership, besides patrimonial property of the State, provinces, cities and municipalities, consists of all property belonging to private persons, either individually or collectively.

Prescription is essentially a civil law term and is not mentioned as one of the modes of acquiring alienable public land under the PLA, (Significantly, the PLA – under its Section 48 – provides for its system of how possession can ripen into ownership; the PLA does not refer to this as acquisitive prescription but as

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part of the law which courts are established to administer, as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtain redress for their invasion (*Primicias v. Ocampo*, 93 Phil. 446.) It is the nature and the purpose of the law which determines whether it is substantive or procedural, and not its place in the statute, or its inclusion in a code (Regalado, *Remedial Law Compendium*, Volume I [Ninth Revised Edition], p. 19). Note that Section 55 of the PLA refers to the Land Registration Act (the predecessor law of the PRD) on how the Torrens title may be obtained.

[8] CIVIL CODE, Book II (Property, Ownership and its Modifications), Articles 415-711.

[9] CIVIL CODE, Book III (Different Modes of Acquiring Ownership), Articles 1106-1155.

basis for confirmation of title.) Section 14(2) of the PRD, however, specifies that "[t]hose who have acquired ownership of ***private lands*** by prescription under the provisions of existing laws" as among those who may apply for land registration. ***Thus, prescription was introduced into the land registration scheme (the PRD), but not into the special law governing lands of the public domain (the PLA).***

A starting point in considering prescription in relation with public lands is Article 1108 of the Civil Code, which states that prescription does not run against the State and its subdivisions. At the same time, Article 1113 provides that "all things which are within the commerce of men are susceptible of prescription, unless otherwise provided; property of the State or any of its subdivisions not patrimonial in character shall not be the object of prescription." The provisions of Articles 1128 to 1131 may also come into play in the application of prescription to real properties.

In light of our established hierarchy of laws, particularly the supremacy of the Philippine Constitution, any consideration of lands of the public domain should start with the Constitution and its Regalian doctrine; all lands belong to the State, and he who claims ownership carries the burden of proving his claim.[10] **Next in the hierarchy is the PLA for purposes of the terms of the grant, alienation and disposition of the lands of the public domain, and the PRD for the registration of lands. The PLA and the PRD are special laws supreme in their respective spheres, subject only to the Constitution. The Civil Code, for its part, is the general law on property and prescription and should be accorded respect as such. In more concrete terms, where alienable and disposable lands of the public domain are involved, the PLA is the primary law that should govern,**

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[10] See the consolidated cases of *The Secretary of the Department of Environment and Natural Resources v. Yap*, G.R. No. 167707 and *Sacay v. The Secretary of the Department of Environment and Natural Resources*, G.R. No. 173775, jointly decided on October 8, 2008 (the *Boracay cases*).

and the Civil Code provisions on property and prescription must yield in case of conflict.[11]

The Public Land Act

At the risk of repetition, I start the discussion of the PLA with a reiteration of the **first principle** that under the regalian doctrine, all lands of the public domain belong to the State, and the State is the source of any asserted right to ownership in land and charged with the conservation of such patrimony. Otherwise expressed, all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State.[12] **Thus, all lands that have not been acquired from the government, either by purchase or by grant, belong to the State as part of the inalienable public domain.**[13] We should never lose sight of the impact of this first principle where a private ownership claim is being asserted against the State.

The PLA has undergone many revisions and changes over time, starting from the first PLA, Act No. 926; the second public land law that followed, Act No. 2874; and the present CA 141 and its amendments. Act No. 926 was described in the following terms:

> The law governed the disposition of lands of the public domain. It prescribed rules and regulations for the homesteading, selling and leasing of portions of the public domain of the Philippine Islands, and prescribed the terms and conditions to enable persons to perfect their titles to public lands in the Islands. It also provided for the "issuance of patents to certain native settlers upon public lands," for the establishment of town sites and sale of lots therein, for the completion of imperfect titles, and for the cancellation or confirmation of Spanish concessions and grants in the Islands." **In short, the Public Land Act operated on the assumption that title to public lands in the Philippine Islands remained in the**

[11] CIVIL CODE, Article 18.

[12] *Director of Lands and Director of Forest Development v. Intermediate Appellate Court and J. Antonio Araneta*, G.R. No. 73246, March 2, 1993, 219 SCRA 339.

[13] See the Boracay cases, *supra* note 8.

government; and that the government's title to public land sprung from the Treaty of Paris and other subsequent treaties between Spain and the United States. The term "public land" referred to all lands of the public domain whose title still remained in the government and are thrown open to private appropriation and settlement, and excluded the patrimonial property of the government and the friar lands.[14]

This basic essence of the law has not changed and has been carried over to the present PLA and its amendments. Another basic feature, the requirement for open, continuous, exclusive, and notorious possession and occupation of the alienable and disposable public land under a *bona fide* claim of ownership also never changed. Still another consistent public land feature is the concept that once a person has complied with the requisite possession and occupation in the manner provided by law, he is automatically given a State grant that may be asserted against State ownership; the land, in other words, *ipso jure* becomes private land.[15] The application for judicial confirmation of imperfect title shall then follow, based on the procedure for land registration.[16] It is in this manner that the PLA ties up with the PRD.

A feature that has changed over time has been the period for reckoning the required occupation or possession. In the first PLA, the required occupation/possession to qualify for judicial confirmation of imperfect title was 10 years preceding the effectivity of Act No. 926 – July 26, 1904 (or since July 26, 1894 or earlier). This was retained up to CA 141, until this law was amended by Republic Act (*RA*) No. 1942 (enacted on

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[14] See the opinion of Justice Reynato S. Puno (now Chief Justice) in *Cruz v. Secretary of the Department of Environment and Natural Resources* (G.R. No. 135385, December 6, 2000, 347 SCRA 128) quoted in *Collado* (*supra* note 2).

[15] Enunciated in the old case of *Susi v. Razon and Director of Lands*, 48 Phil. 424 (1925); See *Abejaron v. Nabasa*, cited on p. 10 of this Dissent.

[16] PLA, Sections 49-56; the reference to the Land Registration Act (Act No. 496) should now be understood to mean the PRD which repealed Act 496.

June 22, 1957),[17] which provided for a simple 30-year prescriptive period for judicial confirmation of imperfect title. This period did not last; on January 25, 1977, Presidential Decree No. 1073 (*PD 1073*)[18] changed the required 30-year possession and occupation period provision, to possession and occupation of the land applied for **since June 12, 1945, or earlier**. PD 1073 likewise changed the lands subject of imperfect title, from agricultural lands of the public domain to alienable and disposable lands of the public domain. PD 1073 also extended the period for applications for free patents and judicial confirmation of imperfect titles to December 31, 1987.

The significance of the date "June 12, 1945" appears to have been lost to history. A major concern raised against this date is that the country was at this time under Japanese occupation, and for some years after, was suffering from the uncertainties and instabilities that World War II brought. Questions were raised on how one could possibly comply with the June 12, 1945 or earlier occupation/possession requirement of PD 1073 when the then prevailing situation did not legally or physically permit it.

Without the benefit of congressional records, as the enactment of the law (a Presidential Decree) was solely through the President's lawmaking powers under a regime that permitted it, the most logical reason or explanation for the date is the possible impact of the interplay between the old law and the amendatory law. When PD 1073 was enacted, the utmost concern, in all probability, was how the law would affect the application of the old law which provided for a thirty-year possession period. Counting 30 years backwards from the enactment of PD 1073 on January 25, 1977, PD 1073 should have provided for a

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[17] *An Act to Amend Subsection (b) of Section Forty Eight of Commonwealth Act Numbered One Hundred Forty One, otherwise known as the The Public Land Act.*

[18] *Extending the Period of Filing Applications for Administrative Legislation (Free Patent) and Judicial Confirmation of Imperfect and Incomplete Titles to Alienable and Disposable Lands in the Public Domain Under Chapter VII and Chapter VIII of Commonwealth Act No. 141, As Amended, For Eleven (11) Years Commencing January 1, 1977.*

January 24, 1947 cut-off date, but it did not. Instead, it provided, for unknown reasons, the date June 12, 1945.

The June 12, 1945 cut-off date raised legal concerns; vested rights acquired under the old law (CA 141, as amended by RA 1942) providing for a 30-year possession period could not be impaired by the PD 1073 amendment. We recognized this legal dilemma in *Abejaron v. Nabasa*,[19] when we said:

> **However, as petitioner Abejaron's 30-year period of possession and occupation required by the Public Land Act, as amended by R.A. 1942 ran from 1945 to 1975, prior to the effectivity of P.D. No. 1073 in 1977, the requirement of said P.D. that occupation and possession should have started on June 12, 1945 or earlier, does not apply to him**. As the *Susi* doctrine holds that the grant of title by virtue of Sec. 48(b) takes place by operation of law, then upon Abejaron's satisfaction of the requirements of this law, he would have already gained title over the disputed land in 1975. **This follows the doctrine laid down in** *Director of Lands v. Intermediate Appellate Court, et al.*, **that the law cannot impair vested rights such as a land grant**. **More clearly stated, "Filipino citizens who by themselves or their predecessors-in-interest have been, prior to the effectivity of P.D. 1073 on January 25, 1977, in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition of ownership, for at least 30 years, or at least since January 24, 1947" may apply for judicial confirmation of their imperfect or incomplete title under Sec. 48(b) of the Public Land Act**.

From this perspective, PD 1073 should have thus provided January 24, 1947 and not June 12, 1945 as its cut-off date, yet the latter date is the express legal reality. The reconciliation, as properly defined by jurisprudence, is that where an applicant has satisfied the requirements of Section 48 (b) of CA 141, as amended by RA 1942, *prior to the effectivity of PD 1073*, the applicant is entitled to perfect his or her title, even if possession and occupation does not date back to June 12, 1945. **For purposes of the present case, a discussion of the cut-off date has been fully made to highlight that it is a date whose significance**

[19] G.R. No. 84831, June 20, 2001, 359 SCRA 47.

and import cannot be minimized nor glossed over by mere judicial interpretation or by judicial social policy concerns; the full legislative intent must be respected.

In considering the PLA, it should be noted that its amendments were not confined to RA 1942 and PD 1073. These decrees were complemented by **Presidential Decree No. 892** (*PD 892*)[20] — issued on February 16, 1976 — which limited to six months the use of Spanish titles as evidence in land registration proceedings.[21] Thereafter, the recording of all *unregistered lands* shall be governed by Section 194 of the Revised Administrative Code, as amended by Act No. 3344. Section 3 of PD 1073 totally disallowed the judicial confirmation of incomplete titles to public land based on unperfected Spanish grants.

Subsequently, RA 6940[22] extended the period for filing applications for free patent and judicial confirmation of imperfect title to December 31, 2000. The law now also allows the issuance of free patents for lands not in excess of 12 hectares to any natural-born citizen of the Philippines who is not the owner of more than 12 hectares and who, for at least 30 years prior to

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[20] *Discontinuance of the Spanish Mortgage System of Registration and of the Use of Spanish Titles as Evidence in Land Registration Proceedings.*

[21] Section 1of PD 892 states:

SECTION 1. The system of registration under the Spanish Mortgage Law is discontinued, and all lands recorded under said system which are not yet covered by Torrens title shall be considered as unregistered lands.

All holders of Spanish titles or grants should apply for registration of their lands under Act No. 496, otherwise known as the Land Registration Act, within six (6) months from the effectivity of this decree. Thereafter, Spanish titles cannot be used as evidence of land ownership in any registration proceedings under the Torrens system.

Hereafter, all instruments affecting lands originally registered under the Spanish Mortgage Law may be recorded under Section 194 of the Revised Administrative Code, as amended by Act. 3344.

[22] *An Act Granting a Period ending on December 31, 2000 for Filing Applications for Free Patent and Judicial Confirmation of Imperfect Title to Alienable and Disposable Lands of the Public Domain under Chapters VII and VIII of the Public Land Act (CA 141, as amended).*

the effectivity of the amendatory Act, has continuously occupied and cultivated, either by himself or through his predecessors-in-interest, a tract or tracts of agricultural public lands subject to disposition.

Congress recently extended the period for filing applications for judicial confirmation of imperfect and incomplete titles to alienable and disposable lands of the public domain under RA 9176 from December 31, 2000 under RA 6940 to December 31, 2020.[23]

Read together with Section 11 of the PLA (which defines the administrative grant of title to alienable and disposable lands of the public domain through homestead settlement and sale, among others), RA 6940 and RA 9176 signify that despite the cut-off date of June 12, 1945 that the Legislature has provided, ample opportunities exist under the law for the grant of alienable lands of the public domain to deserving beneficiaries.

Presidential Decree No. 1529 or the Property Registration Decree

As heretofore mentioned, PD 1529 amended Act No. 496 on June 11, 1978 to codify the various laws relative to registration of property. Its Section 14 describes the applicants who may avail of registration under the Decree, among them —

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.

(2) Those who have acquired ownership of private lands by prescription under the provision of existing laws

These subsections and their impact on the present case are separately discussed below.

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[23] R.A. No. 9176, Section 2.

Section 14(1)

Section 14(1) merely repeated PD 1073 which sets a cut-off date of June 12, 1945 and which, under the conditions discussed above, may be read to be January 24, 1947.

The *ponencia* discussed Section 48(b) of the PLA in relation with Section 14(1) of the PRD and, noted among others, that "under the current state of the law, the substantive right granted under Section 48(b) may be availed of only until December 31, 2020." This is in light of RA 9176, passed in 2002,[24] limiting the filing of an application for judicial confirmation of imperfect title to December 31, 2020. The amendatory law apparently refers only to the use of Section 14(1) of the PRD as a mode of registration. Where ownership right or title has already vested in the possessor-occupant of the land that Section 48(b) of the PLA grants by operation of law, Section 14(2) of the PRD continues to be open for purposes of registration of a "private land" since compliance with Section 48(b) of the PLA vests title to the occupant/possessor and renders the land private in character.

The *ponencia* likewise rules ***against*** the position of the Office of the Solicitor General that the public land to be registered must have been classified as alienable and disposable as of the cut-off date for possession stated in Section 48(b) - June 12, 1945. In doing this, it cites and reiterates its continuing support for the ruling in *Republic v. Court of Appeals and Naguit* that held:[25]

Petitioner suggests an interpretation that the alienable and disposable character of the land should have already been established since June 12, 1945 or earlier. This is not borne out by the plain meaning of Section 14(1). "Since June 12, 1945," as used in the provision, qualifies its antecedent phrase "under a bonafide claim of ownership." Generally speaking, qualifying words restrict or modify only the words or phrases to which they are immediately associated, and not those distantly or remotely located. *Ad proximum antecedents fiat relation nisi impediatur sentencia.*

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[24] See pp. 14-15 of the *ponencia.*

[25] *Supra* note 1.

Besides, we are mindful of the absurdity that would result if we adopt petitioner's position. Absent a legislative amendment, the rule would be, adopting the OSG's view, that all lands of the public domain which were not declared alienable or disposable before June 12, 1945 would not be susceptible to original registration, no matter the length of unchallenged possession by the occupant. Such interpretation renders paragraph (1) of Section 14 virtually inoperative and even precludes the government from giving it effect even as it decides to reclassify public agricultural lands as alienable and disposable. The unreasonableness of the situation would even be aggravated considering that before June 12, 1945, the Philippines was not yet even considered an independent state.

Instead, the more reasonable interpretation of Section 14(1) is that it merely requires the property sought to be registered as already alienable and disposable at the time the application for registration of title is filed. If the State, at the time the application is made, has not yet deemed it proper to release the property for alienation or disposition, the presumption is that the government is still reserving the right to utilize the property; hence, the need to preserve its ownership in the State irrespective of the length of adverse possession even if in good faith. However, if the property has already been classified as alienable and disposable, as it is in this case, then there is already an intention on the part of the State to abdicate its exclusive prerogative over the property.

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This case is distinguishable from *Bracewell v. Court of Appeals*, wherein the Court noted that while the claimant had been in possession since 1908, it was only in 1972 that the lands in question were classified as alienable and disposable. Thus, the bid at registration therein did not succeed. In *Bracewell*, the claimant had filed his application in 1963, or nine (9) years before the property was declared alienable and disposable. Thus, in this case, where the application was made years after the property had been certified as alienable and disposable, the *Bracewell* ruling does not apply.

As it did in *Naguit*, the present *ponencia* as well discredits *Bracewell*. It does the same with *Republic v. Herbieto*[26] that

[26] G.R. No. 156117, May 26, 2005, 459 SCRA 183, 201-202.

came after *Naguit* and should have therefore overtaken the *Naguit* ruling. In the process, the *ponencia* cites with approval the ruling in *Republic v. Ceniza,*[27] penned by the same *ponente* who wrote *Bracewell.*

While the *ponencia* takes pains to compare these cases, it however completely misses the point from the perspective of whether possession of public lands classified as alienable and disposable after June 12, 1945 should be credited for purposes of a grant under Section 48(b) of the PLA, and of registration under Section 14(1) of the PRD. These cases, as analyzed by the *ponencia*, merely granted or denied registration on the basis of *whether the public land has been classified as alienable and disposable at the time the petition for registration was filed.* Thus, except for *Naguit*, these cases can be cited only as instances when registration was denied or granted despite the classification of the land as alienable after June 12, 1945.

The ruling in *Naguit* is excepted because, as shown in the quotation above, this is one case that explained why possession prior to the classification of public land as alienable should be credited in favor of the possessor who filed his or her application for registration after the classification of the land as alienable and disposable, but where such classification occurred after June 12, 1945.

Closely analyzed, the rulings in *Naguit* that the *ponencia* relied upon are its statutory construction interpretation of Section 48(b) of the PLA and the observed ABSURDITY of using June 12, 1945 as the cut-off point for the classification.

Five very basic reasons compel me to strongly disagree with *Naguit* and its reasons.

First. The constitutional and statutory reasons. The Constitution classifies public lands into agricultural, mineral, and timber. Of these, only agricultural lands can be alienated.[28] Without the requisite classification, there can be no basis to

[27] 440 Phil. 697 (2002); penned by Mme. Justice Consuelo Ynares-Santiago.

[28] CONSTITUTION, Article XII, Section 2.

determine which lands of the public domain are alienable and which are not; hence, **classification is a constitutionally-required step whose importance should be given full legal recognition and effect.** Otherwise stated, without classification into disposable agricultural land, the land forms part of the mass of the public domain that, not being agricultural, must be mineral or timber land that are completely inalienable and as such cannot be possessed with legal effects. To allow effective possession is to do violence to the regalian doctrine; the ownership and control that the doctrine denotes will be less than full if the possession that should be with the State as owner, but is elsewhere without any authority, can anyway be recognized.

From the perspective of the PLA under which grant can be claimed under its Section 48(b), it is very important to note that this law does not apply until a classification into alienable and disposable land of the public domain is made. If the PLA does not apply prior to a public land's classification as alienable and disposable, how can possession under its Section 48(b) be claimed prior such classification? There can simply be no imperfect title to be confirmed over lands not yet classified as disposable or alienable because, in the absence of such classification, the land remains unclassified public land that fully belongs to the State. This is fully supported by Sections 6, 7, 8, 9, and 10 of CA 141.[29] If the land is either

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[29] **SECTION 6.** The President, upon the recommendation of the Secretary of Agriculture and Commerce, shall from time to time classify the lands of the public domain into —

(a) Alienable or disposable,
(b) Timber, and
(c) Mineral lands,

and may at any time and in a like manner transfer such lands from one class to another, **for the purposes of their administration and disposition**.

SECTION 7. For the purposes of the administration and disposition of alienable or disposable public lands, the President, upon recommendation by the Secretary of Agriculture and Commerce, shall from time to time declare what lands are open to disposition or concession under this Act.

SECTION 8. Only those lands shall be declared open to disposition or concession which have been officially delimited and classified and, when

mineral or timber and can never be the subject of administration and disposition, it defies legal logic to allow the possession of these unclassified lands to produce legal effect. Thus, the classification of public land as alienable and disposable is inextricably linked to effective possession that can ripen into a claim under Section 48(b) of the PLA.

Second. The Civil Code reason. Possession is essentially a civil law term that can best be understood in terms of the Civil Code in the absence of any specific definition in the PLA other than in terms of time of possession.[30] Article 530 of the Civil Code provides that *"[O]nly things and rights which are susceptible of being appropriated may be the object of possession."* Prior to the declaration of alienability, a land of the public domain cannot be appropriated; hence, any claimed

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practicable, surveyed, and which have not been reserved for public or quasi-public uses, nor appropriated by the Government, nor in any manner become private property, nor those on which a private right authorized and recognized by this Act or any other valid law may be claimed, or which, having been reserved or appropriated, have ceased to be so. However, the President may, for reasons of public interest, declare lands of the public domain open to disposition before the same have had their boundaries established or been surveyed, or may, for the same reason, suspend their concession or disposition until they are again declared open to concession or disposition by proclamation duly published or by Act of the National Assembly.

SECTION 9. For the purpose of their administration and disposition, the lands of the public domain alienable or open to disposition shall be classified, according to the use or purposes to which such lands are destined, as follows:

(a) Agricultural;
(b) Residential, commercial, industrial, or for similar productive purposes;
(c) Educational, charitable, or other similar purposes;
(d) Reservations for town sites and for public and quasi-public uses.

The President, upon recommendation by the Secretary of Agriculture and Commerce, shall from time to time make the classifications provided for in this section, and may, at any time and in a similar manner, transfer lands from one class to another.

SECTION 10. The words "alienation," "disposition," or "concession" as used in this Act, shall mean any of the methods authorized by this Act for the acquisition, lease, use, or benefit of the lands of the public domain other than timber or mineral lands.

[30] See: Article 18, Civil Code.

possession cannot have legal effects. This perspective fully complements what has been said above under the constitutional and PLA reasons. It confirms, too, that the critical difference the *ponencia* saw in the *Bracewell* and *Naguit* situations does not really exist. Whether an application for registration is filed before or after the declaration of alienability becomes immaterial if, in one as in the other, no effective possession can be recognized prior to the declaration of alienability.

Third. Statutory construction and the cut-off date – June 12, 1945. The *ponencia* assumes, based on its statutory construction reasoning and its reading of Section 48(b) of the PLA, that all that the law requires is possession from June 12, 1945 and that it suffices if the land has been classified as alienable at the time of application for registration. As heretofore discussed, this cut-off date was painstakingly set by law and should be given full significance. Its full import appears from PD 1073 that amended Section 48(b), whose exact wordings state:

> SECTION 4. The provisions of Section 48(b) and Section 48(c), Chapter VIII of the Public Land Act are hereby amended in the sense that *these provisions shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant himself or thru his predecessor-in-interest, under a bona fide claim of acquisition of ownership, since June 12, 1945.*

Under this formulation, it appears clear that *PD 1073 did not expressly state what Section 48(b) should provide under the amendment PD 1073 introduced in terms of the exact wording of the amended Section 48(b).* But under the PD 1073 formulation, the intent to count the alienability to June 12, 1945 appears very clear. The provision applies ***only*** to alienable and disposable lands of the public domain that is described in terms of the character of the possession required since June 12, 1945. This intent – *seen in the direct, continuous and seamless linking of the alienable and disposable lands of the public domain to June 12, 1945 under the wording of the Decree* – is clear and should be respected.

Fourth. Other Modes of Acquisition of lands under the PLA. *Naguit's* absurdity argument that the *ponencia* effectively adopted is more apparent than real, since the use of June 12, 1945 as cut-off date for the declaration of alienability will not render the grant of alienable public lands out of reach. The acquisition of ownership and title may still be obtained by other modes under the PLA. Among other laws, **RA 6940,** mentioned above, now allows the use of free patents.[31] It was approved on March 28, 1990; hence, counting 30 years backwards, possession since April 1960 or thereabouts may qualify a possessor to apply for a free patent. The administrative modes provided under Section 11 of the PLA are also open, particularly, homestead settlement and sales.

Fifth. Addressing the wisdom – the absurdity – of the law. This Court acts beyond the limits of the constitutionally-mandated separation of powers in giving Section 48(b), as amended by PD 1073, an interpretation beyond its plain wording. Even this Court cannot read into the law an intent that is not there even your purpose is to avoid an absurd situation. If we feel that a law already has absurd effects because of the passage of time, our role under the principle of separation of powers is not to give the law an interpretation that is not there in order to avoid the perceived absurdity. We thereby dip into the realm of policy — a role delegated by the Constitution to the Legislature. If only for this reason, we should avoid expanding — through *Naguit* and the present *ponencia* — the plain meaning of Section 48(b) of the PLA, as amended by PD 1073.

In standing by *Naguit*, the *ponencia* pointedly discredits the ruling in *Herbieto;* it is, allegedly, either an incorrect ruling or an *obiter dictum*. As to legal correctness, *Herbieto* is in full accord with what we have stated above; hence, it cannot be dismissed off-hand as an incorrect ruling. Likewise, its ruling on the lack of effective legal possession prior to the classification of a public land as alienable and disposable cannot strictly be *obiter* because it responded to an issue directly raised by the parties. Admittedly, its ruling on jurisdictional grounds could

[31] See: pp. 10-11 of this Dissent.

have fully resolved the case, but it cannot be faulted if it went beyond this threshold issue into the merits of the claim of effective possession prior to the classification of the land as alienable and disposable.

To be sure, *Herbieto* has more to it than the *Naguit* ruling that the *ponencia* passes off as the established and definitive rule on possession under Section 14(1) of the PRD. **There, too, is the undeniable reason that no definitive ruling touching on Section 14(1) can be deemed to have been established in the present case since the applicant Heirs could only prove possession up to 1948**. **For this reason, the *ponencia* falls back on and examines Section 14(2) of the PRD. In short, if there is a perfect example of a ruling that is not necessary for the resolution of a case, that unnecessary ruling is the *ponencia's* ruling that *Naguit* is now the established rule.**

Section 14(2)

Section 14(2), by its express terms, applies only to *private lands*. Thus, on plain reading, it does not apply to alienable and disposable lands of the public domain that Section 14(1) covers. This is the difference between Sections 14(1) and 14(2).

The *ponencia,* as originally formulated, saw a way of expanding the coverage of Section 14(2) *via* the Civil Code by directly applying civil law provisions on prescription on alienable and disposable lands of the public domain. To quote the *obiter dictum* in *Naguit* that the *ponencia* wishes to enshrine as the definitive rule and leading case on Sections 14(1) and 14(2):[32]

Prescription is one of the modes of acquiring ownership under the Civil Code. There is a consistent jurisprudential rule that properties classified as alienable public land may be converted into private property by reason of open, continuous and exclusive possession of at least thirty (30) years. With such conversion, such property may now fall within the contemplation of "private lands" under Section 14(2), and thus susceptible to registration by those who

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[32] See p. 20 of the *ponencia*.

have acquired ownership through prescription. Thus, even if possession of the alienable public land commenced on a date later than June 12, 1945, and such possession being open, continuous and exclusive, then the possessor may have the right to register the land by virtue of Section 14(2) of the Property Registration Decree.

The *ponencia* then posits that Article 1113 of the Civil Code should be considered in the interpretation of Section 14(2). Article 1113 of the Civil Code provides:

> All things which are within the commerce of men are susceptible of prescription, unless otherwise provided. Property of the State or any of its subdivisions not patrimonial in character shall not be the object of prescription.

The application of Article 1113 assumes, of course, that (1) the Civil Code fully applies to alienable and disposable lands of the public domain; (2) assuming that the Civil Code fully applies, these properties are patrimonial and are therefore "private property"; and (3) assuming that the Civil Code fully applies, that these properties are within the commerce of men and can be acquired through prescription.

I find the *Naguit obiter* to be questionable because of the above assumptions and its direct application of prescription under Section 14(2) to alienable or disposable lands of the public domain. **This Section becomes relevant only once the ownership of an alienable and disposable land of the public domain vests in the occupant or possessor pursuant to the terms of Section 48(b) of the PLA, with or without judicial confirmation of title, so that the land has become a private land. At that point, Section 14(2) becomes fully operational *on what had once been* an alienable and disposable land of the public domain.**

<u>Hierarchy of Law in Reading PRD's Section 14(2)</u>

The hierarchy of laws governing the lands of the public domain is clear from Article XII, Section 3 of the Constitution. There are matters that the Constitution itself provides for, and some

[33] CA 141, Section 2.

that are left for Congress to deal with. Thus, under Section 3, the Constitution took it upon itself to classify lands of the public domain, and to state that only agricultural lands may be alienable lands of the public domain. It also laid down the terms under which lands of the public domain may be leased by corporations and individuals. At the same time, it delegated to Congress the authority to classify agricultural lands of the public domain according to the uses to which they may be devoted. Congress likewise determines, by law, the size of the lands of the public domain that may be acquired, developed, held or leased, and the conditions therefor.

In acting on the delegation, Congress is given the choice on how it will act, specifically, whether it will pass a general or a special law. On alienable and disposable lands of the public domain, Congress has, from the very beginning, *acted through the medium of a special law*, specifically, through the Public Land Act that by its terms "shall apply to the lands of the public domain; but timber and mineral lands shall be governed by special laws." Notably, the Act goes on to provide that nothing in it "shall be understood or construed to change or modify the administration and disposition of the lands commonly called 'friar lands' and those which, being privately owned, have reverted to or become property of the Commonwealth of the Philippines, which administration and disposition shall be governed by laws at present in force or which may hereafter be enacted."[33] Under these terms, the PLA can be seen to be a very specific act whose coverage extends only to lands of the public domain; in this sense, it is a special law on that subject.

In contrast, the Civil Code is a general law that covers general rules on the effect and application of laws and human relations; persons and family relations; property and property relations; the different modes of acquiring ownership; and obligations and contracts.[34] Its general nature is best appreciated when in its Article 18, it provides that: "In matters which are governed by the Code of Commerce and **special laws**, their deficiency shall be supplied by the provisions of this Code."

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[34] These are the Introductory Chapters and Books I to IV of the Civil Code.

The Civil Code has the same relationship with the PRD with respect to the latter's special focus – land registration – and fully applies civil law provisions in so far only as they are allowed by the PRD. One such case where the Civil Code is expressly allowed to apply is in the case of Section 14(2) of the PRD which calls for the application of prescription under existing laws.

As already explained above, the PLA and the PRD have their own specific purposes and are supreme within their own spheres, subject only to what the higher Constitution provides. Thus, the PRD must defer to what the PLA provides when the matter to be registered is an alienable and disposable land of the public domain.

Application of the Civil Code

In its Book II, the Civil Code has very clear rules on property, including State property. It classifies property as either of public dominion or of private ownership,[35] and property for public use, public service and those for the development of the national wealth as property of the public dominion.[36] All property not so characterized are patrimonial property of the State[37] which are susceptible to private ownership,[38] against which prescription will run.[39]

In reading all these provisions, it should not be overlooked that they refer to the properties of the State *in general*, *i.e.,* to both movable and immovable properties.[40] **Thus, the Civil Code provisions on property do not refer to land alone, much less do they refer solely to alienable and disposable lands of the public domain. For this specie of land, the PLA is**

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[35] CIVIL CODE, Article 419.

[36] *Id.*, Article 420.

[37] *Id.*, Article 421.

[38] *Id.*, Article 425.

[39] *Id..*, Article 1108.

[40] Article 415 of the Civil Code defines immovable property, while Article 416 defines movable property.

the special governing law and, under the Civil Code itself, the Civil Code provisions shall apply only in case of deficiency.[41]

This conclusion gives rise to the question – can alienable and disposable lands of the public domain at the same time be patrimonial property of the State because they are not for public use, public purpose, and for the development of national wealth?

The answer to this question can be found, among others, in the interaction discussed above between the PLA and PRD, on the one hand, and the Civil Code, on the other, and will depend on the purpose for which an answer is necessary.

If, as in the present case, the purpose is to determine whether a grant or disposition of an alienable and disposable land of the public domain has been made, then the PLA primarily applies and the Civil Code applies only suppletorily. The possession and occupation that the PLA recognizes is based on its Section 48(b) and, until the requirements of this Section are satisfied, the alienable and disposable land of the public domain remains a State property that can be disposed only under the terms of Section 11 of the PLA. In the face of this legal reality, the question of whether – *for purposes of prescription* – an alienable and disposable land of the public domain is patrimonial or not becomes immaterial; a public land, even if alienable and disposable, is State property and prescription does not run against the State.[42] **In other words, there is no room for any hairsplitting that would allow the inapplicable concept of prescription under the Civil Code to be directly applied to an alienable and disposable land of the public domain before this land satisfies the terms of a grant under Section 48(b) of the PLA.**

Given this conclusion, any further discussion of the patrimonial character of alienable and disposable public lands under the norms of the Civil Code is rendered moot and academic.

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[41] CIVIL CODE, Article 18.

[42] *Id.*, Article 1108.

From the prism of the overriding regalian doctrine that all lands of the public domain are owned by the State, an applicant for land registration invoking Section 14(2) of the PRD to support his claim must first clearly show that the land has been withdrawn from the public domain through an express and positive act of the government.[43]

A clear express governmental grant or act withdrawing a particular land from the mass of the public domain is provided both in the old and the prevailing Public Land Acts. These laws invariably provide that compliance with the required possession of agricultural public land (under the first and second PLAs) or alienable and disposable land of the public domain (under the prevailing PLA) in the manner and duration provided by law is equivalent to a government grant. Thus, the land *ipso jure* becomes private land. It is only at that point that the "private land" requirement of Section 14(2) materializes.[44]

Prescription

In my original Dissent (in response to the original *ponencia*), I discussed ordinary acquisitive prescription as *an academic exercise* to leave no stone unturned in rejecting the *ponencia's* original conclusion that prescription directly applies to alienable and disposable lands of the public domain under Section 14(2) of the PRD. I am happy to note that the present *ponencia* has adopted, albeit without any attribution, part of my original academic discussion on the application of the Civil Code, particularly on the subjects of patrimonial property of the State and prescription.

Specifically, I posited – assuming *arguendo* that the Civil Code applies – that the classification of a public land as alienable and disposable does not *per se* signify that the land is patrimonial

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[43] *Supra* note 10, *Director of Lands v. Intermediate Appellate Court.*

[44] At this point, prescription can be invoked, not by the occupant/possessor who now owns the land in his private capacity, but against the new owner by whomsoever shall then occupy the land and comply with the ordinary or extraordinary prescription that the Civil Code ordains. This assumes that the new owner has not placed the land under the Torrens system; otherwise, indefeasibility and imprescriptibility would set in.

under the Civil Code since property, to be patrimonial, must not be for public use, for public purpose or for the development of national wealth. Something more must be done or shown beyond the fact of classification. The *ponencia* now concedes that *"[T]here must also be an express government manifestation that the property is already patrimonial or no longer retained for public use or the development of the national wealth, under Article 422 of the Civil Code. And only when the property has become patrimonial can the prescriptive period for the acquisition of property of the public domain begin to run."*

I agree with this statement as it describes a clear case when the property has become private by the government's own declaration so that prescription under the Civil Code can run. Note in this regard that there is no inconsistency between this conclusion and the hierarchy of laws on lands of the public domain that I expounded on. **To reiterate, the PLA applies as a special and primary law when a public land is classified as alienable and disposable, and remains fully and exclusively applicable until the State itself expressly declares that the land now qualifies as a patrimonial property. At that point, the application of the Civil Code and its law on prescription are triggered. The application of Section 14(2) of the PRD follows.**

To summarize, I submit in this Concurring and Dissenting Opinion that:

1. The hierarchy of laws on public domain must be given full application in considering lands of the public domain. Top consideration should be accorded to the Philippine Constitution, particularly its Article XII, followed by the consideration of applicable special laws – the PLA and the PRD, insofar as this Decree applies to lands of the public domain. The Civil Code and other general laws apply to the extent expressly called for by the primary laws or to supply any of the latter's deficiencies.

2. The ruling in this *ponencia* and in *Naguit* that the classification of public lands as alienable and disposable does not need to date back to June 12, 1945 at the latest, is wrong because:

a. Under the Constitution's regalian doctrine, classification is a required step whose full import should be given full effect and recognition; giving legal effect to possession prior to classification runs counter to the regalian doctrine.

b. The Public Land Act applies only from the time a public land is classified as alienable and disposable; thus, Section 48(b) of this law and the possession it requires cannot be recognized prior to any classification.

c. Under the Civil Code, *"[O]nly things and rights which are susceptible of being appropriated may be the object of possession."* Prior to the classification of a public land as alienable and disposable, a land of the public domain cannot be appropriated; hence, any claimed possession cannot have legal effects.

d. There are other modes of acquiring alienable and disposable lands of the public domain under the Public Land Act; this legal reality renders the *ponencia's* absurdity argument misplaced.

e. The alleged absurdity of the law addresses the wisdom of the law and is a matter for the Legislature, not for this Court, to address.

Consequently, *Naguit* must be abandoned and rejected for being based on legally-flawed premises and for being an aberration in land registration jurisprudence. At the very least, the present *ponencia* cannot be viewed as an authority on the effective possession prior to classification since this ruling, by the *ponencia's* own admission, is not necessary for the resolution of the present case.

SPECIAL SECOND DIVISION

[G.R. No. 146408. April 30, 2009]

PHILIPPINE AIRLINES, INC., *petitioner, vs.* **ENRIQUE LIGAN, EMELITO SOCO, ALLAN PANQUE, JOLITO OLIVEROS, RICHARD GONCER, NONILON PILAPIL, AQUILINO YBANEZ, BERNABE SANDOVAL, RUEL GONCER, VIRGILIO P. CAMPOS, JR., ARTHUR M. CAPIN, RAMEL BERNARDES, LORENZO BUTANAS, BENSON CARISUSA, JEFFREY LLENES, ROQUE PILAPIL, ANTONIO M. PAREJA, CLEMENTE R. LUMAYNO, NELSON TAMPUS, ROLANDO TUNACAO, CHERIE ALEGRES, BENEDICTO AUXTERO, EDUARDO MAGDADARAUG, NELSON M. DULCE, and ALLAN BENTUZAL,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; WHEN MODIFICATION IS IN ORDER; CASE AT BAR.—** Before the Court are petitioner's Motion for Reconsideration and respondents' Motion for Clarification and/or Reconsideration of the Court's February 29, 2008 Decision in light of incidents bearing on the present case which were not brought to light by them **before** the Court promulgated said Decision. In light of these recent manifestations-informations of the parties, the Court finds that a modification of the Decision is in order, the claims with respect to Pilapil and Auxtero having been deemed extinguished even before the promulgation of the Decision. That Pilapil was a regular employee yields to the final finding of a valid dismissal in the supervening case involving his own misconduct, while Auxtero's attempt at forum-shopping should not be countenanced.

2. **ID.; ID.; ID.; SUPREME COURT'S FINDINGS THAT RESPONDENTS ARE REGULAR EMPLOYEES OF PETITIONER NEITHER FRUSTRATES NOR PREEMPTS THE APPELLATE COURT'S PROCEEDING IN THE**

ILLEGAL DISMISSAL CASE; CASE AT BAR.— All told, the pending illegal dismissal case in CA-G.R. SP No. 00922 may now take its course. The Court's finding that respondents are regular employees of petitioner neither frustrates nor preempts the appellate court's proceedings in resolving the issue of retrenchment as an authorized cause for termination. If an authorized cause for dismissal is later found to exist, petitioner would still have to pay respondents their corresponding benefits and salary differential up to June 30, 1998. Otherwise, if there is a finding of illegal dismissal, an order for reinstatement with full backwages does not conflict with the Court's declaration of the regular employee status of respondents.

3. **ID.; ID.; ID.; APPEAL; PARTIES WHO HAVE NOT APPEALED CAN NOT OBTAIN FROM THE APPELLATE COURT ANY AFFIRMATIVE RELIEFS OTHER THAN THOSE GRANTED IN THE DECISION OF THE LOWER TRIBUNAL; CASE AT BAR.—** As to the belated plea of respondents for attorney's fees, suffice it to state that parties who have not appealed cannot obtain from the appellate court any affirmative reliefs other than those granted, if any, in the decision of the lower tribunal. Since respondents did not file a motion for reconsideration of the appellate court's decision, much less appeal therefrom, they can advance only such arguments as may be necessary to defeat petitioner's claims or to uphold the appealed decision, and cannot ask for a modification of the judgment in their favor in order to obtain other positive reliefs.

VELASCO, *J., dissenting opinion*:

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; REGULAR EMPLOYEES; CLAIM FOR SALARY DIFFERENTIAL; NOT SUPPORTED BY EVIDENCE IN CASE AT BAR.—** In the instant case, respondents failed to present any evidence at all to prove under payment to support a claim for salary differential. Other than their self-serving declarations, respondents did not adduce substantial proof of any underpayment. In other words, respondents have not presented evidence to show, as basis for salary differential,

how much they are supposed to receive after they are accepted as regular employees of petitioner. In the context of this case, salary differential presupposes two reference points: *first,* the salary respondents were receiving immediately prior to their "regularization"; [and *second,* the salary they were supposed to receive after "regularization."] No evidence can be adduced as to their salaries after regularization because they have not yet been actually taken in as regular employees.

2. ID.; ID.; ID.; ID.; BURDEN OF PROOF.— We must bear in mind the legal principle that "he who asserts, not he who denies, must prove." Thus, the award of salary differential has no leg to stand on and 1 vote to recall the grant of salary differentials.

APPEARANCES OF COUNSEL

Bienvenido T. Jamoralin, Jr. for petitioner.
M.P. Legaspi Law Office for respondents.

R E S O L U T I O N

CARPIO MORALES, *J.*:

Before the Court are petitioner's Motion for Reconsideration and respondents' Motion for Clarification and/or Reconsideration of the Court's February 29, 2008 Decision in light of incidents bearing on the present case which were not brought to light by them **before** the Court promulgated said Decision.

The Decision of the Court affirmed with modification the appellate court's September 29, 2000 Decision and directed petitioner Philippine Airlines, Inc. to:

(a) accept respondents ENRIQUE LIGAN, EMELITO SOCO, ALLAN PANQUE, JOLITO OLIVEROS, RICHARD GONCER, NONILON PILAPIL, AQUILINO YBANEZ, BERNABE SANDOVAL, RUEL GONCER, VIRGILIO P. CAMPOS, JR., ARTHUR M. CAPIN, RAMEL BERNARDES, LORENZO BUTANAS, BENSON CARESUSA, JEFFREY LLENOS, ROQUE PILAPIL, ANTONIO M. PAREJA, CLEMENTE R.

LUMAYNO, NELSON TAMPUS, ROLANDO TUNACAO, CHERRIE ALEGRES, EDUARDO MAGDADARAUG, NELSON M. DULCE and ALLAN BENTUZAL as its regular employees in their same or substantially equivalent positions, and pay the **wages and benefits due** them as regular employees plus **salary differential** corresponding to the difference between the wages and benefits given them and those granted to petitioner's other regular employees of the same rank; and

(b) pay respondent BENEDICTO AUXTERO **salary differential**; **backwages** from the time of his dismissal until the finality of this decision; and **separation pay**, in lieu of reinstatement, equivalent to one (1) month pay for every year of service until the finality of this decision.

There being no data from which this Court may determine the monetary liabilities of petitioner, the case is REMANDED to the Labor Arbiter solely for that purpose.

SO ORDERED.[1]

Synergy Services Corporation (Synergy) having been found to be a labor-only contractor, respondents were consequently declared as petitioner's regular employees who are entitled to the salaries, allowances, and other employment benefits under the pertinent Collective Bargaining Agreement.

Petitioner prays for a reconsideration of the Decision, maintaining its position that respondents were employed by Synergy, and to "reinstate" respondents as regular employees is iniquitous since it would be compelled to employ personnel more than what its operations require. It adds that the Court should declare that reinstatement is no longer an appropriate relief in view of the long period of time that had elapsed.

For their part, respondents, deducing from the Decision that their termination was found to be illegal, posit that the portion of the Decision ordering petitioner to "accept" them should also mean to "reinstate" them with backwages.[2] Respondents

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[1] Decision, pp. 15-16; *rollo*, pp. 648-649.

[2] *Id.* at 662. Respondents pray *inter alia* that the following directive be added to par. (a) of the dispositive portion: "x x x and/or to reinstate to their

additionally pray for the award to them of attorney's fees, albeit they admit that they failed to raise it as an issue.

Both parties point out that the Court's Decision "presupposes" or "was based on the erroneous assumption" that respondents are still in the actual employ of petitioner.

Respondents disclose that except for those who have either died, accepted settlement earlier, or declared as employee of Synergy, the remaining respondents have all been terminated in the guise of retrenchment. Joining such account, petitioner reveals that 13 out of the 25 respondents filed an illegal dismissal case, which is pending before the appellate court stationed at Cebu City as CA-G.R. SP No. 00922.[3]

Respondents add that the appellate court, by Resolution of April 22, 2008, held the illegal dismissal case in abeyance until after this Court rules on the present case.[4]

Petitioner also urges the Court to examine the cases of respondents Roque Pilapil (Pilapil) and Benedicto Auxtero (Auxtero) in light of the following information, *viz*: **Pilapil** entered petitioner's pool of regular employees on September 1, 1991[5] but was later terminated for submitting falsified academic credentials. Pilapil's complaint for illegal dismissal was dismissed by the labor arbiter, whose decision was reinstated with modification by the appellate court by Decision of March 7,

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same or substantially equivalent positions the private respondents who have been terminated during the pendency of this case with full backwages and other benefits due them from the time of their termination up to their actual reinstatement."

[3] *Id.* at 665-666, 688-690 where petitioner manifests that the NLRC ruled in favor of the 13 respondents, namely, Enrique Ligan, Eduardo Magdaraog, Jolito Oliveros, Richard Goncer, Emelito Soco, Virgilio Campos, Jr., Lorenzo Butanas, Ramel Bernardes, Nelson Dulce, Clemente Lumayno, Arthur Capin, Allan Bentuzal, and Jeffrey Llenes, and ordered petitioner to pay them separation pay plus backwages.

[4] *Id.* at 689-690.

[5] *Id.* at 666, 684; the body of the CA Decision shows, however, that Pilapil was hired on September 1, 1992 (*rollo*, pp. 677, 681).

2001 in CA-G.R. SP No. 50578. On Pilapil's appeal, this Court, by Resolution of September 19, 2001 in G.R. No. 147853, declared the case terminated when Pilapil failed to file his intended petition.

Given its information in the immediately foregoing paragraph, petitioner claims that it already complied with the judgment awarding separation pay representing financial assistance to Pilapil on September 23, 2003, during the pendency of the present case.[6] Respondents do not dispute petitioner's information.[7]

Petitioner also informs the Court that **Auxtero** already secured a favorable judgment from this Court in G.R. No. 158710 which effectively affirmed the appellate court's Decision of February 26, 2003 in CA-G.R. SP No. 50480.[8] It appears from the "Joint Declaration of Satisfaction of Judgment"[9] with "Release and Quitclaim and Waiver,"[10] both dated November 29, 2007, that petitioner already satisfied the judgment rendered in said G.R. No. 158710 in favor of Auxtero in the amount of ₱1.3 Million, and that Auxtero had waived reinstatement. Respondents essentially corroborate this information of petitioner.[11]

In light of these recent manifestations-informations of the parties, the Court finds that a modification of the Decision is in

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[6] *Id.* at 666-667, 676-687.

[7] *Id.* at 690.

[8] *Id.* at 698-701, 711. In that case entitled *Philippine Airlines, Inc. v. National Organization of Workingmen, et al.,* the Court denied the petition "as the issues raised are factual and petitioner failed to show that a reversible error had been committed by the appellate court" when it affirmed the NLRC's December 29, 1998 Decision which declared, among others, that Synergy Services Corporation is a labor-only contractor, that complainants (Auxtero included) were regular employees of petitioner, and that the complaints for illegal dismissal were meritorious.

[9] *Id.* at 714-715.

[10] *Id.* at 716-717.

[11] Respondents' counsel was not the one who handled Auxtero's other case. He states that Auxtero never informed him about such case nor coordinated with him despite efforts to contact Auxtero. *vide rollo*, pp. 691, 715.

order, the claims with respect to Pilapil and Auxtero having been deemed extinguished even before the promulgation of the Decision. That Pilapil was a regular employee yields to the final finding of a valid dismissal in the supervening case involving his own misconduct, while Auxtero's attempt at forum-shopping should not be countenanced.

IN ALL OTHER RESPECTS, the Court finds no sufficient reason to deviate from its Decision, but proceeds, nonetheless, to clarify a few points.

While this Court's Decision ruled on the regular status of respondents, it must be deemed to be **without prejudice to the resolution of the issue of illegal dismissal in the proper case**. The Decision thus expressly stated:

> Finally, it must be stressed that respondents, having been declared to be regular employees of petitioner, Synergy being a mere agent of the latter, had acquired security of tenure. As such, they could only be dismissed by petitioner, the real employer, on the basis of just or authorized cause, and with observance of procedural due process.[12] (Underscoring supplied)

Notably, subject of the Decision was respondents' complaints[13] for regularization and under-/non-payment of benefits. The Court did not and could not take cognizance of the validity of the eventual dismissal of respondents because the matter of just or authorized cause is beyond the issues of the case. That is why the Court did not order reinstatement for such relief presupposes a finding of illegal dismissal[14] in the proper case which, as the parties now manifest, pends before the appellate court.

Respecting petitioner's allegation of financial woes that led to the June 30, 1998 lay-off of respondents, as the Court held in its Decision, petitioner failed to establish such economic losses

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[12] Decision, pp. 14-15; *rollo*, pp. 647-648.

[13] *Id.* at 77-99.

[14] Vide *Filflex Industrial & Manufacturing Corp. v. NLRC*, 349 Phil. 913, 922 (1998).

which rendered impossible the compliance with the order to accept respondent as regular employees. Thus the Decision reads:

> Other than its bare allegations, petitioner presented nothing to substantiate its impossibility of compliance. In fact, petitioner waived this defense by failing to raise it in its Memorandum filed on June 14, 1999 before the Court of Appeals. x x x[15] (Underscoring supplied)

Petitioner, for the first time, revealed the matter of termination and the allegation of financial woes in its Motion for Reconsideration of October 10, 2000 before the appellate court,[16] **not by way of defense to a charge of illegal dismissal but to manifest that supervening events have rendered it impossible for petitioner to comply** with the order to accept respondents as regular employees.[17] Moreover, the issue of economic losses as a ground for dismissing respondents is factual in nature, hence, it may be determined in the proper case.

All told, the pending illegal dismissal case in CA-G.R. SP No. 00922 may now take its course. The Court's finding that respondents are regular employees of petitioner neither frustrates nor preempts the appellate court's proceedings in resolving the issue of retrenchment as an authorized cause for termination. If an authorized cause for dismissal is later found to exist, petitioner would still have to pay respondents their corresponding benefits and salary differential up to June 30, 1998. Otherwise, if there is a finding of illegal dismissal, an order for reinstatement with full backwages does not conflict with the Court's declaration of the regular employee status of respondents.

As to the belated plea of respondents for attorney's fees, suffice it to state that parties who have not appealed cannot

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[15] Decision, p. 14; *rollo*, p. 647.

[16] *Id.* at 20-28. In the instant petition, petitioner reiterates that the law does not exact compliance with the impossible, to which respondents remark that such impossibility is no longer the fault of respondents who also expressed willingness to accept substantially equivalent positions.

[17] *Rollo*, p. 26; to which respondents tersely remark that assuming *arguendo* that the directive is no longer feasible, it does not mean that petitioner is now free from any obligation to them. (*rollo*, p. 471)

obtain from the appellate court any affirmative reliefs other than those granted, if any, in the decision of the lower tribunal.[18] Since respondents did not file a motion for reconsideration of the appellate court's decision, much less appeal therefrom, they can advance only such arguments as may be necessary to defeat petitioner's claims or to uphold the appealed decision, and cannot ask for a modification of the judgment in their favor in order to obtain other positive reliefs.[19]

WHEREFORE, the Decision of February 29, 2008 is, in light of the foregoing discussions, *MODIFIED*. As MODIFIED, the dispositive portion of the Decision reads:

WHEREFORE, the Court of Appeals Decision of September 29, 2000 is AFFIRMED with MODIFICATION.

Petitioner PHILIPPINE AIRLINES, INC., is *ORDERED* to recognize respondents ENRIQUE LIGAN, EMELITO SOCO, ALLAN PANQUE, JOLITO OLIVEROS, RICHARD GONCER, NONILON PILAPIL, AQUILINO YBANEZ, BERNABE SANDOVAL, RUEL GONCER, VIRGILIO P. CAMPOS, JR., ARTHUR M. CAPIN, RAMEL BERNARDES, LORENZO BUTANAS, BENSON CARISUSA, JEFFREY LLENES, ANTONIO M. PAREJA, CLEMENTE R. LUMAYNO, NELSON TAMPUS, ROLANDO TUNACAO, CHERIE ALEGRES, EDUARDO MAGDADARAUG, NELSON M. DULCE and ALLAN BENTUZAL as its regular employees in their same or substantially equivalent positions, and pay the wages and benefits due them as regular employees plus salary differential corresponding to the difference between the wages and benefits given them and those granted to petitioner's other regular employees of the same or substantially equivalent rank, up to June 30, 1998, without prejudice to the resolution of the illegal dismissal case.

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[18] *Solgus Corporation v. Court of Appeals*, G.R. No. 157488, February 6, 2007, 514 SCRA 522.

[19] Vide *Almendrala v. Ngo*, G.R. No. 142408, September 30, 2005, 471 SCRA 311.

There being no data from which this Court may determine the monetary liabilities of petitioner, the case is *REMANDED* to the Labor Arbiter solely for that purpose.

SO ORDERED.

Carpio, *Corona*,[*] and *Tinga*, *JJ.,* concur.

Velasco, *Jr.*, *J.*, with dissenting opinion.

DISSENTING OPINION

VELASCO, JR., *J.*:

I submit that petitioner's motion for reconsideration should be partially granted with respect to the grant of salary differential awarded in the modified *fallo*. In labor cases, it is axiomatic that substantial evidence is required for the grant of any award. In the instant case, no substantial evidence had been adduced showing underpayment to support the award of salary differential.

In the recent case of *Portuguez v. GSIS Family Bank (Comsavings Bank)*, this Court held:

> In the same breath, we are constrained to deny petitioner's claim for salary differentials. We are not unmindful that the amount of ₱19,000 a month may not be commensurate compensation to the position of Acting Assistant Vice-President, but in the case at bar, the **facts and the evidence did not establish even at least a rational basis for how much the standard compensation for the said position must be.** It is not enough that petitioner perceived that he was receiving a very low salary in the absence of a comparative standard upon which he can peg his supposed commensurate compensation.[1] (Emphasis added.)

Therein, the award of salary differential was deleted by the National Labor Relations Commission which the Court of Appeals (CA) affirmed. In affirming the assailed CA Decision, this Court made it clear that the award, *i.e.*, salary differential, must be

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[*] Additional member per Raffle dated March 16, 2009.

[1] G.R. No. 169570, March 2, 2007, 517 SCRA 309, 325.

supported by substantial evidence. Substantial evidence is such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion.[2]

In the instant case, respondents failed to present any evidence at all to prove underpayment to support a claim for salary differential. Other than their self-serving declarations, respondents did not adduce substantial proof of any underpayment. In other words, respondents have not presented evidence to show, as basis for salary differential, how much they are supposed to receive after they are accepted as regular employees of petitioner. In the context of this case, salary differential presupposes two reference points: *first*, the salary respondents were receiving immediately prior to their "regularization"; and *second*, the salary they were supposed to receive after "regularization." No evidence can be adduced as to their salaries after regularization because they have not yet been actually taken in as regular employees. We must bear in mind the legal principle that "he who asserts, not he who denies, must prove."[3] Thus, the award of salary differential has no leg to stand on and I vote to recall the grant of salary differentials.

Moreover, it is undisputed that the employees of the contractor will be accepted as regular employees of petitioner to the same or substantially equivalent positions that they previously had after the finality of the decision. If they will be assigned the same positions with the same compensation, then there is no salary differential to speak of. The grant of salary differential is premature as it is baseless.

In view of the foregoing, I vote to delete the award of salary differential in the February 29, 2008 Decision.

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[2] *Id.; Pacific Global Contact Center, Inc. vs. Cabansay*, G.R. No. 167345, November 23, 2007, 538 SCRA 498; *Bautista v. Sula*, A.M. No. P-04-1920, August 17, 2007, 530 SCRA 406.

[3] *Portuguez, supra* note 1; citing *Kar Asia, Inc. v. Corona*, G.R. No. 154985, August 24, 2004, 437 SCRA 184, 189.

SECOND DIVISION

[G.R. No. 157723. April 30, 2009]

ROMEO SAYOC *y* AQUINO and RICARDO SANTOS *y* JACOB, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; IN CRIMINAL CASES IN WHICH THE PENALTY IMPOSED IS *RECLUSION TEMPORAL* OR LOWER, APPEAL TO THE COURT IS BY PETITION FOR REVIEW ON *CERTIORARI;* CASE AT BAR.—** Settled is the rule that in criminal cases in which the penalty imposed is *reclusion temporal* or lower, all appeals to this Court may be taken by filing a petition for review on *certiorari,* raising only questions of law. It is evident from this petition that no question of law is proffered by petitioners. The principal issue involved is the credibility of the prosecution witnesses.

2. **ID.; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT THEREOF BEST LEFT TO THE TRIAL JUDGE.—** It bears stressing that in criminal cases, the assessment of the credibility of witnesses is a domain best left to the trial court judge. And when his findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court. The rationale of this rule lies on the fact that the matter of assigning values to declarations on the witness stand is best and most commonly performed by the trial judge who is in the best position to assess the credibility of the witnesses who appeared before his sala, as he had personally heard them and observed their deportment and manner of testifying during the trial.

3. **ID.; ID.; ID.; POSITIVE DECLARATIONS OF THE PROSECUTION WITNESSES PREVAIL OVER DENIAL OF THE ACCUSED; CASE AT BAR.—** Petitioners' weak denial, especially when uncorroborated, cannot overcome the positive identification of them by the prosecution witnesses. As between the positive declarations of the prosecution

witnesses and the negative statements of the accused, the former deserve more credence and weight. As found by the trial court, Jaen and the police officer were able to identify the petitioners, as among those who staged the robbery inside the bus.

4. **ID.; ID.; ID.; INACCURACIES IN TESTIMONY MAY IN FACT SUGGEST THAT THE WITNESS IS TELLING THE TRUTH.—** This Court maintains that minor inconsistencies in the narration of a witness do not detract from its essential credibility as long as it is on the whole coherent and intrinsically believable. Inaccuracies may in fact suggest that the witness is telling the truth and has not been rehearsed as it is not to be expected that he will be able to remember every single detail of an incident with perfect or total recall.

5. **ID.; ID.; PRESUMPTIONS; POLICE OFFICER-WITNESS WAS REGULARLY PERFORMING HER DUTIES WITH RESPECT TO HOLDUP; CASE AT BAR.—** Moreover, there is no shred of evidence to show that the police officer was actuated by improper motives to testify falsely against the petitioners. Her testimony deserves great appreciation in light of the presumption that she is regularly performing her duties.

6. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; DECISION; A DECISION MUST STATE CLEARLY AND DISTINCTLY THE FACTS AND THE LAW ON WHICH IT IS BASED; CASE AT BAR.—** Finally, petitioners argue that the appellate court's decision failed to conform to the standards set forth in Section 14, Art. V111 of the 1987 Constitution and Section 2, Rule 120 of the Rules of Court. We are not convinced. The appellate court did not merely quote the facts presented by the trial court, it arrived at its own findings. After citing and evaluating the evidence and arguments presented by both parties, the appellate court favored the prosecution. It dealt with the issues submitted by petitioners, albeit in a concise manner. This constitutes sufficient compliance with the constitutional and statutory mandate that a decision must state clearly and distinctly the facts and law on which it is based.

7. **CRIMINAL LAW; ANTI-HIGHWAY ROBBERY LAW OF 1974 (P.D. No. 532); PER *PEOPLE VS. SIMON*, INDETERMINATE SENTENCE LAW IS APPLICABLE; CASE AT BAR.—** We disagree, however, with the penalty imposed by the lower court. The penalty for simple highway robbery is *reclusion temporal*

in its minimum period. However, consonant with the ruling in the case of *People v. Simon*, since P.D. No. 532 is a special law which adopted the penalties under the Revised Penal Code in their technical terms, with their technical signification and effects, the indeterminate sentence law is applicable in this case. Accordingly, for the crime of highway robbery, the indeterminate prison term is from seven (7) years and four (4) months of *prision mayor,* as minimum, to thirteen (13) years, nine (9) months and ten (10) days of *reclusion temporal*, as maximum.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
The Solicitor General for respondent.

D E C I S I O N

TINGA[*], *J.*:

This petition assails the Decision[1] dated 30 January 2002 of the Court of Appeals which affirmed the Decision[2] dated 25 November 1999 of the Regional Trial Court finding the accused guilty beyond reasonable doubt for violation of Presidential Decree No. 532, otherwise known as the Anti-Highway Robbery Law of 1974, and the Resolution[3] dated 14 October 2002 denying the motion for reconsideration.[4]

The facts, culled from the records, are as follows:

In the afternoon of 4 March 1999, Elmer Jaen (Jaen) was aboard a bus when a fellow passenger announced a hold-up. Three (3) persons then proceeded to divest the passengers of their belongings. Under knife-point, purportedly by a man later

[*] Acting Chairperson.

[1] *Rollo*, pp. 66-71.

[2] *Id.* at 31-33.

[3] *Id.* at 83.

[4] *Id.* at 72-78.

identified as Ricardo Santos (Santos), Jaen's necklace was taken by Santos' cohort Teodoro Almadin (Almadin). The third robber, Romeo Sayoc (Sayoc), meanwhile, reportedly threatened to explode the hand grenade he was carrying if anybody would move. After taking Jaen's two gold rings, bracelet and watch, the trio alighted from the bus.

PO2 Remedios Terte (police officer), who was a passenger in the same bus, ran after the accused, upon hearing somebody shouting about a hold-up. Sayoc was found by the police officer hiding in an "owner-type" jeep. The latter instructed Jaen to guard Sayoc while she pursued the two robbers. Sayoc was then brought to the police station.

A few hours later, *barangay* officials arrived at the police station with Santos and Almadin. They reported that the two accused were found hiding inside the house of one Alfredo Bautista but were prevailed upon to surrender.

The victim's bracelet was recovered from Santos while the two rings were retrieved from Almadin.

On 8 March 1999, an information was filed against the accused in the Regional Trial Court of Quezon City, which reads:

Criminal Case No. Q-99-81757

That on or about the 4th day of March 1999 in Quezon City, Philippines, the above-named accused armed with [a] deadly weapon[,] conspiring, confederating with and mutually helping one another with intent to gain and by means of force and intimidation against person [*sic*] did then and there [willfully], unlawfully and feloniously rob one ELMER JAEN *Y* MAGPANTAY in the manner as follows: said accused pursuant to their conspiracy boarded a passenger bus and pretended to be passengers thereof and upon reaching EDSA Balintawak[,] a public highway, Brgy. Apolonio Samson, this city,[*sic*] announce the hold-up and with the use of a knife poked[,] it against herein complainant and took, robbed and carried away the following:

One gold bracelet		₱20,000.00
Two gold rings		8,000.00
One Guess watch		4,000.00
	Total	₱32,000.00

Belonging to Elmer Jaen *y* Magpantay in the total amount of ₱32,000.00 Phiippine Currency to the damage and prejudice of said offended party in the aforementioned amount of ₱32,000.00 Philippine Currency.

CONTRARY TO LAW.[5]

When arraigned, petitioners pleaded not guilty. After arraignment however, Almadin "jumped bail."

Santos denied knowing his co-accused and his complicity in the hold-up. He declared that he was engaged in a drinking session with his *kumpare* Alfredo Bautista when he went up to the comfort room to relieve himself. He was suddenly dragged by the *barangay* officials, who hit him in the head rendering him unconscious. He was later brought to a hospital for treatment.

For his part, Sayoc disclaimed knowing the other accused. He claimed to be a passenger on the said bus when the hold-up was announced. Upon seeing a person holding a gun, he immediately descended from the bus. According to Sayoc, he entered a street where vehicles were passing. As the persons who were running passed by him, he went to the side and stood up behind a wall. Soon thereafter, he was apprehended by a police officer.

On 25 November 1999, the RTC rendered judgment against the petitioners and sentenced them to suffer imprisonment from twelve (12) years and one (1) day of *reclusion temporal*, as minimum to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum. They were also ordered to pay jointly and severally the amount of ₱4,500.00 to the victim.[6]

The trial court gave full credence to the testimonies of the prosecution. It noted that the defenses raised by petitioners, which were not corroborated, cannot prevail over the clear and positive identification made by the complainant. The trial court

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[5] *Id*. at 29.

[6] *Id*. at 50-62.

also pointed out that the prosecution's witnesses "did not have any motive to perjure against the petitioners."

Petitioners appealed to the Court of Appeals, ascribing as errors, the conclusions of the trial court on the following issues, namely: (1) the positive identification of the perpetrators; (2) the accordance of evidentiary weight to the conflicting testimonies of the victim and the police officer; (3) the disregard of evidence adduced by Sayoc; and (4) the failure to declare as illegal the arrest of Santos.[7]

On 30 January 2002, the Court of Appeals affirmed the trial court's decision. The appellate court viewed the alleged inconsistencies between the testimonies of the victim and the police officer as a minor variation which tends to strengthen the probative value of their testimonies. Anent the issue of illegal arrest, the appellate court concluded from evidence that Almadin and Santos voluntarily surrendered.[8]

In their motion for reconsideration,[9] petitioners reiterated that the inconsistencies in the testimonies of the victim and the police officer refer to substantial matters, as they establish the lack of positive and convincing identification of the petitioners. On 14 October 2002, the Court of Appeals issued a Resolution denying the motion for reconsideration for lack of merit.

Petitioners filed the instant petition,[10] relying on the same arguments presented before the lower courts. Petitioners again raise as issues the credibility of the prosecution witnesses with respect to the identification of the perpetrators, the legality of their arrest and the failure of the judgment of conviction in stating the legal basis in support thereof.[11]

Settled is the rule that in criminal cases in which the penalty imposed is *reclusion temporal* or lower, all appeals to this Court

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[7] *Id*. at 59.

[8] *Supra* note 1.

[9] *Supra* note 4.

[10] *Id*. at 8-28.

[11] *Id*. at 13-14.

may be taken by filing a petition for review on *certiorari*, raising only questions of law.[12] It is evident from this petition that no question of law is proffered by petitioners. The principal issue involved is the credibility of the prosecution witnesses. It bears stressing that in criminal cases, the assessment of the credibility of witnesses is a domain best left to the trial court judge. And when his findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court.[13] The rationale of this rule lies on the fact that the matter of assigning values to declarations on the witness stand is best and most commonly performed by the trial judge who is in the best position to assess the credibility of the witnesses who appeared before his sala, as he had personally heard them and observed their deportment and manner of testifying during the trial.[14] The findings of fact made by the trial court were substantially supported by evidence on record. Therefore, we are constrained not to disturb its factual findings.

Petitioners contend that the identification made by the prosecution witnesses is not positive, clear and convincing. They argue that extreme fear, stress and anxiety may have contributed to the hazy recollection of the victim pertaining to the identification of the perpetrators. With respect to the police officer, on the other hand, petitioners insist that the former did not personally see the petitioners actually committing the crime charged.

Petitioners' weak denial, especially when uncorroborated, cannot overcome the positive identification of them by the prosecution witnesses. As between the positive declarations of the prosecution witnesses and the negative statements of the

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[12] RULES OF COURT, Rule 56, Sec. 3 provides:

Mode of Appeal.—An appeal to the Supreme Court may be taken only by a petition for review on *certiorari*, except in criminal cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment.

[13] *Duran v. Court of Appeals*, G.R. Nos. 125256 and 126973, 2 May 2006, 488 SCRA 438, 447, citing *Roca v. Court of Appeals*, G.R. No. 114917, 29 January 2001, 350 SCRA 414.

[14] *Magno v. People*, G.R. No. 133896, 27 January 2006, 480 SCRA 276, 286, citing *People v. Escote*, 431 SCRA 345 (2004).

accused, the former deserve more credence and weight.[15] As found by the trial court, Jaen and the police officer were able to identify the petitioners, as among those who staged the robbery inside the bus, thus:

> Based on the testimonies of the complainant and PO1 Remedios Terte, the accused were clearly and positively identified as the three men who staged the robbery/ hold-up inside the California bus. It was Ricardo Santos who announced the hold-up after which he pointed a knife at the neck of the complainant while Teodoro Almadin divested him of his jewelry. Romeo Sayoc held everyone at bay by threatening to explode a hand grenade if anyone moved.[16]

Petitioners also anchor their defense on the alleged inconsistencies of the testimonies of the prosecution witnesses, such as:

1. During the direct examination, the police officer testified that she was seated on the first row at the driver's side, while on cross-examination, she stated that she was actually seated on the seventh row;[17]
2. On direct examination, the police officer testified that when somebody announced the hold-up, the latter was seated on the right side of the bus near her, on cross-examination however, she stated that her back was turned against the person who announced the holdup;[18]
3. On cross-examination, the police officer stated that after the holdup, one civilian together with the victim alighted from the bus. However, the victim did not mention any civilian who got off the bus with him;[19]

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[15] *Ferrer v. People*, G.R. No. 143487, 22 February 2006, 483 SCRA 31, 52, citing *People v. Macalaba*, 443 Phil. 565, 578 (2003) and *People v. Matore*, 436 Phil. 430 (2002).

[16] *Rollo*, p. 33.

[17] *Id*. at 18.

[18] *Id*.

[19] *Id*.

4. The police officer averred that after the holdup, about three (3) persons proceeded towards the direction of Cubao, only to retract her statement later, to the effect that these persons turned left towards a street;[20]

5. During the cross-examination, the police officer witnessed a civilian calling 117 while she was running after the perpetrators. This was not mentioned in her direct-examination. Jaen, on the other hand, never mentioned such call.[21]

6. The police officer testified during the direct examination that she saw Sayoc "inside" an "owner-type" jeep, only to change it later to "underneath" the vehicle.[22]

7. The victim testified that it took the petitioners five to ten minutes to rob him while the police officer stated that it took them about five minutes.[23]

The variance in the testimonies of the prosecution witnesses is too trivial to affect their credibility. This Court maintains that minor inconsistencies in the narration of a witness do not detract from its essential credibility as long as it is on the whole coherent and intrinsically believable. Inaccuracies may in fact suggest that the witness is telling the truth and has not been rehearsed as it is not to be expected that he will be able to remember every single detail of an incident with perfect or total recall. The positive identification of the petitioners as perpetrators made by the victim himself and the police officer cannot be overthrown by the weak denial and alibi of petitioners.

Moreover, there is no shred of evidence to show that the police officer was actuated by improper motives to testify falsely against the petitioners. Her testimony deserves great appreciation in light of the presumption that she is regularly performing her duties.

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[20] *Id*.

[21] *Id*. at 20.

[22] *Id*. at 19.

[23] *Id*.

The contention of Santos that he was illegally arrested and searched deserves scant consideration. As held by the trial court, Santos was not arrested, instead, he voluntarily surrendered to the *barangay* officials, and no countervailing evidence to dispute this fact appears from the record.

Finally, petitioners argue that the appellate court's decision failed to conform to the standards set forth in Section 14,[24] Art. VIII of the 1987 Constitution and Section 2,[25] Rule 120 of the Rules of Court. We are not convinced.

The appellate court did not merely quote the facts presented by the trial court, it arrived at its own findings. After citing and evaluating the evidence and arguments presented by both parties, the appellate court favored the prosecution. It dealt with the issues submitted by petitioners, albeit in a concise manner. This constitutes sufficient compliance with the constitutional and statutory mandate that a decision must state clearly and distinctly the facts and law on which it is based.

We disagree, however, with the penalty imposed by the lower court. The penalty for simple highway robbery is *reclusion temporal* in its minimum period. However, consonant with the ruling in the case of *People v. Simon*,[26] since P.D. No. 532 is a special law which adopted the penalties under the Revised Penal Code in their technical terms, with their technical signification and effects, the indeterminate sentence law is applicable in this case. Accordingly, for the crime of highway robbery, the

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[24] No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

[25] If the judgment is of conviction, it shall state: (1) the legal qualification of the offense constituted by the acts committed by the accused and the aggravating or mitigating circumstances which attended its commission; (2) the participation of the accused in the offense, whether as principal, accomplice or accessory after the fact; (3) the penalty imposed upon the accused; and (4) the civil liability or damages caused by his wrongful act or omission to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate civil action has been reserved or waived.

[26] G.R. No. 93028, 29 July 1994, 234 SCRA 555.

indeterminate prison term is from seven (7) years and four (4) months of *prision mayor,* as minimum, to thirteen (13) years, nine (9) months and ten (10) days of *reclusion temporal*, as maximum.[27]

WHEREFORE, this Court *AFFIRMS WITH MODIFICATION* the findings of fact and conclusions of law in the Decision dated 30 January 2002 of the Court of Appeals in CA-G.R. CR No. 24140, finding appellants Romeo Sayoc and Ricardo Santos guilty beyond reasonable doubt of simple highway robbery. Appellants are hereby sentenced to the indeterminate penalty of seven (7) years and four (4) months of *prision mayor,* as minimum, to thirteen (13) years, nine (9) months and ten (10) days of *reclusion temporal*, as maximum, and to pay jointly and severally the amount of ₱4,500.00 to the private complainant, Elmer Jaen as their civil liability, with legal interest from the filing of the Information until fully paid. Since appellants are detention prisoners, they shall be credited with the period of their temporary imprisonment.

SO ORDERED.

Chico-Nazario,[**] *Velasco, Jr., Leonardo-de Castro,*[***] and *Brion, JJ.,* concur.

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[27] *People v. Cerbito,* 381 Phil. 315, 329 (2000).

[**] In lieu of inhibition of Justice Conchita Carpio Morales, Justice Minita V. Chico-Nazario is hereby designated as additional member.

*** Per Special Order No. 619, Justice Teresita J. Leonardo-De Castro is hereby designated as additional member of the Second Division in lieu of Justice Leonardo A. Quisumbing, who is on official leave.

SECOND DIVISION

[G.R. No. 168273. April 30, 2009]

HARBORVIEW RESTAURANT, *petitioner, vs.* **REYNALDO LABRO,** *respondent.*

SYLLABUS

1. **LABOR LAW AND SOCIAL WELFARE LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; DISMISSAL; BURDEN OF PROOF RESTS WITH EMPLOYER TO SHOW DISMISSAL IS FOR A JUST CAUSE; NO CLEAR PROOF OF ABANDONMENT IN CASE AT BAR.—** It is a basic principle that in the dismissal of employees, the burden of proof rests upon the employer to show that the dismissal is for a just cause and failure to do so would necessarily mean that the dismissal is not justified.
2. **ID.; ID.; ID.; ID.; ABANDONMENT.—** It has been repeatedly stressed that for abandonment to be a valid cause for dismissal there must be a concurrence of intention to abandon and some overt act from which it may be inferred that the employee had no more interest to continue working in his job. An employee who forthwith takes steps to protest his layoff cannot by any logic be said to have abandoned his work. Otherwise stated, one could not possibly abandon his work and shortly thereafter vigorously pursue his complaint for illegal dismissal.
3. **ID.; ID.; ID.; DISMISSAL; FOR EMPLOYEE TO REPORT FOR WORK AFTER HE HAD FILED A CASE FOR ILLEGAL DISMISSAL IS ABSURD; CASE AT BAR.—** There is no clear proof that respondent was instructed by petitioner to submit himself to an investigation. Neither is there proof that the letters supposedly sent by petiitoner to respondent instructing him to report to work were ever received by respondent, or were ever sent in the first place. Further, assuming that the 8 February 1999 letter was indeed received by respondent, there is no reason for respondent to report to work. As this Court has held in one case, "for petitioner to anticipate respondent to report for work after the latter already filed a case for illegal dismissal before the NLRC, would be absurd."

4. **ID.; ID.; ID.; ID.; CONSIDERING THAT THE ACT OF DISMISSAL IS SERIOUS, THE COURT FINDS NO REASON WHY RESPONDENT'S TWO IMMEDIATE SUPERIORS WOULD GIVE HIM THE FALSE IMPRESSION THAT HE WAS BEING DISMISSED.—** A final note. Petitioner insists that the case of *Ranara v. NLRC* is not analogous to the case at bar. The Court does not agree. To reiterate, central to petitioner's case is its claim that respondent could not have been terminated because it was not the general manager who informed him of his alleged termination. This argument was already raised and ruled upon in *Ranara*. By way of background, in *Ranara,* a company driver was informed by the company's secretary that he had been dismissed from his job, prompting the latter to file a complaint for illegal dismissal. The employer claimed that the driver was not dismissed, since the secretary had no authority to terminate the driver; rather, the driver merely abandoned his work. The Supreme Court rejected the employer's defense, reasoning that considering the seriousness of the act of dismissal, the secretary would not have presumed to dismiss the driver had she not been authorized to do so. Moreover, the Court noted that the driver could not have intended to abandon his job, considering that three days after his dismissal, he filed a complaint. In the instant case, respondent was informed by no less than his immediate superior, the chief cook and by his brother that he was being terminated. Like the Court of Appeals, the Court finds no reason why these two would give respondent the false impression that he was being dismissed, and in turn, the Court, like the appellate court again, is inclined to believe that they were given prior instruction, or they at least had prior knowledge of the termination.

APPEARANCES OF COUNSEL

Yorac Arroyo Chua Caedo & Coronel Law Firm for petitioner.
Eduardo L. Antonio for respondent.

D E C I S I O N

TINGA, ***J.*****:**

This is a petition for review of the resolution of the Court of Appeals in CA-G.R. SP No. 72393 dated 16 May 2005 which denied petitioner's motion for reconsideration of the appellate court's decision of 19 November 2004.

The antecedent facts follow.

Respondent Reynaldo Labro (respondent) was a cook at Harborview Restaurant since August 1985. When he reported for work on 29 January 1999, he discovered that his co-employee, a certain Salvador Buenaobra, had taken over his work and that the take-over was effected upon the instructions of the General Manager, Demetrio Dizon. This was confirmed by the chief cook, who told respondent to go home as there was no more work for him to do, and by respondent's own brother, who was the restaurant's over-all supervisor. Respondent was further told by his brother that the reason for his dismissal was an incident which happened on 20 January 1999 wherein respondent allegedly took out a plastic bag of ground meat from the restaurant's kitchen, and gave the same to a supplier of the restaurant. The incident was supposedly witnessed by two of respondent's co-employees. Respondent denied the accusation and said that what he took out was a mere "throw away" bottle, and that this was witnessed by another co-employee. Respondent left the company premises.

The following week, or on 5 February 1999, respondent filed a complaint for illegal dismissal with the National Labor Relations Commission (NLRC), claiming to have been illegally dismissed by petitioner. Petitioner, on the other hand, maintained that they had not dismissed petitioner. It claimed that petitioner had refused to work, despite its General Manager's letter dated 8 February 1999 instructing him to report for work immediately, otherwise he would be deemed to have abandoned his work and would be terminated. In the 8 February 1999 letter, it was

mentioned that there was a previous instruction for respondent to see the General Manager on 29 January 1999, but respondent did not follow the directive. Petitioner added that assuming *arguendo* that respondent was indeed terminated there was just cause for his dismissal. Respondent, however, denied having received the 8 February 1999 letter. There was also no indication whether respondent received the letter.

The labor arbiter ruled in favor of respondent with the pronouncement that he had been illegally dismissed. He stressed that there was no proof that respondent had stolen meat as alleged by petitioner and that neither was there proof that respondent had been furnished copies of the affidavits of his co-employees implicating him. Moreover, even assuming that the dismissal was for cause, petitioner failed to afford respondent due process. The labor arbiter also disregarded the claim of abandonment.[1]

On appeal, petitioner contended that respondent resorted to the filing of the illegal dismissal complaint in order to escape the charge of abandonment. It reiterated its position that there was no dismissal; instead, it was respondent who refused to report to work despite notice. Finding merit in the appeal, the NLRC reversed the ruling of the labor arbiter. It found that respondent was not terminated from employment, in fact there was no dismissal to speak of, and that he had capitalized on the circumstances under which the illegal dismissal complaint was filed merely to justify the abandonment of his work. The NLRC thus reversed and set aside the labor arbiter's decision and ordered the dismissal of respondent's complaint.[2]

Petitioner filed a petition for *certiorari* before the Court of Appeals, submitting that the NLRC had erred in ruling that respondent was terminated and in finding that respondent had abandoned his work. The Court of Appeals granted the petition.

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[1] Penned by Associate Justice Rebecca de Guia-Salvador, with the concurrence of Associate Justice Portia Aliño- Hormachuelos and Associate Justice Aurora Santiago-Lagman. *Rollo*, pp. 50-64, 66-67.

[2] *Rollo*, pp. 72-97.

The Court of Appeals, applying the case of *Ranara v. NLRC,*[3] found that petitioner had intended to dismiss, and in fact did dismiss respondent, through the concerted acts of the chief cook and respondent's brother, who served verbal notices of termination on respondent. Moreover, the appellate court found no indication of respondent's alleged intention to abandon his work. Even his failure to respond to the General Manager's report does not indicate the intention to sever the relationship since the order came after the illegal dismissal complaint had been filed. Finally, the Court of Appeals ruled that petitioner did not observe due process in dismissing respondent.[4]

Petitioner sought reconsideration of the decision but its motion for reconsideration was denied.[5] Hence, this petition.

Before this Court, petitioner insists that the Court of Appeals erred when it reversed the decision of the NLRC. It argues that the *Ranara* case relied upon by the Court of Appeals, is not analogous to the case at bar. It maintains that respondent was not terminated, but rather, on the date when the alleged termination was made, he was merely informed that he was being investigated for theft and must report to the manager. The supposed replacement for respondent was only a temporary substitute during the period that respondent was being questioned. It reiterates its position that respondent abandoned his job and unjustifiably refused to return to work.

The Court resolves to disallow the petition.

Petitioner insists that there cannot be any illegal dismissal because in the first place, there was no dismissal to speak of, as it was respondent who abandoned his work, after finding out that he was being investigated for theft. The Court is not convinced. It is a basic principle that in the dismissal of employees, the burden of proof rests upon the employer to show that the

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[3] G.R. No. 100969, 14 August 1992, 212 SCRA 631.

[4] *Rollo*, pp. 51-64.

[5] *Id.* at 66-67.

dismissal is for a just cause and failure to do so would necessarily mean that the dismissal is not justified.[6]

Petitioner failed to discharge the burden of proof that complainant was guilty of abandonment. It did not adduce any proof to show that petitioner clearly and unequivocally intended to abandon his job. It has been repeatedly stressed that for abandonment to be a valid cause for dismissal there must be a concurrence of intention to abandon and some overt act from which it may be inferred that the employee had no more interest to continue working in his job. An employee who forthwith takes steps to protest his layoff cannot by any logic be said to have abandoned his work.[7] Otherwise stated, one could not possibly abandon his work and shortly thereafter vigorously pursue his complaint for illegal dismissal.[8] In the instant case, save for the allegation that respondent did not submit him to the investigation and the latter's failure to return to work as instructed in the 8 February 1999 letter, petitioner was unable to present any evidence which tend to show respondent's intent to abandon his work. Neither is the Court convinced that the filing of the illegal dismissal case was respondent's way to avoid the charge of theft. On the contrary, the filing of the complaint a few days after his alleged dismissal signified respondent's desire to return to work, a factor which further militates against petitioner's theory of abandonment.

There is no clear proof that respondent was instructed by petitioner to submit himself to an investigation. Neither is there proof that the letters supposedly sent by petitioner to respondent instructing him to report to work were ever received by respondent, or were ever sent in the first place. Further, assuming that the 8 February 1999 letter was indeed received by respondent, there is no reason for respondent to report to work. As this Court has

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[6] *Philippine Manpower Services, Inc. v. NLRC*, G.R. No. 98450, 224 SCRA 691 (1993).

[7] *Nazal v. NLRC*, G.R. No. 122368, 19 June 1997, 274 SCRA 350 citing *Bontia, et al. v. National Labor Relations Commission, et al.*, G.R. No. 114988, March 18, l996, 255 SCRA 167.

[8] *De Ysasi III v. NLRC*, 231 SCRA 173; *Ranara v. NLRC*, 212 SCRA 631.

held in one case, "for petitioner to anticipate respondent to report for work after the latter already filed a case for illegal dismissal before the NLRC, would be absurd."[9]

Petitioner also insists that the chief cook and over-all supervisor (respondent's brother) never told respondent that he was terminated, and that even assuming *arguendo* that such statements were truly made, they did not emanate from petitioner, neither are these statements binding on petitioner because the chief cook and supervisor do not have administrative powers and thus have no authority to fire an employee. The Court is not persuaded.

There is reason for respondent to believe the statements of the chief cook and the over-all supervisors. After all, these two are respondent's immediate superiors, and respondent, as cook is presumed to have been used to receiving instructions from the said officers during his employment. The Court also agrees with the Court of Appeal's observation that the over-all supervisor being respondent's brother, he would not make the false representation to respondent that he was being dismissed from work.

A final note. Petitioner insists that the case of *Ranara v. NLRC* is not analogous to the case at bar.[10] The Court does not agree. To reiterate, central to petitioner's case is its claim that respondent could not have been terminated because it was not the general manager who informed him of his alleged termination. This argument was already raised and ruled upon in *Ranara*.[11] By way of background, in *Ranara,* a company driver was informed by the company's secretary that he had been dismissed from his job, prompting the latter to file a complaint for illegal dismissal.[12] The employer claimed that the driver

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[9] *The Philippine American Life and General Insurance Co. v. Gramaje*, G.R. No. 156963, 11 November 2004, 442 SCRA 274, 292.

[10] *Supra* note 3.

[11] *Id.*

[12] *Id.*

was not dismissed, since the secretary had no authority to terminate the driver; rather, the driver merely abandoned his work. The Supreme Court rejected the employer's defense, reasoning that considering the seriousness of the act of dismissal, the secretary would not have presumed to dismiss the driver had she not been authorized to do so. Moreover, the Court noted that the driver could not have intended to abandon his job, considering that three days after his dismissal, he filed a complaint.

In the instant case, respondent was informed by no less than his immediate superior, the chief cook and by his brother that he was being terminated. Like the Court of Appeals, the Court finds no reason why these two would give respondent the false impression that he was being dismissed, and in turn, the Court, like the appellate court again, is inclined to believe that they were given prior instruction, or they at least had prior knowledge of the termination. Moreover, as previously discussed, the charge of abandonment does not square with the fact that a week after respondent's alleged dismissal, he filed a complaint with the NLRC.

WHEREFORE, the petition is *DENIED*. The Decision and Resolution of the Court of Appeals dated 19 November 2004 and 16 May 2005, respectively, are *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

Carpio Morales,[*] *Velasco, Jr., Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

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[*] Acting Chairperson as replacement of Justice Leonardo A. Quisumbing who is on official leave per Special Order No. 618.

[**] Additional member of the Second Division per Special Order No. 619.

THIRD DIVISION

[G.R. No. 170532. April 30, 2009]

THE PROVINCIAL ASSESSOR OF MARINDUQUE, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS and MARCOPPER MINING CORPORATION,** *respondents.*

SYLLABUS

1. **TAXATION; REAL PROPERTY TAX CODE (P.D. NO. 464); PROPER MODE OF APPEAL FROM ASSESSMENTS; CASE AT BAR.—** Previously, under Section 36 of Presidential Decree (P.D.) No. 464 or the Real Property Tax Code, the proper mode of appeal from a decision rendered by the Central Board of Assessment Appeals (CBAA) was by special civil action for *certiorari* filed directly with the Court. However, with the passage of R.A. No. 7902, granting the CA exclusive appellate jurisdiction over decisions of boards and commissions, the Court issued Revised Administrative Circular No. 1-95 which provides under paragraphs 1 and 5 that appeal from a decision of the CBAA shall be by Petition for Review with the CA. Thus, from the final judgment of the CA, appeal to the Court on questions of law is by Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. The availability of such remedy bars recourse to a special civil action for *certiorari* even if one of the grounds invoked is grave abuse of discretion. Indeed, petitioner erred in its mode of appeal by Petition for *Certiorari* under Rule 65. Nonetheless, in its Resolution of July 5, 2006, the Court gave due course to the petition for it involves not only the power of taxation of a local government unit but also its stewardship of the environment. The higher interest of public welfare dictates that the court suspend its rules *pro hac vice* in order to resolve the merits of the petition.

2. **ID.; ID.; CLAIM FOR EXEMPTION FROM REAL PROPERTY TAX GRANTED TO MACHINERY AND EQUIPMENT USED FOR POLLUTION CONTROL AND UNDER SECTION 234 (C) THEREOF; MUST BE SUPPORTED BY**

EVIDENCE THAT THE PROPERTY SOUGHT TO BE EXEMPTED IS ACTUALLY, DIRECTLY AND EXCLUSIVELY USED FOR POLLUTION CONTROL AND ENVIRONMENTAL PROTECTION DURING THE PERIOD UNDER ASSESSMENT.— As held in *Mactan,* the exemption granted under Sec. 234(c) of R.A. No. 7160 to "[m]achinery and equipment used for pollution control and environmental protection" is based on usage. The term usage means direct, immediate and ***actual*** application of the property itself to the exempting purpose. Section 199 of R.A. No. 7160 defines actual use as "the purpose for which the property is principally or predominantly utilized by the person in possession thereof." It contemplates concrete, as distinguished from mere potential, use. Thus, a claim for exemption under Sec. 234(c) of R.A. No. 7160 should be supported by evidence that the property sought to be exempt is actually, directly and exclusively used for pollution control and environmental protection.

3. ID.; ID.; ID.; ID.; EVIDENTIARY REQUIREMENTS FOR EXEMPTION FROM REAL PROPERTY TAX; NOT COMPLIED WITH IN CASE AT BAR.— [Moreover,] Sec. 206 prescribes the evidentiary requirements for exemption from real property taxation, *viz.*: Sec. 206. ***Proof of Exemption*** of Real Property from Taxation***. — Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial , city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, bylaws, contracts, affidavits, certifications and mortgage deeds, and similar documents.*** If the ***required*** evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll. The burden is upon the taxpayer to prove, by clear and convincing evidence, that his claim for exemption has legal and factual basis. As aptly pointed out by petitioner, there is no allegation nor evidence in respondent's pleadings that it had complied with the procedural requirement under Sec. 206. There is nothing

in the records which would indicate that, within 30 days from its filing of Tax Declaration No. 05-35697 on November 17, 1993, respondent filed with the provincial assessor an application for exemption or any documentary evidence of the exempt status of the subject property. What respondent submitted along with its appeal before the LBAA are Affidavit of Esquires, the project design of the subject property, as well as a Certification dated May 24, 1994 issued by Carlos J. Magno, Regional Technical Director of DENR Regional Office No. 1V. But far from proving that the subject property is tax exempt, the documents classify the subject property as anything but machinery or equipment.

4. **ID.; ID.; ID.; ID.; FEATURES OF A PIECE OF MACHINERY ARE DESCRIBED IN SECTION 199 (O).—**The following features of a piece of machinery are described in Section 199(o) of R.A. No. 7160: (o) "Machinery" embraces machines, equipment, mechanical contrivances, instruments, appliances or apparatus which may or may not be attached, permanently or temporarily, to the real property. It includes the physical facilities for production, the installations and appurtenant service facilities, those which are mobile, self-powered or self-propelled and those not permanently attached to the real property which are actually, directly, and exclusively used to meet the needs of the particular industry, business or activity and which by their very nature and purpose are designed for, or necessary to its manufacturing, mining, logging, commercial, industrial or agricultural purposes.

APPEARANCES OF COUSNEL

Edgardo P. Balquiedra for petitioner.

Quasha Ancheta Peña & Nolasco for private respondent.

DECISION

AUSTRIA-MARTINEZ, *J.*:

The Provincial Assessor of the Province of Marinduque (petitioner) assails by Petition for *Certiorari* under Rule 65 of the Rules of Court the May 30, 2005 Decision[1] of the Court of Appeals (CA) which declared the Siltation Dam and Decant System of Marcopper Mining Corporation (respondent) exempt from real property tax; and the September 29, 2005 CA Resolution[2] which denied petitioner's motion for reconsideration.

Petitioner issued against respondent an Assessment Notice,[3] dated March 28, 1994, for real property taxes due on the latter's real properties, including its Siltation Dam and Decant System (subject property) at *Barangay* Lamese, Sta. Cruz, Marinduque. The subject property is covered by Tax Declaration No. 05-35697 dated November 17, 1993, and has a market value of Php36,360,996.19.[4]

Respondent paid the tax demanded,[5] but appealed the assessment before the Local Board of Assessment Appeals (LBAA) on the ground that the subject property is exempt from real property taxation under Section 234(e) of Republic Act (R.A.) No. 7160[6] or the Local Government Code of 1991, which provides:

Sec. 234. *Exemptions from Real Property Tax*. — The following are exempted from payment of the real property tax:

xxx xxx xxx

(e) ***Machinery and equipment used for pollution control and environmental protection.***

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[1] Penned by Associate Justice Danilo B. Pine and concurred in by Associate Justices Rodrigo V. Cosico and Arcangelita Romilla-Lontok; *rollo*, p. 44.

[2] *Id.* at 61.

[3] CA *rollo*, p. 53.

[4] Exhibit "C-2", *id.* at 54.

[5] *Id.* at 56.

[6] *Id.* at 83.

xxx xxx xxx (Emphasis supplied)

Attached to its appeal is an Affidavit issued by its Chief Mining Engineer Ricardo Esquieres, Jr. (Esquieres), stating that the subject property was constructed to comply with the condition imposed by the Department of Environment and Natural Resources (DENR) that respondent prevent run-offs and silt materials from contaminating the Mogpog and Boac Rivers; and describing the subject property as a specialized combination of essential impervious earth materials with a special provision for a spillway and a diversion canal. Esquieres explains that the subject property is intended for the purpose of pollution control, sediment control, domestic and agricultural water supply and flood control.[7]

Respondent also submitted a May 24, 1994 Certification issued by DENR Regional Technical Director Carlos J. Magno that the subject property is a "Siltation Dam ***structure*** intended primarily for pollution control of silted materials x x x."[8]

In a Decision[9] dated November 10, 1995, the LBAA dismissed respondent's appeal for having been filed out of time. It further held that the subject property is taxable as an improvement on the principal real property, citing the ruling of the Court in *Benguet Corporation v. Central Board of Assessment Appeals*[10] that a tailings dam is a permanent improvement not exempt from real property taxation.

Respondent appealed[11] to the Central Board of Assessment Appeals (CBAA) which, in a Decision[12] dated December 21, 1998, held that respondent's appeal with the LBAA was timely, but the same lacked legal basis because the subject property is

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

[8] CA *rollo*, p. 81.

[9] *Rollo*, p. 63.

[10] G.R. No. 106041, January 29, 1993, 218 SCRA 271.

[11] CA *rollo*, p. 118.

[12] *Rollo*, p. 73.

neither a machinery nor an equipment but a permanent improvement, and therefore not tax exempt under Sec. 234(e) of R.A. No. 7160. Citing the definition of machinery under Sec. 199 of R.A. No. 7160, *viz.*:

Sec. 199. Definition of Terms. – When used in this Title, the term:

xxx xxx xxx

(o) Machinery embraces machines, equipment, mechanical contrivances, instruments, appliances or apparatus which may or may not be attached, permanently or temporarily, to the real property. It includes the physical facilities for production, the installations and appurtenant service facilities, those which are mobile, self-powered or self-propelled, and those not permanently attached to the real property which are actually, directly, and exclusively used to meet the needs of the particular industry, business or activity and which by their very nature and purpose are designed for, or necessary to its manufacturing, mining, logging, commercial, industrial or agricultural purposes."

the CBAA held that to be considered a "machinery," the subject property must either be a physical facility for production, or a service facility, or one that is actually, directly and exclusively used to meet the needs of the particular industry, business, or activity, and which by its very nature and purpose is designed for, or necessary to a manufacturing, mining, logging, commercial, industrial or agricultural purpose. The subject property does not produce anything nor operate as auxiliary to a production process; thus, it is neither a physical facility for production nor a service facility. It is not even necessary to the mining activity of respondent, because its purpose is merely to contain silt and sediments.[13]

Moreover, the CBAA noted that based on an ocular inspection it conducted, the subject property had not been actually used for pollution control, for it had been out of operation since 1993.[14]

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[13] *Rollo*, pp. 81-82.

[14] *Id.* at 81.

Respondent filed a Petition/Motion for Partial Reconsideration,[15] but the CBAA denied the same in its July 27, 2000 Resolution.[16]

Respondent appealed[17] to the CA on the sole issue of whether the subject property was tax exempt under Sec. 234(e) of R.A. No. 7160.[18]

The CA reversed the LBAA and CBAA in its Decision dated May 30, 2005 herein assailed, the dispositive portion of which reads:

> THE FOREGOING DISQUISITIONS CONSIDERED, the instant petition for review is hereby GRANTED, the assailed Decision and Resolution of the Central Board of Assessment Appeals, dated December 21, 1998 and July 27, 2000, respectively are REVERSED and SET ASIDE. The petitioner's siltation dam and decant system being exempt from real property tax as it is hereby determined, the Municipal Treasurer of Sta. Cruz, Marinduque, is hereby directed to refund the tax payments made by petitioner under protest, or in lieu thereof, to credit said payments in favor of petitioner for any taxes it will be required to pay in the future.
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> SO ORDERED.[19]

The CA held that the concept of machinery under Section 199 of R.A. No. 7160 is broad enough to include a "machinery, instrument, apparatus or device consisting of parts which, functioning together, allows a person to perform a task more efficiently," such as the subject property. Not only does it function as a machinery, but it is also actually and directly used for the mining business of petitioner. The CA noted that it was constructed in compliance with a DENR requirement; thus, it "is part and parcel of [respondent's] mining operations to protect

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[15] CA *rollo*, p. 46.

[16] *Rollo*, p. 84.

[17] CA *rollo*, p. 9.

[18] *Id.* at 7.

[19] *Rollo*, p. 59.

the environment within which it operates xxx [i]t is a device used for cleaning up after production, in order to clean the water which must necessarily flow into the Mogpog and Boac Rivers."[20]

Thus, the CA held that the subject property is exempt from real property taxation under Section 91 of R.A. No. 7942 or the Philippine Mining Act of 1995,[21] *viz.*:

Sec. 91. *Incentives for Pollution Control Devices.* — ***Pollution control devices acquired, constructed or installed by contractors shall not be considered as improvements on the land or building where they are placed, and shall not be subject to real property and other taxes or assessments***: Provided, however, That payment of mine wastes and tailings fees is not exempted. (Emphasis supplied)

It qualifies as a pollution control device defined under DENR Administrative Order No. 95-23 as an "***infrastructure***, machinery, equipment, and/or improvement used for impounding, treating or neutralizing, precipitating, filtering, conveying and cleansing mine industrial waste and tailing, as well as eliminating and reducing hazardous effects of solid particles, chemicals, liquids or other harmful by-products and gases emitted from any facility utilized in mining operations for their disposal."[22] The definition "extends to all kinds of pollution control devices acquired, constructed, or installed on the land or buildings of the mining corporation."[23]

Finally, the CA ruled that, contrary to the view of the CBAA, the non-operational state of the subject property "does not remove it from the purview of the clear provisions of R.A. No. 7160 x x x and R.A. No. 7942 x x x [i]n the absence of clear and

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[20] *Rollo*, pp. 55-56.

[21] *Id.* at 57.

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

[23] *Id.* at 58.

convincing evidence that the siltation dam and decant system was inutile to achieve its purpose prior to being damaged, and continued to be so x x x."[24]

Petitioner filed a Motion for Reconsideration[25] but the CA denied it in a Resolution[26] dated September 29, 2005.

Hence, the present petition, raising two main issues:

> I. The propriety of the present action for *certiorari* under Rule 65 of the Rules of Court:
>
> > i. Whether or not there is available to Petitioner, the remedy of appeal or other plain, speedy and adequate remedy in the ordinary course of law;
> >
> > ii. Whether or not a petition for review on *certiorari* under Rule 45 of the Rules of Court is the appropriate remedy;
> >
> > iii. Whether or not, if available to the Petitioner, the remedy of appeal or other plain, speedy and adequate remedy in the ordinary course of law were lost through the fault of the Petitioner.
>
> II. Whether or not the Respondent court committed grave abuse of discretion amounting to lack or excess of jurisdiction when it rendered the Decision and its subsequent Resolution, exempting the siltation dam and decant system of Respondent Marcopper from the real property tax imposed by the Provincial Government of Marinduque.
>
> > i. Respondent Court of Appeals committed grave abuse of discretion amounting to lack or excess of *jurisdiction when it whimsically, arbitrarily and capriciously disregarded by treating as though non-existent, the established and undisputed fact that the Siltation Dam Decant System of Respondent Marcopper was damaged and has not been in operation since 1993 up to, at the very least, the ocular inspection conducted by the CBAA in November 1996, if not*

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[24] *Id.*

[25] CA *rollo*, p. 318.

[26] *Rollo*, p. 61.

up to the present, given the failure of Respondent Marcopper to claim otherwise;

ii. Respondent Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction when it whimsically, arbitrarily and capriciously disregarded, by treating as though non-existent, the established and undisputed fact that Respondent Marcopper does not have a certificate of tax exemption from the DENR under the provisions of the Philippine Mining Act of 1995 so as to entitle it to exemption from the realty tax imposed by the local government of Marinduque.

iii. Respondent Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction when, inspite of the non-operation during the relevant years of the Siltation Dam and Decant System, the lack of certificate of tax exemption therefor and the clear and unambiguous provisions of the Local Government Code and the Philippine Mining Act of 1995, it declared the aforesaid real property as a machinery and equipment or a pollution control device that is exempt from realty tax.[27] (Emphasis supplied)

Petitioner posits that the CA committed not only a reversible error in holding that the subject property is tax exempt under Sec. 234(e) of R.A. No. 7160, but also a grave abuse of discretion in discarding key factual findings of both the LBAA and the CBAA regarding the nature of the subject property — which factual findings respondent did not even controvert. Petitioner points out that the CBAA found that the subject property had not been used for pollution control because it had been out of operation since 1993;[28] and respondent admitted this in its Petition for Review before the CA where it categorically stated that "[w]hat is not denied, however, which even the *barangay* resolutions state was that the siltation dam was damaged in 1993 when a typhoon hit Marinduque. This naturally affected the environment in the area for which reason Marcopper

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[27] Petitioner's Memorandum, *rollo*, pp. 503-504.

[28] Petition, *id.* at 14.

specifically wanted to repair the dam."[29] Yet, petitioner argues, the CA completely ignored such undisputed fact by holding that there is "absence of clear and convincing evidence that the siltation dam and decant system was inutile to achieve its purpose prior to being damaged, and continued to be so x x x."[30]

Petitioner further cites the finding of the CBAA that respondent did not obtain from the DENR a certification of the tax exempt classification of the subject properties. This CBAA finding was not controverted by respondent in its pleadings before the CA; yet, said court completely glossed over this matter and declared the subject properties tax exempt.[31]

On the other hand, respondent contends that petitioner's mode of appeal from the CA Decision should have been a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed within fifteen (15) days from October 13, 2005, the day petitioner received notice of the CA Resolution denying its motion for reconsideration. That petitioner filed instead a Petition for *Certiorari* on December 12, 2005 — the 60th day from receipt of the CA Resolution — indicates that it resorted to a special civil action for *certiorari* as a substitute for the appeal it had lost;[32] worse, petitioner raised factual issues which the Court cannot resolve for it is no trier of facts.[33]

The petition has merit.

On the proper mode of appeal

Previously, under Section 36 of Presidential Decree (P.D.) No. 464 or the Real Property Tax Code, the proper mode of appeal from a decision rendered by the CBAA was by special

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[29] Petition for Review in CA-G.R. No. 60672, CA *rollo*, p. 21.

[30] CA Decision, *rollo*, p. 58.

[31] Petition, *rollo*, pp. 16-17.

[32] Memorandum for Respondent, *id.* at 560-563.

[33] *Id.* at 564.

civil action for *certiorari* filed directly with the Court.[34] However, with the passage of R.A. No. 7902,[35] granting the CA exclusive appellate jurisdiction over decisions of boards and commissions, the Court issued Revised Administrative Circular No. 1-95[36] which provides under paragraphs 1[37] and 5[38] that appeal from a decision of the CBAA shall be by Petition for Review with the CA. Thus, from the final judgment of the CA, appeal to the Court on questions of law is by Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.[39] The availability of such

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[34] *Caltex (Phil.) Inc. v. Central Board of Assessment Appeals*, G.R. No. 50466, May 3, 1982, 114 SCRA 296, 300. See also *Benguet Corporation v. Central Board of Assessment Appeals*, *supra*, note 10 at 279 and *Sesbreño v. Central Board of Assessment Appeals*, G.R. No. 106588, March 24, 1997, 270 SCRA 360, 369.

[35] An Act Expanding the Jurisdiction of the Court of Appeals; approved February 23, 1995.

[36] Rules Governing Appeals to the Court of Appeals from Judgments or Final Orders of the Court of Tax Appeals and Quasi-judicial Agencies; effective June 1, 1995.

[37] 1. *Scope.* — These rules 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, Land Registration Authority, Social Security Commission, Office of the President, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunication 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, and Construction Industry Arbitration Commission.

[38] 5. *How appeal taken.* — Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, with proof of service of a copy thereof on the adverse party and on the court or agency *a quo*. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner.

[39] *Macasasa v. Sicad*, G.R. No. 146547, June 20, 2006, 491 SCRA 368, 375-376.

remedy bars recourse to a special civil action for *certiorari* even if one of the grounds invoked is grave abuse of discretion.[40]

Indeed, petitioner erred in its mode of appeal by Petition for *Certiorari* under Rule 65.[41] Nonetheless, in its Resolution[42] of July 5, 2006, the Court gave due course to the petition for it involves not only the power of taxation of a local government unit but also its stewardship of the environment. The higher interest of public welfare dictates that the Court suspend its rules *pro hac vice* in order to resolve the merits of the petition.[43]

On whether the subject property is exempt from real property taxation

It should be borne in mind that the protest and appeals filed by respondents before the LBAA, CBAA, and CA refer to

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[40] *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, G.R. No. 156067, August 11, 2004, 436 SCRA 123, 137.

[41] See *Talento v. Escalada*, G.R. No. 180884, June 27, 2008, 556 SCRA 491, 498.

[42] *Rollo,* p. 492.

[43] *People v. Zulueta*, 89 Phil. 752, 756-757 (1951). See *Hydro Resources Contractors Corp. v. Court of Appeals*, G.R. No. 85714, November 29, 1991, 204 SCRA 309, 315. In *Sanchez v. Court of Appeals* (345 Phil. 155, 179 [1997]), the Court noted that in "Remedial Law Compendium," Volume One, p. 708, (1997), Justice Florenz D. Regalado enumerated the following exceptions.: "(1) where the appeal does not constitute a speedy and adequate remedy (*Salvadades v. Pajarillo*, 78 Phil. 77), as where 33 appeals were involved from orders issued in a single proceeding which will inevitably result in a proliferation of more appeals (*PCIB v. Escolin*, G.R. Nos. L-27860 and L-27896, Mar. 29, 1974); (2) where the orders were also issued either in excess of or without jurisdiction (*Aguilar v. Tan*, G.R. No. L-23600, June 30, 1970, *Cf. Bautista v. Sarmiento*, G.R. No. L-45137, September 23, 1985); (3) for certain special consideration, as public welfare or public policy (See *Jose v. Zulueta*, G.R. No. L-16598, May 31, 1961 and the cases cited therein); (4) where in criminal actions, the court rejects rebuttal evidence for the prosecution as, in case of acquittal, there could be no remedy (*People v. Abalos*, G.R. No. L-29039, Nov. 28, 1968); (5) where the order is a patent nullity (*Marcelo v. De Guzman*, G.R. No. L-29077, June 29, 1982); and (6) where the decision in the *certiorari* case will avoid future litigations (*St. Peter Memorial Park, Inc. v. Campos*, G.R. No. L-38280, Mar. 21, 1975)."

the Assessment Notice dated March 28, 1994 and **effective January 1, 1995**.[44] No other assessment notice is under question.

The disputed assessment notice having taken effect on January 1, 1995, its validity is determined by the provisions of Title II (Real Property Taxation) of R.A. No. 7160, effective January 1, 1992. R.A. No. 7942 has no bearing on the matter, for this law came into effect only on April 14, 1995. Hence, reference to R.A. No. 7942 by the CA and the respondent are all out of place.

Title II of R.A. No. 7160 governs the administration, appraisal, assessment, levy and collection of real property tax. Section 234 thereof grants exemption from real property taxation based on ownership, character or usage. As the Court explained in *Mactan Cebu International Airport Authority v. Marcos*,[45] to wit:

Section 234 of the LGC provides for the exemptions from payment of real property taxes and withdraws previous exemptions therefrom granted to natural and juridical persons, including government-owned and controlled corporations, except as provided therein.

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These exemptions are 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

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[44] Sec. 221 of R.A. No. 7160, which provides;

Sec. 221. *Date of Effectivity of Assessment or Reassessment*. — All assessments or reassessments made after the first (1st) day of January of any year shall take effect on the first (1st) day of January of the succeeding year: Provided, however, That the reassessment of real property due to its partial or total destruction, or to a major change in its actual use, or to any great and sudden inflation or deflation of real property values, or to the gross illegality of the assessment when made or to any other abnormal cause, shall be made within ninety (90) days from the date any such cause or causes occurred, and shall take effect at the beginning of the quarter next following the reassessment (Previously Section 24 of Presidential Decree No. 464 (PD 464) or the Real Property Tax Code.) See *Province of Nueva Ecija v. Imperial Mining Co., Inc.*, G.R. No. 59463, November 19, 1982, 118 SCRA 632.

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

Republic, (ii) a province, (iii) a city, (iv) a municipality, (v) a barangay, and (vi) registered cooperatives.

(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. (Emphasis supplied)

As held in *Mactan*, the exemption granted under Sec. 234(e) of R.A. No. 7160 to "[m]achinery and equipment used for pollution control and environmental protection" is based on usage. The term usage means direct, immediate and ***actual*** application of the property itself to the exempting purpose.[46] Section 199 of R.A. No. 7160 defines actual use as "the purpose for which the property is principally or predominantly utilized by the person in possession thereof." It contemplates concrete, as distinguished from mere potential, use. Thus, a claim for exemption under Sec. 234(e) of R.A. No. 7160 should be supported by evidence that the property sought to be exempt is actually, directly and exclusively used for pollution control and environmental protection.[47]

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[46] *Lung Center of the Philippines v. Quezon City*, G.R. No. 144104, June 29, 2004 , 433 SCRA 119, 137.

[47] See Senator Aquilino Pimentel, *The Local Government Code Revisited*, Manila (2007), p. 444. See also *Light Rail Transit Authority v. Central Board of Assessment Appeals*, G.R. No. 127316, October 12, 2000, 342 SCRA 692.

The records yield no allegation or evidence by respondent that the subject property was actually, directly and exclusively used for pollution control and environmental protection ***during the period covered by the assessment notice under protest***. Rather, the finding of the CBAA that said property "apparently out of commission and not apt to its function as would control pollution and protect the environment"[48] stands undisputed; such finding is even admitted by respondent when, to repeat, in its Petition for Review before the CA, it categorically stated that "[w]hat is not denied, however, which even the *barangay* resolutions state was that the siltation dam was damaged ***in 1993*** when a typhoon hit Marinduque. This naturally affected the environment in the area for which reason Marcopper specifically wanted to repair the dam."[49]

Moreover, Sec. 206 prescribes the evidentiary requirements for exemption from real property taxation, *viz.*:

> Sec. 206. ***Proof of Exemption*** of Real Property from Taxation. — ***Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, bylaws, contracts, affidavits, certifications and mortgage deeds, and similar documents***. If the ***required*** evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll. (Emphasis supplied)

The burden is upon the taxpayer to prove, by clear and convincing evidence, that his claim for exemption has legal and factual basis.[50]

As aptly pointed out by petitioner, there is no allegation nor evidence in respondent's pleadings that it had complied with the procedural requirement under Sec. 206. There is nothing in

[48] *Rollo*, p. 81.

[49] Petition for Review in CA-G.R. No. 60672, CA *rollo*, p. 21.

[50] *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*, G.R. No. 147295, February 16, 2007, 516 SCRA 93, 103.

the records that would indicate that, within 30 days from its filing of Tax Declaration No. 05-35697 on November 17, 1993,[51] respondent filed with the provincial assessor an application for exemption or any documentary evidence of the exempt status of the subject property.

What respondent submitted along with its appeal before the LBAA are Affidavit of Esquieres,[52] the project design of the subject property,[53] as well as a Certification[54] dated May 24, 1994 issued by Carlos J. Magno, Regional Technical Director of DENR Regional Office No. IV.

But far from proving that the subject property is tax exempt, the documents classify the subject property as anything but machinery or equipment.

The DENR Certification classifies the subject property as a "***structure*** intended primarily for pollution control of silted materials in order to protect the environmental degredation of Maguila-guila, Mangamu-Mogpog River system from getting turbid."[55] That the subject property is a structure is further underscored by the project design which describes the subject property as a "zoned earth siltation dam"[56] composed of a clay core consisting of clayey materials or impervious fill, a random fill made up of heavily to intensely fractured metarock, and filters comprised of course tailings, river sand deposits and course filter gravels.[57]

It is described in greater detail by respondent's Chief Mining Engineer Ricardo Esquieres, Jr. in an October 11, 1994 Affidavit[58] attached to respondent's appeal[59] before the LBAA, thus:

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[51] CA *rollo*, p. 55.

[52] *Id.* at 63-68.

[53] *Id.* at 72-80.

[54] *Id.* at 81.

[55] *Id.*

[56] *Id.* at 72.

[57] *Id.* at 77-78.

[58] *Id.* at 63.

[59] *Id.* at 61.

7. The siltation dam and decant system was constructed sometime in August 1992. It is not only a specialized combination of essential impervious earth materials which provide adequate strength and detention of turbid streamwater. It also has special provisions like spillway and diversion canal which also promote its integrity by providing a safe outlet of the impounded streamwater. Basically, the zoned-earth dam is composed of a clay core, random fill and filter drains.

1. Clay core – impervious central portion of the dam to be inclined with a width to heat ratio greater than 1.0 and designed to be thick – thick enough to reduce seepage.

2. Random fill – relatively more permeable than the clay core and of greater strength. Placed at the upstream face of the dam (to serve as armor or ballast against slope stablity).

3. Filters – designed to ensure that the dam structure is always in its full drained state, thus, relieving any pore pressure that may develop behind the dam.[60]

Therefore, by design, composition and function, the subject property is a structure adhered to the soil, and has neither a mechanical contrivance, instrument, tool, implement, appliances, apparatus, nor paraphernalia that produces a mechanical effect or performs a mechanical work of any kind.[61] It meets none of the following features of a machinery as described in Section 199(o) of R.A. No. 7160:

(o) "Machinery" embraces machines, equipment, mechanical contrivances, instruments, appliances or apparatus which may or may not be attached, permanently or temporarily, to the real property. It includes the physical facilities for production, the installations and appurtenant service facilities, those which are mobile, self-powered or self-propelled and those not permanently attached to the real property which are actually, directly, and exclusively used to meet the needs of the particular industry, business or activity and which by their very nature and purpose are designed for, or necessary to its manufacturing, mining, logging, commercial, industrial or agricultural purposes.

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[60] *Id.* at 65.

[61] See *Central Azucarera de La Carlota v. Coscolluela*, 44 Phil. 527 (1923).

That a structure such as the subject property does not qualify as a machinery or equipment used for pollution control as contemplated under R.A. No. 7160 is evident from the adoption of an expanded definition of *pollution control device* in R.A. No. 7942. Under Section 3 (am) thereof, a pollution control device now also refers to "infrastructure" or "improvement," and not just to machinery or equipment. This new concept, however, cannot benefit respondent, for the assessment notice under review pertains to real property tax assessed prior to the amendment of Sec. 234 (e) of R.A. No. 7160 by Sec. 91 in relation to Sec. 3 (am) of R.A. No. 7942. It is settled that tax laws are prospective in application, unless expressly provided to apply retroactively.[62] R.A. No. 7942 does not provide for the retroactive application of its provisions.

In sum, the CA committed grave abuse of discretion in ignoring irrefutable evidence that the subject property is not a machinery used for pollution control, but a structure adhering to the soil and intended for pollution control, but has not been actually applied for that purpose during the period under assessment.

WHEREFORE, the petition is *GRANTED*. The Decision dated May 30, 2005 and Resolution dated September 29, 2005 are *REVERSED* and *SET ASIDE*. The Assessment Notice dated March 28, 1994 is declared *VALID* under the then applicable Republic Act No. 7160.

No costs.

SO ORDERED.

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

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[62] *Pansacola v. Commissioner of Internal Revenue*, G.R. No. 159991, November 16, 2006, 507 SCRA 81, 92-93; *Abello v. Commissioner of Internal Revenue*, G.R. No. 120721, February 23, 2005, 452 SCRA 162, 173.

SECOND DIVISION

[G.R. No. 179563. April 30, 2009]

BACOLOD-TALISAY REALTY AND DEVELOPMENT CORPORATION, MR. MARIO GONZAGA in his capacity as President of Bacolod Realty and Development Corporation, and MR. ERNESTO ALLEN LACSON, JR. in his capacity as Administrator of Bacolod Realty and Development Corporation, *petitioners, vs.* **ROMEO DELA CRUZ,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; VERIFICATION; PURPOSE THEREOF; LACK OF VERIFICATION NOT A FATAL DEFECT.—** Lack of verification is not a fatal defect. Verification is only a formal, not a jurisdictional requirement. It could easily be corrected by directing compliance therewith, its purpose being simply to secure an assurance that the allegations of the petition (or complaint) have been made in good faith, or are true and correct, not merely speculative.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; DISMISSAL; REINSTATEMENT; FEASIBLE ONLY WHEN AN EMPLOYEE'S DISMISSAL IS NOT JUSTIFIED; CASE AT BAR.—** The Court of Appeals, in finding for respondent, noted that the proper procedure in dismissing him was not observed; *ergo,* it ordered his "reinstatement. . ." **Oddly, the appellate court did not determine whether there was just case for respondent's dismissal. For it is only when an employee's dismissal is not justified that reinstatement is, among other things, if still feasible, in order.**

3. **ID.; ID.; ID.; EXISTENCE OF JUST CAUSE FOR TERMINATION OF EMPLOYMENT; CASE AT BAR.—** The above-listed documentary evidence of petitioner indubitably establishes that respondent committed payroll padding, sold canepoints without the knowledge and consent of management and misappropriated the proceeds thereof, and rented tractor to another farm and misappropriated the rental payments therefor. These acts

constitute willful breach by the employee of the trust reposed in him by his employer — a ground for termination of employment.

4. **ID.; ID.; ID.; ID.; PROPER PROCEDURE IN DISMISSING AN EMPLOYEE; TWIN NOTICE REQUIREMENT NOT COMPLIED WITH IN CASE AT BAR.—** The Court of Appeals correctly held though that petitioners did not comply with the proper procedure in dismissing respondent. In other words, petitioners failed to afford respondent due process by failing to comply with the twin notice requirement in dismissing him, *viz*: 1) a first notice to apprise him of his fault, and 2) a second notice to him that his employment is being terminated.

5. **ID.; ID.; ID.; ID.; ID.; ID.; LETTER OF SUSPENSION AND CONFRONTATION HEARINGS BEFORE THE *BARANGAY* COUNCIL DO NOT CONSTITUTE THE "FIRST NOTICE"; CASE AT BAR.—** The letter dated June 3, 1997 sent to respondent was a letter of suspension. It did not comply with the required first notice, the purpose of which is to apprise the employee of the cause *for* termination and to give him reasonable opportunity to explain his side. The confrontation before the *barangay* council did not constitute the first notice – to give the employee ample opportunity to be heard with the assistance of counsel, if he so desires. Hearings before the *barangay* council do not afford the employee ample opportunity to be represented by counsel if he so desires because Section 415 of the Local Government Code mandates that "[i]n all *katarungang pambarangay* proceedings, the parties must appear in person without the assistance of counsel or his representatives, except for minors and incompetents who may be assisted by their next-of-kin who are not lawyers."

APPEARANCES OF COUNSEL

S. E. Sorbito Law Office for petitioners.

Jose De Paula for respondent.

DECISION

CARPIO MORALES, *J.*:

From 1980 up to 1997, Romeo de la Cruz was employed at the Hacienda Gloria, a farm owned and managed by petitioner Bacolod-Talisay Realty and Development Corporation (BTRD). He was dismissed on July 3, 1997 at which time he was holding the position of overseer, in charge of the work of the laborers, checking their attendance, reporting the number of hours worked by each laborer for payroll purposes, checking in-coming and out-going cargo, and selling and receiving payments for seedpieces and canepoints. He was also entrusted with farm equipment and other farm property.

He was dismissed on charges of payroll padding, selling canepoints without the knowledge and consent of management and misappropriating the proceeds thereof, and renting out BTRD's tractor for use in another farm and misappropriating the proceeds thereof.

Respondent thus filed on July 10, 1997 a complaint for illegal suspension and illegal dismissal before the National Labor Relations Commission (NLRC)[1] against petitioners BTRD, *et al.*

In his Position Paper,[2] respondent claimed that on June 4, 1997, he received a June 3, 1997 letter informing him that he was being suspended for the next 30 days due to the abovementioned charges and that there was an ongoing investigation thereof; and after 30 days his wife received a letter dated July 3, 1997 stating that he was terminated from the service on account of the charges.

In their Position Paper, petitioners claimed that as a result of the investigation of respondent's questioned acts, it was discovered that there were farm workers whose names were entered in the payroll even if they did not render services and the corresponding wages were not received by them; and while respondent

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[1] NLRC records, p. 1.

[2] *Id.* at 13-22.

committed to return the money intended for wages of those workers who rendered no services, he did not return them.

Petitioners further claimed that a company tractor was used in another farm, rental fees of which were not remitted to BTRD, and when confronted, respondent admitted his wrongdoings and asked for forgiveness; and while a confrontation about the matter was held before the *barangay* council, no settlement was reached.[3]

The Labor Arbiter dismissed respondent's complaint for lack of merit.[4] And the NLRC dismissed respondent's appeal for not being verified.[5]

By Decision[6] of April 13, 2007, the Court of Appeals, brushing aside the lack of verification of respondent's appeal before the NLRC, found that petitioners "did not comply with the x x x guidelines for the dismissal of [the] employee"[7] and accordingly reversed the NLRC decision, disposing as follows:

> WHEREFORE, the petition is **GRANTED**. Accordingly, the subject resolutions of the National Labor Relations Commission are **REVERSED** and **SET ASIDE**. Petitioner is entitled to reinstatement without loss of seniority rights and benefits and to payment of backwages which shall not exceed three (3) years.[8] (Emphasis in the original; underscoring supplied)

Hence, the present petition,[9] petitioners faulting the Court of Appeals

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[3] *Id*. at 91-92.

[4] *Id*. at 124.

[5] *Id*. at 173-174.

[6] Penned by Court of Appeals Associate Justice Agustin S. Dizon, with the concurrence of Associate Justices Arsenio J. Magpale and Francisco P. Acosta. CA *rollo*, pp. 174-179.

[7] CA *rollo*, p. 178.

[8] *Id*. at 178-179.

[9] *Rollo*, pp. 44-73.

I

x x x IN NOT DECIDING THAT PETITIONER SHOULD ONLY BE HELD LIABLE FOR NOMINAL DAMAGES PURSUANT TO THE AGABON DOCTRINE AND OTHER SUBSEQUENT CASES BUT THE DISMISSAL OF THE RESPONDENT SHOULD BE HELD AS VALID, THE CASE BEING ATTENDED BY JUST CAUSE FOR TERMINATION OF EMPLOYMENT.

II

x x x BY RULING THAT AN APPEAL CAN BE HAD WITH THE NLRC EVEN THOUGH NO VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING WAS ATTACHED TO THE APPEAL, AND EVEN THOUGH NO REASONS OR EXCUSE WAS ADVANCED BY THE RESPONDENT FOR THE NON-SUBMISSION OF THE VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING.

III

x x x IN REVERSING THE DECISION OF THE NLRC AND THE LABOR ARBITER *A QUO* ON THE BASIS OF MERE SPECULATION, CONJECTURE AND MERE SELF-SERVING STATEMENTS OF THE RESPONDENT.[10] (Underscoring supplied)

That the Court of Appeals went on to give due course to respondent's petition despite the lack of verification in respondent's appeal before the NLRC is not erroneous. Lack of verification is not a fatal defect. Verification is only a formal, not a jurisdictional requirement.[11] It could easily be corrected by directing compliance therewith,[12] its purpose being simply to secure an assurance that the allegations of the petition (or complaint) have been made in good faith, or are true and correct, not merely speculative.[13]

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[10] *Id.* at 55-56.

[11] *Vide Iglesia ni Cristo v. Ponferrada*, G.R. No. 168943, Oct. 27, 2006, 505 SCRA 828, 840.

[12] *Vide Gaerlan, Sr. v. National Labor Relations Commission*, G.R. No. 66526, September 28, 1984, 132 SCRA 402, 408.

[13] *Supra* note 11.

The Court of Appeals, in finding for respondent, noted that the proper procedure in dismissing him was not observed; *ergo,* it ordered his "reinstatement . . ." **Oddly, the appellate court did not determine whether there was just case for respondent's dismissal. For it is only when an employee's dismissal is not justified that reinstatement is, among other things, if still feasible, in order**. This brings the Court to pass on the merits of the case.

This Court finds that petitioners were able to establish with substantial evidence that just cause existed for the termination of respondent's employment. Consider the following documentary evidence they presented:

1. Excerpt from the official log book of the *barangay* council of Barangay Concepcion, Talisay, Negros Occidental dated May 30, 1997 documenting the statements of Federico Serie and Jonathan Quilla during a confrontation before the *barangay* counsel;[14]

2. Petitioner Lacson's affidavit;[15]

3. Joint Affidavit of petitioner Mario Gonzaga and the vice-president and secretary of BTRD;[16]

4. Joint affidavit of Federico Serie, Jr. (Serie), Jonathan Quilla (Quilla), Eddie Sausa (Sausa), and Roberto Tortogo (Tortogo) claiming that they refused to sign the payroll which respondent prepared because it indicated that they received ₱256 although they received only ₱71;[17]

5. Copies of payrolls for June 3-8, 1996 and June 10-15, 1996, with respondent's signature beside the name of Federico Serie who refused to sign;[18]

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[14] NLRC records, p. 91.

[15] *Id*. at 88-90;

[16] *Id*. at 94.

[17] *Id*. at 96.

[18] *Id*. at 98-102.

6. Affidavit of John Trasmonte (Transmonte), in charge of keeping the payroll records and cash disbursement of workers' wages for June 1996, claiming that he prepared the payroll based on respondent's report and that he did not receive any return of excess wages for the cash disbursement from the said payroll;[19]

7. Affidavit of Jose Racel Magbanua (Magbanua) stating that he saw respondent allowing the use of the *hacienda's* tractor in another farm and receiving rent therefrom;[20]

8. Affidavit of Rodolfo Cañeso (Cañeso) stating that he saw respondent selling pieces of *patdan* and *drammy*;[21] and

9. Affidavit of Ma. Leonisa Gonzaga claiming shortfalls in the proceeds of the sale of *drammy* and *patdan* as reported and remitted by respondent.[22]

The above-listed documentary evidence of petitioner indubitably establishes that respondent committed payroll padding, sold canepoints without the knowledge and consent of management and misappropriated the proceeds thereof, and rented tractor to another farm and misappropriated the rental payments therefor. These acts constitute willful breach by the employee of the trust reposed in him by his employer — a ground for termination of employment.[23]

In his appeal before the NLRC, respondent noted[24] that affiants Sausa and Tortogo challenged their Joint Affidavit listed above, claiming that they did not understand its contents as they were not translated to the dialect they understand.[25] To respondent,

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[19] *Id*. at 103.

[20] *Id*. at 104.

[21] *Id*. at 105.

[22] *Id*. at 106.

[23] LABOR CODE, Article 282 (c).

[24] <u>*Vide*</u> NLRC records, p. 149.

[25] *Id*. at 116.

this should have placed the Labor Arbiter on notice that there was something irregular that should have called for him to order, but he did not, the conduct of clarificatory hearings.[26]

Respondent's position does not persuade. Sausa's and Tortogo's challenge to their Joint Affidavit does not affect the totality of petitioners' evidence, as affiants Serie and Quilla attested to the same matter-subject of Sausa and Tortogo's questioned Joint Affidavit. Besides, as reflected above, other affidavits and pieces of documentary evidence in support of petitioners' position were presented. Respondent had been furnished petitioners' Position Paper to which copies of these affidavits and other documentary evidence against him were attached.[27] Thus, respondent had the opportunity to file a counter-position paper and refute the evidence against him, but he did not.

The Court of Appeals correctly held though that petitioners did not comply with the proper procedure in dismissing respondent. In other words, petitioners failed to afford respondent due process by failing to comply with the twin notice requirement in dismissing him, *viz:* 1) a first notice to apprise him of his fault, and 2) a second notice to him that his employment is being terminated.

The letter dated June 3, 1997 sent to respondent was a letter of suspension. It did not comply with the required first notice,[28] the purpose of which is to apprise the employee of the cause for termination <u>and to give him reasonable opportunity to explain his side</u>.[29]

The confrontation before the *barangay* council did not constitute the first notice — to give the employee ample

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[26] *Id*. at 149.

[27] NLRC records, p. 71.

[28] <u>*Vide*</u> *R.B. Michael Press v. Galit*, G.R. No. 153510, February 13, 2008, 545 SCRA 23, 37; *Tanala v. National Labor Relations Commission*, G.R. No. 116588, January 24, 1996, 252 SCRA 314, 321.

[29] <u>*Vide*</u> *Tanala v. National Labor Relations Commission*, G.R. No. 116588, January 24, 1996, 252 SCRA 314, 321.

opportunity to be heard with the assistance of counsel, if he so desires.[30] Hearings before the *barangay* council do not afford the employee ample opportunity to be represented by counsel if he so desires because Section 415 of the Local Government Code mandates that "[i]n all *katarungang pambarangay* proceedings, the parties must appear in person without the assistance of counsel or his representatives, except for minors and incompetents who may be assisted by their next-of-kin who are not lawyers."

The requirement of giving respondent the first notice not having been complied with, discussions of whether the second notice was complied with is rendered unnecessary.

In fine, while the dismissal of respondent was for a just cause, the procedure in effecting the same was not observed.

WHEREFORE, the assailed Decision of the appellate court is *VACATED* and another is rendered *ORDERING* petitioners to, in light of the foregoing discussions, *PAY* respondent the sum of ₱30,000 as nominal damages.

SO ORDERED.

Tinga, Velasco, Jr., Leonardo-de Castro,[*] and *Brion, JJ.,* concur.

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[30] *Vide* Omnibus Rules Implementing the Labor Code, Rules Implementing Book VI, Rule I, Section 2(d)(ii); *Metro Eye Security, Inc. v. Salsona*, G.R. No. 167637, September 28, 2007, 534 SCRA 375, 391.

[*] Additional member in lieu of Justice Leonardo A. Quisumbing who is on official leave.

SECOND DIVISION

[G.R. No. 180923. April 30, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **SALOMON DIONEDA *Y* DELA CRUZ *a.k.a.* SIMON DIONEDA DELA CRUZ,** *appellant.*

SYLLABUS

REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIVIAL INCONSISTENCIES AND INCONSEQUENTIAL DISCREPANCIES ON MINOR DETAILS COULD BE BADGES OF TRUTH; CASE AT BAR.— The place where AAA met appellant when she was about to leave the Dajao residence, whether on the ground or second floor is a trivial matter. AAA, a child of tender age, could not be expected to give a perfect recollection of the exact floor of the house where she met appellant. Forthright witnesses are not immune from committing minor inaccuracies in their narration of events. Trivial inconsistencies and inconsequential discrepancies on minor details in the testimonies of witness do not impair their credibility. They could, in fact, be badges of truth for they manifest spontaneity and erase any suspicion of a rehearsed testimony. As long as the inconsistencies are immaterial or irrelevant to the elements of the crime and do not touch on material facts crucial to the guilt or innocence of the accused as in the present case, these are not valid grounds to reverse a conviction.

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 is the January 31, 2007 Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 02096 which affirmed with modification the February 4, 2004 Decision of Branch 107 of the Regional Trial Court in Quezon City finding Salomon Dioneda *y* Dela Cruz[2] *a.k.a*. Simon Dioneda Dela Cruz (appellant) guilty of raping six year old AAA[3] in Criminal Case No. Q-00-94913.

Appellant, by Information filed on August 29, 2000, was charged for rape as follows:

> That on or about the 27th day of August, 2000 in Quezon City, Philippines, the above-named accused, a minor 17 years of age, by means of force and intimidation, with lewd designs, did, then and there, willfully, unlawfully and feloniously put himself on top of one AAA, a minor 6 years of age, and thereafter have carnal knowledge with said complainant against her will and without her consent, to her damage and prejudice.
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> CONTRARY TO LAW.[4]

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[1] Penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Josefina Guevarra-Salonga and Ramon R. Garcia; CA *rollo*, pp. 130-145.

[2] The assailed Court of Appeals Decision noted that appellant "uses the name **Salomon** Dioneda *y* Dela Cruz and the Information identifies him as bearing that name. However, his birth certificate bears the name **Simon** Dioneda *y* Dela Cruz" (*id.* at 131, note 2).

[3] Pursuant to Section 44 of Republic Act (R.A.) No. 9262, otherwise known as THE ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004, and Section 63, Rule XI of the Rules and Regulations Implementing R.A. 9262, the real name of the victim is withheld to protect her privacy. Fictitious initials are used instead to represent her. Likewise, the personal circumstances or any other information tending to establish or compromise her identity, as well as those of her family members shall not be disclosed.

[4] Records, pp. 1-4.

Through the testimonies of AAA, her parents BBB[5] and CCC,[6] Dr. Jaime Rodrigo Leal, Eddie Roque and SPO3 Violeta Balanse, the prosecution proffered the following version:

At about 6:00 o'clock in the evening of August 27, 2000, AAA, then six (6) years old, she having born on May 14, 1994 to BBB and CCC,[7] went to her neighbor Ruth Dajao's three-storey house at Belen Street, Gulod, Novaliches, Quezon City with the intention of playing with the latter's son, Iking (Iking).[8] On reaching the first floor, AAA met appellant, a helper of the Dajao family who usually goes to her residence, who told her that Iking was already asleep at the third floor. AAA just the same went up the third floor of the house and saw that Iking was indeed sleeping.[9] She thus went down and decided to go home.

When AAA reached the first floor, appellant prevented her from leaving, saying "*Sandali lang,*" he telling her that the two of them were going to play. She refused but appellant held her arm, forcing her to return to the second floor. Appellant caught up with her, however, made her lie down on the floor and placed himself on top of her. He then carried her to a double-deck bed where he laid her down, removed her panties, undressed himself, went on top of her, and inserted his penis into her vagina. She experienced pain. He then wiped her vagina and warned her not to tell the incident to anybody. She stood up, put on her panties and ran straight to her house crying.[10]

Her parents asked her why she was crying to which she replied that her vagina was aching because "*Kuya Jong*," whom she identified as appellant, did something bad to her. She thereupon showed them her "*kikay*," referring to her vagina,

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[5] His real name is withheld for the same reason as stated in note 3.

[6] Her real name is likewise withheld for similar reason stated in note 3.

[7] *Vide.* Exhibit "A" (AAA's Birth Certificate), Transcript of Stenographic Notes (TSN), January 16, 2000, pp. 4-5; January 20, 2002, pp. 4-5.

[8] TSN, October 9, 2003, p. 4.

[9] TSN, May 25, 2001, p. 12.

[10] *Id.* at 15-16.

and her panties with bloodstains.[11] She related that appellant went on top of her and placed his penis in her vagina. Furious, her parents stepped out of the house and looked for appellant.[12]

On seeing appellant in Dajao's house, BBB tried to attack him but was restrained by CCC and several neighbors who had in the meantime gotten wind of the incident. AAA, together with her parents, reported the incident to the authorities who thereafter arrested appellant.[13]

Dr. Jaime Rodrigo Leal, the Medico-Legal Officer of the Philippine National Police (PNP), Camp Crame, examined AAA and found her hymen bruised and an abrasion in the area surrounding the hymen and a 0.3 cm. fresh laceration with blood clots at the posterior fourchette, indicating that it occurred within 24 hours prior to the examination. The doctor opined that his findings on AAA's genitalia were indicative of penetration and consistent with her disclosure of sexual abuse.[14]

AAA's mother noticed that after the rape incident, AAA had difficulty urinating and "*kinikilig*."[15]

Denying the accusation, appellant gave the following version: At around 6:00 to 7:00 o'clock that evening of August 27, 2000, he was watching television at the first floor of the house of the Dajaos. He later gathered the clothes from the clothesline and saw AAA outside the house holding her toys and playing with someone he did not know. AAA's father BBB soon appeared and shouted at him, accusing him of having raped her daughter, and was later brought to the police station where he was detained.

By Decision dated February 4, 2004, the trial court found appellant guilty of rape as charged under Article 266-A,

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[11] TSN, January 10, 2001, pp. 6-7.

[12] *Id.* at 7; TSN, February 20, 2002, pp. 8-12.

[13] TSN, March 6, 2003, pp. 2-7.

[14] TSN, July 17, 2002, pp. 7, 12; Exhibit "G" dated August 27, 2000 and Exhibit "H"; records, p. 166.

[15] RTC Decision dated February 4, 2004, CA *rollo*, p. 34.

paragraph 1(d) of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353.

Considering, however, that appellant was only 17 years old when he committed the crime on August 27, 2000, having been born on September 24, 1982 as shown by his birth certificate, he was credited with the privilege mitigating circumstance of minority to lower the penalty by one degree — *reclusion perpetua*.[16] Thus the trial court disposed:

WHEREFORE, IN VIEW OF THE FOREGOING, the prosecution having established the guilt of the accused beyond reasonable doubt, this Court finds the accused SALOMON DIONEDA *Y* DELA CRUZ *a.k.a*. SIMON DIONEDA *Y* DELA CRUZ, guilty of the offense charged. He is hereby sentenced:

1. To suffer the penalty of *reclusion perpetua*;
2. To pay the private complainant, (AAA) x x x civil indemnity in the amount of ₱50,000.00;
3. To pay the x x x private complainant the amount of ₱50,000.00 for exemplary damages;
4. To pay further the x x x private complainant the amount of ₱50.000.00 as moral damages; and
5. The accused is hereby ordered, upon his release from detention, not to approach the private complainant in school, in the church, in the malls or anywhere else; he shall never contact the private complainant either by telephone, cellphone or send text messages or with the use of any electrical device or even letters, otherwise, the private complainant can seek the assistance of this Court.

SO ORDERED.[17]

The records of the case were forwarded to this Court on appeal of appellant.[18] Per *People v. Mateo*,[19] however, the Court

[16] *Id.* at 42-43.

[17] *Id.* at 44.

[18] *Id.* at 48.

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

referred the case to the Court of Appeals by Resolution of September 28, 2005.[20]

The appellate court, by Decision of January 31, 2007, affirmed the factual findings of the trial court but modified the award of exemplary damages from ₱50,000.00 to ₱25,000.00, consistent with prevailing jurisprudence. It thus disposed:

> WHEREFORE, premises considered, the February 4, 2004 Decision of the Regional Trial Court of Quezon City, Branch 107, in Criminal Case No. Q-00-94913, is hereby **AFFIRMED with MODIFICATION** in that exemplary damages are hereby reduced to ₱25,000.00.
>
> Pursuant to Section 13 (c), Rule 124 of the 2000 Rules of Criminal Procedure as amended by A.M. No. 00-5-03-SC dated September 28, 2004, which became effective on October 15, 2004, this judgment of the Court of Appeals may be appealed to the Supreme Court by notice of appeal filed with the Clerk of Court of the Court of Appeals.
>
> SO ORDERED. (Emphasis in the original)

In his Brief, appellant faulted the trial court

> … IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES.[21]

Appellant assails AAA's credibility, citing her inconsistent answers regarding the circumstances before the commission of the alleged rape, particularly her testimony on direct examination that she stopped at the second floor of the Dajaos' house where he allegedly told her to wait ("*sandali lang*") but that on cross-examination she stated that she met appellant at the ground floor.

Appellant's appeal is doomed.

The place where AAA met appellant when she was about to leave the Dajao residence, whether on the ground or second floor is a trivial matter. AAA, a child of tender age, could not

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[20] CA *rollo*, pp. 127-128.

[21] Accused-Appellant's Brief, *id.* at 57.

be expected to give a perfect recollection of the exact floor of the house where she met appellant.

Forthright witnesses are not immune from committing minor inaccuracies in their narration of events. Trivial inconsistencies and inconsequential discrepancies on minor details in the testimonies of witness do not impair their credibility. They could, in fact, be badges of truth for they manifest spontaneity and erase any suspicion of a rehearsed testimony.[22] As long as the inconsistencies are immaterial or irrelevant to the elements of the crime and do not touch on material facts crucial to the guilt or innocence of the accused as in the present case, these are not valid grounds to reverse a conviction.[23]

Appellant's challenge to the assailed decision having failed, and no circumstance which creates reasonable doubt on his guilt being extant, his conviction must be upheld.

WHEREFORE, the appeal is *DISMISSED*. The assailed Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02096 is *AFFIRMED*.

No costs.

SO ORDERED.

Tinga, Velasco, Jr., Leonardo-de Castro,[*] and *Brion, JJ.,* concur.

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[22] *People v. Ortiz*, G.R. No. 133814, July 17, 2001, 361 SCRA 274; *People v. Jamiro*, G.R. No. 117576, September 18, 1997, 279 SCRA 290.

[23] *People v. Delmo*, G.R. Nos. 130078-82, October 4, 2002, 390 SCRA 395; *People v. Garcia*, G.R. No. 117406, January 16, 2001, 349 SCRA 67.

[*] Additional member in lieu of Justice Leonardo A.Quisumbing who is on official leave.

SECOND DIVISION

[G.R. No. 183232. April 30, 2009]

GILBERT T. DE LA PAZ, *petitioner, vs.* **MARIKINA FOOTWEAR DEVELOPMENT COOPERATIVE, INC. (MAFODECO), represented by its chairman RODOLFO DE GUZMAN,** *respondent.*

SYLLABUS

CIVIL LAW; LEASE; ORDERING PAYMENT OF RENTALS TO A PERSON WHO HAS NO RIGHT TO LEASE THE PROPERTY CONSTITUTES UNJUST ENRICHMENT; CASE AT BAR.— Respondent, in misrepresenting in its complaint for unlawful detainer that it is "the **OWNER**" of the property, attached a document entitled "*Pahintulot Sa Paghahanap-buhay*," which document, as the title itself says, is simply a permit or authority to engage in business. Apparently, respondent made such false declaration of ownership to make it appear that it had the right to lease the property to petitioner. When respondent filed on February 11, 2002 the complaint for unlawful detainer against petitioner, it could not also have anchored its right to lease the property on the "tolerance" of its previous owner Bayani who had died more than 11 years earlier or on October 16, 1993. Bayani's act of tolerance in favor of respondent had automatically ceased with his demise. In any event, when on January 1, 2001, Severina, the registered owner of the property since July 29, 1999, herself entered into a lease contract with petitioner, she severed the authority she may have previously given MAFODECO to lease the property to petitioner and to split the rentals therefor between her and MAFODECO. To allow petitioner, under the circumstances, to vacate the property and pay respondent rentals until the property shall have been vacated, as ordered by the MeTC and affirmed by both the RTC and Court of Appeals, petitioner's existing lease contact with Severina notwithstanding, would constitute unjust enrichment in favor of respondent and cause unjust *poverty to petitioner.*

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo Law Offices for petitioner.
Von P. Sto. Domingo for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Gilbert T. de la Paz (petitioner), operator of a water-refilling station, entered in May 7, 1998 into a contract of lease[1] with respondent Marikina Footwear Development Cooperative, Inc. (MAFODECO), represented by its chairman Rodolfo de Guzman (de Guzman), over a commercial space described as MAFODECO Store, Stall No. 25, located at the New Marikina Trade Fair Building, Sta. Elena, Marikina City, for a period of one (1) year or from May 9, 1998 until May 9, 1999 at a monthly rental of ₱8,000.

It appears that Bayani Vergara (Bayani), owner of the leased property, allowed MAFODECO to use the property as its office for free; and that upon Bayani's demise on October 16, 1993,[2] the ownership of the leased property was transferred to his spouse Severina. And petitioner, MAFODECO's chairman de Guzman, and Severina executed an "Agreement on Advance Rental"[3] under which petitioner agreed to pay Severina's real estate taxes of ₱28,000 and MAFODECO's outstanding association dues with the Marikina New Trade Fair Association (the Association) in the amount of ₱18,000, which amounts were to be deducted from his (petitioner's) rental payments. De Guzman in fact, by a document entitled "History of Payments,"[4] acknowledged the settlement of those amounts by petitioner.

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[1] Contract of Lease, *rollo*, pp. 29-30.

[2] Petitioner's Appeal Memorandum filed before the Regional Trial Court of Marikina City, Branch 273, *id* at 300.

[3] *Id.* at 31.

[4] *Id.* at 32.

Severina eventually agreed to split the rental payments of petitioner between her and MAFODECO starting May, 1998.

Petitioner and MAFODECO renewed the lease contract for another year beginning May 9, 1999 until May 9, 2000.[5] Upon the expiration of this lease contract, Severina advised petitioner that she opted to exercise her right as owner of the property and decided to discontinue the split rental arrangement.

Petitioner and Severina soon executed a lease contract[6] for the period January 1, 2001 to December 31, 2001, renewable every year at the option of both parties, at a monthly rental of ₱12,000.

MAFODECO later asked petitioner, by letter[7] dated October 12, 2001, "to pay the amount of at least Seventy Eight Thousand (₱78,000) Pesos (rent from August 2000 to July 2001)" and to vacate the property within five (5) days from notice.

Petitioner refused to heed the demand, prompting MAFODECO to file on February 11, 2002 a complaint[8] for unlawful detainer against him before the Metropolitan Trial Court (MeTC) of Marikina City, docketed as Civil Case No. 02-7304.

In its complaint, MAFODECO alleged, in the main, that it "is the **OWNER** and **LESSOR**" of the property "under a **verbal lease**," with a monthly rental of ₱8,000; and that petitioner "ha[d] not paid the rents for the leased premises since August 2000 up to the present, thereby leaving arrears in the amount of at least ₱156,000."[9]

Denying the material allegations of the complaint, petitioner, in his Answer with Counterclaim,[10] proffered that, among other

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[5] *Id.* at 62-63.

[6] *Id.* at 83-85.

[7] *Id.* at 86.

[8] *Id.* at 97-99.

[9] *Id* at 97, par. 5.

[10] *Id.* at 104-115.

things, MAFODECO, which has neither juridical nor physical possession of the property, has no cause of action against him since his possession thereof is anchored on the existing lease contract between him and Severina.

By Decision of June 25, 2002,[11] Marikina MeTC Branch 76 rendered judgment in favor of MAFODECO and against petitioner, ordering the latter to: (a) vacate the leased premises and surrender possession thereof to MAFODECO; (b) pay MAFODECO ₱8,000 per month beginning September 2000 until the property shall have been fully vacated; and (c) pay ₱10,000 attorney's fees, plus ₱1,500 per court appearance, and costs.

In finding for MAFODECO, the MeTC held that although Severina is the owner of the property, "she has not recovered possession [thereof] from MAFODECO; hence, she lacks the capacity to enter into a lease contract [with petitioner]"; that Severina should have filed "the proper *accion publiciana* against MAFODECO"; and that "all rental payments made [by petitioner] to Severina could not be considered as payment to MAFODECO."[12]

Branch 273 of the Regional Trial Court (RTC) of Marikina, by Decision of January 7, 2003,[13] affirmed the MeTC decision.

On petitioner's Petition for Review, the Court of Appeals, by Decision of August 31, 2007,[14] affirmed the RTC decision. His motion for reconsideration having been denied by Resolution of June 2, 2008, petitioner filed the present Petition for Review on *Certiorari*, faulting the Court of Appeals

(a) . . . in affirming the RTC Decision despite the undisputed fact that "respondent MAFODECO was aware that Bayani, Severina's

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[11] *Id*. at 271-287.

[12] *Id*. at pp. 285-286.

[13] *Id*. at 371-377.

[14] *Id*. at 426-440. Penned by Associate Justice Enrico A. Lanzanas with the concurrence of Associate Justices Remedios Salazar-Fernando and Rosalinda Asuncion-Vicente.

husband, from whom it claims a right over the property in question, had long died; yet, MAFODECO proceeded to lease the property to petitioner without even obtaining Severina's consent as the new owner."[15]

(b) . . . in requiring him to pay MAFODECO rent from September 2000 until he vacates the same, despite the undisputed fact that "he had religiously and fully paid rent to Severina beginning September 2000 and that his contract of lease with MAFODECO had expired in May 2000."[16] (Underscoring supplied)

The Court finds for petitioner.

Respondent, in misrepresenting in its complaint for unlawful detainer that it is "the **OWNER**" of the property, attached a document entitled "*Pahintulot Sa Paghahanap-buhay,*" which document, as the title itself says, is simply a permit or authority to engage in business. Apparently, respondent made such false declaration of ownership to make it appear that it had the right to lease the property to petitioner.

When respondent filed on February 11, 2002 the complaint for unlawful detainer against petitioner, it could not also have anchored its right to lease the property on the "tolerance" of its previous owner Bayani who had died more than 11 years earlier or on October 16, 1993. Bayani's act of tolerance in favor of respondent had automatically ceased with his demise.

In any event, when on January 1, 2001, Severina, the registered owner of the property since July 29, 1999, herself entered into a lease contract with petitioner, she severed the authority she may have previously given MAFODECO to lease the property to petitioner and to split the rentals therefor between her and MAFODECO.

To allow petitioner, under the circumstances, to vacate the property and pay respondent rentals until the property shall have been vacated, as ordered by the MeTC and affirmed by

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[15] Petition, *rollo*, p. 23.

[16] *Id.* at 24.

both the RTC and Court of Appeals, petitioner's existing lease contract with Severina notwithstanding, would constitute unjust enrichment in favor of respondent and cause unjust poverty to petitioner.

WHEREFORE, the Petition is *GRANTED* and the assailed Decision and Resolution of the Court of Appeals are *SET ASIDE*. Respondent MAFODECO's Complaint for unlawful detainer, docketed before the Metropolitan Trial Court of Marikina City as Civil Case No. 02-7304, is *DISMISSED*.

SO ORDERED.

Tinga, Velasco, Jr., Leonardo-de Castro,[*] and *Brion, JJ.*, concur.

SECOND DIVISION

[A.C. No. 5704. May 8, 2009]

WILLEM KUPERS, *complainant, vs.* **ATTY. JOHNSON B. HONTANOSAS,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; A LAWYER HAS THE DUTY TO ATTAIN THE ENDS OF JUSTICE BY MAINTAINING RESPECT FOR THE LEGAL PROFESSION.—** We stress that much is demanded from those who engage in the practice of law because they have a duty not only to their clients, but also to the court, to the bar, and to the public. The lawyer's diligence and dedication to his work and profession ideally should not only promote the interests of his clients. A lawyer

[*] Additional member in lieu of Justice Leonardo A. Quisumbing who is on official leave.

has the duty to attain the ends of justice by maintaining respect for the legal profession.

2. **ID.; ID.; ADMINISTRATIVE CASES AGAINST LAWYERS; COMPLAINANT NEED NOT BE THE AGGRIEVED PARTY; CASE AT BAR.—** Administrative cases against lawyers are *sui generes* and as such the complainant in the case need not be the aggrieved party. Thus even if complainant is not a party to the contracts, the charge of drafting and notarizing contracts in contravention of law holds weight. A plain reading of these contracts clearly shows that they violate the law limiting lease of private lands to aliens for a period of twenty five (25) years renewable for another twenty five (25) years.

3. **ID.; ID.; ID.; ONE OF FOREMOST SWORN DUTIES OF A LAWYER IS TO "OBEY THE LAWS OF THE PHILIPPINES."—** One of the foremost sworn duties of an attorney-at-law is to "obey the laws of the Philippines." This duty is enshrined in the Atttorney's Oath and in Canon 1, which provides that "(a) lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes." Rule 1.02 under Canon 1 states: "A lawyer shall not counsel or abet activities aimed at defiance of the law or at decreasing confidence in the legal systems."

4. **ID.; ID.; ID.; OTHER CANONS OF PROFESSIONAL RESPONSIBILITY WHICH RESPONDENT TRANSGRESSED; CASE AT BAR.—** The other canons of professional responsibility which respondent trangressed are the following: CANON 15 – A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENTS. x x x Rule 15.07- A lawyer shall impress upon his client compliance with the laws and the principles of hairness. CANON 17-A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

5. **ID.; ID.; DISBARMENT; NOT METED OUT WHERE A LESSER PENALTY WILL SUFFICE TO ACCOMPLISH THE DESIRED END.—** The supreme penalty of disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of

the court. While we will not hesitate to remove an erring attorney from the esteemed brotherhood of lawyers, where the evidence calls for it, we will also disbar him where a lesser penalty will suffice to accomplish the desired end.

APPEARANCES OF COUNSEL

I.P. Herrero Law Office for complainant.

R E S O L U T I O N

TINGA, *J.*:

This administrative case against respondent Atty. Johnson B. Hontanosas was triggered by a letter-complaint[1] dated April 15, 2002 of complainant Willem Kupers to the Court through the Court Administrator. The Court Administrator referred the letter to the Bar Confidant on April 25, 2002.[2] On May 7, 2002, the Acting Bar Confidant wrote complainant that for the court to take cognizance of an administrative case against a lawyer, a verified complaint must be filed in nineteen (19) copies together with supporting documents.[3] Thus, complainant was told to submit an additional thirteen (13) copies of his complaint. On May 25, 2002, complainant complied and submitted an additional thirteen (13) copies of his complaint.

Complainant alleged that respondent[4] had: (1) prepared and notarized contracts that are both invalid and illegal as these contracts violated the limitations on aliens leasing private lands; (2) served conflicting interests since he performed legal services for adverse parties; (3) refused to furnish copies of the contracts he notarized to the parties thereof; (4) notarized documents without keeping copies thereof and (5) failed to properly discharge his duty to his client Karl Novak, particularly when respondent

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[1] *Rollo* (Vol. 1), pp. 5-6.

[2] *Id.* at 4.

[3] *Id.* at 2.

[4] Records (Vol. 1), pp. 5-21, with annexes.

allegedly refused to accept his dismissal as counsel for Novak, failed to turn over Novak's documents thereafter, handled legal matters without adequate preparation, betrayed Novak's trust and refused to see Novak with a translator of Novak's choice.

Complainant claimed that as counsel for Hans and Vivian Busse, respondent had prepared a memorandum of agreement and a contract of lease between the spouses Busse and Hochstrasser, a Swiss national. Under said agreement, Hochstrasser would lease Vivian Busse's property in Alcoy, Cebu for fifty (50) years, renewable for another fifty (50) years.[5] Complainant added that respondent had acted despite conflict of interest on his part since the Spouses Busse and Hochstrasser were both his clients. Respondent prepared a similar agreement and lease contract between the spouses Busse and Karl Emberger, a Swiss national, over another parcel of land in Alcoy, Cebu. This time the lease contract was for a period of forty nine (49) years renewable for another forty nine (49) years.[6] All four (4) documents were notarized by respondent. It was also averred that respondent drafted two deeds of sale over the leased properties of Spouses Busse to Naomie Melchior, a Filipina, and Karl Novak, a German National.

The Court required respondent to comment on the charges.[7] He answered that if anyone should be penalized, it should be complainant for meddling in the affairs of his clients and otherwise making a mockery of the Philippine legal system by deceitfully passing as material facts opinionated, baseless and false allegations as well as a falsified document.[8] Respondent also moved that complainant be made to show cause why he should not be cited for contempt.

Complainant filed a reply on November 6, 2002, in which he stated among other things that respondent is like Pontius Pilatus [sic].[9]

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[5] *Id*. at 21-28.

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

[7] *Id*. at 162.

[8] *Id*. at 168-216, with annexes.

[9] *Id*. at 286-328, with annexes.

On February 10, 2003, the Court resolved to refer the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[10]

In lieu of hearings, Commissioner Doroteo Aguila required the parties to file their respective memoranda due to the limited time period given by the Court. The parties did. The Commissioner found that respondent had prepared and notarized contracts that violated Presidential Decree No. 471 (P.D. No. 471) since leases of private lands by aliens cannot exceed twenty five (25) years, renewable for another twenty five (25) years.[11] Nonetheless, complainant failed to prove the other charges he had hurled against respondent as the former was not privy to the agreements between respondent and the latter's clients. Moreover, complainant failed to present any concrete proof of the other charges. The commissioner recommended that respondent be suspended from the practice of law for two (2) months.

Upon review, the IBP Board of Governors disregarded the recommendation of the commissioner and dismissed the complaint on February 27, 2004.[12] The Board of Governors ratiocinated that suspension was not warranted since respondent did not really perform an illegal act. The act was not illegal *per se* since the lease agreement was likely made to reflect the agreement among the parties without considering the legality of the situation. While admittedly respondent may be guilty of ignorance of the law or plain negligence, the Board dismissed the complaint out of compassion.

We reject the Board's recommendation. We stress that much is demanded from those who engage in the practice of law because they have a duty not only to their clients, but also to the court, to the bar, and to the public.[13] The lawyer's diligence and dedication to his work and profession ideally should not only

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[10] *Id*. at 376.

[11] Records (Vol. V), pp. 72-76.

[12] *Id*. at 70-71.

[13] *Endaya v. Atty. OCA*, 547 Phil. 314, 329 (2003).

promote the interests of his clients. A lawyer has the duty to attain the ends of justice by maintaining respect for the legal profession.[14]

The investigating commissioner and the IBP Board of Governors both found that the majority of the charges against the respondent lack proof. Our own review of the records confirms that most of the charges are unsupported by evidence. Such charges are simply the unsubstantiated accusations in the complaint with nary a whit of concrete proof such as affidavits of the clients whose trust respondents had allegedly breached.

However, administrative cases against lawyers are *sui generes* and as such the complainant in the case need not be the aggrieved party. Thus even if complainant is not a party to the contracts, the charge of drafting and notarizing contracts in contravention of law holds weight. A plain reading of these contracts clearly shows that they violate the law limiting lease of private lands to aliens for a period of twenty five (25) years renewable for another twenty five (25) years.

In his defense, respondent avers that the assailed contracts are valid under Republic Act No. 7652 (R.A. No. 7652), entitled "An Act Allowing The Long-Term Lease of Private Lands by Foreign Investors." They add that these contracts should not be viewed purely as lease contracts since they allow the leasor to nominate a Filipino citizen or corporation to purchase the subject property within the lease period. Respondent's defenses are frivolous. Assuming that it can be duly established that his foreign clients are indeed "foreign investors" as contemplated under R.A. No. 7652,[15] said law allows the lease for the original

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[14] *Santiago v. Fojas*, A.C. No. 4103, 7 September 1995, 248 SCRA 68, 75-76.

[15] See Section 3(1), Rep. Act No. 7652. "Investing in the Philippines" shall mean making an equity investment in the Philippines through actual remittance of foreign exchange or transfer of assets, whether in the form of capital goods, patents, formulae, or other technological rights or processes, upon registration with the Securities and Exchange Commission."

period of fifty (50) years, renewable for another period of twenty five (25) years, well below the periods of fifty (50) years renewable for another fifty (50) years, and forty-nine (49) years renewable for another forty-nine (49) years respectively, stipulated in the two lease agreements.

Respondent, by drafting the questioned lease agreements, caused his clients to violate Section 7 of R.A. No. 7652 which states:

> **Sec. 7. Penal Provision.** — Any contract or agreement made or executed in violation of any of the following prohibited acts shall be null and void *ab initio* and both contracting parties shall be punished by a fine of not less than One Hundred thousand pesos (₱100,000) nor more than One million pesos (₱1,000,000), or imprisonment of six (6) months to (6) years, or both, at the discretion of the court:
>
> **(1) Any provision in the lease agreement stipulating a lease period in excess of that provided in paragraph (1) of Section 4;**
>
> (2) Use of the leased premises for the purpose contrary to existing laws of the land, public order, public policy, morals, or good customs;
>
> (3) Any agreement or agreements resulting is the lease of land in excess of the area approved by the DTI: *Provided*, That, where the excess of the totality of the area leased is due to the acts of the lessee, the lessee shall be held solely liable therefor: *Provided*, *further*, That, in the case of corporations, associations, or partnerships, the president, manager, director, trustee, or officers responsible for the violation hereof shall bear the criminal liability. (Emphasis ours)

In preparing and notarizing the illegal lease contracts, respondent violated the Attorney's Oath and several canons of the Code of Professional Responsibility. One of the foremost sworn duties of an attorney-at-law is to "obey the laws of the Philippines." This duty is enshrined in the Attorney's Oath[16] and in Canon 1,

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See also Section 5(1) of the same law. "Foreign individuals, corporations, associations, or partnerships not otherwise investing in the Philippines as defined herein shall continue to be covered by Presidential Decree No. 471 and other existing laws in lease of land to foreigners."

[16] RULES OF COURT, Rule 138, Sec. 20(a).

which provides that "(a) lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes." Rule 1.02 under Canon 1 states: "A lawyer shall not counsel or abet activities aimed at defiance of the law or at decreasing confidence in the legal systems."

The other canons of professional responsibility which respondent transgressed are the following:

CANON 15 – A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENTS.

xxx xxx xxx

Rule 15.07— A lawyer shall impress upon his client compliance with the laws and the principles of fairness.

CANON 17 – A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

Aside from constituting violation of the lawyer's oath, the acts of respondents also amount to gross misconduct under Section 27, Rule 138 of the Rules of Court, which provides:

SEC. 27. *Disbarment or suspension of attorneys by Supreme Court, grounds therefor*.— A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a wilful disobedience appearing as an attorney for a party to a case without authority so to do. x x x

The supreme penalty of disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court. While we will not hesitate to remove an erring attorney from the esteemed brotherhood of lawyers, where the evidence calls for it, we will also not disbar him where a lesser penalty will suffice to accomplish

the desired end.

We cannot accept, however, the plea of leniency expressed by the IBP Board of Governors in behalf of respondent. We also find that the suspension for two (2) months recommended by the IBP Investigating Commissioner too light. We find six (6) months suspension to be a sufficient sanction against respondent.

WHEREFORE, respondent Atty. Johnson B. Hontanosas, is found *GUILTY* of violating the lawyer's oath and gross misconduct. He is *SUSPENDED* from the practice of law for six (6) months with a *WARNING* that a repetition of the same or similar act will be dealt with more severely. Respondent's suspension is effective upon notice hereof. Let notice of this Resolution be spread in respondent's record as an attorney in this Court, and notice of the same served on the Integrated Bar of the Philippines and on the Office of the Court Administrator for circulation to all the courts concerned.

SO ORDERED.

Carpio Morales,[*] *Velasco, Jr., Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

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[*] Acting chairperson as replacement of Associate Justice Leonardo Quisumbing who is on official leave per Special Order No. 618.

[**] Additional member of the Second Division per Special Order No. 619.

SECOND DIVISION

[G.R. No. 136978. May 8, 2009]

GD EXPRESS WORLDWIDE N.V. and AMIHAN MANAGEMENT SERVICES, INC., *petitioners, vs.* **HON. COURT OF APPEALS (FOURTH DIVISION), HON. SECURITIES AND EXCHANGE COMMISSION (*en banc*), HON. ROSITA R. GUERRERO, in her capacity as Hearing Officer, and FILCHART AIRWAYS, INC.,** *respondents.*[*]

SYLLABUS

1. **REMEDIAL LAW; JURISDICTION; INTRA-CORPORATE CONTROVERSIES; TRANSFERRED FROM THE SECURITIES AND EXCHANGE COMMISSION (SEC) TO THE REGIONAL TRIAL COURTS (RTCs) OR SPECIAL COMMERCIAL COURTS (SCC).—** Pursuant to Section 5.2 of Republic Act No. 8799, the SEC's jurisdiction over intra-corporate controversies has been transferred to the RTCs or Special Commercial Courts (SCC) designated by the Court pursuant to A.M. No. 00-11-03-SC promulgated on 21 November 2000.

2. **ID.; ID.; ID.; SOME EXAMPLES OF PRAYERS OF RESPONDENT WHICH ARE INTRA-CORPORATE IN NATURE; CASE AT BAR.—** There is no question that the prayers for the appointment of a management receiver, the nullification and amendment of certain provisions of PEAC's articles of incorporation and by-laws, the recognition of the election of respondent Filchart's directors, as well as the inspection of the corporate books, are intra-corporate in nature as they pertain to the regulation of corporate affairs. Even the issue of respondent Filchart's status as stockholder in PEAC and, concomitantly, its capacity to file SEC Case No. 08-97-5746 must be threshed out in the intra-corporate proceedings. Petitioner GD Express' allegation that respondent Filchart has

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[*] In a Supplemental Petition dated 03 February 1999, which was admitted pursuant to a Resolution dated 08 February 1999, petitioners impleaded the following additional respondents: SEC Hearing Officers Ysobel S.Y. Murillo and Juanito B. Almosa, Jr. and members of the Interim Management Committee, namely, Atty. Cornelio T. Peralta and Jose Antonio Lim.

not fully paid its subscription to the shares in PEAC and, thus, cannot claim to be a stockholder in PEAC does not oust the SCC of its jurisdiction over the case. For the purpose of determining whether SEC Case No. 08-97-5746 should be heard as an intra-corporate proceeding, the allegation in respondent Filchart's petition that it is a stockholder in PEAC is deemed hypothetically admitted. It is only after a full-blown hearing that the SCC may determine whether respondent Filchart's may be considered a *bona fide* stockholder of PEAC and is entitled to the reliefs prayed for in its petition.

3. **ID.; ID.; REGIONAL TRIAL COURTS; RTCs TO BE DESIGNATED AS SCCs STILL CONSIDERED COURTS OF GENERAL JURISDICTION.—** It should be noted that the SCCs are still considered courts of general jurisdiction. Section 5.2 of R.A. No. 8799 directs merely the Supreme Court's designation of RTC branches that shall exercise jurisdiction over intra-corporate disputes. Nothing in the language of the law suggests the diminution of jurisdiction of those RTCs to be designated as SCCs. The assignment of intra-corporate disputes to SCCs is only for the purpose of streamlining the workload of the RTCs so that certain branches thereof like the SCCs can focus only on a particular subject matter. The RTC exercising jurisdiction over an intra-corporate dispute can be likened to an RTC exercising its probate jurisdiction or sitting as a special agrarian court. The designation of the SCCs as such has not in any way limited their jurisdiction to hear and decide cases of all nature, whether civil, criminal or special proceedings.

4. **ID.; ID.; ID.; ID.; SUSPENSION OF PROCEEDINGS; WHEN PROPER; CASE AT BAR.—** There is no jurisdictional infirmity for either court (the RTC hearing Civil Case No. 96-17-675 and the SCC assigned to hear SEC Case No. 08-97-5746), the only question that remains is whether Civil Case No. 96-17-675 and SEC Case No. 08-97-5746, now transferred to the proper SCC, may proceed concurrently or should be consolidated or whether SEC Case No. 08-97-5746 should be suspended to await the outcome of Civil Case No. 96-17-675. x x x The issue of the interpretation of the provisions of the joint venture agreements is among the subjects of Civil Case No. 96-17-675. On the one hand, petitioner GD Express is claiming therein that the joint venture agreements requiring

the petitioner GD Express' consent to the sale of PADC's shares in PEAC must be enforced while respondent Filchart instituted SEC Case No. 08-97-5746 precisely to nullify the said provision. There is no doubt that the objects of both suits are necessarily connected; hence, respondent Filchart's prayer for the nullification of the joint venture agreements should have been raised as a defense in Civil Case No. 96-17-675 because there exists a logical relationship between the two claims. Conducting separate trials of the respective claims of the parties would entail substantial duplication of time and effort by the parties and the court. As regards the aforementioned intra-corporate issues raised in SEC Case No. 08-97-5746, the resolution thereof is necessarily connected with the outcome of Civil Case No. 96-17-675. The transactions alleged in SEC Case No. 08-97-5746 had come about as an offshoot of the events forming the basis of Civil Case No. 96-17-675. The latter ultimately seeks to nullify the award in favor of and the consequent transfer of PEAC shares to respondent Filchart. The outcome in Civil Case No. 96-17-675, that is, whether or not the award in favor of and the sale of PEAC's shares to respondent Filchart is valid, will have a bearing on respondent Filchart's capacity to institute the intra-corporate suit. The test to determine whether the suspension of the proceedings in the SECOND CASE is proper is whether the issues raised by the pleadings in the FIRST CASE are so related with the issues raised in the SECOND CASE, such that the resolution of the issues in the FIRST CASE would determine the issues in the SECOND CASE.

5. ID.; ID.; ID.; ID.; ID.; ID.; POWER TO STAY PROCEEDINGS IS INCIDENTAL TO POWER INHERENT IN EVERY COURT TO CONTROL DISPOSITION OF CASES ; CASE AT BAR.— The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the cases on its dockets, considering its time and effort, that of counsel and the litigants. But if proceedings must be stayed, it must be done in order to avoid multiplicity of suits and prevent vexatious litigations, conflicting judgments, confusion between litigants and courts. It bears stressing that whether or not the RTC, in this case the SCC, would suspend the proceedings in the SECOND CASE is submitted to its sound discretion. Thus, the SCC to which SEC Case No. 08-97-5746 was transferred has sufficient discretion to determine whether under the

circumstances of the case, it should await the outcome of Civil Case No. 96-17-675.

6. ID.; ID.; FORUM SHOPPING; NOT PRESENT IN CASE AT BAR.— The essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. The elements of forum shopping are: (a) identity of parties, or at least such parties as represent the same interests in both action; (b) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (c) the identity with respect to the two preceding particulars in the two cases is such that any judgment rendered in the pending cases, regardless of which party is successful, amount to *res judicata* in the other case.

APPEARANCES OF COUNSEL

Carpio Villaraza & Cruz for petitioners.
Ceniza Ocampo & Associates for respondents.

D E C I S I O N

TINGA, *J.*:

Before the Court is a petition for review on *certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision[2] of the Court of Appeals in CA-G.R. SP No. 48442 and praying for the dismissal of the petition filed before the Securities and Exchange Commission (SEC) by respondent Filchart Airways, Inc. (Filchart) in SEC Case No. 08-97-5746.

The following factual antecedents are matters of record.

Petitioner GD Express Worldwide N.V. (GD Express) is a corporation duly organized and existing under the laws of the Netherlands. On 27 September 1990, its predecessor-in-interest,

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[1] *Rollo*, pp. 10-113.

[2] Dated 23 December 1998 and penned by Justice Marina L. Buzon and concurred in by Justices Jesus M. Elbinias, Chairman of the Fourth Division, and Eugenio S. Labitoria; *Id.* at 115-123.

TNT Limited (TNT) entered into a joint venture agreement with Philippine Aerospace Development Corporation (PADC) for the establishment of a domestic corporation as their corporate vehicle to operate as an international air freight carrier. The joint venture agreements stipulated that PADC would own 80% of the shares of stock of the corporate vehicle while TNT would own the remaining 20%.[3]

The agreements essentially laid down the relationship between TNT and PADC and the management, control and existence of the corporation. Also, pursuant to the joint venture agreements, PADC and TNT registered with the SEC a corporation to be known as Air Philippines Corporation (APC).

Subsequently, on 11 December 1992, APC amended its articles of incorporation to change its corporate name to Pacific East Asia Cargo Airlines, Inc. (PEAC). On 02 April 1993, TNT transferred all its shares in PEAC to petitioner GD Express.[4] PEAC immediately commenced operations. Herein petitioner Amihan Management Services, Inc. (Amihan), a domestic corporation, was contracted to undertake the daily operations in PEAC pursuant to the joint venture agreement.[5]

Sometime in 1994, the Office of the President mandated the Committee on Privatization to require the Asset Privatization Trust (APT) to dispose of PADC's 80% share in PEAC. Thus, petitioner GD Express and PADC executed the Terms of Reference that would govern the disposition of PADC's equity comprising 12,800 subscribed shares of stock in PEAC.[6]

In March 1996, the APT issued the Asset Specific Bidding Rules (ASBR) incorporating the Terms of Reference for the sale of PADC's shares of stock in PEAC. The ASBR required prospective bidders, among others, to comply with the obligations and undertakings/warranties enumerated therein. At the bidding conducted on 19 March 1996, respondent Filchart, also a domestic

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[3] *Id.* at 115-116.

[4] *Id.* at 116.

[5] *Id.* at 357.

[6] *Id.* at 116.

corporation, emerged as the highest bidder of the 12,800 shares of stock owned by PADC in PEAC.

Alleging that respondent Filchart was bent on reneging on its obligations and warranties under the ASBR and Terms of Reference, petitioner GD Express instituted on 14 October 1996, Civil Case No. 96-1675 for specific performance before the Regional Trial Court (RTC) of Makati to compel PADC and APT to faithfully comply with the joint venture agreements, the ASBR and the Terms of Reference, with a prayer for the preservation of the *status quo ante litem*.

During the pendency of Civil Case No. 96-1675, PADC and respondent Filchart executed on 04 March 1997 the corresponding deed of absolute sale, by virtue of which PADC sold to respondent Filchart its shares of stock in PEAC in consideration of the bid price of ₱110,000,000.00.[7] The sale was duly recorded in PEAC's stock and transfer book and the shares of stock were transferred in the name of respondent Filchart.[8]

This prompted petitioner GD Express to file an amended complaint[9] to introduce another cause of action for the nullification of the said transfer and to implead the Committee on Privatization, the PEAC and respondent Filchart as additional defendants. The amended complaint reiterated the prayer for the issuance of a temporary restraining order (TRO) and writ of preliminary injunction. Respondent Filchart opposed the issuance of TRO, claiming that the dispute was intra-corporate in nature falling within the SEC's jurisdiction.[10]

In the amended complaint dated 06 June 1997, petitioner sought to nullify the approval by the Committee on Privatization and the notice of award issued by the APT in favor of respondent Filchart and to compel the defendants to perform all their respective obligations under the joint venture agreements, the

[7] *Id.* at 117.

[8] *Id.* at 317.

[9] *Id.* at 454.

[10] *Id.* at 118.

ASBR and the Terms of Reference and to desist from committing further breach thereof or, in the alternative, to nullify any transfer and/or issuance of PADC's subscribed shares of stock in PEAC in favor of respondent Filchart. Petitioner GD Express also prayed for an award of temperate and exemplary damages and attorney's fees.[11] On 22 August 1997, the RTC issued a temporary restraining order against respondent Filchart in Civil Case No. 96-1675.[12]

Meanwhile, on 12 August 1997, respondent Filchart filed before the SEC a petition, docketed as SEC Case No. 08-97-5746, praying for the appointment of a management committee to take over the business operations of PEAC pending litigation and for judgment declaring, among others, the nullity of certain provisions in the joint venture agreement between PADC and petitioner GD Express, particularly those requiring the consent of petitioner GD Express in the sale of PADC's shareholdings in PEAC. Also sought to be nullified were certain provisions in PEAC's articles of incorporation and by-laws, and the management agreement between petitioners GD Express and Amihan. Named respondents were herein petitioners GD Express and Amihan.[13]

On 29 September 1997, petitioners filed a motion to dismiss the petition in SEC Case No. 08-97-5746 on the grounds that its filing constituted a willful and deliberate act of forum shopping and that respondent Filchart had no capacity to sue and cause of action to ask for the appointment of a management committee pending the determination of its status as a stockholder.[14]

On 21 November 1997, Hearing Officer Rosita R. Guerrero issued an order denying petitioners' motion to dismiss, holding that SEC Case No. 08-97-5746 pertained to different causes of action falling under the exclusive jurisdiction of the SEC. Petitioners' motion for reconsideration was denied in an Order dated 08 December 1997.[15]

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[11] *Id.* at 484-491.

[12] *Id.* at 118.

[13] *Id.*

[14] *Id.* at 119.

[15] *Id.*

Petitioners elevated the matter to the SEC *en banc* via a petition for *certiorari*. Acting on petitioners' prayer for the issuance of a TRO, the SEC *en banc* issued an order on 15 December 1997 enjoining the Hearing Officer from appointing a management committee and conducting any proceedings on the petition. However, the SEC *en banc* eventually dismissed the petition for *certiorari* and affirmed the two aforementioned orders of the Hearing Officer. The SEC *en banc* likewise denied petitioners' motion for reconsideration.[16]

Aggrieved, petitioners filed a Rule 43 petition before the Court of Appeals arguing that the Hearing Officer had no jurisdiction over SEC Case No. 08-97-5746 on the following grounds: (1) the dispute was not intra-corporate in character considering that respondent Filchart had not fully paid the subscription rights in PADC; (2) respondent Filchart's status as stockholder in PEAC must be settled first in Civil Case No. 96-1675; and (3) a request from the supervising government agency must be secured first before the appointment of a management committee to undertake the management of PEAC. Petitioners also pointed out that the filing of the petition in SEC Case No. 08-97-5746 constituted a willful and deliberate act of forum shopping and that the Hearing Officer dismissed petitioners' motion to dismiss and motion for reconsideration without stating clearly and distinctly the reasons of the dismissal.[17]

On 23 December 1998, the Court of Appeals rendered the assailed decision, dismissing the petition for lack of merit. The appellate court ruled that the SEC had jurisdiction over a petition filed by a non-stockholder like respondent Filchart under Section 5(a) of P.D. No. 902-A, where fraud and misrepresentation detrimental to public interest were alleged to have been committed by petitioner GD Express against PEAC. As regards the issue of respondent Filchart's status as a stockholder, the appellate court held that the resolution thereof needed a study of the merits of the case and should be referred to the SEC Hearing

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[16] *Id.*

[17] *Id.* at 120-121.

Officer. The appellate court further held that respondent Filchart did not commit forum shopping in filing SEC Case No. 08-97-5746 because the causes of action raised therein were different from those raised in Civil Case No. 96-1675.[18]

Hence, the instant petition, arguing that the SEC Hearing Officer was not authorized to assume jurisdiction over SEC Case No. 08-97-5746 for the following reasons: (1) the status of respondent Filchart must first be resolved with finality in Civil Case No. 96-1675; (2) there is no intra-corporate dispute since respondent Filchart is not a stockholder; (3) SEC jurisdiction under Section 5(a) of P.D. No. 902-A does not apply to SEC Case No. 08-97-5746; (4) prior request of the supervising government agency must first be secured before the SEC Hearing Officer can appoint a management committee; and (5) the filing of SEC Case No. 08-97-5746 constitutes a willful and deliberate act of forum shopping.[19]

Subsequently, petitioners filed a supplemental petition,[20] which was admitted by the Court. The supplemental petition averred that the SEC constituted a Hearing Panel in SEC Case No. 08-97-5746. On the same day the instant petition was filed or on 29 January 1999, the said SEC Hearing Panel purportedly issued an *ex-parte* order creating and appointing an Interim Management Committee in PEAC. Two members of the SEC Hearing Panel allegedly went to the PEAC office to implement the said order. Thus, petitioners sought to implead additional respondents, namely: SEC Hearing Officers Ysobel S.Y. Murillo and Juanito B. Almosa, Jr., as well as Atty. Cornelio T. Peralta and Jose Antonio Lim, two of the members of the Interim Management Committee.[21]

The supplemental petition was accompanied by an application for the issuance of a TRO and/or writ of preliminary injunction

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

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

[20] *Id.* at 1274.

[21] *Id.* at 1256-1259.

to enjoin the SEC Hearing Panel from assuming jurisdiction over SEC Case No. 08-97-5746 and the Interim Management Committee from implementing the Order dated 29 January 1999.[22] The supplemental petition reiterated the prayers for the reversal of the assailed decision of the Court of Appeals, for the dismissal of respondent Filchart's petition in SEC Case No. 08-97-5746 and for making permanent the injunction which may be granted in the instant case.[23]

At the core of the instant petition is the issue of whether the SEC erred in assuming jurisdiction over respondent Filchart's petition in SEC Case No. 08-97-5746 during the pendency of Civil Case No. 96-1675. Corollary to this is the question whether the filing thereof during the pendency of Civil Case No. 96-1675 constitutes a willful and deliberate act of forum shopping on the part of respondent Filchart.

At the outset, it must be emphasized that pursuant to Section 5.2[24] of Republic Act No. 8799,[25] the SEC's jurisdiction over intra-corporate controversies has been transferred to the RTCs or Special Commercial Courts (SCC) designated by the Court pursuant to A.M. No. 00-11-03-SC promulgated on 21 November 2000.

In view of the said transfer of jurisdiction, the SEC Hearing Panel which the SEC constituted and the Interim Management Committee which the SEC Hearing Panel appointed have become

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[22] *Id.* at 1271.

[23] *Id.* at 1272.

[24] R.A. No. 8799, Section 5.2. The Commission's jurisdiction over all cases enumerated under section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided*, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over the cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payment/ rehabilitation cases filed as of 30 June 2000 until finally disposed.

[25] Entitled "The Securities Regulation Code;" approved on 19 July 2000.

functus officio. Petitioners' prayer for a TRO and/or writ of injunction to prevent the said bodies from acting upon their authority has been rendered moot and academic by this development.

R.A. No. 8799 became effective during the pendency of both Civil Case No. 96-1675 and SEC Case No. 08-97-5746. It appears that the records of SEC Case No. 08-97-5746 have already been forwarded to the Office of the Court Administrator for proper transmittal to the appropriate SCC.[26] Be that as it may, the resolution of this petition is not rendered moot by the transfer of jurisdiction from the SEC to the SCC. The question whether Civil Case No. 96-1675 can proceed simultaneously and independently with the intra-corporate case or whether both cases should be consolidated or either case suspended or dismissed remains to be settled.

Petitioners argue that the assumption of jurisdiction by the SEC over SEC Case No. 08-97-5746 has resulted in the splitting of jurisdiction over the issues of which the RTC has already previously assumed jurisdiction in Civil Case No. 96-17-675. Petitioners theorize that **all** issues pertaining to the validity and enforceability of the obligations of respondent Filchart under the joint venture agreements, the ASBR and the Terms of Reference, as well as the validity of certain provisions in PEAC's articles of incorporation and by-laws, the supposed transfer and issuance of subscribed shares to respondent Filchart and the exercise of rights of ownership over said shares, must be resolved by the RTC in Civil Case No. 96-17-675.

On the other hand, respondent Filchart argues that Civil Case No. 96-17-675 is an intra-corporate dispute exclusively cognizable by the SEC because the questions therein necessarily involve a determination of the validity of certain acts of a shareholder of a corporation, that is, whether the sale by PADC of its shares in PEAC to respondent Filchart is valid.

Respondent Filchart's petition in SEC Case No. 08-97-5746 prays for the following reliefs:

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[26] SEC Records, p. 275.

WHEREFORE, it is respectfully prayed that, after notice and hearing:

1. Pending judgment on the merits, an interim order be issued creating and appointing a Management Committee to take over the management of the business operations and affairs of PEAC; such Management Committee to be composed of a SEC representative to serve as Chairman, three (3) members to be nominated by Filchart and one (1) member to be nominated by GD Express.

2. After hearing on the merits, judgment be rendered in favor of Filchart:

(a) Declaring *void ab initio* for being contrary to law and public policy, and the Constitution (i) Sec. 6.1 of the Pre-Incorporation Agreement and Section 21.1 of the Shareholders Agreement which provisions purport to restrict PADC's right to sell, assign or transfer its shareholdings in PEAC without the written consent of GD Express; (ii) Article 10 [2], [3] of the Article of Incorporation of PEAC; and (iii) Section 8, Article II Section 5, Article III of the By-Laws of PEAC.

(b) Annulling and setting aside for being contrary to law, public policy and the Constitution the Management Agreement entered into between PEAC and Amihan.

(c) Directing the stockholders of PEAC to amend PEAC's Articles of Incorporation and By-Laws by deleting the provisions declared *void ab initio* as prayed for above.

(d) Declaring Filchart's nominees, namely: Robin Sy, Jose Antonio Lim, Eduardo R. Ceniza, Domingo G. Castillo and Ricardo P.G. Ongkiko, as having been duly elected directors of PEAC at the Special Meeting of the Stockholders held on August 5, 1997, and ordering defendant GD Express, its officers, and all persons acting in their behalf to allow said nominee directors of Filchart to have access to the office premises of PEAC, its records and its properties.

(e) Ordering GD Express to pay Filchart –

[i] nominal damages in the amount of ₱1,000,000.00;

[ii] temperate damages in such amount as the Honorable Commission may fix in its discretion;

[iii] exemplary damages in the amount of ₱500,000.00;

[iv] attorney's fees, in the amount of ₱2,000,000.00, plus expenses of litigation the amount of which will be proved at the trial.

[v] the costs of suit.

Filchart prays for such other reliefs just and equitable under the premises.[27]

There is no question that the prayers for the appointment of a management receiver, the nullification and amendment of certain provisions of PEAC's articles of incorporation and by-laws, the recognition of the election of respondent Filchart's directors, as well as the inspection of the corporate books, are intra-corporate in nature as they pertain to the regulation of corporate affairs.

Even the issue of respondent Filchart's status as stockholder in PEAC and, concomitantly, its capacity to file SEC Case No. 08-97-5746 must be threshed out in the intra-corporate proceedings. Petitioner GD Express' allegation that respondent Filchart has not fully paid its subscription to the shares in PEAC and, thus, cannot claim to be a stockholder in PEAC does not oust the SCC of its jurisdiction over the case. For the purpose of determining whether SEC Case No. 08-97-5746 should be heard as an intra-corporate proceeding, the allegation in respondent Filchart's petition that it is a stockholder in PEAC is deemed hypothetically admitted. It is only after a full-blown hearing that the SCC may determine whether respondent Filchart's may be considered a *bona fide* stockholder of PEAC and is entitled to the reliefs prayed for in its petition.

However, in view of the transfer of jurisdiction over intra-corporate disputes from the SEC to the SCCs, which are the same RTCs exercising general jurisdiction, the question of jurisdiction is no longer decisive to the resolution of the instant case.

It should be noted that the SCCs are still considered courts of general jurisdiction. Section 5.2 of R.A. No. 8799[28] directs

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[27] *Rollo*, pp. 322-323.

[28] *Supra*.

merely the Supreme Court's designation of RTC branches that shall exercise jurisdiction over intra-corporate disputes. Nothing in the language of the law suggests the diminution of jurisdiction of those RTCs to be designated as SCCs. The assignment of intra-corporate disputes to SCCs is only for the purpose of streamlining the workload of the RTCs so that certain branches thereof like the SCCs can focus only on a particular subject matter.

The designation of certain RTC branches to handle specific cases is nothing new. For instance, pursuant to the provisions of the R.A. No. 6657 or the Comprehensive Agrarian Reform Law, the Supreme Court has assigned certain RTC branches to hear and decide cases under Sections 56 and 57 of R.A. No. 6657.

The RTC exercising jurisdiction over an intra-corporate dispute can be likened to an RTC exercising its probate jurisdiction or sitting as a special agrarian court. The designation of the SCCs as such has not in any way limited their jurisdiction to hear and decide cases of all nature, whether civil, criminal or special proceedings.

There is no jurisdictional infirmity for either court (the RTC hearing Civil Case No. 96-17-675 and the SCC assigned to hear SEC Case No. 08-97-5746), the only question that remains is whether Civil Case No. 96-17-675 and SEC Case No. 08-97-5746, now transferred to the proper SCC, may proceed concurrently or should be consolidated or whether SEC Case No. 08-97-5746 should be suspended to await the outcome of Civil Case No. 96-17-675.

Incidentally, not all the prayers and reliefs sought by respondent Filchart in SEC Case No. 08-97-5746 can be characterized as intra-corporate in nature. For instance, respondent Filchart's petition does not allege that the cause of action for the nullification of the management contract between PEAC and petitioner Amihan is being instituted as a derivative suit. It is an ordinary action for the nullification of a contract, which is cognizable by courts of general jurisdiction.

The issue of the interpretation of the provisions of the joint venture agreements is among the subjects of Civil Case No. 96-17-675. On the one hand, petitioner GD Express is claiming therein that the joint venture agreements requiring the petitioner GD Express' consent to the sale of PADC's shares in PEAC must be enforced while respondent Filchart instituted SEC Case No. 08-97-5746 precisely to nullify the said provision. There is no doubt that the objects of both suits are necessarily connected; hence, respondent Filchart's prayer for the nullification of the joint venture agreements should have been raised as a defense in Civil Case No. 96-17-675 because there exists a logical relationship between the two claims. Conducting separate trials of the respective claims of the parties would entail substantial duplication of time and effort by the parties and the court.[29]

As regards the aforementioned intra-corporate issues raised in SEC Case No. 08-97-5746, the resolution thereof is necessarily connected with the outcome of Civil Case No. 96-17-675. The transactions alleged in SEC Case No. 08-97-5746 had come about as an offshoot of the events forming the basis of Civil Case No. 96-17-675. The latter ultimately seeks to nullify the award in favor of and the consequent transfer of PEAC shares to respondent Filchart. The outcome in Civil Case No. 96-17-675, that is, whether or not the award in favor of and the sale of PEAC's shares to respondent Filchart is valid, will have a bearing on respondent Filchart's capacity to institute the intra-corporate suit.

The test to determine whether the suspension of the proceedings in the SECOND CASE is proper is whether the issues raised by the pleadings in the FIRST CASE are so related with the issues raised in the SECOND CASE, such that the resolution of the issues in the FIRST CASE would determine the issues in the SECOND CASE.[30]

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[29] See *Lafarge Cement Phils. Inc. v. Continental Cement Corp.,* 486 Phil. 123 (2004).

[30] *Security Bank Corp. v. Victorio*, G.R. No. 155099, 31 August 2005, 468 SCRA 609, 627-628.

The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the cases on its dockets, considering its time and effort, that of counsel and the litigants. But if proceedings must be stayed, it must be done in order to avoid multiplicity of suits and prevent vexatious litigations, conflicting judgments, confusion between litigants and courts. It bears stressing that whether or not the RTC, in this case the SCC, would suspend the proceedings in the SECOND CASE is submitted to its sound discretion.[31]

Thus, the SCC to which SEC Case No. 08-97-5746 was transferred has sufficient discretion to determine whether under the circumstances of the case, it should await the outcome of Civil Case No. 96-17-675.

Furthermore, petitioners also contend that respondent Filchart committed a deliberate act of forum shopping in filing SEC Case No. 08-97-5746.

The essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. The elements of forum shopping are: (a) identity of parties, or at least such parties as represent the same interests in both action; (b) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (c) the identity with respect to the two preceding particulars in the two cases is such that any judgment rendered in the pending cases, regardless of which party is successful, amount to *res judicata* in the other case.[32]

To begin with, respondent Filchart did not file multiple suits but only a single action which is SEC Case No. 08-97-5746. As already explained above, the outcome in Civil Case

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[31] *Security Bank Corp. v. Victorio*, G.R. No. 155099, 31 August 2005, 468 SCRA 609, 628.

[32] *United Overseas Bank Phils. v. Rosemoore Mining & Development Corp.*, G.R. Nos. 159669 & 163521, 12 March 2007, 518 SCRA 123, 134, citing *Mondragon Leisure and Resorts Corporation v. United Coconut Planters Bank*, G.R. No. 154187, 14 April 2004, 427 SCRA 585.

No. 96-17-675 will only determine respondent Filchart's capacity to institute the intra-corporate suit. Thus, the judgment in the said civil case cannot amount to *res judicata* in SEC Case No. 08-97-5746. Strictly speaking, the latter can still proceed independently of Civil Case No. 96-17-675, but the SCC may exercise its sound discretion to suspend the intra-corporate proceeding if it believes that the outcome of the civil case will affect the causes of action raised in SEC Case No. 96-17-675.

WHEREFORE, the instant petition is *DENIED*. Costs against petitioners.

SO ORDERED.

Carpio Morales,[*] *Velasco, Jr., Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 147437. May 8, 2009]

LARRY V. CAMINOS, JR., *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; RECKLESS IMPRUDENCE; DENIED.— Reckless imprudence generally defined by our penal law consists in voluntarily but without malice, doing or failing to do an act from which material damage results by reason of inexcusable

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[*] Acting Chairperson as replacement of Justice Leonardo A. Quisumbing who is on official leave per Special Order No. 618.

[**] Additional member of the Second Division per Special Order No. 619.

lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place. Imprudence connotes a deficiency of action. It implies a failure in precaution or a failure to take the necessary precaution once the danger or peril becomes foreseen. Thus, something more than mere negligence in the operation of a motor vehicle is necessary to constitute the offense of reckless driving, and a willful and wanton disregard of the consequences is required. Willful, wanton or reckless disregard for the safety of others within the meaning of reckless driving statutes has been held to involve a conscious choice of a course of action which injures another, either with knowledge of serious danger to others involved, or with knowledge of facts which would disclose the danger to any reasonable person.

2. **ID.; ID.; CONCURRENCE OF ELEMENTS FOR A FINDING OF GUILT THEREOF BEYOND REASONABLE DOUBT.—** Hence, in prosecutions for reckless imprudence resulting in damage to property, whether or not one of the drivers of the colliding automobiles is guilty of the offense is a question that lies in the manner and circumstances of the operation of the motor vehicle, and a finding of guilt beyond reasonable doubt requires the concurrence of the following elements, namely, (a) that the offender has done or failed to do an act; (b) that the act is voluntary; (c) that the same is without malice; (d) that material damage results; and (e) that there has been inexcusable lack of precaution on the part of the offender.

3. **ID.; ID.; ID.; INEXCUSABLE LACK OF PRECAUTION IS MOST CENTRAL ELEMENT TO A FINDING OF GUILT.—** Among the elements constitutive of the offense, what perhaps is most central to a finding of guilt is the conclusive determination that the accused has exhibited, by his voluntary act without malice, an inexcusable lack of precaution because it is that which supplies the criminal intent so indispensable as to bring an act of mere negligence and imprudence under the operation of the penal law. This, because a conscious indifference to the consequences of the conduct is all that that is required from the standpoint of the frame of mind of

the accused, that is, without regard to whether the private offended party may himself be considered likewise at fault.

4. **ID.; ID.; ID.; RATE OF SPEED IS ONE PRINCIPAL CONSIDERATION TO DETERMINE WHETHER A MOTORIST HAS BEEN RECKLESS; CASE AT BAR.—** The photographs taken of Arnold's car clearly show that the extent of the damage to it could not have been caused by petitioner's car running on second gear at the speed of 25-30 kph. The fact that the hood of Arnold's car was violently wrenched as well as the fact that on impact the car even turned around 180 degrees and was hurled several feet away from the junction to the outer lane of Ortigas Avenue—when in fact Arnold had already established his turn to the left on the inner lane and into the opposite lane—clearly demonstrate that the force of the collision had been created by a speed way beyond petitioner's estimation. Rate of speed, in connection with other circumstances, is one of the principal considerations in determining whether a motorist has been reckless in driving an automobile, and evidence of the extent of the damage caused may show the force of the impact from which the rate of speed of the vehicle may be modestly inferred.

5. **ID.; ID.; ID.; ID.; SPEEDING IS INDICATIVE OF IMPRUDENT BEHAVIOR.—** Speeding, moreover, is indicative of imprudent behavior because a motorist is bound to exercise such ordinary care and drive at a reasonable rate of speed commensurate with the conditions encountered on the road. What is reasonable speed, of course, is necessarily subjective as it must conform to the peculiarities of a given case but in all cases, it is that which will enable the driver to keep the vehicle under control and avoid injury to others using the highway. This standard of reasonableness is actually contained in Section 35 of R.A. No. 4136. x x x Even apart from statutory regulations as to speed, a motorist is nevertheless expected to exercise ordinary care and drive at a reasonable rate of speed commensurate with all the conditions encountered which will enable him to keep the vehicle under control and, whenever necessary, to put the vehicle to a full stop to avoid injury to others using the highway.

6. **ID.; ID.; ID.; ID.; RESTRICTION ON SPEED ASSUMES MORE IMPORTANCE WHERE THE MOTORIST IS APPROACHING AN INTERSECTION.—** It is must be

stressed that this restriction on speed assumes more importance where the motorist is approaching an intersection. Ordinary or reasonable care in the operation of a motor vehicle at an intersection would naturally require more precaution than is necessary when driving elsewhere in a street or highway. A driver approaching an intersection is generally under duty, among others, to be vigilant and to have the vehicle under control as to be able to stop at the shortest possible notice, that is, he must look for vehicles that might be approaching from within the radius that denotes the limit of danger. Since compliance with this duty is measured by whether an approaching motorist has exercised the level of precaution required under the circumstances, then with more reason that he exhibit a relatively higher level of care when the intersection is blind at the point where the roads meet. In other words, where the view at an intersection is obstructed and an approaching motorist cannot get a good view to the right or left until he is close to the intersection, prudence would dictate that he take particular care to observe the traffic before entering the intersection or otherwise use reasonable care to avoid a collision, which means that he is bound to move with the utmost caution until it is determinable that he can proceed safely and at the slowest speed possible so that the vehicle could be stopped within the distance the driver can see ahead.

7. **ID.; ID.; ID.; ID.; ID.; THE ULTIMATE TEST IS TO BE FOUND IN THE REASONABLE FORESEEABILITY THAT HARM MIGHT RESULT IF COMMENSURATE CARE IS NOT EXERCISED.—** The ultimate test, in other words, is to be found in the reasonable foreseeability that harm might result if commensurate care is not exercised. It is not necessary, however, that a motorist actually foresee the probability of harm or that the particular injury which resulted was foreseeable; it would suffice that he, in the position of an ordinary prudent man, knowing what he knew or should have known, anticipate that harm of a general nature as that suffered was to materialize.

8. **ID.; ID.; ID.; "RIGHT OF WAY"; DRIVING WITH SUFFICIENT CARE TO PERMIT THE OTHER APPROACHING VEHICLE TO EXERCISE SUCH RIGHT.—** In traffic law parlance, the term "right of way" is understood as the right of one vehicle to proceed in a lawful manner in preference to another approaching vehicle under

such circumstances of direction, speed and proximity as to give rise to a danger of collision unless one of the vehicles grants precedence to the other. Although there is authority to the effect that the right of way is merely of statutory creation and exists only according to express statutory provision, it is generally recognized, where no statute or ordinance governs the matter, that the vehicle first entering an intersection is entitled to the right of way, and it becomes the duty of the other vehicle likewise approaching the intersection to proceed with sufficient care to permit the exercise of such right without danger of collisions. In our setting, the right of way rule is governed by Section 42 of Republic Act (R.A.) No. 4136, x x x Nevertheless, the right of way accorded to vehicles approaching an intersection is not absolute in terms. It is actually subject to and is affected by the relative distances of the vehicles from the point of intersection. Thus, whether one of the drivers has the right of way or, as sometimes stated, has the status of a favored driver on the highway, is a question that permeates a situation where the vehicles approach the crossing so nearly at the same time and at such distances and speed that if either of them proceeds without regard to the other a collision is likely to occur. Otherwise stated, the statutory right of way rule under Section 42 of our traffic law applies only where the vehicles are approaching the intersection at approximately the same time and not where one of the vehicles enter the junction substantially in advance of the other.

9. **ID.; ID.; ID.; NEGLIGENCE OF THE INJURED PERSON OR OF THE DRIVER OF THE VEHICLE WITH WHICH THE ACCUSED'S VEHICLE COLLIDED DOES NOT CONSTITUTE A DEFENSE.—** Moreover, in a prosecution for reckless or dangerous driving, the negligence of the person who was injured or who was the driver of the motor vehicle with which the accused's vehicle collided does not constitute a defense. In fact, even where such driver is said to be guilty of a like offense, proof thereof may never work favors to the case of the accused. In other words, proof that the offended party was also negligent or imprudent in the operation of his automobile bears little weight, if at all, at least for purposes of establishing the accused's culpability beyond reasonable doubt.

APPEARANCES OF COUNSEL

Eduardo R. Ceniza and *Nelson M. Reyes* for petitioner.
The Solicitor General for respondent.

D E C I S I O N

TINGA, *J.*:

The right of a person using public streets and highways for travel in relation to other motorists is mutual, coordinate and reciprocal.[1] He is bound to anticipate the presence of other persons whose rights on the street or highway are equal to his own.[2] Although he is not an insurer against injury to persons or property,[3] it is nevertheless his duty to operate his motor vehicle with due and reasonable care and caution under the circumstances for the safety of others[4] as well as for his own.[5]

This Petition for Review[6] seeks the reversal of the Decision[7] of the Court of Appeals in CA-G.R. CR No. 14819 dated 28 February 1995. The assailed decision affirmed the judgment of conviction[8] rendered by the Regional Trial Court of Pasig City, Branch 163

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[1] *Richards v. Begenstos*, 21 N.W.2d 23; *Hodges v. Smith*, 298 S.W. 1023; *Lawson v. Fordyce*, 12 N.W.2d 301.

[2] *Magnolia Petroleum Co. v. Owen*, 101 S.W.2d 354.

[3] *Atlantic Greyhound Corp. v. Lyon*, 107 F.2d 157; *Oklahoma Natural Gas Co. v. McKee*, 121 F.2d 583.

[4] *Burdick v. Powell Bros. Truck Lines*, 124 F.2d 694; *Dixie Motor Coach Corp. v. Lane*, 116 F.2d 264; *Shipley v. Komer*, 154 F.2d 861.

[5] *Magnolia Petroleum Co. v. Owen*, 101 S.W.2d 354.

[6] Under Rule 45 of the RULES OF COURT. *Rollo*, pp. 8-23.

[7] Penned by then Associate Justice Romeo J. Callejo (now retired Associate Justice, Supreme Court of the Philippines) and concurred in by Associate Justices Alfredo L. Benipayo and Ricardo P. Galvez. CA *rollo*, pp. 94-113; *Rollo*, pp. 27-46.

[8] In Criminal Case No. 76653. The trial court decision dated 18 September 1992 was penned by Acting Judge Rodolfo R. Bonifacio. Records, pp. 182-194.

in Criminal Case No. 76653 — one for reckless imprudence resulting in damage to property — against petitioner Larry V. Caminos, Jr. but reduced the latter's civil liability on account of the finding that the negligence of Arnold Litonjua, the private offended party, had contributed to the vehicular collision subject of the instant case.

The case is rooted on a vehicular collision that happened on the night of 21 June 1988 at the intersection of Ortigas Avenue and Columbia Street in Mandaluyong City, right in front of Gate 6 of East Greenhills Subdivision. The vehicles involved were a Mitsubishi Super Saloon[9] driven by petitioner and a Volkswagen Karmann Ghia[10] driven by Arnold Litonjua (Arnold). The mishap occurred at approximately 7:45 in the evening.[11] That night, the road was wet.[12] Arnold, who had earlier passed by Wack Wack Subdivision, was traversing Ortigas Avenue toward the direction of Epifanio Delos Santos Avenue. He prepared to make a left turn as he reached the intersection of Ortigas Avenue and Columbia Street, and as soon as he had maneuvered the turn through the break in the traffic island the Mitsubishi car driven by petitioner suddenly came ramming into his car from his right-hand side. Petitioner, who was also traversing Ortigas Avenue, was headed towards the direction of San Juan and he approached the same intersection from the opposite direction.[13]

The force exerted by petitioner's car heaved Arnold's car several feet away from the break in the island, sent it turning 180 degrees until it finally settled on the outer lane of Ortigas

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[9] The Mitsubishi Super Saloon with plate numbers PDU 403 was registered in the name of Antonio S. Gonzales.

[10] The Volkswagen Karmann Ghia bore plate numbers NTX 617. It was registered in the name of Antonio K. Litonjua, the father of the private offended party, Arnold Litonjua. See Records, Exhibit "E".

[11] Records, Exhibits "1" and "D"; *Rollo*, p. 27.

[12] See the Traffic Accident Investigation Report. Records; see also *rollo*, p. 27.

[13] *Rollo*, p. 28.

Avenue.[14] It appears that it was the fender on the left-hand side of petitioner's car that made contact with Arnold's car, and that the impact—which entered from the right-hand side of Arnold's car to the left—was established on the frontal center of the latter vehicle which thus caused the left-hand side of its hood to curl upward.[15]

Arnold immediately summoned to the scene of the collision Patrolman Ernesto Santos (Patrolman Santos),[16] a traffic investigator of the Mandaluyong Police Force who at the time was manning the police outpost in front of the Philippine Overseas Employment Administration Building.[17] Patrolman Santos interrogated both petitioner and Arnold and made a sketch depicting the relative positions of the two colliding vehicles after the impact.[18] The sketch, signed by both petitioner and Arnold and countersigned by Patrolman Santos, shows petitioner's car—which, it seems, was able to keep its momentum and general direction even upon impact—was stalled along Ortigas Avenue a few feet away from the intersection and facing the direction of San Juan whereas Arnold's car had settled on the outer lane of Ortigas Avenue with its rear facing the meeting point of the median lines of the intersecting streets at a 45-degree angle.[19]

At the close of the investigation, a traffic accident investigation report (TAIR)[20] was forthwith issued by P/Cpl. Antonio N. Nato of the Eastern Police District. The report revealed that at the time of the collision, Arnold's car, which had "no right of

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[14] *Id.* at 28.

[15] See Records, Exhibits "C", "C-1", "C-2", "C-3" and "C-4". These exhibits in the form of photographs depict the extent of the damage caused to Arnold Litonjua's Volkswagen Karmann Ghia.

[16] *Rollo*, p. 28.

[17] TSN, 21 February 1990, pp. 5-6.

[18] *Id.* at 7-8. The sketch executed by Patrolaman Ernesto Santos was marked as Exhibit "A" for the prosecution.

[19] Records, Exhibit "A".

[20] *Id.*, Exhibit "1" of the defense and Exhibit "D" of the prosecution.

way,"[21] was "turning left" whereas petitioner's car was "going straight" and was "exceeding lawful speed."[22] It also indicated that the vision of the drivers was obstructed by the "center island flower bed."[23]

Petitioner was subsequently charged before the Regional Trial Court of Pasig City with reckless imprudence resulting in damage to property.[24] He entered a negative plea on arraignment.[25]

At the ensuing trial, Patrolman Santos admitted having executed the sketch which depicts the post-collision positions of the two vehicles.[26] Arnold's testimony established that his vehicle was at a full stop at the intersection when the incident happened.[27] Told by the trial court to demonstrate how the incident transpired, he executed a sketch which showed that his car had not yet invaded the portion of the road beyond the median line of the island and that the path taken by petitioner's car, depicted by

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[21] *Id.*, Exhibit "1-b".

[22] *Id.*, Exhibits "1" and "D".

[23] *Id.*, Exhibit "1-a".

[24] *Id.* at 1. The inculpatory portion of the Information reads:

That on or about the 21st day of June 1988, in the municipality of Mandaluyong, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being then the driver and/or person in charge of the Mitsubishi 4-door sedan bearing Plate No. PDU 403, did then and there willfully, unlawfully and feloniously drive, manage and operate the same in a careless, reckless, negligent and imprudent manner, without due regard to traffic laws, rules and regulations and without taking the necessary care and precaution to avoid damage to property, causing by such negligence, carelessness and imprudence the said vehicle to bump/collide with a Volkswagen bearing Plate No. NTX 617 being then driven by one Arnold M. Litonjua and owned by one Antonio K. Litonjua, thereby causing damage to the latter motor vehicle in the amount of ₱73,962.00, to the damage and prejudice of its owner in the aforesaid amount of ₱73,962.00, Philippine currency.

Contrary to law.

[25] Records, p. 23.

[26] TSN, 21 February 1990, pp. 7, 12-13.

[27] TSN, 14 August 1991, p. 5.

broken lines, came swerving from the outer lane of the road to the left and rushing toward the island where Arnold's car was executing a turn.[28] On cross-examination, he admitted the correctness of the entry in the TAIR to the effect that he was turning left when hit by petitioner's car,[29] but he claimed on re-direct examination that he had stopped at the intersection in order to keep the traffic open to other vehicles and that it was then that petitioner bumped his car. On re-cross examination, however, he stated that he had brought his car to a full stop before turning left but that the front portion thereof was already two (2) feet into the other lane of Ortigas Avenue and well beyond the median line of the traffic island.[30]

Antonio Litonjua (Antonio), the father of Arnold in whose name the Volkswagen car was registered, testified that the estimation of the cost of repairs to be made on the car was initially made by SKB Motors Philippines, Inc. The estimation report dated 30 June 1988 showed the total cost of repairs to be ₱73,962.00. The necessary works on the car, according to Antonio, had not been performed by SKB Motors because the needed materials had not been delivered.[31] Meanwhile, SKB Motors allegedly ceased in its operation, so Antonio procured another repair estimation this time from Fewkes Corporation.[32] The estimation report was dated 13 December 1991, and it bloated the total cost of repairs to ₱139,294.00.[33] Ricardo Abrencia, resident manager of Fewkes Corporation, admitted that he personally made and signed the said estimation report and that Antonio had already delivered a check representing the payment for half of the total assessment.[34]

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[28] Records, Exhibit "B".

[29] TSN, 25 September 1991, pp. 4-6.

[30] TSN, 26 September 1991, pp. 2-3, 5, 7-8.

[31] TSN, 29 October 1991, p. 6-8. See Records, Exhibits "F" and "F-1".

[32] TSN, 16 January 1992, pp. 4, 6.

[33] Records, Exhibit "G" and "G-1".

[34] TSN, 16 January 1992, pp. 19-22.

Petitioner, the lone defense witness, was a company driver in the employ of Fortune Tobacco, Inc. assigned to drive for the company secretary, Mariano Tanigan, who was with him at the time of the incident. In an effort to exonerate himself from liability, he imputed negligence to Arnold as the cause of the mishap, claiming that he, moments before the collision, was actually carefully traversing Ortigas Avenue on second gear. He lamented that it was Arnold's car which bumped his car and not the other way around and that he had not seen Arnold's car coming from the left side of the intersection—which seems to suggest that Arnold's car was in fact in motion or in the process of making the turn when the collision occurred. His speed at the time, according to his own estimate, was between 25 and 30 kph because he had just passed by the stoplight located approximately 100 meters away at the junction of Ortigas Avenue and EDSA, and that he even slowed down as he approached the intersection.[35]

In its 18 September 1992 Decision,[36] the trial court found petitioner guilty as charged. The trial court relied principally on the sketch made by Patrolman Santos depicting the post-collision positions of the two vehicles—that piece of evidence which neither of the parties assailed at the trial—and found that of the two conflicting accounts of how the collision happened, it was Arnold's version that is consistent with the evidence. It pointed out that just because Arnold had no right of way, as shown in the TAIR, does not account for fault on his part since it was in

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[35] TSN, 3 March 1992, pp. 4-6, 8, 10-11.

[36] The dispositive portion of the trial court's decision reads:

WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of the offense of Reckless Imprudence Resulting [in] Damage to Property, and hereby sentences him to pay a fine of One Hundred Thirty[-nine] Thousand Two Hundred Ninety[-four (₱139,294.00) Pesos which is [the] amount equal to the damage to property resulting from said Reckless Imprudence.

On the civil aspect, the accused is hereby ordered to indemnify Antonio Litonjua the similar amount of One Hundred Thirty[-nine] Thousand Two Hundred Ninety[-four] (₱139,294.00) Pesos for the damages sustained by his motor vehicle, with costs *de oficio*.

SO ORDERED.

fact petitioner's car that came colliding with Arnold's car. It concluded that petitioner, by reason of his own admission that he did not notice Arnold's car at the intersection, is solely to be blamed for the incident especially absent any showing that there was any obstruction to his line of sight. Petitioner, according to the trial court, would have in fact noticed on-coming vehicles coming across his path had he employed proper precaution. Accordingly, the trial court ordered petitioner to pay civil indemnity in the amount of ₱139,294.00 as well as a fine in the same amount.

The Court of Appeals agreed with the factual findings of the trial court. In its Decision dated 28 February 1995, the appellate court affirmed the judgment of conviction rendered by the trial court against petitioner. However, it mitigated the award of civil indemnity on its finding that Arnold himself was likewise reckless in maneuvering a left turn inasmuch as he had neglected to look out, before entering the other lane of the road, for vehicles that could likewise be possibly entering the intersection from his right side.[37]

This notwithstanding, petitioner was still unsatisfied with the ruling of the appellate court. Seeking an acquittal, he filed the present petition for review in which he maintains Arnold's own negligence was the principal determining factor that caused the mishap and which should thus defeat any claim for damages. In declaring him liable to the charge despite the existence of negligence attributable to Arnold, petitioner believes that the Court of Appeals had misapplied the principle of last clear chance in this case.

The Office of the Solicitor General (OSG), in its Comment,[38] argues that petitioner's negligence is the proximate cause of the collision and that Arnold Litonjua's negligence was contributory to the accident which, however, does not bar recovery of damages. Additionally, it recommends the reduction of both the fine and the civil indemnity as the same are beyond what the prosecution was able to prove at the trial.

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[37] *Rollo*, p. 46.

[38] *Id.* at 138-166.

The Court denies the petition.

Reckless imprudence generally defined by our penal law consists in voluntarily but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place.[39]

Imprudence connotes a deficiency of action. It implies a failure in precaution or a failure to take the necessary precaution once the danger or peril becomes foreseen.[40] Thus, something more than mere negligence in the operation of a motor vehicle is necessary to constitute the offense of reckless driving, and a willful and wanton disregard of the consequences is required.[41] Willful, wanton or reckless disregard for the safety of others within the meaning of reckless driving statutes has been held to involve a conscious choice of a course of action which injures another, either with knowledge of serious danger to others involved, or with knowledge of facts which would disclose the danger to any reasonable person.[42]

Hence, in prosecutions for reckless imprudence resulting in damage to property, whether or not one of the drivers of the colliding automobiles is guilty of the offense is a question that lies in the manner and circumstances of the operation of the motor vehicle,[43] and a finding of guilt beyond reasonable doubt requires the concurrence of the following elements, namely,

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[39] *THE REVISED PENAL CODE*, REYES, LUIS B., 15th ed. (2001) p. 995.

[40] *THE REVISED PENAL CODE*, REYES, LUIS B., 15th ed. (2001) pp. 994-995.

[41] *People v. Paarlberg*, 612 N.E.2d 106 (1933); *People v. Crawford*, 467 N.W.2d 818 (1991); *Wood v. City of Casper*, 683 P.2d 1147 (1984); *State v. Houser*, 626 P.2d 256 (1981); *State v. Boydston*, 609 P.2d 224 (1980); *State v. Tamanaha*, 377 P.2d 688 (1962).

[42] *Wofford v. State*, 395 S.E.2d 630 (1990); *Shorter v. State*, 122 N.E.2d 847 (1954); *White v. State*, 647 S.W.2d 751 (1983).

[43] 7A Am. Jur. 2d, pp. 861-862.

(a) that the offender has done or failed to do an act; (b) that the act is voluntary; (c) that the same is without malice; (d) that material damage results; and (e) that there has been inexcusable lack of precaution on the part of the offender.[44]

Among the elements constitutive of the offense, what perhaps is most central to a finding of guilt is the conclusive determination that the accused has exhibited, by his voluntary act without malice, an inexcusable lack of precaution because it is that which supplies the criminal intent so indispensable as to bring an act of mere negligence and imprudence under the operation of the penal law.[45] This, because a conscious indifference to the consequences of the conduct is all that is required from the standpoint of the frame of mind of the accused,[46] that is, without regard to whether the private offended party may himself be considered likewise at fault.

Inasmuch as the Revised Penal Code, however, does not detail what particular act or acts causing damage to property may be characterized as reckless imprudence, certainly, as with all criminal prosecutions, the inquiry as to whether the accused could be held liable for the offense is a question that must be addressed by the facts and circumstances unique to a given case. Thus, if we must determine whether petitioner in this case has shown a conscious indifference to the consequences of his conduct, our attention must necessarily drift to the most fundamental factual predicate. And we proceed from petitioner's contention that at the time the collision took place, he was carefully driving the car as he in fact approached the intersection on second gear and that his speed allegedly was somewhere between 25 and 30 kph which under normal conditions could be considered so safe and manageable as to enable him to bring the car to a full stop when necessary.

Aside from the entry in the TAIR, however, which noted petitioner's speed to be beyond what is lawful, the physical

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[44] *THE REVISED PENAL CODE*, REYES, LUIS B., 15th ed. (2001) p. 995.

[45] *White v. State*, 647 S.W.2d 751 (1983).

[46] *People v. Ackroyd*, 543 N.Y.S.2d 848 (1989).

evidence on record likewise seems to negate petitioner's contention. The photographs taken of Arnold's car clearly show that the extent of the damage to it could not have been caused by petitioner's car running on second gear at the speed of 25-30 kph. The fact that the hood of Arnold's car was violently wrenched as well as the fact that on impact the car even turned around 180 degrees and was hurled several feet away from the junction to the outer lane of Ortigas Avenue—when in fact Arnold had already established his turn to the left on the inner lane and into the opposite lane—clearly demonstrate that the force of the collision had been created by a speed way beyond what petitioner's estimation.

Rate of speed, in connection with other circumstances, is one of the principal considerations in determining whether a motorist has been reckless in driving an automobile,[47] and evidence of the extent of the damage caused may show the force of the impact from which the rate of speed of the vehicle may be modestly inferred.[48] While an adverse inference may be gathered with respect to reckless driving[49] from proof of excessive speed under the circumstances[50]—as in this case where the TAIR itself shows that petitioner approached the intersection in excess of lawful speed—such proof raises the presumption of imprudent driving which may be overcome by evidence,[51] or, as otherwise stated, shifts the burden of proof so as to require the accused to show that under the circumstances he was not driving in a careless or imprudent manner.[52]

We find, however, that petitioner has not been able to discharge that burden inasmuch as the physical evidence on record is

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[47] 52 A.L.R.2d 1343.

[48] *Knuth v. Murphy*, 54 N.W.2d 771. This case held that evidence of the extent of personal injuries is competent to show the force of the impact as a basis for an inference of the rate of speed of the vehicle.

[49] *Sanford v. State*, 16 So.2d 628; *People v. Whitby*, 44 N.Y.S.2d 76.

[50] *People v. Devoe*, 159 N.E. 682; *People v. Whitby*, 44 N.Y.S.2d 76.

[51] *People v. Carrie*, 204 N.Y.S. 759.

[52] *People v. Herman*, 20 N.Y.S.2d 149.

heavy with conviction way more than his bare assertion that his speed at the time of the incident was well within what is controllable. Indeed, the facts of this case do warrant a finding that petitioner, on approach to the junction, was traveling at a speed far greater than that conveniently fixed in his testimony. Insofar as such facts are consistent with that finding, their truth must reasonably be admitted.[53]

Speeding, moreover, is indicative of imprudent behavior because a motorist is bound to exercise such ordinary care and drive at a reasonable rate of speed commensurate with the conditions encountered on the road. What is reasonable speed, of course, is necessarily subjective as it must conform to the peculiarities of a given case but in all cases, it is that which will enable the driver to keep the vehicle under control and avoid injury to others using the highway.[54] This standard of reasonableness is actually contained in Section 35 of R.A. No. 4136. It states:

> SEC. 35. *Restriction as to speed.*—(a) Any person driving a motor vehicle on a highway shall drive the same at a careful and prudent speed, not greater nor less than is reasonable and proper, having due regard for the traffic, the width of the highway, and of any other condition then and there existing; and no person shall drive any motor vehicle upon a highway at such speed as to endanger the life, limb and property of any person, nor at a speed greater than will permit him to bring the vehicle to a stop within the assured clear distance ahead.

Even apart from statutory regulations as to speed, a motorist is nevertheless expected to exercise ordinary care and drive at a reasonable rate of speed commensurate with all the conditions encountered[55] which will enable him to keep the vehicle under control and, whenever necessary, to put the vehicle to a full stop to avoid injury to others using the highway.[56]

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[53] See *Woodson v. Germas*, 104 S.E.2d 739.

[54] *Gabriel v. Court of Appeals*, G.R. No. 128474, 6 October 2004, 440 SCRA 136, 148-149.

[55] *Foster v. ConAgra Poultry Co.*, 670 So.2d 471.

[56] *Nunn v. Financial Indem. Co.*, 694 So.2d 630. Duty of reasonable care includes duty to keep the vehicle under control and to maintain proper lookout for hazards.

It must be stressed that this restriction on speed assumes more importance where the motorist is approaching an intersection. Ordinary or reasonable care in the operation of a motor vehicle at an intersection would naturally require more precaution than is necessary when driving elsewhere in a street or highway.[57] A driver approaching an intersection is generally under duty, among others, to be vigilant and to have the vehicle under control as to be able to stop at the shortest possible notice,[58] that is, he must look for vehicles that might be approaching from within the radius that denotes the limit of danger.[59]

Since compliance with this duty is measured by whether an approaching motorist has exercised the level of precaution required under the circumstances, then with more reason that he exhibit a relatively higher level of care when the intersection is blind at the point where the roads meet. In other words, where the view at an intersection is obstructed and an approaching motorist cannot get a good view to the right or left until he is close to the intersection, prudence would dictate that he take particular care to observe the traffic before entering the intersection or otherwise use reasonable care to avoid a collision,[60] which means that he is bound to move with the utmost caution until it is determinable that he can proceed safely and at the slowest speed possible[61] so that the vehicle could be stopped within the distance the driver can see ahead.[62]

On this score, what brings certain failure in petitioner's case is his own admission that he had not seen Arnold's car making a left turn at the intersection. Of course, there had been an arduous debate at the trial as to whether Arnold's car was in motion or at a full stop at the intersection moments before the collision; nevertheless, inasmuch as he (Arnold), as shown by

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[57] *Roberts v. Leahy,* 214 P.2d 673.

[58] *Reppert v. White Star Lines*, 106 A.L.R. 413; *Riccio v. Ginsberg*, 62 A.L.R. 967.

[59] *Stauffer v. School District of Tecumseh*, 473 N.W.2d 392.

[60] *Kane v. Locke*, 12 N.W.2d 495; *Shelton v. Detamore*, 93 S.E.2d 314.

[61] *Matthews v. Patton*, 123 A.2d 667.

[62] *Henthorn v. M.G.C.Corp.*, 83 N.W.2d 759.

the evidence, had been able to establish himself at the intersection significantly ahead of petitioner, it defies logic to accord even a semblance of truth to petitioner's assertion that he had not seen Arnold's car entering the intersection laterally from his left especially when the said car admittedly had already taken two feet of the other lane of the road—the lane on which petitioner was proceeding to cross—and well beyond the median line of the intersecting road on which Arnold proceeded after making the turn. Indeed, not even the fact that the view at the intersection was blocked by the flower bed on the traffic island could provide an excuse for petitioner as it has likewise been established that he approached the intersection at such a speed that could not, as in fact it did not, enable him to arrest his momentum and forestall the certainty of the collision.

It can only be surmised at this point that petitioner had inexcusably fallen short of the standard of care in a situation which called for more precaution on the highway in failing to make an observation in the interest at least of his own safety whether or not it was safe to enter the crossing. Since he is chargeable with what he should have observed only had he exercised the commensurate care required under the circumstances of the case, the inescapable conclusion is that he had inexcusably breached the elementary duties of a responsible, prudent and reasonable motorist.

In general, the degree of care and attention required of a driver in a particular case in exercising reasonable care will vary with and must be measured in the light of all the surrounding circumstances, such that it must be commensurate with the dangers which are to be anticipated and the injuries which are likely to result from the use of the vehicle.[63] In other words, he must observe a sense of proportionality between precaution and the peculiar risks attendant or even inherent in the condition of the road[64] which are open to ordinary observation.[65] The ultimate

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[63] *Reed v. Stroh*, 128 P.2d 829; *Butcher v. Thornhill*, 58 P.2d 179.

[64] *Reed v. Stroh*, 128 P.2d 829; *Tucker v. Ragland-Potter Co.*, 148 S.W.2d 691.

[65] *Webb v. Smith*, 10 S.E. 2d 503; *Le Master v. Fort Worth Transit Co.*, 142 S.W.2d 908.

test, in other words, is to be found in the reasonable foreseeability that harm might result if commensurate care is not exercised. It is not necessary, however, that a motorist actually foresee the probability of harm or that the particular injury which resulted was foreseeable; it would suffice that he, in the position of an ordinary prudent man, knowing what he knew or should have known, anticipate that harm of a general nature as that suffered was to materialize.[66] The evidence in this case is teeming with suggestion that petitioner had failed to foresee the certainty of the collision that was about to happen as he entered the junction in question especially considering that his lateral vision at the intersection was blocked by the structures on the road. In the same way, he failed to solidly establish that such failure to foresee the danger lurking on the road could be deemed excusable as indeed his contention that he was running at a safe speed is totally negated by the evidence derived from the physical facts of the case.

Yet, petitioner clings to a chance of acquittal. In his petition, he theorizes that the negligence of Arnold, which according to the Court of Appeals was incipient in character, was actually the principal determining factor which caused the mishap and the fact that the TAIR indicated that Arnold had no right of way, it is he himself who had the status of a favored driver. The contention is utterly without merit.

In traffic law parlance, the term "right of way" is understood as the right of one vehicle to proceed in a lawful manner in preference to another approaching vehicle under such circumstances of direction, speed and proximity as to give rise to a danger of collision unless one of the vehicles grants precedence to the other.[67] Although there is authority to the effect that the right of way is merely of statutory creation and exists only according to express statutory provision,[68] it is generally recognized, where no statute or ordinance governs the matter, that the vehicle first entering an intersection is entitled to the

[66] *Figlar v. Gordon*, 53 A.2d 645.

[67] *Burrows v. Jacobsen*, 311 N.W.2d 880 (1981).

[68] *Betchkal v. Willis*, 378 N.W.2d 684 (1985).

right of way, and it becomes the duty of the other vehicle likewise approaching the intersection to proceed with sufficient care to permit the exercise of such right without danger of collisions.[69]

In our setting, the right of way rule is governed by Section 42 of Republic Act (R.A.) No. 4136,[70] which materially provides:

Section 42. *Right of Way.*

(a) When two vehicles approach or enter an intersection at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right, except as otherwise hereinafter provided. The driver of any vehicle traveling at an unlawful speed shall forfeit any right which he might otherwise have hereunder.

(b) The driver of a vehicle approaching but not having entered an intersection shall yield the right of a way to a vehicle within such intersection or turning therein to the left across the line of travel of such first-mentioned vehicle, provided the driver of the vehicle turning left has given a plainly visible signal of intention to turn as required in this Act. x x x.

The provision governs the situation when two vehicles approach the intersection from the same direction and one of them intends to make a turn on either side of the road. But the rule embodied in the said provision, also prevalent in traffic statutes in the United States, has also been liberally applied to a situation in which two vehicles approach an intersection from directly opposite directions at approximately the same time on the same street and one of them attempts to make a left-hand turn into the intersecting street, so as to put the other upon his right, the vehicle making the turn being under the duty of yielding to the other.[71]

Nevertheless, the right of way accorded to vehicles approaching an intersection is not absolute in terms. It is actually subject to

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[69] *Creech v. Blackwell*, 298 S.W.2d 394.

[70] Entitled "AN ACT TO COMPILE THE LAWS RELATIVE TO LAND TRANSPORTATION AND TRAFFIC RULES, TO CREATE A LAND TRANSPORTATION COMMISSION AND FOR OTHER PURPOSES." The law was approved on 20 June 1964.

[71] *McCarthy v. Beckwith*, 141 N.E. 126; *Arvo v. Delta Hardware Co.*, 204 N.W. 134; *Cohen v. Silverman*, 190 N.W. 795; *Webber v. Park Auto Transp. Co.*, 47 A.L.R. 590.

and is affected by the relative distances of the vehicles from the point of intersection.[72] Thus, whether one of the drivers has the right of way or, as sometimes stated, has the status of a favored driver on the highway, is a question that permeates a situation where the vehicles approach the crossing so nearly at the same time and at such distances and speed that if either of them proceeds without regard to the other a collision is likely to occur.[73] Otherwise stated, the statutory right of way rule under Section 42 of our traffic law applies only where the vehicles are approaching the intersection at approximately the same time and not where one of the vehicles enter the junction substantially in advance of the other.

Whether two vehicles are approaching the intersection at the same time does not necessarily depend on which of the vehicles enters the intersection first. Rather, it is determined by the imminence of collision when the relative distances and speeds of the two vehicles are considered.[74] It is said that two vehicles are approaching the intersection at approximately the same time where it would appear to a reasonable person of ordinary prudence in the position of the driver approaching from the left of another vehicle that if the two vehicles continued on their courses at their speed, a collision would likely occur, hence, the driver of the vehicle approaching from the left must give the right of precedence to the driver of the vehicle on his right.[75]

Nevertheless, the rule requiring the driver on the left to yield the right of way to the driver on the right on approach to the intersection, no duty is imposed on the driver on the left to come to a dead stop, but he is merely required to approach the intersection with his vehicle under control so that he may yield the right of way to a vehicle within the danger zone on his right.[76] He is not bound to wait until there is no other vehicle

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[72] *Wlodkowski v. Yerkaitis*, 57 A.2d 792.

[73] *Reynolds v. Madison Bus Co.*, 26 N.W. 2d 653.

[74] *Wilmes v. Mihelich*, 25 N.W.2d 833.

[75] *Moore v. Kujath*, 29 N.W.2d 883.

[76] *Moore v. Kujath*, 29 N.W.2d 883.

on his right in sight before proceeding to the intersection but only until it is reasonably safe to proceed.[77] Thus, in *Adzuara v. Court of Appeals,*[78] it was established that a motorist crossing a thru-stop street has the right of way over the one making a turn; but if the person making the turn has already negotiated half of the turn and is almost on the other side so that he is already visible to the person on the thru-street, he is bound to give way to the former.

Moreover, in a prosecution for reckless or dangerous driving, the negligence of the person who was injured or who was the driver of the motor vehicle with which the accused's vehicle collided does not constitute a defense.[79] In fact, even where such driver is said to be guilty of a like offense, proof thereof may never work favors to the case of the accused.[80] In other words, proof that the offended party was also negligent or imprudent in the operation of his automobile bears little weight, if at all, at least for purposes of establishing the accused's culpability beyond reasonable doubt. Hence, even if we are to hypothesize that Arnold was likewise negligent in neglecting to keep a proper lookout as he took a left turn at the intersection, such negligence, contrary to petitioner's contention, will nevertheless not support an acquittal. At best, it will only determine the applicability of several other rules governing situations where concurring negligence exists and only for the purpose of arriving at a proper assessment of the award of damages in favor of the private offended party.

But it must be asked: do the facts of the case support a finding that Arnold was likewise negligent in executing the left turn? The answer is in the negative. It is as much unsafe as it is unjust to assume that Arnold, just because the TAIR so indicated that he at the time had no right of way, that Arnold had performed a risky maneuver at the intersection in failing to keep a proper lookout for oncoming vehicles. In fact, aside

[77] *Metzger v. Cushman's Sons*, 152 N.E. 695.

[78] G.R. No. 125134, 22 January 1999, 301 SCRA 657.

[79] *State v. Blake,* 255 N.W. 108.

[80] *State v. Sullivan*, 277 N.W. 230.

from petitioner's bare and self-serving assertion that Arnold's fault was the principal determining cause of the mishap as well as his allegation that it was actually Arnold's car that came colliding with his car, there is no slightest suggestion in the records that could tend to negate what the physical evidence in this case has established. Clearly, it was petitioner's negligence, as pointed out by the OSG, that proximately caused the accident.

Finally, on the issue of damages, inasmuch as petitioner had not extended efforts to present countervailing evidence disproving the extent and cost of the damage sustained by Arnold's car, the award assessed and ordered by the trial court must stand.

All told, it must be needlessly emphasized that the measure of a motorist's duty is such care as is, under the facts and circumstances of the particular case, commensurate with the dangers which are to be anticipated and the injuries which are likely to result from the use of the vehicle, and in proportion to or commensurate with the peculiar risk attendant on the circumstances and conditions in the particular case,[81] the driver being under the duty to know and to take into consideration those circumstances and factors affecting the safe operation of the vehicle which would be open to ordinary observation.[82]

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CR No. 14819 dated 28 February 1995 is *REVERSED* and *SET ASIDE*. The Decision of the Regional Trial Court of Pasig, Branch 163 in Criminal Case No. 76653 dated 18 September 1992 is *REINSTATED*.

SO ORDERED.

Carpio Morales,[*] *Velasco, Jr., Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

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[81] *Reed v. Stroh*, 128 P.2d 829.

[82] *Webb v. Smith*, 10 S.E. 2d 503; *Le Master v. Fort Worth Transit Co.*, 142 S.W.2d 908.

[*] Acting Chairperson as replacement of Justice Leonardo A. Quisumbing who is on official leave per Special Order No. 618.

[**] Additional member of the Second Division per Special Order No. 619.

SECOND DIVISION

[G.R. No. 152071. May 8, 2009]

PRODUCERS BANK OF THE PHILIPPINES, *petitioner, vs.* **EXCELSA INDUSTRIES, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45; COURT IS LIMITED TO REVIEWING ERRORS OF LAW; EXCEPTION; CASE AT BAR.—** Notably, the errors cited by petitioners are factual in nature. Although the instant case is a petition for review under Rule 45 which, as a general rule, is limited to reviewing errors of law, findings of fact being conclusive as a matter of general principle, however, considering the conflict between the factual findings of the RTC and the Court of Appeals, there is a need to review the factual issues as an exception to the general rule.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; BANK DRAFTS; LIABILITY UNDER LETTER OF UNDERTAKING INDEPENDENT FROM LIABILITY UNDER BANK DRAFT; CASE AT BAR.—** In the two undertakings executed by respondent as a condition for the negotiation of the drafts, respondent held itself liable if the drafts were not accepted. The two undertakings signed by respondent are similarly-worded and contained respondent's express warranties. In *Velasquez v. Solidbank Corporation*, where the drawer therein also executed a separate letter of undertaking in consideration for the bank's negotiation of its sight drafts, the Court held that the drawer can still be made liable under the letter of undertaking even if he is discharged due to the bank's failure to protest the non-acceptance of the drafts. The Court explained, thus: Petitioner, however, can still be made liable under the letter of undertaking. It bears stressing that it is a separate contract from the sight draft. The liability of petitioner under the letter of undertaking is direct and primary. It is independent from his liability under the sight draft. Liability subsists on it even if the sight draft was dishonored for non-acceptance or non-payment. Respondent agreed to purchase

the draft and credit petitioner its value upon the undertaking that he will reimburse the amount in case the sight draft is dishonored. The bank would certainly not have agreed to grant petitioner an advance export payment were it not for the letter of undertaking. The consideration for the letter of undertaking was petitioner's promise to pay respondent the value of the sight draft if it was dishonored for any reason by the Bank of Seoul. Thus, notwithstanding petitioner's alleged failure to comply with the requirements of notice of dishonor and protest under Sections 89 and 152, respectively, of the Negotiable Instruments Law, respondent may not escape its liability under the separate undertakings, where respondent promised to pay on demand the full amount of the drafts.

3. ID.; ID.; MORTGAGES; "DRAGNET CLAUSE", EXPLAINED.— It has been settled in a long line of decisions that mortgages given to secure future advancements are valid and legal contracts, and the amounts named as consideration in said contracts do not limit the amount for which the mortgage may stand as security if from the four corners of the instrument the intent to secure future and other indebtedness can be gathered. In *Union Bank of the Philippines v. Court of Appeals*, the nature of a dragnet clause was explained, thus: Is one which is specifically phrased to subsume all debts of past and future origins. Such clauses are "carefully scrutinized and strictly construed." Mortgages of this character enable the parties to provide continuous dealings, the nature or extent of which may not be known or anticipated at the time, and they avoid the expense and inconvenience of executing a new security on each new transaction. A "dragnet clause" operates as a convenience and accommodation to the borrowers as it makes available additional funds without their having to execute additional security documents, thereby saving time, travel, loan closing costs, costs of extra legal services, recording fees, *et cetera*.

4. ID.; ID.; ID.; STIPULATION ON FURNISHING NOTICE ON MORTGAGOR OF SALE OF FORECLOSED PROPERTY; EFFECT; CASE AT BAR. — The Court of Appeals invalidated the extrajudicial foreclosure of the mortgage on the ground that petitioner had failed to furnish respondent personal notice of the sale contrary to the stipulation in the real estate mortgage. Petitioner, on the other hand, claims that under paragraph 12 of the real estate mortgage, personal notice of the foreclosure

sale is not a requirement to the validity of the foreclosure sale. A perusal of the records of the case shows that a notice of sheriff's sale was sent by registered mail to respondent and received in due course. Yet, respondent claims that it did not receive the notice but only learned about it from petitioner. In any event, paragraph 12 of the real estate mortgage requires petitioner merely to furnish respondent with the notice and does not oblige petitioner to ensure that respondent actually receives the notice. On this score, the Court holds that petitioner has performed its obligation under paragraph 12 of the real estate mortgage.

APPEARANCES OF COUNSEL

Pangilinan Britanico Sarmiento & Franco Law Offices for petitioner.

Ricardo J.M. Rivera Law Office for respondent.

D E C I S I O N

TINGA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 43 of the 1997 Rules of Civil Procedure, assailing the decision[2] and resolution[3] of the Court of Appeals in CA-G.R. CV No. 59931. The Court of Appeals' decision[4] reversed the decision of the Regional Trial Court (RTC), Branch 73, Antipolo, Rizal, upholding the extrajudicial foreclosure of the mortgage on respondent's properties, while the resolution denied petitioner's motion for reconsideration.[5]

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[1] *Rollo*, pp. 10-38.

[2] Dated 30 May 2001 and penned by Justice Oswaldo D. Agcaoili and concurred in by Justices Cancio C. Garcia, Chairman of the First Division, and Elvi John S. Asuncion; *id.* at 47-75.

[3] Dated 29 January 2002; *id.* at 77.

[4] *Id.* at 117-125.

[5] *Id.* at 126-137.

As borne by the records of the case, the following factual antecedents appear:

Respondent Excelsa Industries, Inc. is a manufacturer and exporter of fuel products, particularly charcoal briquettes, as an alternative fuel source. Sometime in January 1987, respondent applied for a packing credit line or a credit export advance with petitioner Producers Bank of the Philippines, a banking institution duly organized and existing under Philippine laws.[6]

The application was supported by Letter of Credit No. M3411610NS2970 dated 14 October 1986. Kwang Ju Bank, Ltd. of Seoul, Korea issued the letter of credit through its correspondent bank, the Bank of the Philippine Islands, in the amount of US$23,000.00 for the account of Shin Sung Commercial Co., Ltd., also located in Seoul, Korea. T.L. World Development Corporation was the original beneficiary of the letter of credit. On 05 December 1986, for value received, T.L. World transferred to respondent all its rights and obligations under the said letter of credit. Petitioner approved respondent's application for a packing credit line in the amount of ₱300,000.00, of which about ₱96,000.00 in principal remained outstanding.[7] Respondent executed the corresponding promissory notes evidencing the indebtedness.[8]

Prior to the application for the packing credit line, respondent had obtained a loan from petitioner in the form of a bill discounted and secured credit accommodation in the amount of ₱200,000.00, of which ₱110,000.00 was outstanding at the time of the approval of the packing credit line. The loan was secured by a real estate mortgage dated 05 December 1986 over respondent's properties covered by Transfer Certificates of Titles (TCT) No. N-68661, N-68662, N-68663, N-68664, N-68665 and N-68666, all issued by the Register of Deeds of Marikina.[9]

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[6] *Id.* at 48.

[7] *Id.*

[8] Records, pp. 340-350.

[9] *Rollo*, p. 48.

Significantly, the real estate mortgage contained the following clause:

> For and in consideration of those certain loans, overdraft and/or other credit accommodations on this date obtained from the MORTGAGEE, and to secure the payment of the same, the principal of all of which is hereby fixed at FIVE HUNDRED THOUSAND PESOS ONLY (₱500,000.00) Pesos, Philippine Currency, as well as those that the MORTGAGEE may hereafter extend to the MORTGAGOR, including interest and expenses or any other obligation owing to the MORTGAGEE, the MORTGAGOR does hereby transfer and convey by way of mortgage unto the MORTGAGEE, its successors or assigns, the parcel(s) of land which is/are described in the list inserted on the back of this document, and/or appended hereto, together with all the buildings and improvements now existing or which may hereafter be erected or constructed thereon, of which the MORTGAGOR declares that he/it is the absolute owner, free from all liens and encumbrances.[10]

On 17 March 1987, respondent presented for negotiation to petitioner drafts drawn under the letter of credit and the corresponding export documents in consideration for its drawings in the amounts of US$5,739.76 and US$4,585.79. Petitioner purchased the drafts and export documents by paying respondent the peso equivalent of the drawings. The purchase was subject to the conditions laid down in two separate undertakings by respondent dated 17 March 1987 and 10 April 1987.[11]

On 24 April 1987, Kwang Ju Bank, Ltd. notified petitioner through cable that the Korean buyer refused to pay respondent's export documents on account of typographical discrepancies. Kwang Ju Bank, Ltd. returned to petitioner the export documents.[12]

Upon learning about the Korean importer's non-payment, respondent sent petitioner a letter dated 27 July 1987, informing the latter that respondent had brought the matter before the

[10] Records, p. 366.

[11] *Id.* at 121; *id.* 335-337.

[12] *Rollo*, p. 48.

Korea Trade Court and that it was ready to liquidate its past due account with petitioner. Respondent sent another letter dated 08 September 1987, reiterating the same assurance. In a letter 05 October 1987, Kwang Ju Bank, Ltd. informed petitioner that it would be returning the export documents on account of the non-acceptance by the importer.[13]

Petitioner demanded from respondent the payment of the peso equivalent of the export documents, plus interest and other charges, and also of the other due and unpaid loans. Due to respondent's failure to heed the demand, petitioner moved for the extrajudicial foreclosure on the real estate mortgage over respondent's properties.

Per petitioner's computation, aside from charges for attorney's fees and sheriff's fees, respondent had a total due and demandable obligation of ₱573,225.60, including interest, in six different accounts, namely:

1) EBP-PHO-87-1121 (US$4,585.97 x 21.212)	=	₱119,165.06
2) EBP-PHO-87-1095 (US$ 5,739.76 x 21.212)	=	151,580.97
3) BDS-001-87	=	61,777.78
4) BDS-030/86 A	=	123,555.55
5) BDS-PC-002-/87	=	55,822.91
6) BDS-005/87	=	61,323.33
		₱ 573,225.60[14]

The total approved bid price, which included the attorney's fees and sheriff fees, was pegged at ₱752,074.63. At the public auction held on 05 January 1988, the Sheriff of Antipolo, Rizal issued a Certificate of Sale in favor of petitioner as the highest bidder.[15] The certificate of sale was registered on 24 March 1988.[16]

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[13] Records, pp. 361-365.

[14] *Id.* at 369-370.

[15] *Id.*

[16] *Rollo*, p. 124.

On 12 June 1989, petitioner executed an affidavit of consolidation over the foreclosed properties after respondent failed to redeem the same. As a result, the Register of Deeds of Marikina issued new certificates of title in the name of petitioner.[17]

On 17 November 1989, respondent instituted an action for the annulment of the extrajudicial foreclosure with prayer for preliminary injunction and damages against petitioner and the Register of Deeds of Marikina. Docketed as Civil Case No. 1587-A, the complaint was raffled to Branch 73 of the RTC of Antipolo, Rizal. The complaint prayed, among others, that the defendants be enjoined from causing the transfer of ownership over the foreclosed properties from respondent to petitioner.[18]

On 05 April 1990, petitioner filed a petition for the issuance of a writ of possession, docketed as LR Case No. 90-787, before the same branch of the RTC of Antipolo, Rizal. The RTC ordered the consolidation of Civil Case No, 1587-A and LR Case No. 90-787.[19]

On 18 December 1997, the RTC rendered a decision upholding the validity of the extrajudicial foreclosure and ordering the issuance of a writ of possession in favor of petitioner, to wit:

> WHEREFORE, in Case No. 1587-A, the court hereby rules that the foreclosure of mortgage for the old and new obligations of the plaintiff Excelsa Industries Corp., which has remained unpaid up to the time of foreclosure by defendant Producers Bank of the Philippines was valid, legal and in order; In Case No. 787-A, the court hereby orders for the issuance of a writ of possession in favor of Producer's Bank of the Philippines after the properties of Excelsa Industries Corp., which were foreclosed and consolidated in the name of Producers Bank of the Philippines under TCT No. 169031, 169032, 169033, 169034 and 169035 of the Register of Deeds of Marikina.
>
> SO ORDERED.[20]

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

[18] Records, p. 1.

[19] *Rollo*, pp.1-5.

[20] *Id.* at 125.

The RTC held that petitioner, whose obligation consisted only of receiving, and not of collecting, the export proceeds for the purpose of converting into Philippine currency and remitting the same to respondent, cannot be considered as respondent's agent. The RTC also held that petitioner cannot be presumed to have received the export proceeds, considering that respondent executed undertakings warranting that the drafts and accompanying documents were genuine and accurately represented the facts stated therein and would be accepted and paid in accordance with their tenor.[21]

Furthermore, the RTC concluded that petitioner had no obligation to return the export documents and respondent could not expect their return prior to the payment of the export advances because the drafts and export documents were the evidence that respondent received export advances from petitioner.[22]

The RTC also found that by its admission, respondent had other loan obligations obtained from petitioner which were due and demandable; hence, petitioner correctly exercised its right to foreclose the real estate mortgage, which provided that the same secured the payment of not only the loans already obtained but also the export advances.[23]

Lastly, the RTC found respondent guilty of laches in questioning the foreclosure sale considering that petitioner made several demands for payment of respondent's outstanding loans as early as July 1987 and that respondent acknowledged the failure to pay its loans and advances.[24]

The RTC denied respondent's motion for reconsideration.[25] Thus, respondent elevated the matter to the Court of Appeals, reiterating its claim that petitioner was not only a collection agent but was considered a purchaser of the export.

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[21] *Id.* at pp. 49-50.

[22] *Rollo*, at 51.

[23] *Id.* at 51-52.

[24] *Id.* at 52.

[25] Records, pp. 279-280.

On 30 May 2001, the Court of Appeals rendered the assailed decision, reversing the RTC's decision, thus:

WHEREFORE, the appeal is hereby GRANTED. The decision of the trial court dated December 18, 1997 is REVERSED and SET ASIDE. Accordingly, the foreclosure of mortgage on the properties of appellant is declared as INVALID. The issuance of the writ of possession in favor of appellee is ANNULLED. The following damages are hereby awarded in favor of appellant:

(a) Moral damages in the amount of ₱100,000.00;

(b) Exemplary damages in the amount of ₱100,000.00; and

(c) Costs.

SO ORDERED.[26]

The Court of Appeals held that respondent should not be faulted for the dishonor of the drafts and export documents because the obligation to collect the export proceeds from Kwang Ju Bank, Ltd. devolved upon petitioner. It cited the testimony of petitioner's manager for the foreign currency department to the effect that petitioner was respondent's agent, being the only entity authorized under Central Bank Circular No. 491 to collect directly from the importer the export proceeds on respondent's behalf and converting the same to Philippine currency for remittance to respondent. The appellate court found that respondent was not authorized and even powerless to collect from the importer and it appeared that respondent was left at the mercy of petitioner, which kept the export documents during the time that respondent attempted to collect payment from the Korean importer.

The Court of Appeals disregarded the RTC's finding that the export documents were the only evidence of respondent's export advances and that petitioner was justified in refusing to return them. It opined that granting petitioner had no obligation to return the export documents, the former should have helped respondent in the collection efforts instead of augmenting respondent's dilemma.

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[26] *Rollo*, pp. 74-75.

Furthermore, the Court of Appeals found petitioner's negligence as the cause of the refusal by the Korean buyer to pay the export proceeds based on the following: first, petitioner had a hand in preparing and scrutinizing the export documents wherein the discrepancies were found; and, second, petitioner failed to advise respondent about the warning from Kwang Ju Bank, Ltd. that the export documents would be returned if no explanation regarding the discrepancies would be made.

The Court of Appeals invalidated the extrajudicial foreclosure of the real estate mortgage on the ground that the posting and publication of the notice of extrajudicial foreclosure proceedings did not comply with the personal notice requirement under paragraph 12[27] of the real estate mortgage executed between petitioner and respondent. The Court of Appeals also overturned the RTC's finding that respondent was guilty of estoppel by laches in questioning the extrajudicial foreclosure sale.

Petitioner's motion for reconsideration[28] was denied in a Resolution dated 29 January 2002. Hence, the instant petition, arguing that the Court of Appeals erred in finding petitioner as respondent's agent, which was liable for the discrepancies in the export documents, in invalidating the foreclosure sale and in declaring that respondent was not estopped from questioning the foreclosure sale.[29]

The validity of the extrajudicial foreclosure of the mortgage is dependent on the following issues posed by petitioner: (1)

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[27] 12. All correspondence relative to this mortgage, including demand letters, summonses, subpoenas, or notifications of any judicial or extra-judicial action shall be sent to the mortgagor at x x x, or at the address that may hereafter be given in writing by the MORTGAGOR to the MORTGAGEE. The mere act of sending any correspondence by mail or by personal delivery to the said address shall be valid and effective notice to the MORTGAGOR for all legal purposes, and the fact that any communication is not actually received by the MORTGAGOR or that it has been returned unclaimed to the MORTGAGEE, or that no person was found at the address given, or that the address is fictitious or cannot be located, shall not excuse or relieve the MORTGAGOR from the effects of such notice.

[28] CA *rollo*, pp. 126-137.

[29] *Id.* at 18-19.

the coverage of the "blanket mortgage clause"; (2) petitioner's failure to furnish personal notice of the foreclosure to respondent; and (3) petitioner's obligation as negotiating bank under the letter of credit.

Notably, the errors cited by petitioners are factual in nature. Although the instant case is a petition for review under Rule 45 which, as a general rule, is limited to reviewing errors of law, findings of fact being conclusive as a matter of general principle, however, considering the conflict between the factual findings of the RTC and the Court of Appeals, there is a need to review the factual issues as an exception to the general rule.[30]

Much of the discussion has revolved around who should be liable for the dishonor of the draft and export documents. In the two undertakings executed by respondent as a condition for the negotiation of the drafts, respondent held itself liable if the drafts were not accepted. The two undertakings signed by respondent are similarly-worded and contained respondent's express warranties, to wit:

> In consideration of your negotiating the above described draft(s), **we hereby warrant that the said draft(s) and accompanying documents thereon are valid, genuine and accurately represent the facts stated therein, and that such draft(s) will be accepted and paid in accordance with its/their tenor.** We further undertake and agree, jointly and severally, to defend and hold you free and harmless from any and all actions, claims and demands whatsoever, and to pay on demand all damages actual or compensatory including attorney's fees, costs and other awards or be adjudged to pay, in case of suit, which you may suffer arising from, by reason, or on account of your negotiating the above draft(s) because of the following discrepancies or reasons or any other discrepancy or reason whatever.
>
> **We hereby undertake to pay on demand the full amount of the above draft(s) or any unpaid balance thereof,** the Philippine peso equivalent converted at the prevailing selling rate (or selling rate prevailing at the date you negotiate our draft, whichever is higher) allowed by the Central Bank with interest at the rate prevailing today from the date of negotiation, plus all charges and expenses whatsoever

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[30] *Agasen v. Court of Appeals*, 382 Phil. 391 (2000).

incurred in connection therewith. You shall neither be obliged to contest or dispute any refusal to accept or to pay the whole or any part of the above draft(s), nor proceed in any way against the drawee, the issuing bank or any endorser thereof, before making a demand on us for the payment of the whole or any unpaid balance of the draft(s).(Emphasis supplied)[31]

In *Velasquez v. Solidbank Corporation*,[32] where the drawer therein also executed a separate letter of undertaking in consideration for the bank's negotiation of its sight drafts, the Court held that the drawer can still be made liable under the letter of undertaking even if he is discharged due to the bank's failure to protest the non-acceptance of the drafts. The Court explained, thus:

Petitioner, however, can still be made liable under the letter of undertaking. It bears stressing that it is a separate contract from the sight draft. The liability of petitioner under the letter of undertaking is direct and primary. It is independent from his liability under the sight draft. Liability subsists on it even if the sight draft was dishonored for non-acceptance or non-payment.

Respondent agreed to purchase the draft and credit petitioner its value upon the undertaking that he will reimburse the amount in case the sight draft is dishonored. The bank would certainly not have agreed to grant petitioner an advance export payment were it not for the letter of undertaking. The consideration for the letter of undertaking was petitioner's promise to pay respondent the value of the sight draft if it was dishonored for any reason by the Bank of Seoul.[33]

Thus, notwithstanding petitioner's alleged failure to comply with the requirements of notice of dishonor and protest under Sections 89[34] and 152,[35] respectively, of the

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[31] *Id.* at 335.

[32] G.R. No. 157309, 28 March 2008, 550 SCRA 119.

[33] *Id.* at 129.

[34] SEC. 89. TO WHOM NOTICE OF DISHONOR MUST BE GIVEN.— Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser and any drawer or indorser to whom such notice is not given is discharged.

[35] SEC. 152. IN WHAT CASES PROTEST NECESSARY.— Where a foreign bill appearing on its face to be such is dishonored by non-acceptance,

Negotiable Instruments Law, respondent may not escape its liability under the separate undertakings, where respondent promised to pay on demand the full amount of the drafts.

The next question, therefore, is whether the real estate mortgage also served as security for respondent's drafts that were not accepted and paid by the Kwang Ju Bank, Ltd.

Respondent executed a real estate mortgage containing a "blanket mortgage clause," also known as a "dragnet clause." It has been settled in a long line of decisions that mortgages given to secure future advancements are valid and legal contracts, and the amounts named as consideration in said contracts do not limit the amount for which the mortgage may stand as security if from the four corners of the instrument the intent to secure future and other indebtedness can be gathered.[36]

In *Union Bank of the Philippines v. Court of Appeals*,[37] the nature of a dragnet clause was explained, thus:

> Is one which is specifically phrased to subsume all debts of past and future origins. Such clauses are "carefully scrutinized and strictly construed." Mortgages of this character enable the parties to provide continuous dealings, the nature or extent of which may not be known or anticipated at the time, and they avoid the expense and inconvenience of executing a new security on each new transaction. A "dragnet clause" operates as a convenience and accommodation to the borrowers as it makes available additional funds without their having to execute additional security documents, thereby saving time, travel, loan closing costs, costs of extra legal services, recording fees, *et cetera*.[38]

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it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance, is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

[36] *Prudential Bank v. Alviar*, G.R. No. 150197, 28 July 2005, 464 SCRA 353, 363.

[37] G.R. No. 164910, 30 September 2005, 471 SCRA 751.

[38] *Id.* at 758-759.

xxx xxx xxx

Petitioner, therefore, was not precluded from seeking the foreclosure of the real estate mortgage based on the unpaid drafts drawn by respondent. In any case, respondent had admitted that aside from the unpaid drafts, respondent also had due and demandable loans secured from another account as evidenced by Promissory Notes (PN Nos.) BDS-001-87, BDS-030/86 A, BDS-PC-002-/87 and BDS-005/87.

However, the Court of Appeals invalidated the extrajudicial foreclosure of the mortgage on the ground that petitioner had failed to furnish respondent personal notice of the sale contrary to the stipulation in the real estate mortgage.

Petitioner, on the other hand, claims that under paragraph 12[39] of the real estate mortgage, personal notice of the foreclosure sale is not a requirement to the validity of the foreclosure sale.

A perusal of the records of the case shows that a notice of sheriff's sale[40] was sent by registered mail to respondent and received in due course.[41] Yet, respondent claims that it did not receive the notice but only learned about it from petitioner. In any event, paragraph 12 of the real estate mortgage requires petitioner merely to furnish respondent with the notice and does not oblige petitioner to ensure that respondent actually receives the notice. On this score, the Court holds that petitioner has performed its obligation under paragraph 12 of the real estate mortgage.

As regards the issue of whether respondent may still question the foreclosure sale, the RTC held that the sale was conducted according to the legal procedure, to wit:

Plaintiff is estopped from questioning the foreclosure. The plaintiff is guilty of laches and cannot at this point in time question the

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[39] *Supra*.

[40] Records, p. 113.

[41] *Id.* at 416. The registry return card evidencing receipt of the copy of the notice of sheriff's sale set for 05 January 1988 on 21 December 1987 is marked as Exhibit 35.

foreclosure of the subject properties. Defendant bank made demands against the plaintiff for the payment of plaintiff's outstanding loans and advances with the defendant as early as July 1997. Plaintiff acknowledged such outstanding loans and advances to the defendant bank and committed to liquidate the same. For failure of the plaintiff to pay its obligations on maturity, defendant bank foreclosed the mortgage on subject properties on January 5, 1988 the certificate of sale was annotated on March 24, 1988 and there being no redemption made by the plaintiff, title to said properties were consolidated in the name of defendant in July 1989. Undeniably, subject foreclosure was done in accordance with the prescribed rules as may be borne out by the exhibits submitted to this Court which are Exhibit "33", a notice of extrajudicial sale executed by the Sheriff of Antipolo, Exhibit "34" certificate posting of extrajudicial sale, Exhibit "35" return card evidencing receipt by plaintiff of the notice of extrajudicial sale and Exhibit "21" affidavit of publication.

The Court adopts and approves the aforequoted findings by the RTC, the same being fully supported by the evidence on record.

WHEREFORE, the instant petition for review on *certiorari* is *GRANTED* and the decision and resolution of the Court of Appeals in CA-G.R. CV No. 59931 are *REVERSED* and *SET ASIDE*. The decision of the Regional Trial Court Branch 73, Antipolo, Rizal in Civil Case No. 1587-A and LR Case No. 90-787 is *REINSTATED*.

SO ORDERED.

Carpio Morales,[*] *Velasco, Jr., Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

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[*] Acting Chairperson in lieu of Senior Associate Justice Leonardo A. Quisumbing, who is on official leave, per Special Order No. 618.

[**] Designated as an additional member of the Second Division in lieu of Senior Associate Justice Leonardo A. Quisumbing, who is on official leave, per Special Order No. 618.

SECOND DIVISION

[G.R. No. 154427. May 8, 2009]

ZACARIAS DELOS SANTOS, *petitioner, vs.* **CONSUELO B. PAPA and MARIA C. MATEO,** *respondents.*

SYLLABUS

1. **CIVIL LAW; DAMAGES; MORAL DAMAGES; WHEN RECOVERABLE.—** The award of moral damages is proper when the following circumstances concur: (1) there is an injury, whether physical, mental or psychological, clearly sustained by the claimant; (2) there is a culpable act or omission factually established; (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) the award of damages is predicated on any of the cases stated in Article 2219. This article provides: 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. The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages. The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

2. **LABOR AND SOCIAL LEGISLATION; URBAN LAND REFORM ACT; REQUIREMENTS FOR A TENANT TO BE CONSIDERED A BENEFICIARY.—** The complaint was based on P.D. No. 1517 or the Urban Land Reform Act (the *Act*) that grants preferential rights to landless tenants to acquire land within urban land reform areas. The right of first refusal is provided by Section 6 of the Act, which states: **Section 6.** *Land Tenancy in Urban Land Reform Areas.* Within the Urban Zones legitimate tenants who have resided on the land for ten years or more who have built their homes on the land and

residents who have legally occupied the lands by contract, continuously for the last ten years shall not be dispossessed of the land and shall be allowed the right of first refusal to purchase the same within a reasonable time and at reasonable prices, under terms and conditions to be determined by the Urban Zone Expropriation and Land Management Committee created by Section 8 of this Decree. A beneficiary of this Act must fulfill the following requirements: he or she (1) must be a legitimate tenant of the land for ten (10) years or more; (2) must have built his or her home on the land by contract; and (3) has resided on the land continuously for the last ten (10) years or more. It is likewise imperative that the leased property be within a declared Area for Priority Development (*APD*) and Urban Land Reform Zone (*ULRZ*).

3. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; MERE FAILURE TO PAY RENT DOES NOT MAKE THE LESSEE'S POSSESSION OF THE PREMISES UNLAWFUL.—** Mere failure to pay rent does not make the lessee's possession of the premises unlawful, thereby denying him the status of being a tenant.

4. **LABOR AND SOCIAL LEGISLATION; URBAN LAND REFORM ACT; RIGHT OF FIRST REFUSAL; WRITTEN OFFER TO SELL, REQUIRED.—** Section 34 of the Rules and Regulations to Implement P.D. No. 1517 provides: **Period to Exercise Right of First Refusal.** In cases where the tenants and residents referred to in Section 33 are unable to purchase the said lands or improvement, they may apply for financial assistance from the government. The right of first refusal shall be exercised within the time to be determined by the Urban Zone Committee which shall not exceed 6 months from the time the owner made a written offer to sell to the tenant or resident.

5. **ID.; ID.; ID.; ID.; ANNULMENT OF SALE CASE HAS LEGAL BASIS; CASE AT BAR.—** Since the implementing rules require a *written offer* to sell to the tenant, the petitioner – who allegedly was not served a written offer – was merely exercising his right to litigate when he filed his complaint for annulment. Under these circumstances, we cannot conclude that the suit for annulment of sale that the petitioner filed was completely without basis and one that was filed simply to vex or harass

the respondents. On the contrary, from the surrounding factual and legal circumstances, it appears that the petitioner was at the point of losing his home and was motivated by the desire to prevent the loss, rather than by any intent to vex or harass the respondents; he had a legal basis, although a disputable one, to back up his claim. If he failed at all to pursue his case, it was not due to lack of merit; the case was lost because nobody pursued the case after his son and attorney-in-fact, who was handling the case for him, died.

6. **CIVIL LAW;DAMAGES; MORAL DAMAGES; RIGHT TO LITIGATE; FILING OF UNFOUNDED SUIT NOT A GROUND FOR GRANT OF MORAL DAMAGES; CASE AT BAR.—** Assuming *arguendo* that the petitioner's case lacked merit, the award of moral damages is not a legal consequence that automatically followed. Moral damages are only awarded if the basis therefor, as provided in the law quoted above, is duly established. In the present case, the ground the respondents invoked and failed to establish is malicious prosecution. *Crystal v. Bank of the Philippine Island*s is instructive on this point, as it tells us that the law never intended to impose a penalty on the right to litigate so that the filing of an unfounded suit does not automatically entitle the defendant to moral damages: x x x The rationale for the rule is that the law could not have meant to impose a penalty on the right to litigate. ***Otherwise, moral damages must every time be awarded in favor of the prevailing defendant against an unsuccessful plaintiff.***

7. **ID.; ID.; EXEMPLARY DAMAGES; NOT AWARDED IF MORAL DAMAGES ARE NOT AWARDED.—** The rule in our jurisdiction is that exemplary damages are awarded in addition to moral damages. In *Mahinay v. Velasquez, Jr.*, we held: Neither is respondent entitled to exemplary damages. "If the court has no proof or evidence upon which the claim for moral damages could be based, such indemnity could not be outrightly awarded. The same holds true with respect to the award of exemplary damages where it must be shown that the party acted in a wanton, oppressive or malevolent manner." Furthermore, **this specie of damages is allowed only in addition to moral damages such that no exemplary damages can be awarded unless the claimant first establishes his clear right to moral damages.**

8. ID.; ID.; ATTORNEY'S FEES; AWARD THEREOF THE EXCEPTION RATHER THAN THE GENERAL RULE.— We have consistently held that the award of attorney's fees is the exception rather than the general rule, and "counsel's fees are not to be awarded every time a party wins a suit. The discretion of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification, without which the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture. In all events, the court must state the reason for the award of attorney's fees."

APPEARANCES OF COUNSEL

Cañeba & Andres Law Firm for petitioner.
Madamba Lim & Associates for respondent.

D E C I S I O N

BRION, *J*.:

In this petition for review on *certiorari* under Rule 45 of the Rules of Court, the petitioner Zacarias Delos Santos (*petitioner*) seeks the reversal of the January 16, 2002 Decision[1] of the Court of Appeals (*CA*) and its subsequent Resolution of July 22, 2002[2] denying the petitioner's motion for reconsideration.

BACKGROUND FACTS

The facts of this case are undisputed.[3] The petitioner was leasing respondent Consuelo Papa's (*Papa*) property (*subject property*). On May 2, 1994, Papa verbally offered to sell the subject property to the petitioner. However, the petitioner turned down the offer because he did not have the means to purchase

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[1] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Conrado M. Vasquez, Jr. and Amelita G. Tolentino, concurring; *rollo,* pp. 14-20.

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

[3] *Id.,* pp. 15-16.

the property. Thereafter, Papa found another buyer in the person of Maria C. Mateo (*Mateo*), the other respondent in this case. The subject property's ownership was duly transferred to Mateo's name through the issuance of Transfer Certificate of Title (*TCT*) No. 216221 by the Registry of Deeds of Manila.

Meanwhile, the petitioner failed to pay his rent from May to August 1994, prompting Mateo, as the subject property's new owner, to institute ejectment proceedings against him before the Metropolitan Trial Court (*MeTC*) of Manila; the complaint was docketed as Civil Case No. 146030. The MeTC ruled in favor of Mateo and ordered the petitioner's ejectment. The CA, on appeal, upheld the MeTC's order.

On October 17, 1994, *while the ejectment case was pending*, the petitioner filed the present case for "Annulment of Deed of Sale and Cancellation of Title with Injunction and/or Issuance of Temporary Restraining Order," docketed as Civil Case No. 94-71936, with the Regional Trial Court (*RTC*), Branch 38, Manila. On November 25, 1994, the respondents filed a counterclaim for attorney's fees, costs of suit, moral and exemplary damages.

During the trial that ensued, the petitioner presented two witnesses – his son, William Delos Santos (who had been his representative in the suit) and Mrs. Geronima Angeles (*Angeles*), District Manager of the National Housing Authority. At the scheduled hearing for the completion of Angeles' testimony, neither the petitioner nor his counsel appeared. The RTC ordered Angeles' incomplete testimony stricken off the record, and declared that the lone testimony of the petitioner's son was insufficient to sustain a judgment against the respondents. Thus, the RTC dismissed the complaint.

The RTC continued to hear and receive evidence on the respondents' counterclaim, consisting of the testimonies of respondents Papa and Mateo. On March 8, 2000, the RTC rendered a Decision awarding respondents exemplary damages in the amount of ₱100,000.00 each, moral damages for ₱100,000.00 each and attorney's fees and litigation expenses

in the amount of ₱50,000.00 each, with costs of suit.

On January 16, 2001, the CA affirmed the RTC decision, with the modification that the amount awarded as moral and exemplary damages to each respondent be reduced to ₱50,000.00. The CA reasoned that the petitioner was not a *bona fide* lessee as contemplated by Presidential Decree (*P.D.*) No. 1517 and P.D. No. 2016; he had failed to pay his rent from May to August 1994, the time that the subject property was offered and subsequently sold to Mateo. The CA thus concluded that he instituted the complaint in bad faith, considering that he was aware that he was in no position to exercise the right of first refusal. The CA also ruled that he violated Article 19 of the Civil Code.[4]

The CA denied the petitioner's subsequent motion for reconsideration. Hence, this petition for review on *certiorari*, raising the following issues:

ISSUES

I.

THE HONORABLE COURT OF APPEALS GRAVELY AND SERIOUSLY ERRED IN DISREGARDING THE ISSUE REGARDING PETITIONER'S RIGHT OF FIRST REFUSAL IN VIEW OF HIS FAILURE [TO] APPEAL THE DISMISSAL IN DUE TIME[;]

II.

THE HONORABLE COURT OF APPEALS GRAVELY AND SERIOUSLY ERRED IN FAILING TO CONSIDER THAT THE AWARD OF MORAL AND EXEMPLARY DAMAGES, AS WELL AS ATTORNEY'S FEES AND LITIGATION EXPENSES WAS ABSOLUTELY WITHOUT FACTUAL LEGAL BASIS[.]

The petitioner argues that respondent Papa is mandated by law to give him a written notice of her intention to sell the subject property to Mateo and that the failure to do so renders

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[4] Art. 19. 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.

the sale to the latter null and void. This right of first refusal or first option is provided under P.D. No. 1517 and P.D. No. 2016.

He further argues that the filing of the complaint was the idea of his previous counsel, who later abandoned his case. He cannot be said to have acted in bad faith when his lawyer was the one who advised him to file the suit. Bad faith is never presumed, and the respondents miserably failed to discharge the burden of proof required to prove that he had acted in bad faith. He also argues that the CA erred in finding him guilty of committing an act similar to malicious prosecution, which has the following elements: 1) there is a sinister design to vex and humiliate a person, and 2) the suit was deliberately initiated by the defendant knowing that his charges were false and groundless. Petitioner stresses that the mere act of submitting a case to the authorities does not make one liable for malicious prosecution.

Petitioner argues that there is no factual basis and evidentiary support for the grant of moral and exemplary damages, the only bases being: Papa's self-serving and inadequate testimony that she felt "great inconvenience"; her agreement with her lawyer regarding attorney's fees; and Mateo's unsubstantiated assertion that she suffered hypertension. The petitioner also argues that there is no basis for the lower courts' conclusion that he violated Article 19 of the Civil Code.

On his failure to appeal the RTC's dismissal of his complaint for lack of cause of action, the petitioner explains that his son, William, who was acting as his attorney-in-fact and legal representative, died in 1996; that William was the one who contacted his lawyers; and that since William's death, the petitioner lost contact with these lawyers.

The respondent, on the other hand, argues that the petitioner knew that he was disqualified from exercising the right of first refusal under P.D. No. 1517 and P.D. No. 2016. His filing of the baseless and unfounded complaint caused the petitioner to suffer mental anguish; thus, the award of moral and exemplary damages, and of attorney's fees, is justified.[5]

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[5] *Rollo,* p. 27.

OUR RULING

We find the petition meritorious.

When moral damages are recoverable

The award of moral damages is proper when the following circumstances concur: (1) there is an injury, whether physical, mental or psychological, clearly sustained by the claimant; (2) there is a culpable act or omission factually established; (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) the award of damages is predicated on any of the cases stated in Article 2219.[6] This article provides:

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.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

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[6] *Expertravel & Tours, Inc, v. Court of Appeals*, G.R. No. 130030, June 25, 1999, 309 SCRA 141.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

The CA sustained the lower court's grant of moral damages on the ground that the petitioner, in filing the "baseless, unfounded and groundless suit despite the fact that defendant Maria C. Mateo owns the property in question as evidenced by her Transfer Certificate of Title No. 216221 of the Registry of Deeds of Manila which she acquired by purchase from her co-defendant Consuelo B. Papa, xxx did not act with justice, did not give defendants their due and did not observe honesty and good faith in violation of the Civil Code."[7] **However, a close scrutiny of the case reveals that the complaint was not completely groundless.**

Petitioner's Right of First Refusal under P.D. No. 1517

At the outset, we note that the petitioner's failure to appeal the RTC's dismissal of his complaint rendered the dismissal final and executory. Hence, we cannot reverse the RTC's ruling that the petitioner lacked a cause of action and that the lone testimony of the petitioner's son failed to muster a preponderance of evidence in his favor. If we look at this aspect of the case at all, it is for purposes of determining whether sufficient basis exists to conclude that the filing of the complaint was an act of malicious prosecution that entitled the respondent to the awards of moral and exemplary damages, attorney's fees, and costs of suit granted by the lower courts. In other words, the dismissal of the complaint is final, but for purposes of reviewing the propriety of the awards, we examine the filing of the complaint from the prism of whether it constituted a malicious prosecution or an abuse of rights. **We rule that it was not.**

First. The complaint was based on P.D. No. 1517 or the Urban Land Reform Act (the *Act*) that grants preferential rights to landless tenants to acquire land within urban land reform

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[7] *Rollo,* p. 19.

areas.[8] The right of first refusal is provided by Section 6 of the Act, which states:

> **Section 6.** *Land Tenancy in Urban Land Reform Areas.* Within the Urban Zones legitimate tenants who have resided on the land for ten years or more who have built their homes on the land and residents who have legally occupied the lands by contract, continuously for the last ten years shall not be dispossessed of the land and shall be allowed the right of first refusal to purchase the same within a reasonable time and at reasonable prices, under terms and conditions to be determined by the Urban Zone Expropriation and Land Management Committee created by Section 8 of this Decree. [Underscoring supplied]

A beneficiary of this Act must fulfill the following requirements: he or she (1) must be a legitimate tenant of the land for ten (10) years or more; (2) must have built his or her home on the land by contract; and (3) has resided on the land continuously for the last ten (10) years or more.[9] It is likewise imperative that the leased property be within a declared Area for Priority Development (*APD*) and Urban Land Reform Zone (*ULRZ*).[10]

It appears undisputed that the petitioner possesses requisites 2 and 3 - he built his home on the leased property and has lived there for more than 10 years. The inclusion of the land in the APD and the ULRZ was not raised as an issue before the appellate court.[11] **The bone of contention that the lower courts emphasized is whether he is a legitimate tenant as defined by the Act, as amended by P.D. No. 2016.** A legitimate tenant is one who is not a usurper or an occupant by tolerance.[12]

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[8] *Dimaculangan v. Casalla,* G.R. No. 156689, June 8, 2007, 524 SCRA 181; *Frilles v. Yambao*, G.R. No. 129889, July 11, 2002, 384 SCRA 353.

[9] *Alcantara v. Reta*, G.R. No. 136996, December 14, 2001, 372 SCRA 364.

[10] *Fernando v. Lim*, G.R. No. 176282, August 22, 2008.

[11] The records show that a witness, the District Manager of the National Housing Authority, was testifyhing on this point, but her testimony was not completed because of the failure of the petitioner and his counsel to appear.

[12] *Delos Santos v. Court of Appeals*, G.R. No. 127465, October 25, 2001, 368 SCRA 226.

Sections 3(f) of the Act, as amended by P.D. No. 2016, provides:

> SEC. 3(f). Tenant refers to the rightful occupant of land and its structures, but does not include those whose presence on the land is merely tolerated and without the benefit of contract, those who enter the land by force or deceit, or those whose possession is under litigation.

The lower courts unanimously held that the petitioner was not a legitimate tenant, as he had failed to pay his rentals for the months of May to August, 1994. We find this conclusion questionable, as mere failure to pay rent does not make the lessee's possession of the premises unlawful, thereby denying him the status of being a tenant. What should assume materiality here is that the petitioner is not a usurper or an occupant by tolerance, but one who believed that he had a claim to possession based on the right of first refusal. If at all, the more appropriate reason would have been the pendency of an ejectment case against the petitioner at the time he filed his complaint for annulment of sale. Even this reason, however, is not a clear cut reason for barring him from filing his annulment of sale case; his status as a tenant involves factual and legal questions touching on, and intertwined with, the merits of the annulment of sale case. In other words, it is a legitimate issue that could have been raised in the case and cannot be an outright bar to the filing of the case. We find it obvious that, at that point, the petitioner resorted to the complaint for annulment of sale as a counter-step, taken at another venue and for another legal reason bearing on, but not directly related to, the issues in the ejectment case he was facing.

Second. The petitioner's complaint is anchored on the argument that the sale to Mateo is void because no written offer to sell was extended to him before the property was sold to Mateo. This argument is not without basis in law. Section 34 of the Rules and Regulations to Implement P.D. No. 1517 provides:

> **Period to Exercise Right of First Refusal.** In cases where the tenants and residents referred to in Section 33 are unable to purchase the said lands or improvement, they may apply for financial assistance

from the government. The right of first refusal shall be exercised within the time to be determined by the Urban Zone Committee which shall not exceed 6 months from the time the owner made a written offer to sell to the tenant or resident.

Since the implementing rules require a *written offer* to sell to the tenant, the petitioner – who allegedly was not served a written offer – was merely exercising his right to litigate when he filed his complaint for annulment.

Under these circumstances, we cannot conclude that the suit for annulment of sale that the petitioner filed was completely without basis and one that was filed simply to vex or harass the respondents. On the contrary, from the surrounding factual and legal circumstances, it appears that the petitioner was at the point of losing his home and was motivated by the desire to prevent the loss, rather than by any intent to vex or harass the respondents; he had a legal basis, although a disputable one, to back up his claim. If he failed at all to pursue his case, it was not due to lack of merit; the case was lost because nobody pursued the case after his son and attorney-in-fact, who was handling the case for him, died.

The filing of an unfounded suit is not a ground for the grant of moral damages

Assuming *arguendo* that the petitioner's case lacked merit, the award of moral damages is not a legal consequence that automatically followed. Moral damages are only awarded if the basis therefor, as provided in the law quoted above, is duly established. In the present case, the ground the respondents invoked and failed to establish is malicious prosecution. *Crystal v. Bank of the Philippine Island*s[13] is instructive on this point, as it tells us that the law never intended to impose a penalty on the right to litigate so that the filing of an unfounded suit does not automatically entitle the defendant to moral damages:

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[13] G.R. No. 172428, November 28, 2008. See also *Expertravel & Tours, Inc.* v. *Court of Appeals*, *supra* note 6.

The spouses' complaint against BPI proved to be unfounded, but it does not automatically entitle BPI to moral damages. Although the institution of a clearly unfounded civil suit can at times be a legal justification for an award of attorney's fees, such filing, however, has almost invariably been held not to be a ground for an award of moral damages. The rationale for the rule is that the law could not have meant to impose a penalty on the right to litigate. ***Otherwise, moral damages must every time be awarded in favor of the prevailing defendant against an unsuccessful plaintiff.***

Given this conclusion, we find it unnecessary to rule on whether the respondents indeed suffered injuries for which they should be awarded moral damages.

Award of Exemplary Damages and Attorney's Fees Deleted

The rule in our jurisdiction is that exemplary damages are awarded in addition to moral damages. In *Mahinay v. Velasquez, Jr.*,[14] we held:

Neither is respondent entitled to exemplary damages. "If the court has no proof or evidence upon which the claim for moral damages could be based, such indemnity could not be outrightly awarded. The same holds true with respect to the award of exemplary damages where it must be shown that the party acted in a wanton, oppressive or malevolent manner." Furthermore, **this specie of damages is allowed only in addition to moral damages such that no exemplary damages can be awarded unless the claimant first establishes his clear right to moral damages**. (emphasis ours)

In light of our ruling on non-entitlement to moral damages, the CA's award of exemplary damages should be deleted.

Neither do we find factual and legal basis for the award of attorney's fees. We have consistently held that the award of attorney's fees is the exception rather than the general rule, and "counsel's fees are not to be awarded every time a party wins a suit. The discretion of the court to award attorney's

[14] G.R. No. 152753, January 13, 2004, 419 SCRA 118.

fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification, without which the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture. In all events, the court must state the reason for the award of attorney's fees."[15] None of the circumstances justifying an award of attorney's fees enumerated under Art. 2008 of the Civil Code are present, or have been proven in this case.[16]

WHEREFORE, the Decision of the Court of Appeals – which affirmed with modification the award of the Regional Trial Court

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[15] *Congregation of the Religious of the Virgin Mary v. Court of Appeals,* G.R. No. 126363, 26 June 1998, 291 SCRA 385; *Philipp Brothers Oceanic v. Court of Appeals*, G.R. Nos. 105416-17, 111863, 143715, 25 June 2003, 404 SCRA 605.

[16] In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs cannot be recovered, except:

(1) When exemplary damages are awarded;
(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;
(3) In criminal cases of malicious prosecution against the plaintiff;
(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
(6) In actions for legal support;
(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
(8) In actions for indemnity under workmen's compensation and employer's liability laws;
(9) In a separate civil action to recover civil liability arising from a crime;
(10) When at least double judicial costs are awarded;
(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

Manila, Branch 38, of damages, attorney's fees and costs in the respondents' counterclaim in Civil Case No. 94-71936 – is *REVERSED* and *SET ASIDE*. The respondents' counterclaim is *DISMISSED*. No pronouncement as to costs.

SO ORDERED.

Carpio Morales,[*] *Tinga, Velasco, Jr.* and *Leonardo-de Castro,*[**] *JJ.,* concur.

Quisumbing, J., on official leave.

SECOND DIVISION

[G.R. No. 156087. May 8, 2009]

KUWAIT AIRWAYS, CORPORATION, *petitioner, vs.* **PHILIPPINE AIRLINES, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; OBLIGATORY FORCE OF CONTRACTS; SINCE PHILIPPINE AIRLINES WAS ALREADY UNDER PRIVATE OWNERSHIP AT THE TIME THE CONFIDENTIAL MEMORANDUM OF AGREEMENT (CMU) WAS ENTERED INTO, IT CANNOT BE PRESUMED THAT ANY AND ALL COMMITMENTS MADE BY THE PHILIPPINE GOVERNMENT ARE UNILATERALLY BINDING ON THE CARRIER EVEN AT THE EXPENSE OF DIPLOMATIC EMBARRASSMENT.— There is no doubt that Philippine Airlines forebears under several regulatory

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[*] Designated Acting Chairperson of the Second Division per Special Order No. 618 dated April 14, 2009.

[**] Designated additional Member of the Second Division per Special Order No. 619 dated April 14, 2009.

perspectives. First, its authority to operate air services in the Philippines derives from its legislative franchise and is accordingly bound by whatever limitations that are presently in place or may be subsequently incorporated in its franchise. Second, Philippine Airlines is subject to the other laws of the Philippines, including R.A. No. 776, which grants regulatory power to the CAB over the economic aspect of air transportation. Third, there is a very significant public interest in state regulation of air travel in view of considerations of public safety, domestic and international commerce, as well as the fact that air travel necessitates steady traversal of international boundaries, the amity between nations. At the same time, especially since Philippine Airlines was already under private ownership at the time the CMU was entered into, we cannot presume that any and all commitments made by the Philippine government are unilaterally binding on the carrier even if this comes at the expense of diplomatic embarrassment. While it may have been, prior to the privatization of Philippine Airlines, that the Philippine Government had the authority to bind the airline in its capacity as owner of the airline, under the post-privatization era, however, whatever authority of the Philippine Government to bind Philippine Airlines can only come in its capacity as regulator.

2. **ID.; ID.; ID.; THE CIVIL AERONAUTICS BOARD (CAB) HAS AMPLE POWER UNDER ITS ORGANIZING CHARTER TO COMPEL PHILIPPINE AIR LINES TO TERMINATE WHATEVER COMMERCIAL AGREEMENTS THE CARRIER MAY HAVE.—** As with all regulatory subjects of the government, infringement of property rights can only avail with due process of law. Legislative regulation of public utilities must not have the effect of depriving an owner of his property without due process of law, nor of confiscating or appropriating private property without due process of law, nor of confiscating or appropriating private property without just compensation, nor of limiting or prescribing irrevocably vested rights or privileges lawfully acquired under a charter or franchise. The power to regulate is subject to these constitutional limits. We can deem that the CAB has ample power under its organizing charter, to compel Philippine Airlines to terminate whatever commercial agreements the carrier may have. After all, Section 10 of R.A. No. 776 grants to the CAB the "general

supervision and regulation of, and jurisdiction and control over, air carriers as well as their **property, property rights, equipment, facilities and franchise,**" and this power correlates to Section 4(c) of the same law, which mandates that the Board consider in the exercise of its functions "the regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic condition in, such transportation, and to improve the relations between, and coordinate transportation by air carriers." We do not doubt that the CAB, in the exercise of its statutory mandate, has the power to compel Philippine Airlines to immediately terminate its Commercial Agreement with Kuwait Airways pursuant to the CMU. Considering that it is the Philippine government that has the sole authority to charter air policy and negotiate with foreign governments with respect to air traffic rights, the government through the CAB has the indispensable authority to compel local air carriers to comply with government determined policies, even at the expense of economic rights. The airline industry is a sector where government abjuration is least desired.

3. **ID.; ID.; ID.; THE PROMISES MADE BY A PHILIPPINE PRESIDENT OR HIS ALTER EGOS TO A FOREIGN MONARCH ARE NOT TRANSUBSTANTIATED BY DIVINE RIGHT SO AS TO *IPSO FACTO* RENDER LEGAL RIGHTS OF PRIVATE CITIZENS OBVIATED.—** Imagine if the President of the Philippines, or one of his alter egos, acceded to the demands of a foreign counterpart and agreed to shut down a particular Filipino business or enterprise, going as far as to co-sign a document averring that the business "will be shut down immediately." Granting that there is basis in Philippine law for the closure of such business, could the mere declaration of the President have the legal effect of immediately rendering business operations illegal? We, as magistrates in a functioning democratic State with a fully fleshed Bill of Rights and a Constitution that emphatically rejects "*l'etat cest moi*" as the governing philosophy, think not. There is nothing to prevent the Philippine government from utilizing all the proper channels under law to enforce such closure, but unless and until due process is observed, it does not have legal effect in this jurisdiction. Even granting that the "agreement" between the

two governments or their representatives creates a binding obligation under international law, it remains incumbent for each contracting party to adhere to its own internal law in the process of complying with its obligations. The promises made by a Philippine president or his alter egos to a foreign monarch are not transubstantiated by divine right so as to *ipso facto* render legal rights of private persons obviated. Had Philippine Airlines remained a government-owned or controlled corporation, it would have been bound, as part of the executive branch, to comply with the dictates of the President or his alter egos since the President has executive control and supervision over the components of the executive branch. Yet Philippine Airlines has become, by this time, a private corporation – one that may have labored under the conditions of its legislative franchise that allowed it to conduct air services, but private in character nonetheless. The President or his *alter egos* do not have the legal capacity to dictate insuperable commands to private persons. And that undesirable trait would be refuted on the President had petitioner's position prevailed, since it is imbued with the presumption that the commitment made to a foreign government becomes operative without complying with the internal processes for the divestiture of private rights.

4. **ID.; ID.; ID.; THE PHILIPPINE GOVERNMENT COULD HAVE AVAILED OF LEGAL REMEDIES TO EFFECT THE IMMEDIATE TERMINATION OF THE SUBJECT COMMERCIAL AGREEMENT; NO LEGAL REMEDY WAS EVER ATTEMPTED BY THE GOVERNMENT.—** We do not see why the Philippine government could not have observed due process of law, should it have desired to see the Commercial Agreement immediately terminated in order to adhere to its apparent commitment to the Kuwait government. The CAB, with its ample regulatory power over the economic affairs of local airliners, could have been called upon to exercise its jurisdiction to make it so. A remedy even exists in civil law–the judicial annulment or reformation of contracts–which could have been availed of to effect the immediate termination of the Commercial Agreement. No such remedy was attempted by the government. Nor can we presume, simply because Dr. Linlingan, Executive Director of the CAB had signed the CMU in behalf of the Philippine Panel, that he could have done so bearing the authority of the Board, in the exercise of regulatory

jurisdiction over Philippine Airlines. For one, the CAB is a collegial body composed of five members, and no one member–even the chairman–can act in behalf of the entire Board. The Board is disabled from performing as such without a quorum. For another, the Executive Director of the CAB is not even a member of the Board, per R.A. No. 776, as amended.

5. **ID.; ID.; ID.; DEPRIVATION OF PROPERTY REQUIRES DUE PROCESS OF LAW AND TO VALIDATE PETITIONER'S POSITION IS TO CONCEDE THAT THE RIGHT TO DUE PROCESS MAY BE EXTINGUISHED BY EXECUTIVE COMMAND.—** Even granting that the police power of the State, as given flesh in the various laws governing the regulation of the airline industry in the Philippines, may be exercised to impair the vested rights of privately-owned airlines, the deprivation of property still requires due process of law. In order to validate petitioner's position, we will have to concede that the right to due process may be extinguished by executive command. While we sympathize with petitioner, who reasonably could rely on the commitment made to it by the Philippine government, we still have to respect the segregate identity of the government and that of a private corporation and give due meaning to that segregation, vital as it is to the very notion of democracy.

APPEARANCES OF COUNSEL

Puno and Puno for petitioner.

Office of the General Counsel Lucio Tan Group of Companies for respondent.

D E C I S I O N

TINGA, *J.*:

This petition for review[1] filed by the duly designated air carrier of the Kuwait Government assails a decision[2] dated 25 October 2002 of the Makati Regional Trial Court (RTC), Branch 60, ordering Kuwait Airways to pay respondent Philippine Airlines

[1] *Rollo*, pp. 19-61.

[2] *Id.* at 118-137.

the amount of US$1,092,690.00, plus interest, attorney's fees, and cost of suit.[3] The principal liability represents the share to Philippine Airlines in the revenues the foreign carrier had earned for the uplift of passengers and cargo in its flights to and from Kuwait and Manila which the foreign carrier committed to remit as a contractual obligation.

On 21 October 1981, Kuwait Airways and Philippine Airlines entered into a Commercial Agreement,[4] annexed to which was a Joint Services Agreement[5] between the two airlines. The Commercial Agreement covered a twice weekly Kuwait Airways flight on the route Kuwait-Bangkok-Manila and vice versa.[6] The agreement stipulated that "only 3rd and 4th freedom traffic rights between Kuwait and Manila and vice versa will be exercised. No 5th freedom traffic rights will be exercised between Manila on the one hand and Bangkok on the other."[7]

The "freedom traffic rights" referred to in the Agreement are the so-called "five freedoms" contained in the International Air Transport Agreement (IATA) signed in Chicago on 7 December 1944. Under the IATA, each contracting State agreed to grant to the other contracting states, five "freedoms of air." Among these freedoms were "[t]he privilege to put down passengers, mail and cargo taken on in the territory of the State whose nationality the aircraft possesses" (Third Freedom); "[t]he privilege to take on passengers, mail or cargo destined for the territory of the State whose nationality the aircraft possesses" (Fourth Freedom); and the right to carry passengers from one's own country to a second country, and from that country to a third country (Fifth Freedom). In essence, the Kuwait Airways flight was authorized to board passengers in Kuwait and deplane them in Manila, as well as to board passengers in Manila and deplane

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[3] *Id.* at 136-137.

[4] Records (Vol. 1), p. 5-9.

[5] *Id.* at 10-16.

[6] *Id.* at 5. By 1993, the said flight was expanded to thrice weekly. See *id.* at 35.

[7] *Id.*

them in Kuwait. At the same time, with the limitation in the exercise of Fifth Freedom traffic rights, the flight was barred from boarding passengers in Bangkok and deplaning them in Manila, or boarding passengers in Manila and deplaning them in Bangkok.

The Commercial Agreement likewise adverted to the annexed Joint Services Agreement covering the Kuwait-Manila (and vice versa) route, which both airlines had entered into "[i]n order to reflect the high level of friendly relationships between [Kuwait Airways] and [Philippine Airlines] and to assist each other to develop traffic on the route."[8] The Agreement likewise stipulated that "[u]ntil such time as [Philippine Airlines] commences its operations to or via Kuwait, the Joint Services shall be operated with the use of [Kuwait Airways] aircraft and crew."[9] By virtue of the Joint Services Agreement, Philippine Airlines was entitled to seat allocations on specified Kuwait Airways sectors, special prorates for use by Philippine Airlines to specified Kuwait Airways sectors, joint advertising by both carriers in each other's timetables and other general advertising, and mutual assistance to each other with respect to the development of traffic on the route.[10]

Most pertinently for our purposes, under Article 2.1 of the Commercial Agreement, Kuwait Airways obligated itself to "share with Philippine Airlines revenue earned from the uplift of passengers between Kuwait and Manila and vice versa."[11] The succeeding paragraphs of Article 2 stipulated the basis for the shared revenue earned from the uplift of passengers.

The Commercial Agreement and the annexed Joint Services Agreement was subsequently amended by the parties six times between 1981 and 1994. At one point, in 1988, the agreement was amended to authorize Philippine Airlines to operate provisional services, referred to as "*ad hoc* joint services," on the Manila-

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[8] *Id.* at 8.

[9] *Id.*

[10] *Id.*

[11] *Id.* at 6.

Kuwait (and vice versa) route for the period between April to June 1988.[12] In 1989, another amendment was agreed to by the parties, subjecting the uplift of cargo between Kuwait and Manila to the same revenue sharing arrangement as the uplift of passengers.[13] From 1981 until when the present incidents arose in 1995, there seems to have been no serious disagreements relating to the contract.

In April of 1995, delegations from the Philippines and Kuwait (Philippine Panel and Kuwait Panel) met in Kuwait. The talks culminated in a Confidential Memorandum of Understanding (CMU) entered into in Kuwait on 12 April 1995. Among the members of the Philippine Panel were officials of the Civil Aeronautics Board (CAB), the Department of Foreign Affairs (DFA), and four officials of Philippine Airlines: namely its Vice-President for Marketing, Director for International Relations, Legal Counsel, and a Senior International Relations Specialist. Dr. Victor S. Linlingan, the Head of the Delegation and Executive Director of the CAB, signed the CMU in behalf of the Government of the Republic of the Philippines.

The present controversy stems from the fourth paragraph of the CMU, which read:

4. The two delegations agreed that the unilateral operation and the exercise of third and fourth freedom traffic rights shall not be subject to any royalty payment or commercial arrangements, as from the date of signing of this [CMU].

The aeronautical authorities of the two Contracting Parties will bless and encourage any cooperation between the two designated airlines.

The designated airlines shall enter into commercial arrangements for the unilateral exercise of fifth freedom traffic rights. Such arrangements will be subject to the approval of the aeronautical authorities of both contracting parties.[14]

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[12] *Id.* at 21, 24.

[13] *Id.* at 26.

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

On 15 May 1995, Philippine Airlines received a letter from Dawoud M. Al-Dawoud, the Deputy Marketing & Sales Director for International Affairs of Kuwait Airways, addressed to Ms. Socorro Gonzaga, the Director for International Relations of Philippine Airlines.[15] Both Al-Dawoud and Gonzaga were members of their country's respective delegations that had met in Kuwait the previous month. The letter stated in part:

Regarding the [Kuwait Airways/Philippine Airlines] Commercial Agreement, pursuant to item 4 of the new MOU[,] we will advise our Finance Department that the Agreement concerning royalty for 3rd/4th freedom traffic will be terminated effective April 12, 1995. Although the royalty agreement will no longer be valid, we are very keen on seeing that [Philippine Airlines] continues to enjoy direct participation in the Kuwait/Philippines market through the Block Space Agreement and to that extent we would like to maintain the Jt. Venture (Block Space) Agreement, although with some minor modifications.[16]

To this, Gonzaga replied to Kuwait Airways in behalf of Philippine Airlines in a letter dated 22 June 1995.[17] Philippine Airlines called attention to Section 6.5 of the Commercial Agreement, which read:

This agreement may be terminated by either party by giving ninety (90) days notice in writing to the other party. However, any termination date must be the last day of any traffic period, *e.g.*[,] 31st March or 31st October.[18]

Pursuant to this clause, Philippine Airlines acknowledged the 15 May 1995 letter as the requisite notice of termination. However, it also pointed out that the agreement could only be effectively terminated on 31 October 1995, or the last day of the then current traffic period. Thus, Philippine Airlines insisted that

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[15] *Id.* at 206.

[16] *Id.*

[17] *Id.* at 207.

[18] *Id.*

the provisions of the Commercial Agreement "shall continue to be enforced until such date."[19]

Subsequently, Philippine Airlines insisted that Kuwait Airways pay it the principal sum of US$1,092,690.00 as revenue for the uplift of passengers and cargo for the period 13 April 1995 until 28 October 1995.[20] When Kuwait Airways refused to pay, Philippine Airlines filed a Complaint[21] against the foreign airline with the Regional Trial Court (RTC) of Makati City, seeking the payment of the aforementioned sum with interest, attorney's fees, and costs of suit. In its Answer,[22] Kuwait Airways invoked the CMU and argued that its obligations under the Commercial Agreement were terminated as of the effectivity date of the CMU, or on 12 April 1995. Philippine Airlines countered in its Reply that it was "not privy to the [CMU],"[23] though it would eventually concede the existence of the CMU.[24]

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[19] Records, p. 207.

[20] *Rollo,* p. 136; As found by the trial court, the amount was determined in this manner:

For period 12 April 1995 to 31 October 1995: As defendant Kuwait was using three (3) different aircraft types namely the B747, A310 and A340, plaintiff made an estimate based on the average capacity of the three types of aircraft less plaintiff's average seat allocation, as follows:

KU ACFT	Seat Capacity	PR Seat Allocation	KU net seat capacity
B747	252	75	177
A340	272	50	222
A310	170	50	120
Average	231	58.3 or 60	171

There were a total of seventy one (71) round trip operated flights or one hundred forty two (142) one-way flights and as provided for under the agreement, plaintiff's revenue share is forty-five United States Dollar ($45.00) per passenger. Computed as such, plaintiff, for the passenger side of Agreement should received the amount of USD1,092,690.00 or PHP28,221,462.00 (exchange rate 1 USD = PHP25.82651) from defendant Kuwait."

[21] *Id.* at 65-78.

[22] Records (Vol. 1), pp. 47-56.

[23] Records (Vol. 1), pp. 74-75.

[24] See *id.* at 138-141.

An exhaustive trial on the merits was had. On 25 October 2002, the RTC rendered a Decision in favor of Philippine Airlines. The RTC noted that "the only issue to resolve in this case is a legal one," particularly whether Philippine Airlines is entitled to the sums claimed under the terms of the Commercial Agreement. The RTC also considered as a corollary issue whether Kuwait Airways "validly terminated the Commercial Agreement x x x, plaintiff's contention being that [Kuwait Airways] had not complied with the terms of termination provided for in the Commercial Agreement."

The bulk of the RTC's discussion centered on the Philippine Airlines' claim that the execution of the CMU could not prejudice its existing rights under the Commercial Agreement, and that the CMU could only be deemed effective only after 31 October 1995, the purported effectivity date of termination under the Commercial Agreement. The rationale for this position of Philippine Airlines was that the execution of the CMU could not divest its proprietary rights under the Commercial Agreement.

On this crucial point, the RTC agreed with Philippine Airlines. It asserted the obligatory force of contracts between contracting parties as the source of vested rights which may not be modified or impaired. After recasting Kuwait Airway's arguments on this point as being that "the Confidential Memorandum of Understanding is superior to the Commercial Agreement[,] the same having been supposedly executed by virtue of the state's sovereign power," the RTC rejected the argument, holding that "[t]he fact that the [CMU] may have been executed by a Philippine Panel consisting of representative [*sic*] of CAB, DFA, *etc*. does not necessarily give rise to the conclusion that the [CMU] is a superior contract[,] for the exercise of the State's sovereign power cannot be arbitrarily and indiscriminately utilized specifically to impair contractual vested rights."[25]

Instead, the RTC held that "[t]he Commercial Agreement and its specific provisions on revenue sharing having been freely and voluntarily agreed upon by the affected parties x x x has the force of law between the parties and they are bound to the

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[25] *Rollo,* p. 134

fulfillment of what has been expressly stipulated therein."[26] Accordingly, "the provision of the [CMU] must be applied in such a manner that it does not impair the vested rights of the parties."

From this Decision, Kuwait Airways directly filed with this Court the present Petition for Review, raising pure questions of law. Kuwait Airways poses three questions of law for resolution: whether the designated air carrier of the Republic of the Philippines can have better rights than the government itself; whether the bilateral agreement between the Republic of the Philippines and the State of Kuwait is superior to the Commercial Agreement; and whether the enforcement of the CMU violates the non-impairment clause of the Constitution.

Let us review the factual backdrop to appreciate the underlying context behind the Commercial Agreement and the CMU. The Commercial Agreement was entered into in 1981 at a time when Philippine Airlines had not provided a route to Kuwait while Kuwait Airways had a route to Manila. The Commercial Agreement established a joint commercial arrangement whereby Philippine Airlines and Kuwait Airways were to jointly operate the Manila-Kuwait (and vice versa) route, utilizing the planes and services of Kuwait Airways. Based on the preambular paragraphs of the Joint Services Agreement, as of 1981, Kuwait Airways was interested in establishing a "second frequency" (or an increase of its Manila flights to two) and that "as a result of cordial and frank discussions the concept of a joint service emerged as the most desirable alternative option."[27]

As a result, the revenue-sharing agreement was reached between the two airlines, an agreement which stood as an alternative to both carriers offering competing flights servicing the Manila-Kuwait route. An apparent concession though by Philippine Airlines was the preclusion of the exercise of one of the fundamental air traffic rights, the Fifth Freedom traffic rights with respect to the Manila-Bangkok-Kuwait, thereby precluding

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[26] *Id.*

[27] Records (Vol. 1), p. 10.

the deplaning of passengers from Manila in Bangkok and the boarding in Bangkok of passengers bound for Manila.

The CMU effectively sought to end the 1981 agreement between Philippine Airlines and Kuwait Airways, by precluding any commercial arrangements in the exercise of the Third and Fourth freedom traffic rights. As a result, both Kuwait and the Philippines had the respective right to board passengers from their respective countries and deplane them in the other country, without having to share any revenue or enter into any commercial arrangements to exercise such rights. In exchange, the designated airline or airlines of each country was entitled to operate six frequencies per week in each direction. In addition, the designated airlines were allowed to enter into commercial arrangements for the unilateral exercise of the Fifth Freedom traffic rights.

Another notable point, one not touched upon by the parties or the trial court. It is well known that at the time of the execution of the 1981 agreements, Philippine Airlines was controlled by the Philippine government, with the Government Service Insurance System (GSIS) holding the majority of shares. However, in 1992, Philippine Airlines was privatized, with a private consortium acquiring 67% of the shares of the carrier.[28] Thus, at the time of the signing of the CMU, Philippine Airlines was a private corporation no longer controlled by the Government. This fact is significant. Had Philippine Airlines remained a government owned or controlled corporation at the time the CMU was executed in 1995, its status as such would have bound Philippine Airlines to the commitments made in the document by no less than the Philippine government. However, since Philippine Airlines had already become a private corporation at

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[28] The consortium, known as PR Holdings, consisted of Ascot Holdings And Equities, Inc., Cube Factor Holdings, Inc., Sierra Holdings & Equities, Inc., Pol Holdings, Inc., the Philippine National Bank, the Development Bank of the Philippines, the AFP Retirement and Separation Benefits System, among others. See *Land Bank v. Ascot Holdings*, G.R. No. 175613, 19 October 2007. In January of 1995, the majority stockholder of PR Holdings, Lucio Tan, became Chairman and Chief Executive Officer of Philippine Airlines. See http://www.philippineairlines.com/about_pal/milestones/milestones.jsp.

that juncture, the question of impairment of private rights may come into consideration.

In this regard, we observe that the RTC appears to have been under the impression that the CMU was brought about by machinations of the Philippine Panel and the Kuwait Panel of which Philippine Airlines was not aware or in which it had a part. This impression is not exactly borne by the record since no less than four of the nine members of the Philippine Panel were officials of Philippine Airlines. It should be noted though that one of these officials, Senior International Relations Specialist Arnel Vibar, testified for Philippine Airlines that the airline voiced its opposition to the withdrawal of the commercial agreements under the CMU even months before the signing of the CMU, but the objections were overruled.

Now, the arguments raised in the petition.

One line of argument raised by Kuwait Airways can be dismissed outright. Kuwait Airways points out that the third Whereas clause of the 1981 Commercial Agreement stated: "NOW, it is hereby agreed, subject to and without prejudice to any existing or future agreements between the Government Authorities of the Contracting Parties hereto …" That clause, it is argued, evinces acknowledgement that from the beginning Philippine Airlines had known fully well that its rights under the Commercial Agreement would be limited by whatever agreements the Philippine and Kuwait governments may enter into later.

But can a perambulatory clause, which is what the adverted "Whereas" clause is, impose a binding obligation or limitation on the contracting parties? In the case of statutes, while a preamble manifests the reasons for the passage of the statute and aids in the interpretation of any ambiguities within the statute to which it is prefixed, it nonetheless is not an essential part of an act, and it neither enlarges nor confers powers.[29] Philippine

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[29] WEST'S ENCYCLOPEDIA OF AMERICAN LAW (2nd ed., 2008). "Besides, a preamble is really not an integral part of a law. It is merely an introduction to show its intent or purposes. It cannot be the origin of rights and obligations. Where the meaning of a statute is clear and unambiguous,

Airlines submits that the same holds true as to the preambular whereas clauses of a contract.

What was the intention of the parties in forging the "Whereas" clause and the contexts the parties understood it in 1981? In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered,[30] and in doing so, the courts may consider the relations existing between the parties and the purpose of the contract.[31] In 1981, Philippine Airlines was still owned by the Philippine government. In that context, it is evident that the Philippine government, as owner Philippine Airlines, could enter into agreements with the Kuwait government that would supersede the Commercial Agreement entered into by one of its GOCCs, a scenario that changed once Philippine Airlines fell to private ownership. Philippine Airlines argues before us that the cited preambular stipulation is in fact superfluous, and we can agree in the sense that as of the time of the execution of the Commercial Agreement, it was evident, without need of stipulation, that the Philippine government could enter into an agreement with the Kuwait government that would prejudice the terms of the commercial arrangements between the two airlines. After all, Philippine Airlines then would not have been in a position to challenge the wishes of its then majority stockholder – the Philippine government.

Yet by the time ownership of Philippine Airlines was transferred into private hands, the controverted "Whereas" clause had taken on a different complexion, for it was newly evident that an act of the Philippine government negating the commercial arrangement between the two airlines would infringe the vested rights of a private individual. The original intention of the "Whereas" clause was to reflect what was then a given fact relative to the nationalized

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the preamble can neither expand nor restrict its operation, much less prevail over its text." *Echegaray v. Secretary of Justice*, G.R. No. 132601, Resolution dated 19 January 1999; citing Agpalo, *Statutory Construction*, Second Edition 1990 & Martin, *Statutory Construction*, Sixth Edition, 1984.

[30] CIVIL CODE, ART. 1371.

[31] *Kidwell v. Cartes*, 43 Phil. 953 (1922).

status of Philippine Airlines. With the change of ownership of Philippine Airlines, the "Whereas" clause had ceased to be reflective of the current situation as it now stands as a seeming invitation to the Philippine government to erode private vested rights. We would have no problem according the interpretation preferred by Kuwait Airways of the "Whereas" clause had it been still reflective of the original intent to waive vested rights of private persons, rather than the rights in favor of the government by a GOCC. That is not the case, and we are not inclined to give effect to the "Whereas" clause in a manner that does not reflect the original intention of the contracting parties.

Thusly, the proper focus of our deliberation should be whether the execution of the CMU between the Philippine and Kuwait governments could have automatically terminated the Commercial Agreement, as well as the Joint Services Agreement between Philippine Airlines and Kuwait Airways.

Philippine Airlines is the grantee of a legislative franchise authorizing it to provide domestic and international air services.[32] Its initial franchise was granted in 1935 through Act No. 4271, which underwent substantial amendments in 1959 through Republic Act No. 2360.[33] It was granted a new franchise in 1979 through Presidential Decree No. 1590, wherein statutory recognition was accorded to Philippine Airlines as the "national flag carrier." P.D. No. 1590 also recognized that the "ownership, control, and management" of Philippine Airlines had been reacquired by the Government. Section 19 of P.D. No. 1590 authorized Philippine Airlines to contract loans, credits and indebtedness from foreign sources, including foreign governments, with the unconditional guarantee of the Republic of the Philippines.

At the same time, Section 8 of P.D. No. 1590 subjects Philippine Airlines "to the laws of the Philippines now existing or hereafter enacted." After pointing to this provision, Kuwait Airways

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[32] See *Civil Aeronautics Board v. Philippine Airlines, Inc.,* 159-A Phil. 142, 144 (1975).

[33] *Civil Aeronautics Board v. Philippine Airlines, Inc.,* 159-A Phil. 142, 144-145 (1975) .

correlates it to Republic Act (R.A.) No. 776, or the Civil Aeronautics Act of the Philippines, which grants the Civil Aeronautics Board (CAB) "the power to regulate the economic aspect of air transportation, [its] general supervision and regulation of, and jurisdiction and control over, air carriers as well as their property, property rights, equipment, facilities, and franchise." R.A. No. 776 also mandates that the CAB "shall take into consideration the obligation assumed by the Republic of the Philippines in any treaty, convention or agreement with foreign countries on matters affecting civil aviation."

There is no doubt that Philippine Airlines forebears under several regulatory perspectives. First, its authority to operate air services in the Philippines derives from its legislative franchise and is accordingly bound by whatever limitations that are presently in place or may be subsequently incorporated in its franchise. Second, Philippine Airlines is subject to the other laws of the Philippines, including R.A. No. 776, which grants regulatory power to the CAB over the economic aspect of air transportation. Third, there is a very significant public interest in state regulation of air travel in view of considerations of public safety, domestic and international commerce, as well as the fact that air travel necessitates steady traversal of international boundaries, the amity between nations.

At the same time, especially since Philippine Airlines was already under private ownership at the time the CMU was entered into, we cannot presume that any and all commitments made by the Philippine government are unilaterally binding on the carrier even if this comes at the expense of diplomatic embarrassment. While it may have been, prior to the privatization of Philippine Airlines, that the Philippine Government had the authority to bind the airline in its capacity as owner of the airline, under the post-privatization era, however, whatever authority of the Philippine Government to bind Philippine Airlines can only come in its capacity as regulator.

As with all regulatory subjects of the government, infringement of property rights can only avail with due process of law. Legislative regulation of public utilities must not have the effect

of depriving an owner of his property without due process of law, nor of confiscating or appropriating private property without due process of law, nor of confiscating or appropriating private property without just compensation, nor of limiting or prescribing irrevocably vested rights or privileges lawfully acquired under a charter or franchise. The power to regulate is subject to these constitutional limits.[34]

We can deem that the CAB has ample power under its organizing charter, to compel Philippine Airlines to terminate whatever commercial agreements the carrier may have. After all, Section 10 of R.A. No. 776 grants to the CAB the "general supervision and regulation of, and jurisdiction and control over, air carriers as well as their **property, property rights, equipment, facilities and franchise,**" and this power correlates to Section 4(c) of the same law, which mandates that the Board consider in the exercise of its functions "the regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic condition in, such transportation, and to improve the relations between, and coordinate transportation by air carriers."

We do not doubt that the CAB, in the exercise of its statutory mandate, has the power to compel Philippine Airlines to immediately terminate its Commercial Agreement with Kuwait Airways pursuant to the CMU. Considering that it is the Philippine government that has the sole authority to charter air policy and negotiate with foreign governments with respect to air traffic rights, the government through the CAB has the indispensable authority to compel local air carriers to comply with government determined policies, even at the expense of economic rights.

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[34] AGBAYANI, AGUENDO F., *COMMENTARIES AND JURISPRUDENCE ON THE COMMERCIAL LAWS OF THE PHILIPPINES*, p. 560, 1993 ed.; citing *Fisher v. Yangco Steamship Company*, 31 Phil 1, (1915), referring to *Chicago*, *etc. R. Co. v. Minnesota*, 134 U.S. 418; *Minneapolis Eastern R. Co. v. Minnesota*, 134 U.S. 467, *Chicago*, *etc. R. Co. v. Wellman*, 143 U.S. 339; *Smyth v. Arnes*, 169 U.S. 466, 524; *Henderson Bridge Co. v. Henderson City*, 173 U.S. 592, 614.

The airline industry is a sector where government abjuration is least desired.

However, this is not a case where the CAB had duly exercised its regulatory authority over a local airline in order to implement or further government air policy. What happened instead was an officer of the CAB, acting in behalf not of the Board but of the Philippine government, had committed to a foreign nation the immediate abrogation of Philippine Airlines's commercial agreement with Kuwait Airways. And while we do not question that ability of that member of the CAB to represent the Philippine government in signing the CMU, we do question whether such member could have bound Philippine Airlines in a manner that can be accorded legal recognition by our courts.

Imagine if the President of the Philippines, or one of his alter egos, acceded to the demands of a foreign counterpart and agreed to shut down a particular Filipino business or enterprise, going as far as to co-sign a document averring that the business "will be shut down immediately." Granting that there is basis in Philippine law for the closure of such business, could the mere declaration of the President have the legal effect of immediately rendering business operations illegal? We, as magistrates in a functioning democratic State with a fully fleshed Bill of Rights and a Constitution that emphatically rejects "*l'etat cest moi*" as the governing philosophy, think not. There is nothing to prevent the Philippine government from utilizing all the proper channels under law to enforce such closure, but unless and until due process is observed, it does not have legal effect in this jurisdiction. Even granting that the "agreement" between the two governments or their representatives creates a binding obligation under international law, it remains incumbent for each contracting party to adhere to its own internal law in the process of complying with its obligations.

The promises made by a Philippine president or his alter egos to a foreign monarch are not transubstantiated by divine right so as to *ipso facto* render legal rights of private persons

obviated. Had Philippine Airlines remained a government-owned or controlled corporation, it would have been bound, as part of the executive branch, to comply with the dictates of the President or his alter egos since the President has executive control and supervision over the components of the executive branch. Yet Philippine Airlines has become, by this time, a private corporation – one that may have labored under the conditions of its legislative franchise that allowed it to conduct air services, but private in character nonetheless. The President or his *alter egos* do not have the legal capacity to dictate insuperable commands to private persons. And that undesirable trait would be refuted on the President had petitioner's position prevailed, since it is imbued with the presumption that the commitment made to a foreign government becomes operative without complying with the internal processes for the divestiture of private rights.

Herein, we do not see why the Philippine government could not have observed due process of law, should it have desired to see the Commercial Agreement immediately terminated in order to adhere to its apparent commitment to the Kuwait government. The CAB, with its ample regulatory power over the economic affairs of local airliners, could have been called upon to exercise its jurisdiction to make it so. A remedy even exists in civil law–the judicial annulment or reformation of contracts–which could have been availed of to effect the immediate termination of the Commercial Agreement. No such remedy was attempted by the government.

Nor can we presume, simply because Dr. Linlingan, Executive Director of the CAB had signed the CMU in behalf of the Philippine Panel, that he could have done so bearing the authority of the Board, in the exercise of regulatory jurisdiction over Philippine Airlines. For one, the CAB is a collegial body composed of five members,[35] and no one member–even the chairman–can act in behalf of the entire Board. The Board is disabled from performing as such without a quorum. For another, the Executive Director of the CAB is not even a member of the Board, per R.A. No. 776, as amended.

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[35] See Sec. 5, R.A. No. 776, as amended.

Even granting that the police power of the State, as given flesh in the various laws governing the regulation of the airline industry in the Philippines, may be exercised to impair the vested rights of privately-owned airlines, the deprivation of property still requires due process of law. In order to validate petitioner's position, we will have to concede that the right to due process may be extinguished by executive command. While we sympathize with petitioner, who reasonably could rely on the commitment made to it by the Philippine government, we still have to respect the segregate identity of the government and that of a private corporation and give due meaning to that segregation, vital as it is to the very notion of democracy.

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

SO ORDERED.

Carpio Morales,[*] *Velasco, Jr., Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

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[*] Acting Chairperson.

[**] Per Special Order No. 619, Justice Teresita J. Leonardo-De Castro is hereby designated as additional member of the Second Division in lieu of Justice Leonardo A. Quisumbing, who is on official leave.

SECOND DIVISION

[G.R. No. 162033. May 8, 2009]

HEIRS OF TRANQUILINO LABISTE (also known as Tranquilino Laviste) represented by: (1) GERARDO LABISTE, representing the Heirs of Gregorio Labiste; (2) OBDULLIA LABISTE GABUAN, representing the heirs of Juan Labiste; (3) VICTORIA G. CHIONG, representing the Heirs of Eulalia Labiste; (4) APOLINARIA LABISTE YLAYA, representing the Heirs of Nicolasa Labiste; (5) DEMOSTHENES LABISTE, representing the Heirs of Gervacio Labiste; (6) ALEJANDRA LABISTE; representing the Heirs of SINFROCIO LABISTE, and (7) CLOTILDE LABISTE CARTA, representing the Heirs of Andres Labiste, *petitioners, vs.* **HEIRS OF JOSE LABISTE, survived by his children, (1) ZACARIAS LABISTE, deceased and survived by his children, namely: CRESENCIA LABISTE and EUFRONIO LABISTE; (2) BERNARDINO LABISTE, deceased and survived by his children, namely: POLICARPIO LABISTE, BONIFACIO LABISTE, FELIX LABISTE, GABINA LABISTE, CAYETANA LABISTE and ISABEL LABISTE; (3) LUCIA LABISTE, deceased and survived by her children, namely: ISAAC LABISTE, GENARO LABISTE, BRAULIA LABISTE, BRAULIO LABISTE, ASUNCION LABISTE, ALFONSO LABISTE and CLAUDIA LABISTE; (4) EPIFANIO LABISTE and CLAUDIA LABISTE; deceased and survived by his children, namely SILVESTRE LABISTE, PAULA LABISTE and GERARDA LABISTE; (5) ANA LABISTE, deceased and survived by her children, namely: MAXIMO LABISTE, MOISES LABISTE, GERVACIO LABISTE, SATURNINA LABISTE and QUIRINO LABISTE; (6) SEVERO LABISTE, deceased and survived by his children, namely: FELIX LABISTE, RUFINA LABISTE, SIMPLICIO LABISTE, VICENTE LABISTE and PATRICIO LABISTE,** *respondents.*

SYLLABUS

1. **CIVIL LAW; TRUST; EXPRESS TRUST; CREATED BY DIRECT AND POSITIVE ACTS OF THE PARTIES, BY SOME WRITING OR DEED, OR WILL, OR BY WORDS EITHER EXPRESSLY OR IMPLIEDLY EVINCING AN INTENTION TO CREATE TRUST, AS SUCH, PRESCRIPTION AND LACHES WILL RUN ONLY FROM THE TIME THE TRUST IS REPUDIATED; CASE AT BAR.—** The Court of Appeals erred in applying the rules on prescription and the principle of laches because what is involved in the present case is an express trust. Trust is the right to the beneficial enjoyment of property, the legal title to which is vested in another. It is a fiduciary relationship that obliges the trustee to deal with the property for the benefit of the beneficiary. Trust relations between parties may either be express or implied. An express trust is created by the intention of the trustor or of the parties. An implied trust comes into being by operation of law. Express trusts are created by direct and positive acts of the parties, by some writing or deed, or will, or by words either expressly or impliedly evincing an intention to create a trust. Under Article 1444 of the Civil Code, "[n]o particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended." The Affidavit of Epifanio is in the nature of a trust agreement. Epifanio affirmed that the lot brought in his name was co-owned by him, as one of the heirs of Jose, and his uncle Tranquilino. And by agreement, each of them has been in possession of half of the property. Their arrangement was corroborated by the subdivision plan prepared by Engr. Bunagan and approved by Jose P. Dans, Acting Director of Lands. As such, prescription and laches will run only from the time the express trust is repudiated. The Court has held that for acquisitive prescription to bar the action of the beneficiary against the trustee in an express trust for the recovery of the property held in trust it must be shown that: (a) the trustee has performed unequivocal acts of repudiation amounting to an ouster of the *cestui que trust*; (b) such positive acts of repudiation have been made known to the *cestui que trust*, and (c) the evidence thereon is clear and conclusive. Respondents cannot rely on the fact that the Torrens title was issued in the name of Epifanio and the other heirs of Jose. It has been held that a trustee who obtains a Torrens title over property

held in trust by him for another cannot repudiate the trust by relying on the registration. The rule requires a clear repudiation of the trust duly communicated to the beneficiary. The only act that can be construed as repudiation was when respondents filed the petition for reconstitution in October 1993. And since petitioners filed their complaint in January 1995, their cause of action has not yet prescribed, laches cannot be attributed to them.

2. **ID.; OBLIGATIONS AND CONTRACTS; TO RECOVER THE OTHER HALF OF THE PROPERTY COVERED BY THE PRIVATE *CALIG-ONAN SA PANAGPALIT* AND TO HAVE IT REGISTERED ON THE TITLE OF THE PROPERTY, PETITIONERS SHOULD HAVE FILED AN ACTION TO COMPEL RESPONDENTS, AS HEIRS OF THE SELLERS IN THE CONTRACT, TO EXECUTE A PUBLIC DEED OF SALE; EVEN ASSUMING THAT SUCH ACTION WAS FILED BY PETITIONERS, THE SAME HAD ALREADY PRESCRIBED.—** To recover the other half of the property covered by the private *Calig-onan sa Panagpalit* and to have it registered on the title of the property, petitioners should have filed an action to compel respondents, as heirs of the sellers in the contract, to execute a public deed of sale. A conveyance of land made in a private document does not affect its validity. Article 1358, like its forerunner Article 1280 of the Civil Code of Spain, does not require the accomplishment of the acts or contracts in a public instrument in order to validate the act or contract but only to insure its efficacy, so that after the existence of said contract has been admitted, the party bound may be compelled to execute the proper document. But even assuming that such action was filed by petitioners, the same had already prescribed.

3. **ID.; ID.; ONLY LAWS EXISTING AT THE TIME OF THE EXECUTION OF A CONTRACT ARE APPLICABLE THERETO AND NOT LATER STATUTES; IT IS THE OLD CODE OF CIVIL PROCEDURE (ACT NO. 190) WHICH APPLIES IN CASE AT BAR SINCE THE *CALIG-ONAN SA PANAGPALIT* WAS EXECUTED ON 18 OCTOBER 1939 WHILE THE NEW CIVIL CODE TOOK EFFECT ONLY ON 30 AUGUST 1950.—** It is settled that only laws existing at the time of the execution of a contract are applicable thereto and not later statutes, unless the latter are specifically intended to have retroactive effect. Consequently, it is the Old Code of

Civil Procedure (Act No. 190) which applies in this case since the *Calig-onan sa Panagpalit* was executed on 18 October 1939 while the New Civil Code took effect only on 30 August 1950. And Section 43 of Act No. 190, like its counterpart Article 1144 of the New Civil Code, provides that action upon a written contract must be filed within ten years.

APPEARANCES OF COUNSEL

Palma Pangan & Ybañez for petitioners.

Basilio E. Duaban, Alfonso T. Dela Cerna and *Rolando C. Rama* for respondents.

D E C I S I O N

TINGA, *J*.:

This is a petition for review[1] under Rule 45 of the Rules of Court of the Court of Appeals' Decision dated 30 June 2003[2] in CA-G.R. CV No. 65829, reversing the decision of the Regional Trial Court (RTC) of Cebu City, Branch 9. The appellate court denied petitioners'[3] motion for reconsideration in a Resolution dated 15 January 2004.

The factual antecedents are as follows:

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[1] *Rollo*, pp. 14-33.

[2] *Id.* at 35-46. Penned by Associate Justice B.A. Adefuin-De la Cruz and concurred by Associate Justices Josefina Guevara-Salonga and Hakim Abdulwahid. The dispositive portion reads:

> WHEREFORE, premises considered, the assailed Decision is hereby REVERSED and SET ASIDE, and the complaint filed before the court *a quo* is hereby DISMISSED.
>
> No costs.
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> SO ORDERED.

[3] *Id.* at 15-16. Petitioners are descendants and heirs of the late Tranquilino Labiste. They are represented by the following : (1) Gerardo Labiste, representing the Heirs of Gregorio Labiste; (2) Obdullia Labiste Gabuan, representing the heirs of Juan Labiste; (3) Victoria G. Chiong, representing the Heirs of Eulalia Labiste; (4) Apolinaria Labiste Ylana, representing the Heirs of Nicolasa Labiste; (5) Demosthenes Labiste, representing the Heirs of Gervacio Labiste; (6) Alejandra Labiste, representing the Heirs of Simfrocio Labiste; and (7) Clotilde Labiste Carta, representing the Heirs of Andres Labiste.

On 29 September 1919, the late Epifanio Labiste (Epifanio), on his own and on behalf of his brothers and sisters who were the heirs of Jose Labiste (Jose), purchased from the Bureau of Lands Lot No. 1054 of the Banilad Friar Lands Estate, with an area of 13,308 square meters, located at Guadalupe, Cebu City for ₱36.00.[4] Subsequently, on 9 June 1924, then Bureau of Lands Director Jorge B. Vargas executed Deed of Conveyance No. 12536 selling and ceding Lot No. 1054 to Epifanio and his brothers and sisters who were the heirs of Jose.[5]

After full payment of the purchase price but prior to the issuance of the deed of conveyance, Epifanio executed an Affidavit[6] (Affidavit of Epifanio) in Spanish on 10 July 1923 affirming that he, as one of the heirs of Jose, and his uncle and petitioners' predecessor-in-interest, Tranquilino Labiste (Tranquilino), then co-owned Lot No. 1054 because the money that was paid to the government came from the two of them. Tranquilino and the heirs of Jose continued to hold the property jointly.

Sometime in 1928, the Register of Deeds of Cebu City issued Original Certificate of Title No. 3878 for Lot No. 1054. On 2 May 1928, Engineer Espiritu Bunagan (Engr. Bunagan), Deputy Public Land Surveyor, subdivided Lot No. 1054 into two lots: Lot No. 1054-A with an area of 6,664 square meters for Tranquilino and Lot No. 1054-B with an area of 6,664 square meters for Epifanio. The subdivision plan prepared by Engr. Bunagan was approved by Jose P. Dans, Acting Director of Lands on 28 October 1928.[7]

Subsequently, on 18 October 1939, the heirs of Tranquilino[8] purchased the one-half (½) interest of the heirs of Jose[9] over

[4] *Id.* at 234-235.

[5] *Id.* at 236-237.

[6] *Id.* at 238.

[7] *Id.* at 239-240.

[8] Gregorio Labiste, Juan Labiste, Eulalia Labiste, Nicolasa Labiste, Andres Labiste, Gervacio Labiste, Alejandra Labiste, and Fidelina Labiste.

[9] Bernardino Labiste, Epifanio Labiste, Anna Labiste, Lucio Labiste, Felix Labiste, Simplicio Labiste, Patricio Labiste, and Rufina Labiste.

Lot No. 1054 for ₱300.00, as evidenced by the *Calig-onan sa Panagpalit*[10] executed by the parties in the *Visayan* dialect. The heirs of Tranquilino immediately took possession of the entire lot.

When World War II broke out, the heirs of Tranquilino fled Cebu City and when they came back they found their homes and possessions destroyed. The records in the Office of the Register of Deeds, Office of the City Assessor and other government offices were also destroyed during the war. Squatters have practically overrun the entire property, such that neither petitioners nor respondents possess it.

In October 1993, petitioners learned that one of the respondents,[11] Asuncion Labiste, had filed on 17 September 1993 a petition for reconstitution of title over Lot No. 1054. Petitioners opposed the petition at first but by a compromise agreement between the parties dated 25 March 1994, petitioners withdrew their opposition to expedite the reconstitution process. Under the compromise agreement, petitioners were to be given time to file a complaint so that the issues could be litigated in an ordinary action and the reconstituted title was to be deposited with the Clerk of Court for a period of sixty (60) days to allow petitioners to file an action for reconveyance and to annotate a notice of *lis pendens*. The Register of Deeds of Cebu City

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[10] *Id.* at 241-242.

[11] *Id.* at 16. Respondents are descendants and heirs of the late Jose Labiste. The Heirs of Jose Labiste are: (1) Zacarias Labiste, deceased and survived by his children, namely: Cresencia Labiste and Eufronio Labiste; (2) Bernardino Labiste, deceased and survived by his children, namely: Policarpio Labiste, Bonifacio Labiste, Felix Labiste, Gabina Labiste, Cayetana Labiste, and Isabel Labiste; (3) Lucia Labiste, deceased and survived by her children, namely: Isaac Labiste, Genaro Labiste, Braulia Labiste, Braulio Labiste, Asuncion Labiste, Alfonso Labiste, and Claudia Labiste; (4) Epifanio Labiste, deceased and survived by his children, namely: Silvestre Labiste, Paula Labiste and Gerarda Labiste; (5) Ana Labiste, deceased and survived by her children, namely: Maximo Labiste, Moises Labiste, Gervacio Labiste, Saturnina Labiste, and Quirino Labiste; (6) Severo Labiste, deceased and survived by his children, namely: Felix Labiste, Rufina Labiste, Simplicio Labiste, Vicente Labiste, and Patricio Labiste.

issued the reconstituted title, TCT No. RT-7853,[12] in the name of "Epifanio Labiste, married to Tomasa Mabitad, his brothers and sisters, heirs of Jose Labiste" on 14 December 1994. However, respondents did not honor the compromise agreement.

Petitioners filed a complaint[13] for annulment of title seeking the reconveyance of property and damages on 13 January 1995, docketed as Civil Case No. CEB-16943, with the RTC of Cebu City. Respondents claimed that the Affidavit of Epifanio and the *Calig-onan sa Panagpalit* were forgeries and that petitioners' action had long prescribed or barred by laches.[14]

The RTC in a Decision dated 23 August 1999[15] ruled in favor of petitioners. After evaluating the documents presented by petitioners, the RTC found that they are genuine and authentic as ancient documents and that they are valid and enforceable.[16] Moreover, it held that the action had not prescribed as the complaint was filed about a year after the reconstitution of the title by respondents. The judicial reconstitution was even opposed by petitioners until a compromise agreement was reached by the parties and approved by the RTC which ordered the

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[12] *Id.* at 243.

[13] *Id.* at 67-74.

[14] *Id.* at 78-82; 89-93.

[15] *Id.* at 111-122. Penned by Judge Benigno Gaviola. The dispositive portion of reads as follows:

WHEREFORE, judgment is hereby rendered in favor of plaintiffs, heirs of Tranquilino Labiste, and against defendants, heirs of Jose Labiste, as follows:

a) Declaring the heirs of Tranquilino Labiste, plaintiffs herein, as the rightful and absolute owners of Lot No. 1054, subject of this case.

b) Ordering the annulment, cancellation of TCT No. RT-7853 issued by the Register of Deeds of Cebu City in the name of Epifanio Labiste married to Tomasa Mabitad, his brothers and sisters, heirs of Jose Labiste; and Ordering the Register of Deeds of Cebu City to issue a new Transfer Certificate of Title in lieu thereof in the name of plaintiffs, heirs of Tranquilino Labiste.

No mention as to costs.

SO ORDERED.

[16] *Id.* at 117-119.

reconstitution. The RTC further held that the reconstituted title did not give any more right to respondents than what their predecessors-in-interest actually had as it is limited to the reconstitution of the certificate as it stood at the time of its loss or destruction.[17]

On appeal, the Court of Appeals, while affirming petitioners' right to the property, nevertheless reversed the RTC's decision on the ground of prescription and laches. It affirmed the RTC's findings that the Affidavit and the *Calig-onan sa Panagpalit* are genuine and authentic, and that the same are valid and enforceable documents.[18] Citing Article 1144 of the Civil Code, it held that petitioners' cause of action had prescribed for the action must be brought within ten (10) years from the time the right of action accrues upon the written contract which in this case was when petitioners' predecessors-in-interest lost possession over the property after World War II. Also, the lapse of time to file the action constitutes neglect on petitioners' part so the principle of laches is applicable.[19]

Hence, the present petition.

The genuineness and authenticity of the Affidavit of Epifanio and the *Calig-onan sa Panagpalit* are beyond cavil. As we have ruled in a litany of cases, resort to judicial review of the decisions of the Court of Appeals under Rule 45 is confined only to errors of law.[20] The findings of fact by the lower court are conclusive absent any palpable error or arbitrariness.[21] The

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[17] *Id.* at 119-121.

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

[19] *Id.* at 42-45.

[20] See *Perez v. Court of Appeals*, 374 Phil. 388, 409-410 (1999).

[21] The factual findings of the Court of Appeals affirming those of the trial court are final and conclusive and may not be reviewed on appeal, except under any of the following circumstances: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are

Court finds no reason to depart from this principle. Moreover, it is a long settled doctrine that findings of fact of the trial court, when affirmed by the Court of Appeals, are binding upon the Court. It is not the function of the Supreme Court to weigh anew the evidence already passed upon by the Court of Appeals for these are deemed final and conclusive and may not be reviewed on appeal.[22]

The sole issue that the Court has to resolve is whether or not petitioners' cause of action has prescribed.

The Court of Appeals erred in applying the rules on prescription and the principle of laches because what is involved in the present case is an express trust.

Trust is the right to the beneficial enjoyment of property, the legal title to which is vested in another. It is a fiduciary relationship that obliges the trustee to deal with the property for the benefit of the beneficiary.[23] Trust relations between parties may either be express or implied. An express trust is created by the intention of the trustor or of the parties. An implied trust comes into being by operation of law.[24]

Express trusts are created by direct and positive acts of the parties, by some writing or deed, or will, or by words either expressly or impliedly evincing an intention to create a trust.[25]

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based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. See *Gonzales v. Court of Appeals*, 358 Phil. 806, 821 (1998); *Polotan, Sr. v. Court of Appeals*, 357 Phil. 250, 256-257 (1998). See also *Lacanilao v. Court of Appeals*, 330 Phil. 1074, 1079-1080 (1996).

[22] *Changco v. Court of Appeals,* 429 Phil. 336, 342 (2002).

[23] *Rizal Surety & Insurance Company v. Court of Appeals* , 329 Phil. 786, 804 (1996).

[24] CIVIL CODE, Art. 1441.

[25] See *Ramos v. Ramos*, No. L-19872, 3 December 1974, 61 SCRA 284, 297,3 December 1974; *Salao v. Salao*, No. L-26699, 16 March 1976, 162 SCRA 89, 111 (1976); *Medina v. Court of Appeals*, 146 Phil. 205, 212 (1981).

Under Article 1444 of the Civil Code, "[n]o particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended." The Affidavit of Epifanio is in the nature of a trust agreement. Epifanio affirmed that the lot brought in his name was co-owned by him, as one of the heirs of Jose, and his uncle Tranquilino. And by agreement, each of them has been in possession of half of the property. Their arrangement was corroborated by the subdivision plan prepared by Engr. Bunagan and approved by Jose P. Dans, Acting Director of Lands.

As such, prescription and laches will run only from the time the express trust is repudiated. The Court has held that for acquisitive prescription to bar the action of the beneficiary against the trustee in an express trust for the recovery of the property held in trust it must be shown that: (a) the trustee has performed unequivocal acts of repudiation amounting to an ouster of the *cestui que trust*; (b) such positive acts of repudiation have been made known to the *cestui que trust*, and (c) the evidence thereon is clear and conclusive.[26] Respondents cannot rely on the fact that the Torrens title was issued in the name of Epifanio and the other heirs of Jose. It has been held that a trustee who obtains a Torrens title over property held in trust by him for another cannot repudiate the trust by relying on the registration.[27] The rule requires a clear repudiation of the trust duly communicated to the beneficiary. The only act that can be construed as repudiation was when respondents filed the petition for reconstitution in October 1993. And since petitioners filed their complaint in January 1995, their cause of action has not yet prescribed, laches cannot be attributed to them.

It is hornbook doctrine that laches is a creation of equity and its application is controlled by equitable considerations. Laches cannot be used to defeat justice or perpetrate fraud and injustice.[28]

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[26] *Pilapil v. Heirs of Maximino R. Briones*, G.R. No. 150175, February 5, 2007, 514 SCRA 197, 214-215.

[27] *Sotto v. Teves*, 175 Phil. 343, 365 (1978).

[28] *Jimenez v. Fernandez*, G.R. No. 46364, 6 April 1990, 184 SCRA 190, 197, cited in *Cometa v. Court of Appeals,* 404 Phil. 107, 123 (2001).

Neither should its application be used to prevent the rightful owners of a property from recovering what has been fraudulently registered in the name of another.[29] The equitable remedy of laches is, therefore, unavailing in this case.

However, to recover the other half of the property covered by the private *Calig-onan sa Panagpalit* and to have it registered on the title of the property, petitioners should have filed an action to compel[30] respondents, as heirs of the sellers in the contract,[31] to execute a public deed of sale. A conveyance of land made in a private document does not affect its validity. Article 1358, like its forerunner Article 1280 of the Civil Code of Spain, does not require the accomplishment of the acts or contracts in a public instrument in order to validate the act or contract but only to insure its efficacy,[32] so that after the existence of said contract has been admitted, the party bound may be compelled to execute the proper document.[33] But even assuming that such action was filed by petitioners, the same had already prescribed.

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[29] *Heirs of Clemente Ermac v. Heirs of Vicente Ermac*, 451 Phil. 368, L-379 (2003).

[30] Art. 1357. If the law requires a document or other special form, as in the acts and contracts enumerated in the following article, the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contract. (1279a)

[31] When a party to a contract dies and is survived by his heirs, the latter may be compelled to execute the proper documents. They are not third parties, and they succeed to whatever interest their predecessor may have in the property covered by the contract. All of the heirs, however, must be made parties to such an action. See *Mojica v. Fernandez*, 9 Phil. 403 (1907); *Araneta v. Montelibano*, 14 Phil. 117 (1909).

[32] *Manotok Realty, Inc. v. Court of Appeals*, 233 Phil. 178 (1987); *Alano v. Babasa*, 10 Phil. 511, 515 (1908); see also Tolentino, *Civil Code*, Vol. 4, pp. 546-547 (1991).

[33] *Hawaiian Phil. Co. v. Hernaez*, 45 Phil. 746, 749 (1924); *Dievos v. Acuna Co Chongco*, 16 Phil. 447, 449 (1910); *Doliendo v. Depino*, 12 Phil. 758, 764 (1909).

It is settled that only laws existing at the time of the execution of a contract are applicable thereto and not later statutes, unless the latter are specifically intended to have retroactive effect.[34] Consequently, it is the Old Code of Civil Procedure (Act No. 190) which applies in this case since the *Calig-onan sa Panagpalit* was executed on 18 October 1939 while the New Civil Code took effect only on 30 August 1950. And Section 43 of Act No. 190, like its counterpart Article 1144 of the New Civil Code, provides that action upon a written contract must be filed within ten years.[35]

WHEREFORE, the petition is *PARTIALLY GRANTED*. The Decision of the Court of Appeals dated 30 June 2003 in CA-G.R. CV No. 65829 is *REVERSED* and *SET ASIDE* and the Decision of the Regional Trial Court of Cebu City, Branch 9 dated 23 August 1999 is *REINSTATED* with *MODIFICATION* in petitioners are hereby *DECLARED* the absolute owners of one-half of Lot No. 1054 or Lot No. 1054-A under TCT No. RT-7853. The Register of Deeds of Cebu City is hereby *ORDERED* to *CANCEL* TCT No. RT-7853 in part and issue a new Transfer Certificate of Title to petitioners, heirs of Tranquilino Labiste, covering Lot No. 1054-A. No costs.

SO ORDERED.

Carpio Morales (Acting Chairperson), Velasco, Jr., Leonardo-de Castro, and *Brion, JJ.,* concur.

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[34] *Philippine Virginia Tobacco Administration v. Gonzalez*, G.R. No. 34628, 30 July 1979, 92 SCRA 172 (1979), cited in *Ortigas Co. Ltd. v. Court of Appeals*, G.R. No. 126102, 346 SCRA 748.

[35] See *Osorio v. Tan Jongko, et al.*, 98 Phil. 35 (1955). See also *Francisco v. De Borja*, 98 Phil. 446, 458 (1956); *Amar v. Odiaman*, 109 Phil. 681 (1960).

SECOND DIVISION

[G.R. No. 162467. May 8, 2009]

MINDANAO TERMINAL AND BROKERAGE SERVICE, INC., *petitioner, vs.* **PHOENIX ASSURANCE COMPANY OF NEW YORK/MCGEE & CO., INC.,** *respondent.*

SYLLABUS

1. **CIVIL LAW; EXTRA CONTRACTUAL OBLIGATIONS; QUASI-DELICTS; PRESENT ACTION IS BASED ON QUASI-DELICT AND THE ALLEGATION OF NEGLIGENCE ON THE PART OF THE DEFENDANT IS SUFFICIENT TO ESTABLISH A CAUSE OF ACTION.—** We agree with the Court of Appeals that the complaint filed by Phoenix and McGee against Mindanao Terminal, from which the present case has arisen, states a cause of action. The present action is based on quasi-delict, arising from the negligent and careless loading and stowing of the cargoes belonging to Del Monte Produce. Even assuming that both Phoenix and McGee have only been subrogated in the rights of Del Monte Produce, who is not a party to the contract of service between Mindanao Terminal and Del Monte, still the insurance carriers may have a cause of action in light of the Court's consistent ruling that the act that breaks the contract may be also a tort. In fine, a liability for tort may arise even under a contract, where tort is that which breaches the contract. In the present case, Phoenix and McGee are not suing for damages for injuries arising from the breach of the contract of service but from the alleged negligent manner by which Mindanao Terminal handled the cargoes belonging to Del Monte Produce. Despite the absence of contractual relationship between Del Monte Produce and Mindanao Terminal, the allegation of negligence on the part of the defendant should be sufficient to establish a cause of action arising from quasi-delict.

2. **ID.; ID.; ID.; PETITIONER HAD ACTED MERELY AS A LABOR PROVIDER AND SINCE THERE IS NO SPECIFIC PROVISION OF LAW THAT IMPOSES A HIGHER DEGREE OF DILIGENCE THAN ORDINARY DILIGENCE**

FOR A STEVEDORING COMPANY, PETITIONER WAS REQUIRED ONLY TO OBSERVE ORDINARY DILIGENCE IN THE LOADING AND STOWING OF THE SUBJECT CARGOES.— Article 1173 of the Civil Code is very clear that if the law or contract does not state the degree of diligence which is to be observed in the performance of an obligation then that which is expected of a good father of a family or ordinary diligence shall be required. Mindanao Terminal, a stevedoring company which was charged with the loading and stowing the cargoes of Del Monte Produce aboard *M/V Mistrau*, had acted merely as a labor provider in the case at bar. There is no specific provision of law that imposes a higher degree of diligence than ordinary diligence for a stevedoring company or one who is charged only with the loading and stowing of cargoes. It was neither alleged nor proven by Phoenix and McGee that Mindanao Terminal was bound by contractual stipulation to observe a higher degree of diligence than that required of a good father of a family. We therefore conclude that following Article 1173, Mindanao Terminal was required to observe ordinary diligence only in loading and stowing the cargoes of Del Monte Produce aboard *M/V Mistrau*.

3. ID.; ID.; ID.; RELIANCE OF THE APPELLATE COURT IN THE CASE OF *SUMMA INSURANCE CORPORATION V. COURT OF APPEALS AND PORT SERVICE INC*. IS MISPLACED CONSIDERING THE DISTINCTION OF AN ARRASTRE AND A STEVEDORE WITH RESPECT TO RESPONSIBILITY OF THE CARGO BEING HANDLED; THE RESPONSIBILITY OF AN ARRASTRE OPERATOR LASTS UNTIL THE DELIVERY OF THE CARGO TO THE CONSIGNEE WHILE THE RESPONSIBILITY OF A STEVEDORE ENDS UPON THE LOADING AND STOWING OF THE CARGO IN THE VESSEL.— The Court of Appeals erred when it cited the case of *Summa Insurance Corporation v. CA and Port Service Inc.* in imposing a higher degree of diligence, on Mindanao Terminal in loading and stowing the cargoes. The case of *Summa Insurance Corporation v. CA*, which involved the issue of whether an arrastre operator is legally liable for the loss of a shipment in its custody and the extent of its liability, is inapplicable to the factual circumstances of the case at bar. Therein, a vessel owned by the National Galleon Shipping Corporation (NGSC) arrived at Pier 3, South

Harbor, Manila, carrying a shipment consigned to the order of Caterpillar Far East Ltd. with Semirara Coal Corporation (Semirara) as "notify party." The shipment, including a bundle of PC 8 U blades, was discharged from the vessel to the custody of the private respondent, the exclusive arrastre operator at the South Harbor. Accordingly, three good-order cargo receipts were issued by NGSC, duly signed by the ship's checker and a representative of private respondent. When Semirara inspected the shipment at house, it discovered that the bundle of PC8U blades was missing. From those facts, the Court observed: x x x The relationship therefore between the *consignee and the arrastre operator* must be examined. This relationship is much akin to that existing between the consignee or owner of shipped goods and the common carrier, or that between a depositor and a warehouseman. In the performance of its obligations, an arrastre operator should observe the same degree of diligence as that required of a common carrier and a warehouseman as enunciated under Article 1733 of the Civil Code and Section 3(b) of the Warehouse Receipts Law, respectively. Being the custodian of the goods discharged from a vessel, an arrastre operator's duty is to take good care of the goods and to turn them over to the party entitled to their possession. There is a distinction between an arrastre and a stevedore. Arrastre, a Spanish word which refers to hauling of cargo, comprehends the handling of cargo on the wharf or between the establishment of the consignee or shipper and the ship's tackle. The responsibility of the arrastre operator lasts until the delivery of the cargo to the consignee. The service is usually performed by longshoremen. On the other hand, stevedoring refers to the handling of the cargo in the holds of the vessel or between the ship's tackle and the holds of the vessel. The responsibility of the stevedore ends upon the loading and stowing of the cargo in the vessel.

4. ID.; ID.; ID.; PETITIONER, AS A STEVEDORE, WAS ONLY CHARGED WITH THE LOADING AND STOWING OF THE CARGOES FROM THE PIER TO THE SHIP'S CARGO HOLD AND WAS NEVER THE CUSTODIAN OF THE SHIPMENT; THE PUBLIC POLICY CONSIDERATIONS IN LEGALLY IMPOSING UPON A COMMON CARRIER OR A WAREHOUSEMAN A HIGHER DEGREE OF DILIGENCE IS NOT PRESENT IN A STEVEDORING OUTFIT WHICH MAINLY PROVIDES LABOR IN

LOADING AND STOWING OF CARGOES FOR ITS CLIENTS.— It is not disputed that Mindanao Terminal was performing purely stevedoring function while the private respondent in the *Summa* case was performing arrastre function. In the present case, Mindanao Terminal, as a stevedore, was only charged with the loading and stowing of the cargoes from the pier to the ship's cargo hold; it was never the custodian of the shipment of Del Monte Produce. A stevedore is not a common carrier for it does not transport goods or passengers; it is not akin to a warehouseman for it does not store goods for profit. The loading and stowing of cargoes would not have a far reaching public ramification as that of a common carrier and a warehouseman; the public is adequately protected by our laws on contract and on quasi-delict. The public policy considerations in legally imposing upon a common carrier or a warehouseman a higher degree of diligence is not present in a stevedoring outfit which mainly provides labor in loading and stowing of cargoes for its clients.

5. **ID.; ID.; ID.; RESPONDENTS FAILED TO PROVE BY PREPONDERANCE OF EVIDENCE THAT PETITIONER HAD ACTED NEGLIGENTLY; ESTABLISHED FACTS SHOWS THAT THE ONLY PARTICIPATION OF PETITIONER WAS THE LOADING OF THE CARGOES ON BOARD THE VESSEL.—** Phoenix and McGee failed to prove by preponderance of evidence that Mindanao Terminal had acted negligently. Where the evidence on an issue of fact is in equipoise or there is any doubt on which side the evidence preponderates the party having the burden of proof fails upon that issue. That is to say, if the evidence touching a disputed fact is equally balanced, or if it does not produce a just, rational belief of its existence, or if it leaves the mind in a state of perplexity, the party holding the affirmative as to such fact must fail. We adopt the findings of the RTC, which are not disputed by Phoenix and McGee. The Court of Appeals did not make any new findings of fact when it reversed the decision of the trial court. The only participation of Mindanao Terminal was to load the cargoes on board *M/V Mistrau.* It was not disputed by Phoenix and McGee that the materials, such as ropes, pallets, and cardboards, used in lashing and rigging the cargoes were all provided by *M/V Mistrau* and these materials meets industry standard. It was further established that Mindanao

Terminal loaded and stowed the cargoes of Del Monte Produce aboard the *M/V Mistrau* in accordance with the stowage plan, a guide for the area assignments of the goods in the vessel's hold, prepared by Del Monte Produce and the officers of *M/V Mistrau.* The loading and stowing was done under the direction and supervision of the ship officers. The vessel's officer would order the closing of the hatches only if the loading was done correctly after a final inspection. The said ship officers would not have accepted the cargoes on board the vessel if they were not properly arranged and tightly secured to withstand the voyage in open seas. They would order the stevedore to rectify any error in its loading and stowing. A foreman's report, as proof of work done on board the vessel, was prepared by the checkers of Mindanao Terminal and concurred in by the Chief Officer of *M/V Mistrau* after they were satisfied that the cargoes were properly loaded.

6. **ID.; ID.; ID.; THE DAMAGE SURVEY REPORT OF THE ADJUSTER REVEALS THAT IT WAS THE TYPHOON ENCOUNTERED BY THE VESSEL DURING THE VOYAGE WHICH CAUSED THE SHIPMENTS IN THE CARGO HOLD TO COLLAPSE, SHIFT AND BRUISE IN EXTENSIVE EVENT.—** Phoenix and McGee relied heavily on the deposition of Byeong Yong Ahn and on the survey report of the damage to the cargoes. Byeong, whose testimony was refreshed by the survey report, found that the cause of the damage was improper stowage due to the manner the cargoes were arranged such that there were no spaces between cartons, the use of cardboards as support system, and the use of small rope to tie the cartons together but not by the negligent conduct of Mindanao Terminal in loading and stowing the cargoes. As admitted by Phoenix and McGee in their Comment before us, the latter is merely a stevedoring company which was tasked by Del Monte to load and stow the shipments of fresh banana and pineapple of Del Monte Produce aboard the *M/V Mistrau*. How and where it should load and stow a shipment in a vessel is wholly dependent on the shipper and the officers of the vessel. In other words, the work of the stevedore was under the supervision of the shipper and officers of the vessel. Even the materials used for stowage, such as ropes, pallets, and cardboards, are provided for by the vessel. Even the survey report found that it was because of the boisterous stormy weather due to

the typhoon Seth, as encountered by *M/V Mistrau* during its voyage, which caused the shipments in the cargo hold to collapse, shift and bruise in extensive extent. Even the deposition of Byeong was not supported by the conclusion in the survey report that: CAUSE OF DAMAGE x x x From the above facts and our survey results, we are of the opinion that damage occurred aboard the carrying vessel during sea transit, being caused by ship's heavy rolling and pitching under boisterous weather while proceeding from 1600 hrs on 7th October to 0700 hrs on 12th October, 1994 as described in the sea protest. As it is clear that Mindanao Terminal had duly exercised the required degree of diligence in loading and stowing the cargoes, which is the ordinary diligence of a good father of a family, the grant of the petition is in order.

7. ID.; DAMAGES; NO BASIS FOR AWARD OF ATTORNEY'S FEES.— The Court finds no basis for the award of attorney's fees in favor of petitioner. None of the circumstances enumerated in Article 2208 of the Civil Code exists. The present case is clearly not an unfounded civil action against the plaintiff as there is no showing that it was instituted for the mere purpose of vexation or injury. It is not sound public policy to set a premium to the right to litigate where such right is exercised in good faith, even if erroneously. Likewise, the RTC erred in awarding ₱83,945.80 actual damages to Mindanao Terminal. Although actual expenses were incurred by Mindanao Terminal in relation to the trial of this case in Davao City, the lawyer of Mindanao Terminal incurred expenses for plane fare, hotel accommodations and food, as well as other miscellaneous expenses, as he attended the trials coming all the way from Manila. But there is no showing that Phoenix and McGee made a false claim against Mindanao Terminal resulting in the protracted trial of the case necessitating the incurrence of expenditures.

APPEARANCES OF COUNSEL

Froilan M. Bacungan & Associates for petitioner.

Fajardo Law Offices for respondents.

D E C I S I O N

TINGA, *J*.:

Before us is a petition for review on *certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure of the 29 October 2003[2] Decision of the Court of Appeals and the 26 February 2004 Resolution[3] of the same court denying petitioner's motion for reconsideration.

The facts of the case are not disputed.

Del Monte Philippines, Inc. (Del Monte) contracted petitioner Mindanao Terminal and Brokerage Service, Inc. (Mindanao Terminal), a stevedoring company, to load and stow a shipment of 146,288 cartons of fresh green Philippine bananas and 15,202 cartons of fresh pineapples belonging to Del Monte Fresh Produce International, Inc. (Del Monte Produce) into the cargo hold of the vessel *M/V Mistrau*. The vessel was docked at the port of Davao City and the goods were to be transported by it to the port of Inchon, Korea in favor of consignee Taegu Industries, Inc. Del Monte Produce insured the shipment under an "open cargo policy" with private respondent Phoenix Assurance Company of New York (Phoenix), a non-life insurance company, and private respondent McGee & Co. Inc. (McGee), the underwriting manager/agent of Phoenix.[4]

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[1] *Rollo*, pp. 3-25.

[2] *Id.* at 29-34. Penned by Associate Justice Danilo B. Pine and concurred by Associate Justices Cancio C. Garcia and Renato C. Dacudao. The dispositive portion reads as follows:

WHEREFORE, premises considered, the judgment appealed from is hereby **REVERSED** and **SET ASIDE**. Mindanao Terminal Brokerage Services, Inc. is ordered to pay the plaintiff-appellants the total amount of $210,265.45 plus legal interest from the filing of the complaint until fully paid and attorney's fees of 20% of the claim.

Costs against defendant-appellee.

SO ORDERED.

[3] *Id.* at 36.

[4] Records, pp. 234-310.

Mindanao Terminal loaded and stowed the cargoes aboard the *M/V Mistrau*. The vessel set sail from the port of Davao City and arrived at the port of Inchon, Korea. It was then discovered upon discharge that some of the cargo was in bad condition. The Marine Cargo Damage Surveyor of Incok Loss and Average Adjuster of Korea, through its representative Byeong Yong Ahn (Byeong), surveyed the extent of the damage of the shipment. In a survey report, it was stated that 16,069 cartons of the banana shipment and 2,185 cartons of the pineapple shipment were so damaged that they no longer had commercial value.[5]

Del Monte Produce filed a claim under the open cargo policy for the damages to its shipment. McGee's Marine Claims Insurance Adjuster evaluated the claim and recommended that payment in the amount of $210,266.43 be made. A check for the recommended amount was sent to Del Monte Produce; the latter then issued a subrogation receipt[6] to Phoenix and McGee.

Phoenix and McGee instituted an action for damages[7] against Mindanao Terminal in the Regional Trial Court (RTC) of Davao City, Branch 12. After trial, the RTC,[8] in a decision dated 20 October 1999, held that the only participation of Mindanao Terminal was to load the cargoes on board the *M/V Mistrau* under the direction and supervision of the ship's officers, who would not have accepted the cargoes on board the vessel and signed the foreman's report unless they were properly arranged and tightly secured to withstand voyage across the open seas. Accordingly, Mindanao Terminal cannot be held liable for whatever happened to the cargoes after it had loaded and stowed them. Moreover, citing the survey report, it was found by the RTC that the cargoes were damaged on account of a typhoon which *M/V Mistrau* had encountered during the voyage. It was further held that Phoenix and McGee had no cause of action

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[5] *Rollo*, p. 30.

[6] Records, p. 350.

[7] *Id.* at 1-6.

[8] *Rollo*, pp. 38-44. Penned by Judge Paul T. Arcangel.

against Mindanao Terminal because the latter, whose services were contracted by Del Monte, a distinct corporation from Del Monte Produce, had no contract with the assured Del Monte Produce. The RTC dismissed the complaint and awarded the counterclaim of Mindanao Terminal in the amount of ₱83,945.80 as actual damages and ₱100,000.00 as attorney's fees.[9] The actual damages were awarded as reimbursement for the expenses incurred by Mindanao Terminal's lawyer in attending the hearings in the case wherein he had to travel all the way from Metro Manila to Davao City.

Phoenix and McGee appealed to the Court of Appeals. The appellate court reversed and set aside[10] the decision of the RTC in its 29 October 2003 decision. The same court ordered Mindanao Terminal to pay Phoenix and McGee "the total amount of $210,265.45 plus legal interest from the filing of the complaint until fully paid and attorney's fees of 20% of the claim."[11] It sustained Phoenix's and McGee's argument that the damage in the cargoes was the result of improper stowage by Mindanao Terminal. It imposed on Mindanao Terminal, as the stevedore of the cargo, the duty to exercise extraordinary diligence in loading and stowing the cargoes. It further held that even with the absence of a contractual relationship between Mindanao Terminal and Del Monte Produce, the cause of action of Phoenix and McGee could be based on quasi-delict under Article 2176 of the Civil Code.[12]

Mindanao Terminal filed a motion for reconsideration,[13] which the Court of Appeals denied in its 26 February 2004[14] resolution. Hence, the present petition for review.

Mindanao Terminal raises two issues in the case at bar, namely: whether it was careless and negligent in the loading and stowage

[9] *Id.* at 44.
[10] *Id.* at 33-34.
[11] *Id.* at 36.
[12] *Id.* at 31-33.
[13] CA *rollo*, pp. 94-104.
[14] *Rollo*, p. 36.

of the cargoes onboard *M/V Mistrau* making it liable for damages; and, whether Phoenix and McGee has a cause of action against Mindanao Terminal under Article 2176 of the Civil Code on quasi-delict. To resolve the petition, three questions have to be answered: first, whether Phoenix and McGee have a cause of action against Mindanao Terminal; second, whether Mindanao Terminal, as a stevedoring company, is under obligation to observe the same extraordinary degree of diligence in the conduct of its business as required by law for common carriers[15] and warehousemen;[16] and third, whether Mindanao Terminal observed the degree of diligence required by law of a stevedoring company.

We agree with the Court of Appeals that the complaint filed by Phoenix and McGee against Mindanao Terminal, from which the present case has arisen, states a cause of action. The present action is based on quasi-delict, arising from the negligent and careless loading and stowing of the cargoes belonging to Del Monte Produce. Even assuming that both Phoenix and McGee have only been subrogated in the rights of Del Monte Produce, who is not a party to the contract of service between Mindanao Terminal and Del Monte, still the insurance carriers may have a cause of action in light of the Court's consistent ruling that the act that breaks the contract may be also a tort.[17] In fine, a liability for tort may arise even under a contract, where tort is that which breaches the contract.[18] In the present case, Phoenix and McGee are not suing for damages for injuries arising from the breach of the contract of service but from the alleged negligent manner by which Mindanao Terminal handled the cargoes belonging to Del Monte Produce. Despite the absence of contractual relationship between Del Monte Produce and Mindanao Terminal, the allegation of negligence on the part of

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[15] CIVIL CODE, Art. 1733.

[16] Sec. 3(b), Act 2137, Warehouse Receipt Law.

[17] *Air France v. Carrascoso*, 18 SCRA 155, 168 (1966); *Singson v. Bank of the Philippine Islands*, 132 Phil. 597, 600 (1968); Mr. & Mrs. *Fabre, Jr. v. Court of Appeals*, 328 Phil. 775, 785 (1996).

[18] *PSBA v. Court of Appeals*, G.R. No. 84698, 4 February 1992, 205 SCRA 729, 734.

the defendant should be sufficient to establish a cause of action arising from quasi-delict.[19]

The resolution of the two remaining issues is determinative of the ultimate result of this case.

Article 1173 of the Civil Code is very clear that if the law or contract does not state the degree of diligence which is to be observed in the performance of an obligation then that which is expected of a good father of a family or ordinary diligence shall be required. Mindanao Terminal, a stevedoring company which was charged with the loading and stowing the cargoes of Del Monte Produce aboard *M/V Mistrau*, had acted merely as a labor provider in the case at bar. There is no specific provision of law that imposes a higher degree of diligence than ordinary diligence for a stevedoring company or one who is charged only with the loading and stowing of cargoes. It was neither alleged nor proven by Phoenix and McGee that Mindanao Terminal was bound by contractual stipulation to observe a higher degree of diligence than that required of a good father of a family. We therefore conclude that following Article 1173, Mindanao Terminal was required to observe ordinary diligence only in loading and stowing the cargoes of Del Monte Produce aboard *M/V Mistrau*.

The Court of Appeals erred when it cited the case of *Summa Insurance Corporation v. CA and Port Service Inc.*[20] in imposing a higher degree of diligence,[21] on Mindanao Terminal in loading and stowing the cargoes. The case of *Summa Insurance Corporation v. CA*, which involved the issue of whether an arrastre operator is legally liable for the loss of a shipment in its custody and the extent of its liability, is inapplicable to the factual circumstances of the case at bar. Therein, a vessel owned by the National Galleon Shipping Corporation (NGSC) arrived at

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[19] CIVIL CODE. 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. (Emphasis supplied)

[20] 323 Phil. 214 (1996).

[21] *Rollo*, p. 32.

Pier 3, South Harbor, Manila, carrying a shipment consigned to the order of Caterpillar Far East Ltd. with Semirara Coal Corporation (Semirara) as "notify party." The shipment, including a bundle of PC 8 U blades, was discharged from the vessel to the custody of the private respondent, the exclusive arrastre operator at the South Harbor. Accordingly, three good-order cargo receipts were issued by NGSC, duly signed by the ship's checker and a representative of private respondent. When Semirara inspected the shipment at house, it discovered that the bundle of PC8U blades was missing. From those facts, the Court observed:

> x x x The relationship therefore between the **consignee and the arrastre operator** must be examined. This relationship is much akin to that existing between the consignee or owner of shipped goods and the common carrier, or that between a depositor and a warehouseman.[22] In the performance of its obligations, **an arrastre operator should observe the same degree of diligence as that required of a common carrier and a warehouseman** as enunciated under Article 1733 of the Civil Code and Section 3(b) of the Warehouse Receipts Law, respectively. **Being the custodian of the goods discharged from a vessel, an arrastre operator's duty is to take good care of the goods and to turn them over to the party entitled to their possession**. (Emphasis supplied)[23]

There is a distinction between an arrastre and a stevedore.[24] Arrastre, a Spanish word which refers to hauling of cargo, comprehends the handling of cargo on the wharf or between the establishment of the consignee or shipper and the ship's tackle. The responsibility of the arrastre operator lasts until the delivery of the cargo to the consignee. The service is usually performed by longshoremen. On the other hand, stevedoring refers to the handling of the cargo in the holds of the vessel or between the ship's tackle and the holds of the vessel. The

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[22] *Malayan Insurance Co. Inc. v. Manila Port Service*, 138 Phil. 69 (1969).

[23] *Supra* note at 222-223.

[24] See *Compañia Maritima v. Allied Free Workers Union,* 167 Phil. 381, 385 (1977).

responsibility of the stevedore ends upon the loading and stowing of the cargo in the vessel.

It is not disputed that Mindanao Terminal was performing purely stevedoring function while the private respondent in the *Summa* case was performing arrastre function. In the present case, Mindanao Terminal, as a stevedore, was only charged with the loading and stowing of the cargoes from the pier to the ship's cargo hold; it was never the custodian of the shipment of Del Monte Produce. A stevedore is not a common carrier for it does not transport goods or passengers; it is not akin to a warehouseman for it does not store goods for profit. The loading and stowing of cargoes would not have a far reaching public ramification as that of a common carrier and a warehouseman; the public is adequately protected by our laws on contract and on quasi-delict. The public policy considerations in legally imposing upon a common carrier or a warehouseman a higher degree of diligence is not present in a stevedoring outfit which mainly provides labor in loading and stowing of cargoes for its clients.

In the third issue, Phoenix and McGee failed to prove by preponderance of evidence[25] that Mindanao Terminal had acted negligently. Where the evidence on an issue of fact is in equipoise or there is any doubt on which side the evidence preponderates the party having the burden of proof fails upon that issue. That is to say, if the evidence touching a disputed fact is equally balanced, or if it does not produce a just, rational belief of its existence, or if it leaves the mind in a state of perplexity, the party holding the affirmative as to such fact must fail.[26]

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[25] See *Republic of the Philippines v. Orfinada, Sr.*, G.R. No. 141145, November 12, 2004, 442 SCRA 342, 352 citing *Go v. Court of Appeals*, G.R. No. 112550, February 5, 2001 citing *Reyes v. Court of Appeals*, 258 SCRA 651 (1996).

[26] Francisco, Ricardo, EVIDENCE, 3rd (1996), p. 555. Citing *Howes v. Brown*, 75 Ala. 385; *Evans v. Winston*, 74 Ala. 349; *Marlowe v. Benagh*, 52 Ala. 112; *Brandon v. Cabiness*, 10 Ala. 155; *Delaware Coach v. Savage*, 81 Supp. 293.

We adopt the findings[27] of the RTC,[28] which are not disputed by Phoenix and McGee. The Court of Appeals did not make any new findings of fact when it reversed the decision of the trial court. The only participation of Mindanao Terminal was to load the cargoes on board *M/V Mistrau.*[29] It was not disputed by Phoenix and McGee that the materials, such as ropes, pallets, and cardboards, used in lashing and rigging the cargoes were all provided by *M/V Mistrau* and these materials meets industry standard.[30]

It was further established that Mindanao Terminal loaded and stowed the cargoes of Del Monte Produce aboard the *M/V Mistrau* in accordance with the stowage plan, a guide for the area assignments of the goods in the vessel's hold, prepared by Del Monte Produce and the officers of *M/V Mistrau.*[31] The loading and stowing was done under the direction and supervision of the ship officers. The vessel's officer would order the closing of the hatches only if the loading was done correctly after a final inspection.[32] The said ship officers would not have accepted the cargoes on board the vessel if they were not properly arranged and tightly secured to withstand the voyage in open seas. They would order the stevedore to rectify any error in its loading and stowing. A foreman's report, as proof of work done on board the vessel, was prepared by the checkers of Mindanao Terminal

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[27] This Court is not a trier of facts. Furthermore, well settled is the doctrine that "the findings of fact by the trial court are accorded great respect by appellate courts and should not be disturbed on appeal unless the trial court has overlooked, ignored, or disregarded some fact or circumstances of sufficient weight or significance which, if considered, would alter the situation." The facts of the case, as stated by the trial court, were adopted by the Court of Appeals. And a conscientious sifting of the records fails to bring to light any fact or circumstance militative against the correctness of the said findings of the trial court and the Court of Appeals. See *Home Development Mutual Fund v. CA*, 351 Phil. 858, 859-860 (1998).

[28] *Rollo*, pp. 38-44.

[29] *Id.* at 42.

[30] *Id.* at 16.

[31] TSN, 6 July 1999, p. 5.

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

and concurred in by the Chief Officer of *M/V Mistrau* after they were satisfied that the cargoes were properly loaded.[33]

Phoenix and McGee relied heavily on the deposition of Byeong Yong Ahn[34] and on the survey report[35] of the damage to the cargoes. Byeong, whose testimony was refreshed by the survey report,[36] found that the cause of the damage was improper stowage[37] due to the manner the cargoes were arranged such that there were no spaces between cartons, the use of cardboards as support system, and the use of small rope to tie the cartons together but not by the negligent conduct of Mindanao Terminal in loading and stowing the cargoes. As admitted by Phoenix and McGee in their Comment[38] before us, the latter is merely a stevedoring company which was tasked by Del Monte to load and stow the shipments of fresh banana and pineapple of Del Monte Produce aboard the *M/V Mistrau*. How and where it should load and stow a shipment in a vessel is wholly dependent on the shipper and the officers of the vessel. In other words, the work of the stevedore was under the supervision of the shipper and officers of the vessel. Even the materials used for stowage, such as ropes, pallets, and cardboards, are provided for by the vessel. Even the survey report found that it was because of the boisterous stormy weather due to the typhoon Seth, as encountered by *M/V Mistrau* during its voyage, which caused the shipments in the cargo hold to collapse, shift and bruise in extensive extent.[39] Even the deposition of Byeong was not supported by the conclusion in the survey report that:

<u>CAUSE OF DAMAGE</u>

xxx xxx xxx

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[33] *Id.* at 5-6.

[34] Records, pp. 89-96.

[35] *Id.* at 99-113.

[36] *Id.* at 93.

[37] *Id.* at 96.

[38] *Rollo*, pp. 47-49.

[39] Records, pp. 105.

From the above facts and our survey results, we are of the opinion that damage occurred aboard the carrying vessel during sea transit, being caused by ship's heavy rolling and pitching under boisterous weather while proceeding from 1600 hrs on 7th October to 0700 hrs on 12th October, 1994 as described in the sea protest.[40]

As it is clear that Mindanao Terminal had duly exercised the required degree of diligence in loading and stowing the cargoes, which is the ordinary diligence of a good father of a family, the grant of the petition is in order.

However, the Court finds no basis for the award of attorney's fees in favor of petitioner. None of the circumstances enumerated in Article 2208 of the Civil Code exists. The present case is clearly not an unfounded civil action against the plaintiff as there is no showing that it was instituted for the mere purpose of vexation or injury. It is not sound public policy to set a premium to the right to litigate where such right is exercised in good faith, even if erroneously.[41] Likewise, the RTC erred in awarding ₱83,945.80 actual damages to Mindanao Terminal. Although actual expenses were incurred by Mindanao Terminal in relation to the trial of this case in Davao City, the lawyer of Mindanao Terminal incurred expenses for plane fare, hotel accommodations and food, as well as other miscellaneous expenses, as he attended the trials coming all the way from Manila. But there is no showing that Phoenix and McGee made a false claim against Mindanao Terminal resulting in the protracted trial of the case necessitating the incurrence of expenditures.[42]

WHEREFORE, the petition is *GRANTED*. The decision of the Court of Appeals in CA-G.R. CV No. 66121 is *SET ASIDE* and the decision of the Regional Trial Court of Davao City, Branch 12 in Civil Case No. 25,311.97 (sic) is hereby *REINSTATED MINUS* the awards of ₱100,000.00 as attorney's fees and ₱83,945.80 as actual damages.

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[40] *Id.* at 112.

[41] See *Ramos v. Ramos,* 158 Phil. 935, 960 (1974); *Barreto v. Arevalo*, 99 Phil. 771, 779 (1956); *Mirasol v. Judge De la Cruz*, 173 Phil. 518 (1978).

[42] See *Uy v. Court of Appeals*, 420 Phil. 408 (2001).

SO ORDERED.

Carpio Morales,[*] *Velasco, Jr., Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 163495. May 8, 2009]

SAMUEL MALABANAN, *petitioner, vs.* **RURAL BANK OF CABUYAO, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; ELEMENTS; NOT PRESENT IN CASE AT BAR; A JUDGMENT IN AN EJECTMENT CASE WOULD NOT AMOUNT TO *RES JUDICATA* IN AN ANNULMENT OF TITLE CASE.—** Forum-shopping exists where the elements of *litis pendentia* are present, namely: (a) identity of parties or at least such as representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amounts to *res judicata* in the other. Petitioner and respondent are the same parties in the annulment and ejectment cases. The issue of ownership was likewise being contended, with same set of evidence being presented in both cases. However, it cannot be inferred that a judgment in the ejectment case would amount

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[*] Acting Chairperson as replacement of Associate Justice Leonardo Quisumbing who is on official leave per Special Order No. 618.

[**] Additional member of the Special Second Division per Special Order No. 619.

to *res judicata* in the annulment case, and *vice-versa*. This issue is hardly a novel one. It has been laid to rest by heaps of cases iterating the principle that a judgment rendered in an ejectment case shall not bar an action between the same parties respecting title to the land or building nor shall it be conclusive as to the facts therein found in a case between the same parties upon a different cause of action involving possession. It bears emphasizing that in ejectment suits, the only issue for resolution is the physical or material possession of the property involved, independent of any claim of ownership by any of the party litigants. However, the issue of ownership may be provisionally ruled upon for the sole purpose of determining who is entitled to possession *de facto*. Therefore, the provisional determination of ownership in the ejectment case cannot be clothed with finality.

2. **ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; A PENDING ACTION INVOLVING OWNERSHIP OF THE SAME PROPERTY DOES NOT BAR THE FILING OR CONSIDERATION OF AN EJECTMENT SUIT.—** The incidental issue of whether a pending action for annulment would abate an ejectment suit must be resolved in the negative. A pending action involving ownership of the same property does not bar the filing or consideration of an ejectment suit, nor suspend the proceedings. This is so because an ejectment case is simply designed to summarily restore physical possession of a piece of land or building to one who has been illegally or forcibly deprived thereof, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings.

3. **ID.; ID.; ID.; NATURE OF AN UNLAWFUL DETAINER ACTION.—** The crux of the controversy centers on the propriety of the unlawful detainer suit. In unlawful detainer, one unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any contract, express or implied. In such case, the possession was originally lawful but became unlawful by the expiration or termination of the right to possess; hence, the issue of rightful possession is decisive for, in such action, the defendant is in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession.

4. **ID.; ID.; ID.; RESPONDENT'S ACTION FOR UNLAWFUL DETAINER IS BASED ON PETITIONER'S POSSESSION BY MERE TOLERANCE, THE FORBEARANCE CEASED WHEN RESPONDENT MADE A DEMAND ON PETITIONER TO VACATE THE LOT, AND, THENCEFORTH, PETITIONER'S OCCUPANCY HAD BECOME UNLAWFUL.—** both the trial court and the appellate court lent more credence to the validity of the *dacion en pago* and respondent's title. This determination, however, is regarded merely as provisional. It is a settled doctrine that courts in ejectment cases may determine questions of ownership whenever necessary to decide the question of possession. In any case, we sustain the finding that the respondents have the better right to possess the subject property. Well-established is the rule that if possession is by tolerance as has been alleged in the complaint such possession becomes illegal upon demand to vacate, with the possessor refusing to comply with such demand. Going over the allegations in the complaint, it is clear that respondent's action for unlawful detainer is based on petitioner's possession by mere tolerance. From the time the title to the property was transferred in the name of respondent, petitioner's possession was converted into one by mere tolerance of the owner. The forbearance ceased when respondent made a demand on petitioner to vacate the lot. Thenceforth, petitioner's occupancy had become unlawful. A person who occupies the land of another with the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which a summary action for ejectment is the proper remedy against him.

5. **ID.; ID.; ID.; A PLAINTIFF IN AN EJECTMENT CASE IS ENTITLED TO DAMAGES CAUSED BY HIS LOSS OF THE USE AND POSSESSION OF THE PREMISES; CASE AT BAR.—** There is no doubt that the plaintiff in an ejectment case is entitled to damages caused by his loss of the use and possession of the premises. Damages in the context of Section 17, Rule 70 of the 1997 Rules of Civil Procedure is limited to "rent" or fair rental value or the reasonable compensation for the use and occupation of the property. Respondent, as the plaintiff in the complaint for unlawful detainer brought before the MTCC, had sought therein the award of ₱100,000.00 a month as reasonable rental. Before this Court, petitioner asserts

that respondent had failed to prove his claim that the reasonable rental value is ₱100,000.00 a month. Respondent, as the plaintiff in the complaint before the MTCC, had the burden to adduce evidence to prove the fair rental value or reasonable compensation for the subject property, but it failed to discharge its burden. All that it did was to make through his counsel a self-serving and uncorroborated assertion in the unverified Position Paper before the MCTC that "(g)iven the size and strategic location of the subject property the reasonable rentals" for its use "can be safely estimated at ₱100,000.00 a month." Neither did the trial court make any ratiocination when it granted the rentals prayed for by respondent.

APPEARANCES OF COUNSEL

Dimayacyac & Dimayacyac Law Firm for petitioner.
Melvin D.C. Mane for respondents.

D E C I S I O N

TINGA, *J.*:

This petition for review on *certiorari*[1] seeks to set aside the decision[2] of the Court of Appeals dated 7 May 2004 in CA-G.R. SP No. 82223 which sustained the judgment[3] of the Regional Trial Court (RTC), Branch 55, Calamba City. The RTC, in the exercise of its appellate jurisdiction, reversed an earlier decision of the Municipal Trial Court in Cities[4] (MTCC) and ordered the ejectment of herein petitioner.

The following facts are uncontroverted.

Samuel Malabanan (petitioner) was indebted to the Rural Bank of Cabuyao (respondent) in the amount of ₱5,000,000.00.

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[1] *Rollo,* pp. 3-51.

[2] *Id.* at 53-59; Penned by Associate Justice Eugenio S. Labitoria and concurred in by Associate Justices Jose L. Sabio, Jr. and Hakim S. Abdulwahid.

[3] *Id.* at 68-71. Presided by Judge Romeo C. De Leon.

[4] Presided by Judge Wilhelmina B. Jorge-Wagan.

To secure the payment of said loan, petitioner executed a Real Estate Mortgage[5] (REM) on 18 April 1996 in favor of respondent over a parcel of land in Calamba, Laguna, with an area of 1,021 square meters, covered by Transfer Certificate of Title (TCT) No. 255916.[6]

When petitioner failed to settle his loan, he executed a *dacion en pago* over the mortgaged property in favor of respondent on 12 November 2001.[7] By virtue thereof, the transfer of registration of said property was effected and TCT No. T-493506[8] was subsequently issued in respondent's name. For refusal of petitioner to surrender possession of subject property despite repeated demands, respondent filed a complaint for unlawful detainer before the MTCC.[9] It also prayed for the award of reasonable rental amounting to ₱100,000.00; another ₱100,000.00 as exemplary damages, and ₱300,000.00 as attorney's fees.[10]

In his Answer,[11] petitioner denied having executed a *dacion en pago*, stated that he never appeared before the Notary Public, and that its Executive Vice-President/General Manager, Renato Delfino, who purportedly represented respondent, was no longer officially connected with the latter since 1999. He also made a counterclaim for damages.[12]

Prior to the filing of the ejectment case, however, petitioner had already filed an action for an Annulment of the *dacion*

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[5] *Id.* at 164-165.

[6] *Id.* at 143-144. Per the terms of the Real Estate Mortgage, the mortgaged property was covered by TCT No. 255916, however, based on the technical description, it appears that the TCT should have been 265916.

[7] *Id.* at 166-168.

[8] *Id.* at 169-170.

[9] *Id.* at 158-163.

[10] *Id.* at 158.

[11] *Id.* at 173-185.

[12] *Rollo*, pp. 246-247.

en pago and TCT No. T-493506 and reconveyance before Branch 35, RTC-Calamba.[13]

In the preliminary conference held on 18 July 2003, the parties agreed and stipulated on the following facts:

1. The execution of the real estate mortgage in favor of herein plaintiff executed by defendant Samuel Malabanan.

2. That prior to the institution of this instant case, Civil Case No. 3316-2002 for the Annulment of *Dacion En Pago* and Transfer Certificate of Title No. T-493506 and Reconveyance with Damages and Temporary Restraining Order and/or Injunction entitled *Samuel [Malabanan] v. Rural Bank of Cabuyao Inc., Renato Delfino, Notary Public Ruben Avenido and The Register of Deeds for Calamba City, Laguna* was filed on September 25, 2002.

3. That the alleged *Dacion en Pago* refers to TCT-T-255916.

4. The existence and receipt of the demand letter dated August 12, 2002.[14]

On 8 September 2003, the MTCC dismissed the complaint, as well as the counterclaim, for lack of merit.[15] The lower court noted that respondent was not able to prove that petitioner's continued occupancy of the subject premises was by mere tolerance in order to sustain a cause of action for unlawful detainer.[16]

On appeal, the RTC reversed the MTCC decision and ordered petitioner to vacate the subject property and to pay respondent ₱100,000.00 for rentals and ₱20,000.00 as attorney's fees.[17]

Petitioner elevated the case to the Court of Appeals by way of Petition for Review with Urgent Prayer for Issuance of a Temporary Restraining Order and/or Writ of Preliminary

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[13] *Id.* at 244.

[14] *Id.* at 213.

[15] *Id.* at 65.

[16] *Id.*

[17] *Id.* at 71.

Injunction.[18] Petitioner imputed error on the part of the trial court in not dismissing the complaint for unlawful detainer on the ground of *litis pendencia*. He also faulted the RTC for not simultaneously resolving the ejectment case and the annulment of *dacion en pago*.

On 7 May 2004, the Fifth Division of the Court of Appeals promulgated the assailed decision affirming *in toto* the RTC ruling.[19]

In the present petition, petitioner raises substantially the same issues brought before the Court of Appeals, which can be summarized into two: (1) whether the complaint for unlawful detainer can be dismissed on ground of *litis pendencia* and forum shopping; and (2) whether the allegations in the complaint make out a case of unlawful detainer.[20]

Petitioner asserts that there is a pending case for annulment of *dacion en pago* and TCT No. T-493506 before the RTC in which the issue to be resolved also involves possession as in this case. The allegations and the evidence to be presented in both complaints are identical. Hence, the instant complaint for unlawful detainer must be dismissed on grounds of *litis pendencia* and forum shopping.[21] Assuming without conceding that the complaint cannot be dismissed, petitioner urges at least the suspension of the ejectment proceedings pending resolution of the annulment case.

The Court of Appeals squarely addressed this issue, *viz*:

> It is established that in ejectment cases, the only issue for resolution is who is entitled to the physical possession or material possession of the property involved, independent of any claim of ownership set forth by any of the party-litigants.
>
> While it is true that both parties raised the issue of ownership over the subject property, yet it is emphasized that in ejectment

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[18] *Id.* at 72-112.

[19] *Supra* note 2.

[20] *Id.* at 20.

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

cases, even if the question of ownership is raised in the pleadings, the court may pass upon such issue but only to determine the question of possession especially if the former is inseparably linked with the latter, but such determination of ownership is not clothed with finality and neither will it affect ownership of the property nor constitute a binding and conclusive adjudication on the merits with respect to the issue of ownership. Therefore, the judgment in the present case would not amount to *res judicata* in the other case which is the pending Annulment of *Dacion En Pago*.[22]

Forum-shopping exists where the elements of *litis pendentia* are present, namely: (a) identity of parties or at least such as representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amounts to *res judicata* in the other.[23]

Petitioner and respondent are the same parties in the annulment and ejectment cases. The issue of ownership was likewise being contended, with same set of evidence being presented in both cases. However, it cannot be inferred that a judgment in the ejectment case would amount to *res judicata* in the annulment case, and *vice-versa*.

This issue is hardly a novel one. It has been laid to rest by heaps of cases iterating the principle that a judgment rendered in an ejectment case shall not bar an action between the same parties respecting title to the land or building nor shall it be conclusive as to the facts therein found in a case between the same parties upon a different cause of action involving possession.[24]

It bears emphasizing that in ejectment suits, the only issue for resolution is the physical or material possession of the property

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

[23] *Abines v. Bank of the Philippine Islands,* G.R. No. 167900, 13 February 2006, 482 SCRA 421, 429.

[24] *Barnes v. Padilla*, G.R. No. 160753, 28 June 2005, 461 SCRA 503, 543.

involved, independent of any claim of ownership by any of the party litigants. However, the issue of ownership may be provisionally ruled upon for the sole purpose of determining who is entitled to possession *de facto*.[25] Therefore, the provisional determination of ownership in the ejectment case cannot be clothed with finality.

Corollarily, the incidental issue of whether a pending action for annulment would abate an ejectment suit must be resolved in the negative.

A pending action involving ownership of the same property does not bar the filing or consideration of an ejectment suit, nor suspend the proceedings. This is so because an ejectment case is simply designed to summarily restore physical possession of a piece of land or building to one who has been illegally or forcibly deprived thereof, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings.[26]

The crux of the controversy centers on the propriety of the unlawful detainer suit. In unlawful detainer, one unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any contract, express or implied.[27] In such case, the possession was originally lawful but became unlawful by the expiration or termination of the right to possess; hence, the issue of rightful possession is decisive for, in such action, the defendant is in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession.[28]

The pertinent allegations in the complaint read:

4. That on various occasion, defendant Samuel Malabanan obtained loans from plaintiff in the total principal amount of FIVE MILLION

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[25] *Heirs of Rosendo Lasam v. Umengan*, G.R. No. 168156, 6 December 2006, 510 SCRA 496, 507.

[26] *Barnes v. Padilla,* G.R. No. 160753, 28 June 2005, 461 SCRA 533, 543.

[27] *Racaza v. Gozum*, G.R. No. 148759, 8 June 2006, 490 SCRA 302, 312.

[28] *Go, Jr. v. Court of Appeals*, 415 Phil. 172, 184 (2001).

PESOS (₱5,000,000.00) Philippine currency using as collateral that parcel of land located in Bo. Parian, Calamba, Laguna consisting of 1,021 sq. m. including all the improvements found therein and covered by TCT No. T-265916 of the Registry of Deeds of Calamba, Laguna (hereinafter referred to as "subject property" for brevity). x x x

5. Unfortunately, however, defendant Malabanan failed to pay his loans with the plaintiff;

6. On November [12, 2001], to settle his loans with plaintiff, defendant Samuel Malabanan executed a *dacion en pago* (deed of assignment in payment of debt). x x x

7. Through the said *dacion en pago*, plaintiff was able to effect [the] transfer of registration of the subject property in its name on [February 14, 2002] as evidenced by TCT No. T-493506 issued by the Registry of Deeds of Calamba, Laguna in its name. x x x

8. Under the circumstances, plaintiff is entitled to the immediate possession of the subject property;

9. But through tolerance, plaintiff allowed defendant Malabanan to remain in the subject property without requiring him to pay any rentals;

10. However, when the need of the plaintiff for the subject property arose, plaintiff has demanded unto defendant Malabanan to peacefully surrender the possession of the subject property, the last of which was received by defendant on September [1, 2002] sent by [the] undersigned counsel which was received by defendant on September 16, 2002. x x x

xxx xxx xxx

12. Defendant Malabanan has been unlawfully detaining the subject property from plaintiff and defendant Malabanan and all persons acting his authority should be ejected therefrom and possession thereof surrendered to plaintiff;

xxx xxx xxx[29]

An examination of the complaint reveals that initially, petitioner exercised possession over the subject property as the registered owner. He executed a real estate mortgage in favor of respondent

[29] *Rollo*, pp. 158-160.

and for his failure to pay his obligation, he purportedly executed a *dacion en pago*, whereby ownership over the property was transferred to respondent. Subsequently, a new TCT was issued in respondent's name. Thus, respondent became entitled to possession.

Petitioner insists that the allegations in the complaint were not supported by sufficient evidence to justify the remedy of an action for unlawful detainer. He challenges the allegations of how respondent came "to possess" the subject property and anchors his claim on the alleged simulated *dacion en pago*. To prove fraud in the execution of said deed, petitioner points out that the subject property is formerly covered by TCT No. T-2<u>6</u>5916 in his name while the subject of the *dacion en pago* refers to TCT No. T-255916, registered in the name of Ledesco Development Corporation.[30]

While petitioner harps on the supposed variance between the two certificate of titles, he failed to explain why the supposed erroneous TCT No. T-255916 covers the property subject of the Real Estate Mortgage, which he himself admitted to having executed. To bolster the reasonable conclusion that indeed it was a mere typographical error, the technical description of the mortgaged property clearly refers to the lot situated in Calamba, Laguna.

In dismissing petitioner's contention, the trial court observed that the variance in the TCT numbers appearing on the title and the deed may be attributed to a typographical oversight because the technical descriptions of the properties covered by TCT No. T-255916 and TCT No. T-265916 would clearly show that the properties covered therein refer to one and the same property, which is the property in dispute.[31] The appellate court added that what is controlling is the technical description of the property. Moreover, petitioner admitted having executed the Real Estate Mortgage which also bears the erroneous TCT No. T-255916.[32]

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[30] *Id.* at 18.

[31] *Id.* at 64.

[32] *Id.* at 57.

Petitioner accuses respondent of employing fraudulent means and pretenses in procuring his signature in the said deed as he never consented to its execution. He further denies appearing before the Notary Public and that the Community Tax Certificate Number appearing on the document was not his.

It can readily be inferred that petitioner is primarily asserting his ownership over the subject property. It should be reiterated, at the point of being repetitive, that in an unlawful detainer case, the only issue to be resolved is who between the parties is entitled to the physical or material possession of the property in dispute. The trial court and the appellate court were one in saying that respondent had overwhelmingly established its right of possession by virtue of the *dacion en pago* and the torrens title.

At this juncture, it may not be amiss to note that in a petition for review under Rule 45 of the Rules of Court, only questions of law may be raised for the simple reason that the Court is not a trier of facts. It is not duty-bound to analyze and weigh again the evidence considered in the proceedings below.h The factual findings of the trial court, especially when adopted and affirmed by the Court of Appeals as in the present case, are final and conclusive and may not be reviewed on appeal.[33]

In the case at bar, both the trial court and the appellate court lent more credence to the validity of the *dacion en pago* and respondent's title. This determination, however, is regarded merely as provisional. It is a settled doctrine that courts in ejectment cases may determine questions of ownership whenever necessary to decide the question of possession.[34] In any case, we sustain the finding that the respondents have the better right to possess the subject property.

Well-established is the rule that if possession is by tolerance as has been alleged in the complaint such possession becomes illegal

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[33] *Umpoc v. Mercado*, G.R. No. 158166, 21 January 2005, 449 SCRA 220, 235.

[34] *Rivera v. Rivera*, 453 Phil. 404, 411-412 (2002).

upon demand to vacate, with the possessor refusing to comply with such demand.[35]

Going over the allegations in the complaint, it is clear that respondent's action for unlawful detainer is based on petitioner's possession by mere tolerance. From the time the title to the property was transferred in the name of respondent, petitioner's possession was converted into one by mere tolerance of the owner. The forbearance ceased when respondent made a demand on petitioner to vacate the lot. Thenceforth, petitioner's occupancy had become unlawful.

A person who occupies the land of another with the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which a summary action for ejectment is the proper remedy against him.[36]

There is no doubt that the plaintiff in an ejectment case is entitled to damages caused by his loss of the use and possession of the premises. Damages in the context of Section 17, Rule 70 of the 1997 Rules of Civil Procedure is limited to "rent" or fair rental value or the reasonable compensation for the use and occupation of the property.[37]

Respondent, as the plaintiff in the complaint for unlawful detainer brought before the MTCC, had sought therein the award of ₱100,000.00 a month as reasonable rental.[38] Before this Court, petitioner asserts that respondent had failed to prove his claim that the reasonable rental value is ₱100,000.00 a month.[39] Respondent, as the plaintiff in the complaint before the MTCC, had the burden to adduce evidence to prove the fair rental value

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[35] *Odsigue v. Court of Appeals, et al.*, G.R. No. 111179, 4 July 1994, 233 SCRA 626.

[36] *Ballesteros v. Abion*, G.R. No. 143361, 9 February 2006, 482 SCRA 23, 28.

[37] *Sps. Catungal v. Hao*, G.R. No. 134972, 22 March 2001, 407 Phil. 309, 320 (2001).

[38] CA *rollo*, p. 102.

[39] *Rollo*, pp. 29-32, 647.

or reasonable compensation for the subject property,[40] but it failed to discharge its burden. All that it did was to make through his counsel a self-serving and uncorroborated assertion in the unverified Position Paper[41] before the MCTC that "(g)iven the size and strategic location of the subject property the reasonable rentals" for its use "can be safely estimated at ₱100,000.00 a month."[42] Neither did the trial court make any ratiocination when it granted the rentals prayed for by respondent.

WHEREFORE, premises considered, the Petition is *GRANTED IN PART.* The Decision dated 7 May 2004 of the Court of Appeals is *AFFIRMED WITH MODIFICATION* in that its affirmation of the Regional Trial Court's award of reasonable rentals in favor of respondent is *DELETED* and *SET ASIDE.*

SO ORDERED.

Carpio Morales,[*] *Velasco, Jr., Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

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[40] *Josefa v. San Buenaventura*, G.R. No. 163429, 3 March 2006, 484 SCRA 49, 63.

[41] CA *rollo*, pp. 217-224.

[42] *Id.* at 221.

[*] Acting Chairperson.

[**] Per Special Order No. 619, Justice Teresita J. Leonardo-De Castro is hereby designated as additional member of the Second Division in lieu of Justice Leonardo A. Quisumbing, who is on official leave.

SECOND DIVISION

[G.R. No. 164025. May 8, 2009]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **HEIRS OF HONORATO DE LEON, represented by AMBROCIO DE LEON,** *respondent.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW; DETERMINATION OF JUST COMPENSATION; INSTANT CASE REMANDED TO THE SPECIAL AGRARIAN COURT (SAC) FOR THE DETERMINATION OF JUST COMPENSATION IN ACCORDANCE WITH DAR (DEPARTMENT OF AGRARIAN REFORM) A.O. NO. 5, SERIES OF 1998, THE LATEST DAR ISSUANCE ON FIXING JUST COMPENSATION.— Respondents were furnished with the notice of coverage sometime in 1988 only. Even if respondents' property were acquired pursuant to P.D. No. 27, the fixing of just compensation based on the values under P.D. No. 27/E.O. No. 228 would render meaningless respondents' right to a just compensation. Thus, the Court ruled in *Paris v. Alfeche* that when the passage of R.A. No. 6657 supervened before the payment of just compensation, the provisions of R.A. No. 6657 on just compensation would be applicable. The same pronouncement has been reiterated in *Land Bank of the Philippines v. Natividad*, *Land Bank of the Philippines v. Estanislao*, *Land Bank of the Philippines v. Heirs of Domingo* and *LBP v. Heirs of Cruz.* Pertinently, Section 17 of R.A. No. 6657 provides: Sec. 17. *Determination of Just Compensation.*—In determining just compensation, the cost of acquisition of the land, the current value of the like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessments made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government

financing institution on the said land shall be considered as additional factors to determine its valuation. In *Land Bank of the Philippines v. Celada*, the Court ruled that the factors enumerated under Section 17, R.A. No. 6657 had already been translated into a basic formula by the Department of Agrarian Reform (DAR) pursuant to its rule-making power under Section 49 of R.A. No. 6657. Thus, the Court held in *Celada* that the formula outlined in DAR A.O. No. 5, series of 1998 should be applied in computing just compensation. Likewise, in *Land Bank of the Philippines v. Sps. Banal*, the Court ruled that the applicable formula in fixing just compensation is DAR A.O. No. 6, series of 1992, as amended by DAR A.O. No. 11, series of 1994, then the governing regulation applicable to compulsory acquisition of lands, in recognition of the DAR's rule-making power to carry out the objectives of R.A. No. 6657. Because the trial court therein based its valuation upon a different formula and did not conduct any hearing for the reception of evidence, the Court ordered a remand of the case to the SAC for trial on the merits. The mandatory application of the aforementioned guidelines in determining just compensation has been reiterated recently in *Land Bank of the Philippines v. Lim* and *Land Bank of the Philippines v. Heirs of Cruz*, where the Court also ordered the remand of the cases to the SAC for the determination of just compensation strictly in accordance with the applicable DAR regulation. Conformably with the aforequoted rulings, the instant case must be remanded to the SAC for the determination of just compensation in accordance with DAR A.O. No. 5, series of 1998, the latest DAR issuance on fixing just compensation.

APPEARANCES OF COUNSEL

LBP Legal Department for petitioner.
Hector Rueben D. Feliciano for respondent.

DECISION

TINGA, *J.*:

This is a petition for review[1] on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, assailing the decision[2] and resolution[3] of the Court of Appeals in CA-G.R. SP No. 77619. The assailed decision dismissed for lack of merit petitioner's appeal from the decision[4] of the Regional Trial Court (RTC), Branch 26, Cabanatuan City ordering the payment of just compensation to respondents while the resolution denied petitioner's motion for reconsideration.[5]

The following factual antecedents are undisputed.

Petitioner Land Bank of the Philippines (LBP) is a government banking institution designated under Section 64 of Republic Act (R.A.) No. 6654 as the financial intermediary of the agrarian reform program of the government.

Respondents are the heirs of the late Honorato De Leon, the registered owner of an agricultural land situated at Barangay Carmen, Zaragoza, Nueva Ecija and covered by Transfer Certificate of Title (TCT) No. 10918-R. The whole area measuring 36.1238 hectares was acquired by the Department of Agrarian Reform (DAR) and placed under the coverage of Presidential Decree (P.D.) No. 27. Respondents received the notice of coverage sometime in 1988.

Finding the land valuation offered by the DAR to be very low, respondents filed a complaint for the fixing of just

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[1] *Rollo,* pp. 2-30.

[2] Dated 19 March 2004 and penned by Justice Andres B. Reyes, Jr. and concurred in by Justices Buenaventura J. Guerrero, Chairman of the Second Division, and Regalado E. Maambong; *id.* at 31-32.

[3] Dated 9 June 2004; *id.* at 98-105.*rollo*,

[4] Dated 14 January 2003 and penned by Judge Evelyn Dimaculangan-Querijero; *id.* at 98.

[5] *Id.* at 46-54.

compensation before the RTC of Cabanatuan City, sitting as a Special Agrarian Court (SAC). The complaint dated 20 February 1995 was docketed as Agrarian Case No. 98-AF and entitled, *Heirs of Honorato De Leon, represented by Ponciano R. De Leon v. Department of Agrarian Reform, as representative of the Republic of the Philippines, and Land Bank of the Philippines*.

Respondents prayed that just compensation be computed based on the following values: (a) an average gross production (AGP) of 195 *cavans* per hectare per year or **17,610.35 *cavans*** for the entire 36.1238 hectares; (b) plus simple interest of 6% per annum for 20 years on the 17,610.35 *cavans* or **21,132.41 *cavans***; and (c) government support price of ₱500.00. Using the aforementioned values, respondents claimed that the total just compensation due them should be in the amount of ₱19,371,385.00.[6]

DAR adopted petitioner's exhibits, among them a DAR order for petitioner to pay respondents the amount of ₱195,971.60 exclusive of the benefits under DAR A.O. No. 13, series of 1994. Also submitted in evidence were a Certification dated 07 June 1991 showing that the total compensation in the amount of ₱195,971.60 due respondents had been deposited on 31 January 1991 in cash and bonds and a letter dated 29 March 2000, informing respondents that the balance of their claim remained at ₱706,754.00, inclusive of interest provided under DAR A.O. No. 13, series of 1994.[7]

Acting under a written authority issued by Atty. Federico Poblete, DAR Undersecretary for Legal Affairs, a certain Atty. Benjamin Baui, the Legal Officer of DAR-Cabanatuan City, entered into a compromise agreement with herein respondents. The agreement, which was approved by the SAC on 29 June 2001 after petitioner failed to file a comment thereto, provided the payment of just compensation in the amount of ₱19,371,385.00.[8]

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[6] (AGP plus interest) x government support price = (17610.35 *cavans* plus 21,132.41 *cavans*) x ₱500.00 = ₱19,371,385.00.

[7] *Rollo*, p. 102.

[8] *Id.* at 40; G.R. No.166972.

However, on 9 November 2001, the SAC denied the motion for execution of the compromise judgment on the ground of oversight on the part of Atty. Baui regarding his authority to enter into a settlement.

On 14 January 2003, the SAC rendered a decision, the dispositive portion of which states:

WHEREFORE, judgment is hereby rendered ordering the Department of Agrarian Reform through the Land Bank of the Philippines to pay petitioners the total amount of ONE MILLION EIGHT HUNDRED NINETY-SIX THOUSAND FOUR HUNDRED NINTY-NINE PESOS and FIFTY CENTAVOS (₱1,896,499.50), Philippine Currency without interests, representing the just compensation of the property with the total area of 36.1238 hectares located in Barangay Carmen, Zaragoza, Nueva Ecija, covered by TCT No. 10218.

SO ORDERED.[9]

In arriving at the amount of just compensation, the SAC used a value of ₱175.00 as the government support price for *palay* based on the certification by the provincial manager of the National Food Authority (NFA) in Cabanatuan City. The SAC no longer imposed interest on account of a higher value of government support price.

With regard to the compromise judgment, the SAC declared in its decision that the same had been set aside and considered without effect on the ground that Atty. Poblete cannot authorize Atty. Baui to enter into a stipulation of facts binding upon the DAR.

Petitioner filed an appeal docketed as CA-G.R. SP No. 77619, arguing that just compensation should be fixed based on the formula in P.D. No. 27 in relation to Executive Order No. 228, providing a government support price of ₱35.00. Using the said formula and the provision on interest under DAR A.O. No. 13, series of 1994, petitioner prayed that just compensation be fixed at ₱706,754.90.

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[9] *Id.* at 105.

Respondents questioned the authority of the Court of Appeals to give due course to the appeal, considering that the compromise judgment had not been set aside under Rule 38 of the Rules of Court. In a Resolution dated 8 October 2004, the Court of Appeals affirmed its jurisdiction to take cognizance of petitioner's appeal.[10]

On 19 March 2, 2004, the Court of Appeals rendered the assailed decision, dismissing the appeal for lack of merit. On 9 June 2004, the appellate court denied petitioner's motion for reconsideration.

Hence, the instant petition, raising a lone issue for the Court's consideration:

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ERROR OF LAW WHEN IT USED DIFFERENT FACTORS/ DATA IN THE DETERMINATION OF JUST COMPENSATION OF SUBJECT RICELAND, IN UTTER DISREGARD OF THE EVIDENCE ON RECORD AND THE PERTINENT PROVISIONS OF PRESIDENTIAL DECREE NO. 27 AND EXECUTIVE ORDER NO. 228.

For their part, respondents elevated to this Court a petition for *certiorari* and prohibition, docketed as G.R. No. 166972. The petitioner prayed for the nullification of the assumption of jurisdiction by the Court of Appeals in CA-G.R. SP No. 77619 and the declaration that the compromise judgment is final and executory.

In a Resolution dated 22 June 2005, the Court resolved to dismiss G.R. No. 166972 for the failure to submit a verified statement of the material dates of the receipt of the decision and filing of the motion for reconsideration and failure to verify the petition and submit a valid certification of nonforum shopping.[11] The resolution became final and executory on 22 August 2005.[12]

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[10] *Id.* at 53.

[11] *Id.* at 79.

[12] *Id.* at 89.

The only question that remains for resolution is the value of just compensation to be paid to respondents. Petitioner maintains that the formula should be based under the provisions of P.D. No. 27 and E.O. No. 228, which fix the Land Value to be equal to (2.5 x AGP x ₱35) x A, where AGP is the average gross production per hectare; ₱35.00 is the government support price for *palay* in 1972; and A is the total land area. Petitioner argues that "₱35.00 was used in the foregoing formula as the support price of *palay* per *cavan* because it was the selling price of *palay* per *cavan* on October 21, 1972, when the government took over the ownership of the subject land."

The petition lacks merit.

On 15 June 1988, the Comprehensive Agrarian Reform Law (CARL) or R.A. No. 6657 was enacted to promote special 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."[13]

Section 4 of R.A. No. 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 provides that rice and corn lands under P.D. No. 27, among other lands, will comprise phase one of the acquisition plan and distribution program. Section 75 states that the provisions of P.D. No. 27 and E.O. Nos. 228 and 229, and other laws not inconsistent with R.A. No. 6657 shall have suppletory effect.[14]

Furthermore, in *Land Bank of the Philippines v. Heirs of Domingo*,[15] the Court stressed the duty of the Court to balance the interests of both the landowner and the farmer-beneficiaries, to wit:

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[13] *Land Bank of the Philippines v. Heirs of Angel T. Domingo*, G.R. No. 168533, 4 February 2008, 543 SCRA 627, 638.

[14] *Land Bank of the Philippines v. Heirs of Angel T. Domingo,* G.R. No. 168533, 4 February 2008, 543 SCRA 627, 639.

[15] *Land Bank of the Philippines v. Heirs of Angel T. Domingo,* G.R. No. 168533, 4 February 2008, 543 SCRA 627.

Section 9, Article III of the 1987 Constitution provides that no private property shall be taken for public use without just compensation. As a concept in the Bill of Rights, just compensation is defined as the fair market value of the property as between one who receives, and one who desires to sell.

Section 4, Article XIII of the 1987 Constitution mandates that the redistribution of agricultural lands shall be "subject to the payment of just compensation." The deliberations of the 1986 Constitutional Commission on this subject reveal that just compensation should not also make an insurmountable obstacle to a successful agrarian reform. Hence, the landowner's right to just compensation should be balanced with agrarian reform. In *Land Bank v. Court of Appeals*, we declared that it is the duty of the court to protect the weak and the underprivileged, but this duty should not be carried out to such an extent as to deny justice to the landowner whenever truth and justice happen to be on his side.[16]

In the instant case, respondents were furnished with the notice of coverage sometime in 1988 only. Even if respondents' property were acquired pursuant to P.D. No. 27, the fixing of just compensation based on the values under P.D. No. 27/E.O. No. 228 would render meaningless respondents' right to a just compensation.

Thus, the Court ruled in *Paris v. Alfeche*[17] that when the passage of R.A. No. 6657 supervened before the payment of just compensation, the provisions of R.A. No. 6657 on just compensation would be applicable. The same pronouncement has been reiterated in *Land Bank of the Philippines v. Natividad*,[18] *Land Bank of the Philippines v. Estanislao*,[19] *Land Bank of the Philippines v. Heirs of Domingo*[20] and *LBP v. Heirs of Cruz*.[21]

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[16] *Id.* at 639-640.

[17] 416 Phil. 473 (2001).

[18] G.R. No. 127198, 16 May 2005, 458 SCRA 441.

[19] G.R. No. 166777, 10 July 2007, 527 SCRA 181.

[20] *Supra* note 16.

[21] G.R. No. 175175, 29 September 2008.

Pertinently, Section 17 of R.A. No. 6657 provides:

Sec. 17. *Determination of Just Compensation*.—In determining just compensation, the cost of acquisition of the land, the current value of the like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessments made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

In *Land Bank of the Philippines v. Celada*, the Court ruled that the factors enumerated under Section 17, R.A. No. 6657 had already been translated into a basic formula by the Department of Agrarian Reform (DAR) pursuant to its rule-making power under Section 49 of R.A. No. 6657. Thus, the Court held in *Celada* that the formula outlined in DAR A.O. No. 5, series of 1998 should be applied in computing just compensation.[22]

Likewise, in *Land Bank of the Philippines v. Sps. Banal*,[23] the Court ruled that the applicable formula in fixing just compensation is DAR A.O. No. 6, series of 1992, as amended by DAR A.O. No. 11, series of 1994, then the governing regulation applicable to compulsory acquisition of lands, in recognition of the DAR's rule-making power to carry out the objectives of R.A. No. 6657. Because the trial court therein based its valuation upon a different formula and did not conduct any hearing for the reception of evidence, the Court ordered a remand of the case to the SAC for trial on the merits.[24]

The mandatory application of the aforementioned guidelines in determining just compensation has been reiterated recently in *Land Bank of the Philippines v. Lim*[25] and *Land Bank of the*

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[22] G.R. No. 164876, 23 January 2006, 479 SCRA 495.

[23] 478 Phil. 701 (2004).

[24] *LBP v. Heirs of Cuz*, *supra* note 22.

[25] G.R. No. 171941, 2 August 2007, 529 SCRA 129.

Philippines v. Heirs of Cruz,[26] where the Court also ordered the remand of the cases to the SAC for the determination of just compensation strictly in accordance with the applicable DAR regulation.

Conformably with the aforequoted rulings, the instant case must be remanded to the SAC for the determination of just compensation in accordance with DAR A.O. No. 5, series of 1998, the latest DAR issuance on fixing just compensation.

WHEREFORE, the instant petition for review on *certiorari* is *DENIED* and the decision and resolution of the court of Appeals in CA-G.R. SP No. 77619 are *REVERSED* and *SET ASIDE*. Agrarian Case No. 98-AF is *REMANDED* to the Regional Trial Court, Branch 26, Cabanatuan City, which is directed to determine with dispatch the just compensation due respondents strictly in accordance with DAR A.O. No. 5, series of 1998.

SO ORDERED.

Carpio Morales,[*] *Velasco, Jr., Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

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[26] *Supra* note 22.

[*] Acting Chairperson in lieu of Senior Associate Justice Leonardo A. Quisumbing, who is on official leave, per Special Order No. 618.

[**] Designated as an additional member of the Second Division in lieu of Senior Associate Justice Leonardo A. Quisumbing, who is on official leave, per Special Order No. 618.

SECOND DIVISION

[G.R. No. 164108. May 8, 2009]

ALFREDO HILADO, LOPEZ SUGAR CORPORATION, and FIRST FARMERS HOLDING CORPORATION, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, THE HONORABLE AMOR A. REYES, Presiding Judge, Regional Trial Court of Manila, Branch 21 and ADMINISTRATRIX JULITA CAMPOS BENEDICTO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; INTERVENOR; LEGAL INTEREST IN THE CASE REQUIRED; NOT EXTENDED TO CREDITORS OF A DECEDENT WHOSE CREDIT IS BASED ON A CONTINGENT CLAIM.—** Section 1 of Rule 19 of the 1997 Rules of Civil Procedure requires that an intervenor "has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court x x x." While the language of Section 1, Rule 19 does not literally preclude petitioners from intervening in the intestate proceedings, case law has consistently held that the legal interest required of an intervenor "must be actual and material, direct and immediate, **and not simply contingent and expectant**." Intervention as set forth under Rule 19 does not extend to creditors of a decedent whose credit is based on a contingent claim. The definition of "intervention" under Rule 19 simply does not accommodate contingent claims.

2. **ID.; RULES ON SPECIAL PROCEEDINGS; THE RULES APPLICABLE FOR THE SETTLEMENT OF ESTATE OF DECEASED PERSONS.—** The settlement of estates of deceased persons fall within the rules of special proceedings under the Rules of Court, not the Rules on Civil Procedure. Section 2, Rule 72 further provides that "[i]n the absence of

special provisions, the rules provided for in ordinary actions shall be, as far as practicable, applicable to special proceedings."

3. **ID.; ID.; ID.; CLAIMS AGAINST THE ESTATE; CIVIL ACTIONS FOR TORT OR QUASI-DELICT SURVIVE THE DEATH OF THE DECEDENT AND MAY BE COMMENCED AGAINST THE ADMINISTRATOR OF ESTATE.—** Had the claims of petitioners against Benedicto been based on contract, whether express or implied, then they should have filed their claim, even if contingent, under the aegis of the notice to creditors to be issued by the court immediately after granting letters of administration and published by the administrator immediately after the issuance of such notice. However, it appears that the claims against Benedicto were based on fort, as they arose from his actions in connection with Philsucom, Nasutra and Traders Royal Bank. Civil actions for tort or quasi-delict do not fall within the class of claims to be filed under the notice to creditors required under Rule 86. These actions, being as they are civil, survive the death of the decedent and may be commenced against the administrator pursuant to Section 1, Rule 87. Indeed, the records indicate that the intestate estate of Benedicto, as represented by its administrator, was successfully impleaded in Civil Case No. 11178, whereas the other civil case was already pending review before this Court at the time of Benedicto's death.

4. **ID.; ID.; ID.; ID.; ID.; INTERESTED PERSONS, INCLUDING CREDITORS, INTERVENING IN THE SETTLEMENT OF ESTATE ALLOWED TO DO SO TO PROTECT THEIR INTEREST IN THE ESTATE.—** The Court, citing *Dinglasan v. Ang Chia* stated: "[t]he rulings of this court have always been to the effect that in the special proceeding for the settlement of the estate of a deceased person, persons not heirs, intervening therein to protect their interests are allowed to do so to protect the same, but not for a decision on their action. Petitioners' interests in the estate of Benedicto may be inchoate interests, but they are viable interests nonetheless. We are mindful that the Rules of Special Proceedings allows not just creditors, but also "any person interested" or "persons interested in the estate" various specified capacities to protect their respective interests in the estate. Anybody with a contingent claim based on a pending action for quasi-delict against a decedent may be reasonably concerned that by the time

judgment is rendered in their favor, the estate of the decedent would have already been distributed, or diminished to the extent that the judgment could no longer be enforced against it. In the same manner that the Rules on Special Proceedings do not provide a creditor or any person interested in the estate, the right to participate in every aspect of the testate or intestate proceedings, but instead provides for specific instances when such persons may accordingly act in those proceedings, we deem that while there is no general right to intervene on the part of the petitioners, they may be allowed to seek certain prayers or reliefs from the intestate court not explicitly provided for under the Rules, if the prayer or relief sought is necessary to protect their interest in the estate, and there is no other modality under the Rules by which such interests can be protected.

5. **ID.; ID.; ID.; ID.; ID.; ID.; ACCESS TO COURT RECORDS IN THE INTESTATE PROCEEDINGS, PROPER.—** In *Hilado v. Judge Reyes,* the Court heard a petition for *mandamus* filed by the same petitioners herein against the RTC judge, praying that they be allowed access to the records of the intestate proceedings, which the respondent judge had denied from them. Section 2 of Rule 135 came to fore, the provision stating that "the records of every court of justice shall be public records and shall be available for the inspection of any interested person x x x ." The Court ruled that petitioners were "interested persons" entitled to access the court records in the intestate proceedings. Allowing creditors, contingent or otherwise, access to the records of the intestate proceedings is an eminently preferable precedent than mandating the service of court processes and pleadings upon them. In either case, the interest of the creditor in seeing to it that the assets are being preserved and disposed of in accordance with the rules will be duly satisfied. Acknowledging their right to access the records, rather than entitling them to the service of every court order or pleading no matter how relevant to their individual claim, will be less cumbersome on the intestate court, the administrator and the heirs of the decedent, while providing a viable means by which the interests of the creditors in the estate are preserved.

6. **ID.; ID.; ID.; ID.; ID.; ID.; ID.; INSTANCES WHEN NOTICE TO INTERESTED PARTIES IN ESTATE PROCEEDINGS REQUIRED.—** Nonetheless, in the instances that the Rules

on Special Proceedings do require notice to any or all "interested parties" the petitioners as "interested parties" will be entitled to such notice. The instances when notice has to be given to interested parties are provided in: (1) Sec. 10, Rule 85 in reference to the time and place of examining and allowing the account of the executor or administrator; (2) Sec. 7(b) of Rule 89 concerning the petition to authorize the executor or administrator to sell personal estate, or to sell, mortgage or otherwise encumber real estates; and; (3) Sec. 1, Rule 90 regarding the hearing for the application for an order for distribution of the estate residue. After all, even the administratrix has acknowledged in her submitted inventory, the existence of the pending cases filed by the petitioners.

7. **ID.; ID.; ID.; ID.; ADMINISTRATOR'S DUTIES; CANNOT BE COMPELLED BY ONE WITH CONTINGENT CLAIM AGAINST THE ESTATE BUT THERE IS PROTECTION AVAILABLE UNDER RULE 88.—** Section 1 of Rule 83 requires the administrator to return to the court a true inventory and appraisal of all the real and personal estate of the deceased within three (3) months from appointment, while Section 8 of Rule 85 requires the administrator to render an account of his administration within one (1) year from receipt of the letters testamentary or of administration. We do not doubt that there are reliefs available to compel an administration to perform either duty, but a person whose claim against the estate is still contingent is not the party entitled to do so. Still, even if the administrator did delay in the performance of these duties in the context of dissipating the assets of the estate, there are protections enforced and available under Rule 88 to protect the interests of those with contingent claims against the estate.

8. **ID.; ID.; ID.; ID.; ADMINISTRATOR'S COMPETENCE; REMOVAL OF ADMINISTRATOR BASED ON INCOMPETENCE MAY BE SOUGHT BY ONE EVEN WITH MERE CONTINGENT CLAIM.—** Concerning complaints against the general competence of the administrator, the proper remedy is to seek the removal of the administrator in accordance with Section 2, Rule 82. While the provision is silent as to who may seek with the court the removal of the administrator, we do not doubt that a creditor, even a contingent one, would have the personality to seek such relief. After all, the interest of the creditor in the estates relates to the

preservation of sufficient assets to answer for the debt, and the general competence or good faith of the administrator is necessary to fulfill such purpose.

APPEARANCES OF COUNSEL

Andres H. Hagad Daniel Hagad Victor Cabalusa & Ralph A. Sarmiento for petitioners.

Dominador R. Santiago for private respondent.

D E C I S I O N

TINGA, *J.*:

The well-known sugar magnate Roberto S. Benedicto died intestate on 15 May 2000. He was survived by his wife, private respondent Julita Campos Benedicto (administratrix Benedicto), and his only daughter, Francisca Benedicto-Paulino.[1] At the time of his death, there were two pending civil cases against Benedicto involving the petitioners. The first, Civil Case No. 95-9137, was then pending with the Regional Trial Court (RTC) of Bacolod City, Branch 44, with petitioner Alfredo Hilado as one of the plaintiffs therein. The second, Civil Case No. 11178, was then pending with the RTC of Bacolod City, Branch 44, with petitioners Lopez Sugar Corporation and First Farmers Holding Corporation as one of the plaintiffs therein.[2]

On 25 May 2000, private respondent Julita Campos Benedicto filed with the RTC of Manila a petition for the issuance of letters of administration in her favor, pursuant to Section 6, Rule 78 of the Revised Rules of Court. The petition was raffled to Branch 21, presided by respondent Judge Amor A. Reyes. Said petition acknowledged the value of the assets of the decedent to be ₱5 Million, "net of liabilities."[3] On 2 August 2000, the Manila RTC issued an order appointing private respondent as

[1] *Rollo*, p. 45.

[2] *Id.* at 13.

[3] *Id.* at 56.

administrator of the estate of her deceased husband, and issuing letters of administration in her favor.[4] In January 2001, private respondent submitted an Inventory of the Estate, Lists of Personal and Real Properties, and Liabilities of the Estate of her deceased husband.[5] In the List of Liabilities attached to the inventory, private respondent included as among the liabilities, the above-mentioned two pending claims then being litigated before the Bacolod City courts.[6] Private respondent stated that the amounts of liability corresponding to the two cases as ₱136,045,772.50 for Civil Case No. 95-9137 and ₱35,198,697.40 for Civil Case No. 11178.[7] Thereafter, the Manila RTC required private respondent to submit a complete and updated inventory and appraisal report pertaining to the estate.[8]

On 24 September 2001, petitioners filed with the Manila RTC a Manifestation/Motion *Ex Abundanti Cautela*,[9] praying that they be furnished with copies of all processes and orders pertaining to the intestate proceedings. Private respondent opposed the manifestation/motion, disputing the personality of petitioners to intervene in the intestate proceedings of her husband. Even before the Manila RTC acted on the manifestation/motion, petitioners filed an omnibus motion praying that the Manila RTC set a deadline for the submission by private respondent of the required inventory of the decedent's estate.[10] Petitioners also filed other pleadings or motions with the Manila RTC, alleging lapses on the part of private respondent in her administration of the estate, and assailing the inventory that had been submitted thus far as unverified, incomplete and inaccurate.

On 2 January 2002, the Manila RTC issued an order denying the manifestation/motion, on the ground that petitioners are not

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[4] *Id.* at 67-69.

[5] *Id.* at 76-85A.

[6] *Id.* at 85-A.

[7] *Id.*

[8] *Id.* at 87.

[9] *Id.* at 101-104.

[10] *Id.* at 121-125.

interested parties within the contemplation of the Rules of Court to intervene in the intestate proceedings.[11] After the Manila RTC had denied petitioners' motion for reconsideration, a petition for *certiorari* was filed with the Court of Appeals. The petition argued in general that petitioners had the right to intervene in the intestate proceedings of Roberto Benedicto, the latter being the defendant in the civil cases they lodged with the Bacolod RTC.

On 27 February 2004, the Court of Appeals promulgated a decision[12] dismissing the petition and declaring that the Manila RTC did not abuse its discretion in refusing to allow petitioners to intervene in the intestate proceedings. The allowance or disallowance of a motion to intervene, according to the appellate court, is addressed to the sound discretion of the court. The Court of Appeals cited the fact that the claims of petitioners against the decedent were in fact contingent or expectant, as these were still pending litigation in separate proceedings before other courts.

Hence, the present petition. In essence, petitioners argue that the lower courts erred in denying them the right to intervene in the intestate proceedings of the estate of Roberto Benedicto. Interestingly, the rules of procedure they cite in support of their argument is not the rule on intervention, but rather various other provisions of the Rules on Special Proceedings.[13]

To recall, petitioners had sought three specific reliefs that were denied by the courts *a quo*. First, they prayed that they be henceforth furnished "copies of all processes and orders issued" by the intestate court as well as the pleadings filed by administratrix Benedicto with the said court.[14] Second, they

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[11] *Id.* at 132-133.

[12] *Id.* at 45-52. Decision penned by Associate Justice Amelita G. Tolentino of the Sixteenth Division, and concurred in by Associate Justices Eloy R. Bello, Jr. and Magdangal M. De Leon.

[13] More particularly, the Rules on Settlement of Estates of Deceased Persons. See Rules 73 to 91, REVISED RULES OF COURT.

[14] See *rollo*, p. 103.

prayed that the intestate court set a deadline for the submission by administratrix Benedicto to submit a verified and complete inventory of the estate, and upon submission thereof, order the inheritance tax appraisers of the Bureau of Internal Revenue to assist in the appraisal of the fair market value of the same.[15] Third, petitioners moved that the intestate court set a deadline for the submission by the administrator of her verified annual account, and, upon submission thereof, set the date for her examination under oath with respect thereto, with due notice to them and other parties interested in the collation, preservation and disposition of the estate.[16]

The Court of Appeals chose to view the matter from a perspective solely informed by the rule on intervention. We can readily agree with the Court of Appeals on that point. Section 1 of Rule 19 of the 1997 Rules of Civil Procedure requires that an intervenor "has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court xxx." While the language of Section 1, Rule 19 does not literally preclude petitioners from intervening in the intestate proceedings, case law has consistently held that the legal interest required of an intervenor "must be actual and material, direct and immediate, **and not simply contingent and expectant**."[17]

Nonetheless, it is not immediately evident that intervention under the Rules of Civil Procedure necessarily comes into operation in special proceedings. The settlement of estates of deceased persons fall within the rules of special proceedings under the Rules of Court,[18] not the Rules on Civil Procedure. Section 2, Rule 72 further provides that "[i]n the absence of special provisions, the rules provided for in ordinary actions shall be, as far as practicable, applicable to special proceedings."

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[15] *Id.* at 124.

[16] *Id.* at 124-125.

[17] *Batama Farmers' Cooperative Marketing Association, Inc., et al., v. Hon. Rosal, etc. et al.,* 149 Phil. 514, 519 (1971).

[18] See Section 1(a), Rule 72, RULES OF COURT.

We can readily conclude that notwithstanding Section 2 of Rule 72, intervention as set forth under Rule 19 does not extend to creditors of a decedent whose credit is based on a contingent claim. The definition of "intervention" under Rule 19 simply does not accommodate contingent claims.

Yet, even as petitioners now contend before us that they have the right to intervene in the intestate proceedings of Roberto Benedicto, the reliefs they had sought then before the RTC, and also now before us, do not square with their recognition as intervenors. In short, even if it were declared that petitioners have no right to intervene in accordance with Rule 19, it would not necessarily mean the disallowance of the reliefs they had sought before the RTC since the right to intervene is not one of those reliefs.

To better put across what the ultimate disposition of this petition should be, let us now turn our focus to the Rules on Special Proceedings.

In several instances, the Rules on Special Proceedings entitle "any interested persons" or "any persons interested in the estate" to participate in varying capacities in the testate or intestate proceedings. Petitioners cite these provisions before us, namely: (1) Section 1, Rule 79, which recognizes the right of "any person interested" to oppose the issuance of letters testamentary and to file a petition for administration"; (2) Section 3, Rule 79, which mandates the giving of notice of hearing on the petition for letters of administration to the known heirs, creditors, and "to any other persons believed to have interest in the estate"; (3) Section 1, Rule 76, which allows a "person interested in the estate" to petition for the allowance of a will; (4) Section 6 of Rule 87, which allows an individual interested in the estate of the deceased "to complain to the court of the concealment, embezzlement, or conveyance of any asset of the decedent, or of evidence of the decedent's title or interest therein"; (5) Section 10 of Rule 85, which requires notice of the time and place of the examination and allowance of the Administrator's account "to persons interested"; (6) Section 7(b) of Rule 89, which requires the court to give notice "to the persons interested"

before it may hear and grant a petition seeking the disposition or encumbrance of the properties of the estate; and (7) Section 1, Rule 90, which allows "any person interested in the estate" to petition for an order for the distribution of the residue of the estate of the decedent, after all obligations are either satisfied or provided for.

Had the claims of petitioners against Benedicto been based on contract, whether express or implied, then they should have filed their claim, even if contingent, under the aegis of the notice to creditors to be issued by the court immediately after granting letters of administration and published by the administrator immediately after the issuance of such notice.[19] However, it appears that the claims against Benedicto were based on tort, as they arose from his actions in connection with Philsucom, Nasutra and Traders Royal Bank. Civil actions for tort or quasi-delict do not fall within the class of claims to be filed under the notice to creditors required under Rule 86.[20] These actions, being as they are civil, survive the death of the decedent and may be commenced against the administrator pursuant to Section 1, Rule 87. Indeed, the records indicate that the intestate estate of Benedicto, as represented by its administrator, was successfully impleaded in Civil Case No. 11178, whereas the other civil case[21] was already pending review before this Court at the time of Benedicto's death.

Evidently, the merits of petitioners' claims against Benedicto are to be settled in the civil cases where they were raised, and not in the intestate proceedings. In the event the claims for damages of petitioners are granted, they would have the right to enforce the judgment against the estate. Yet until such time, to what extent may they be allowed to participate in the intestate proceedings?

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[19] See RULES OF COURT, Rule 86, Secs. 1 & 3.

[20] See *Aguas v. Llemos, et al.,* 116 Phil. 112 (1962); *Leung Ben v. O'Brien,* 38 Phil. 182, 189-194 (1918)

[21] 88 Phil. 477 (1951).

Petitioners place heavy reliance on our ruling in *Dinglasan v. Ang Chia*,[22] and it does provide us with guidance on how to proceed. A brief narration of the facts therein is in order. Dinglasan had filed an action for reconveyance and damages against respondents, and during a hearing of the case, learned that the same trial court was hearing the intestate proceedings of Lee Liong to whom Dinglasan had sold the property years earlier. Dinglasan thus amended his complaint to implead Ang Chia, administrator of the estate of her late husband. He likewise filed a verified claim-in-intervention, manifesting the pendency of the civil case, praying that a co-administrator be appointed, the bond of the administrator be increased, and that the intestate proceedings not be closed until the civil case had been terminated. When the trial court ordered the increase of the bond and took cognizance of the pending civil case, the administrator moved to close the intestate proceedings, on the ground that the heirs had already entered into an extrajudicial partition of the estate. The trial court refused to close the intestate proceedings pending the termination of the civil case, and the Court affirmed such action.

> **If the appellants filed a claim in intervention in the intestate proceedings it was only pursuant to their desire to protect their interests it appearing that the property in litigation is involved in said proceedings and in fact is the only property of the estate left subject of administration and distribution; and the court is justified in taking cognizance of said civil case because of the unavoidable fact that whatever is determined in said civil case will necessarily reflect and have a far reaching consequence in the determination and distribution of the estate.** In so taking cognizance of civil case No. V-331 the court does not assume general jurisdiction over the case but merely makes of record its existence because of the close interrelation of the two cases and cannot therefore be branded as having acted in excess of its jurisdiction.
>
> Appellants' claim that the lower court erred in holding in abeyance the closing of the intestate proceedings pending determination of the separate civil action for the reason that there is no rule or authority justifying the extension of administration proceedings until after

[22] G.R. No. L-3342, 18 April 1951.

the separate action pertaining to its general jurisdiction has been terminated, cannot be entertained. Section 1, Rule 88, of the Rules of Court, expressly provides that "action to recover real or personal property from the estate or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal, may be commenced against the executor or administrator." What practical value would this provision have if the action against the administrator cannot be prosecuted to its termination simply because the heirs desire to close the intestate proceedings without first taking any step to settle the ordinary civil case? This rule is but a corollary to the ruling which declares that questions concerning ownership of property alleged to be part of the estate but claimed by another person should be determined in a separate action and should be submitted to the court in the exercise of its general jurisdiction. These rules would be rendered nugatory if we are to hold that an intestate proceedings can be closed by any time at the whim and caprice of the heirs x x x[23] (Emphasis supplied) [Citations omitted]

It is not clear whether the claim-in-intervention filed by Dinglasan conformed to an action-in-intervention under the Rules of Civil Procedure, but we can partake of the spirit behind such pronouncement. Indeed, a few years later, the Court, citing *Dinglasan*, stated: "[t]he rulings of this court have always been to the effect that in the special proceeding for the settlement of the estate of a deceased person, persons not heirs, intervening therein to protect their interests are allowed to do so to protect the same, but not for a decision on their action."[24]

Petitioners' interests in the estate of Benedicto may be inchoate interests, but they are viable interests nonetheless. We are mindful that the Rules of Special Proceedings allows not just creditors, but also "any person interested" or "persons interested in the estate" various specified capacities to protect their respective interests in the estate. Anybody with a contingent claim based on a pending action for quasi-delict against a decedent may be

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[23] *Id.* at 480-481.

[24] *Baquial v. Amihan*, 92 Phil. 501, 503 (1953); citing 2 Moran, 432, 1952 revised edition, citing the case of *Intestate Estate of the Deceased Lee Liong, Dinglasan, et al. v. Ang Chia, et al.*, G.R. No. L-3342, April 18, 1951.

reasonably concerned that by the time judgment is rendered in their favor, the estate of the decedent would have already been distributed, or diminished to the extent that the judgment could no longer be enforced against it.

In the same manner that the Rules on Special Proceedings do not provide a creditor or any person interested in the estate, the right to participate in every aspect of the testate or intestate proceedings, but instead provides for specific instances when such persons may accordingly act in those proceedings, we deem that while there is no general right to intervene on the part of the petitioners, they may be allowed to seek certain prayers or reliefs from the intestate court not explicitly provided for under the Rules, if the prayer or relief sought is necessary to protect their interest in the estate, and there is no other modality under the Rules by which such interests can be protected. It is under this standard that we assess the three prayers sought by petitioners.

The first is that petitioners be furnished with copies of all processes and orders issued in connection with the intestate proceedings, as well as the pleadings filed by the administrator of the estate. There is no questioning as to the utility of such relief for the petitioners. They would be duly alerted of the developments in the intestate proceedings, including the status of the assets of the estate. Such a running account would allow them to pursue the appropriate remedies should their interests be compromised, such as the right, under Section 6, Rule 87, to complain to the intestate court if property of the estate concealed, embezzled, or fraudulently conveyed.

At the same time, the fact that petitioners' interests remain inchoate and contingent counterbalances their ability to participate in the intestate proceedings. We are mindful of respondent's submission that if the Court were to entitle petitioners with service of all processes and pleadings of the intestate court, then anybody claiming to be a creditor, whether contingent or otherwise, would have the right to be furnished such pleadings, no matter how wanting of merit the claim may be. Indeed, to impose a precedent that would mandate the service of all court processes and pleadings to anybody posing a claim to the estate,

much less contingent claims, would unduly complicate and burden the intestate proceedings, and would ultimately offend the guiding principle of speedy and orderly disposition of cases.

Fortunately, there is a median that not only exists, but also has been recognized by this Court, with respect to the petitioners herein, that addresses the core concern of petitioners to be apprised of developments in the intestate proceedings. In *Hilado v. Judge Reyes*,[25] the Court heard a petition for *mandamus* filed by the same petitioners herein against the RTC judge, praying that they be allowed access to the records of the intestate proceedings, which the respondent judge had denied from them. Section 2 of Rule 135 came to fore, the provision stating that "the records of every court of justice shall be public records and shall be available for the inspection of any interested person x x x." The Court ruled that petitioners were "interested persons" entitled to access the court records in the intestate proceedings. We said:

> Petitioners' stated main purpose for accessing the records to—monitor prompt compliance with the Rules governing the preservation and proper disposition of the assets of the estate, *e.g*., the completion and appraisal of the Inventory and the submission by the Administratrix of an annual accounting—appears legitimate, for, as the plaintiffs in the complaints for sum of money against *Roberto Benedicto, et al.*, they have an interest over the outcome of the settlement of his estate. They are in fact "interested persons" under Rule 135, Sec. 2 of the Rules of Court x x x[26]

Allowing creditors, contingent or otherwise, access to the records of the intestate proceedings is an eminently preferable precedent than mandating the service of court processes and pleadings upon them. In either case, the interest of the creditor in seeing to it that the assets are being preserved and disposed of in accordance with the rules will be duly satisfied. Acknowledging their right to access the records, rather than entitling them to the service of every court order or pleading no

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[25] G.R. No. 163155, 21 July 2006, 496 SCRA 282.

[26] *Id.* at 301.

matter how relevant to their individual claim, will be less cumbersome on the intestate court, the administrator and the heirs of the decedent, while providing a viable means by which the interests of the creditors in the estate are preserved.

Nonetheless, in the instances that the Rules on Special Proceedings do require notice to any or all "interested parties" the petitioners as "interested parties" will be entitled to such notice. The instances when notice has to be given to interested parties are provided in: (1) Sec. 10, Rule 85 in reference to the time and place of examining and allowing the account of the executor or administrator; (2) Sec. 7(b) of Rule 89 concerning the petition to authorize the executor or administrator to sell personal estate, or to sell, mortgage or otherwise encumber real estates; and; (3) Sec. 1, Rule 90 regarding the hearing for the application for an order for distribution of the estate residue. After all, even the administratrix has acknowledged in her submitted inventory, the existence of the pending cases filed by the petitioners.

We now turn to the remaining reliefs sought by petitioners; that a deadline be set for the submission by administratrix Benedicto to submit a verified and complete inventory of the estate, and upon submission thereof: the inheritance tax appraisers of the Bureau of Internal Revenue be required to assist in the appraisal of the fair market value of the same; and that the intestate court set a deadline for the submission by the administratrix of her verified annual account, and, upon submission thereof, set the date for her examination under oath with respect thereto, with due notice to them and other parties interested in the collation, preservation and disposition of the estate. We cannot grant said reliefs.

Section 1 of Rule 83 requires the administrator to return to the court a true inventory and appraisal of all the real and personal estate of the deceased within three (3) months from appointment, while Section 8 of Rule 85 requires the administrator to render an account of his administration within one (1) year from receipt of the letters testamentary or of administration. We do not doubt that there are reliefs available to compel an administrator to

perform either duty, but a person whose claim against the estate is still contingent is not the party entitled to do so. Still, even if the administrator did delay in the performance of these duties in the context of dissipating the assets of the estate, there are protections enforced and available under Rule 88 to protect the interests of those with contingent claims against the estate.

Concerning complaints against the general competence of the administrator, the proper remedy is to seek the removal of the administrator in accordance with Section 2, Rule 82. While the provision is silent as to who may seek with the court the removal of the administrator, we do not doubt that a creditor, even a contingent one, would have the personality to seek such relief. After all, the interest of the creditor in the estate relates to the preservation of sufficient assets to answer for the debt, and the general competence or good faith of the administrator is necessary to fulfill such purpose.

All told, the ultimate disposition of the RTC and the Court of Appeals is correct. Nonetheless, as we have explained, petitioners should not be deprived of their prerogatives under the Rules on Special Proceedings as enunciated in this decision.

WHEREFORE, the petition is *DENIED*, subject to the qualification that petitioners, as persons interested in the intestate estate of Roberto Benedicto, are entitled to such notices and rights as provided for such interested persons in the Rules on Settlement of Estates of Deceased Persons under the Rules on Special Proceedings. No pronouncements as to costs.

SO ORDERED.

Carpio Morales,[*] *Velasco, Jr., Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

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[*] Acting Chairperson.

[**] Per Special Order No. 619, Justice Teresita J. Leonardo-De Castro is hereby designated as additional member of the Second Division in lieu of Justice Leonardo A. Quisumbing, who is on official leave

SECOND DIVISION

[G.R. No. 167195. May 8, 2009]

ASSET PRIVATIZATION TRUST, *petitioner, vs.* **T.J. ENTERPRISES,** *respondent.*

SYLLABUS

1. **CIVIL LAW; SPECIAL CONTRACTS; SALES; TRANSFER OF OWNERSHIP OF THING SOLD UPON ACTUAL OR CONSTRUCTIVE DELIVERY THEREOF; RE SALE MADE THROUGH PUBLIC INSTRUMENT; ELABORATED.—**The ownership of a thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof. The thing sold shall be understood as delivered when it is placed in the control and possession of the vendee. As a general rule, when the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred. And with regard to movable property, its delivery may also be made by the delivery of the keys of the place or depository where it is stored or kept. In order for the execution of a public instrument to effect tradition, the purchaser must be placed in control of the thing sold. However, the execution of a public instrument only gives rise to a *prima facie* presumption of delivery. Such presumption is destroyed when the delivery is not effected because of a legal impediment. It is necessary that the vendor shall have control over the thing sold that, at the moment of sale, its material delivery could have been made. Thus, a person who does not have actual possession of the thing sold cannot transfer constructive possession by the execution and delivery of a public instrument.

2. **ID.; ID.; ID.; ID.; AS-IS-WHERE-IS BASIS, NOT APPLICABLE TO ISSUE OF DELIVERY.—** Petitioner posits that the sale being in an *as-is-where-is* basis, respondent agreed to take possession of the things sold in the condition where they are found and from the place where they are located. The phrase *as-is where-is* basis pertains solely to the physical condition of the thing sold, not to its legal situation. It is

merely descriptive of the state of the thing sold. Thus, the *as-is where-is* basis merely describes the actual state and location of the machinery and equipment sold by petitioner to respondent. The depiction does not alter petitioner's responsibility to deliver the property to respondent.

3. **ID.; ID.; ID.; OBLIGATIONS OF THE VENDOR; TO TRANSFER OWNERSHIP AND DELIVER THE OBJECT OF SALE, NOT PRESENT IN CASE AT BAR.—** The vendor is bound to transfer the ownership of and deliver, as well as warrant the thing which is the object of the sale. Ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in articles 1497 to 1501, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee. A perusal of the deed of absolute sale shows that both the vendor and the vendee represented and *warranted* to each other that each had all the requisite power and authority to enter into the deed of absolute sale and that they shall *perform each of their respective obligations* under the deed of absolute sale in accordance with the terms thereof. As previously shown, there was no actual or constructive delivery of the things sold. Thus, petitioner has not performed its obligation to transfer ownership and possession of the things sold to respondent.

4. **ID.; OBLIGATIONS AND CONTRACTS; FORTUITOUS EVENTS; ELEMENTS.—** The matter of fortuitous events is governed by Art. 1174 of the Civil Code which provides that except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires assumption of risk, no person shall be responsible for those events which could not be foreseen, or which though foreseen, were inevitable. The elements of a fortuitous event are: (a) the cause of the unforeseen and unexpected occurrence, must have been independent of human will; (b) the event that constituted the *caso fortuito* must have been impossible to foresee or, if foreseeable, impossible to avoid; (c) the occurrence must have been such as to render it impossible for the debtors to fulfill their obligation in a normal manner, and; (d) the obligor must have been free from any participation in the aggravation of the resulting injury to the creditor.

5. **ID.; ID.; ID.; RULE NOT APPLICABLE WHEN LOSS IS FOUND TO BE PARTLY THE RESULT OF A PERSON'S PARTICIPATION.—** A fortuitous event may either be an act of God, or natural occurrences such as floods or typhoons, or an act of man such as riots, strikes or wars. However, when the loss is found to be partly the result of a person's participation–whether by active intervention, neglect or failure to act—the whole occurrence is humanized and removed from the rules applicable to a fortuitous event.

6. **ID.; SPECIAL CONTRACTS; SALES; OBLIGATIONS OF THE VENDOR; RISK OF LOSS OR DETERIORATION OF GOODS SOLD DOES NOT PASS TO THE BUYER UNTIL THERE IS ACTUAL OR CONSTRUCTIVE DELIVERY THEREOF. —** Art. 1504 of the Civil Code provides that where actual delivery has been delayed through the fault of either the buyer or seller the goods are at the risk of the party in fault. The risk of loss or deterioration of the goods sold does not pass to the buyer until there is actual or constructive delivery thereof. As previously discussed, there was no actual or constructive delivery of the machinery and equipment. Thus, the risk of loss or deterioration of property is borne by petitioner. Thus, it should be liable for the damages that may arise from the delay.

7. **ID.; DAMAGES; IN CONTRACTS AND QUASI-CONTRACTS, OBLIGOR IN GOOD FAITH IS LIABLE FOR DAMAGES THAT ARE NATURAL AND PROBABLE CONSEQUENCES OF THE BREACH OF OBLIGATIONS WHICH THE PARTIES COULD HAVE FORESEEN AT THE TIME THE OBLIGATION WAS CONSTITUTED. —** Assuming *arguendo* that Creative Lines' refusal to allow the hauling of the machinery and equipment is a fortuitous event, petitioner will still be liable for damages. This Court agrees with the appellate court's findings on the matter of damages, thus: Article 1170 of the Civil Code states: "Those who in the performance of their obligations are guilty of fraud, negligence, or delay and those who in any manner contravene the tenor thereof are liable for damages." In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation

was constituted. The trial court correctly awarded actual damages as pleaded and proven during trial.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Evelyn V. Lucero Gutierrez for respondent.

D E C I S I O N

TINGA, ***J.*****:**

This is a Rule 45 petition[1] which seeks the reversal of the Court of Appeals' decision[2] and resolution[3] affirming the RTC's decision[4] holding petitioner liable for actual damages for breach of contract.

Petitioner Asset Privatization Trust[5] (petitioner) was a government entity created for the purpose to conserve, to provisionally manage and to dispose assets of government institutions.[6] Petitioner had acquired from the Development Bank

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[1] *Rollo*, pp. 27-64.

[2] Dated 31 August 2004. Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Romeo A. Brawner and Mariano C. Del Castillo; *Id.* at 14-24.

[3] Dated 17 February 2005. Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Romeo A. Brawner and Mariano C. Del Castillo; *Id.* at 11-13.

[4] Dated 21 September 1998. Penned by Judge Francisco B. Ibay; *Id.* at 79-86.

[5] R.A. No. 7886 extended the term of APT up to December 31, 1999.

[6] Proclamation No. 50, Sec. 9

Sec. 9. *Creation*.—There is hereby created a public trust to be known as the Asset Privatization Trust, hereinafter referred to as the Trust, which shall, for the benefit of the National Government, take title to and possession of, conserve, provisionally manage and dispose the assets as defined in Section 2 herein which have been identified for privatization or disposition and transferred to the Trust for the purpose, pursuant to Section 23 of this Proclamation.

of the Philippines (DBP) assets consisting of machinery and refrigeration equipment which were then stored at Golden City compound, Pasay City. The compound was then leased to and in the physical possession of Creative Lines, Inc., (Creative Lines). These assets were being sold on an *as-is-where-is* basis.

On 7 November 1990, petitioner and respondent entered into an absolute deed of sale over certain machinery and refrigeration equipment identified as Lots Nos. 2, 3 and 5. Respondent paid the full amount of ₱84,000.00 as evidenced by petitioner's Receipt No. 12844. After two (2) days, respondent demanded the delivery of the machinery it had purchased. Sometime in March 1991, petitioner issued Gate Pass No. 4955. Respondent was able to pull out from the compound the properties designated as Lots Nos. 3 and 5. However, during the hauling of Lot No. 2 consisting of sixteen (16) items, only nine (9) items were pulled out by respondent. The seven (7) items that were left behind consisted of the following: (1) one (1) Reefer Unit 1; (2) one (1) Reefer Unit 2; (3) one (1) Reefer Unit 3; (4) one (1) unit blast freezer with all accessories; (5) one (1) unit chest freezer; (6) one (1) unit room air-conditioner; and (7) one (1) unit air compressor. Creative Lines' employees prevented respondent from hauling the remaining machinery and equipment.

Respondent filed a complaint for specific performance and damages against petitioner and Creative Lines.[7] During the pendency of the case, respondent was able to pull out the remaining machinery and equipment. However, upon inspection it was discovered that the machinery and equipment were damaged and had missing parts.

Petitioner argued that upon the execution of the deed of sale it had complied with its obligation to deliver the object of the sale since there was no stipulation to the contrary. It further argued that being a sale on an *as-is-where-is* basis, it was the duty of respondent to take possession of the property. Petitioner claimed that there was already a constructive delivery of the machinery and equipment.

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[7] Records, pp. 1-5.

The RTC ruled that the execution of the deed of absolute sale did not result in constructive delivery of the machinery and equipment. It found that at the time of the sale, petitioner did not have control over the machinery and equipment and, thus, could not have transferred ownership by constructive delivery. The RTC ruled that petitioner is liable for breach of contract and should pay for the actual damages suffered by respondent.

On petitioner's appeal, the Court of Appeals affirmed *in toto* the decision of the RTC.

Hence this petition.

Before this Court, petitioner raises issues by attributing the following errors to the Court of Appeals, to wit:

I.

The Court of Appeals erred in not finding that petitioner had complied with its obligation to make delivery of the properties subject of the contract of sale.

II.

The Court of Appeals erred in not considering that the sale was on an "as-is-where-is" basis wherein the properties were sold in the condition and in the place where they were located.

III.

The Court of Appeals erred in not considering that respondent's acceptance of petitioner's disclaimer of warranty forecloses respondent's legal basis to enforce any right arising from the contract.

IV.

The reason for the failure to make actual delivery of the properties was not attributable to the fault and was beyond the control of petitioner. The claim for damages against petitioner is therefore bereft of legal basis.[8]

The first issue hinges on the determination of whether there was a constructive delivery of the machinery and equipment upon the execution of the deed of absolute sale between petitioner and respondent.

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[8] *Rollo*, pp. 40-41.

The ownership of a thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof.[9] The thing sold shall be understood as delivered when it is placed in the control and possession of the vendee.[10]

As a general rule, when the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred. And with regard to movable property, its delivery may also be made by the delivery of the keys of the place or depository where it is stored or kept.[11] In order for the execution of a public instrument to effect tradition, the purchaser must be placed in control of the thing sold.[12]

However, the execution of a public instrument only gives rise to a *prima facie* presumption of delivery. Such presumption is destroyed when the delivery is not effected because of a legal impediment.[13] It is necessary that the vendor shall have control over the thing sold that, at the moment of sale, its material delivery could have been made.[14] Thus, a person who does not have actual possession of the thing sold cannot transfer constructive possession by the execution and delivery of a public instrument.[15]

In this case, there was no constructive delivery of the machinery and equipment upon the execution of the deed of absolute sale

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[9] CIVIL CODE, Art. 1477.

[10] CIVIL CODE, Art. 1497.

[11] CIVIL CODE, Art. 1498.

[12] *Santos v. Santos*, 418 Phil. 681, 690-691 (2001), citing *Danguilan v. IAC,* 168 SCRA 22.

[13] *Ten Forty Realty and Development Corp. v. Cruz*, 457 Phil. 603, citing *Equatorial Realty Development Inc. v. Mayfair Theater, Inc.*, 370 SCRA 56, November 21, 2001.

[14] BAVIERA, ARACELI. *Sales*. U.P. Law Complex ©2005 p. 67.

[15] *Id.* citing *Masallo v. Cesar*, 39 Phil. 134 (1918).

or upon the issuance of the gate pass since it was not petitioner but Creative Lines which had actual possession of the property. The presumption of constructive delivery is not applicable as it has to yield to the reality that the purchaser was not placed in possession and control of the property.

On the second issue, petitioner posits that the sale being in an *as-is-where-is* basis, respondent agreed to take possession of the things sold in the condition where they are found and from the place where they are located. The phrase *as-is where-is* basis pertains solely to the physical condition of the thing sold, not to its legal situation.[16] It is merely descriptive of the state of the thing sold. Thus, the *as-is where-is* basis merely describes the actual state and location of the machinery and equipment sold by petitioner to respondent. The depiction does not alter petitioner's responsibility to deliver the property to respondent.

Anent the third issue, petitioner maintains that the presence of the disclaimer of warranty in the deed of absolute sale absolves it from all warranties, implied or otherwise. The position is untenable.

The vendor is bound to transfer the ownership of and deliver, as well as warrant the thing which is the object of the sale.[17] Ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in Articles 1497 to 1501, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee.[18] A perusal of the deed of absolute sale shows that both the vendor and the vendee represented and *warranted* to each other that each had all the requisite power and authority to enter into the deed of absolute sale and that they shall *perform each of their respective obligations* under the deed of absolute sale in accordance with the terms thereof.[19] As previously

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[16] *National Development Company v. Madrigal Wan Hai Lines Corporation,* 458 Phil. 1038, 1054 (2003).

[17] CIVIL CODE, Art. 1495.

[18] CIVIL CODE, Art. 1496.

[19] Item no. 2 of the terms and conditions of the Deed of Absolute Sale. C.A. Records p. 525.

shown, there was no actual or constructive delivery of the things sold. Thus, petitioner has not performed its obligation to transfer ownership and possession of the things sold to respondent.

As to the last issue, petitioner claims that its failure to make actual delivery was beyond its control. It posits that the refusal of Creative Lines to allow the hauling of the machinery and equipment was unforeseen and constituted a fortuitous event.

The matter of fortuitous events is governed by Art. 1174 of the Civil Code which provides that except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires assumption of risk, no person shall be responsible for those events which could not be foreseen, or which though foreseen, were inevitable. The elements of a fortuitous event are: (a) the cause of the unforeseen and unexpected occurrence, must have been independent of human will; (b) the event that constituted the *caso fortuito* must have been impossible to foresee or, if foreseeable, impossible to avoid; (c) the occurrence must have been such as to render it impossible for the debtors to fulfill their obligation in a normal manner, and; (d) the obligor must have been free from any participation in the aggravation of the resulting injury to the creditor.[20]

A fortuitous event may either be an act of God, or natural occurrences such as floods or typhoons, or an act of man such as riots, strikes or wars.[21] However, when the loss is found to be partly the result of a person's participation–whether by active intervention, neglect or failure to act—the whole occurrence is

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[20] *Lea Mer Industries, Inc. v. Malayan Insurance Co., Inc.*, G.R. No. 161745, 30 September 2005, 471 SCRA 698,708 citing *Mindex Resources Development v. Morillo,* 428 Phil. 934, 944; *Philippine American General Insurance Co., Inc. v. MGG Marine Services, Inc.*, 428 Phil. 705,714*; Metal Forming Corp. v. Office of the President*, 317 Phil.853, 859; *Vasquez v. Court of Appeals*, 138 SCRA 553, 557, September 13, 1985; *Republic v. Luzon Stevedoring Corp.*, 128 Phil. 313, 318.

[21] *Philippine Communications Satellite Corporation v. Globe Telecom, Inc.,* G.R. Nos. 147324 and 147334, 25 May 2005, 429 SCRA 153,163.

humanized and removed from the rules applicable to a fortuitous event.[22]

We quote with approval the following findings of the Court of Appeals, to wit:

> We find that Creative Lines' refusal to surrender the property to the vendee does not constitute *force majeure* which exculpates APT from the payment of damages. This event cannot be considered unavoidable or unforeseen. APT knew for a fact that the properties to be sold were housed in the premises leased by Creative Lines. It should have made arrangements with Creative Lines beforehand for the smooth and orderly removal of the equipment. The principle embodied in the act of God doctrine strictly requires that the act must be one occasioned exclusively by the violence of nature and all human agencies are to be excluded from creating or entering into the cause of the mischief. When the effect, the cause of which is to be considered, is found to be in part the result of the participation of man, whether it be from active intervention or neglect, or failure to act, the whole occurrence is thereby humanized, as it were, and removed from the rules applicable to the acts of God.[23]

Moreover, Art. 1504 of the Civil Code provides that where actual delivery has been delayed through the fault of either the buyer or seller the goods are at the risk of the party in fault. The risk of loss or deterioration of the goods sold does not pass to the buyer until there is actual or constructive delivery thereof. As previously discussed, there was no actual or constructive delivery of the machinery and equipment. Thus, the risk of loss or deterioration of property is borne by petitioner. Thus, it should be liable for the damages that may arise from the delay.

Assuming *arguendo* that Creative Lines' refusal to allow the hauling of the machinery and equipment is a fortuitous event, petitioner will still be liable for damages. This Court agrees with the appellate court's findings on the matter of damages,

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[22] *Sicam v. Jorge*, G.R. No. 159617, 8 August 2007, 529 SCRA 443, 460, citing *Mindex Resources Development Corporation v. Morillo*, 482 Phil. 934, 944.

[23] *Rollo,* pp. 21-22, citing *National Power Corporation v. Court of Appeals*, 222 SCRA 415.

thus:

Article 1170 of the Civil Code states: "Those who in the performance of their obligations are guilty of fraud, negligence, or delay and those who in any manner contravene the tenor thereof are liable for damages." In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.[24] The trial court correctly awarded actual damages as pleaded and proven during trial.[25]

WHEREFORE, the Court *AFFIRMS* in *toto* the Decision of the Court of Appeals dated 31 August 2004. Cost against petitioner.

SO ORDERED.

Carpio Morales,[*] *Velasco, Jr., Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

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[24] CIVIL CODE, Art. 2201.

[25] *Rollo*. pp. 22-23.

[*] Acting Chairperson in lieu of Senior Associate Justice Leonardo Quisumbing, who is on official leave per Special Order No. 618.

[**] Designated as an additional member of the Second Division in lieu of Senior Associate Justice Leonardo Quisuimbing, who is on official leave, per Special Order No. 619.

SECOND DIVISION

[G.R. No. 171399. May 8, 2009]

VICENTA CANTEMPRATE, ZENAIDA DELFIN, ELVIRA MILLAN, FEVITO G. OBIDOS, MACARIO YAP, CARMEN YAP, LILIA CAMACHO, LILIA MEJIA, EMILIA DIMAS, ESTRELLA EUGENIO, MILAGROS L. CRUZ, LEONARDO ECAT, NORA MASANGKAY, JESUS AYSON, NILO SAMIA, and CARMENCITA LORNA RAMIREZ, *petitioners, vs.* **CRS REALTY DEVELOPMENT CORPORATION, CRISANTA SALVADOR, CESAR CASAL, BENNIE CUASON, and CALEB ANG,** *respondents.*

SYLLABUS

1. **CIVIL LAW; SPECIAL CONTRACTS; CONTRACT OF SALE; ELUCIDATED.—** The only requisite for a contract of sale or contract to sell to exist in law is the meeting of minds upon the thing which is the object of the contract and the price, including the manner the price is to be paid by the vendee. Under Article 1458 of the New Civil Code, in a contract of sale, whether absolute or conditional, one of the contracting parties obliges himself to transfer the ownership of and deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

2. **ID.; ID.; ID.; VALIDITY OF SALE BETWEEN SUBDIVISION SELLER AND BUYER NOT AFFECTED BY ABSENCE OF LICENSE TO SELL IN THE SALE OF SUBDIVISION LOTS AND CONDOMINIUMS UNDER PD NO. 957.—** In the instant case, the failure by respondent CRS Realty to obtain a license to sell the subdivision lots does not render the sales void on that ground alone especially that the parties have impliedly admitted that there was already a meeting of the minds as to the subject of the sale and price of the contract. The absence of the license to sell only subjects respondent CRS Realty and its officers civilly and criminally liable for the said violation under Presidential Decree (P.D.) No. 957 and related rules and regulations. The absence of the license to sell does not

affect the validity of the already perfected contract of sale between petitioners and respondent CRS Realty. In *Co Chien v. Sta. Lucia Realty and Development, Inc.*, the Court ruled that the requisite registration and license to sell under P.D. No. 957 do not affect the validity of the contract between a subdivision seller and buyer. The Court explained, thus: A review of the relevant provisions of P.D. [No.] 957 reveals that while the law penalizes the selling subdivision lots and condominium units without prior issuance of a Certificate of Registration and License to sell by the HLURB, it does not provide that the absence thereof will automatically render a contract, otherwise validly entered, void. xxx As found by the Court of Appeals, in the case at bar, the requirements of Sections 4 and 5 of P.D. [No.] 957 do not go into the validity of the contract, such that the absence thereof would automatically render the contract null and void. It is rather more of an administrative convenience in order to allow a more effective regulation of the industry. x x x

3. **REMEDIAL LAW; JURISDICTION; HOUSING LAND USE AND REGULATORY BOARD (HLURB); ACTION FOR SPECIFIC PERFORMANCE TO COMPEL REALTORS TO DELIVER TO BUYERS CERTIFICATES OF TITLE AFTER FULL PAYMENT OF SUBDIVISION LOTS.—** The HLURB has exclusive jurisdiction over the complaint for specific performance to compel respondents CRS Realty, Casal and Salvador as subdivision owners and developers to deliver to petitioners the certificates of title after full payment of the subdivision lots. On this score, the Court affirms the findings of HLURB Arbiter Aquino with respect to the obligation of respondents Casal, Salvador and CRS Realty to deliver the certificates of title of the subdivision to petitioners pursuant to their respective contracts to sell.

4. **POLITICAL LAW; ADMINISTRATIVE LAW; SALE OF SUBDIVISION LOTS AND CONDOMINIUMS UNDER PD NO. 957; OBLIGATIONS OF REALTORS; DELIVERY OF SUBDIVISION LOT TO BUYER BY CAUSING TRANSFER OF CORRESPONDING CERTIFICATE OF TITLE OVER SUBJECT LOT; CASE AT BAR.—** Under Section 25 of P.D. No. 957, among the obligations of a subdivision owner or developer is the delivery of the subdivision lot to the buyer by causing the transfer of the corresponding certificate of title

over the subject lot. x x x In the instant case, the contract to sell itself expressly obliges the vendor to cause the issuance of the corresponding certificate of title upon full payment of the purchase price. x x x [Therefrom,] it is clear that upon full payment, the seller is duty-bound to deliver the title of the unit to the buyer. Thus, for instance, even with a valid mortgage over the lot, the seller is still bound to redeem said mortgage without any cost to the buyer apart from the balance of the purchase price and registration fees.

5. **ID.; ID.; ID.; ID.; ID.; VIOLATION THEREOF; REMEDY; CASE WHERE SUBJECT PROPERTY IS INVOLVED IN OTHER LITIGATION AND THERE IS NOTICE OF *LIS PENDENS* AT THE BACK OF TITLES INVOLVED AS IN CASE AT BAR.—** There is no question that respondents Casal, Salvador and CRS Realty breached their obligations to petitioners under the contracts to sell. It is settled that a breach of contract is a cause of action either for specific performance or rescission of contracts. Respondents Casal, Salvador and CRS Realty have the obligation to deliver the corresponding clean certificates of title of the subdivision lots, the purchase price of which have been paid in full by petitioners. That the subject subdivision property is involved in a pending litigation between respondent Casal and persons not parties to the instant case must not prejudice petitioners. Respondents' obligation to deliver the corresponding certificates of title is simultaneous and reciprocal. Upon the full payment of the purchase price of the subdivision lots, respondents' obligation to deliver the certificates of title becomes extant. Respondents must cause the delivery of the certificates of title to petitioners free of any encumbrance. But since the lots are involved in litigation and there is a notice of *lis pendens* at the back of the titles involved, respondents have to be given a reasonable period of time to work on the adverse claims and deliver clean titles to petitioners. The Court believes that six (6) months is a reasonable period for the purpose.

6. **ID.; ID.; ID.; ID.; ID.; ID.; ID.; BUYERS ENTITLED TO ACTUAL OR COMPENSATORY DAMAGES.—** Should respondents fail to deliver such clean titles at the end of the period, they ought to pay petitioners actual or compensatory damages. Article 1191 of the Civil Code sanctions the right to rescind the obligation in the event that specific performance

becomes impossible, to wit: Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him. **The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible. The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.** This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law. Rescission creates the obligation to return the object of the contract. It can be carried out only when the one who demands rescission can return whatever he may be obliged to restore. Rescission abrogates the contract from its inception and requires a mutual restitution of the benefits received. Thus, respondents Casal, Salvador and CRS Realty must return the benefits received from the contract to sell if they cannot comply with their obligation to deliver the corresponding certificates of title to petitioners.

7. **CIVIL LAW; DAMAGES; ACTUAL OR COMPENSATORY DAMAGES; ELUCIDATED; CASE AT BAR.—** Under Article 2199 of the Civil Code, actual or compensatory damages are those awarded in satisfaction of, or in recompense for, loss or injury sustained. They proceed from a sense of natural justice and are designed to repair the wrong that has been done, to compensate for the injury inflicted and not to impose a penalty. Also, under Article 2200, indemnification for damages shall comprehend not only the value of the loss suffered, but also that of the profits which the obligee failed to obtain. Thus, there are two kinds of actual or compensatory damages: one is the loss of what a person already possesses, and the other is the failure to receive as a benefit that which would have pertained to him. In the event that respondents Casal, Salvador and CRS Realty cannot deliver clean certificates of title to petitioners, the latter must be reimbursed not only of the purchase price of the subdivision lots sold to them but also of the incremental value arising from the appreciation of the lots. Thus, petitioners are entitled to actual damages equivalent to the current market value of the subdivision lots. In *Solid Homes, Inc. v. Spouses Tan*, the Court ordered instead the payment of

the current market value of the subdivision lot after it was established that the subdivision owner could no longer comply with its obligation to develop the subdivision property in accordance with the approved plans and advertisements.

8. **POLITICAL LAW; ADMINISTRATIVE LAW; SALE OF SUBDIVISION LOTS AND CONDOMINIUMS UNDER PD NO. 957; CONTRACTS BIND ONLY THE PARTIES THEREIN, CANNOT FAVOR OR PREJUDICE A THIRD PERSON; CASE AT BAR.—** In denying any liability, respondent Salvador argues that even before the filing of the case before the HLURB, the agreements between her and respondent Casal involving the development and sale of the subdivision lots were superseded by an agreement dated 30 August 1996, whereby respondent Casal purportedly assumed full responsibility over the claims of the subdivision lot buyers while respondent Salvador sold her share in CRS Realty and relinquished her participation in the business. The subsequent agreement which purportedly rescinded the subdivision development agreement between respondents Casal and Salvador could not affect third persons like herein petitioners because of the basic civil law principle of relativity of contracts which provides that contracts can only bind the parties who entered into it, and it cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof. The fact remains that the contracts to sell involving the subdivision lots were entered into by and between petitioners, as vendees, and respondent Salvador, on behalf of respondent CRS Realty as vendor. As one of the responsible officers of respondent CRS Realty, respondent Salvador is also liable to petitioners for the failure of CRS Realty to perform its obligations under the said contracts and P.D. No. 957, notwithstanding that respondent Salvador had subsequently divested herself of her interest in the CRS Realty. One of the purposes of P.D. No. 957 is to discourage and prevent unscrupulous owners, developers, agents and sellers from reneging on their obligations and representations to the detriment of innocent purchasers. The Court cannot countenance a patent violation on the part of the said respondents that will cause great prejudice to petitioners. The Court must be vigilant and should punish, to the fullest extent of the law, those who prey upon the desperate with empty promises of better lives, only to feed on their aspirations.

9. REMEDIAL LAW; JURISDICTION; HLURB; ISSUE OF OWNERSHIP, POSSESSION OR INTEREST IN THE CONDOMINIUM UNIT IS UNDER THE JURISDICTION OF THE REGIONAL TRIAL COURT (RTC).— In *Spouses Suntay v. Gocolay*, the Court held that the HLURB has no jurisdiction over the issue of ownership, possession or interest in the condominium unit subject of the dispute therein because under Section 19 of Batas Pambansa (B.P.) Blg. 129, the Regional Trial Courts shall exercise exclusive original jurisdiction in all civil actions which involve the title to, or possession of, real property, or any interest therein.

10. ID.; ID.; ID.; ISSUE OF WHETHER THE ALLEGED SUBSEQUENT SALE OF SUBDIVISION LOTS CONSTITUTED A DOUBLE SALE IS WITHIN THE JURISDICTION OF THE HLURB, THE SAME BEING RELATED TO CASE COMPELLING REALTY CORP. TO ISSUE CERTIFICATE OF TITLE.— Nothing prevents the HLURB from adjudicating on the issue of whether the alleged subsequent sale of the subdivision lots to respondents Ang and Cuason constituted a double sale because the issue is intimately related to petitioners' complaint to compel respondents CRS Realty, Casal and Salvador to perform their obligation under the contracts to sell. Considering that the alleged subsequent sale to respondents Ang and Cuason apparently would constitute a breach of respondents' obligation to issue the certificate of title to petitioners, if not an unsound business practice punishable under Section 1 of P.D. No. 1344, the HLURB cannot shirk from its mandate to enforce the laws for the protection of subdivision buyers. In *Union Bank of the Philippines v. Housing and Land Use Regulatory Board*, the Court upheld HLURB's jurisdiction over a condominium unit buyer's complaint to annul the certificate of title over the unit issued to the highest bidder in the foreclosure of the mortgage constituted on the unit by the condominium developer without the consent of the buyer.

11. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; THAT DECISION RENDERED MUST EXPRESS CLEARLY AND DISTINCTLY THE FACTS AND LAW ON WHICH IT IS BASED; COMPLIANCE THEREWITH AFFIRMED WITH MEMORANDUM DECISIONS.— [T]he decision of the OP does not violate the

mandate of Section 14, Article VIII of the Constitution, which provides that "No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based." The OP decision ruled that "the findings of fact and conclusions of law of the office *a quo* are amply supported by substantial evidence" and that it is "bound by said findings of facts and conclusions of law and hereby adopt(s) the assailed resolution by reference." The Court finds these legal bases in conformity with the requirements of the Constitution. The Court has sanctioned the use of memorandum decisions, a species of succinctly written decisions by appellate courts in accordance with the provisions of Section 40, B.P. Blg. 129 on the grounds of expediency, practicality, convenience and docket status of our courts. The Court has declared that memorandum decisions comply with the constitutional mandate.

APPEARANCES OF COUNSEL

Aristotle Q. Sarmiento for petitioners.
Pantaleon Law Offfice for Crisanta R. Salvador.
Funa Tantuan & Fortes Law Offices for Caleb Ang.
J.P. Villanueva and Associates for Bennie Cuason.
Cortes & Reyna Law Firm for Cesar E. Casal and CRS Realty Development.

D E C I S I O N

TINGA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure assailing the decision[2] and resolution[3] of the Court of Appeals in CA-G.R. SP No. 81859. The Court of Appeals decision affirmed the decision[4] of the

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[1] *Rollo,* pp. 9-50.

[2] Dated 21 June 2005 and penned by Justice Hakim S. Abdulwahid and concurred in by Justices Remedios A. Salazar-Fernando, Acting Chairperson of the Special Former Division, and Vicente S.E. Veloso; *id.* at 693-709.

[3] *Id.* at 737-738.

[4] *Id.* at 459-460.

Office of the President, which adopted the decision[5] of the Housing Land Use and Regulatory Board (HLURB) dismissing petitioners' complaint for lack of jurisdiction, while the resolution denied petitioners' motion for reconsideration.

The following factual antecedents are matters of record.

Herein petitioners Vicenta Cantemprate, Zenaida Delfin, Elvira Millan, Fevito G. Obidos, Macario Yap, Carmen Yap, Lilia Camacho, Lilia Mejia, Emilia Dimas, Estrella Eugenio, Milagros L. Cruz, Leonardo Ecat, Nora Masangkay, Jesus Ayson, Nilo Samia, Carmencita Morales and Lorna Ramirez were among those who filed before the HLURB a complaint[6] for the delivery of certificates of title against respondents CRS Realty Development Corporation (CRS Realty), Crisanta Salvador and Cesar Casal.[7]

The complaint alleged that respondent Casal was the owner of a parcel of land situated in General Mariano Alvarez, Cavite known as the CRS Farm Estate while respondent Salvador was the president of respondent CRS Realty, the developer of CRS Farm Estate. Petitioners averred that they had bought on an installment basis subdivision lots from respondent CRS Realty and had paid in full the agreed purchase prices; but notwithstanding the full payment and despite demands, respondents failed and refused to deliver the corresponding certificates of title to petitioners. The complaint prayed that respondents be ordered to deliver the certificates of title corresponding to the lots petitioners had purchased and paid in full and to pay petitioners damages.[8]

An amended complaint[9] was subsequently filed impleading other respondents, among them, the Heirs of Vitaliano and Enrique Laudiza, who were the predecessors-in-interest of respondent

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[5] *Id.* at 159-171.

[6] *Id.* at 51-58.

[7] *Id.* at 51.

[8] *Id.* at 52-53.

[9] *Id.* at 63-69.

Casal, herein respondents Bennie Cuason and Caleb Ang, to whom respondent Casal purportedly transferred the subdivision lots and one Leticia Ligon. The amended complaint alleged that by virtue of the deed of absolute sale executed between respondent Casal and respondents Ang and Cuason, Transfer Certificate of Title (TCT) No. 669732 covering the subdivided property was issued in the names of respondents Ang and Cuason as registered owners thereof.[10]

The amended complaint prayed for additional reliefs, namely: (1) that petitioners be declared the lawful owners of the subdivision lots; (2) that the deed of absolute sale executed between respondent Casal and respondents Cuason and Ang and TCT No. 669732 be nullified; and (3) that respondents Cuason and Ang be ordered to reconvey the subdivision lots to petitioners.[11]

In his answer,[12] respondent Casal averred that despite his willingness to deliver them, petitioners refused to accept the certificates of title with notice of *lis pendens* covering the subdivision lots. The notice of *lis pendens* pertained to Civil Case No. BCV-90-14, entitled "*Heirs of Vitaliano and Enrique Laudiza, represented by their Attorney-In-Fact Rosa Medina, Plaintiffs, v. Cesar E. Casal, CRS Realty and Development Corporation and the Register of Deeds of Cavite, Defendants*," which was pending before the Regional Trial Court (RTC), Branch 19, Bacoor, Cavite. Leticia Ligon was said to have intervened in the said civil case.[13]

By way of special and affirmative defenses, respondent Casal further averred that the obligation to deliver the certificate of titles without encumbrance fell on respondent CRS Realty on the following grounds: (1) as stipulated in the subdivision development agreement between respondents Casal and CRS Realty executed on 06 September 1988, the certificates of title of the subdivision lots would be transferred to the developer or

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[10] *Id.* at 66.

[11] *Id.* at 68-69.

[12] *Id.* at 70-75.

[13] *Id.* at 71.

buyers thereof only upon full payment of the purchase price of each lot; (2) the contracts to sell were executed between petitioners and respondent CRS Realty; and (3) the monthly amortizations were paid to respondent CRS Realty and not to respondent Casal.[14]

Respondent Casal also alleged that he subsequently entered into a purchase agreement over the unsold portions of the subdivision with respondents Ang, Cuason and one Florinda Estrada who assumed the obligation to reimburse the amortizations already paid by petitioners.[15]

In her answer, respondent Salvador alleged that the failure by respondent Casal to comply with his obligation under the first agreement to deliver to CRS or the buyers the certificates of title was caused by the annotation of the notice of *lis pendens* on the certificate of title covering the subdivision property. Respondent Salvador further averred that the prior agreements dated 6 September 1988 and 08 August 1989 between respondents Casal and CRS Realty were superseded by an agreement dated 30 August 1996 between respondents Casal and Salvador. In the subsequent agreement, respondent Casal purportedly assumed full responsibility for the claims of the subdivision lot buyers while respondent Salvador sold her share in CRS Realty and relinquished her participation in the business.

Respondents Ang and Cuason claimed in their answer with counterclaim[16] that respondent Casal remained the registered owner of the subdivided lots when they were transferred to them and that the failure by petitioners to annotate their claims on the title indicated that they were unfounded. Respondent CRS Realty and the Heirs of Laudiza were declared in default for failure to file their respective answers.[17]

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[14] *Id.* at 695.

[15] *Id.* at 73.

[16] *Id.* at 76-82.

[17] *Supra* note 13.

On 18 December 1998, HLURB Arbiter Ma. Perpetua Y. Aquino rendered a decision[18] primarily ruling that the regular courts and not the HLURB had jurisdiction over petitioners' complaint, thus, the complaint for quieting of title could not be given due course. The Heirs of Laudiza and Ligon were dropped as parties on the ground of lack of cause of action. However, she found respondents CRS Realty, Casal and Salvador liable on their obligation to deliver the certificates of title of the subdivision lots to petitioners who had paid in full the purchase price of the properties. She also found as fraudulent and consequently nullified the subsequent transfer of a portion of the subdivision to respondents Ang and Cuason.

The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing, judgement [*sic*] is hereby rendered as follows:

1) For respondents CRS Realty and Development Corp., Crisanta Salvador, and Cesar Casal to, jointly and severally:

a) cause the delivery or to deliver the individual titles, within thirty (30) days from the finality of the decision, to the following complainants who have fully paid the purchase price of their lots, and to whom Deeds of Sale were issued, to wit:

1. Vicenta Cantemprate	=	Lots 1 to 8 Block 2 Lots 5 & 6 Block 13
2. Leonardo/Felicidad Ecat	=	Lots 21, 23 & 25 Block 11
3. Jesus Ayson	=	Lot 2 Block 9
4. Lilia Camacho	=	Lot 4 Block 11
5. Zenaida Delfin	=	Lot 2 Block 3
6. Natividad Garcia	=	Lot 8 Block 11
7. Nora Masangkay	=	Lot 7 Block 13
8. Elvira Millan	=	Lot 10 Block 13
9. Fevito Obidos	=	Lot 1 Block 3
10. Josefina Quinia	=	Lot 1 & 2 Block 12

[18] *Id.* at 111-122.

11. Nilo Samia = Lot 1 Block 9
12. Rosel Vedar = Lot 10 Block 4
13. Macario/Carmen Yap = Lot 14 Block 4
14. Estrella/Danilo Eugerio = Lot 10 Block 5
15. Nerissa Cabanag = Lot 5 Block 4
16. Milagros Cruz = Lots 11 & 13 to 16 Block 3
17. Erlinda Delleva = Lot 6 Block 4
18. Lilia Mejia = Lot 2 & 3 Block 4
19. Carmen Yap/H. Capulso = Lot 13 Block 11
20. Mercedes Montano = Lot 4 Block 4
21. Teresita Manuel = Lot 11 Block 5
22. Amalia Sambile = Lot 3 Block 3
23. Carmencita Lorna Ramirez = Lot 13 Block 13
24. Emilia Dimas = Lot 16 Block 13
25. Rosita Torres = Lot 2 Block 13
26. Alladin Abubakar = Lot 9 Block 6
27. Manuel Andaya = Lot 5 & 6 Block 11
28. Remigio Araya = Lot 11 Block 4
29. J. Ayson/R. Elquiero = Lot 5 Block 3
30. L. Bernal/D. Morada = Lot 19 Block 11
31. Rosa Nely Buna = Lot 9 Block 5
32. Nestor Calderon = Lot 6 Block 3
33. Ernesto Capulso = Lot 15 Block 11
34. Jorge Chiuco = Lots 12, 13 & 15 to 17 Block 4
35. Carolina Cruz = Lot 4 Block 14
36. Erna Daniel = Lot 6 Block 5
37. Zenaida De Guzman = Lots 19, 20 & 21 Block 10
38. Joselito De Lara = Lot 1 Block 11
39. J. De Lara/N. Gusi = Lot 11, Block 11
40. Virginia De La Paz = Lot 22, Block 11
41. Anastacia De Leon = Lot 10, Block 11

42. Salvador De Leon = Lot 7 & 8 Block 4
43. Josefina De Vera = Lot 20 Block 11
44. Julieta Danzon = Lot 4 Block 13
45. Constancia Diestro = Lot 17 Block 13
46. Corazon Ducusin = Lots 14, 16 & 18 Block 11
47. Juanita Flores = Lots 2 & 4 Block 5
48. Remedios Galman = Lot 12 Block 11
49. Mila Galamay = Lot 12 Block 5
50. Grace Baptist Church = Lot 24 Block 11
51. Rizalina Guerrero = Lot 26 Block 10
52. Nema Ida = Lot 9 Block 4
53. Milagros Jamir = Lot 8 Block 13
54. Violeta Josef = Lots 3 & 5 Block 5
55. Marivic Ladines = Lot 3 Block 13
56. Eulogio Legacion = Lots 8 & 9 Block 3
57. Emerita Mauri = Lot 12 Block 3
58. Mina Mary & Co. = Lot 1 Block 4
59. Babyrose Navarro = Lot 22 Block 10
60. Lauretto Nazarro = Lots 14 to 18 Block 10
61. Amelia Nomura = Lots 4 & 5 Block 9
62. Virgilio Ocampo = Lot 5 Block 12
63. Norma Paguagan = Lot 8 Block 12
64. Nicostrato Pelayo = Lots 7 & 9 Block 11
65. Gloria Racho = Lot 1 Block 5
66. Pepito Ramos = Lot 9 Block 13
67. Pedro Rebustillo = Lot 8 Block 5
68. S. Recato/A. Rebullar = Lot 11 Block 13
69. Laura Regidor = Lot 4 Block 3
70. Zenaida Santos = Lot 7 Block 5
71. R. Sarmiento/H. Eugenio = Lot 1 Block 13
72. Lourdes Teran = Lot 17 Block 6

73. R. Valdez/F. Corre	= Lot 3 Block 9
74. Teodoro Velasco	= Lot 17 Block 11
75. Edgardo Villanueva	= Lots 1 to 5 Block 1
76. Gregorio Yao	= Lots 2 & 3 Block 11
77. Willie Atienza	= Lot 3 Block 12
78. Z. Zacarias/A. Guevarra	= Lot 6 Block 12

That as concern[ed] complainant LEONARDO/FELICIDAD ECAT, whose total lost area is deficient by 278 square meters from the 2,587 square meters provided for in the Contract to Sell and that covered by the Deed of Sale which is 2,309 square meters, for respondents to deliver the deficiency by the execution of the Deed of Sale on the said portion and the delivery of the titles on their three (3) lots.

b) submit to the Register of Deeds of Trece Martires City, Cavite a certified true copy of the approved subdivision plan of CRS Farm Estate, as well as photocopies of the technical description of complainants' individual lots, blue prints and tracing cloth: In the event that said respondents cannot surrender said documents, complainants are hereby ordered to secure said documents and be the ones to submit them to the Register of Deeds;

c) to refund to complainants the expenses they've incurred in registering their individual Deeds of Sale with the Register of Deeds of Trece Martires City, Cavite;

d) pay each of the complainants the sum of ₱10,000.00[,] as actual damages; the sum of ₱15,000.00[,] as moral damages; and the sum of ₱20,000.00[,] as exemplary damages;

e) pay complainants the sum of ₱30,000.00 as and by way of attorney's fees;

f) pay to the Board the sum of ₱20,000.00 as administrative fine for violation of Section 25 of P.D. No. 957 in relation to Sections 38 and 39 of the same decree.

2.) The sale of the subject property in whole to respondents Caleb Ang and Bennie Cuason is hereby declared annulled and of no effect especially that which pertains to the portion of the subdivision which have already been previously sold by the respondent CRS Realty to herein complainants, prior to the sale made by respondent Cesar

Casal to Caleb Ang and Bennie Cuason. As a consequence thereof, respondents Ang and Cuason are hereby ordered to surrender to the Register of Deeds of Trece Martires City, Cavite, the owner's duplicate copy of TCT No. 669732 in order for the said Register of Deeds to issue the corresponding certificates of title to all complainants named herein;

3.) The Register of Deeds of Trece Martires City, Cavite is hereby ordered to cancel TCT No. 669732 and reinstate TCT No. T-2500 in the name of Cesar Casal, from which the individual titles of herein complainants would be issued, with all the annotations of encumbrances inscribed at the back of TCT No. 669732 carried over to the said reinstated title.

All other claims and counterclaims are hereby dismissed.

SO ORDERED.[19]

From the decision of the HLURB Arbiter, respondents Casal, Cuason and Ang, as well as Leticia Ligon, filed separate petitions for review before the Board of Commissioners (Board).

On 22 November 1999, the Board rendered a decision,[20] affirming the HLURB Arbiter's ruling that the HLURB had no jurisdiction over an action for the quieting of title, the nullification of a certificate of title or the reconveyance of a property. Notably, the Board referred to an earlier case, HLURB Case No. REM-A-0546, involving respondent Casal and the Heirs of Laudiza, where the Board deferred the issuance of a license to sell in favor of CRS Farm Estate until the issue of ownership thereof would be resolved in Civil Case No. BCV-90-14 pending before the RTC of Bacoor, Cavite.

Furthermore, the Board ruled that to allow petitioners to proceed with the purchases of the subdivision lots would be preempting the proceedings before the RTC of Bacoor, Cavite and compounding the prejudice caused to petitioners. Thus, the Board dismissed the complaint for quieting of title but ordered the refund of the amounts paid by petitioners and other buyers to CRS Realty, to wit:

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[19] *Id.* at 117-122.

[20] *Supra* note 4.

WHEREFORE, premises considered, judgment is hereby rendered, MODIFYING the Decision dated December 18, 1998 by the Office below, to wit:

1. The complaint for quieting of title against Cesar Casal, Bennie Cuason, Caleb Ang, Heirs of Vitaliano and Enrique Laudiza, and Leticia Ligon is DISMISSED for lack of jurisdiction.

2. Ordering CRS Realty and/or any of the Officers to refund to complainants for all payments made plus 12% from the time the contract to sell is executed until fully paid.

3. All other claims and counterclaims are hereby DISMISSED.

4. Directing CRS to pay ₱10,000.00 as administrative fine for each and every sale without license.

Let case be referred to the Legal Services Group (LSG) for possible criminal prosecution against the Officers of CRS Realty and Casal.

SO ORDERED.[21]

Ligon, respondent Casal and herein petitioners filed separate motions for reconsideration. On 28 November 2000, the Board issued a resolution,[22] modifying its Decision dated 22 November 2009 by imposing the payment of damages in favor of petitioners, thus:

WHEREFORE, based on the foregoing:

1. The decision of this Board dated November 22, 1999 is hereby MODIFIED to read as follows:

> WHEREFORE, premises considered, judgment is hereby rendered, MODIFYING the Decision dated December 18, 1998 by the Office below, thus:
>
> 1. The complaint for quieting of title against Cesar Casal, Bennie Cuason, Caleb Ang, Heirs of Vitaliano and Enrique Laudiza and Leticia Ligon is DISMISSED for lack of jurisdiction;

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[21] *Id.* at 170-171.

[22] *Id.* at 191-198.

2. CRS Realty and/or any of the officers jointly and severally is/are ordered to refund to complainants, at the complainant's option, all payments made for the purchase of the lots plus 12% interest from the time the contract to sell is executed until fully paid and cost of improvement, if any;

3. CRS Realty and/or any of its officers jointly and severally is/are ordered [to] pay each of the complainants the sum of ₱30,000.00 as and by way [of] moral damages, ₱30,000.00 as and by way of exemplary damages, and ₱20,000.00 as attorney's fees;

4. CRS Realty and/or any of its officers is/are hereby ordered to pay this Board ₱10,000.00 as administrative fine for each and every sale executed without license

5. All other claims and counterclaims are hereby DISMISSED.

Let the case be referred to the Legal Services Group (LSG) for possible criminal prosecution against the officers of CRS Realty and Casal.

2. Complainants' Motion for Reconsideration, save in so far as we have above given due course, is hereby DISMISSED.

3. Likewise respondents' Motion for Reconsideration are hereby DISMISSED for lack of merit.

4. Respondent Bennie Cuason's Motion to Cancel *Lis Pendens* is hereby DENIED, the same being premature.

Let the records be elevated to the Office of the President in view of the appeal earlier filed by complainants.

SO ORDERED.[23]

Upon appeal, the Office of the President (OP) on 03 December 2003 affirmed *in toto* both the decision and resolution of the Board.[24] Aggrieved, petitioners elevated the matter to the Court of Appeals via a Rule 43 petition for review.

Before the Court of Appeals, petitioners argued that the OP erred in rendering a decision which adopted by mere reference

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[23] *Id.* at 197-198.

[24] *Supra* note 3.

the decision of the HLURB and that the HLURB erred in ruling that it had no jurisdiction over petitioners' complaint, in not nullifying the deed of absolute sale executed between respondent Casal and respondents Cuason and Ang and in ordering the refund of the amounts paid by petitioners for the subdivision lots.[25]

On 21 June 2005, the Court of Appeals rendered the assailed decision,[26] affirming the OP Decision dated 03 December 2003. On 03 February 2006, the appellate court denied petitioners' motion for reconsideration for lack of merit.[27]

Hence, the instant petition, essentially praying for judgment ordering the cancellation of the deed of absolute sale entered between respondent Casal, on the one hand, and respondents Ang and Cuason, on the other, the delivery of the certificates of title of the subdivision lots, and the payment of damages to petitioners.

Petitioners have raised the following issues: (1) whether or not the absence of a license to sell has rendered the sales void; (2) whether or not the subsequent sale to respondent Cuason and Ang constitutes double sale; (3) whether or not the HLURB has jurisdiction over petitioners' complaint; and (4) whether a minute decision conforms to the requirement of Section 14, Article VIII of the Constitution.[28]

We shall resolve the issues *in seriatim*.

Petitioners assail the Court of Appeals' ruling that the lack of the requisite license to sell on the part of respondent CRS Realty rendered the sales void; hence, neither party could compel performance of each other's contractual obligations.

The only requisite for a contract of sale or contract to sell to exist in law is the meeting of minds upon the thing which is the

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[25] *Id.* at 504-505.

[26] *Supra* note 1.

[27] *Id.* at 24.

[28] *Id.* at 24.

object of the contract and the price, including the manner the price is to be paid by the vendee. Under Article 1458 of the New Civil Code, in a contract of sale, whether absolute or conditional, one of the contracting parties obliges himself to transfer the ownership of and deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.[29]

In the instant case, the failure by respondent CRS Realty to obtain a license to sell the subdivision lots does not render the sales void on that ground alone especially that the parties have impliedly admitted that there was already a meeting of the minds as to the subject of the sale and price of the contract. The absence of the license to sell only subjects respondent CRS Realty and its officers civilly and criminally liable for the said violation under Presidential Decree (P.D.) No. 957[30] and related rules and regulations. The absence of the license to sell does not affect the validity of the already perfected contract of sale between petitioners and respondent CRS Realty.

In *Co Chien v. Sta. Lucia Realty and Development, Inc.*,[31] the Court ruled that the requisite registration and license to sell under P.D. No. 957 do not affect the validity of the contract between a subdivision seller and buyer. The Court explained, thus:

> A review of the relevant provisions of P.D. [No.] 957 reveals that while the law penalizes the selling subdivision lots and condominium units without prior issuance of a Certificate of Registration and License to sell by the HLURB, it does not provide that the absence thereof will automatically render a contract, otherwise validly entered, void. x x x
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> As found by the Court of Appeals, in the case at bar, the requirements of Sections 4 and 5 of P.D. [No.] 957 do not go into the validity of the contract, such that the absence thereof would

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[29] *Boston Bank of the Philippines v. Manalo*, G.R. No. 158149, 09 February 2006, 482 SCRA 108, 129.

[30] ENTITLED, "REGULATING THE SALE OF SUBDIVISION LOTS AND CONDOMINIUMS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF."

[31] G.R. No. 162090, 31 January 2007, 513 SCRA 570.

automatically render the contract null and void. It is rather more of an administrative convenience in order to allow a more effective regulation of the industry. x x x[32]

The second and third issues are interrelated as they pertain to whether the HLURB has jurisdiction over petitioners' complaint for the delivery of certificates of titles and for quieting of title.

Petitioners are partly correct in asserting that under Section 1 of P.D. No. 1344,[33] an action for specific performance to compel respondents to comply with their obligations under the various contracts for the purchase of lots located in the subdivision owned, developed and/or sold by respondents CRS Realty, Casal and Salvador is within the province of the HLURB.

The HLURB has exclusive jurisdiction over the complaint for specific performance to compel respondents CRS Realty, Casal and Salvador as subdivision owners and developers to deliver to petitioners the certificates of title after full payment of the subdivision lots. On this score, the Court affirms the findings of HLURB Arbiter Aquino with respect to the obligation of respondents Casal, Salvador and CRS Realty to deliver the certificates of title of the subdivision to petitioners pursuant to their respective contracts to sell.

Indeed, under Section 25 of P.D. No. 957, among the obligations of a subdivision owner or developer is the delivery of the subdivision lot to the buyer by causing the transfer of the

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[32] *Co Chien v. Sta. Lucia Realty and Development, Inc.*, *supra* note 29 at 518-519.

[33] P.D. No. 1344, Sec. 1. In the exercise of its function to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have exclusive jurisdiction to hear and decide the cases of the following nature:

a. Unsound real estate business practices;

b. Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and

c. Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, dealer, broker or salesman.

corresponding certificate of title over the subject lot.[34] The provision states:

> Sec. 25. *Issuance of Title*.—The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit. No fee, except those required for the registration of the deed of sale in the Registry of Deeds, shall be collected for the issuance of such title. In the event a mortgage over the lot or unit is outstanding at the time of the issuance of the title to the buyer, the owner or developer shall redeem the mortgage or the corresponding portion thereof within six months from such issuance in order that the title over any fully paid lot or unit may be secured and delivered to the buyer in accordance herewith.

In the instant case, the contract to sell itself expressly obliges the vendor to cause the issuance of the corresponding certificate of title upon full payment of the purchase price, to wit:

> 3. Title to said parcel of land shall remain in the name of the VENDOR until complete payment of the agreed price by the VENDEE and all obligations herein stipulated, at which time the VENDOR agrees to cause the issuance of a certificate of title in the Land Registration Act and the restrictions as may be provided in this Contract.[35]

From the foregoing it is clear that upon full payment, the seller is duty-bound to deliver the title of the unit to the buyer. Thus, for instance, even with a valid mortgage over the lot, the seller is still bound to redeem said mortgage without any cost to the buyer apart from the balance of the purchase price and registration fees.[36]

There is no question that respondents Casal, Salvador and CRS Realty breached their obligations to petitioners under the contracts to sell. It is settled that a breach of contract is a cause of action either for specific performance or rescission of contracts.[37] Respondents Casal, Salvador and CRS Realty have

[34] PRESIDENTIAL DECREE NO. 957(1976), Sec. 25.

[35] *Rollo*, p. 277.

[36] *De Vera, Jr. v. Court of Appeals*, 419 Phil. 820, 833 (2001).

[37] *Radio Communications of the Philippines, Inc. v. Court of Appeals*, 435 Phil. 62, 68 (2002).

the obligation to deliver the corresponding clean certificates of title of the subdivision lots, the purchase price of which have been paid in full by petitioners. That the subject subdivision property is involved in a pending litigation between respondent Casal and persons not parties to the instant case must not prejudice petitioners.

Respondents' obligation to deliver the corresponding certificates of title is simultaneous and reciprocal. Upon the full payment of the purchase price of the subdivision lots, respondents' obligation to deliver the certificates of title becomes extant. Respondents must cause the delivery of the certificates of title to petitioners free of any encumbrance. But since the lots are involved in litigation and there is a notice of *lis pendens* at the back of the titles involved, respondents have to be given a reasonable period of time to work on the adverse claims and deliver clean titles to petitioners. The Court believes that six (6) months is a reasonable period for the purpose.

Should respondents fail to deliver such clean titles at the end of the period, they ought to pay petitioners actual or compensatory damages. Article 1191 of the Civil Code sanctions the right to rescind the obligation in the event that specific performance becomes impossible, to wit:

Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.[38]

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[38] Emphasis supplied.

Rescission creates the obligation to return the object of the contract. It can be carried out only when the one who demands rescission can return whatever he may be obliged to restore. Rescission abrogates the contract from its inception and requires a mutual restitution of the benefits received.[39] Thus, respondents Casal, Salvador and CRS Realty must return the benefits received from the contract to sell if they cannot comply with their obligation to deliver the corresponding certificates of title to petitioners.

Under Article 2199 of the Civil Code, actual or compensatory damages are those awarded in satisfaction of, or in recompense for, loss or injury sustained. They proceed from a sense of natural justice and are designed to repair the wrong that has been done, to compensate for the injury inflicted and not to impose a penalty.[40] Also, under Article 2200, indemnification for damages shall comprehend not only the value of the loss suffered, but also that of the profits which the obligee failed to obtain. Thus, there are two kinds of actual or compensatory damages: one is the loss of what a person already possesses, and the other is the failure to receive as a benefit that which would have pertained to him.[41]

In the event that respondents Casal, Salvador and CRS Realty cannot deliver clean certificates of title to petitioners, the latter must be reimbursed not only of the purchase price of the subdivision lots sold to them but also of the incremental value arising from the appreciation of the lots. Thus, petitioners are entitled to actual damages equivalent to the current market value of the subdivision lots.

In *Solid Homes, Inc. v. Spouses Tan*,[42] the Court ordered instead the payment of the current market value of the subdivision

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[39] *Supercars Management and Development Corporation v. Filemon Flores*, 487 Phil. 259, 269 (2004).

[40] *PNOC Shipping and Transport Corporation v. Court of Appeals*, 358 Phil. 38, 52 (1998).

[41] *Producers Banks of the Philippines v. Court of Appeals*, 417 Phil. 646, 658-659 (2001).

[42] G.R. Nos. 145156-57, 29 July 2005, 465 SCRA 137.

lot after it was established that the subdivision owner could no longer comply with its obligation to develop the subdivision property in accordance with the approved plans and advertisements.

On this score, in its Decision dated 28 November 2000 which was affirmed by the OP and the Court of Appeals, the Board found respondent CRS Realty and its officers solidarily liable to refund the complainants or herein petitioners the installments paid by them including interest, to pay them moral and exemplary damages and attorney's fees and to pay the corresponding fine to the Board. The decision, however, failed to name the responsible officers of respondent CRS Realty who should be solidarily liable petitioners.

The 18 December 1998 Decision of the HLURB Arbiter is quite instructive on this matter, thus:

> Obviously, respondents CRS Realty Development Corporation, Crisanta R. Salvador and Cesar E. Casal, avoided responsibility and liability for their failure to comply with their contractual and statutory obligation to deliver the titles to the individual lots of complainants, by "passing the buck" to each other. The Board[,] however, is not oblivious to the various schemes willfully employed by developers and owners of subdivision projects to subtly subvert the law, and evade their obligations to lot buyers, as it finds the justifications advanced by respondents CRS Realty Development Corp., Crisanta R. Salvador, and Cesar E. Casal grossly untenable. The failure in the implementation of the agreement dated 06 September 1998 entered into by respondent CRS, Salvador and Casal involving the subject property should not operate and work to prejudice complainants, who are lot buyers in good faith and who have complied with their obligations by paying in full the price of their respective lots in accordance with the terms and conditions of their contract to sell. Respondent Casal is not without recourse against respondents CRS Realty or Salvador for the violation of their agreement and as such, the same reason could not be made and utilized as a convenient excuse to evade their obligation and responsibility to deliver titles to complainants.
>
> Under the so called "doctrine of estoppel," where one of two innocent persons, as respondents CRS Development Corp./Crisanta R. Salvador and Cesar E. Casal claimed themselves to be, must suffer,

he whose acts occasioned the loss must bear it. In the herein case, it is respondents' CRS Realty Development Corp./Crisanta Salvador and Cesar E. Casal who must bear the loss. x x x[43]

In denying any liability, respondent Salvador argues that even before the filing of the case before the HLURB, the agreements between her and respondent Casal involving the development and sale of the subdivision lots were superseded by an agreement dated 30 August 1996, whereby respondent Casal purportedly assumed full responsibility over the claims of the subdivision lot buyers while respondent Salvador sold her share in CRS Realty and relinquished her participation in the business.

The subsequent agreement which purportedly rescinded the subdivision development agreement between respondents Casal and Salvador could not affect third persons like herein petitioners because of the basic civil law principle of relativity of contracts which provides that contracts can only bind the parties who entered into it, and it cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof.[44] The fact remains that the contracts to sell involving the subdivision lots were entered into by and between petitioners, as vendees, and respondent Salvador, on behalf of respondent CRS Realty as vendor. As one of the responsible officers of respondent CRS Realty, respondent Salvador is also liable to petitioners for the failure of CRS Realty to perform its obligations under the said contracts and P.D. No. 957, notwithstanding that respondent Salvador had subsequently divested herself of her interest in the CRS Realty.

One of the purposes of P.D. No. 957 is to discourage and prevent unscrupulous owners, developers, agents and sellers from reneging on their obligations and representations to the detriment of innocent purchasers.[45] The Court cannot countenance

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[43] *Rollo*, p. 114.

[44] *Integrated Packaging Corporation v. Court of Appeals*, 388 Phil. 835, 845 (2000).

[45] *Co Chien v. Sta. Lucia Realty and Development, Inc.*, *supra* note 29 at 580.

a patent violation on the part of the said respondents that will cause great prejudice to petitioners. The Court must be vigilant and should punish, to the fullest extent of the law, those who prey upon the desperate with empty promises of better lives, only to feed on their aspirations.[46]

As regards petitioners' prayer to declare them the absolute owners of the subdivision lots, the HLURB correctly ruled that it had no jurisdiction over the same. Petitioners' amended complaint[47] included a cause of action for reconveyance

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[46] *People v. Ortiz-Miyake*, 344 Phil. 598, 615 (1997).

[47] *Rollo,* pp. 66-68; The essential averments in the amended complaint read:

7. Very recently, Complainants learned that the subdivided lots which they respectively purchased from respondents Cesar Casal, CRS Realty Development Corporation and/or Crisanta Salvador, for which they have fully paid after years of religiously paying the monthly amortizations, were sold by respondent Cesar Casal with the consent of his wife Pilar Paular Casal to Respondents Bennie Cuason and Caleb Ang as evidenced by a Deed of Absolute Sale, a copy of which is hereto attached and made an integral part hereof as Annex "E".

8. By reason of said sale, the Register of Deeds for Cavite issued Transfer Certificate of Title No. 669732 in the name of Bennie Cuason and Caleb Ang. A copy of the title is hereto attached and made an integral part hereof as Annex "F".

9. The aforesaid sale by Casal to Cuason and Ang is part of the grand scheme of Respondents to deprive Complainants of their rights, ownership, title and possession over the subdivided lots which they respectively purchased from Respondents Cesar Casal, CRS Realty Development Corporation and/ or Cristina Salvador and for which they have paid in full.

10. Respondents Bennie Cuason and Caleb Ang were fully aware that the land which they purchased from Cesar Casal was already sold to herein Complainants and, therefore, they are purchasers in bad faith. x x x

11. There is, therefore, a legal need to annul and declare without any force and effect the Deed of Absolute Sale (Annex E) and the Transfer Certificate of Title No. 669732 (Annex "F") and to reconvey the property described therein to Complainants.

12. At the time Complainants and Respondents Cesar Casal and/or CRS Realty Development Corporation and/or Crisanta Salvador signed their respective Contracts to Sell, and during all the time the Complainants were paying their monthly amortizations up to the time the corresponding Deeds of Absolute Sale were executed in favor of Complainants, the latter were assured by said

of the subdivision lots to petitioners and/or the quieting of petitioners' title thereto and impleaded a different set of defendants, namely, the Heirs of Laudiza and respondents Ang and Cuason, who allegedly bought the subdivision lots previously sold to petitioners.

In *Spouses Suntay v. Gocolay*,[48] the Court held that the HLURB has no jurisdiction over the issue of ownership, possession or interest in the condominium unit subject of the dispute therein because under Section 19 of Batas Pambansa (B.P.) Blg. 129,[49] the Regional Trial Courts shall exercise exclusive original jurisdiction in all civil actions which involve the title to, or possession of, real property, or any interest therein.

Respondents that the lots they purchased were free from any lien or encumbrances.

13. Sometime after Respondent Cesar Casal and/or CRS Realty Development Corporation and/or Cristina Salvador executed the corresponding Deeds of Absolute Sale of the subdivided lots in favor of Complainants, the latter learned that the "Heirs of Laudiza" and respondent Leticia Ligon, in violation of P.D. No. 957 and as part of all respondents grand design to defraud Complainants to deprive them of the rights, ownership title and possession of the subdivision lots they respectively purchased had started asserting their purported claims of ownership against Casal and herein Complainants involving the same subdivided parcels of land thereby casting a cloud on the legality and validity of their titles, ownership and right thereto.

14. There is, therefore, a need to once and for all remove the cloud on and quiet title to the subdivided lots purchased by complainants, by declaring the latter to be the lawful and valid owners of the property they respectively purchased from CRS Realty Development Corporation and/or Cesar Casal and/or Crisanta Salvador under P.D. No. 957 to the exclusion of the entire world, including all the herein respondents.

[48] G.R. No. 144892, 23 September 2005, 470 SCRA 627.

[49] SEC. 19. *Jurisdiction in Civil Cases.*—Regional Trial Courts shall exercise exclusive original jurisdiction:

(1) x x x

(2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, except actions for forcible entry into and unlawful detainer of yards or buildings, original jurisdiction over which is conferred upon Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts.

In view of the aforequoted delineation of jurisdiction between the HLURB and the RTCs, the HLURB has no jurisdiction to declare petitioners as absolute owners of the subdivision lots as against the Heirs of Laudiza who filed an action for reconveyance against respondent Casal, which is still pending before the RTC.

However, nothing prevents the HLURB from adjudicating on the issue of whether the alleged subsequent sale of the subdivision lots to respondents Ang and Cuason constituted a double sale because the issue is intimately related to petitioners' complaint to compel respondents CRS Realty, Casal and Salvador to perform their obligation under the contracts to sell. Considering that the alleged subsequent sale to respondents Ang and Cuason apparently would constitute a breach of respondents' obligation to issue the certificate of title to petitioners, if not an unsound business practice punishable under Section 1 of P.D. No. 1344,[50] the HLURB cannot shirk from its mandate to enforce the laws for the protection of subdivision buyers.

In *Union Bank of the Philippines v. Housing and Land Use Regulatory Board*,[51] the Court upheld HLURB's jurisdiction over a condominium unit buyer's complaint to annul the certificate of title over the unit issued to the highest bidder in the foreclosure of the mortgage constituted on the unit by the condominium developer without the consent of the buyer.

The remand of the instant case to the HLURB is in order so that the HLURB may determine if the alleged subsequent sale

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[50] SEC. 1. In the exercise of its functions to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have *exclusive jurisdiction* to hear and decide cases of the following nature:

a. Unsound real estate business practices;

b. Claims involving refund of any other claims filed by subdivision lot or condominium buyer against the project owner, developer, dealer, broker, or salesman; and

c. Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivisions lot or condominium unit against the owner, developer, dealer, broker, or salesman.

[51] G.R. No. 95364, 29 June 1992, 210 SCRA 558.

to respondents Ang and Cuason of those lots initially sold to petitioners constituted a double sale and was tainted with fraud as opposed to the respondents' claim that only the unsold portions of the subdivision property were sold to them.

One final note. Contrary to petitioners' contention, the decision of the OP does not violate the mandate of Section 14, Article VIII of the Constitution, which provides that "No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based."

The OP decision ruled that "the findings of fact and conclusions of law of the office *a quo* are amply supported by substantial evidence" and that it is "bound by said findings of facts and conclusions of law and hereby adopt(s) the assailed resolution by reference."

The Court finds these legal bases in conformity with the requirements of the Constitution. The Court has sanctioned the use of memorandum decisions, a species of succinctly written decisions by appellate courts in accordance with the provisions of Section 40, B.P. Blg. 129 on the grounds of expediency, practicality, convenience and docket status of our courts. The Court has declared that memorandum decisions comply with the constitutional mandate.[52]

As already discussed, the Court affirms the ruling of the HLURB Arbiter insofar as it ordered respondents Casal, Salvador and CRS Realty, jointly and severally, to cause the delivery of clean certificates of title to petitioners at no cost to the latter. Said respondents have six months from the finality of this decision to comply with this directive, failing which they shall pay petitioners actual damages equivalent to the current market value of the subdivision lots sold to them, as determined by the HLURB.

However, the Court finds in order and accordingly affirms the Board's award of moral and exemplary damages and attorney's fees in favor of each petitioner, as well as the imposition of administrative fine, against respondents Casal, Salvador and CRS Realty.

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[52] *Yao v. Court of Appeals*, 398 Phil. 86, 102-103 (2000).

WHEREFORE, the instant petition for review on *certiorari* is *PARTLY GRANTED*. The decision and resolution of the Court of Appeals in CA-G.R. SP No. 81859, which upheld the decisions of the Office of the President and the Housing and Land Use Regulatory Board, are *AFFIRMED* in all respects except for the following *MODIFICATIONS*, to wit:

(1) Respondents CRS Realty, Cesar E. Casal and Crisanta R. Salvador are *ORDERED* to secure and deliver to each of petitioners the corresponding certificates of titles, free of any encumbrance, in this names for the lots they respectively purchased and fully paid for, within six (6) months from the finality of this Decision and, in case of default, jointly and severally to pay petitioners the prevailing or current fair market value of the lots as determined by the Housing and Land Use Regulatory Board; and

(2) Without prejudice to the implementation of the other reliefs granted in this Decision, including the reliefs awarded by the HLURB which are affirmed in this Decision, this case is *REMANDED* to the HLURB for the purpose of determining (a) the prevailing or current fair market value of the lots and (b) the validity of the subsequent sale of the lots to respondents Bennie Cuason and Caleb Ang by ascertaining whether or not the sale was attended with fraud and executed in bad faith. No costs.

SO ORDERED.

Carpio Morales,[*] *Velasco, Jr., Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

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[*] Acting Chairperson in lieu of Senior Associate Justice Leonardo A. Quisumbing, who is on official leave, per Special Order No. 618.

[**] Additional member of the Second Division per Special Order No. 619.

SECOND DIVISION

[G.R. No. 171814. May 8, 2009]

SOUTH DAVAO DEVELOPMENT COMPANY, INC. (NOW SODACO AGRICULTURAL CORPORATION) AND/ OR MALONE PACQUIAO AND VICTOR A. CONSUNJI, *petitioners, vs.* **SERGIO L. GAMO, ERNESTO BELLEZA, FELIX TERONA, CARLOS ROJAS, MAXIMO MALINAO, VIRGILIO COSEP, ELEONOR COSEP, MAXIMO TOLDA, NELSON BAGAAN, and TRADE UNION OF THE PHILIPPINES and ALLIED SERVICES (TUPAS),** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; WHAT NEED NOT BE PROVED; JUDICIAL NOTICE; REQUISITES; NONE PRESENT IN CASE AT BAR.—** Petitioner wants this Court to take judicial notice of the current business practice in the coconut industry which allegedly treats *copraceros* as independent contractors. In *Expertravel & Tours, Inc. v. Court of Appeals,* we held, thus: Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety. Moreover, a judicially noticed fact must be one not subject to a reasonable dispute in that it is either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questionable. Things of "common knowledge," of which courts take judicial matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. Thus, facts which are universally

known, and which may be found in encyclopedias, dictionaries or other publications, are judicially noticed, provided, they are of such universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person. As the common knowledge of man ranges far and wide, a wide variety of particular facts have been judicially noticed as being matters of common knowledge. *But a court cannot take judicial notice of any fact which, in part, is dependent on the existence or non-existence of a fact of which the court has no constructive knowledge*. An invocation that the Court take judicial notice of certain facts should satisfy the requisites set forth by case law. A mere prayer for its application shall not suffice. Thus, in this case the Court cannot take judicial notice of the alleged business practices in the copra industry since none of the material requisites of matters of judicial notice is present in the instant petition. The record is bereft of any indication that the matter is of common knowledge to the public and that it has the characteristic of notoriety, except petitioners' self-serving claim.

2. **LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; INDEPENDENT CONTRACTOR; HOW EXISTENCE THEREOF ESTABLISHED.—** In *Escario v. NLRC,* we ruled that there is permissible job contracting when a principal agrees to put out or farm out with a contractor or a subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job or work service is to be performed within or outside the premises of the principal. To establish the existence of an independent contractor, we apply the following conditions: first, the contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except to the result thereof; and second, the contractor has substantial capital or investments in the form of tools, equipment, machineries, work premises and other materials which are necessary in the conduct of his business.

3. **ID.; ID.; ID.; INVESTMENT OF THE INDEPENDENT CONTRACTOR; NOT SUFFICIENT IN CASE AT BAR.—** The Implementing Rules and Regulation of the Labor Code

defines investment—as tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work, or service contracted out. The investment must be sufficient to carry out the job at hand. In the case at bar, Gamo and the copra workers did not exercise independent judgment in the performance of their tasks. The tools used by Gamo and his copra workers like the *karit*, *bolo*, *pangbunot*, *panglugit* and *pangtapok* are not sufficient to enable them to complete the job. Reliance on these primitive tools is not enough. In fact, the accomplishment of their task required more expensive machineries and equipment, like the trucks to haul the harvests and the drying facility, which petitioner corporation owns.

4. **ID.; ID.; EMPLOYER-EMPLOYEE RELATIONSHIP; DETERMINATIVE TEST; PRESENT IN CASE AT BAR.—** In order to determine the existence of an employer-employee relationship, the Court has frequently applied the four-fold test: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so called "control test," which is considered the most important element. From the time they were hired by petitioner corporation up to the time that they were reassigned to work under Gamo's supervision, their status as petitioner corporation's employees did not cease. Likewise, payment of their wages was merely coursed through Gamo. As to the most determinative test¯ the power of control, it is sufficient that the power to control the manner of doing the work exists, it does not require the actual exercise of such power. In this case, it was in the exercise of its power of control when petitioner corporation transferred the copra workers from their previous assignments to work as *copraceros.* It was also in the exercise of the same power that petitioner corporation put Gamo in charge of the copra workers although under a different payment scheme. Thus, it is clear that an employer-employee relationship has existed between petitioner corporation and respondents since the beginning and such relationship did not cease despite their reassignments and the change of payment scheme.

5. **ID.; ID.; ABANDONMENT; ELEMENTS. –** It is well settled that abandonment as a just and valid ground for dismissal requires

the deliberate and unjustified refusal of the employee to return for work. Two elements must be present, namely: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship. The second element is more determinative of the intent and must be evinced by overt acts. Mere absence, not being sufficient, the burden of proof rests upon the employer to show that the employee clearly and deliberately intended to discontinue her employment without any intention of returning. In *Samarca v. Arc-Men Industries, Inc*, we held that abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts. To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. Clearly, the operative act is still the employee's ultimate act of putting an end to his employment. However, an employee who takes steps to protest her layoff cannot be said to have abandoned her work because a charge of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal, more so when it includes a prayer for reinstatement. When Eleonor filed the illegal dismissal complaint, it totally negated petitioner's theory of abandonment.

6. **ID.; ID.; ID.; DISMISSAL OF EMPLOYEE; DUE PROCESS REQUIREMENT OF NOTICE, IMPERATIVE.—** To effectively dismiss an employee for abandonment, the employer must comply with the due process requirement of sending notices to the employee. In *Brahm Industries, Inc. v. NLRC,* we ruled that this requirement is not a mere formality that may be dispensed with at will. Its disregard is a matter of serious concern since it constitutes a safeguard of the highest order in response to man's innate sense of justice. Petitioner was not able to send the necessary notice requirement to Eleonor. Petitioner's belated claim that it was not able to send the notice of infraction prior to the filing of the illegal dismissal case was simply unacceptable.

APPEARANCES OF COUNSEL

Pascua & Enriquez-Pascua for petitioners.

D E C I S I ON

TINGA, *J.*:

Before us is a Rule 45 petition[1] which seeks the reversal of the Court of Appeals' decision[2] and resolution[3] in CA-G.R. SP No. 68511. The Court of Appeal's decision reinstated the NLRC's Resolution[4] dated 23 March 2001 which reversed the labor arbiter's decision.[5]

Petitioner South Davao Development Company (petitioner or petitioner corporation) is the operator of a coconut and mango farm in San Isidro, Davao Oriental and Inawayan/Baracatan, Davao del Sur. On August 1963 petitioner hired respondent Sergio L. Gamo (Gamo) as a foreman. Sometime in 1987, petitioner appointed Gamo as a copra maker contractor. Respondents Ernesto Belleza, Carlos Rojas, Maximo Malinao were all employees in petitioner's coconut farm, while respondents Felix Terona, Virgilio Cosep, Maximo Tolda, and Nelson Bagaan were assigned to petitioner's mango farm. All of the abovenamed respondents (copra workers) were later transferred by petitioner to Gamo as the latter's *copraceros*. From 1987 to 1999, Gamo and petitioner entered into a profit-sharing agreement wherein 70% of the net proceeds of the sale of copra went to petitioner and 30% to Gamo. The copra workers were paid by Gamo from his 30% share.

Petitioner wanted to standardize payments to its "contractors" in its coconut farms. On 2 October 1999, petitioner proposed

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[1] *Rollo*, pp. 17-30.

[2] Dated 27 September 2005. Penned by Justice Rodrigo F. Lim, Jr. and concurred in by Justices Teresita Dy-Liacco Flores and Myrna Dimaranan Vidal; *Id.* at 32-45.

[3] Dated 27 January 2006. Penned by Justice Rodrigo F. Lim, Jr. and concurred in by Justices Teresita Dy-Liacco Flores and Myrna Dimaranan Vidal; *Id.* at 47-47-A.

[4] Penned by Commissioner Leon G. Gonzaga, Jr. concurred in by Commissioners Salic B. Dumarpa and Oscar N. Abella, *id.* at 93-100.

[5] Dated 21 July 2000. Penned by Miriam A. Libron-Barroso; *id.* at 75-82.

a new payment scheme to Gamo. The new scheme provided a specific price for each copra making activity. Gamo submitted his counter proposal.[6] Petitioner did not accept Gamo's counter proposal since it was higher by at least fifty percent (50%) from its original offer. Without agreeing to the new payment scheme, Gamo and his copra workers started to do harvesting work. Petitioner told them to stop. Eventually, petitioner and Gamo agreed that the latter may continue with the harvest provided that it would be his last "contract" with petitioner. Gamo suggested to petitioner to look for a new "contractor" since he was not amenable to the new payment scheme.[7]

Gamo and petitioner failed to agree on a payment scheme, thus, petitioner did not renew the "contract" of Gamo. Gamo and the copra workers alleged that they were illegally dismissed.

On the other hand, respondent Eleonor Cosep (Eleonor) was employed as a mango classifier in the packing house of petitioner's mango farm in San Isidro, Davao Oriental. Sometime in October 1999, she did not report for work as she had wanted to raise and sell pigs instead. Petitioner, through Malone Pacquiao, tried to convince Eleonor to report for work but to no avail.

On 22 March 2000, respondents filed a complaint[8] for illegal dismissal against petitioner. They alleged that sometime in December 1999, petitioner verbally terminated them *en masse*.

The labor arbiter dismissed[9] the complaint. He ruled that there was no employee-employer relationship between petitioner and respondents. As to Eleonor, he ruled that she had voluntarily stopped working.

Respondents appealed to the National Labor Relations Commission (NLRC). The NLRC's Resolution[10] reversed the arbiter's decision and ruled that respondents were petitioner's

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[6] *Id.* at 63.

[7] *Id.* at 56.

[8] Records, p. 3.

[9] *Supra* note 5.

[10] *Rollo*, pp. 93-100.

employees. Petitioner moved[11] for reconsideration. The NLRC granted[12] the motion for reconsideration and ruled that the nature of the job of the respondents could not result in an employer-employee relationship. Respondents moved for reconsideration which was denied.[13]

Respondents filed a petition for *certiorari*[14] under Rule 65 with the Court of Appeals. The Court of Appeals ruled that there existed an employer-employee relationship. It declared that respondents were regular seasonal employees who can be dismissed by the petitioner at the end of the season provided due process is observed.[15] With regard to Eleonor, the Court of Appeals ruled that she did not abandon her work.

Hence this petition.

Petitioner raises the following issues: (1) whether the Court of Appeals failed to take judicial notice of the accepted practice of independent contractors in the coconut industry; (2) whether there is a valid job contracting between petitioner and Gamo; and (3) whether Eleonor had effectively abandoned her work.

The labor arbiter took judicial notice of the alleged prevailing business practices in the coconut industry that copra making activities are done quarterly; that the workers can contract with other farms; and that the workers are independent from the land owner on all work aspects. Petitioner wants this Court to take judicial notice of the current business practice in the coconut industry which allegedly treats *copraceros* as independent contractors. In *Expertravel & Tours, Inc. v. Court of Appeals,*[16] we held, thus:

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[11] *Id.* at 101-109.

[12] Resolution granting Motion for Reconsideration dated 29 June 2001. *Id.* at 111-114.

[13] *Id.* at 116-a-117.

[14] *Id.* at 118-134.

[15] *Id.* at 43.

[16] *Expertravel & Tours, Inc. v. Court of Appeals*, G.R. No. 152392, 26 May 2005, 459 SCRA 147, 162.

Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety.[17] Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety. Moreover, a judicially noticed fact must be one not subject to a reasonable dispute in that it is either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questionable.[18]

Things of "common knowledge," of which courts take judicial matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. Thus, facts which are universally known, and which may be found in encyclopedias, dictionaries or other publications, are judicially noticed, provided, they are of such universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person. As the common knowledge of man ranges far and wide, a wide variety of particular facts have been judicially noticed as being matters of common knowledge. *But a court cannot take judicial notice of any fact which, in part, is dependent on the existence or non-existence of a fact of which the court has no constructive knowledge*.[19]

An invocation that the Court take judicial notice of certain facts should satisfy the requisites set forth by case law. A mere prayer for its application shall not suffice. Thus, in this case the Court cannot take judicial notice of the alleged business practices in the copra industry since none of the material requisites of matters of judicial notice is present in the instant petition. The record is bereft of any indication that the matter is of

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[17] Citing *State Prosecutors v. Muro*, A.M. RTJ-92-876, 19 September 1994, 236 SCRA 505.

[18] Citing *Wood v. Astleford*, 412 N.W. 2d 753 (1987).

[19] Citing *Trepanier v. Toledo & D.C. Ry., Co.*, 130 N.E. 558.

common knowledge to the public and that it has the characteristic of notoriety, except petitioners' self-serving claim.

A related issue is whether Gamo is an independent contractor. In *Escario v. NLRC,*[20] we ruled that there is permissible job contracting when a principal agrees to put out or farm out with a contractor or a subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job or work service is to be performed within or outside the premises of the principal.[21] To establish the existence of an independent contractor, we apply the following conditions: first, the contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except to the result thereof; and second, the contractor has substantial capital or investments in the form of tools, equipment, machineries, work premises and other materials which are necessary in the conduct of his business.[22]

The Implementing Rules and Regulation of the Labor Code defines investment—as tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work, or service contracted out.[23] The investment must be sufficient to carry out the job at hand.

In the case at bar, Gamo and the copra workers did not exercise independent judgment in the performance of their tasks. The tools used by Gamo and his copra workers like the *karit*, *bolo*, *pangbunot*, *panglugit* and *pangtapok* are not sufficient

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[20] 388 Phil. 929 (2000), G.R. No. 145271, 14 July 2005.

[21] *Id.* at 938.

[22] *Manila Electric Company v. Benamira,* G.R. No. 145271, 14 July 2005, 463 SCRA 331, 353 citing *National Power Corporation v. Court of Appeals*, G.R. No. 119121, 14 August 1998, 294 SCRA 209, 214.

[23] Department of Labor and Employment, Department Order No. 18-02, Sec. 5.

to enable them to complete the job.[24] Reliance on these primitive tools is not enough. In fact, the accomplishment of their task required more expensive machineries and equipment, like the trucks to haul the harvests and the drying facility, which petitioner corporation owns.

In order to determine the existence of an employer-employee relationship, the Court has frequently applied the four-fold test: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so called "control test," which is considered the most important element.[25] From the time they were hired by petitioner corporation up to the time that they were reassigned to work under Gamo's supervision, their status as petitioner corporation's employees did not cease. Likewise, payment of their wages was merely coursed through Gamo. As to the most determinative test—the power of control, it is sufficient that the power to control the manner of doing the work exists, it does not require the actual exercise of such power.[26] In this case, it was in the exercise of its power of control when petitioner corporation transferred the copra workers from their previous assignments to work as *copraceros.* It was also in the exercise of the same power that petitioner corporation put Gamo in charge of the copra workers although under a different payment scheme. Thus, it is clear that an employer-employee relationship has existed between petitioner corporation and respondents since the beginning and such relationship did not cease despite their reassignments and the change of payment scheme.

As to the last issue, petitioner seeks our indulgence to declare that Eleonor has abandoned her work. Petitioner admitted that

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[24] *Rollo*, p. 221.

[25] *Coca-Cola Bottlers, (Phils.), Inc. v. Climaco*, G.R. No. 146881, 05 February 2007, 514 SCRA 164, 177, citing *Philippine Global Communication, Inc. v. De Vera*, G.R. No. 157214, 07 June 2005, 459 SCRA 260, 268.

[26] *Vinoya v. National Labor Relations Commission*, 381 Phil. 460, 481 (2000), citing *Zanotte Shoes v. NLRC*, 241 SCRA 261 and *Tiu v. NLRC*, 254 SCRA 1.

Eleonor was its regular employee.[27] However, it claimed that she abandoned her work, preferring to sell and raise pigs instead.

It is well settled that abandonment as a just and valid ground for dismissal requires the deliberate and unjustified refusal of the employee to return for work. Two elements must be present, namely: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship. The second element is more determinative of the intent and must be evinced by overt acts. Mere absence, not being sufficient, the burden of proof rests upon the employer to show that the employee clearly and deliberately intended to discontinue her employment without any intention of returning.[28] In *Samarca v. Arc-Men Industries, Inc.*, we held that abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts.

To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. Clearly, the operative act is still the employee's ultimate act of putting an end to his employment.[29] However, an employee who takes steps to protest her layoff cannot be said to have abandoned her work because a charge of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal, more so when it includes a prayer for reinstatement.[30] When Eleonor filed the illegal dismissal complaint, it totally negated petitioner's theory of abandonment.

Also, to effectively dismiss an employee for abandonment, the employer must comply with the due process requirement of sending notices to the employee. In *Brahm Industries, Inc. v. NLRC*,[31] we ruled that this requirement is not a mere formality

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[27] *Rollo*, p. 64.

[28] *Aquinas School v. Magnaye*, 344 Phil. 145, 151 (1997) citing *Brew Master International, Inc. v. NLRC*, G.R. No. 111211, July 24, 1997.

[29] *Samarca v. Arc-men Industries, Inc*. 459 Phil. 506, 516 (2003).

[30] *Mame v. Court of Appeals*, G.R. No. 167953, 4 April 2007, 520 SCRA 552, 563.

[31] 345 Phil. 1077 (1997).

that may be dispensed with at will. Its disregard is a matter of serious concern since it constitutes a safeguard of the highest order in response to man's innate sense of justice.[32] Petitioner was not able to send the necessary notice requirement to Eleonor. Petitioner's belated claim that it was not able to send the notice of infraction prior to the filing of the illegal dismissal case cannot (sic) simply unacceptable.[33] Based on the foregoing, Eleonor did not abandon her work.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals is *AFFIRMED*. Cost against petitioner.

SO ORDERED.

Carpio Morales,[*] *Velasco, Jr., Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 173565. May 8, 2009]

TRANSPACIFIC BATTERY CORPORATION and MICHAEL G. SAY, *petitioners, vs.* **SECURITY BANK & TRUST CO.,** *respondent.*

[G.R. No. 173607. May 8, 2009]

MICHAEL G. SAY and JOSEPHINE G. SAY, *petitioners, vs.* **SECURITY BANK & TRUST COMPANY,** *respondent.*

[32] *Id.* at 1086.

[33] *Rollo*, p. 234.

[*] Acting chairperson as replacement of Associate Justice Leonardo Quisumbing who is on official leave per Special Order No. 618.

[**] Additional member of the Second Division per Special Order No. 619.

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; NOVATION; ELUCIDATED.—** Novation is a mode of extinguishing an obligation by changing its objects or principal obligations, by substituting a new debtor in place of the old one, or by subrogating a third person to the rights of the creditor. Article 1292 of the Civil Code expressly provides: Art. 1292. In order that an obligation may be extinguished by another which substitute the same, it is imperative that it be so declared in unequivocal terms, or that the old and new obligations be in every point incompatible with each other. In order for novation to take place, the concurrence of the following requisites are indispensable: 1. There must be a previous valid obligation; 2. There must be an agreement of the parties concerned to a new contract; 3. There must be the extinguishment of the old contract; and 4. There must be the validity of the new contract. Novation is never presumed, and the *animus novandi*, whether totally or partially, must appear by express agreement of the parties, or by their acts that are too clear and unmistakable. The extinguishment of the old obligation by the new one is a necessary element of novation, which may be effected either expressly or impliedly. The contracting parties must incontrovertibly disclose that their object in executing the new contract is to extinguish the old one. Upon the other hand, no specific form is required for an implied novation, and all that is prescribed by law would be an incompatibility between the two contracts.

2. **ID.; ID.; ID.; ID.; TEST OF INCOMPATIBILITY.—** The test of incompatibility is whether the two obligations can stand together, each one having its independent existence. If they cannot, they are incompatible and the latter obligation novates the first. Corollarily, changes that breed incompatibility must be essential in nature and not merely accidental. The incompatibility must take place in any of the essential elements of the obligation, such as its object, cause or principal conditions thereof; otherwise, the change would be merely modificatory in nature and insufficient to extinguish the original obligation.

3. ID.; ID.; ID.; ID.; NOT PRESENT IN OBLIGATION TO PAY SUM OF MONEY WHICH EXPRESSLY RECOGNIZE THE SAME, CHANGES ONLY THE TERMS OF PAYMENT, ADDS OTHER OBLIGATIONS NOT INCOMPATIBLE WITH THE OLD ONES OR THAT THE NEW CONTRACT MERELY SUPPLEMENTS THE OLD ONE; CASE AT BAR. — There is no express novation in case at bar since the restructuring agreement does not state in clear terms that the obligation under the trust receipts is extinguished and in lieu thereof the restructuring agreement will be substituted. Neither is there an implied novation since the restructuring agreement is not incompatible with the trust receipt transactions. Indeed, the restructuring agreement recognizes the obligation due under the trust receipts when it required "payment of all interest and other charges prior to restructuring." With respect to Michael, there was even a proviso under the agreement that the amount due is subject to "the joint and solidary liability of Spouses Miguel and Mary Say and Michael Go Say." While the names of Melchor and Josephine do not appear on the restructuring agreement, it cannot be presumed that they have been relieved from the obligation. The old obligation continues to subsist subject to the modifications agreed upon by the parties. The circumstance that motivated the parties to enter into a restructuring agreement was the failure of petitioners to account for the goods received in trust and/or deliver the proceeds thereof. To remedy the situation, the parties executed an agreement to restructure Transpacific's obligations. The Bank only extended the repayment term of the trust receipts from 90 days to one year with monthly installment at 5% per annum over prime rate or 30% per annum whichever is higher. Furthermore, the interest rates were flexible in that they are subject to review every amortization due. Whether the terms appeared to be more onerous or not is immaterial. Courts are not authorized to extricate parties from the necessary consequences of their acts. The parties will not be relieved from their obligations as there was absolutely no intention by the parties to supersede or abrogate the trust receipt transactions. The intention of the new agreement was precisely to revive the old obligation after the original period expired and the loan remained unpaid. Well-settled is the rule that, with respect to obligations to pay a sum of money, the obligation is not

novated by an instrument that expressly recognizes the old, changes only the terms of payment, adds other obligations not incompatible with the old ones, or the new contract merely supplements the old one. Equally unmeritorious is petitioners' claim that they cannot be held liable to pay any obligation due to the Bank under the restructuring agreement because they did not participate or sign the same. To reiterate, there is no novation. The trust receipts transactions and the restructuring agreement can both stand together. Petitioners have not shown that they were expressly released from the obligation. From the beginning, they were joint and solidary debtors under the trust receipts, the obligation of which subsist *vis-à-vis* the restructuring agreement. Being joint and solidary debtors, they are liable for the entirety of the obligation.

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT THEREON IF AFFIRMED BY THE COURT OF APPEALS, RESPECTED. –** While petitioners Melchor and Josephine insist that they never claimed forgery, the crux of the matter still pertains to the credibility of the witness, which the courts below chose to uphold. Suffice it to say that in the absence of any of the recognized exceptions, the factual findings of the trial court, especially when affirmed by the Court of Appeals are conclusive on this Court.

APPEARANCES OF COUNSEL

Castro Castro & Associates and *Bienvenido D. Comia* for Transpacific Battery Corp., *et al.*

Bernardo P. Fernandez for Melchor G. Say, *et al.*

Jimenez Gonzales Liwanag Bello Valdez Caluya & Fernandez for respondent.

D E C I S I O N

TINGA, *J*.:

Before this Court are two petitions for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking the reversal of the decision[2] of the Court of Appeals in CA-G.R. CV No. 74644 which affirmed with modification the decision[3] of Branch 64 of the Regional Trial Court of Makati City, ordering petitioners Transpacific Battery Corporation (Transpacific), Michael Go Say (Michael), Melchor G. Say (Melchor) and Josephine G. Say (Josephine) jointly and severally liable to Security Bank and Trust Company (The Bank).

The facts, as culled from the records, follow.

Transpacific, represented by its officers, Michael G. Say, Josephine G. Say and Myrna Magpantay, entered into a Credit Line Agreement[4] with the Bank. Consequently, the officers in behalf of Transpacific applied for nine (9) letters of credit (LC) with the Bank to facilitate the importation and/or purchases of certain merchandise, goods and supplies for its business. The Bank issued the corresponding LCs to Transpacific. Transpacific then executed and delivered to the Bank, as entrustor, nine (9) trust receipt agreements with for the release of the imported merchandise and supplies in its favor, with the aforementioned officers, individual petitioners herein, binding themselves to be solidarily liable with Transpacific to the Bank for the value of the merchandise and supplies covered by the trust receipts. The letters of credit and their corresponding trust receipts are listed below:

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[1] *Rollo* (G.R. No. 173565), pp. 14-42; *Rollo* (G.R. No. 173607), pp. 9-36.

[2] *Rollo* (G.R. No. 173607), pp. 38-48; Penned by Associate Justice Juan Q. Enriquez, Jr. concurred in by Associate Justices Romeo A. Brawner and Aurora Santiago-Lagman.

[3] *Id.* at 65-71; Presided by Judge Delia B. Panganiban.

[4] Records, p. 254.

Letter of Credit No.	Trust Receipt Agreement Ref. No.	Date Issued	Expiry Date of Trust Receipt	Amount of Trust Receipt	Entrustees
73 DC-82/492	731B-83/8927	21 July 1983	19 October 1983	₱359,040.00	Michael G.Say, Josephine G. Say, Myrna E. Magpantay[5]
73 DC-83/504	731B-83/9126	8 August 1983	7 November 1983	₱369,600.00	Michael G. Say, Melchor G. Say, Myrna E. Magpantay[6]
73 DC-83/517	731B-83/9259	17 August 1983	15 November 1983	₱355,200.00	Michael G. Say, Melchor G. Say, Myrna E. Magpantay[7]
73 DC-83/6278	731B-83/9187	24 August 1983	22 November 1983	₱119,359.69	Michael G. Say, Melchor G. Say, Myrna E. Magpantay[8]
73 DC-6994	731B-83/9461	9 September 1983	8 December 1983	₱68,772.19	Michael G. Say, Melchor G. Say, Myrna E. Magpantay[9]

[5] Records, pp. 11-12.

[6] *Id.* at 13-14.

[7] *Id.* at 15-16.

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

[9] *Id.* at 19-20.

73 DC-6990	731B-83/9617	27 September 1983	26 December 1983	₱84,032.62	Michael G. Say, Melchor G. Say, Myrna E. Magpantay[10]
73 DC-83/5580	731B-83/587	6 October 1983	4 January 1984	₱661,122.00	Michael G. Say, Melchor G. Say, Myrna E. Magpantay[11]
73 DC-83/5581	731B-83/588	6 October 1983	4 January 1984	₱826,402.50	Michael G. Say, Melchor G. Say, Myrna E. Magpantay[12]
73 DC-83/432	731B-83/8110	8 November 1983	9 January 1984	₱338,500.00	Michael G. Say, Melchor G. Say, Myrna E. Magpantay[13]

Under the terms of the trust receipts, the entrustees agreed to hold the goods, merchandise and supplies, as well as the proceeds of the sale and collection thereof, in trust for the Bank for the payment of petitioners' acceptance, bank commissions and charges, and/or any other indebtedness of petitioners to the Bank, and deliver the same to the Bank upon maturity date of said trust receipts.[14]

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[10] *Id.* at 21-22.

[11] *Id.* at 23-24.

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

[13] *Id.* at 27-28.

[14] See trust receipts, *Id.* at 12, 14, 16, 18, 20, 22, 24, 26, 28.

On the maturity dates of the trust receipts, petitioners failed to account for and to deliver to the Bank the proceeds of the sale and collection of the goods, merchandise and supplies subject of the trust receipts. Despite repeated demands, petitioners reneged on their obligation.

On 8 February 1984, petitioners and the Bank executed a letter-agreement restructuring the former's obligation in the sum of ₱3,082,029.00, subject to the following terms and conditions:

1. Payment of all interest and other charges prior to restructuring;
2. TR term is for one year with equal monthly principal payments;
3. Interest at 5% p.a. over prime rate or 30% p.a., whichever is higher, amortized monthly;
4. Interest rate subject to review every amortization due; and
5. Against the joint and solidary liability of Sps. Miguel and Mary Say and Michael Go Say.[15]

Failure to meet one monthly installment when due shall cause the unmatured balance to become due and demandable. The account shall be referred automatically to our Special Accounts Department for collection.[16]

Alleging that out of the total obligation of ₱3,082,029.00, the amount of ₱2,290,865.41 remained unpaid, the Bank demanded in writing the payment of the unpaid balance.[17]

Despite repeated demands, petitioners failed to comply with the restructuring agreement, prompting the Bank to file a criminal complaint for violation of Presidential Decree No. 115 or the Trust Receipts Law. However, said complaint was dismissed.

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[15] Records, pp. 29-30.

[16] *Id.* at 29.

[17] *Id.* at 31.

On 24 January 1992, the Bank filed a complaint for recovery of a sum of money with the RTC of Makati.[18]

In his answer,[19] Michael countered that the obligation had already been paid or if not totally paid, the same is very minimal. He further contended that said obligation had already been extinguished by novation when the Bank restructured the obligation of Transpacific. He also claimed that the Bank is guilty of laches for its inaction for an unreasonable length of time.[20]

Melchor and Josephine, for their part, argued that the trust receipts have not been executed in strict compliance with the requirements of the Trust Receipts Law; that their participation in the questioned transactions was in their capacity as officers of Transpacific and consequently, cannot be held liable in their individual capacities; that their signatures in some of the documents were forged; and that the obligation had been extinguished by novation.[21]

Ma. Fe Rosadio (Rosadio), who was employed at the Foreign Department of the Bank and tasked with documentation, processing and releasing of import bills and trust receipts, testified for the Bank. She identified the trust receipts and attested to the genuineness of the signatures of petitioners.

Instead of presenting their witnesses, petitioners filed a demurrer to evidence[22] which the trial court denied on 8 December 1995.

In a decision dated 5 March 2002, the trial court ruled in favor of the Bank. The dispositive portion reads:

WHEREFORE, IN VIEW OF THE FOREGOING, judgment is rendered in favor of plaintiff Security Bank and Trust Company and against defendants Transpacific Battery Company, Michael Go Say,

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[18] *Id.* at 1-10.

[19] *Id.* at 54-59.

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

[21] *Id.* at 71-72.

[22] *Id.* at 355-373.

Melchor G. Say and Josephine G. Say ordering the defendants to pay jointly and severally to the plaintiff the following amounts:

1. The sum of ₱2,290,865.41 representing the balance of defendants' outstanding and unpaid obligation as of the filing of the complaint on February 4, 1992 plus interest at the rate of 12% per annum from February 4, 1992 until full payment of the defendants' obligation under the aforecited Trust Receipts and/or Letter Agreement is made;
2. Attorney's fees in the amount equivalent to 25% on the amount due;
3. Cost of suit.

SO ORDERED.[23]

The trial court lent credence to the testimony of Rosadio and upheld the authenticity and genuineness of the signatures of the individual petitioners on the trust receipts. It also ruled that the restructuring of the obligation did not relieve individual petitioners of their liability as solidary debtors to the Bank as there was an express agreement on their part to be bound jointly and severally with Transpacific under the trust receipts.[24]

On appeal, the Court of Appeals affirmed the ruling of the trial court with modification in that it deleted the award of attorney's fees.

The Court of Appeals' decision centered on the finding that there was no novation in the restructuring of the obligation, therefore, the individual petitioners as solidary debtors cannot be exonerated from the obligation of Transpacific. The appellate court also dismissed the allegation of forgery for failure of petitioners to present evidence to support their allegation that the purported signatures in the trust receipts were forged. With respect to the amount of the unpaid obligation, the appellate court concluded that since the issue is factual in nature, the finding of the trial court should not be disturbed on appeal.

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[23] *Rollo* (G.R. No. 173607), p. 71.

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

In the petition filed by Michael, he insists that novation had taken place and effectively extinguished his obligation to the Bank. Moreover, he argues that he did not sign the restructuring agreement; hence, he should not be made liable to pay any obligation due to the Bank under said agreement.[25]

Melchor and Josephine question the credibility of witness Rosadio to testify on the authenticity of their signatures on the trust receipts. They likewise point out the deficiencies in the trust receipts. Finally, they assert that whatever obligation they may have assumed under the agreements in the trust receipts they signed was fully novated by the restructuring agreement entered into between the Bank and Transpacific without their knowledge and consent.

The Bank posits that the arguments presented by petitioners involve factual questions and the findings thereof by the courts below are conclusive upon this Court. It also contends that there is no novation and the restructuring agreement was executed only to make it less onerous for the debtors to perform their obligation. It avers that although petitioners were no longer signatories in the restructuring agreement, they are still bound as they were not expressly released from their obligation. On the contrary, it points out that the restructuring agreement was even made subject to their joint and solidary liability.

Novation is a mode of extinguishing an obligation by changing its objects or principal obligations, by substituting a new debtor in place of the old one, or by subrogating a third person to the rights of the creditor.[26] Article 1292 of the Civil Code expressly provides:

Art. 1292. In order that an obligation may be extinguished by another which substitute the same, it is imperative that it be so declared

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[25] *Id.* at 33-37.

[26] *Garcia v. Llamas*, 462 Phil. 779, 788 (2003), citing *Idolor v. CA*, 351 SCRA 399, 407, February 7, 2001; *Agro Conglomerates, Inc. v. CA*, 348 SCRA 450, 458, December 12, 2000; *De Cortes v. Venturanza*, 79 SCRA 709, 722–723, October 28, 1977; *PNB v. Mallari and The First Nat'l. Surety & Assurance Co., Inc*., 104 Phil. 437, 441, August 29, 1958.

in unequivocal terms, or that the old and new obligations be in every point incompatible with each other.

In order for novation to take place, the concurrence of the following requisites are indispensable:

1. There must be a previous valid obligation;
2. There must be an agreement of the parties concerned to a new contract;
3. There must be the extinguishment of the old contract; and
4. There must be the validity of the new contract.[27]

Novation is never presumed, and the *animus novandi*, whether totally or partially, must appear by express agreement of the parties, or by their acts that are too clear and unmistakable. The extinguishment of the old obligation by the new one is a necessary element of novation, which may be effected either expressly or impliedly. The contracting parties must incontrovertibly disclose that their object in executing the new contract is to extinguish the old one. Upon the other hand, no specific form is required for an implied novation, and all that is prescribed by law would be an incompatibility between the two contracts.[28]

The test of incompatibility is whether the two obligations can stand together, each one having its independent existence. If they cannot, they are incompatible and the latter obligation novates the first. Corollarily, changes that breed incompatibility must be essential in nature and not merely accidental. The incompatibility must take place in any of the essential elements of the obligation, such as its object, cause or principal conditions thereof; otherwise, the change would be merely modificatory in nature and insufficient to extinguish the original obligation.[29]

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[27] *Sueño v. Land Bank of the Philippines*, G.R. No. 174711, 17 September 2008; *Azolla Farms v. Court of Appeals*, 484 Phil. 745, 755 (2004).

[28] *Philippine Savings Bank v. Mañalac, Jr.*, G.R. No. 145441, 26 April 2005, 457 SCRA 203, 218.

[29] *California Bus Lines v. State Investment House*, 463 Phil. 689, 703 (2003), citing *Molino v. Security Diners International Corporation*, G.R. No. 136780, 16 August 2001, 363 SCRA 358, 366.

Petitioners proffer that the terms of the restructuring agreement are absolutely incompatible with the terms of the trust receipts. First, the maturity date under the trust receipts is reckoned at ninety (90) days from their respective issuance dates whereas it is one (1) year under the restructuring agreement. Second, payment is in full under the trust receipts while under the restructured obligation, it is to be made in equal monthly installments. Third, the rate of interest under the trust receipts is 16% or 18% per annum whereas it is 5% per annum over prime rate or 30% per annum, whichever is higher, under the restructured obligation. Fourth, the restructuring agreement has a provision on the time of interest payments, as well as a review of the interest rate, whereas there are no such provisions under the trust receipts. Fifth, the obligation under the trust receipts is secured by the joint and solidary liability of the alleged signatories, whereas the restructured obligation is secured by the joint and solidary liability of Spouses Miguel and Mary Say and Michael G. Say. Sixth, there is no acceleration clause under the trust receipts whereas the restructured obligation is subject to an acceleration clause.

On the other hand, the Bank dismisses any incompatibility between the restructuring agreement and the trust receipt transactions. It alleges that the restructuring agreement even made an express recognition of the trust receipts when it obliged the debtors pay all interests and other charges prior to restructuring. Moreover, only the interest rates and the term of the trust receipts were modified, according to the Bank. In fact, it claims that the restructuring agreement was executed to make it less onerous for the debtors to perform their obligation.

The primary issue for resolution is whether the obligation under the trust receipts was novated by the restructuring agreement. We rule in the negative.

The material portions of the restructuring agreement is hereby reproduced for brevity:

Gentlemen:

We are pleased to inform you that our Executive Committee has approved the restructuring of your outstanding past due trust receipts amounting to ₱3,082,029.00, subject to:

1. Payment of all interest and other charges prior to restructuring;
2. TR term is for one year with equal monthly principal payments
3. Interest at 5% p.a. over prime rate or 30% p.a., whichever is higher, amortized monthly;
4. Interest rate subject to review every amortiaton (sic) due;
5. Against the joint and solidary liability of Sps. Miguel and Mary Say and Michael Go Say;

Failure to meet one monthly installment when due shall cause the unmatured balance to become due and demandable. The account shall be referred automatically to our Special Accounts Department for collection.[30]

Undoubtedly, there is no express novation since the restructuring agreement does not state in clear terms that the obligation under the trust receipts is extinguished and in lieu thereof the restructuring agreement will be substituted. Neither is there an implied novation since the restructuring agreement is not incompatible with the trust receipt transactions.

Indeed, the restructuring agreement recognizes the obligation due under the trust receipts when it required "payment of all interest and other charges prior to restructuring." With respect to Michael, there was even a proviso under the agreement that the amount due is subject to "the joint and solidary liability of Spouses Miguel and Mary Say and Michael Go Say." While the names of Melchor and Josephine do not appear on the restructuring agreement, it cannot be presumed that they have been relieved from the obligation. The old obligation continues to subsist subject to the modifications agreed upon by the parties.

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[30] Records, p. 29.

The circumstance that motivated the parties to enter into a restructuring agreement was the failure of petitioners to account for the goods received in trust and/or deliver the proceeds thereof. To remedy the situation, the parties executed an agreement to restructure Transpacific's obligations.

The Bank only extended the repayment term of the trust receipts from 90 days to one year with monthly installment at 5% per annum over prime rate or 30% per annum whichever is higher. Furthermore, the interest rates were flexible in that they are subject to review every amortization due. Whether the terms appeared to be more onerous or not is immaterial. Courts are not authorized to extricate parties from the necessary consequences of their acts. The parties will not be relieved from their obligations as there was absolutely no intention by the parties to supersede or abrogate the trust receipt transactions. The intention of the new agreement was precisely to revive the old obligation after the original period expired and the loan remained unpaid. Well-settled is the rule that, with respect to obligations to pay a sum of money, the obligation is not novated by an instrument that expressly recognizes the old, changes only the terms of payment, adds other obligations not incompatible with the old ones, or the new contract merely supplements the old one.[31]

Equally unmeritorious is petitioners' claim that they cannot be held liable to pay any obligation due to the Bank under the restructuring agreement because they did not participate or sign the same. To reiterate, there is no novation. The trust receipts transactions and the restructuring agreement can both stand together. Petitioners have not shown that they were expressly released from the obligation. From the beginning, they were joint and solidary debtors under the trust receipts, the obligation of which subsist *vis-à-vis* the restructuring agreement. Being joint and solidary debtors, they are liable for the entirety of the obligation.

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[31] *Reyes v. BPI Family Savings Bank, Inc.*, G.R. Nos. 149840-41, 31 March 2006, 486 SCRA 276, 282.

While petitioners Melchor and Josephine insist that they never claimed forgery, the crux of the matter still pertains to the credibility of the witness, which the courts below chose to uphold. Suffice it to say that in the absence of any of the recognized exceptions,[32] the factual findings of the trial court, especially when affirmed by the Court of Appeals are conclusive on this Court.

WHEREFORE, the twin petitions are *DENIED*. The Decision of the Court of Appeals in CA-G.R. CV No. 74644 is *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Carpio Morales,[*] *Velasco, Jr., Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

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[32] (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to the findings of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and, (11) such findings are contrary to the admissions of both parties. See *Pelonia v. People of the Philippines*, G.R. No. 168997, 13 April 2007, 521 SCRA 207, 219.

[*] Acting Chairperson as replacement of Justice Leonardo A. Quisumbing who is on official leave per Special Order No. 618.

[**] Additional member of the Second Division per Special Order No. 619.

SECOND DIVISION

[G.R. No. 174269. May 8, 2009]

POLO S. PANTALEON, *petitioner, vs.* **AMERICAN EXPRESS INTERNATIONAL, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS; DEFAULT; REQUISITES OF *MORA SOLVENDI* AND *MORA ACCIPIENDI*.— Petitioner correctly cites that under *mora solvendi*, the three requisites for a finding of default are that the obligation is demandable and liquidated; the debtor delays performance; and the creditor judicially or extrajudicially requires the debtor's performance. Petitioner asserts that the Court of Appeals had wrongly applied the principle of *mora accipiendi*, which relates to delay on the part of the obligee in accepting the performance of the obligation by the obligor. The requisites of *mora accipiendi* are: an offer of performance by the debtor who has the required capacity; the offer must be to comply with the prestation as it should be performed; and the creditor refuses the performance without just cause. The error of the appellate court, argues petitioner, is in relying on the invocation by respondent of "just cause" for the delay, since while just cause is determinative of *mora accipiendi*, it is not so with the case of *mora solvendi*.

2. ID.; ID.; ID.; RELATIONSHIP BETWEEN THE CREDIT CARD PROVIDER AND THE CARD HOLDERS, EXPLAINED; APPLICATION.— Generally, the relationship between a credit card provider and its card holders is that of creditor-debtor, with the card company as the creditor extending loans and credit to the card holder, who as debtor is obliged to repay the creditor. This relationship already takes exception to the general rule that as between a bank and its depositors, the bank is deemed as the debtor while the depositor is considered as the creditor. Petitioner is asking us, not baselessly, to again shift perspectives and again see the credit card company as the debtor/obligor, insofar as it has the obligation to the customer as creditor/obligee to act promptly on its purchases on credit. Ultimately, petitioner's perspective appears more sensible than if we were to still regard respondent as the creditor in the context of this

cause of action. If there was delay on the part of respondent in its normal role as creditor to the cardholder, such delay would not have been in the acceptance of the performance of the debtor's obligation (*i.e*., the repayment of the debt), but it would be delay in the extension of the credit in the first place. Such delay would not fall under *mora accipiendi*, which contemplates that the obligation of the debtor, such as the actual purchases on credit, has already been constituted. Herein, the establishment of the debt itself (purchases on credit of the jewelry) had not yet been perfected, as it remained pending the approval or consent of the respondent credit card company.

3. ID.; ID.; ID.; CULPABLE DELAY ON THE PART OF CREDIT CARD PROVIDER IN COMPLYING WITH ITS OBLIGATION TO ACT PROMPTLY ON ITS CUSTOMER'S PURCHASE REQUEST CONSTITUTES *MORA SOLVENDI*.— [I]n order for us to appreciate that respondent was in *mora solvendi*, we will have to first recognize that there was indeed an obligation on the part of respondent to act on petitioner's purchases with "timely dispatch," or for the purposes of this case, within a period significantly less than the one hour it apparently took before the purchase at Coster was finally approved. The findings of the trial court, to our mind, amply established that the tardiness on the part of respondent in acting on petitioner's purchase at Coster did constitute culpable delay on its part in complying with its obligation to act promptly on its customer's purchase request, whether such action be favorable or unfavorable. x x x Notwithstanding the popular notion that credit card purchases are approved "within seconds," there really is no strict, legally determinative point of demarcation on how long must it take for a credit card company to approve or disapprove a customer's purchase, much less one specifically contracted upon by the parties. Yet this is one of those instances when "you'd know it when you'd see it," and one hour appears to be an awfully long, patently unreasonable length of time to approve or disapprove a credit card purchase. It is long enough time for the customer to walk to a bank a kilometer away, withdraw money over the counter, and return to the store. Notably, petitioner frames the obligation of respondent as "to approve or disapprove" the purchase "in timely dispatch," and not "to approve the purchase instantaneously or within seconds."

Certainly, had respondent disapproved petitioner's purchase "within seconds" or within a timely manner, this particular action would have never seen the light of day. Petitioner and his family would have returned to the bus without delay – internally humiliated perhaps over the rejection of his card – yet spared the shame of being held accountable by newly-made friends for making them miss the chance to tour the city of Amsterdam. We do not wish to dispute that respondent has the right, if not the obligation, to verify whether the credit it is extending upon on a particular purchase was indeed contracted by the cardholder, and that the cardholder is within his means to make such transaction. The culpable failure of respondent herein is not the failure to timely approve petitioner's purchase, but the more elemental failure to timely act on the same, whether favorably or unfavorably. Even assuming that respondent's credit authorizers did not have sufficient basis on hand to make a judgment, we see no reason why respondent could not have promptly informed petitioner the reason for the delay, and duly advised him that resolving the same could take some time. In that way, petitioner would have had informed basis on whether or not to pursue the transaction at Coster, given the attending circumstances. Instead, petitioner was left uncomfortably dangling in the chilly autumn winds in a foreign land and soon forced to confront the wrath of foreign folk.

4. **ID.; DAMAGES; MORAL DAMAGES PROPER WHEN THE BREACH OF CONTRACT WAS COMMITTED WITH BAD FAITH AND UNJUSTIFIED NEGLECT.—** Moral damages avail in cases of breach of contract where the defendant acted fraudulently or in bad faith, and the court should find that under the circumstances, such damages are due. The findings of the trial court are ample in establishing the bad faith and unjustified neglect of respondent, attributable in particular to the "dilly-dallying" of respondent's Manila credit authorizer, Edgardo Jaurique. Wrote the trial court: While it is true that the Cardmembership Agreement, which defendant prepared, is silent as to the amount of time it should take defendant to grant authorization for a charge purchase, defendant acknowledged that the normal time for approval should only be three to four seconds. Specially so with cards used abroad which requires "special handling," meaning with priority. Otherwise, the object of credit or charge cards would be lost; it would be so

inconvenient to use that buyers and consumers would be better off carrying bundles of currency or traveller's checks, which can be delivered and accepted quickly. Such right was not accorded to plaintiff in the instances complained off for reasons known only to defendant at that time. This, to the Court's mind, amounts to a wanton and deliberate refusal to comply with its contractual obligations, or at least abuse of its rights, under the contract. x x x The delay committed by defendant was clearly attended by unjustified neglect and bad faith, since it alleges to have consumed more than one hour to simply go over plaintiff's past credit history with defendant, his payment record and his credit and bank references, when all such data are already stored and readily available from its computer. This Court also takes note of the fact that there is nothing in plaintiff's billing history that would warrant the imprudent suspension of action by defendant in processing the purchase.

5. **ID.; ID.; ID.; REASON FOR THE AWARD OF MORAL DAMAGES.—** It should be emphasized that the reason why petitioner is entitled to damages is not simply because respondent incurred delay, but because the delay, for which culpability lies under Article 1170, led to the particular injuries under Article 2217 of the Civil Code for which moral damages are remunerative. Moral damages do not avail to soothe the plaints of the simply impatient, so this decision should not be cause for relief for those who time the length of their credit card transactions with a stopwatch. The somewhat unusual attending circumstances to the purchase at Coster – that there was a deadline for the completion of that purchase by petitioner before any delay would redound to the injury of his several traveling companions – gave rise to the moral shock, mental anguish, serious anxiety, wounded feelings and social humiliation sustained by the petitioner, as concluded by the RTC. Those circumstances are fairly unusual, and should not give rise to a general entitlement for damages under a more mundane set of facts.

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon and San Jose for petitioner.
Sycip Salazar Hernandez and Gatmaitan for respondent.

D E C I S I O N

TINGA, *J.*:

The petitioner, lawyer Polo Pantaleon, his wife Julialinda, daughter Anna Regina and son Adrian Roberto, joined an escorted tour of Western Europe organized by Trafalgar Tours of Europe, Ltd., in October of 1991. The tour group arrived in Amsterdam in the afternoon of 25 October 1991, the second to the last day of the tour. As the group had arrived late in the city, they failed to engage in any sight-seeing. Instead, it was agreed upon that they would start early the next day to see the entire city before ending the tour.

The following day, the last day of the tour, the group arrived at the Coster Diamond House in Amsterdam around 10 minutes before 9:00 a.m. The group had agreed that the visit to Coster should end by 9:30 a.m. to allow enough time to take in a guided city tour of Amsterdam. The group was ushered into Coster shortly before 9:00 a.m., and listened to a lecture on the art of diamond polishing that lasted for around ten minutes.[1] Afterwards, the group was led to the store's showroom to allow them to select items for purchase. Mrs. Pantaleon had already planned to purchase even before the tour began a 2.5 karat diamond brilliant cut, and she found a diamond close enough in approximation that she decided to buy.[2] Mrs. Pantaleon also selected for purchase a pendant and a chain,[3] all of which totaled U.S. $13,826.00.

To pay for these purchases, Pantaleon presented his American Express credit card together with his passport to the Coster sales clerk. This occurred at around 9:15 a.m., or 15 minutes before the tour group was slated to depart from the store. The sales clerk took the card's imprint, and asked Pantaleon to sign the charge slip. The charge purchase was then referred electronically to respondent's Amsterdam office at 9:20 a.m.

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[1] *Id.* at 747.

[2] *Id.* at 748-749.

[3] *Id.* at 750.

Ten minutes later, the store clerk informed Pantaleon that his AmexCard had not yet been approved. His son, who had already boarded the tour bus, soon returned to Coster and informed the other members of the Pantaleon family that the entire tour group was waiting for them. As it was already 9:40 a.m., and he was already worried about further inconveniencing the tour group, Pantaleon asked the store clerk to cancel the sale. The store manager though asked plaintiff to wait a few more minutes. After 15 minutes, the store manager informed Pantaleon that respondent had demanded bank references. Pantaleon supplied the names of his depositary banks, then instructed his daughter to return to the bus and apologize to the tour group for the delay.

At around 10:00 a.m, or around 45 minutes after Pantaleon had presented his AmexCard, and 30 minutes after the tour group was supposed to have left the store, Coster decided to release the items even without respondent's approval of the purchase. The spouses Pantaleon returned to the bus. It is alleged that their offers of apology were met by their tourmates with stony silence.[4] The tour group's visible irritation was aggravated when the tour guide announced that the city tour of Amsterdam was to be canceled due to lack of remaining time, as they had to catch a 3:00 p.m. ferry at Calais, Belgium to London.[5] Mrs. Pantaleon ended up weeping, while her husband had to take a tranquilizer to calm his nerves.

It later emerged that Pantaleon's purchase was first transmitted for approval to respondent's Amsterdam office at 9:20 a.m., Amsterdam time, then referred to respondent's Manila office at 9:33 a.m, then finally approved at 10:19 a.m., Amsterdam time.[6] The Approval Code was transmitted to respondent's Amsterdam office at 10:38 a.m., several minutes after petitioner had already left Coster, and 78 minutes from the time the purchases were electronically transmitted by the jewelry store to respondent's Amsterdam office.

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[4] *Id.* at 20.

[5] *Id.* at 20-21.

[6] *Id.* at 21-22; citing defendant's Exhibits "9-G", "9-H" and "9-I".

After the star-crossed tour had ended, the Pantaleon family proceeded to the United States before returning to Manila on 12 November 1992. While in the United States, Pantaleon continued to use his AmEx card, several times without hassle or delay, but with two other incidents similar to the Amsterdam brouhaha. On 30 October 1991, Pantaleon purchased golf equipment amounting to US $1,475.00 using his AmEx card, but he cancelled his credit card purchase and borrowed money instead from a friend, after more than 30 minutes had transpired without the purchase having been approved. On 3 November 1991, Pantaleon used the card to purchase children's shoes worth $87.00 at a store in Boston, and it took 20 minutes before this transaction was approved by respondent.

On 4 March 1992, after coming back to Manila, Pantaleon sent a letter[7] through counsel to the respondent, demanding an apology for the "inconvenience, humiliation and embarrassment he and his family thereby suffered" for respondent's refusal to provide credit authorization for the aforementioned purchases.[8] In response, respondent sent a letter dated 24 March 1992,[9] stating among others that the delay in authorizing the purchase from Coster was attributable to the circumstance that the charged purchase of US $13,826.00 "was out of the usual charge purchase pattern established."[10] Since respondent refused to accede to Pantaleon's demand for an apology, the aggrieved cardholder instituted an action for damages with the Regional Trial Court (RTC) of Makati City, Branch 145.[11] Pantaleon prayed that he be awarded ₱2,000,000.00, as moral damages; ₱500,000.00, as exemplary damages; ₱100,000.00, as attorney's fees; and ₱50,000.00 as litigation expenses.[12]

On 5 August 1996, the Makati City RTC rendered a decision[13] in favor of Pantaleon, awarding him ₱500,000.00 as moral

[7] *Id.* at 330-331.

[8] *Id.* at 331.

[9] *Id.* at 332-333.

[10] *Id.* at 332.

[11] Docketed as Civil Case No. 92-1665. *Id.* at 335-340.

[12] *Id.* at 339.

[13] Penned by Judge Francisco Donato Villanueva; *id.* at 92-110.

damages, ₱300,000.00 as exemplary damages, ₱100,000.00 as attorney's fees, and ₱85,233.01 as expenses of litigation. Respondent filed a Notice of Appeal, while Pantaleon moved for partial reconsideration, praying that the trial court award the increased amount of moral and exemplary damages he had prayed for.[14] The RTC denied Pantaleon's motion for partial reconsideration, and thereafter gave due course to respondent's Notice of Appeal.[15]

On 18 August 2006, the Court of Appeals rendered a decision[16] reversing the award of damages in favor of Pantaleon, holding that respondent had not breached its obligations to petitioner. Hence, this petition.

The key question is whether respondent, in connection with the aforementioned transactions, had committed a breach of its obligations to Pantaleon. In addition, Pantaleon submits that even assuming that respondent had not been in breach of its obligations, it still remained liable for damages under Article 21 of the Civil Code.

The RTC had concluded, based on the testimonial representations of Pantaleon and respondent's credit authorizer, Edgardo Jaurigue, that the normal approval time for purchases was "a matter of seconds." Based on that standard, respondent had been in clear delay with respect to the three subject transactions. As it appears, the Court of Appeals conceded that there had been delay on the part of respondent in approving the purchases. However, it made two critical conclusions in favor of respondent. First, the appellate court ruled that the delay was not attended by bad faith, malice, or gross negligence. Second, it ruled that respondent "had exercised diligent efforts to effect the approval" of the purchases, which were "not in accordance with the charge pattern" petitioner had established for himself, as exemplified by the fact that at Coster, he was "making his

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[14] *Id.* at 348-351.

[15] *Id.* at 360-362.

[16] Decision penned by Court of Appeals Associate Justice E.J. Asuncion, concurred by Associate Justices J. Mendoza and A. Tayag.

very first single charge purchase of US$13,826," and "the record of [petitioner]'s past spending with [respondent] at the time does not favorably support his ability to pay for such purchase."[17]

On the premise that there was an obligation on the part of respondent "to approve or disapprove with dispatch the charge purchase," petitioner argues that the failure to timely approve or disapprove the purchase constituted *mora solvendi* on the part of respondent in the performance of its obligation. For its part, respondent characterizes the depiction by petitioner of its obligation to him as "to approve purchases instantaneously or in a matter of seconds."

Petitioner correctly cites that under *mora solvendi*, the three requisites for a finding of default are that the obligation is demandable and liquidated; the debtor delays performance; and the creditor judicially or extrajudicially requires the debtor's performance.[18] Petitioner asserts that the Court of Appeals had wrongly applied the principle of *mora accipiendi*, which relates to delay on the part of the obligee in accepting the performance of the obligation by the obligor. The requisites of *mora accipiendi* are: an offer of performance by the debtor who has the required capacity; the offer must be to comply with the prestation as it should be performed; and the creditor refuses the performance without just cause.[19] The error of the appellate court, argues petitioner, is in relying on the invocation by respondent of "just cause" for the delay, since while just cause is determinative of *mora accipiendi*, it is not so with the case of *mora solvendi*.

We can see the possible source of confusion as to which type of *mora* to appreciate. Generally, the relationship between a credit card provider and its card holders is that of creditor-debtor,[20] with the card company as the creditor extending loans

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[17] *Rollo*, p. 80.

[18] See, *e.g.*, *Selegna Management v. UCPB*, G.R. No. 165662, 3 May 2006.

[19] A. TOLENTINO, IV *CIVIL CODE OF THE PHILIPPINES* (1991 ed.), at 108.

[20] See, *e.g.*, *Pacific Banking Corp. v. IAC*, G.R. No. 72275, 13 November 1991, 203 SCRA 496; *Molino v. Security Diners International Corp.*, G.R. No. 136780, 16 August 2001, 363 SCRA 363.

and credit to the card holder, who as debtor is obliged to repay the creditor. This relationship already takes exception to the general rule that as between a bank and its depositors, the bank is deemed as the debtor while the depositor is considered as the creditor.[21] Petitioner is asking us, not baselessly, to again shift perspectives and again see the credit card company as the debtor/obligor, insofar as it has the obligation to the customer as creditor/obligee to act promptly on its purchases on credit.

Ultimately, petitioner's perspective appears more sensible than if we were to still regard respondent as the creditor in the context of this cause of action. If there was delay on the part of respondent in its normal role as creditor to the cardholder, such delay would not have been in the acceptance of the performance of the debtor's obligation (*i.e.*, the repayment of the debt), but it would be delay in the extension of the credit in the first place. Such delay would not fall under *mora accipiendi*, which contemplates that the obligation of the debtor, such as the actual purchases on credit, has already been constituted. Herein, the establishment of the debt itself (purchases on credit of the jewelry) had not yet been perfected, as it remained pending the approval or consent of the respondent credit card company.

Still, in order for us to appreciate that respondent was in *mora solvendi*, we will have to first recognize that there was indeed an obligation on the part of respondent to act on petitioner's purchases with "timely dispatch," or for the purposes of this case, within a period significantly less than the one hour it apparently took before the purchase at Coster was finally approved.

The findings of the trial court, to our mind, amply established that the tardiness on the part of respondent in acting on petitioner's purchase at Coster did constitute culpable delay on its part in complying with its obligation to act promptly on its customer's purchase request, whether such action be favorable or unfavorable. We quote the trial court, thus:

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[21] See, *e.g.*, *Citibank, N.A. v. Cabamongan*, G.R. No. 146918, 2 May 2006, 488 SCRA 517.

As to the first issue, both parties have testified that normal approval time for purchases was a matter of seconds.

Plaintiff testified that his personal experience with the use of the card was that except for the three charge purchases subject of this case, approvals of his charge purchases were always obtained in a matter of seconds.

Defendant's credit authorizer Edgardo Jaurique likewise testified:

Q. – You also testified that on normal occasions, the normal approval time for charges would be 3 to 4 seconds?

A. – Yes, Ma'am.

Both parties likewise presented evidence that the processing and approval of plaintiff's charge purchase at the Coster Diamond House was way beyond the normal approval time of a "matter of seconds".

Plaintiff testified that he presented his AmexCard to the sales clerk at Coster, at 9:15 a.m. and by the time he had to leave the store at 10:05 a.m., no approval had yet been received. In fact, the Credit Authorization System (CAS) record of defendant at Phoenix Amex shows that defendant's Amsterdam office received the request to approve plaintiff's charge purchase at 9:20 a.m., Amsterdam time or 01:20, Phoenix time, and that the defendant relayed its approval to Coster at 10:38 a.m., Amsterdam time, or 2:38, Phoenix time, or a total time lapse of one hour and [18] minutes. And even then, the approval was conditional as it directed in computerese [*sic*] "Positive Identification of Card holder necessary further charges require bank information due to high exposure. By Jack Manila."

The delay in the processing is apparent to be undue as shown from the frantic successive queries of Amexco Amsterdam which reads: "US$13,826. Cardmember buying jewels. ID seen. Advise how long will this take?" They were sent at 01:33, 01:37, 01:40, 01:45, 01:52 and 02:08, all times Phoenix. Manila Amexco could be unaware of the need for speed in resolving the charge purchase referred to it, yet it sat on its hand, unconcerned.

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To repeat, the Credit Authorization System (CAS) record on the Amsterdam transaction shows how Amexco Netherlands viewed the delay as unusually frustrating. In sequence expressed in Phoenix time from 01:20 when the charge purchased was referred for authorization, defendants own record shows:

01:22 – the authorization is referred to Manila Amexco

01:32 – Netherlands gives information that the identification of the cardmember has been presented and he is buying jewelries worth US $13,826.

01:33 – Netherlands asks "How long will this take?"

02:08 – Netherlands is still asking "How long will this take?"

The Court is convinced that defendants delay constitute[s] breach of its contractual obligation to act on his use of the card abroad "with special handling."[22] (Citations omitted)

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Notwithstanding the popular notion that credit card purchases are approved "within seconds," there really is no strict, legally determinative point of demarcation on how long must it take for a credit card company to approve or disapprove a customer's purchase, much less one specifically contracted upon by the parties. Yet this is one of those instances when "you'd know it when you'd see it," and one hour appears to be an awfully long, patently unreasonable length of time to approve or disapprove a credit card purchase. It is long enough time for the customer to walk to a bank a kilometer away, withdraw money over the counter, and return to the store.

Notably, petitioner frames the obligation of respondent as "to approve or disapprove" the purchase "in timely dispatch," and not "to approve the purchase instantaneously or within seconds." Certainly, had respondent disapproved petitioner's purchase "within seconds" or within a timely manner, this particular action would have never seen the light of day. Petitioner and his family would have returned to the bus without delay – internally humiliated perhaps over the rejection of his card – yet spared the shame of being held accountable by newly-made friends for making them miss the chance to tour the city of Amsterdam.

We do not wish do dispute that respondent has the right, if not the obligation, to verify whether the credit it is extending upon on a particular purchase was indeed contracted by the

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[22] *Rollo*, pp. 97-99.

cardholder, and that the cardholder is within his means to make such transaction. The culpable failure of respondent herein is not the failure to timely approve petitioner's purchase, but the more elemental failure to timely act on the same, whether favorably or unfavorably. Even assuming that respondent's credit authorizers did not have sufficient basis on hand to make a judgment, we see no reason why respondent could not have promptly informed petitioner the reason for the delay, and duly advised him that resolving the same could take some time. In that way, petitioner would have had informed basis on whether or not to pursue the transaction at Coster, given the attending circumstances. Instead, petitioner was left uncomfortably dangling in the chilly autumn winds in a foreign land and soon forced to confront the wrath of foreign folk.

Moral damages avail in cases of breach of contract where the defendant acted fraudulently or in bad faith, and the court should find that under the circumstances, such damages are due. The findings of the trial court are ample in establishing the bad faith and unjustified neglect of respondent, attributable in particular to the "dilly-dallying" of respondent's Manila credit authorizer, Edgardo Jaurique.[23] Wrote the trial court:

> While it is true that the Cardmembership Agreement, which defendant prepared, is silent as to the amount of time it should take defendant to grant authorization for a charge purchase, defendant acknowledged that the normal time for approval should only be three to four seconds. Specially so with cards used abroad which requires "special handling", meaning with priority. Otherwise, the object of credit or charge cards would be lost; it would be so inconvenient to use that buyers and consumers would be better off carrying bundles of currency or traveller's checks, which can be delivered and accepted quickly. Such right was not accorded to plaintiff in the instances complained off for reasons known only to defendant at that time. This, to the Court's mind, amounts to a wanton and deliberate refusal to comply with its contractual obligations, or at least abuse of its rights, under the contract.[24]

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[23] *Id.* at 101.

[24] *Id.* at 105-106.

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The delay committed by defendant was clearly attended by unjustified neglect and bad faith, since it alleges to have consumed more than one hour to simply go over plaintiff's past credit history with defendant, his payment record and his credit and bank references, when all such data are already stored and readily available from its computer. This Court also takes note of the fact that there is nothing in plaintiff's billing history that would warrant the imprudent suspension of action by defendant in processing the purchase. Defendant's witness Jaurique admits:

Q. – But did you discover that he did not have any outstanding account?

A. – Nothing in arrears at that time.

Q. – You were well aware of this fact on this very date?

A. – Yes, sir.

Mr. Jaurique further testified that there were no "delinquencies" in plaintiff's account.[25]

It should be emphasized that the reason why petitioner is entitled to damages is not simply because respondent incurred delay, but because the delay, for which culpability lies under Article 1170, led to the particular injuries under Article 2217 of the Civil Code for which moral damages are remunerative.[26] Moral damages do not avail to soothe the plaints of the simply impatient, so this decision should not be cause for relief for those who time the length of their credit card transactions with a stopwatch. The somewhat unusual attending circumstances to the purchase at Coster – that there was a deadline for the completion of that purchase by petitioner before any delay would redound to the injury of his several traveling companions – gave rise to the moral shock, mental anguish, serious anxiety, wounded feelings and social humiliation sustained by the petitioner,

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[25] *Id.* at 104.

[26] "Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shocks, social humiliation, and similar injury. Though incapable of pecuniary computation,

as concluded by the RTC.[27] Those circumstances are fairly unusual, and should not give rise to a general entitlement for damages under a more mundane set of facts.

We sustain the amount of moral damages awarded to petitioner by the RTC. There is no hard-and-fast rule in determining what would be a fair and reasonable amount of moral damages, since each case must be governed by its own peculiar facts, however, it must be commensurate to the loss or injury suffered.[28] Petitioner's original prayer for ₱5,000,000.00 for moral damages is excessive under the circumstances, and the amount awarded by the trial court of ₱500,000.00 in moral damages more seemly.

Likewise, we deem exemplary damages available under the circumstances, and the amount of ₱300,000.00 appropriate. There is similarly no cause though to disturb the determined award of ₱100,000.00 as attorney's fees, and ₱85,233.01 as expenses of litigation.

WHEREFORE, the petition is *GRANTED*. The assailed Decision of the Court of Appeals is *REVERSED* and *SET ASIDE*. The Decision of the Regional Trial Court of Makati, Branch 145 in Civil Case No. 92-1665 is hereby REINSTATED. Costs against respondent.

SO ORDERED.

Carpio Morales,[*] *Velasco, Jr., Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

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moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission."

[27] See *rollo*, p. 107.

[28] *Mercury Drug v. Baking*, G.R. No. 156037, May 25, 2007, 523 SCRA 184, 191.

[*] Acting Chairperson.

[**] Per Special Order No. 619, Justice Teresita J. Leonardo-De Castro is hereby designated as additional member of the Second Division in lieu of Justice Leonardo A. Quisumbing, who is on official leave

SECOND DIVISION

[G.R. No. 175647. May 8, 2009]

GUIDO CATUIRAN *y* NECUDEMUS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; PROOF OF GUILT; IN PROSECUTIONS INVOLVING NARCOTICS, IT MUST BE ESTABLISHED WITH EXACTITUDE THAT THE DANGEROUS DRUGS PRESENTED IN COURT AS EVIDENCE AGAINST THE ACCUSED IS THE SAME AS THAT SEIZED FROM HIM.—** We begin with the precept that in criminal prosecutions, fundamental is the requirement that the elemental acts constituting the offense be established with moral certainty as this is the critical and only requisite to a finding of guilt. In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. Of prime importance therefore in these cases is that the identity of the dangerous drug be likewise established beyond reasonable doubt. In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.

2. **ID.; ID.; ID.; ID.; CHAIN OF CUSTODY RULE, EXPLAINED.—** 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. Indeed, it is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.

3. ID.; ID.; ID.; ID.; ID.; FAILURE TO COMPLY WITH THE EXACTING STANDARD OF THE RULE; CASE AT BAR.— [W]hat, in this case, appears to weigh heavily on the prosecution's cause is the confusion that marks the testimony of Damasco and Baldevieso as to who delivered the specimens to the laboratory. It must be recalled that Damasco claimed that it was he himself who delivered the specimens, but Baldevieso recounted that it was Bolivar who did so. This inconsistency, minor as it may seem, is in fact crucial to a reliable chain of custody of the drug specimens. For, if indeed it was Bolivar who had undertaken to submit the sachets to the laboratory, then the evidence chain would be incomplete in view of the fact that he had not been given an opportunity to appear in court to at least observe the uniqueness of the exhibits and testify as to the condition thereof in the interim that the evidence was in his possession and control. For this same reason, it must also be taken note of that the prosecution had likewise failed to offer the testimony of the unnamed evidence custodian mentioned by Damasco and Patron in their testimony. The same is true with respect to Espura who, according to Ompoy, was the one who received the specimens at the crime laboratory and who could have somehow shed light on the identity of the person which submitted the same for examination. While indeed a perfect chain of custody does not always have to be the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's

level of susceptibility to fungibility, alteration or tampering—without regard to whether the same is advertent or otherwise not—dictates the level of strictness in the application of the chain of custody rule. A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. And the risk of tampering, loss or mistake with respect to an exhibit of this nature is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. As a reasonable measure, in authenticating narcotic specimens, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with. Thus, we cannot simply close our eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over narcotic substances there could have been tampering, alteration or substitution of substances from other cases—by accident or otherwise—in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Inevitably, the conclusion is that the prosecution in this case failed to comply with that standard. For that reason, no reasonable assurance could be had that the specimens of *shabu* submitted in court as evidence against petitioner were the same ones seized from him in the first place, delivered to the police station and later on submitted to the laboratory for chemical analysis—especially considering that petitioner, since the inception of the case, has been adamant in asserting that the supposed sachets of *shabu* were merely planted evidence and that no such items had been recovered from him when he and his brother were arrested.

4. ID.; ID.; PROOF BEYOND REASONABLE DOUBT, NOT ESTABLISHED.— [T]he attendant loopholes in the evidence adduced against petitioner in this case resonate the fact that the prosecution was unable to establish the identity of the dangerous drugs and in effect failed to obliterate the hypothesis of appellant's guiltlessness. And even if we blindly rely on the credibility of the prosecution witnesses in this case, the

evidence would still fall short of satisfying the quantum of evidence required to arrive at a finding of guilt beyond reasonable doubt since the evidence chain failed to solidly connect petitioner with the evidence in a way that would establish that the specimens are one and the same as that seized in the first place and offered in court as evidence.

APPEARANCES OF COUNSEL

Higino C. Macabales for petitioner.
The Solicitor General for respondent.

D E C I S I O N

TINGA, *J.*:

In this petition for review,[1] Guido Catuiran *y* Necudemus assails the Decision[2] of the Court of Appeals[3] in CA-G.R. No. 27702 dated 28 June 2006, as well as its Resolution[4] dated 14 November 2006 which denied reconsideration. The assailed decision affirmed the judgment of conviction[5] rendered by the Regional Trial Court of Kalibo, Aklan, Branch 5 in Criminal Case No. 5834, one for violation of Section 16, Article III of Republic Act No. 6425, as amended.

Petitioner Guido Catuiran *y* Necudemus and his brother, Robert Catuiran (Robert), were apprehended in an entrapment operation conducted by the elements of the Batan, Aklan police force on 23 November 2000 following a "test-buy" operation conducted by a police informant two days before. The two were allegedly caught in the act selling methamphetamine hydrochloride, a dangerous drug locally known as *shabu.* They were charged in a criminal information as follows:

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[1] *Rollo*, pp. 9-32.

[2] *Id.* at 37-46; The decision was penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Agustin S. Dizon.

[3] 19th Division, Cebu City.

[4] *Rollo*, pp. 48-49.

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

That on or about the 23rd day of November 2000, in the afternoon, in Barangay Lupit, Municipality of Batan, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, and acting as pushers [or] brokers in the business of selling, delivering, giving away to another and/or distributing regulated drugs, did then and there willfully, unlawfully and feloniously have in their possession and control two (2) plastic sachets of Methamphetamine Hydrochloride (*Shabu*) weighing 9.5 grams, more or less, which were confiscated from the said accused by members of the Philippine National Police of Batan Police Station, Batan, Aklan, along with cash money amounting to ONE THOUSAND FOUR HUNDRED PESOS AND FIFTY CENTAVOS (₱1,004.50).

CONTRARY TO LAW.[6]

On arraignment, petitioner and Robert entered a negative plea.[7]

At the ensuing trial, the prosecution presented SPO3 Jose Patron (Patron), PO1 Ariel Damasco (Damasco), P/Sr. Insp. Angela Baldevieso (Baldevieso) and P/Insp. Agustina Ompoy (Ompoy) as witnesses. Patron and Damasco were members of the buy-bust team, whereas Baldevieso and Ompoy were forensic chemists at the Camp Delgado Crime Laboratory where the alleged specimens of drugs seized from the two accused (petitioner and Robert) were brought for chemical analysis.

It was established from the prosecution evidence that petitioner and Robert had been known to the Batan authorities for already a month as they had been placed under police surveillance based on the information given by an anonymous informant that they were in the business of selling dangerous drugs. Two days before their arrest, the police asset allegedly was able to buy *shabu* from the two accused.[8] Thus, at around 4:00 in the afternoon of 23 November 2000, the members of the buy-bust team prepared for the operation. At the appointed place and time, the *poseur-buyer* met with petitioner who arrived in a motorcycle

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[6] Records, p. 1.

[7] Records, p. 12.

[8] TSN, 1 March 2001, pp. 3-4.

driven by Robert. The members of the apprehending team were hidden behind a row of plants so they were not visible to the two. The transaction, however, did not transpire as the two accused were in a hurry. Petitioner allegedly was heard saying, *"Abo riya and* stock, *mabalik ugaling kami kung hi* re-pack *ean,"*—implying that they would be back after they have repacked some more of the merchandise—and was seen showing to the poseur-buyer two big sachets of *shabu.* At that instant, Robert uttered, *"Mosyon!* (Let's go!"), and then sped away.[9]

The police then chased the two accused and caught up with them somewhere in Barangay Lupit. The buy-bust team instantaneously introduced themselves as policemen and ordered the two accused to stop. Then, Patron allegedly noticed petitioner taking something out of his left pocket, which he threw away. They then confiscated one sachet of *shabu* from petitioner. The wife of a *kagawad*, who was standing by at the time, allegedly saw petitioner throwing the other sachet away and saw where it landed so she collected it and handed it over to Patron while the accused were being frisked. Aside from the plastic sachets, the team was also able to recover cash from petitioner in the amount of ₱1,004.50. The two accused were brought directly to the police station.[10]

Patron, the leader of the buy-bust team,[11] testified and admitted in court the identity of the drugs recovered from petitioner but that he could not determine which one of the two sachets was recovered directly from petitioner and which one was picked up and surrendered to him by the wife of the *kagawad.* Neither could he recall who actually delivered the specimens to the laboratory and who placed the initial markings thereon as he allegedly surrendered the sachets to the officer-in-charge, Patrocinio Bolivar, who then turned them over to the custodian.[12]

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[9] TSN, 1 March 2001, pp. 5-7; TSN, 25 October 2001, pp. 3-6, 9-11.

[10] TSN, 25 October 2001, pp. 12-16, 18-23; TSN, 3 January 2002, p. 3; TSN, 1 March 2001, pp. 7-9.

[11] TSN, 1 March 2001.

[12] TSN, 7 November 2001, pp. 4-6.

Damasco, supply and finance officer of the Batan police, testified that he marked the plastic sachets each with the initials "A" and "B" at the police station and then brought them to the Camp Delgado Crime Laboratory in Iloilo City on 28 November 2000 for laboratory examination. He professed that he was the one, without company, who had brought the seized sachets of alleged *shabu* to the crime laboratory[13] but did not inform the two accused or the latter's representative of such fact.[14]

Ompoy, the forensic chemist at the crime laboratory testified that she was the one who administered the examination on the specimen. In open court, she was able to observe the uniqueness of the specimens and admitted as her own the markings she had placed on them.[15] She narrated that after conducting the necessary 3-stage test on the specimens submitted, they had tested positive for methamphetamine hydrochloride content. On cross-examination, she admitted that the specimens were received by a certain SPO1 Alberto Espura (Espura) but that immediately she conducted the tests on them.[16] Baldevieso, for her part, affirmed that it was indeed Ompoy who administered the tests on the specimens, but stated that it was Bolivar who delivered the specimens to the laboratory for testing.[17]

The prosecution then submitted to the court the chemistry report[18] bearing the signature of Ompoy and of C/Insp. Rea Abastillas Villavicencio. The report indicates that the two specimens of alleged *shabu* had been tested positive for methamphetamine hydrochloride content.

For his defense, petitioner narrated that he and Robert were on board a motorcycle on their way home that day when suddenly,

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[13] TSN, 25 October 2001, pp. 21, 25.

[14] *Id.* at 19-20, 23.

[15] TSN, 3 January 2002, pp. 3-5.

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

[17] TSN, 24 October 2001, pp. 3-6.

[18] Records, p. 280; The report bore serial numbers D-314-2000.

a certain Steve David summoned him and asked him whether he had a buyer for wood products. Saying that he had none, he and Robert proceeded on their way.[19] This incident was affirmed by Steve David.[20] On their approach to the area of *Barangay* Lupit, Patron and a certain Patrocinio Bolivar, known to him as members of the Batan police, who were also on motorcycle, overtook them from behind and blocked their way. And as soon as they had been stopped, the two police officers allegedly told them to alight and lie face down on the ground, fired a gun and started frisking their pockets. They were then handcuffed and were told to go with the officers to the *poblacion*. Patron allegedly was able to recover from him his cash money.[21] This incident was likewise established by the testimony of Arnaldo Reyes.[22]

At the station, Patron, in the course of the interrogation, allegedly insinuated that the two plastic sachets on the table belonged to petitioner. Petitioner denied ownership thereof and reasoned that the police had not in fact recovered anything from him when he was frisked. He also denied having been in the business of selling drugs.[23] Robert corroborated petitioner's testimony in its material respects.[24]

In its Decision dated 3 July 2003, the trial court found petitioner guilty beyond reasonable doubt of the offense charged but acquitted Robert for insufficiency of evidence.[25]

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[19] TSN, 29 August 2002, pp. 6-9.

[20] TSN, 25 November 2002, pp. 4-6.

[21] TSN, 29 August 2002, pp. 8-12.

[22] TSN, 17 February 2003, pp. 3-11.

[23] TSN, 29 August 2002, pp. 14-15.

[24] TSN, 22 August 2002, pp. 3-8; TSN, 28 August 2002, pp. 2-8

[25] *Rollo,* p. 35; The dispositive portion of the trial court's decision reads:

IN VIEW OF THE FOREGOING, judgment is hereby rendered finding GUIDO CATUIRAN *y* NECUDEMOS, GUILTY beyond reasonable doubt for the crime of Violation of Section 16, Article III of the Dangerous Drugs Act of 1972, as amended, and is hereby sentenced to suffer the indeterminate penalty of One (1) year, Eight (8) months and Twenty-one (21) days to Two (2) years and Four (4) months of *prision correccional* minimum in its maximum period.

On appeal, the Court of Appeals affirmed the decision of the trial court.[26] Petitioner's motion for reconsideration was denied.[27] Hence, this recourse to the Court.

In this petition for review, petitioner, on the one hand, boldly reiterates that he had merely been framed up by the members of the Batan police as indeed no buy-bust operation was conducted by the officers, said officers had not seen petitioner in possession of the alleged drugs that would otherwise justify the chase that ensued and which culminated in a warrantless search and arrest, and not a single sachet of *shabu* had been confiscated from him. He also faults both the trial court and the Court of Appeals in placing too much credibility on the prosecution witnesses.[28]

On the other hand, the Office of the Solicitor General counters that the credibility of the prosecution witnesses prevails over the uncorroborated defenses of denial and frame-up advanced by petitioner inasmuch as the police officers in this case are presumed to have regularly performed their duty and because the same had not been refuted by clear and convincing evidence. It likewise noted that what was important is that the prosecution was able to establish that the buy-bust team actually recovered

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For insufficiency of evidence, the criminal complaint against ROBERT CATUIRAN y NECUDEMOS should be, as it is hereby, DISMISSED.

For want of evidence showing that the One Thousand Four Pesos and Fifty Centavos (₱1,004.50) are proceeds of the crime, said sum of money is ordered return[ed] to accused Guido Catuiran.

The two heat-sealed transparent plastic bags containing a total weight of 8.62 grams of Methamphetamine Hydrochloride (*shabu*) is ordered turned over to the Philippine Drug Enforcement Agency (PDEA) for proper disposal in accordance with law.

SO ORDERED.

[26] *Id.* at 45. The Court of Appeals disposed of the case as follows:

WHEREFORE, in view of the foregoing premises, the instant appeal is hereby DISMISSED and the impugned Decision dated July 3, 2003 of the RTC of Kalibo, Aklan, Branch 5 in Crim. Case No. 5834 is hereby AFFIRMED.

SO ORDERED.

[27] *Supra* note 4.

[28] *Rollo*, pp. 20-21.

the two sachets of *shabu* from petitioner. Thus, it concludes, there was sufficient basis—aside from the presumption that the officers had regularly performed their duty—for a finding of guilt beyond reasonable doubt.[29]

The Court has to grant the petition.

Prefatorily, although the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal, this rule does not apply where facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal.[30]

We begin with the precept that in criminal prosecutions, fundamental is the requirement that the elemental acts constituting the offense be established with moral certainty as this is the critical and only requisite to a finding of guilt. In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.[31] Of prime importance therefore in these cases is that the identity of the dangerous drug be likewise established beyond reasonable doubt.[32] In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[33]

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by

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[29] *Id.* at 80-83.

[30] *People v. Pedronan*, 452 Phil. 226, 233 (2003); *People v. Casimiro*, 432 Phil. 966, 974-975 (2002); *People v. Laxa*, 414 Phil. 156, 162-163 (2001).

[31] *People v. Obmiranis,* G.R. No. 181492, 16 December 2008; *People v. Simbahon,* 449 Phil. 74, 81 (2003); *People v. Laxa*, 414 Phil. 156, 170 (2001).

[32] *People v. Obmiranis,* G.R. No. 181492, 16 December 2008; *Mallillin v. People*, G.R. No. 172953, 30 April 2008, 553 SCRA 619, 632; *People v. Kimura*, G.R. No. 130805, 27 April 2004, 428 SCRA 51, 70; *People v. Simbahon*, 449 Phil. 74, 83 (2003).

[33] *AN ANALYTICAL APPROACH TO EVIDENCE*, RONALD J. ALLEN, RICHARD B. KUHNS, by Little Brown & Co., U.S.A, 1989, p. 174.

evidence sufficient to support a finding that the matter in question is what the proponent claims it to be.[34] 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.[35] Indeed, it is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.[36]

On this score, what, in this case, appears to weigh heavily on the prosecution's cause is the confusion that marks the testimony of Damasco and Baldevieso as to who delivered the specimens to the laboratory. It must be recalled that Damasco claimed that it was he himself who delivered the specimens, but Baldevieso recounted that it was Bolivar who did so. This inconsistency, minor as it may seem, is in fact crucial to a reliable chain of custody of the drug specimens. For, if indeed it was Bolivar who had undertaken to submit the sachets to the laboratory, then the evidence chain would be incomplete in view of the fact that he had not been given an opportunity to appear in court to at least observe the uniqueness of the exhibits and testify as to the condition thereof in the interim that the evidence was in his possession and control.

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[34] *Mallillin v. People,* G.R. No. 172953, 30 April 2008, 553 SCRA 619, 632, citing *United States v. Howard-Arias*, 679 F.2d 363, 366; *United States v. Ricco*, 52 F.3d 58.

[35] *Mallillin v. People*, G.R. No. 172953, 30 April 2008, 553 SCRA 619, 633, citing *Evidence Law*, Roger C. Park, David P. Leonard, Steven H. Goldberg, 1998, 610 Opperman Drive, St. Paul Minnesota, p. 507.

[36] *People v. Obmiranis*, G.R. No. 181492, 16 December 2008.

For this same reason, it must also be taken note of that the prosecution had likewise failed to offer the testimony of the unnamed evidence custodian mentioned by Damasco and Patron in their testimony. The same is true with respect to Espura who, according to Ompoy, was the one who received the specimens at the crime laboratory and who could have somehow shed light on the identity of the person which submitted the same for examination.

While indeed a perfect chain of custody does not always have to be the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness.[37] The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange.[38] In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering—without regard to whether the same is advertent or otherwise not—dictates the level of strictness in the application of the chain of custody rule.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. And the risk of tampering, loss or mistake with respect to an exhibit of this nature is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.[39] As

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[37] *Mallillin v. People, supra*; *People v. Obmiranis*, G.R. No. 181492, 16 December 2008; *Carino v. People*, G.R. No. 178757, 13 March 2009, all citing *EVIDENCE LAW*, ROGER C. PARK, DAVID P. LEONARD, STEVEN H. GOLDBERG, 1998, 610 OPPERMAN DRIVE, ST. PAUL MINNESOTA, P. 507; 29A AM. JUR. 2D EVIDENCE §946.

[38] *Mallillin v. People, supra*; *People v. Obmiranis*, G.R. No. 181492, 13 March 2009; *Carino v. People*, G.R. No. 178757, 13 March 2009.

[39] *Mallillin v. People,* G.R. No. 172953, 30 April 2008; *People v. Obmiranis*, G.R. No. 181492, 13 March 2009; *Carino v. People*, G.R. No. 178757, 13 March 2009, citing *Graham v. State*, 255 N.E2d 652, 655.

a reasonable measure, in authenticating narcotic specimens, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with. Thus, we cannot simply close our eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over narcotic substances there could have been tampering, alteration or substitution of substances from other cases—by accident or otherwise—in which similar evidence was seized or in which similar evidence was submitted for laboratory testing.

Inevitably, the conclusion is that the prosecution in this case failed to comply with that standard. For that reason, no reasonable assurance could be had that the specimens of *shabu* submitted in court as evidence against petitioner were the same ones seized from him in the first place, delivered to the police station and later on submitted to the laboratory for chemical analysis—especially considering that petitioner, since the inception of the case, has been adamant in asserting that the supposed sachets of *shabu* were merely planted evidence and that no such items had been recovered from him when he and his brother were arrested.

All told, the attendant loopholes in the evidence adduced against petitioner in this case resonate the fact that the prosecution was unable to establish the identity of the dangerous drugs and in effect failed to obliterate the hypothesis of appellant's guiltlessness. And even if we blindly rely on the credibility of the prosecution witnesses in this case, the evidence would still fall short of satisfying the quantum of evidence required to arrive at a finding of guilt beyond reasonable doubt since the evidence chain failed to solidly connect petitioner with the evidence in a way that would establish that the specimens are one and the same as that seized in the first place and offered in court as evidence.

In *Mallillin v. People*,[40] *People v. Obmiranis*[41] and *People v. Garcia*[42] and *Carino v. People*[43] we declared that the failure of the prosecution to offer the testimony of key witnesses to establish a sufficiently complete chain of custody of a specimen of *shabu,* and the irregularity which characterized the handling of the evidence before the same was finally offered in court, fatally conflict with every proposition relative to the culpability of the accused. It is this same reason that now moves us to reverse the judgment of conviction in the present case.

WHEREFORE, the assailed Decision of the Court of Appeals CA-G.R. CR No. 27702 dated 28 June 2006 affirming the judgment of conviction of the Regional Trial Court of Kalibo, Aklan, Branch 5 in Criminal Case No. 5834, as well as its Resolution dated 14 November 2006 which denied reconsideration, are *REVERSED* and *SET ASIDE.* Petitioner Guido Catuiran *y* Necudemus is *ACQUITTED* on reasonable doubt and is accordingly ordered immediately released from custody unless he is being lawfully held for another offense.

The Director of the Bureau of Corrections is directed to implement this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.

Carpio Morales,[*] *Velasco, Jr., Leonardo-de Castro,*[*] and *Brion, JJ.,* concur.

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[40] *Supra.*

[41] *Supra.*

[42] G.R. No. 173480, 25 February 2009. The case cited the case of *Mallillin v. People,* G.R. No. 172953, April 30, 2008 as "*Lopez v. People*."

[43] G.R. No. 178757, 13 March 2009.

[*] Acting Chairperson.

[**] Per Special Order No. 619, Justice Teresita Leonardo-De Castro is hereby designated as additional member of the Second Division in lieu of Justice Leonardo A. Quisumbing, who is on official leave.

SECOND DIVISION

[G.R. Nos. 175728 & 178914. May 8, 2009]

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner, vs.* **PRIME NEIGHBORHOOD ASSOCIATION,** *respondent.*

SYLLABUS

1. **CIVIL LAW; ACT 3135; MINISTERIAL DUTY OF THE COURT TO ISSUE WRIT OF POSSESSION AFTER THE FORECLOSURE SALE AND DURING THE REDEMPTION PERIOD; EXCEPTION.—** It is ministerial upon the court to issue a writ of possession after the foreclosure sale and during the period of redemption. The governing law, Act No. 3135, as amended, in Section 7 thereof, explicitly authorizes the purchaser in a foreclosure sale to apply for a writ of possession during the redemption period by filing an *ex parte* motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property with Torrens title. Upon the filing of such motion and the approval of the corresponding bond, the law also in express terms directs the court to issue the order for a writ of possession. The writ of possession issues as a matter of course even without the filing and approval of a bond after consolidation of ownership and the issuance of a new transfer certificate of title in the name of the purchaser. But the rule is not without exception. Under Section 35, Rule 39 of the Rules of Court, which is made suppletory to the extrajudicial foreclosure of real estate mortgages by Section 6 of Act 3135, as amended, the possession of the mortgaged property may be awarded to a purchaser in the extrajudicial foreclosure *unless a third party is actually holding the property adversely to the judgment debtor*. Thus, in the cited case of *Philippine National Bank v. Court of Appeals*, the Court held that the obligation of a court to issue an *ex parte* writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor. This is substantiated by the Civil Code which protects the actual possessor of a property.

2. ID.; ID.; ID.; EXCEPTION, APPLIED; WHEN A PARTY WAS CONSIDERED "*A THIRD PARTY HOLDING THE PROPERTY ADVERSELY TO THE JUDGMENT DEBTOR*".— The question now is whether PNA is a third party in possession of the property claiming a right adverse to that of the debtor/ mortgagor. The answer is yes. DBP's right of possession is founded on its right of ownership over the property which he purchased at the auction sale. Upon expiration of the redemption period and consolidation of the title to the property in its name, DBP became substituted to and acquired all the rights, title and interest of the mortgagor Y Electric. As the new owner of the property, DBP can validly exercise his right of possession over it. Thus, as against Y Electric and its successors-in-interest, DBP can apply for the issuance of a writ of possession against them to compel them to deliver and transfer possession to DBP. Note, however, that a third party not privy to the debtor/ mortgagor—in this case, Y Electric—is protected by law. The purchaser's right of possession is recognized only as against the judgment debtor and his successor-in-interest but not against persons whose right of possession is adverse to the latter. As previously stated, under the law, such third party's possession of the property is legally presumed to be pursuant to a just title which may be overcome by the purchaser in a judicial proceeding for recovery of the property. It is through such a judicial proceeding that the nature of such adverse possession by the third party is determined, according such third party due process and the opportunity to be heard. The third party may be ejected from the property only after he has been given an opportunity to be heard, conformably with the time-honored principle of due process. In its petition for *certiorari* in CA-G.R. No. SP No. 85870, PNA claims that it is the owner of the property in dispute as it purchased it from its true owner, and that the title to the property upon which Y Electric and DBP base their claim is fictitious and non-existent. In exercise of its right of ownership, PNA filed an ejectment case against DBP which is now on appeal with the RTC of Quezon City. There is nothing in the records that would show that PNA derives its claim of ownership from Y Electric or from Y Electric's predecessors-in-interest, or that PNA is a successor-in-interest or transferee of Y Electric's rights. It is thus clear that PNA asserts a claim of ownership adverse to that of Y Electric and DBP, and that it acquired title and possession of the property

by virtue of a title entirely distinct from that through which DBP claims. PNA thus stands in the same position as a stranger or third party whose rights to the property cannot be resolved in an *ex parte* proceeding where it was not impleaded or where it could appear to present its side.

3. **ID.; ID.; ID.; THE JURISDICTION OF THE COURT IS LIMITED ONLY TO THE ISSUANCE OF THE WRIT OF POSSESSION, IT HAS NO JURISDICTION TO DETERMINE WHO IS THE RIGHTFUL OWNER OR LAWFUL POSSESSOR OF THE PROPERTY.—** PNA also need not prove its ownership of the foreclosed property in the same *ex parte* proceeding instituted by DBP. The jurisdiction of the court in the *ex parte* proceeding is limited only to the issuance of the writ of possession. It has no jurisdiction to determine who between the parties is the rightful owner and lawful possessor of the property. As earlier stated, the appropriate judicial proceeding must be resorted to. Consequently, the Court of Appeals' order in CA-G.R. SP No. 85870 to remand the case to the court *a quo* to determine whether PNA and its members are actually in possession of the property claiming a right adverse to that of the original mortgagor is unnecessary.

APPEARANCES OF COUNSEL

Office of the Legal Counsel (DBP) for petitioner.
Prudencio F. Jatayna and *Antolin D. Medalla* for respondent.

D E C I S I O N

TINGA, *J.*:

Before this court are two consolidated cases involving two petitions for review on *certiorari*. The petitions seek to set aside the following decisions and resolutions of the Court of Appeals: in G.R. No. 175728, the Decision[1] dated 15 September 2006 and Resolution[2] dated 11 December 2006 of the Court of

[1] *Rollo* (G.R. No. 175728), pp. 56-64.

[2] *Id.* at 66-67.

Appeals Eleventh Division, while in G.R. No. 178914, the Decision[3] dated 28 August 2006 and Resolution[4] dated 17 July 2007 of the Fifteenth Division.

These consolidated cases arose from an *Ex-Parte* Petition for Issuance of a Writ of Possession[5] filed before the Regional Trial Court (RTC) of Quezon City, Branch 92, filed by petitioner Development Bank of the Philippines (DBP) against Y-Electric Power Corporation (Y-Electric), mortgagor and previous owner of the subject parcel of land. Sometime in June 1960, Y-Electric obtained from DBP an industrial loan of ₱408,000.00 secured by a Real Estate Mortgage executed by the spouses Victorino Yenko and Rosa Jaranilla-Yenko in favor of DBP, over the parcel of land situated in Quezon City, covered by certificate of title TCT No. 342461 (RT-101612).

Y-Electric failed to pay its loan obligation; hence, DBP instituted extrajudicial foreclosure of the mortgage. On 4 March 1977, the property was sold at public auction to DBP as the highest bidder. A certificate of sale was issued in favor of DBP and was registered on 25 May 1977. The redemption period expired on 25 May 1978 without the property being redeemed. On 20 May 2000, DBP consolidated its ownership of the property. Thereafter, DBP subdivided the parcel of land, and on 12 March 2003, had TCT No. 342461 cancelled and in lieu thereof TCT Nos. 247959 and 247960 issued in its name.

On 12 March 2004, DBP filed the *Ex-Parte* Petition for Issuance of a Writ of Possession.[6] On 28 May 2004, the RTC issued an order[7] granting the petition and a writ of possession was issued on 1 June 2004.

On 29 July 2004, respondent Prime Neighborhood Association (PNA) filed its Opposition to the Writ of Possession with Prayer

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

[4] *Id.* at 68-75.

[5] *Id.* at 68-75.

[6] *Rollo* (G.R. No. 178914), pp. 104-109.

[7] *Rollo* (G.R. No. 175728), pp. 79-80.

for Temporary Restraining Order (TRO).[8] PNA claimed to represent third persons in possession of the property in their own right and adverse to the mortgagor Y-Electric. It alleged that it became aware of the writ only when it was being served upon its president Oscar Estopin and several of its members on 14 July 2004. PNA claimed that it should have been notified of the proceedings as it is the owner of the subject property pursuant to a Deed of Sale executed to them by Julian M. Tallano, the registered owner's predecessor-in-interest and court-appointed administrator. It disputed the ownership of Y-Electric as mortgagor and DBP as purchaser at auction as their claims arose from a spurious title. PNA alleged it had filed a case for unlawful detainer against DBP and Luzonville Homeowners Association before the Metropolitan Trial Court (MeTC) of Quezon City, Branch 21, docketed as Civil Case No. 32412. The unlawful detainer case was dismissed on 6 April 2004. PNA filed a notice of appeal on 11 May 2004, and said appeal was still pending at another branch of the Quezon City RTC. PNA claimed that as it was not included as a party in the proceedings of the issuance of the writ of possession, it was deprived of due process when the said writ was issued.

On 5 August 2004, the RTC issued an order noting PNA's opposition and denying its prayer for the issuance of a TRO.[9] Aggrieved, PNA filed a petition for *certiorari*[10] with the Court of Appeals docketed as CA-G.R. SP No. 85870 to annul the writ of possession issued on 28 May 2004, with prayer for issuance of a restraining order to prevent DBP from dispossessing them of the property.

In the meantime, on 17 September 2004, DBP served a notice to vacate the premises against PNA through Sheriff Wilfredo Villanueva of the RTC. The occupants of the property however refused to receive the notice and the sheriff was forced to leave the notice to vacate at their residences. DBP thus filed a Motion

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[8] *Rollo* (G.R. No. 178914), pp. 115-122.

[9] *Rollo* (G.R. No. 178914), p. 127.

[10] *Rollo* (G.R. No. 175728), pp. 81-88.

to Issue an Order of Demolition to Effect the Implementation of the Writ of Possession[11] against PNA, all persons occupying the subject property and all the improvements thereon. On 30 November 2004, the RTC denied the motion.[12] DBP's motion for reconsideration was likewise denied. Thus, DBP filed a petition for *certiorari*[13] with the Court of Appeals docketed as CA-G.R. SP No. 89051 to annul the orders denying its motion for issuance of a demolition order and its motion for reconsideration.

In CA-G.R. SP No. 85870, the Court of Appeals promulgated the assailed Decision[14] dated 15 September 2006 granting PNA's petition for *certiorari* and setting aside the RTC's order for the issuance of the writ of possession. The appellate court relied on *Philippine National Bank v. Court of Appeals*[15] and *Capital Credit Dimension, Inc. v. Chua*[16] which both held that the obligation of a court to issue an *ex parte* writ of possession in favor of a purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor, and that the issuance of the writ of possession in such a case would be to sanction a summary ejectment in violation of the basic tenets of due process. The Court of Appeals thus held that the RTC should not just ignore PNA's claims but should allow their opposition to be heard in order to determine whether they are actual occupants of the subject property. The dispositive portion of the decision reads:

> WHEREFORE, in view of all the foregoing, the petition is GRANTED and the assailed orders of the public respondent are declared NULL and VOID and are hereby SET ASIDE.

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[11] *Rollo* (G.R. No. 178914), pp. 139-142.

[12] *Rollo* (G.R. No. 178914), pp. 101-102.

[13] *Rollo* (G.R. No. 178914), pp. 86-100.

[14] *Supra* note 1. Penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Elvi John S. Asuncion and Jose Catral Mendoza.

[15] 424 Phil. 757 (2002).

[16] G.R. No. 157213, 28 April 2004, 428 SCRA 259.

This case is hereby remanded to the court *a quo* for further proceedings, specifically, to determine whether or not members of petitioner Prime Neighborhood Association, Inc., are actually in possession of subject property who are claiming right adverse to that of the original mortgagor.

SO ORDERED.[17]

The appellate court also denied DBP's motion for reconsideration in the assailed Resolution[18] dated 11 December 2006 for lack of merit.

In CA-G.R. SP No. 89051, the Court of Appeals promulgated the assailed Decision[19] dated 28 August 2006 dismissing DBP's petition for *certiorari* and affirming the RTC's orders denying DBP's motion for the issuance of a demolition order. The appellate court again cited *Philippine National Bank v. Court of Appeals*, saying that the general rule that the issuance of a writ of possession in favor of a purchaser in a foreclosure sale after the lapse of the redemption period and after title is consolidated in its favor does not apply to affect the possession of third persons claiming adverse ownership against the judgment debtor and who were not made a party therein. The Court of Appeals noted that DBP already knew of the actual adverse possession of PNA and that it was for the purpose of racing to beat the proceedings in the ejectment case filed by PNA that the *Ex-Parte* Petition for Issuance of a Writ of Possession was filed. The *fallo* of the decision thus reads:

WHEREFORE, premises considered, the Petition is hereby DISMISSED. The questioned Orders of Br. 92, Regional Trial Court, Quezon City, dated 30 November 2004 and 17 January 2005 respectively, in LRC Case No. Q-17793(04) are hereby AFFIRMED *in toto*.

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[17] *Rollo* (G.R. No. 175728), p.63.

[18] *Supra* note 2.

[19] *Supra* note 3. Penned by Associate Justice Normandie B. Pizarro, concurred in by Associate Justices Eliezer R. De Los Santos and Aurora Santiago-Lagman.

SO ORDERED.[20]

DBP filed a motion for reconsideration but this was denied in the assailed Resolution[21] dated 17 July 2007.

DBP thus filed these petitions for review. In G.R. No. 175728 assailing the decision and resolution in CA-G.R. SP No. 85870, DBP assigns the following errors:

(a) The Court of Appeals erred in granting the intervention of PNA in a proceeding which is *ex parte* in nature.

(b) The Court of Appeals erred in giving due course to the petition for *certiorari* filed by PNA which is clearly frivolous and unfounded and a collateral attack on herein petitioner's valid and subsisting title.

(c) The Court of Appeals erred in disregarding the ruling of this Honorable Supreme Court in *St. Dominic Corp. v. Intermediate Appellate Court*[22] where it was held that there is no denial of the right of a third party in an *ex parte* proceeding when the latter is merely an intruder/ squatter.[23]

In G.R. No. 178914 assailing the decision and resolution in CA-G.R. SP No. 178914, DBP raises the following grounds:

(a) The Court of Appeals erred in denying DBP's motion for demolition for its reliance on *Philippine National Bank v. Court of Appeals* is off tangent and hence, bereft of basis.

(b) The Court of Appeals should not have considered PNA's allegations collaterally attacking the integrity of DBP's titles.

(c) DBP's right to the property is founded on the right to ownership, hence its right over the property is absolute,

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[20] *Id.* at 22.

[21] *Supra* note 4.

[22] Cited as 151 SCRA 577.

[23] *Rollo* (G.R. No. 175728), p. 31.

> vesting upon it the right of possession of the property which the court must aid in effecting its delivery.[24]

The propriety of the issuance of the writ of possession relating to the foreclosure of the real estate mortgage is at issue in these consolidated cases. Consequently, DBP's arguments in the two petitions are inter-related, if not similar.

DBP argues that as the purchaser of the foreclosed property in the public auction, it has the right to petition the trial court to place him in possession of the property through the filing of an *ex parte* motion, pursuant to Sec. 7[25] of Act No. 3135,[26] as amended by Act No. 4118.[27] The issuance of a writ of possession to the purchaser in the extrajudicial foreclosure has long been held to be a ministerial function of the trial court. By the very

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[24] *Rollo* (G.R. No. 178914), pp. 39-49.

[25] Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

[26] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES, 6 March 1924.

[27] AN ACT TO AMEND ACT NUMBERED THIRTY-ONE HUNDRED AND THIRTY-FIVE, ENTITLED "AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES," 7 December 1933.

nature of an *ex parte* proceeding that it is brought for the benefit of one party only and without notice to or consent by any person adversely interested, PNA should not have been allowed to intervene by filing an opposition to the motion for issuance of writ of possession. Instead, DBP claims, PNA should have filed a direct proceeding to have DBP's title declared void and not have resorted to the procedural short cut of intervention.

DBP also argues that PNA's claim of ownership upon which it based its opposition is baseless. DBP alleges that PNA, through its president Oscar Estopoin, recognized DBP's ownership over the subject property. Estopin was the former Vice President of Luzonville Homeowner's Association, Inc. (LHA) and one of its incorporators. The Articles of Incorporation and By-Laws of LHA were registered with the Home Insurance and Guaranty Corporation on 21 August 1998 as "Luzonville Homeowners Association, Inc. (Development Bank of the Philippines Property)." The By-Laws also indicated that the members of LHA were all homeowners or long term lessees of houses at the subject property owned by DBP. DBP claims that it was only on 9 February 2004 that PNA started to falsely claim ownership of the foreclosed property by virtue of an alleged Deed of Sale with Real Estate Mortgage from the vendor, a certain Don Julian M. Tallano, when they learned that DBP agreed to sell the subject property to LHA pursuant to a Memorandum of Agreement dated 22 December 2003. DBP clarifies that PNA is merely a break-away group from LHA. With LHA's recognition of DBP's ownership of the foreclosed property under the Memorandum of Agreement, PNA is estopped from making an adverse claim of ownership against DBP.

PNA claims that DBP's title to the foreclosed property is void, having as its source a fraudulent original certificate of title, OCT No. 614. Such a claim, DBP argues, constitutes a collateral attack on DBP's titles to the foreclosed property. DBP points out that the property is covered by a certificate of title and has passed through different owners until it was acquired by DBP. DBP has already consolidated its title to the property and has had it registered in its name. Previous to that, nobody claimed ownership thereof adverse to the former owners and

to DBP. In sanctioning PNA's baseless claim of ownership, DBP alleges that the Court of Appeals has ignored the protection given by law to the Torrens system and to the certificates of title issued to DBP. DBP thus argues that the Court of Appeals should not have relied on *Philippine National Bank v. Court of Appeals* because PNA cannot be considered a third party in possession of the subject property under a claim of title adverse to DBP's. PNA is neither the owner nor is in possession of rights under a color of title, but a mere squatter/intruder. On the other hand, DBP's right to the property is founded on its right of ownership. It has an indefeasible right to the property and its right over the property is absolute, vesting upon it the right of possession. Thus, the Court of Appeals should have allowed DBP to enforce its right to the possession of the property. The Court of Appeals should have relied on *St. Dominic Corp. v. Intermediate Appellate Court*[28] which emphasized the indefeasibility of Torrens title *vis-à-vis* baseless claims of ownership. It held that as the purchaser of the properties in the foreclosure sale, and to which the respective titles thereto have already been issued, DBP's right over the property has become absolute, vesting upon it the right of possession of the property which the court must aid in effecting its delivery.

DBP thus prays that the decision of the CA in CA-G.R. SP No. 85870 be set aside and the writ of possession granted by the RTC be reinstated, and that the decision in CA-G.R. SP No. 89051 affirming the denial of the motion for a writ of demolition be set aside and the implementation of the writ of possession through the issuance of the writ of demolition against PNA be ordered.

The Court finds the petitions bereft of merit. They should be denied.

It is ministerial upon the court to issue a writ of possession after the foreclosure sale and during the period of redemption. The governing law, Act No. 3135, as amended, in Section 7 thereof, explicitly authorizes the purchaser in a foreclosure sale

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[28] 235 Phil. 582 (1987).

to apply for a writ of possession during the redemption period by filing an *ex parte* motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property with Torrens title. Upon the filing of such motion and the approval of the corresponding bond, the law also in express terms directs the court to issue the order for a writ of possession.[29] The writ of possession issues as a matter of course even without the filing and approval of a bond after consolidation of ownership and the issuance of a new transfer certificate of title in the name of the purchaser.[30]

But the rule is not without exception. Under Section 35,[31] Rule 39 of the Rules of Court, which is made suppletory to the extrajudicial foreclosure of real estate mortgages by Section 6 of Act 3135, as amended, the possession of the mortgaged property may be awarded to a purchaser in the extrajudicial foreclosure *unless a third party is actually holding the property adversely to the judgment debtor*. Thus, in the cited case of *Philippine National Bank v. Court of Appeals*,[32] the Court held that the obligation of a court to issue an *ex parte* writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor.[33] This is substantiated by the

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[29] *Sulit v. Court of Appeals*, 335 Phil. 914, 924 (1997).

[30] *Penson v. Maranan*, G.R. No. 148630, 20 June 2006, 491 SCRA 396, 405.

[31] Now Section 33, Rule 39 of the Rules of Court as revised. The second paragraph thereof reads: "Sec. 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.*—x x x Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor."

[32] *Supra* note 5.

[33] *Penson v. Maranan*, G.R. No. 148630, 20 June 2006, 491 SCRA 396, 406.

Civil Code which protects the actual possessor of a property. The discussion in *Philippine National Bank* on this matter is informative:

> Under [Article 433[34] of the Civil Code], one who claims to be the owner of a property possessed by another must bring the appropriate judicial action for its physical recovery. The term "judicial process" could mean no less than an ejectment suit or reivindicatory action in which ownership claims of the contending parties may be properly heard and adjudicated.
>
> An *ex parte* petition for issuance of a possessory writ under Section 7 of Act 3135[, as amended,] is not, strictly speaking, a "judicial process" as contemplated above. Even if the same may be considered a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale, it is not an ordinary suit filed in court by which one party "sues another for the enforcement or protection of a right, or the prevention or redress of a wrong."
>
> It should be emphasized that an *ex parte* petition for issuance of a writ of possession is a non-litigious proceeding authorized in an extrajudicial foreclosure of mortgage pursuant to Act 3135, as amended. Unlike a judicial foreclosure of real estate mortgage under Rule 68 of the Rules of Court, any property brought within the ambit of the act is foreclosed by the filing of a petition, not with any court of justice, but with the office of the sheriff of the province where the sale is to be made.
>
> As such, a third person in possession of an extrajudicially foreclosed realty, who claims a right superior to that of the original mortgagor, will have no opportunity to be heard on his claim in a proceeding of this nature. It stands to reason, therefore, that such third person may not be dispossessed on the strength of a mere *ex parte* possessory writ, since to do so would be tantamount to his summary ejectment, in violation of the basic tenets of due process.
>
> Besides, as earlier stressed, Article 433 of the Civil Code, cited above, requires nothing less that an action for ejectment to be brought even by the true owner. After all, the actual possessor of a property

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[34] Art. 43. Actual possession under claim of ownership raises a disputable presumption of ownership. The true owners must resort to judicial process for the recovery of the property.

enjoys a legal presumption of just title in his favor, which must be overcome by the party claiming otherwise.[35]

This was reiterated in *Dayot v. Shell Chemical Company (Phils.), Inc.*[36]

The question now is whether PNA is a third party in possession of the property claiming a right adverse to that of the debtor/ mortgagor. The answer is yes.

DBP's right of possession is founded on its right of ownership over the property which he purchased at the auction sale. Upon expiration of the redemption period and consolidation of the title to the property in its name, DBP became substituted to and acquired all the rights, title and interest of the mortgagor Y Electric. As the new owner of the property, DBP can validly exercise his right of possession over it. Thus, as against Y Electric and its successors-in-interest, DBP can apply for the issuance of a writ of possession against them to compel them to deliver and transfer possession to DBP. Note, however, that a third party not privy to the debtor/mortgagor—in this case, Y Electric—is protected by law. The purchaser's right of possession is recognized only as against the judgment debtor and his successor-in-interest but not against persons whose right of possession is adverse to the latter.[37] As previously stated, under the law, such third party's possession of the property is legally presumed to be pursuant to a just title which may be overcome by the purchaser in a judicial proceeding for recovery of the property. It is through such a judicial proceeding that the nature of such adverse possession by the third party is determined, according such third party due process and the opportunity to be heard. The third party may be ejected from the property only after he has been given an opportunity to be heard, conformably with the time-honored principle of due process.[38]

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[35] *PNB v. Court of Appeals, supra* note 10 at 769-771.

[36] G.R. No. 156542, 26 June 2007, 525 SCRA 535.

[37] *Roxas v. Buan*, No. 53798, 8 November 1988, 167 SCRA 43, 50.

[38] *Unchuan v. Court of Appeals (Fifth Division)*, No. 78775, 31 May 1988, 161 SCRA 710, 716.

In its petition for *certiorari* in CA-G.R. No. SP No. 85870, PNA claims that it is the owner of the property in dispute as it purchased it from its true owner, and that the title to the property upon which Y Electric and DBP base their claim is fictitious and non-existent. In exercise of its right of ownership, PNA filed an ejectment case against DBP which is now on appeal with the RTC of Quezon City. There is nothing in the records that would show that PNA derives its claim of ownership from Y Electric or from Y Electric's predecessors-in-interest, or that PNA is a successor-in-interest or transferee of Y Electric's rights. It is thus clear that PNA asserts a claim of ownership adverse to that of Y Electric and DBP, and that it acquired title and possession of the property by virtue of a title entirely distinct from that through which DBP claims. PNA thus stands in the same position as a stranger or third party whose rights to the property cannot be resolved in an *ex parte* proceeding where it was not impleaded or where it could appear to present its side.

St. Dominic Corp. v. Intermediate Appellate Court,[39] cited by DBP, actually supports the finding that PNA is a third party possessor claiming against DBP an adverse right. The facts in *St. Dominic* are as follows:

In 1961, the People's Homesite and Housing Corporation (PHHC) awarded a parcel of land covered by TCT No. 83783 to Cristobal Santiago, who sold the same to the spouses Carlos Robes and Adelia Francisco. The spouses Robes mortgaged the lot to Manufacturer's Bank and Trust Company, and this fact was duly annotated on the back of TCT No. 84387. Thereafter, Civil Case No. Q-11895, entitled "*Ricardo Castulo and Juan V. Ebreo v. Carlos Robes, Adelia Francisco, and People's Homesite and Housing Corporation*," was filed seeking the cancellation of TCT No. 83783. Claiming legal interest in the property, the Bustamante spouses were allowed to intervene in the case. A notice of *lis pendens* was annotated on the title at the instance of the Bustamante spouses. For failure of the Robes spouses to pay the mortgage obligation, Manufacturer's Bank foreclosed the lot which was then bought at public auction by Aurora Francisco, who was subsequently issued a certificate of sale. As no redemption of the property was effected, TCT No. 84387 issued in

[39] *Supra* note 28.

the name of the Robes spouses was cancelled and TCT No. 217192 was issued to the buyer Aurora Francisco. The notice of *lis pendens* was not carried over to TCT No. 217192.

Aurora Francisco applied for, and was issued, a writ of possession for the property. The Bustamante spouses filed a motion to quash the writ, which motion was denied by the lower court. The spouses then filed a petition for *certiorari* with the Supreme Court. Thereafter, Aurora Francisco sold the property to petitioner St. Dominic Corp, which was issued TCT No. 22337. Again, no notice of any lien or encumbrance appeared on the title.

Meanwhile, Civil Case No. Q-11895 was decided. The trial court ruled that the sale by PHHC to Cristobal Santiago was void and cancelled TCT No. 83783. The sale of the same lot to the spouses Robes was likewise declared void and TCT No. 84387 was cancelled. PHHC was ordered to process Bustamante's application to purchase the lot and execute documents awarding the lot to her. A writ of execution was issued to the Bustamante spouses, with the qualification, however, that the writ could not be enforced against St. Dominic Corp. The spouses questioned the order via *certiorari* [with St. Dominic Corp. and Aurora Francisco, though not parties to Civil Case No. Q-11895, made respondents thereto] with the Intermediate Appellate Court, which granted the writ of *certiorari* and ordered the trial court to issue the writ of execution against St. Dominic Corp. [40]

This Court reversed the ruling of the Intermediate Appellate Court and held that St. Dominic Corp. was not bound by the decision in that case because it was never impleaded in Civil Case No. Q-11895. Anent the effect of the trial court's judgment on Manufacturer's Bank's (mortgagee bank) rights and on the foreclosure of the property in question, it was held that where a Torrens title was issued as a result of regular land registration proceedings and was in the name of the mortgagor when given as a security for a bank loan, the subsequent declaration of said title as null and void would not nullify the rights of the mortgagee who acted in good faith. The mortgagee is under no obligation to look beyond the certificate of title and has the right to rely on what appears on its face. The title to the property given as

[40] As summarized in the *Malayan Bank v. Lagrama*, 409 Phil. 493, 505-506 (2001).

security to Manufacturer's Bank by the spouses Robes was valid, regular, and free from any lien or encumbrance. The title of Aurora Francisco, as a purchaser at the auction sale of the property in question, could not be affected by any adverse claim of the plaintiffs in Civil Case No. Q-11895. This is even more true with petitioner St. Dominic Corp. which had acquired title from Francisco without any notice or flaw.[41]

The Bustamante spouses assailed the grant *ex parte* by the trial court of the writ of possession over the property in favor of Aurora Francisco, alleging that a court has no jurisdiction, power and authority to eject a third person who is not a party to the foreclosure proceedings or mortgage by a mere writ of possession summarily issued in a foreclosure suit. This Court approved of the trial court's disquisition on this matter. The trial court was aware of the limitation that a writ of possession may not issue when the property is in the possession of a third party who holds the property adverse to the buyer in the foreclosure sale. But by their express admission in their motion to intervene, the Bustamante spouses were merely occupants-applicants for the purchase of the land from PHHC. Their claim was at best inchoate, and cannot prevent the issuance of the writ of possession prayed for; to do so would becloud the integrity of the Torrens title and in derogation of its indefeasibility. Their inchoate right cannot prevail over the clean title of Aurora Francisco and/or St. Dominic Corp. The Bustamante spouses had no clear title or right that may be enforced, thus, the writ of possession should issue in favor of Aurora Francisco and/or St. Dominic Corp.[42] The Court added:

> Indeed, the rules contemplate a situation where a third party holds the property by adverse title or right such as a co-owner, tenant or usufructuary. In such cases, a grant of a writ of possession would be denial of such third person's rights without giving them their day in court. Especially where question of title is involved, the matter

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[41] *St. Dominic Corp. v. Intermediate Appellate Court*, *supra* note 34, at 592-594.

[42] *St. Dominic Corp. v. Intermediate Appellate Court*, *supra* note 34 at 595-597.

would well be threshed out in a separate action and not in a motion for a writ of possession.[43]

Clearly, the facts in *St. Dominic* are hugely different from the facts of the case at bar. The Bustamante spouses' claim is not as owner of the property, but only as an occupant-applicant thereto; it rests on a mere expectancy. They did not hold the property by any adverse title or right. In the case at bar, however, PNA claims ownership of the property through a title adverse to that of DBP and DBP's predecessor-in-interest.

The other cases[44] cited by DBP also support the finding of PNA as a third party claiming an adverse right. These cases support the ruling that trespassers or intruders without title can be evicted by writ of possession. However, the issuance of the writ of possession in these cases, except for one, is not pursuant to the foreclosure of a mortgage under Act No. 3135, as amended. The said cases involve different judicial proceedings which have for its purpose the recovery of property. Thus, *Caballero v. Court of Appeals* involves an action for cancellation of sale. *Mendoza v. National Housing Authority* and *Galay v. Court of Appeals* are cases for ejectment. *E.B. Marcha Transport Co. v. Intermediate Appellate Court* involves a case for recovery of possession of property. *Rodil v. Benedicto* and *Demorar v. Ibanez* concern registration proceedings. It should be noted too that in these cases, there was a categorical finding by the courts, or there was an admission by the parties, that the persons to be evicted are indeed squatters or intruders without any right to the property.

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[43] *St. Dominic Corp. v. Intermediate Appellate Court*, *supra* note 34 at 596.

[44] *Caballero v. Court of Appeals*, G.R. No. 59888, 29 January 1993, 218 SCRA 56, 64; *Mendoza v. National Housing Authority*, 197 Phil. 596 (1982); *E.B. Marcha Transport Co., Inc. v. Intermediate Appellate Court*, 231 Phil. 275 (1987); *Galay v. Court of Appeals*, 321 Phil. 224 (1995); *Lourdes Rivero D. Ortega v. Hon. Felipe Natividad, et al.*, 71 Phil. 340, 342; *Tomas Rodil, et al. v. Judge Benedicto,* 184 Phil. 107 (1980); and *Demorar v. Ibanez, etc.*, 97 Phil. 72, 74 (1955).

The only case cited by DBP which involves the issuance of a writ of possession under Act No. 3135 is *Rivero de Ortega v. Natividad* which, however, supports the finding that PNA is a third party possessor protected under the law. Thus:

> But where a party in possession was not a party to the foreclosure, and did not acquire his possession from a person who was bound by the decree, but who is a mere stranger and who entered into possession before the suit was begun, the court has no power to deprive him of possession by enforcing the decree. x x x Thus, it was held that only parties to the suit, persons who came in under them *pendente lite*, and trespassers or intruders without title, can be evicted by a writ of possession. x x x The reason for this limitation is that the writ does not issue in case of doubt, nor will a question of legal title be tried or decided in proceedings looking to the exercise of the power of the court to put a purchaser in possession. A very serious question may arise upon full proofs as to where the legal title to the property rests, and should not be disposed of in a summary way. The petitioner, it is held, should be required to establish his title in a proceeding directed to that end.[45]

PNA also need not prove its ownership of the foreclosed property in the same *ex parte* proceeding instituted by DBP. The jurisdiction of the court in the *ex parte* proceeding is limited only to the issuance of the writ of possession. It has no jurisdiction to determine who between the parties is the rightful owner and lawful possessor of the property. As earlier stated, the appropriate judicial proceeding must be resorted to.[46] Consequently, the Court of Appeals' order in CA-G.R. SP No. 85870 to remand the case to the court *a quo* to determine whether PNA and its members are actually in possession of the property claiming a right adverse to that of the original mortgagor is unnecessary.

WHEREFORE, the petitions for review in *certiorari* are *DENIED*.

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[45] *Rivero de Ortega v. Natividad*, 71 Phil. 340, 342-343 (1941).

[46] See CIVIL CODE, Art. 43, *supra* note 29; *Philippine National Bank v. Court of Appeals*, *supra* note 10, at 32; and *Rivero de Ortega v. Natividad*, *supra* note 40, at 343.

In G.R. No. 175728, the Court of Appeals Decision dated 15 September 2006 is *AFFIRMED* insofar as it declares as null and void the Regional Trial Court's Order dated 5 August 2004. The Resolution dated 11 December 2006 is also *AFFIRMED*.

In G.R. No. 178914, the Decision dated 28 August 2006 and Resolution dated 17 July 2007 are *AFFIRMED*.

SO ORDERED.

Carpio Morales,[*] *Velasco, Jr., Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 176308. May 8, 2009]

ANGEL M. PAGADUAN, AMELIA P. TUCCI, TERESITA P. DEL MONTE, ORLITA P. GADIN, PERLA P. ESPIRITU, ELISA P. DUNN, LORNA P. KIMBLE, EDITO N. PAGADUAN, and LEO N. PAGADUAN, *petitioners, vs.* **SPOUSES ESTANISLAO & FE POSADAS OCUMA,** *respondents.*

SYLLABUS

1. CIVIL LAW; TRUST; NO TRUST WAS CREATED UNDER ARTICLE 1456 OF THE CIVIL CODE.— An action for reconveyance respects the decree of registration as incontrovertible but seeks the transfer of property, which has been wrongfully

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[*] Acting Chairperson.

[**] Per Special Order No. 619, Justice Teresita J. Leonardo-De Castro is hereby designated as additional member of the Second Division in lieu of Justice Leonardo A. Quisumbing, who is on official leave.

or erroneously registered in other persons' names, to its rightful and legal owners, or to those who claim to have a better right. However, contrary to the positions of both the appellate and trial courts, no trust was created under Article 1456 of the new Civil Code x x x. The property in question did not come from the petitioners. In fact that property came from Eugenia Reyes. The title of the Ocumas can be traced back from Eugenia Reyes to Ruperta Asuncion to the original owner Nicolas Cleto. Thus, if the respondents are holding the property in trust for anyone, it would be Eugenia Reyes and not the petitioners.

2. **ID.; ID.; ARTICLE 1456 REFERS TO ACTUAL OR CONSTRUCTIVE FRAUD, DISTINCTION THEREOF; ABSENCE OF FRAUD.—** [A]s stated in *Berico v. Court of Appeals*, Article 1456 refers to actual or constructive fraud. Actual fraud consists in deception, intentionally practiced to induce another to part with property or to surrender some legal right, and which accomplishes the end designed. Constructive fraud, on the other hand, is a breach of legal or equitable duty which the law declares fraudulent irrespective of the moral guilt of the actor due to the tendency to deceive others, to violate public or private confidence, or to injure public interests. The latter proceeds from a breach of duty arising out of a fiduciary or confidential relationship. In the instant case, none of the elements of actual or constructive fraud exists. The respondents did not deceive Agaton Pagaduan to induce the latter to part with the ownership or deliver the possession of the property to them.

3. **ID.; SALES; RULE ON OWNERSHIP OF A PROPERTY SUBJECT OF A DOUBLE SALE; APPLICATION.—** [W]here it is an immovable property that is the subject of a double sale, ownership shall be transferred: (1) to the person acquiring it who in good faith first recorded it in the Registry of Property; (2) in default thereof, to the person who in good faith was first in possession; and (3) in default thereof, to the person who presents the oldest title, provided there is good faith. The requirement of the law then is two-fold: acquisition in good faith and registration in good faith. In this case there was a first sale by Eugenia Reyes to Agaton Pagaduan and a second sale by Eugenia Reyes to the respondents. For a second buyer like the respondents to successfully invoke the second paragraph, Article 1544 of the Civil Code, it must possess

good faith from the time of the sale in its favor until the registration of the same. Respondents sorely failed to meet this requirement of good faith since they had actual knowledge of Eugenia's prior sale of the southern portion property to the petitioners, a fact antithetical to good faith. This cannot be denied by respondents since in the same deed of sale that Eugenia sold them the northern portion to the respondents for ₱1,500.00, Eugenia also sold the southern portion of the land to Agaton Pagaduan for ₱500.00. It is to be emphasized that the Agaton Pagaduan never parted with the ownership and possession of that portion of Lot No. 785 which he had purchased from Eugenia Santos. Hence, the registration of the deed of sale by respondents was ineffectual and vested upon them no preferential rights to the property in derogation of the rights of the petitioners. Respondents had prior knowledge of the sale of the questioned portion to Agaton Pagaduan as the same deed of sale that conveyed the northern portion to them, conveyed the southern portion to Agaton Pagaduan. Thus the subsequent issuance of TCT No. T-5425, to the extent that it affects the Pagaduan's portion, conferred no better right than the registration which was the source of the authority to issue the said title. Knowledge gained by respondents of the first sale defeats their rights even if they were first to register the second sale. Knowledge of the first sale blackens this prior registration with bad faith. Good faith must concur with the registration. Therefore, because the registration by the respondents was in bad faith, it amounted to no registration at all. As the respondents gained no rights over the land, it is petitioners who are the rightful owners, having established that their successor-in-interest Agaton Pagaduan had purchased the property from Eugenia Reyes on November 26, 1961 and in fact took possession of the said property.

APPEARANCES OF COUNSEL

Estanislao L. Cesa, Jr. Marc Raymund S. Cesa and Maria Rosario S. Cesa for petitioners.

Ernesto M. Tomaneng for respondents.

D E C I S I O N

TINGA, *J.*:

In this Petition for Review,[1] petitioners assail the Decision[2] of the Court of Appeals dated September 18, 2006 which ruled that petitioners' action for reconveyance is barred by prescription and consequently reversed the decision[3] dated June 25, 2002 of the Regional Trial Court (RTC) of Olongapo City.

Petitioners Angel N. Pagaduan, Amelia P. Tucci, Teresita P. del Monte, Orlita P. Gadin, Perla P. Espiritu, Elisa P. Dunn, Lorna P. Kimble, Edito N. Pagaduan and Leo N. Pagaduan are all heirs of the late Agaton Pagaduan. Respondents are the spouses Estanislao Ocuma and Fe Posadas Ocuma.

The facts are as follows:

The subject lot used to be part of a big parcel of land that originally belonged to Nicolas Cleto as evidenced by Certificate of Title (C.T.) No. 14. The big parcel of land was the subject of two separate lines of dispositions. The first line of dispositions began with the sale by Cleto to Antonio Cereso on May 11, 1925. Cereso in turn sold the land to the siblings with the surname Antipolo on September 23, 1943. The Antipolos sold the property to Agaton Pagaduan, father of petitioners, on March 24, 1961. All the dispositions in this line were not registered and did not result in the issuance of new certificates of title in the name of the purchasers.

The second line of dispositions started on January 30, 1954, after Cleto's death, when his widow Ruperta Asuncion as his sole heir and new owner of the entire tract, sold the same to Eugenia Reyes. This resulted in the issuance of Transfer Certificate of Title (TCT) No. T-1221 in the name of Eugenia Reyes in lieu of TCT No. T-1220 in the name of Ruperta Asuncion.

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[1] *Rollo*, pp. 10-29, with annexes.

[2] *Id.* at 36-49; Penned by Justice Rosmari D. Carandang and concurred in by Justices Renato C. Dacudao and Estela M. Perlas-Bernabe.

[3] *Id.* at 30-35.

On November 26, 1961, Eugenia Reyes executed a unilateral deed of sale where she sold the northern portion with an area of 32,325 square meters to respondents for ₱1,500.00 and the southern portion consisting of 8,754 square meters to Agaton Pagaduan for ₱500.00. Later, on June 5, 1962, Eugenia executed another deed of sale, this time conveying the entire parcel of land, including the southern portion, in respondent's favor. Thus, TCT No. T-1221 was cancelled and in lieu thereof TCT No. T-5425 was issued in the name of respondents. On June 27, 1989, respondents subdivided the land into two lots. The subdivision resulted in the cancellation of TCT No. T-5425 and the issuance of TCT Nos. T-37165 covering a portion with 31,418 square meters and T-37166 covering the remaining portion with 9,661 square meters.

On July 26, 1989, petitioners instituted a complaint for reconveyance of the southern portion with an area of 8,754 square meters, with damages, against respondents before the RTC of Olongapo City.

On June 25, 2002, the trial court rendered a decision in petitioners' favor. Ruling that a constructive trust over the property was created in petitioners' favor, the court below ordered respondents to reconvey the disputed southern portion and to pay attorney's fees as well as litigation expenses to petitioners. The dispositive portion of the decision reads:

WHEREFORE, foregoing premises considered, judgment is hereby rendered:

1. Ordering the defendants to reconvey to the plaintiffs, a portion of their property originally covered by Certificate of Title No. T-54216[4] now TCT Nos. 37165 and 37166 an area equivalent to 8,754 square meters.

2. Ordering the defendant to pay plaintiffs ₱15,000.00 as attorneys fees and ₱5,000.00 for litigation expenses.

3. Defendants counterclaims are dismissed.

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[4] The correct number is T-5425.

SO ORDERED.[5]

Dissatisfied with the decision, respondents appealed it to the Court of Appeals. The Court of Appeals reversed and set aside the decision of the trial court; with the dispositive portion of the decision reading, thus:

WHEREFORE, premises considered, the appeal is granted. Accordingly, prescription having set in, the assailed June 25, 2002 Decision of the RTC is reversed and set aside, and the Complaint for reconveyance is hereby **DISMISSED**.

SO ORDERED.[6]

The Court of Appeals ruled that while the registration of the southern portion in the name of respondents had created an implied trust in favor of Agaton Pagaduan, petitioners, however, failed to show that they had taken possession of the said portion. Hence, the appellate court concluded that prescription had set in, thereby precluding petitioners' recovery of the disputed portion.

Unperturbed by the reversal of the trial court's decision, the petitioners come to this Court via a petition for review on *certiorari*.[7] They assert that the Civil Code provision on double sale is controlling. They submit further that since the incontrovertible evidence on record is that they are in possession of the southern portion, the ten (10)-year prescriptive period for actions for reconveyance should not apply to them.[8] Respondents, on the other hand, aver that the action for reconveyance has prescribed since the ten (10)-year period, which according to them has to be reckoned from the issuance of the title in their name in 1962, has elapsed long ago.[9]

The Court of Appeals decision must be reversed and set aside, hence the petition succeeds.

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[5] *Id.* at 35.

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

[7] *Id.* at 10-29.

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

[9] *Id.* at 58-63.

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. However, contrary to the positions of both the appellate and trial courts, no trust was created under Article 1456 of the new Civil Code which provides:

> Art. 1456. If property is acquired through mistake 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**. (Emphasis supplied)

The property in question did not come from the petitioners. In fact that property came from Eugenia Reyes. The title of the Ocumas can be traced back from Eugenia Reyes to Ruperta Asuncion to the original owner Nicolas Cleto. Thus, if the respondents are holding the property in trust for anyone, it would be Eugenia Reyes and not the petitioners.

Moreover, as stated in *Berico v. Court of Appeals*,[10] Article 1456 refers to actual or constructive fraud. Actual fraud consists in deception, intentionally practiced to induce another to part with property or to surrender some legal right, and which accomplishes the end designed. Constructive fraud, on the other hand, is a breach of legal or equitable duty which the law declares fraudulent irrespective of the moral guilt of the actor due to the tendency to deceive others, to violate public or private confidence, or to injure public interests. The latter proceeds from a breach of duty arising out of a fiduciary or confidential relationship. In the instant case, none of the elements of actual or constructive fraud exists. The respondents did not deceive Agaton Pagaduan to induce the latter to part with the ownership or deliver the possession of the property to them. Moreover, no fiduciary relations existed between the two parties.

This lack of a trust relationship does not inure to the benefit of the respondents. Despite a host of jurisprudence that states a certificate of title is indefeasible, unassailable and binding

[10] G.R. No. 96306, August 20, 1993, 469 SCRA 225.

against the whole world, it merely confirms or records title already existing and vested, and it cannot be used to protect a usurper from the true owner, nor can it be used for the perpetration of fraud; neither does it permit one to enrich himself at the expense of others.[11]

Rather, after a thorough scrutiny of the records of the instant case, the Court finds that this is a case of double sale under Article 1544 of the Civil Code which reads:

> ART. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first possession thereof in good faith, if it should be movable property.
>
> Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.
>
> Should there be no inscription, the ownership shall pertain to the person who in good faith was first in possession; and, in the absence thereof; to the person who presents the oldest title, provided there is good faith.

Otherwise stated, where it is an immovable property that is the subject of a double sale, ownership shall be transferred: (1) to the person acquiring it who in good faith first recorded it in the Registry of Property; (2) in default thereof, to the person who in good faith was first in possession; and (3) in default thereof, to the person who presents the oldest title, provided there is good faith. The requirement of the law then is two-fold: acquisition in good faith and registration in good faith.[12]

In this case there was a first sale by Eugenia Reyes to Agaton Pagaduan and a second sale by Eugenia Reyes to the

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[11] *Consolidated Rural Bank (Cagayan Valley), Inc., v. Court of Appeals*, G.R. No. 132161, January 17, 2005, 448 SCRA 347, 368; *Bayoca v. Nogales*, 394 Phil. 465, 481 (2000); *Suntay v. Court of Appeals*, 251 SCRA 430 (1995).

[12] *Gabriel v. Spouses Mabanta*, 447 Phil. 717, 726 (2003).

respondents.[13] For a second buyer like the respondents to successfully invoke the second paragraph, Article 1544 of the Civil Code, it must possess good faith from the time of the sale in its favor until the registration of the same. Respondents sorely failed to meet this requirement of good faith since they had actual knowledge of Eugenia's prior sale of the southern portion property to the petitioners, a fact antithetical to good faith. This cannot be denied by respondents since in the same deed of sale that Eugenia sold them the northern portion to the respondents for ₱1,500.00, Eugenia also sold the southern portion of the land to Agaton Pagaduan for ₱500.00.[14]

It is to be emphasized that the Agaton Pagaduan never parted with the ownership and possession of that portion of Lot No. 785 which he had purchased from Eugenia Santos. Hence, the registration of the deed of sale by respondents was ineffectual and vested upon them no preferential rights to the property in derogation of the rights of the petitioners.

Respondents had prior knowledge of the sale of the questioned portion to Agaton Pagaduan as the same deed of sale that conveyed the northern portion to them, conveyed the southern portion to Agaton Pagaduan.[15] Thus the subsequent issuance of TCT No. T-5425, to the extent that it affects the Pagaduan's portion, conferred no better right than the registration which was the source of the authority to issue the said title. Knowledge gained by respondents of the first sale defeats their rights even if they were first to register the second sale. Knowledge of the first sale blackens this prior registration with bad faith.[16] Good faith must concur with the registration.[17] Therefore, because the

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[13] *Fudot v. Cattleya Land, Inc.,* G.R. No. 171008, September 13, 2007, 533 SCRA 350.

[14] *Rollo*, p. 44.

[15] *Id.* at 43.

[16] *Ulep v. Court of Appeals*, G.R. No. 125254, 11 October 2005, 472 SCRA 241, 253, citing *Uraca v. Court of Appeals*, 278 SCRA 702 (1997).

[17] *Uraca v. Court of Appeals*, 344 Phil. 253, 265 (1997); *Gabriel v. Mabanta*, 447 Phil. 717, 729 (2003).

registration by the respondents was in bad faith, it amounted to no registration at all.

As the respondents gained no rights over the land, it is petitioners who are the rightful owners, having established that their successor-in-interest Agaton Pagaduan had purchased the property from Eugenia Reyes on November 26, 1961 and in fact took possession of the said property. The action to recover the immovable is not barred by prescription, as it was filed a little over 27 years after the title was registered in bad faith by the Ocumas as per Article 1141 of the Civil Code.[18]

WHEREFORE, the petition is granted. The *Decision* of the Court of Appeals dated January 25, 2006 and its *Resolution* dated May 5, 2006 are hereby *REVERSED* and *SET ASIDE*. The Decision of the Regional Trial Court is hereby *REINSTATED*.

SO ORDERED.

Carpio Morales,[*] *Velasco, Jr., Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

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[18] Article 1141. Real actions over immovables prescribe after thirty years.

This provision is without prejudice to what is established for the acquisition of ownership and other real rights by prescription.

[*] Acting Chairperson as replacement of Justice Leonardo A. Quisumbing who is on official leave per Special Order No. 618.

[**] Additional member of the Second Division per Special Order No. 619.

SECOND DIVISION

[G.R. No. 176709. May 8, 2009]

FORT BONIFACIO DEVELOPMENT CORPORATION, *petitioner, vs.* **HON. EDWIN D. SORONGON and VALENTIN FONG,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; COURTS; JURISDICTION; DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT; APPLICATION.—** Jurisdiction is defined as the authority to try, hear and decide a case. Moreover, that jurisdiction of the court over the subject matter is determined by the allegations of the complaint without regard to whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein is a well entrenched principle. In this regard, the jurisdiction of the court does not depend upon the defenses pleaded in the answer or in the motion to dismiss, lest the question of jurisdiction would almost entirely depend upon the defendant. An examination of the allegations in Fong's complaint reveals that his cause of action springs not from a violation of the provisions of the Trade Contract, but from the assignment of Maxco's retention money to him and failure of petitioner to turn over the retention money. x x x While it is true that respondent, as the assignee of the receivables of Maxco from petitioner under the Trade Contract, merely stepped into the shoes of Maxco. However, the right of Maxco to the retention money from petitioner under the trade contract is not even in dispute in Civil Case No. 06-0200-CFM. Respondent raises as an issue before the RTC is the petitioner's alleged unjustified preference to the claims of the other creditors of Maxco over the retention money.

2. **ID.; ID.; ID.; WHEN THE CLAIM IS NOT CONSTRUCTION-RELATED AT ALL, IT IS THE REGULAR COURT, NOT THE CIAC, WHICH HAS JURISDICTION.—** Although the jurisdiction of the CIAC is not limited to the instances enumerated in Section 4 of E. O. No. 1008, Fong's claim is not even construction-related at all. This court has held that: "*Construction* is defined as referring to all on-site works on

buildings or altering structures, from land clearance through completion including excavation, erection and assembly and installation of components and equipment." Thus, petitioner's insistence on the application of the arbitration clause of the Trade Contract to Fong is clearly anchored on an erroneous premise that the latter is seeking to enforce a right under the trade contract. This premise cannot stand since the right to the retention money of Maxco under the Trade Contract is not being impugned herein. It bears mentioning that petitioner readily conceded the existence of the retention money. Fong's demand that the portion of retention money should have been paid to him before the other creditors of Maxco clearly, does not require the CIAC's expertise and technical knowledge of construction. The adjudication of Civil Case necessarily involves the application of pertinent statutes and jurisprudence to matters of assignment and preference of credits. As this Court held in *Fort Bonifacio Development Corporation v. Domingo,* this *task* more suited for a trial court to carry out after a full-blown trial, than an arbitration body specifically devoted to construction contracts.

3. **ID.; ACTIONS; CAUSE OF ACTION, PRESENT.—** Failure to state a cause of action refers to the insufficiency of allegation in the pleading. In resolving a motion to dismiss based on the failure to state a cause of action only the facts alleged in the complaint must be considered. The test is whether the court can render a valid judgment on the complaint based on the facts alleged and the prayer asked for. In this case the complaint alleges that: x x x at the time he served notice of assignment to defendant FBDC there was only one notice of garnishment that the latter had received and there were still sufficient residual amounts to pay that assigned by defendant Maxco to the plaintiff. Subsequent notices of garnishment received by defendant FBDC could not adversely affect the amounts already assigned to the plaintiff as they are already his property, no longer that of defendant Maxco. From this statement alone, it is clear that a cause of action is present in the complaint filed *a quo*. Respondent has specifically alleged that the undue preference given to other creditors of Maxco over the retention money by petitioner was to the prejudice of his rights.

4. **ID.; CIVIL PROCEDURE; PARTIES; INDISPENSABLE PARTIES, NOT A CASE OF.—** The final error raised by

petitioner that the other judgment creditors as well as the trial court that issued the writ of garnishment and CIAC should have been impleaded as defendants in the case as they were indispensable parties is likewise weak. Section 7, Rule 3 of the Revised Rules of Court provides for the compulsory joinder of indispensable parties without whom no final determination can be had of an action. An indispensable party is defined as one who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest. The other judgment creditors are entitled to the fruits of the final judgments rendered in their favor. Their rights are distinct from the rights acquired by the respondent over the portion of the retention money assigned to the latter by Maxco. Their interests are in no way affected by any judgment to be rendered in this case.

APPEARANCES OF COUNSEL

Lim Ocampo Leynes for petitioner.
Abella & Romero Law Offices for Valentin Fong.

D E C I S I O N

TINGA, *J*.:

Petitioner Fort Bonifacio Development Corporation (petitioner), a corporation registered under Philippine laws, is engaged in the business of real estate development. Respondent, Valentin Fong (respondent) doing business under the name VF Industrial Sales is the assignee of L & M Maxco Specialist Construction's (Maxco) retention money from the Bonifacio Ridge Condominium Phase 1 (BRCP 1).

In this Petition for Review,[1] petitioner assails the Decision[2] of the Court of Appeals dated November 30, 2006 which ruled that it is the regional trial court and not the Construction Industry

[1] *Rollo*, pp. 11-104, with annexes.

[2] Penned by Justice Martin S. Villarama Jr. and concurred in by Justices Lucas P. Bersamin and Monina Arevalo-Zenarosa, *id.* at 106-122.

Arbitration Commission (CIAC) that has jurisdiction over respondent's claim.

The facts are as follows:

On July 2000, Petitioner entered into a trade contract with Maxco wherein Maxco would undertake the structural and partial architectural package of the BRCP 1. Later petitioner accused Maxco of delay in completion of its work and on August 24, 2004 sent the latter a notice of termination. Petitioner also instructed Maxco to perform remedial measures prior to the contract expiration pursuant to Clause 23.1 of the contract.

Subsequently, Maxco was sued by its creditors including respondent for debts unrelated to BRCP 1. In order to settle the collection suit, on February 28, 2005, Maxco assigned its receivables representing its retention money from the BRCP 1 in the amount of one million five hundred seventy-seven thousand one hundred fifteen pesos and ninety centavos (₱1,577,115.90). On April 18, 2005, respondent wrote to petitioner, informing the latter of Maxco's assignment in his favor and asking the latter to confirm the validity of Maxco's receivables.[3] Petitioner replied, informing the respondent that Maxco did have receivables, however these were not due and demandable until January of next year, moreover the amount had to be ascertained and liquidated.

A subsequent exchange of correspondence failed to settle the matter. Specifically, on January 31, 2006,[4] petitioner through counsel, wrote to respondent informing the latter that there is no more amount due to Maxco from petitioner after the rectification of defect as well as the satisfaction of notices of garnishment dated July 30, 2004[5] and January 26, 2006.[6] On February 13,

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[3] *Id.* at 131.

[4] *Id.* at 137.

[5] *Asia-Con Builders Inc. v. L & M Maxco Inc.*, CIAC Case No. 11-2002.

[6] *Concrete Masters Inc. v. L & M Maxco Inc.*, Civil Case No. 05-164 of the RTC, Makati City, Branch 133.

2006, respondent filed a complaint for a sum of money against petitioner and Maxco in the Regional Trial Court of Mandaluyong City.[7] Respondent claimed that there were sufficient residual amounts to pay the receivables of Maxco at the time he served notice of the assignment. The subsequent notices of garnishment should not adversely affect the receivables assigned to him. The retention money was over due in January 2006 and despite demand, petitioner did not pay the amount subject of the deed of assignment. Petitioner however, paid out the retention money to other garnishing creditors of Maxco to the detriment of respondent.

On March 16, 2006, instead of filing an Answer, petitioner filed a Motion to Dismiss on the ground of lack of jurisdiction over the subject matter.[8] Petitioner argued that since respondent merely stepped into the shoes of Maxco as its assignee, it was the CIAC and not the regular courts that had jurisdiction over the dispute as provided in the Trade Contract. Judge Edwin Sorongon issued an Order dated June 27, 2006 denying the motion to dismiss.[9] Petitioner moved for reconsideration but this was denied in an Order dated August 15, 2006.

On October 16, 2006, petitioner filed a petition for *certiorari* and prohibition with the Court of Appeals. On November 30, 2006, the Court of Appeals denied the petition for lack of merit. The dispositive portion reads:

WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED for lack of merit. The assailed Orders dated June 27, 2006 and August 15, 2006 of respondent Judge in Civil Case No. MC-06-2928 are hereby AFFIRMED.

With costs against the petitioner.

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[7] *Rollo*, pp. 126-130.

[8] *Id.* at 138-186.

[9] *Id.* at 267-269.

SO ORDERED.[10]

The appellate court held that it was the trial court and not the Construction Industry Arbitration Commission (CIAC) that had jurisdiction over the claims of Valentin Fong. The claim could not be construed as related to the construction industry as it is for enforcement of Maxco's deed of assignment over its retention money.

Petitioner moved for reconsideration on December 22, 2006 but this was denied by the appellate court in a resolution dated February 29, 2006.

Hence, the present petition for review on *certiorari*. Petitioners sets forth four (4) errors committed by the appellate court namely: (1) the original and exclusive jurisdiction over respondent's complaint is vested with the CIAC; (2) Respondent's complaint failed to state a cause of action; (3) the claim of respondent has already been extinguished; and (4) the conditions precedent for the complaint have not been complied with.

The petition lacks merit.

In reference to the first error, Section 4 of Executive Order No. 1008, Series of 1985 (E.O. No. 1008) sets forth the jurisdiction of CIAC. To wit:

SECTION 4. *Jurisdiction*.—The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.

The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual provisions; maintenance and defects; payment default of employer or contractor and changes in contract cost.

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[10] *Id.* at 122.

Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

Jurisdiction is defined as the authority to try, hear and decide a case.[11] Moreover, that jurisdiction of the court over the subject matter is determined by the allegations of the complaint without regard to whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein is a well entrenched principle.[12] In this regard, the jurisdiction of the court does not depend upon the defenses pleaded in the answer or in the motion to dismiss, lest the question of jurisdiction would almost entirely depend upon the defendant.[13]

An examination of the allegations in Fong's complaint reveals that his cause of action springs not from a violation of the provisions of the Trade Contract, but from the assignment of Maxco's retention money to him and failure of petitioner to turn over the retention money. The allegations in Fong's Complaint are clear and simple: (1) That Maxco had an outstanding obligation to respondent; (2) Maxco assigned to Fong its retention from petitioner in payment of the said obligation; (3) Petitioner as early as April 18, 2005 was notified of the assignment; (4) Despite due notice of such assignment, petitioner still refused to deliver the amount assigned to respondent, giving preference, instead, to the 2 other creditors of Maxco; (5) At the time petitioner was notified of the assignment, there were only one other notice of garnishment and there were sufficient residual amounts to satisfy Fong's claim; and (6) uncertain over which one between

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[11] *Tolentino v. Leviste*, G.R. No. 156118, 19 November 2004, 443 SCRA 274, 284; *Toyota v. The Director of the Bureau of Labor Relations*, 363 Phil. 437 (1999); *Zamora v. Court of Appeals*, G.R. No. 78206, 19 March 1990, 183 SCRA 279.

[12] *Laresma v. Abellana*, G.R. No. 140973, 11 November 2004, 442 SCRA 156, 169; *Cruz v. Spouses Torres*, 374 Phil. 529, 533 (1999).

[13] *Caparros v. Court of Appeals*, G.R. No. 56803, 28 February 1989, 170 SCRA 758; *Ganadin v. Ramos*, 188 Phil. 28, 35 (1973); *Fuentes v. Hon. Bautista*, 153 Phil. 171 (1973); *Simpao, Jr. v. Lilles*, 148-B Phil. 157 (1971); *Vencilao v. Camarenta*, 140 Phil. 99 (1969).

Maxco and petitioner he may resort to for payment, respondent named them both as defendants in Civil Case No. 06-0200-CFM.

While it is true that respondent, as the assignee of the receivables of Maxco from petitioner under the Trade Contract, merely stepped into the shoes of Maxco. However, the right of Maxco to the retention money from petitioner under the trade contract is not even in dispute in Civil Case No. 06-0200-CFM. Respondent raises as an issue before the RTC is the petitioner's alleged unjustified preference to the claims of the other creditors of Maxco over the retention money.

Although the jurisdiction of the CIAC is not limited to the instances enumerated in Section 4 of E. O. No. 1008, Fong's claim is not even construction-related at all. This court has held that: "*Construction* is defined as referring to all on-site works on buildings or altering structures, from land clearance through completion including excavation, erection and assembly and installation of components and equipment."[14] Thus, petitioner's insistence on the application of the arbitration clause of the Trade Contract to Fong is clearly anchored on an erroneous premise that the latter is seeking to enforce a right under the trade contract. This premise cannot stand since the right to the retention money of Maxco under the Trade Contract is not being impugned herein. It bears mentioning that petitioner readily conceded the existence of the retention money. Fong's demand that the portion of retention money should have been paid to him before the other creditors of Maxco clearly, does not require the CIAC's expertise and technical knowledge of construction.

The adjudication of Civil Case necessarily involves the application of pertinent statutes and jurisprudence to matters of assignment and preference of credits. As this Court held in *Fort Bonifacio Development Corporation v. Domingo,*[15] this

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[14] *Fort Bonifacio Development Corporation v. Domingo*, G.R. No. 180765, 27 February 2009, citing *Gammon Philippines, Inc. v. Metro Rail Transit Development Corporation*, G.R. No. 144792, 31 January 2006, 481 SCRA 209, 218-219.

[15] G.R. No. 180765, 27 February 2009.

task is more suited for a trial court to carry out after a full-blown trial, than an arbitration body specifically devoted to construction contracts.

The second error raised also has not merit. Failure to state a cause of action refers to the insufficiency of allegation in the pleading. In resolving a motion to dismiss based on the failure to state a cause of action only the facts alleged in the complaint must be considered. The test is whether the court can render a valid judgment on the complaint based on the facts alleged and the prayer asked for.

In this case the complaint alleges that:

> x x x at the time he served notice of assignment to defendant FBDC there was only one notice of garnishment that the latter had received and there were still sufficient residual amounts to pay that assigned by defendant Maxco to the plaintiff. Subsequent notices of garnishment received by defendant FBDC could not adversely affect the amounts already assigned to the plaintiff as they are already his property, no longer that of defendant Maxco.[16]

From this statement alone, it is clear that a cause of action is present in the complaint filed *a quo*. Respondent has specifically alleged that the undue preference given to other creditors of Maxco over the retention money by petitioner was to the prejudice of his rights.

Petitioner next asserts that the appellate court erred in not ruling that the claim of respondent was extinguished by payment to the other garnishing creditors of Maxco. The assignment of this as an error is misleading as this is precisely one of the issues that need to be resolved in a full blown trial and one of the reasons that respondent impleaded Maxco and petitioner in the alternative.

The final error raised by petitioner that the other judgment creditors[17] as well as the trial court that issued the writ of

[16] *Rollo*, p. 127.

[17] Concrete Masters Inc. in Civil Case No. 05-164 of the RTC, Makati City, Branch 133 and Asia-Con Builders Inc. in CIAC Case No. 11-2002.

garnishment and CIAC should have been impleaded as defendants in the case as they were indispensable parties is likewise weak. Section 7, Rule 3 of the Revised Rules of Court provides for the compulsory joinder of indispensable parties without whom no final determination can be had of an action. An indispensable party is defined as one who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest.[18] The other judgment creditors are entitled to the fruits of the final judgments rendered in their favor. Their rights are distinct from the rights acquired by the respondent over the portion of the retention money assigned to the latter by Maxco. Their interests are in no way affected by any judgment to be rendered in this case.

WHEREFORE, premises considered, the instant Petition is *DENIED*. The Decision dated November 30, 2006 and the Resolution dated February 19, 2007 of the Court of Appeals in CA-G.R. SP No. 96532 are hereby *AFFIRMED.*

SO ORDERED.

Carpio Morales,[*] *Velasco, Jr., Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

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[18] *Moldes v. Villanueva*, G.R. No. 161955, 31 August 2005, 48 SCRA 697, 707.

[*] Acting Chairperson as replacement of Justice Leonardo A. Quisumbing who is on official leave per Special Order No. 618.

[**] Additional member of the Second Division per Special Order No. 619.

SECOND DIVISION

[G.R. No. 178188. May 8, 2009]

OLYMPIC MINES AND DEVELOPMENT CORP., *petitioner, vs.* **PLATINUM GROUP METALS CORPORATION,** *respondent.*

[G.R. No. 180674. May 8, 2009]

CITINICKEL MINES AND DEVELOPMENT CORPORATION, *petitioner, vs.* **HON. JUDGE BIENVENIDO C. BLANCAFLOR, in his capacity as the Presiding Judge of the Regional Trial Court of Palawan, Branch 95, Puerto Princesa City, Palawan, and PLATINUM GROUP METAL CORPORATION,** *respondents.*

[G.R. No. 181141. May 8, 2009]

PLATINUM GROUP METALS CORPORATION, *petitioner, vs.* **CITINICKEL MINES AND DEVELOPMENT CORPORATION, acting for its own interest and on behalf of OLYMPIC MINES AND DEVELOPMENT CORPORATION,** *respondent.*

[G.R. No. 183527. May 8, 2009]

PLATINUM GROUP METALS CORPORATION, *petitioner, vs.* **COURT OF APPEALS and POLLY C. DY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; JURISDICTION; JURISDICTION OVER THE SUBJECT MATTER IS DETERMINED BY THE ALLEGATIONS OF THE COMPLAINT; CASE AT BAR.— Settled is the rule that jurisdiction of the court over the subject matter is determined by the allegation of the complaint. In

Civil Case No. 4199, Platinum alleges in its complaint the following: xxx. From these allegations, we learn that Platinum had rights and interest in real property, specifically, the right to possess and to mine the subject mining areas for a certain period of time, as stated in the Operating Agreement. Olympic, however, had cast a cloud on its interest when: (a) Olympic sent Platinum a letter claiming that it had already terminated the Operating Agreement; (b) Olympic filed a complaint with the RTC Puerto Princesa, Palawan, Branch 52 (docketed as Civil Case No. 4181), asking the court to enjoin Platinum from conducting mining operations under the Operating Agreement, since this Agreement had already been unilaterally terminated by Olympic; and (c) Olympic wrote to the Governor of Palawan to inform him that its Operating Agreement with Platinum was already terminated and to request that the Governor revoke Platinum's SSMPs. Olympic's act clearly indicated its intent to deprive Platinum of its rights, prompting the latter to file the complaint to quiet its title or interest in the subject mining areas and remove all doubts as to the Agreement's continuous effectivity. Platinum's primary objective was to protect its interest in the subject mining areas covered by the Operating Agreement, specifically, under Section 2.12 and 3.4, both are obliged "to maintain the validity and subsistence of the mining rights subject of the agreement." It is thus obvious that the complaint falls within the ambit of the RTC's original jurisdiction, to the exclusion of all other judicial or quasi-judicial bodies.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT 7942 (OTHERWISE KNOWN AS THE MINING ACT OF 1995); SECTION 77 THEREOF; JURISDICTION OF THE PANEL OF ARBITRATORS.—** The POA's jurisdiction is set forth in Section 77 of the Mining Act: Sec. 77. *Panel of Arbitrators.—* xxx. Within thirty (30) working days, after the submission of the case by the parties for decision, *t***he panel shall have exclusive and original jurisdiction to hear and decide on the following: a. Disputes involving rights to mining areas**; **b. Disputes involving mineral agreements or permits**; c. Disputes involving surface owners, occupants and claimholders/concessionaires; and d. Disputes pending before the Bureau and the Department at the date of the effectivity of this Act. Section 77, paragraphs (a) and (b) are

the provisions principally invoked in this case to confer jurisdiction over the dispute between Olympic/Citinickel and Platinum – provisions which, upon closer inspection of the law and jurisprudence, belie Olympic's and Citinickel's contentions.

3. ID.; ID.; ID.; ID.; DISPUTES THAT FALL UNDER SECTION 77 (A) OF THE MINING ACT.— In *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation, et al.,* this Court, speaking through Justice Velasco, specified the kind of disputes that fall under Section 77(a) of the Mining Act: The phrase "disputes involving rights to mining areas" refers to any **adverse claim, protest, or opposition to an application for a mineral agreement.** xxx xxx xxx [T]he power of the POA to resolve any adverse claim, opposition, or protest relative to mining rights under Section 77 (a) of RA 7942 is confined only to **adverse claims, conflicts, and oppositions *relating to* applications for the grant of mineral rights.** xxx. **Clearly, POA's jurisdiction over "disputes involving rights to mining areas" has nothing to do with the cancellation of *existing* mineral agreements.**

4. ID.; ID.; ID.; ID.; JURISDICTION OF THE PANEL OF ARBITRATORS, WHEN MAY BE PROPERLY INVOKED; SECTION 77 (A) OF THE MINING LAW NOT APPLICABLE TO CASE AT BAR.— To properly fall within the POA's jurisdiction under Section 77 (a) of the Mining Law, the dispute must: 1. refer to an *adverse claim, protest, or opposition* **to an application for a mineral agreement;** and 2. be filed *prior to the approval* by the DENR Secretary of the **mineral agreement. Under these terms, Section 77 (a) established a cut-off period (i.e., before the approval of the mineral agreement) when the POA's jurisdiction may be properly invoked, and this period had long lapsed insofar as the dispute between Citinickel and Platinum is concerned, as Olympic's mining lease contract and its Operating Agreement with Platinum had already been approved by the Government**. Accordingly, invocation of the POA's jurisdiction under Section 77(a) finds no application in this case.

5. ID.; ID.; ID.; SECTION 77 (B) THEREOF; TERM "MINERAL AGREEMENT" DEFINED; OPERATING AGREEMENT IN CASE AT BAR IS NOT A CONTRACT BETWEEN THE

GOVERNMENT AND A CONTRACTOR BUT A PURELY CIVIL CONTRACT BETWEEN TWO PRIVATE ENTITIES.— Neither will POA be vested with jurisdiction through Section 77(b), as the nature of the agreement between Olympic and Platinum is not the "mineral agreement" contemplated under the law. The term "mineral agreement" has a specific definition under the Mining Act, Section 3 (ab) thereof states: Section 3. *Definition of Terms.*— xxx (ab) "Mineral Agreement"—refers to a contract between the government and a contractor, involving mineral production-sharing agreement, co-production agreement, or joint-venture agreement. **Quite obviously, the Operating Agreement is not "a contract between the government and a contractor"; instead, it is *a purely civil contract between two private entities*—one of whom happens to be a party to a mineral agreement with the government**. While the enforcement of the terms of an operating agreement would necessarily *relate to* an existing and approved mineral agreement (as may be inferred from Section 4 of DENR Memorandum Order No. 2003-08), this however does not make the two concepts the same, nor does it make an operating agreement a specie of the mineral agreements contemplated under the Mining Act. Section 26 of the Mining Act states that a mineral agreement may be in the form of a mineral production sharing agreement, a co-production agreement or a joint-venture agreement, and does not include an operating agreement in the enumeration. Apart from this, the Mining Act and the various administrative issuances treat these two separately by providing for different requirements, rules, and procedures governing their application, approval, and cancellation. **Thus, to contend that a dispute involving operating agreements can be classified as a "dispute involving mineral agreements or permits" stretches the definition of "mineral agreement" beyond the clear terms of the law.**

6. **ID.; ID.; ID.; JURISDICTION OF THE PANEL OF ARBITRATORS IS LIMITED TO RESOLUTION OF DISPUTES INVOLVING PUBLIC MINERAL AGREEMENTS.—** Although Section 77 (d) of the Mining Act has transferred to the POA jurisdiction over disputes pending before the Bureau of Mines and the DENR, Section 77 (b) did not adopt the wording of Section 7, paragraphs (a) and (c) of PD No. 1281 so as to include all other forms of contracts –

public or private – involving mining rights; Section 77 (b) in relation to Section 3 (ab) of the Mining Act did not include a general catch-all phrase to cover other agreements involving mining rights similar to those in Section 7, paragraphs (a) and (c) of PD No. 1281. Instead, the Mining Act, through the above-quoted Sections 3 (ab) and 26, has limited the jurisdiction of the POA, as successor of the adjudicatory functions of the Bureau of Mines, to mineral agreements between the government and the private contractor. Otherwise stated, while disputes between parties to any mining contract (including operating agreements) may previously fall within the Bureau of Mines' jurisdiction under Section 7 (a) or (c) of PD No. 1281, it can no longer be so placed now within the authority of the POA to settle under Section 77 (b) of the Mining Law because its jurisdiction has been limited to the resolution of disputes involving *public* mineral agreements.

7. ID.; ID.; ID.; AN OPERATING AGREEMENT CANNOT BE CONSIDERED AS A MINERAL PERMIT.— Parenthetically, the "permit" referred to in Section 77(b) of the Mining Act pertains to exploration permit, quarry permit, and other mining permits recognized in Chapters IV, VIII, and IX of the Mining Act. An operating agreement, not being among those listed, cannot be considered as a "mineral permit" under Section 77 (b). Since the Operating Agreement is not the mineral agreement contemplated by law, the contention that jurisdiction should be with the POA under Section 77 (b) of the Mining Act cannot be legally correct. **In plainer terms, no jurisdiction vests in the POA under the cited provision because the Operating Agreement is not the "mineral agreement" that Section 77(b) refers to.**

8. ID.; ID.; ID.; INVOCATION OF SECTION 77 THEREOF NOT SUFFICIENT TO CONFER JURISDICTION OVER THE DISPUTE TO THE PANEL OF ARBITRATORS; PHRASE "DISPUTES INVOLVING SURFACE OWNERS, OCCUPANTS AND CLAIM CONCESSIONAIRES," CONSTRUED.— Even an invocation of Section 77(c) of Mining Act (referring to "disputes involving surface owners, occupants and claim-holders/concessionaires") would not suffice to confer jurisdiction over the dispute to the POA. Surface-owners, occupants, and concessionaires refer to owners or occupants of the real property affected by the mining activities conducted

by the claim-holders/concessionaires (entities which are holding mining rights granted by the government). Neither Citinickel nor Platinum falls under this classification.

9. **CIVIL LAW; ESTOPPEL; DOCTRINE APPLIED TO CASE AT BAR.—** Additionally, the Court notes that both Olympic and Citinickel have previously recognized the RTC's jurisdiction to decide the dispute when they filed civil cases before the trial courts of Palawan and Parañaque, respectively, for the cancellation of the Operating Agreement on account of Platinum's alleged gross violations. By doing so, both Olympic and Citinickel acknowledged the authority and jurisdiction of the trial court to resolve their dispute with Platinum. Not only did they acknowledge this jurisdiction, they as well failed to appeal the decisions rendered by the trial courts in these cases. Thereby, they accepted the binding effect of the trial court decision, and – more importantly – recognized the trial court's authority to rule on their dispute with Platinum regarding the Operating Agreement. In other words, they are now **estopped from claiming that the POA, rather than the trial court, has the sole and exclusive authority to resolve the issue of whether the Operating Agreement may be rescinded for Platinum's alleged violations.**

10. **REMEDIAL LAW; ACTIONS; VENUE; THE PRIMARY OBJECTIVE IN FILING THE CASE IS THE CONTROLLING FACTOR IN THE DETERMINATION OF THE VENUE THEREOF; CASE AT BAR.—** The controlling factor in determining venue for cases is the primary objective for which said cases are filed. As we had earlier stated, Platinum's primary objective in filing the complaint is to protect its interest in the subject mining areas, although it joined its claims of breach of contract, damages, and specific performance in the case. In any event, the Rules of Court allow joinder of causes of action in the RTC, provided one of the causes of action (in this case, the cause of action for quieting of title or interest in real property located in Palawan) falls within the jurisdiction of said court and venue lies therein. **In fine, there is absolutely no reason to disturb the CA's findings that venue was properly laid in the Palawan court**. In light of these, **the Court affirms the jurisdiction of the RTC of Puerto Princesa, Palawan, Branch 95, and accordingly dismiss Olympic's petition for review on *certiorari* in G.R. 178188.**

11. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT 7942 (OTHERWISE KNOWN AS THE MINING ACT OF 1995); ASSIGNMENT OR TRANSFER OF A MINERAL AGREEMENT APPLICATION, WHEN TAKES EFFECT.— Even if Platinum knew of the assignment/transfer, it was not bound to include Citinickel in the complaint because the assignment/transfer of a mineral agreement application would, by law, take effect only *after* the approval of the DENR Secretary or his representative. Section 40 of DENR Administrative Order No. 96-40 (Implementing Rules and Regulations of the Mining Act), which states: xxx. The provision is clear – any transfer or assignment of a mineral agreement application is still subject to the approval of the Director of the Mines and Geosciences Bureau or the Regional Director concerned. In determining whether to approve the assignment or not, the Director or Regional Director has to consider the national interest, public welfare, as well as study the eligibility of the party to whom said application is being transferred to. Any assignment of a mineral agreement is thus considered provisional, pending final approval by the Director or Regional Director. Thus, although the Deed of Assignment between Olympic and Citinickel was executed on June 9, 2006, the actual transfer of rights occurred only *after* the Regional Director of the MGB Regional Office No. IV-B had given its approval to the assignment on September 6, 2006, or after Civil Case No. 4199 was filed on June 14, 2006. Accordingly, Citinickel, being a mere successor-in-interest of Olympic, is bound by the questioned injunction order. Even if we disregard the inclusion of Citinickel in the July 16, 2006 Order granting the application for a writ of preliminary injunction, the result would be the same – the injunction imposed on Olympic will similarly bind Citinickel.

12. ID.; ID.; EXHAUSTION OF ADMINISTRATIVE REMEDIES; EXCEPTIONS TO THE RULE.— The rule of exhaustion of administrative remedies admits of numerous exceptions, such as: 1) when there is a violation of due process; 2) when the issue involved is purely a legal question; 3) *when the administrative action is patently illegal amounting to lack or excess of jurisdiction;* 4) when there is estoppel on the part of the administrative agency concerned; 5) when there is irreparable injury; 6) when the respondent is a department secretary whose acts as an alter ego of the President bears the

implied and assumed approval of the latter; 7) when to require exhaustion of administrative remedies would be unreasonable; 8) when it would amount to a nullification of a claim; 9) when the subject matter is a private land in land case proceedings; 10. when the rule does not provide a plain, speedy and adequate remedy; and 11. *when there are circumstances indicating the urgency of judicial intervention.* Platinum's serious allegations amount to circumstances calling for urgent judicial intervention. More importantly, Platinum's allegations essentially attack POA's jurisdiction over Citinickel's complaint for lack or excess of jurisdiction. The CA thus committed a reversible error when it failed to recognize the POA's jurisdictional errors and instead, mistakenly placed its reliance on a procedural technicality.

13. **REMEDIAL LAW; PROVISIONAL REMEDIES; INJUNCTION; INJUNCTIVE WRIT AGAINST A PARTY BINDS ITS SUCCESSOR-IN-INTERST.—** Going into the merits of G.R. No. 181141, the Court finds that the POA Resolution was issued in disregard of the injunctive writs in Civil Case No. 4199. We have earlier ruled in G.R. No. 180674 that Citinickel, as successor-in-interest of Olympic, became bound by the writ of injunction issued by the trial court, even though it was not formally impleaded as a party when Civil Case No. 4199 was instituted. The injunction prohibited the parties – Citinickel included – from performing "any act that will tend to impede, hamper, limit or adversely affect the full enjoyment by [Platinum] of its rights under the Operating Agreement xxx [and] from performing any act which will disturb the *status quo*." When the POA issued the assailed Resolution rescinding the Operating Agreement and cancelling Platinum's SSMPs at the instance of Citinickel, it clearly went against the prohibition.

14. **ID.; ACTIONS;RULE AGAINST FORUM SHOPPING; VIOLATED IN CASE AT BAR.—** Not only was the POA Resolution issued in contravention of the injunctive writ, POA Case No. 2006-02-B (where the Resolution was issued) was instituted in blatant violation of the rules of forum shopping. POA Case No. 2006-02-B was instituted while Citinickel's complaint for cancellation of the Operating Agreement was pending before the RTC of Paranaque (docketed as Civil Case NO. 06-0185). And while there was yet no decisive ruling on

the status and validity of the Operating Agreement in these cases, Citinickel had prematurely instituted petitions to cancel Platinum's SSMPs and ECCs before the PMRB (docketed as PMRB Case No. 002-06) and EMB, respectively. Along the same line, Citinickel filed a *mandamus* petition before the RTC of Quezon City (docketed as Civil Case No. Q-07-59855) to compel the DENR Secretary to confiscate and hold possession of the mineral ores of Platinum stockpiled at the Palawan pier. Over and above these cases, Olympic had, prior to the assignment, already instituted similar actions before the same courts and agencies – actions Citinickel is similarly bound as the assignee/transferee of Olympic.

15. **ID.; ID.; ID.; WHILE A PARTY MAY AVAIL HIMSELF OF THE REMEDIES PRESCRIBED BY LAW, SUCH PARTY IS NOT FREE TO RESORT TO THEM SIMULTANEOUSLY OR AT HIS PLEASURE OR CAPRICE; CASE AT BAR.—** Both Olympic and Citinickel evidently trifled with the courts and abused its processes by improperly instituting several cases before various judicial and quasi-judicial bodies, one case after another (some even simultaneously filed during the pendency of other cases) once it became evident that a favorable decision will not be obtained in the previously filed case – all of which are focused on the termination of the Operating Agreement and the cancellation of Platinum's mining permits. While a party may avail himself of the remedies prescribed by law or by the Rules of Court, such party is not free to resort to them simultaneously or at his pleasure or caprice. **The actions of Olympic and Citinickel, taken separately or collectively, betray a pattern of calculated and intentional forum shopping that warrants denial of the reliefs they pray for**.

CARPIO MORALES, *J., concurring opinion*:

REMEDIAL LAW; COURTS; JURISDICTION; DETERMINED BY THE MATERIAL ALLEGATIONS OF THE COMPLAINT AND THE LAW, IRRESPECTIVE OF WHETHER THE PLAINTIFF IS ENTITLED TO RECOVER ALL OR SOME OF THE RELIEFS SOUGHT; PANEL OF ARBITRATORS HAS NO JURISDICTION OVER THE CASE AT BAR.— On the question of jurisdiction, going by the well-entrenched principle that jurisdiction is determined

by the material allegations of the complaint and the law, irrespective of whether the plaintiff is entitled to recover all or some of the reliefs sought, I find that the main issue brought forth by Platinum's complaint for Quieting of Title/Interest and Removal of Cloud, Breach of Contract and Damages, and Specific Performance in Civil Case No. 4199 is the validity of Olympic's unilateral termination of the Operating Agreement. Consistent with the case of *Gonzales* cited by the dissent of *J*. Tinga, this is a *judicial* question as it involves the determination of what the law is and what the legal rights of the parties are with respect to the matter in controversy. The resolution of this question, in turn, affects the parties' title to, possession of, or interest in, the subject real property. Jurisdiction, thus, lies with the trial court and not the Panel of Arbitrators of the Department of Environment and Natural Resources.

TINGA, *J*., *dissenting opinion*:

1. REMEDIAL LAW; COURTS; JURISDICTION; JURISDICTION OF THE COURTS OVER THE SUBJECT MATTER OF THE ACTION IS DETERMINED BY THE MATERIAL ALLEGATIONS OF THE COMPLAINT AND THE LAW; CASE AT BAR.— The well-entrenched principle is that the jurisdiction of the court over the subject matter of the action is determined by the material allegations of the complaint and the law, irrespective of whether or not the plaintiff is entitled to recover all or some of the claims or reliefs sought therein. Platinum's complaint, styled as one for Quieting of Title/Interest and Removal of Cloud, Breach of Contract and Damages, and Specific Performance, alleges: xxx. It would seem, at first glance, that the complaint involves title to, or possession of, real property, or an interest therein, bringing the complaint within the exclusive original jurisdiction of the RTC. A thorough examination of the complaint, however, reveals an underlying question which makes the jurisdiction of the RTC over the complaint not so indubitable.

2. ID.; ID.; ID.; MINING DISPUTE DISTINGUISHED FROM JUDICIAL QUESTION; LIMITATION ON THE JURISDICTION OF THE PANEL OF ARBITRATORS OVER MINING DISPUTES.— The Court in *Gonzales*

distinguished between a mining dispute within the exclusive and original jurisdiction of the POA and a judicial question properly resolved by regular courts. We held: A judicial question is a question that is proper for determination by the courts, as opposed to a moot question or one properly decided by the executive or legislative branch. A judicial question is raised when the determination of the question involves the exercise of a judicial function; that is, the question involves the determination of what the law is and what the legal rights of the parties are with respect to the matter in controversy. On the other hand, a mining dispute is a dispute involving (a) rights to mining area, (b) mineral agreements, FTAAs, or permits, and (c) surface owners, occupants and claimholders/ concessionaires. Under Republic Act No. 7942 (otherwise known as the Philippine Mining Act of 1995), the Panel of Arbitrators has exclusive and original jurisdiction to hear and decide these mining disputes. The Court of Appeals, in its questioned decision, correctly stated that Panel's jurisdiction is limited only to those mining disputes which raise questions of fact or matters requiring the application of technological knowledge and experience.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT 7942 (OTHERWISE KNOWN AS THE MINING ACT OF 1995), SECTION 77 THEREOF; PANEL OF ARBITRATORS; JURISDICTION THEREOF OVER COMPLAINTS RELATING TO DISPUTES INVOLVING MINERAL AGREEMENTS OR PERMITS.—** The majority argues that following our ruling in *Celestial Mining v. Macroasia,* the POA cannot exercise jurisdiction over Citinickel's complaint on the basis on Section 77(a), the key phrase of the provision being "disputes involving rights to mining areas." We said in *Celestial*: [T]he power of the POA to resolve any adverse claim, opposition, or protest relative to mining rights under Section 77(a) of RA 7942 is confined only to adverse claims, conflicts, and oppositions **relating to applications for the grant of mineral rights**. xxx. Clearly, POA's jurisdiction over "disputes involving rights to mining areas" has nothing to do with the cancellation of existing mineral agreements. The complaint herein did not pertain to "applications for the grant of mineral rights," hence Section 77(a) need not apply. **Verily though, <u>the POA properly exercised</u>**

jurisdiction over Citinickel's complaint, on the basis of Section 77(b), which relates to "disputes involving mineral agreements or permits".

4. ID.; ID.; ID.; ID.; JURISDICTION THEREOF IS LIMITED ONLY TO THOSE MINING DISPUTES WHICH RAISE QUESTIONS OF FACT OR MATTERS REQUIRING THE APPLICATION OF TECHNOLOGICAL KNOWLEDGE AND EXPERIENCE.— xxx **It thus emerges that at least two of the key questions raised in the complaint: whether or not Platinum had engaged in illegal large scale mining by extracting more ore than it was allowed under the law, and whether Platinum's mining activity had caused environmental damage, are questions that involve the expertise of the POA, rooted as they are in the determination of scientific facts and technical issues.** Notably, among the members of the POA is a mining engineer or a professional in a related field who would be adept at evaluating the technical issues involved. In contrast, a degree in the mining sciences is not a prerequisite to assume a judicial seat, and it would come as an eccentric surprise if there are actually judges out there conversant with the technical aspects of mining. We held in *Gonzales v. Climax Mining* that the POA's jurisdiction "is limited only to those mining disputes which raise questions of fact or matters requiring the application of technological knowledge and experience."

5. ID.; ID.; ID.; ID.; HAS JURISDICTION TO PREVENT RESPONDENT CORPORATION FROM FURTHER VIOLATION OF THE MINERAL AGREEMENT.— The complaint filed with the POA can be accommodated with ease under Section 77(b), which states "disputes involving mineral agreements." The subject dispute involves mineral agreements, since it was under the indispensable authority of the mineral agreements that Platinum had allegedly committed the assailed acts. The violations complained of Platinum are indisputably contrary to the mineral agreements themselves, which Platinum was bound to observe under the terms of the Operating Agreement. The POA certainly has the jurisdiction to prevent further violations on the part of Platinum, and there is nothing in Section 77(b) that would prevent the POA from restraining Platinum's continued abuse of the earth under the authority of the Operating Agreement.

6. **ID.; ID.; ID.; ID.; HAS JURISDICTION OVER DISPUTE INVOLVING VIOLATION BY A PARTY OF THE RIGHT OF ANOTHER UNDER A SUBSISTING MINERAL AGREEMENT; CASE AT BAR.—**With respect to Section 77(b), the Court in *Celestial* concluded that the POA had no jurisdiction over a petition for the cancellation of an existing mineral agreement based on the alleged violation of any of the terms thereof. That conclusion aligns with the *ponencia* since the instant cases do not involve the cancellation of the mineral agreements themselves. The Court in *Celestial* also required the existence of a "dispute" for Section 77(b) to apply, pertaining "to a violation by a party of the right to another." Herein, there is clearly a dispute between the rights of Citinickel (as successor-in-interest of Olympic) and Platinum, where the latter's violations have jeopardized the former's highly regulated rights and privileges under a subsisting mineral agreements. Citinickel, as Olympic's successor-in-interest, is a real party-in-interest with a material and substantial interest in the mineral agreements which it had legally taken over. In addition, the determination of the claims involve the terms of the mineral agreements themselves, relating as they do to violations of the law and environmental regulations with which the contractee to a mineral agreement is obliged to comply. Under the framework set forth in *Celestial*, the complaint filed by Citinickel falls within the jurisdiction of the POA under Section 77(b) of the Mining Act.

7. **REMEDIAL LAW; ACTIONS; PARTIES; INDISPENSABLE PARTY; PRESENCE THEREOF IS A *SINE QUA NON* TO THE TRIAL COURT'S EXERCISE OF JUDICIAL POWER.—**Citinickel claims that prior to Platinum's filing of its complaint in Civil Case No. 4199 on June 14, 2006, the Deed of Assignment, whereby Olympic assigned to Citinickel all its rights and interest over its mining claims, had already been executed on June 9, 2006. Citinickel became an indispensable party to the suit by virtue of the prior assignment to it of Olympic's mining rights, which included the latter's rights over the disputed areas occupied by Platinum. As an indispensable party without whom no final determination can be had in the case, Citinickel's presence was a *sine qua non* to the trial court's exercise of judicial power.

8. ID.; PROVISIONAL REMEDIES; INJUNCTION; STRANGERS TO A CASE ARE NOT BOUND BY JUDGMENT RENDERED BY THE COURT.— In *Matuguina v. Court of Appeals,* the Court invalidated a DENR Order of Execution directed against one which was never a party to the assailed proceeding resulting in the issuance of such Order and, without affording the same an opportunity to be heard before it was adjudged liable. We stated: Generally accepted is the principle that no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by judgment rendered by the court. In the same manner an execution can be issued only against a party and not against one who did not have his day in court. xxx. In a similar vein, the failure to implead Citinickel even though Olympic had ceded its rights to Citinickel **prior to the filing of Platinum's complaint** necessarily relieves Citinickel from the jurisdiction of the Palawan RTC. At the time of the filing of the complaint, Citinickel was already a real party-in-interest and an indispensable party which should have been impleaded. The cases cited above clearly refute the majority's contentions on those points.

9. ID.; ID.; ID.; INJUNCTIVE WRIT ISSUED AGAINST PARTIES WHO WERE NEVER IMPLEADED IN THE CASE SHOULD BE NULLIFIED.— It is unacceptable that the trial court proceeded to include Citinickel in its injunctive order when it had never acquired jurisdiction over Citinickel in the first place. For the same reason, it should be said that the expanded writ of injunction against the DENR, the DENR Secretary, the POA, the EMB, and the MGB, all of whom were never impleaded in the case, should be nullified. Indeed, the complaint should have been dismissed, failing which, all subsequent actions of the court are deemed null and void for want of authority to act, not only as to the absent parties such as Citinickel and the above-mentioned DENR agencies but even as to those present.

10. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WILL NOT LIE WHEN THERE ARE OTHER REMEDIES AVAILABLE TO THE PETITIONER.— It cannot be overemphasized that the extraordinary remedy of *certiorari* will not lie when there are other remedies available to the petitioner. Indeed, Platinum cannot be allowed to forgo procedure simply based on its belief, misguided at that, that filing an appeal with the MAB would have been futile. It was indeed rash for Platinum to suppose

that just because the DENR Secretary, who also heads the MAB, issued an Order cancelling Platinum's ECC's, he would not give due regard to his duty to review and, if need be, reconsider an Order he had issued.

11. ID.; ID.; ID.; DISMISSAL OF THE PETITION PROPER IN CASE AT BAR; APPEAL TO THE MINES ADJUDICATION BOARD PROPER REMEDY TO PREVENT THE RESOLUTION OF THE PANEL OF ARBITRATORS FROM ATTAINING FINALITY.— The foregoing rule is clear enough. The filing of an appeal to the MAB is the only procedural recourse that would have effectively prevented the POA Resolution from attaining finality. Given that Platinum deliberately ignored the remedy laid out in the POA and MAB Rules, the appellate court's dismissal of its petition for *certiorari* was proper. The finality of the POA Resolution followed *ipso facto*.

12. POLITICAL LAW; ADMINISTRATIVE LAW; MINING ACT OF 1995 OTHERWISE KNOWN AS REPUBLIC ACT 7942; PETITIONER PLATINUM HAS NO RIGHT TO POSSESS AND OCCUPY THE MINING AREAS DUE TO THE CANCELLATION AND EXPIRATION OF THE MINING PERMIT ISSUED THEREON.— Platinum's right to conduct mining operations in the disputed mining areas proceeds solely from the Operating Agreement, from which also emanates Platinum's privilege to apply for SSMPs and ECCs. It should be noted that Platinum is not a grantee of a mining concession nor was any mining permit issued in its favour by the DENR independent of the Operating Agreement. Moreover, the POA Resolution cancelled and withdrew the SSMPs issued to Platinum. These same SSMPs (SSMP-PLW-039 and SSMP-PLW-040) issued by the Provincial Governor on November 4, 2004 had already expired two years thence, or on November 3, 2006, as provided for under Sec. 13 of Republic Act No. 7076, otherwise known as the People's Small-Scale Mining Act of 1991. It follows, too, that the ECCs issued by the DENR have become *functus officio*. In view of the cancellation of the Operating Agreement as decreed by the POA and the cancellation and expiration of the SSMPs issued to Platinum, the latter clearly has no right to possess and

occupy the mining areas that now belong to Citinickel by virtue of the Deed of Assignment dated June 9, 2006.

LEONARDO-DE CASTRO, *J.*, *separate opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; THE PHILIPPINE MINING ACT OF 1995 (R.A. NO. 7942); PANEL OF ARBITRATORS; JURISDICTION THEREOF.— The jurisdiction of the POA is embodied in the Section 77 of Republic Act No. 7942 (The Philippine Mining Act of 1995), to wit: Within thirty (30) working days, after the submission of the case by the parties for decision, the panel shall have exclusive and original jurisdiction to hear and decide on the following: (a) **Disputes involving rights to mining areas**; (b) **Disputes involving mineral agreements or permits**; (c) Disputes involving surface owners, occupants and claimholders/concessionaires; and (d) Disputes pending before the Bureau and the Department at the date of the effectivity of this Act.

2. ID.; ID.; ID.; TERM "MINERAL AGREEMENT," DEFINED.— Both the *ponencia* and the dissent opine that the present controversy does not fall under Section 77(a), under the parameters laid down in *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation*. However, they disagree whether the dispute falls under Section 77(b). On this point, I agree with the *ponencia* that the Operating Agreement does not come within the ambit of Section 77(b) for it is not a "mineral agreement" as defined under RA No. 7942. As defined by statute, a "mineral agreement" is a contract **between the government and a contractor**, involving mineral production-sharing agreement, co-production agreement, or joint-venture agreement. A "mineral production sharing agreement," "co-production agreement" and "joint venture agreement" likewise have technical definitions under the law and suffice it to say, that the Operating Agreement did not fit any of those definitions. Neither did the Operating Agreement involve an assignment or transfer of rights and obligations under a mineral agreement as contemplated by Section 30 of RA No. 7942.

3. ID.; ID.; ID.; RELATIONSHIP BETWEEN THE PETITIONER OLYMPIC AND RESPONDENT PLATINUM IS AKIN TO THE CONCEPT OF AGENCY.— To begin with, it is unclear

if Olympic had a subsisting grant from the government over the subject mining areas at the time the Operating Agreement was executed. What is apparent from the pleadings is that Olympic was previously granted mining lease contracts over the mining areas and that Olympic was also the applicant for an MPSA for the same mining areas. In any event, whatever rights and obligations Olympic had as the previous grantee of mining concessions or as the recognized applicant for an MPSA over the said mining areas, none of those mining rights and obligations were transferred or assigned to Platinum. Under the Operating Agreement, Olympic was simply allowing Platinum to undertake mining activities on Olympic's mining claims or to operate Olympic's mines on the former's behalf. Their relationship under the Operating Agreement is akin to the concept of agency under civil law. Olympic allowed Platinum to do acts within the mining areas that Olympic itself could lawfully do but only for and on Olympic's behalf. In fact, Olympic and Citinickel referred to Platinum as an "agent" in their petition before the POA.

4. **ID.; ID.; ID.; TERM "DISPUTE," DEFINED; PHRASE "DISPUTES INVOLVING RIGHTS TO MINING AREAS," CONSTRUED; CASE AT BAR.—** It is also doubtful that the present controversy is the sort of "dispute" over which the POA has jurisdiction. In *Celestial,* the Court held that a dispute is defined as "a conflict or controversy; a conflict of claims or rights; an assertion of a right, claim or demand on one side; met by contrary claims or allegations on the other." Taking this definition of a "dispute" and interpreting the provisions of DENR AO 96-40, the Court held in *Celestial* that the phrase "disputes involving rights to mining areas" in Section 77(a) refers to any adverse claim, protest, or opposition to an **application** for mineral agreement. Analogous to the reasoning in *Celestial*, to my mind, Section 77(b) should likewise be interpreted as referring to conflicting interests and claims with respect to a **granted** mineral agreement or permit. In the cases at bar, there were no conflicting claims or rival interests in a mineral agreement or permit granted by the government. There was only one grantee of, or applicant for, a mineral agreement and that was Olympic (later substituted by Citinickel). Any mining rights that Platinum enjoyed or exercised under the Operating Agreement was in representation of Olympic. It is

conceded that Platinum had no mining grant or concession from the government in its own name over the same mining areas. Platinum was issued mining permits, not as a grantee or applicant in its own right, but as Olympic's agent/operator. In other words, there is an identity of interests between Olympic and Platinum. There could be no rival or disputing claims to a granted mineral agreement or permit.

5. **ID.; ID.; ID.; PANEL OF ARBITRATORS; NO JURISDICTION TO CANCEL THE OPERATING AGREEMENT NOR DECLARE IT OF NO FORCE AND EFFECT; PETITIONER PLATINUM'S CAUSES OF ACTION FALL WITHIN THE JURISDICTION OF THE REGIONAL TRIAL COURT.—** Premises considered, the POA had no jurisdiction to cancel the Operating Agreement nor to declare it of no force and effect. To reiterate, the Operating Agreement is not a mineral agreement. Notwithstanding the technical nature of some of the undertakings in the Operating Agreement and despite the State's interest in ensuring compliance with mining laws by the parties thereto, the Operating Agreement is primarily a civil contract between private persons and the rights and obligations of the parties thereto is properly determined by the civil courts. Platinum's commitment under the Operating Agreement to faithfully comply with mining laws and regulations was only one of the obligations involved in said agreement. The causes of action raised by Platinum in its complaint, such as the alleged (a) invalid termination of the Operating Agreement, (b) bad faith attending the termination, (c) entitlement to damages and specific performance, are well within the jurisdiction of the RTC.

6. **ID.; ID.; ID.; ID.; NO JURISDICTION TO CANCEL THE MINING PERMIT OF THE RESPONDENT CORPORATION; POWER TO CANCEL OR WITHDRAW A MINERAL AGREEMENT OR PERMIT FOR VIOLATION OF THE TERMS AND CONDITIONS THEREON BELONG TO THE APPROVING AUTHORITY.—** As for the POA's cancellation of the SSMPs of Platinum, I am also of the considered view that the POA had no jurisdiction to issue such an order. The underlying principle in *Celestial* is that it is the approving/granting authority that has the power to cancel or withdraw a mineral agreement or permit on the ground of violation of the terms and conditions of the agreement or permit.

SSMPs are not issued by the POA. Under Section 103 of DENR Administrative Order No. 96-40, it is the Provincial Governor/ City Mayor, through the Provincial/City Mining Regulatory Board, that has the power to approve SSMPs for areas outside mineral reservations. The records show that Platinum's SSMPs were approved by the Provincial Governor, through the proper provincial mining regulatory board. I believe the proposed cancellation of an SSMP for any violation of the terms thereof should be brought before the issuing/approving authority and not the POA.

7. **ID.; ID.; ID.; THE ENVIRONMENTAL MANAGEMENT BUREAU OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES HAS THE JURISDICTION TO INVESTIGATE THE ISSUE ON VIOLATIONS OF THE TERMS AND CONDITIONS OF THE ENVIRONMENTAL COMPLIANCE CERTIFICATES (ECCS).—** As for the purported violations by Platinum of the terms and conditions of its ECCs, I likewise believe that the Environmental Management Bureau of the DENR, as the issuing/approving authority, has the jurisdiction to investigate and pass upon the matter. Thus, the parties should exhaust their administrative remedies on the matter of environmental compliance.

8. **ID.; ID.; ID.; BREACHES OF THE OPERATING AGREEMENTS FALL WITHIN THE JURISDICTION OF THE REGULAR COURTS WHILE BREACHES OF THE TERMS OF THE MINING PERMITS BELONG TO THE JURISDICTION OF THE APPROPRIATE EXECUTIVE ADMINISTRATIVE AGENCIES.—** As for the injunctive writs issued by the RTC and the CA, I concur with the *ponencia* on the propriety of setting aside the writ of preliminary injunction issued by the CA against the RTC in Civil Case No. 4199 and in affirming the validity of the injunctive writs issued by the RTC for substantially the same reasons stated in the *ponencia*. I qualify my vote, however, with respect to the RTC's injunctive order against the DENR and its offices/agencies. The RTC's order should be understood as only preventing the said agencies from taking jurisdiction over disputes pertaining to the Operating Agreement. However, the RTC should not enjoin the DENR and its offices, or other executive/administrative agencies, from exercising their jurisdiction over alleged violations of the terms of Platinum's ECCs or other mining permits. To my mind,

breaches of the Operating Agreement and breaches of the terms of Platinum's ECCs or mining permits are different matters. The former belongs to the jurisdiction of the regular courts while the latter belongs to the jurisdiction of the appropriate executive/administrative agencies. Each should respect the jurisdiction of the others.

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D E C I S I O N

BRION, *J.*:

Before the Court are the following inter-related and subsequently consolidated cases:

1. **G.R. No. 178188** is a petition for review on *certiorari* filed by Olympic Mines and Development Corporation (*Olympic*) assailing the decision dated February 28, 2007,[1] and resolution dated May 30, 2007[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 97259, which effectively upheld the jurisdiction of the Regional Trial Court (*RTC*) of Puerto Princesa City, Branch 95, in Civil Case No. 4199, and affirmed the injunctive writs issued therein;

2. **G.R. No. 180674** is a petition for review on *certiorari* filed by Citinickel Mines and Development Corporation

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[1] *Rollo,* G.R. No. 178188, pp. 41-58.

[2] *Id.,* pp. 78-80.

(*Citinickel*) assailing the decision dated November 20, 2007 of the CA in CA-G.R. SP No. 99422, which dismissed the petition for *certiorari* filed by Citinickel against the injunctive writ[3] issued by the RTC of Puerto Princesa, Branch 95 in Civil Case No. 4199;

3. **G.R. No. 183527** is a petition for *certiorari* filed by Platinum Group Metals Corporation (*Platinum*), assailing the resolution dated March 3, 2008 of the CA in CA-G.R. SP No. 101544, which ordered the issuance of a writ of preliminary injunction enjoining the RTC of Puerto Princesa, Branch 95, from conducting further proceedings in Civil Case No. 4199; and

4. **G.R. No. 181141** is a petition for review on *certiorari* filed by Platinum against the resolution dated January 18, 2007 of the CA in CA-G.R. SP No. 97288, which dismissed the petition for *certiorari* filed by Platinum against the Panel of Arbitrators (*POA*) Resolution cancelling the Operating Agreement and its Small Scale Mining Permits (*SSMPs*).

These four (4) petitions stem from the Operating Agreement entered into by Olympic and Platinum, and the subsequent attempts made by Olympic, and thereafter its successor-in-interest Citinickel, to unilaterally terminate the same.

FACTUAL BACKGROUND

Operating Agreement between Olympic and Platinum

In 1971 and 1980, Olympic was granted "Mining Lease Contracts"[4] by the Secretary of the Department of Environment

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[3] RTC Order dated July 21, 2006 (granting Platinum's application for writ of preliminary injunction).

[4] Numbered as PLC-V-544, PLC-V-545, PCL-V-550, MLC-MRD-127, MLC-MRC-128, MLC-MRD-129, and MLC-MRC-130. The mining lease contracts subsequently became the subject of mineral production sharing agreements (*MPSA*) applications by Olympic (AMA-IVB-040 and AMA-IVB-0454).

and Natural Resources (*DENR*) covering mining areas located in the municipalities of Narra and Espanola, Palawan.

On July 18, 2003, Olympic entered into an **Operating Agreement**[5] with Platinum, by virtue of which Platinum was given the exclusive right to control, possess, manage/operate, and conduct mining operations, and to market or dispose mining products on the Toronto Nickel Mine in the Municipality of Narra, with an area of 768 hectares, and the Pulot Nickel Mine in the Municipality of Espanola, covering an area of 1,408 hectares (referred to as *subject mining areas*), for a period of twenty five years. In return, Platinum would pay Olympic a royalty fee of 2½% of the gross revenues.

Olympic and Platinum applied for, and were subsequently granted the necessary government permits and environmental compliance certificates.

On April 24, 2006, Olympic sent a letter to Platinum, informing the latter of the immediate termination of the Operating Agreement on account of Platinum's gross violations of its terms, and directing Platinum to immediately surrender possession of the subject mining areas under the Operating Agreement.

Civil Case No. 4181 and the Branch 52 Order

On April 25, 2006, Olympic instituted an action for the issuance of an injunctive writ before the RTC of Puerto Princesa, Branch 52 (docketed as Civil Case No. 4181) against Platinum. In its prayer, Olympic sought to enjoin Platinum from conducting mining operations on the subject mining areas, and also to recover possession thereof. Civil Case No. 4181 essentially involved the issue of whether Olympic can unilaterally terminate the Operating Agreement on account of the alleged gross violations committed by Platinum, and accordingly, prevent the latter from continuing its mining operations. The RTC, through an Order dated May 16, 2006 (*Branch 52 Order*), ruled that it did not; the trial court found that Platinum substantially complied with the terms of the Operating Agreement and declared that Olympic's

[5] *Rollo,* G.R. No. 178188, pp. 87-94.

unilateral termination thereof was legally impermissible.[6] The RTC thus dismissed Olympic's complaint.

Administrative Complaints Instituted by Olympic

Instead of seeking relief against the Branch 52 Order (which thus became final and executory), Olympic then filed two cases with different agencies of the DENR:

a. Provincial Mining Regulatory Board (*PMRB*) Case No. 001-06 (filed on May 18, 2006) for the revocation of the SSMPs of Platinum, on the ground of Olympic's termination of the Operating Agreement because of the alleged gross violations thereof by Platinum. This was dismissed through a Resolution dated August 16, 2006, on the basis of the Branch 52 Order which found Olympic's unilateral rescission of the Operating Agreement to be illegal;[7] and

b. POA Case No. 2006-01-B (filed on June 8, 2006) for the cancellation of the Operating Agreement and the revocation of the SSMPs of Platinum. This case was subsequently withdrawn by Olympic on June 20, 2006

Assignment of Rights under the Operating Agreement

While these two administrative cases were pending, Olympic transferred its applications for mineral agreements, including its rights under the Operating Agreement, to Citinickel *via* a Deed of Assignment dated June 9, 2006, without the knowledge or consent of Platinum. This assignment was thereafter approved by the Regional Director of the Mines and Geosciences Bureau (*MGB*) on September 6, 2006.

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[6] *Rollo* (G.R. No. 180674), pp. 402-404.

[7] *Rollo*, G.R. No. 180674, pp. 592-596, states in part:

The PMRB Resolution

> As born out of the records, the letter-complaint does not present any other ground aside from those matters that have already been passed upon by the Court in Civil Case No. 4181. Ergo, since the

Civil Case No. 06-0185

After the assignment, Citinickel filed Civil Case No. 06-0185 before the RTC of Parañaque, Branch 258, on June 21, 2006, seeking to invalidate the Operating Agreement based on Platinum's alleged violation of its terms. This action was also dismissed by the trial court, citing forum shopping and improper venue as among the grounds for dismissal.[8] Citinickel did not bother to appeal this dismissal, opting instead to find other remedies.

Administrative Cases Instituted by Citinickel

Citinickel thereafter filed three administrative cases: PMRB Case No. 002-06, DENR Environmental Management Bureau (*EMB*) Case No. 8253, and POA Case No. 2006-02-B.

PMRB Case No. 002-06, where Citinickel sought the cancellation of Platinum's SSMPs, was dismissed through a

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> ground for revocation of the [SSMPs] dwells more on the termination of the Operating Agreement between [Olympic] and [Platinum], which is contractual in nature, over which the competent court had already ruled over the same issue raised herein, this Board finds no cogent reason to disturb the said Order dated May 16, 2006, which appears to have become final and executory.

[8] *Rollo*, G.R. No. 178188, pp. 511-519, states in part:

The PMRB Resolution

> With regard to the second issue that there are pending cases between the same parties for the same cause of action, the court found that there is her identity of parties in the sense that the complainants are the same because **there is privity between [Olympic] and [Citinickel] which is the former's successor-in-interest who are litigating for the same subject matter and under the same title of being the awardee and in the same capacity.**
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> xxx xxx xxx
>
> After weighing the grounds relied upon by the parties in this regard, **the court found that venue in this case has been improperly laid**, since the reliefs prayed for by [Citinickel] is the return and/or surrender of the possession and control of the subject mining areas, as well as other personal equipment and documents appurtenant to the subject mining sites. **The action therefore is real and not personal, contrary to the claim of [Citinickel]**. [Emphasis supplied]

Resolution dated September 12, 2006, on the basis of the injunctive writ issued in Civil Case No. 4199, as well as the finding of the PMRB that Citinickel committed forum shopping.[9]

DENR EMB Case No. 8253 was instituted by Citinickel requesting for the cancellation of the Environmental Compliance Certificates (*ECCs*) of Platinum; although granted by the EMB, and later affirmed by the DENR Secretary, the cancellation of Platinum's ECCs was reversed by the Office of the President.

While Civil Case No. 06-0185 (for the rescission of the Operating Agreement) was pending before the RTC of Paranaque, Citinickel filed a complaint, docketed as POA Case No. 002-06-B, with the POA of DENR, asking for a writ of injunction against Platinum and for the cancellation of the Operating Agreement. This time, Citinickel's relentless efforts to have the Operating Agreement cancelled bore fruit – the POA issued a Resolution dated October 30, 2006 (*POA Resolution*)[10] that

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[9] *Rollo* (G.R. No. 180674), pp. 1059-1064.

[10] *Id.,* G.R. No. 180674, pp. 436-494; The dispositive portion of the decision states:

> WHEREFORE, premises considered, the complaint, dated July 18, 2006, filed by Olympic Mines and Development Corporation, as represented by Citinickel Mines and Development Corporation, and the earlier Petition, dated June 8, 2006, filed by Olympic Mines and Development Corporation are, as they are hereby given due course.
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> 1. The Operating Agreement, dated July 18, 2003, by and between Olympic Mines and Development Corporation and Platinum Group Metals Corporation is hereby cancelled and declared as without force and effect.
> 2. The Small Scale Mining Permits SSMP PL W No. 39 and 40, issued under the name of Platinum Group Metals Corporation are, as they are hereby cancelled and withdrawn.
> 3. In order to prevent respondent, their privies and all other persons working in their behalf from further inflicting wanton damage and prejudice to the environment, it is recommended to the Mines Adjudication Board that an order be issued directing that they cease and desist from operating the mining areas subject of this case.
> 4. Enjoining the Mines and Geosciences Bureau and the Environmental Management Bureau, of DENR Region IV-B MIMAROPA to conduct an in depth investigation and accounting of the environmental damage brought upon the areas covered for proper assignment.
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> SO ORDERED.

cancelled the Operating Agreement as well as Platinum's SSMPs, and ordered Platinum to cease and desist from operating the subject mining areas.

Through a petition for *certiorari*, Platinum questioned the POA Resolution before the CA; the case was docketed as CA-G.R. SP No. 97288. The appellate court, however, dismissed Platinum's *certiorari* petition,[11] upon finding that Platinum failed to file a motion for reconsideration of the POA Resolution with the Mines Adjudication Board (*MAB*) – the body which has appellate jurisdiction over decisions or orders of the POA pursuant to Section 78 of the Republic Act No. 7942 or the Philippine Mining Act of 1995 (*Mining Act*) – before elevating the case to the CA.

Protesting the dismissal of its *certiorari* petition, Platinum filed before the Court one of the four petitions involved in these consolidated cases – **G.R. No. 181141.** Platinum contends that the non-filing of an appeal (through a motion for reconsideration) with the MAB would be useless, as the POA declared that its decision to cancel the Operating Agreement was not just its own, but also that of the DENR, which includes the MAB. Additionally, Platinum claimed that the POA Resolution[12] was patently illegal, as it contravened the injunctive writs issued in Civil Case No. 4199 (discussed next), thus the immediate need to invoke the appellate court's *certiorari* jurisdiction.

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[11] Resolution dated January 18, 2007, *id.,*G.R. No. 181141, pp. 79-82.

[12] *Supra* note 7; The POA Resolution states in part:

The preliminary injunction issued by the [RTC] of Palawan, to our mind, should not be made to enjoin the DENR from looking into the allegations of violations of the Operating Agreement and some other environmental issues committed by [Platinum] in the conduct of its operations in the mining areas in Palawan. xxx the DENR cannot be compelled or prevented from doing what it must do under the premises on the simple reason that it was never impleaded or made party in the cases filed by Platinum that resulted in the issuance of the Order dated July 21, 2006 [referring to the injunctive writ issued in Civil Case No. 4199].

Civil Case No. 4199
and the Injunctive Writs

Civil Case No. 4199 involved a complaint for quieting of title, damages, breach of contract, and specific performance filed by Platinum against Olympic before the RTC of Puerto Princesa, Palawan, Branch 95 on June 14, 2006. The proceedings and the orders issued in this case became the subject of three of the four consolidated petitions now pending with the Court – **G.R. Nos. 178188, 180674, and 183527.** The RTC's narration provides us with a background of Civil Case No. 4199:

Alleging that Olympic's claims and misrepresentation in the letters dated April 24, 2006 [referring to the termination letter sent by Olympic to Platinum], May 18, 2006 [referring to the letter-complaint of Olympic filed in PMRB Case No. 001-06 which sought the revocation of Platinum's SSMPs], and June 6, 2008 [referring to the letter of Olympic notifying Platinum of its intention to file legal action against Platinum for gross violations of the Operating Agreement], xxx Platinum filed with Branch 95 of the RTC of Puerto Princesa City on June 14, 2006, a complaint to quiet Platinum's title/interest over the subject mining areas, to recover damages and to compel Olympic to perform its obligations under the Operating Agreement.

xxx xxx xxx

On July 21, 2006, upon xxx Platinum's motion, xxx Blancaflor, in his capacity as the presiding judge of the RTC of Puerto Princesa, Branch 95, issued [an] xxx order in Civil Case No. 4199, granting xxx Platinum's application for the issuance of a writ of preliminary injunction xxx directing Olympic, and its successor-in-interest, xxx Citinickel, to cease and desist from performing any act that would tend to impede, hamper, limit, or adversely affect xxx Platinum's full enjoyment of its rights under the Operating Agreement xxx.

xxx xxx xxx

Meanwhile, on August 28, 2006, xxx Platinum filed a Motion for Leave to Amend Complaint, attaching thereto the Amended Complaint, which impleaded Olympic's Board of Directors and

Rockworks Resources Corporation (Rockworks) and the latter's Board of Directors as additional defendants.[13] [Emphasis supplied.]

Olympic sought the dismissal of Platinum's Civil Case No. 4199 through a motion to dismiss where Olympic alleged that the trial court was without jurisdiction to rule on the issues raised in the case. *Olympic contended that the case involved a mining dispute requiring the technical expertise of the POA; accordingly, jurisdiction should be with the POA.* The RTC denied the motion to dismiss in a Resolution dated August 15, 2006. When Olympic failed to secure a reversal of the RTC's August 15 Resolution, it filed an appeal with the CA, docketed as CA-G.R. SP No. 97259. The CA declared that the trial court properly exercised jurisdiction over Civil Case No. 4199 because the main issue therein was whether Platinum had a claim and/or right over the subject mining areas pursuant to the Operating Agreement. The dismissal of its petition before the CA prompted Olympic to elevate the matter with this Court, through a petition for review on *certiorari*, docketed as **G.R. No. 178188.**

Citinickel, for its part, filed its own *certiorari* petition before the CA (CA-G.R. SP No. 99422), and questioned the injunctive writs issued in Civil Case No. 4199. It claimed that the writ of preliminary injunction cannot be enforced against it since it was not impleaded in the case even if it was an indispensable party; Olympic's rights under the Operating Agreement had already been transferred to it by virtue of the June 9, 2006 Deed of Assignment. The appellate court nonetheless dismissed Citinickel's petition, prompting the latter to file an appeal by *certiorari* with this Court, docketed as **G.R. No. 180674.**

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[13] Platinum sought to hold Rockworks and the members of its Board of Directors liable for the patently unlawful acts and/or bad faith under Section 31 of the Corporation Code in directing the affairs of Rockworks. According to Platinum, the Memorandum of Agreement between Olympic and Rockworks showed the intent "to oust Platinum and to take immediate possession and control of the mining areas involved in the Operating Agreement" through the creation of a joint venture company to be known as Citinickel Mines and Development Corporation. Rockworks is one of the stockholders of Citinickel; *rollo* (G.R. No. 183527), pp. 8-9, 13, 25; see p. 2 of Memorandum of Agreement between Olympic and Rockworks, *rollo,* G.R. No. 181141, pp. 164-170.

Polly Dy, as a member of Rockworks' Board of Directors who was impleaded as co-defendant of Olympic in Civil Case No. 4199, filed her own *certiorari* petition (docketed as CA-G.R. SP No. 101544) against the injunctive writs issued by the trial court in the same case. Acting favorably for Polly Dy, the CA directed the issuance of a writ of preliminary injunction against the RTC of Puerto Princesa, Branch 95, enjoining it from conducting further proceedings in Civil Case No. 4199. Through a petition for *certiorari*, docketed as **G.R. No. 183527**, Platinum asks the Court to annul the writ of preliminary injunction issued by the CA in CA-G.R. SP No. 101544.

Civil Case No. Q-07-59855

Notwithstanding the injunctive writ issued in Civil Case No. 4199 ordering Olympic/Citinickel to respect the rights of Platinum under the Operating Agreement (including its right to control, possess, and operate the subject mining areas), Citinickel instituted a *mandamus* petition with the RTC of Quezon City, Branch 100 (docketed as Civil Case No. Q-07-59855), for the DENR Secretary to confiscate and maintain custody and possession of the mineral ores stockpiled at the Palawan Pier until the determination of the rights of Citinickel and Platinum under the Operating Agreement. While the trial court initially issued a *status quo* order, it eventually **dismissed the Citinickel's petition for *mandamus*** in its Decision dated May 4, 2007, for Citinickel's failure to prove a clear legal right on its part to justify the issuance of a *mandamus* writ in its favor, and also **for forum shopping**.[14]

For a more graphic presentation, these cases are presented hereunder in tabular form:

CASE NUMBER	PARTIES	CAUSE OF ACTION	STATUS
Civil Case No. 4181 (RTC Palawan, Branch 52)	*Olympic v. Platinum*	**Complaint for injunction** to enjoin Platinum from continuing	• **May 16, 2006 Order dismissing the complaint for**

[14] *Rollo* (G.R. No. 178188), pp. 635-647.

		mining activities filed on April 25, 2006	**injunction** after finding that unilateral termination of the Operating Agreement was illegal (***Branch 52 Order***). • Olympic did not appeal the Order.
PMRB Case No. 001-06	*Olympic v. Platinum*	Complaint for revocation of Platinum's SSMPs dated May 18, 2006	• August 16, 2006 Resolution dismissing complaint on the basis of the Branch 52 Order, which had become final and executory.
Civil Case No. 4199 (RTC Palawan, Branch 95)	*Platinum v. Olympic*	Complaint for quieting of title, damages, and specific performance	• July 21, 2005 Order granting the writ of preliminary injunction against Olympic and Citinickel • August 15, 2006 Order denying Olympic's motion to dismiss/suspend proceedings
DENR POA Case No. 2006-01-B	*Olympic v. Platinum*	Petition to cancel Operating Agreement and revoke Platinum's SSMPs dated June 8, 2006	• June 20, 2006 Notice of Withdrawal filed by Olympic
Civil Case No. 06-0185 (RTC Paranaque)	*Citinickel v. Platinum*	Complaint to rescind Operating Agreement dated June 21, 2006	• December 22, 2006 Order dismissing complaint on the

			ground of **forum shopping and improper venue** • Citinickel did not appeal the Order.
PMRB Case No. 002-06	*Citinickel v. Platinum*	Petition to cancel Platinum's SSMPs dated July 12, 2006	• September 12, 2006 Resolution dismissing the petition on the basis of the injunctive writ issued in Civil Case No. 4199 and **the forum shopping committed by Citinickel**.
DENR POA Case No. 2006-02-B	*Citinickel v. Platinum*	Complaint to cancel Operating Agreement and to issue injunction against Platinum dated July 19, 2006	• **October 30, 2006 Resolution** cancelling OA and SSMP of Platinum (***POA Resolution***)
EMB letter-complaints filed as DENR EMB Case No. 8253	*Citinickel v. Platinum*	Complaint to cancel ECCs issued to Platinum dated July 31, 2006	• Elevated to DENR Secretary by Citinickel on account of alleged inaction of EMB • Sept 25, 2006 Order of DENR Secretary cancelling the ECCs issued to Platinum • Nov 22 Order denying MR of Platinum • Feb 26, 2007 Decision of the

			Office of the President reversing DENR Secretary's Order that cancelled the ECCs
Civil Case No. Q-07-59855 (RTC Quezon City, Branch 76)	*Citinickel v. DENR*	Petition for *mandamus* to compel DENR Secretary to confiscate and hold mineral ores stockpiled in Palawan pier	• May 4, 2007 Order dismissing the petition **for lack of merit and forum shopping.**

THE PETITIONS

G.R. No. 178188 on Jurisdiction and Venue in Civil Case No. 4199

In its petition before the Court,[15] Olympic assails the CA Decision[16] dated February 28, 2007 in CA-G.R. SP No. 97259, in which the appellate court affirmed the October 4,[17] and 5[18] 2006 Orders of the RTC of Puerto Princesa, Palawan in Civil Case No. 4199. The CA declared that the trial court properly exercised jurisdiction over Platinum's complaint in Civil Case No. 4199 because the main issue raised therein was whether

[15] Petition for review on *certiorari* under Rule 45 of the Rules of Court; dated June 20, 2007; *rollo* (G.R. No. 178188), pp. 3-37.

[16] *Supra* note 1.

[17] The RTC Order dated October 4, 2006 denied Olympic's motion for reconsideration of the RTC Orders of July 21, 2006 (granting Platinum's application for writ of preliminary injunction) and July 31, 2006 (approving the bond for the writ of preliminary injunction).

[18] The RTC Order dated October 5, 2006 denied Olympic's motion for reconsideration of the RTC Oder dated August 15, 2006 (denying Olympic's motion to dismiss and suspend the proceedings).

Platinum had a claim and/or right over the subject mining areas, pursuant to the Operating Agreement, and the resolution of this issue did not require the technical expertise of the POA. Moreover, the CA declared that venue was properly laid in the RTC of Puerto Princesa (where the disputed mining areas are located) because it was an action affecting an interest in real property that was commenced and tried in a court that has jurisdiction over the area of the real property. Lastly, the CA found that the lower court had not abused its discretion when it issued the writ of preliminary injunction prayed for by Platinum. Olympic's motion for reconsideration of the CA's decision was denied in the May 30, 2007 Resolution of the CA for lack of merit.

Olympic however asserts that it is the POA which has exclusive jurisdiction over the complaint filed by Platinum in Civil Case No. 4199 because the case involves a mining dispute that requires the technical expertise of the POA. Olympic additionally contends that the complaint is a personal action because Platinum sought a declaration that it did not violate the Operating Agreement, and was asking its enforcement; as a personal action, the case should have been filed in the place where either the plaintiff or the defendant resides, at the election of the plaintiff, and not the court where the property is located.

Platinum, on the other hand, opposes Olympic's contentions, claiming that Olympic itself had already recognized the authority of the trial court to resolve the dispute by instituting Civil Case No. 4181 before the RTC of Puerto Princesa, Branch 52 (the injunction case filed by Olympic against Platinum that was dismissed for lack of merit). Incidentally, Platinum points out that Olympic had committed forum shopping because aside from Civil Case No. 4181, it filed several other administrative cases, all grounded on Platinum's alleged violation of the Operating Agreement.

With regard to the issue of venue, Platinum claims that its principal objective in instituting Civil Case No. 4199 was to retain possession of the subject mining areas – it was therefore a real action properly filed in the Puerto Princesa court that had jurisdiction over the areas.

G.R. No. 183527 on the Injunction against the Proceedings in Civil Case No. 4199

While the jurisdiction of the RTC of Puerto Princesa, Branch 95 was upheld by the CA's Special Fifth Division in CA-G.R. SP No. 97259, the 15th Division of the appellate court, on the other hand, enjoined (through a Resolution[19] dated March 2, 2008, in CA-G.R. SP No. 101544) the same trial court from conducting further proceedings in Civil Case No. 4199 and from implementing its Orders dated July 21, 2006,[20] October 26, 2006,[21] and April 13, 2007.[22]

In assailing the CA's 15th Division's Resolution dated March 2, 2008 (through the present petition for review on *certiorari*),[23] Platinum principally argues that Polly Dy – the petitioner in CA-G.R. SP No. 97259 – had no standing to question the injunctive writs issued in Civil Case No. 4199 because none of the writs were directed against Polly Dy. Additionally, Polly Dy did not file a motion for reconsideration of the assailed Orders of the trial court, rendering her CA *certiorari* petition fatally defective for being premature.

G.R. No. 180674 on Citinickel's inclusion in the injunctive writs issued in Civil Case No. 4199

Citinickel questions the CA Decision[24] in CA-G.R. SP No. 99422, which dismissed for lack of merit its petition for *certiorari*,

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[19] *Rollo,* G.R. No. 183527, pp. 37-40.

[20] Granting Platinum's application for a writ of preliminary injunction.

[21] Granting Platinum's motion to amend complaint for the purpose of impleading additional defendants (namely, the members of the Board of Directors of Rockwell).

[22] Granting Platinum's application for an extended writ of preliminary injunction.

[23] *Rollo,*G.R. No. 183527, pp. 3-21.

[24] Dated November 20, 2007; *rollo*, G.R. No. 180674, pp. 889-911.

assailing the July 21, 2006[25] and April 13, 2007[26] Orders of the RTC in Civil Case No. 4199.

Citinickel assails the CA Decision through this petition,[27] asserting that by virtue of the Deed of Assignment dated June 9, 2006, it became an assignee of Olympic – before Platinum filed its complaint (Civil Case No. 4199) on June 14, 2006, and thus claims to be an indispensable party to the case. Since it was not impleaded as a party to Civil Case No. 4199, it cannot be bound by the writ of preliminary injunction issued by the trial court; for the same reason, the POA Resolution issued in the case filed by Citinickel cannot be deemed to have contravened the writ of preliminary injunction issued in Civil Case No. 4199.

Platinum counters that the injunction orders are binding on Citinickel because the assignment of Olympic's rights to Citinickel

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[25] *Supra* notes 14 and 16.

[26] *Supra* note 18; the dispositive portion of the extended writ of preliminary injunction states:

WHEREFORE, premises considered, this Court GRANTS the issuance of an expanded writ of preliminary injunction as prayed for, to wit:

Directing the DENR, Office of the Secretary of the DENR, the Secretary of DENR, as well as the Panel of Arbitrators, Environmental Management Bureau (EMB) and the Mines and Geosciences Bureau (MGB), their agents, representatives or persons entities acting on their behalf or under their authority, control or influence, from interfering in any way with the possession, control and/or operation of the Pulot Nickel Mine and the Toronto Nickel Mine, including the custody, control and disposition of the mineral ores extracted pursuant to the Operating Agreement and stockpiled at the stockyards; and further, from performing any act which will disturb the status quo; and from doing any act – including the implementation/enforcement of the Order dated 27 February 2007 issued by Judge Alexander Balut and the Memorandum dated 27 February 2007 issued by the Secretary of the DENR – that will tend to impede, hamper, limit or adversely affect the full enjoyment by Platinum of its rights under the Operating Agreement.

The plaintiff-movant is directed to increase its bond from ₱2,000,000.00 to ₱2,500,000.00 effective immediately to answer for any damage that may arise as a result of the enforcement of the original writ of preliminary injunction and this new expanded writ of preliminary injunction.

IT IS SO ORDERED.

[27] Dated December 26, 2007; *rollo,* G.R. No. 180674, pp. 10-50.

only took effect upon the approval thereof by the Regional Director, which approval was issued only in September 6, 2006 or after Civil Case No. 4199 was filed on June 14, 2006. Thus, Citinickel is a successor-in-interest by title, and is therefore bound by the injunction orders issued in the case. Platinum also alleges that Citinickel merely stepped into the shoes of Olympic and acted as the latter's agent.

G.R. No. 181141 on the validity of the POA Resolution

In its Petition for Review,[28] Platinum assails the CA Resolution[29] in CA-G.R. SP No. 97288, which dismissed its petition for *certiorari* questioning the POA Resolution for having failed to previously file a motion for reconsideration with the POA. The CA also denied Platinum's motion for reconsideration in its Resolution[30] dated December 21, 2007.

Platinum claims that it chose not to file a motion for reconsideration of the POA Resolution in DENR Case No. 2006-02-B because that motion would have been denied by the POA as it had already affirmed the cancellation of Platinum's ECCs in DENR Case No. 8253. Further, an appeal to the MAB would also be useless because the POA had declared that the decision to cancel the Operating Agreement and the SSMPs was not entirely its (POA's) own, but also that of the DENR, which includes the MAB. Platinum contends that it had to file the petition for *certiorari* because the POA Resolution was patently illegal as it effectively nullified the injunctive writ previously issued by the lower court in Civil Case No. 4199.

THE COURT'S RULING

The key matter in resolving all four petitions involves the issue of **jurisdiction** – that is, which body has the authority to hear and decide the dispute between Olympic/Citinickel and Platinum, as parties to the operating agreement.

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[28] Dated February 28, 2008, *rollo*, G.R. No. 181141, pp. 14-78.

[29] Dated January 18, 2007, *rollo*, G.R. No. 181141, pp. 79-82.

[30] *Rollo*, G.R. No. 181141, pp. 84-87.

Jurisdiction of the Panel of Arbitrators

Settled is the rule that jurisdiction of the court over the subject matter is determined by the allegations of the complaint.[31]

In Civil Case No. 4199, Platinum alleges in its complaint[32] the following:

3. Plaintiff is engaged in mining operations. Defendant holds mining rights/claims over the Toronto Nickel Mine in the Municipality of Narra and the Pulot Nickel Mine in the Municipality of Espanola (hereinafter, the "subject mining areas") in Palawan.

4. On 18 July 2003, plaintiff, as the SECOND PARTY, and defendant, as the FIRST PARTY, entered into an Operating Agreement. The said Agreement vested plaintiff with, among others, the following rights and interests:

   2.1 To enter, occupy, possess, explore, develop, utilize and control the mineral properties subject to Section 2, hereof;

   2.2 To conduct mining and all subsidiaries, associated and other related operations in the mineral properties at a rate it deems appropriate;

   2.3 To mill, beneficiate and process the ores by appropriate methods or process within or outside the area of the mineral properties;

xxx xxx xxx

5. Section 23 of the Operating Agreement states that it shall be effective for twenty-five (25) years or for the life of the subject mining areas. Under Section 19 thereof, it may only be [pre]terminated for gross violations of its terms and provisions.

xxx xxx xxx

9. On 24 April 2006, plaintiff was shocked when it received a letter of even date from defendant's counsel alleging that

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[31] See *Nell & Co. v. Cubacub*, G.R. No. L-20843, June 23, 1965, 14 SCRA 419; *Time, Inc. v. Reyes et al*., L-28882, May 31, 1971, 39 SCRA 303.

[32] *Rollo,* G.R. No. 180674, pp. 210-216.

plaintiff has committed gross violations of the Operating Agreement, informing plaintiff of its immediate termination and the suspension of the mining operations, and demanding that plaintiff surrender the possession of the subject mining areas.

xxx xxx xxx

17. Defendant claims and declares in the letter dated 24 April 2006, the complaint dated 25 April 2006, the letter dated 18 May 2006 and the letter dated 8 June 2006 that it has already terminated the Operating Agreement. As ground for termination as well as purported basis for its complaint and its application for TRO, defendant insidiously alleged that plaintiff committed gross violations of the Operating Agreement.

18. Defendant's claims and misrepresentations in said letters and complaint have cast a cloud on plaintiff's rights and interests over the subject mining areas. The said letters and complaint unequivocally give the impression that, since the Operating Agreement has already been terminated, plaintiff no longer possesses any right or interest over the subject mining areas.

xxx xxx xxx

21. Defendant's actions are clearly in breach of the Operating Agreement. To repeat, the Operating Agreement provides that it may only be [pre]terminated for gross violations of its terms and provisions. As stated above, however, defendant's allegations with respect to plaintiff's violations of the terms and conditions of the Operating Agreement are merely imagined.

22. In any case, even assuming *in gratia argumenti* that there is factual basis for defendant to terminate the Operating Agreement, defendant's termination thereof is clearly bereft of legal basis and in breach of the Operating Agreement. Section 20 unambiguously provides:

> The FIRST PARTY may terminate this agreement by giving thirty (30) days notice to the SECOND PARTY based on gross violation of the terms and conditions of this agreement.

23. Clearly, the Operating Agreement may only be considered terminated after the lapse of 30 days. In the instant case, defendant served plaintiff the letter dated 24 April 2006 on even date and filed a complaint the following day. The complaint if filed and the TRO it caused to be issued were thus premature and violative of the Operating Agreement.

From these allegations, we learn that Platinum had rights and interest in real property, specifically, the right to possess and to mine the subject mining areas for a certain period of time, as stated in the Operating Agreement. Olympic, however, had cast a cloud on its interest when: (a) Olympic sent Platinum a letter claiming that it had already terminated the Operating Agreement; (b) Olympic filed a complaint with the RTC Puerto Princesa, Palawan, Branch 52 (docketed as Civil Case No. 4181), asking the court to enjoin Platinum from conducting mining operations under the Operating Agreement, since this Agreement had already been unilaterally terminated by Olympic; and (c) Olympic wrote to the Governor of Palawan to inform him that its Operating Agreement with Platinum was already terminated and to request that the Governor revoke Platinum's SSMPs. Olympic's act clearly indicated its intent to deprive Platinum of its rights, prompting the latter to file the complaint to quiet its title or interest in the subject mining areas and remove all doubts as to the Agreement's continuous effectivity. Platinum's primary objective was to protect its interest in the subject mining areas covered by the Operating Agreement, specifically, under Section 2.12 and 3.4, both are obliged "to maintain the validity and subsistence of the mining rights subject of the agreement."[33] It is thus obvious that the complaint falls within the ambit of the RTC's original jurisdiction, to the exclusion of all other judicial or quasi-judicial bodies.[34]

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[33] *Supra* note 5, p. 4.

[34] Batas Pambansa Bilang 129, as amended by RA No. 7691. The relevant provision states:

> Sec. 19. *Jurisdiction in civil cases.*— Regional Trial Courts shall exercise exclusive original jurisdiction:
>
> xxx xxx xxx

Olympic, through its petition in G.R. No. 178188, contends that jurisdiction should instead be with the POA. It posits that to fall under the jurisdiction of the POA, the dispute must necessarily involve questions of facts or matters requiring the application of technological knowledge and expertise or which needs the interpretation and the application of particular knowledge and expertise possessed by the members of the Panel. It reads Platinum's complaint in Civil Case No. 4199, to be a matter involving a mining dispute that raises questions of facts or matters requiring the application of technical knowledge and expertise of the POA – an interpretation that we cannot sustain in light of the clear wording of the law.[35]

The POA's jurisdiction is set forth in Section 77 of the Mining Act:

> Sec. 77. *Panel of Arbitrators.*— xxx. Within thirty (30) working days, after the submission of the case by the parties for decision, **the panel shall have exclusive and original jurisdiction to hear and decide on the following:**
>
> **a. Disputes involving rights to mining areas;**
>
> **b. Disputes involving mineral agreements or permits;**
>
> c. Disputes involving surface owners, occupants and claimholders/concessionaires; and
>
> d. Disputes pending before the Bureau and the Department at the date of the effectivity of this Act. [Emphasis supplied.]

Section 77, paragraphs (a) and (b) are the provisions principally invoked in this case to confer jurisdiction over the dispute between Olympic/Citinickel and Platinum – provisions which, upon closer inspection of the law and jurisprudence, belie Olympic's and Citinickel's contentions.

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(2) In all civil actions which involve title to, or possession of, real property, or any interest therein, except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts; x x x

[35] *Rollo,* G.R. No. 178188, pp. 13-25.

In *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation, et al.,*[36] this Court, speaking through Justice Velasco, specified the kind of disputes that fall under Section 77(a) of the Mining Act:

The phrase "disputes involving rights to mining areas" refers to any **adverse claim, protest, or opposition to an application for a mineral agreement.**

xxx xxx xxx

[T]he power of the POA to resolve any adverse claim, opposition, or protest relative to mining rights under Section 77 (a) of RA 7942 is confined only to **adverse claims, conflicts, and oppositions *relating to* applications for the grant of mineral rights**. xxx. Clearly, **POA's jurisdiction over "disputes involving rights to mining areas" has nothing to do with the cancellation of *existing* mineral agreements.** [Emphasis supplied.]

In so ruling, the Court read Section 77 (a) in relation with Sections 38 and 41 of DENR Administrative Order No. 96-40 (Revised Implementing Rules and Regulations of the Mining Act or *RIRR*), which provide:

Sec. 38. x x x. Within thirty (30) calendar days from the last date of publication/posting/radio announcements, the authorized officer(s) of the concerned office(s) shall issue a certification(s) that the publication/posting/radio announcement have been complied with. **Any adverse claim, protest or opposition shall be filed directly, within thirty (30) calendar days from the last date of publication/ posting/radio announcement, with the concerned Regional Office** or through any concerned PENRO or CENRO for filing in the concerned Regional Office **for purposes of its resolution by the Panel of Arbitrators pursuant to the provisions of this Act and these implementing rules and regulations.** Upon final resolution of any adverse claim, protest or opposition, the Panel of Arbitrators shall likewise issue a certification to that effect within five (5) working days from the date of finality of resolution thereof. Where there is no adverse claim, protest or opposition, the Panel of Arbitrators shall likewise issue a Certification to that effect within five working

[36] G.R. Nos. 169080, 172936, 176226, and 176319, December 19, 2007, 541 SCRA 166.

days therefrom.

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No Mineral Agreement shall be approved unless the requirements under this Section are fully complied with and any adverse claim/protest/opposition is finally resolved by the Panel of Arbitrators.

Sec. 41. x x x Within fifteen (15) working days from the receipt of the Certification issued by the Panel of Arbitrators as provided in Section 38 hereof, the concerned Regional Director shall initially evaluate the Mineral Agreement applications in areas outside Mineral reservations. He/She shall thereafter endorse his/her findings to the Bureau for further evaluation by the Director within fifteen (15) working days from receipt of forwarded documents. Thereafter, the Director shall endorse the same to the secretary for consideration/approval within fifteen working days from receipt of such endorsement.

In case of Mineral Agreement applications in areas with Mineral Reservations, **within fifteen (15) working days from receipt of the Certification issued by the Panel of Arbitrators as provided for in Section 38 hereof**, **the same shall be evaluated and endorsed by the Director to the Secretary for consideration/approval within fifteen days from receipt of such endorsement.** [Emphasis supplied.]

Sections 38 and 41 of the RIRR pertain to the *procedure involved in approving mineral agreements*. These provisions are largely lifted from Sections 48 and 53 of PD 463 (or the Mining Resources Development Decree), except that instead of the POA, it was the Director of Bureau of Mines (now Mines and Geosciences Bureau or *MGB*) who previously had the authority to rule on **pre-approval protests or adverse claims**.

To properly fall within the POA's jurisdiction under Section 77 (a) of the Mining Law, the dispute must:

1. refer to an *adverse claim, protest, or opposition to an application* for a **mineral agreement**; and
2. be filed *prior to the approval* by the DENR Secretary of the **mineral agreement**.

Under these terms, Section 77 (a) established a cut-off period (*i.e.,* before the approval of the mineral agreement) when the POA's jurisdiction may be properly invoked, and this period had long lapsed insofar as the dispute between Citinickel and Platinum is concerned, as Olympic's mining lease contract and its Operating Agreement with Platinum had already been approved by the Government. Accordingly, invocation of the POA's jurisdiction under Section 77(a) finds no application in this case.

Neither will POA be vested with jurisdiction through Section 77(b), as the nature of the agreement between Olympic and Platinum is not the "mineral agreement" contemplated under the law. The term "mineral agreement" has a specific definition under the Mining Act, Section 3 (ab) thereof states:

Section 3. *Definition of Terms.*— xxx

(ab) "Mineral Agreement"— refers to a contract between the government and a contractor, involving mineral production-sharing agreement, co-production agreement, or joint-venture agreement.

Quite obviously, the Operating Agreement is not "a contract between the government and a contractor";[37] **instead, it is *a purely civil contract between two private entities* – one of whom happens to be a party to a mineral agreement with the government.** While the enforcement of the terms of an operating agreement would necessarily *relate to* an existing and approved mineral agreement (as may be inferred from Section 4 of DENR Memorandum Order No. 2003-08),[38] this however

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[37] Defined in Section 3(g) of the Mining Act as a "qualified person acting alone or in consortium, who is a party to a mineral agreement or to a financial or technical assistance agreement."

[38] Section 4. *Approval of Memorandum of Agreement/Option Agreement/ Operating Agreement and other Similar Forms of Agreement.*— Memorandum of Agreement/Option Agreement/**Operating Agreement** and other similar forms of Agreement, ***except involving transfer/assignment of mining rights*****, entered into *involving* an approved Exploration Permit, Mineral Agreement, Financial or Technical Assistance Agreement, or any other mining permit under Republic Act No. 7942 or the Philippine Mining Act of 1995, shall be registered with the MGB Central Office/**

does not make the two concepts the same, nor does it make an operating agreement a specie of the mineral agreements contemplated under the Mining Act. Section 26 of the Mining Act[39] states that a mineral agreement may be in the form of a mineral production sharing agreement, a co-production agreement or a joint-venture agreement, and does not include an operating agreement in the enumeration. Apart from this, the Mining Act and the various administrative issuances treat these two separately by providing for different requirements, rules, and procedures

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RO concerned **and shall be subject to the approval of the MGB Director** upon evaluation and recommendation by the RO concerned.

Memorandum of Agreement/Option Agreement/Operating Agreement and other similar forms of Agreement entered into involving an application for EP, MA, FTAA, or any other mining permit application, shall be registered with the MGB Central Office/RO concerned and shall form part of the supporting documents of a mining application, subject to the evaluation of the MGB Central Office/RO concerned. Such agreement shall be deemed approved upon approval of the pertinent mining application. (Emphasis supplied)

[39] Section 26. *Modes of Mineral Agreement*.— For purposes of mining operations, **a mineral agreement may take the following forms** as herein defined:

(a) Mineral production sharing agreement - is an agreement where the Government grants to the contractor the exclusive right to conduct mining operations within a contract area and shares in the gross output. The contractor shall provide the financing, technology, management and personnel necessary for the implementation of this agreement.

(b) Co-production agreement— is an agreement between the Government and the contractor wherein the Government shall provide inputs to the mining operations other than the mineral resource.

(c) Joint-venture agreement— is an agreement where a joint-venture company is organized by the Government and the contractor with both parties having equity shares. Aside from earnings in equity, the Government shall be entitled to a share in the gross output.

A mineral agreement shall grant to the contractor the exclusive right to conduct mining operations and to extract all mineral resources found in the contract area. In addition, the contractor may be allowed to convert his agreement into any of the modes of mineral agreements or financial or technical assistance agreement covering the remaining period of the original agreement subject to the approval of the Secretary. (Emphasis supplied)

governing their application, approval, and cancellation. **Thus, to contend that a dispute involving operating agreements can be classified as a "dispute involving mineral agreements or permits" stretches the definition of "mineral agreement" beyond the clear terms of the law.**

Indeed, the adoption of a definite meaning for "mineral agreement" reveals the intent to remove from the DENR, through the MGB, the jurisdiction over disputes involving civil contracts on mining rights. Presidential Decree No. 1281[40] enumerates cases that fall under the Bureau of Mines' jurisdiction:

> Section 7. In addition to its regulatory and adjudicative functions over companies, partnerships or persons engaged in mining exploration, development and exploitation, the Bureau of Mines shall have original and exclusive jurisdiction to hear and decide cases involving:
>
> (a) a mining property subject of *different agreements* entered into by the claim holder thereof with several mining operators;
>
> (b) xxx
>
> (c) cancellation and/or enforcement of *mining contracts* due to the refusal of the claimowner/operator to abide by the terms and conditions thereof. [Emphasis supplied.]

Although Section 77 (d) of the Mining Act[41] has transferred to the POA jurisdiction over disputes pending before the Bureau of Mines and the DENR, Section 77 (b) did not adopt the wording of Section 7, paragraphs (a) and (c) of PD No. 1281 so as to include all other forms of contracts – public or private – involving mining rights; Section 77 (b) in relation to Section 3 (ab) of the Mining Act did not include a general catch-all phrase to cover other agreements involving mining rights similar to those in Section 7, paragraphs (a) and (c) of PD No. 1281. Instead, the Mining Act, through the above-quoted Sections 3 (ab) and 26, has limited the jurisdiction of the POA, as successor of the

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[40] Revising Commonwealth Act No. 136, creating the Bureau of Mines, and for other purposes.

[41] See p. 21 of this Decision.

adjudicatory functions of the Bureau of Mines, to mineral agreements between the government and the private contractor. Otherwise stated, while disputes between parties to any mining contract (including operating agreements) may previously fall within the Bureau of Mines' jurisdiction under Section 7 (a) or (c) of PD No. 1281, it can no longer be so placed now within the authority of the POA to settle under Section 77 (b) of the Mining Law because its jurisdiction has been limited to the resolution of disputes involving *public* mineral agreements.

Parenthetically, the "permit" referred to in Section 77(b) of the Mining Act pertains to exploration permit, quarry permit, and other mining permits recognized in Chapters IV, VIII, and IX of the Mining Act. An operating agreement, not being among those listed, cannot be considered as a "mineral permit" under Section 77 (b).

Since the Operating Agreement is not the mineral agreement contemplated by law, the contention that jurisdiction should be with the POA under Section 77(b) of the Mining Act cannot be legally correct. **In plainer terms, no jurisdiction vests in the POA under the cited provision because the Operating Agreement is not the "mineral agreement" that Section 77(b) refers to.**

Even an invocation of Section 77(c) of Mining Act (referring to "disputes involving surface owners, occupants and claim-holders/concessionaires") would not suffice to confer jurisdiction over the dispute to the POA. Surface-owners, occupants, and concessionaires refer to owners or occupants of the real property affected by the mining activities conducted by the claim-holders/ concessionaires (entities which are holding mining rights granted by the government).[42] Neither Citinickel nor Platinum falls under this classification.

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[42] This definition can be inferred from a reading of Section 105 of the RIRR, which states:

Section 105. *Entry Into Lands*—The holder(s) of mining right(s) shall not be prevented from entry into its/their contract/mining area(s) for the purpose(s) of exploration, development and/or utilization: *Provided*, That written notice(s) at its/their registered address(es) was/were sent to and duly received by the **surface owner(s) of the land(s), occupant(s) and concessionaire(s)** thereof

Additionally, the Court notes that both Olympic and Citinickel have previously recognized the RTC's jurisdiction to decide the dispute when they filed civil cases before the trial courts of Palawan[43] and Parañaque,[44] respectively, for the cancellation of the Operating Agreement on account of Platinum's alleged gross violations. By doing so, both Olympic and Citinickel acknowledged the authority and jurisdiction of the trial court to resolve their dispute with Platinum. Not only did they acknowledge this jurisdiction, they as well failed to appeal the decisions rendered by the trial courts in these cases. Thereby, they accepted the binding effect of the trial court decision, and – more importantly – recognized the trial court's authority to rule on their dispute with Platinum regarding the Operating Agreement. In other words, they are now **estopped from claiming that the POA, rather than the trial court, has the sole and exlcusive authority to resolve the issue of whether the Operating Agreement may be rescinded for Platinum's alleged violations.**

Olympic also raises the issue of venue: since one of Platinum's causes of action in Civil Case No. 4199 was specific performance

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and that a bond is posted in accordance with Section 108 hereof.

If the surface owner(s) of the land, occupant(s) or concessionaire(s) thereof can not be found, the Permittee/Permit Holder/Contractor or concessionaire shall notify the concerned Regional Director, copy furnished the concerned local officials in case of private land or the concerned Government agency in case of concessionaires, attaching thereto a copy of the written notice and a sworn declaration by the holder(s) of mining right(s) that it/they had exerted all efforts to locate such surface owner(s)/occupant(s)/concessionaire(s). Such notice(s) to the concerned Regional Director shall be deemed notice(s) to the surface owner(s) and concessionaire(s).

In cases where the surface owner(s) of the land(s), occupant(s) or concessionaire(s) thereof refuse(s) to allow the Permittee/Permit Holder/ Contractor entry into the land(s) despite its/their receipt(s) of the written notice(s) or refuse(s) to receive said written notice(s) or in case of disagreement over such entry, **the Permittee/Permit Holder/Contractor shall bring the matter before the Panel of Arbitrators for proper disposition.** [Emphasis supplied.]

[43] Civil Case No. 4181; see p. 5 of this Decision.

[44] Civil Case No. 06-0185, see p. 6 of this Decision.

in Civil Case No. 4199, Olympic claims that Platinum's action was actually a personal one that should have been filed either in Olympic's or in Platinum's place of residence, *i.e.,* in Manila or in Makati City, respectively, and not in Puerto Princesa, Palawan.

This contention however is negated by the allegations made by Platinum in its complaint to quiet title, filed before the RTC of Puerto Princesa, Palawan. To reiterate, according to Platinum, it had been peacefully exercising its rights under the Operating Agreement since 2003. However, Olympic cast a cloud on its interest under the Operating Agreement through its various actions, which gave the public the impression that the Operating Agreement had already been terminated, and jeopardized Platinum's right to possess and conduct mining operations in the subject mining areas. Thus, Platinum asked the court to remove this cloud on its rights over the subject mining areas.

The controlling factor in determining venue for cases is the primary objective for which said cases are filed.[45] As we had earlier stated, Platinum's primary objective in filing the complaint is to protect its interest in the subject mining areas, although it joined its claims of breach of contract, damages, and specific performance in the case. In any event, the Rules of Court allow joinder of causes of action in the RTC, provided one of the causes of action (in this case, the cause of action for quieting of title or interest in real property located in Palawan) falls within the jurisdiction of said court and venue lies therein.[46] **In**

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[45] *Go v. United Coconut Planters Bank*, G.R. No. 156187, November 11, 2004, 442 SCRA 264.

[46] RULES OF COURT, Rule 2, Sections 5 and 6 state:

> **Section 5.** *Joinder of causes of action*. — A party may in one pleading assert, in the alternative or otherwise, as many causes of action as he may have against an opposing party, subject to the following conditions:
>
> (a) The party joining the causes of action shall comply with the rules on joinder of parties;
>
> (b) The joinder shall not include special civil actions or actions governed by special rules;

fine, there is absolutely no reason to disturb the CA's findings that venue was properly laid in the Palawan court.

In light of these, **the Court affirms the jurisdiction of the RTC of Puerto Princesa, Palawan, Branch 95, and accordingly dismiss Olympic's petition for review on *certiorari* in G.R. No. 178188.**

Our conclusion on the trial court's authority to rule on Civil Case No. 4199 necessarily invalidates the injunctive writ issued by the CA in CA-G.R. SP No. 101544 against the continuance of the proceedings in Civil Case No. 4199. **We thus grant Platinum's petition in G.R. No. 183527.** Moreover, the Court agrees with Platinum's contention that Polly Dy had no standing to assail the injunctive writs issued as these were not directed against her; her petition for *certiorari* before the CA (CA-G.R. SP No. 101544) should have been dismissed.

Injunctive Writ against Citinickel, as Successor-in-Interest of Olympic

In G.R. No. 180674, Citinickel mainly argues it cannot be bound by the injunctive writs issued in Civil Case No. 4199 as it was not impleaded in the case, despite the fact that the Deed of Assignment was executed before Civil Case No. 4199 was instituted by Platinum, thus making it an indispensable party. Citinickel further claims that the POA Resolution had already attained finality when the CA dismissed Platinum's petition for *certiorari* questioning the POA Resolution in its January 18, 2007 Resolution.

(c) Where the causes of action are between the same parties but pertain to different venues or jurisdictions, the joinder may be allowed in the Regional Trial Court provided one of the causes of action falls within the jurisdiction of said court and the venue lies therein; and

(d) Where the claims in all the causes action are principally for recovery of money, the aggregate amount claimed shall be the test of jurisdiction.

Section 6. *Misjoinder of causes of action*. — Misjoinder of causes of action is not a ground for dismissal of an action. A misjoined cause of action may, on motion of a party or on the initiative of the court, be severed and proceeded with separately. [Emphasis supplied.]

We disagree.

In this case, one fact resonates and remains unrebutted – the transfer of Olympic's rights to Citinickel was done surreptitiously, *via* the Deed of Assignment dated June 9, 2006, without the knowledge or consent of Platinum. Thus, when Platinum instituted Civil Case No. 4199 on June 14, 2006 – five days after the execution of the Deed of Assignment – Platinum was not notified of the assignment or even of the earlier Memorandum of Agreement between Olympic and Rockworks, contrary to the terms of Section 13 of the Operating Agreement which expressly requires any party transferring or assigning its rights under the Operating Agreement to a third party to inform the original party of the transfer or assignment. Section 13 of the Operating Agreement states:

The rights and interests of either [Olympic] or [Platinum] in and under this Agreement are assignable and/or transferrable, in whole or in part, to persons or entities qualified xxx **provided that the rights of both of the parties under this Agreement are preserved and maintained, unaffacted or unimpaired,** and **provided further that the assignee undertake to be bound by all the provisions of this Agreement, provided furthermore that the assigning party shall duly notify in writing the other party of such proposed assignment and/or transfer before the actual assignment and/ or transfer is done.** [Emphasis supplied.]

Even if Platinum knew of the assignment/transfer, it was not bound to include Citinickel in the complaint because the assignment/transfer of a mineral agreement application would, by law, take effect only *after* the approval of the DENR Secretary or his representative. Section 40 of DENR Administrative Order No. 96-40 (Implementing Rules and Regulations of the Mining Act), which states:

Section 40. *Transfer or Assignment of Mineral Agreement Application.*— Transfer or assignment of Mineral Agreement applications shall be allowed **subject to the approval of the Director/concerned Regional Director taking into account the national interest and public welfare**: *Provided*, That such transfer or assignment shall be subject to eligibility requirements and shall not be allowed in cases involving speculation. [Emphasis supplied.]

The provision is clear – any transfer or assignment of a mineral agreement application is still subject to the approval of the Director of the Mines and Geosciences Bureau or the Regional Director concerned. In determining whether to approve the assignment or not, the Director or Regional Director has to consider the national interest, public welfare, as well as study the eligibility of the party to whom said application is being transferred to. Any assignment of a mineral agreement is thus considered provisional, pending final approval by the Director or Regional Director. Thus, although the Deed of Assignment between Olympic and Citinickel was executed on June 9, 2006, the actual transfer of rights occurred only *after* the Regional Director of the MGB Regional Office No. IV-B had given its approval to the assignment on September 6, 2006, or after Civil Case No. 4199 was filed on June 14, 2006. Accordingly, Citinickel, being a mere successor-in-interest of Olympic, is bound by the questioned injunction order. Even if we disregard the inclusion of Citinickel in the July 16, 2006 Order granting the application for a writ of preliminary injunction, the result would be the same – the injunction imposed on Olympic will similarly bind Citinickel.

Thus, we resolve to dismiss Citinickel's petition for lack of merit.

Validity of the POA Resolution

Platinum's Rule 65 petition praying for the annulment of the POA Resolution was dismissed by the CA in its Resolution dated January 18, 2007 in CA-G.R. SP No. 97288, on the ground that Platinum failed to exhaust administrative remedies by appealing the POA Resolution to the MAB, as provided under the Mining Act.

We disagree with the reasoning of the CA and resolve to overturn its January 18, 2007 Resolution.

The rule of exhaustion of administrative remedies admits of numerous exceptions, such as:

1) when there is a violation of due process;

2) when the issue involved is purely a legal question;

3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction;

4) when there is estoppel on the part of the administrative agency concerned;

5) when there is irreparable injury;

6) when the respondent is a department secretary whose acts as an alter ego of the President bears the implied and assumed approval of the latter;

7) when to require exhaustion of administrative remedies would be unreasonable;

8) when it would amount to a nullification of a claim;

9) when the subject matter is a private land in land case proceedings;

10) when the rule does not provide a plain, speedy and adequate remedy; and

11) when there are circumstances indicating the urgency of judicial intervention.[47]

Platinum's serious allegations amount to circumstances calling for urgent judicial intervention. More importantly, Platinum's allegations essentially attack POA's jurisdiction over Citinickel's complaint for lack or excess of jurisdiction. The CA thus committed a reversible error when it failed to recognize the POA's jurisdictional errors and instead, mistakenly placed its reliance on a procedural technicality.

Going into the merits of G.R. No. 181141, the Court finds that the POA Resolution was issued in disregard of the injunctive writs in Civil Case No. 4199. We have earlier ruled in G.R. No. 180674 that Citinickel, as successor-in-interest of Olympic, became bound by the writ of injunction issued by the trial court, even though it was not formally impleaded as a party when Civil Case No. 4199 was instituted. The injunction prohibited the parties – Citinickel included – from performing "any act

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[47] See *Paat v. Court of Appeals*, G.R. No. 111107, January 10, 1997, 226 SCRA 167.

that will tend to impede, hamper, limit or adversely affect the full enjoyment by [Platinum] of its rights under the Operating Agreement xxx [and] from performing any act which will disturb the status quo." When the POA issued the assailed Resolution rescinding the Operating Agreement and cancelling Platinum's SSMPs at the instance of Citinickel, it clearly went against the prohibition.

Not only was the POA Resolution issued in contravention of the injunctive writ, POA Case No. 2006-02-B (where the Resolution was issued) was instituted in blatant violation of the rules of forum shopping. POA Case No. 2006-02-B was instituted while Citinickel's complaint for cancellation of the Operating Agreement was pending before the RTC of Paranaque (docketed as Civil Case NO. 06-0185). And while there was yet no decisive ruling on the status and validity of the Operating Agreement in these cases, Citinickel had prematurely instituted petitions to cancel Platinum's SSMPs and ECCs before the PMRB (docketed as PMRB Case No. 002-06) and EMB, respectively. Along the same line, Citinickel filed a *mandamus* petition before the RTC of Quezon City (docketed as Civil Case No. Q-07-59855) to compel the DENR Secretary to confiscate and hold possession of the mineral ores of Platinum stockpiled at the Palawan pier. Over and above these cases, Olympic had, prior to the assignment, already instituted similar actions before the same courts and agencies – actions Citinickel is similarly bound as the assignee/ transferee of Olympic.

Both Olympic and Citinickel evidently trifled with the courts and abused its processes by improperly instituting several cases before various judicial and quasi-judicial bodies, one case after another (some even simultaneously filed during the pendency of other cases) once it became evident that a favorable decision will not be obtained in the previously filed case – all of which are focused on the termination of the Operating Agreement and the cancellation of Platinum's mining permits. While a party may avail himself of the remedies prescribed by law or by the Rules of Court, such party is not free to resort to them

simultaneously or at his pleasure or caprice.[48] **The actions of Olympic and Citinickel, taken separately or collectively, betray a pattern of calculated and intentional forum shopping that warrants denial of the reliefs they pray for.**

In accordance with our finding in G.R. No. 180674 that Citinickel is bound by the injunctive writ issued by the trial court in Civil Case No. 4199, as well as our observation in G.R. No. 178188 that the trial court, not POA, has jurisdiction over Platinum's complaint in Civil Case No. 4199, we can come to no other conclusion than to declare that the POA gravely abused its discretion when it issued the POA Resolution dated October 30, 2006. **Thus, we grant Platinum's petition in G.R. No. 181141, and annul the POA Resolution.**

WHEREFORE, premises considered, we rule as follows:

a) in **G.R. No. 178188** (*Olympic Mines v. Platinum Group Metals Corporation*): Olympic's petition is denied for lack of merit and the assailed CA Decision in *CA-G.R. SP No. 97259* is *AFFIRMED*;

b) in **G.R. No. 183527** (*Platinum Group Metals Corporation v. Court of Appeals*): The assailed CA Resolution in *CA-G.R. SP No. 101544* is *REVERSED* and *SET ASIDE*;

c) in **G.R. No. 180674** (*Citinickel Mines and Development Corporation v. Judge Bienvenido Blancaflor and Platinum Group Metals Corporation*): The questioned CA Decision in *CA-G.R. SP No. 99422* is *AFFIRMED*; and

d) in **G.R. No. 181141** (*Platinum Group Metals Corporation v. Citinickel Mines and Development Corporation*): The CA decision in *CA-G.R. SP No. 97288* is *REVERSED* and *SET ASIDE*. The POEA Resolution, having been issued in violation of a previously issued writ of preliminary injunction, is *ANNULLED* and *SET ASIDE.*

SO ORDERED.

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[48] *Feliciano v. Villasin*, G.R. No. 174929, June 7, 2008, 556 SCRA 348.

Carpio Morales,[*] *J.,* see separate opinion.

Tinga, J., dissents. See dissenting opinion.

Velasco, Jr., J., joins the dissent of *J*. Tinga.

Leonardo-de Castro,[**] *J.,* see separate opinion.

CONCURRING OPINION

CARPIO MORALES, *J*.:

I concur in the *ponencia* of Justice Arturo D. Brion. I proffer the following grounds to reinforce my concurrence:

On the question of jurisdiction, going by the well-entrenched principle that jurisdiction is determined by the material allegations of the complaint and the law, irrespective of whether the plaintiff is entitled to recover all or some of the reliefs sought, I find that the main issue brought forth by Platinum's complaint for Quieting of Title/Interest and Removal of Cloud, Breach of Contract and Damages, and Specific Performance in Civil Case No. 4199 is the validity of Olympic's unilateral termination of the Operating Agreement. Consistent with the case of *Gonzales* cited by the dissent of *J*. Tinga, this is a *judicial* question as it involves the determination of what the law is and what the legal rights of the parties are with respect to the matter in controversy. The resolution of this question, in turn, affects the parties' title to, possession of, or interest in, the subject real property. Jurisdiction, thus, lies with the trial court and not the Panel of Arbitrators of the Department of Environment and Natural Resources.

Respecting the thesis that forum shopping is a false issue for purposes of adjudicating these consolidated petitions, the same does not merit my concurrence. While indeed there are only

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[*] Designated Acting Chairperson of the Second Division per Special Order No. 618 dated April 14, 2009.

[**] Designated additional member of the Second Division per Special Order No. 619 dated April 14, 2009.

two cases that spawned these four petitions – Civil Case No. 4199 instituted by Platinum and the complaint with the POA filed by Citinickel – the Court should not reluctantly play deaf and dumb to the fact that many other related cases were consecutively filed by Olympic and Citinickel, acting for each other, in various fora seeking essentially the same reliefs – the nullification of the Operating Agreement between Olympic and Platinum and the surrender of the subject mining areas to either Olympic or Citinickel. The filing of such other related cases is borne by the records and admitted by the parties. As such, it is a proper subject of judicial notice.[1] The proscription against forum shopping and abuse of judicial processes is far too established to even require citation of authority.

I thus vote to GRANT the petitions in G.R. No. 181141 and G.R. No. 183527, and DENY the petitions in G.R. No. 178188 and G.R. No. 180674.

DISSENTING OPINION

TINGA, *J.*:

I respectfully dissent. Contrary to the majority's ruling, the Panel of Arbitrators (POA) has jurisdiction over the complaint filed with it by Citinickel docketed as DENR Case No. 2006-02B. Moreover, the Regional Trial Court (RTC) of Puerto Princesa City, Palawan has no jurisdiction over the action for quieting of title filed by Platinum. And finally, while forum-shopping may be apparent from the factual background of these cases, it ultimately cannot be the cause for dispositive action on the part of this Court, as will be demonstrated forthwith.

I.

I wish to restate the facts behind these cases.

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[1] Section 2, Rule 129 of the Rules of Court provides:

SEC. 2. ***Judicial Notice, when discretionary.***— A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or **ought to be known to judges because of their judicial functions**.

Olympic Mines and Development Corporation (Olympic) is the grantee of mining concessions located in Narra and Española, Palawan, covered by Mining Lease Contracts. It entered into an Operating Agreement dated July 18, 2003 with Platinum Group Metals Corporation (Platinum), whereby, in consideration of a royalty fee of two and a half percent (2½%) of gross revenues, Olympic granted Platinum the exclusive right to conduct mining operations on two portions with a total area of 2,176 hectares of the entire concession for a period of 25 years. Olympic and Platinum applied for and were granted separate Small-Scale Mining Permits (SSMP) and the corresponding Environmental Compliance Certificates (ECC) over their respective areas.

In 2006, Olympic took steps to terminate the Operating Agreement claiming that Platinum violated the terms and conditions thereof. Olympic sought official termination of the Operating Agreement by the Department of Environment and Natural Resources (DENR). It thereafter assigned its rights under the Operating Agreement to Citinickel Mines and Development Corporation (Citinickel) without the knowledge and consent of Platinum.

Spurred by these developments, Platinum filed a complaint to quiet its title/interest over the mining areas docketed as Civil Case No. 4199 in the Regional Trial Court (RTC) of Puerto Princesa City, Palawan, Branch 95. The trial court issued a writ of preliminary injunction directing Olympic and Citinickel to cease and desist from performing any act that would tend to impede, hamper, limit or adversely affect Platinum's full enjoyment of its rights under the Operating Agreement.

This précis encapsulates the present controversy comprising four consolidated petitions. For a fuller comprehension of the case, however, the following narrative by the Court of Appeals in its assailed Decision[1] dated November 20, 2007 in CA-G.R. SP No. 99422, which spawned one of the petitions herein docketed as G.R. No. 180674, is reproduced:

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[1] *Rollo* (G.R. No. 180674), pp. 889-911; Penned by Associate Justice Vicente Q. Roxas with the concurrence of Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia.

In 1971 and 1980, OLYMPIC was granted by the then Secretary of Natural Resources "Mining Lease Contracts" numbered as PLC-V-544, PCL-V-545, PCL-V-550, MLC-MRD-127, MLC-MRC-128, MLC-MRD-129 and MLC-MRC-130, covering mining areas located in Narra and Española, Palawan.

On July 18, 2003, an "Operating Agreement" was entered into by and between OLYMPIC and private respondent PLATINUM, which granted PLATINUM the exclusive right to control, possess, manage/operate and conduct mining operations and to market or dispose mining products on the Toronto Nickel Mine in the Municipality of Narra with an area of 768 hectares and the Pulot Nickel Mine in the Municipality of Española covering an area of 1,408 hectares, for a period of 25 years in consideration of a royalty fee of 2½% of gross revenues.

On August 21, 1996,[2] OLYMPIC filed an Application for Mineral Agreement denominated as AMA-IVB-040 and AMA-IVB-045 covering the aforesaid mining lease contracts pursuant to Executive Order No. 279.

On January 21, 2004, OLYMPIC and private respondent PLATINUM filed with the Provincial Mining Regulatory Board (PMRB) of Palawan four (4) SSMPs. On November 4, 2004,[3] the Provincial Governor of Palawan approved the application and issued the SSMPs as follows:

1. SSMP-PLW-037 of OLYMPIC located in San Isidro, Narra, Palawan;
2. SSMP-PLW-038 of OLYMPIC located in Pulot, Española, Palawan;
3. SSMP-PLW-039 of PLATINUM located in San Isidro, Narra, Palawan; and
4. SSMP-PLW-040 of PLATINUM located in Pulot, Española, Palawan.

All of the said SSMPs were granted and the corresponding ECCs

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[2] The date is stated as August 21, 2006 in the assailed Decision. However, a verification of the records reveals that this date is more accurately, August 21, 1996. *Id*. at 2383.

[3] This date is also erroneously stated as November 4, 2006. *Id*. at 2384.

were issued, as follows: ECC Nos. 4B-218-PA-2140-2004, 4B-219-PA-2140-2004, 4B-220-PA-2140-2004, and 4B-221-PA-2140-2004.

On April 24, 2006, OLYMPIC sent a letter to private respondent PLATINUM, informing PLATINUM of the immediate and unilateral termination of the "Operating Agreement" and directing PLATINUM to suspend its mining operations and to surrender possession of the mining areas subject of the "Operating Agreement" to OLYMPIC on the ground of gross violations of the "Operating Agreement."

On April 25, 2006, OLYMPIC filed with the RTC of Puerto Princesa City, Branch 52, a complaint for injunction with prayer for the issuance of a writ of preliminary injunction, a writ of preliminary mandatory injunction, and a temporary restraining order (TRO) against private respondent PLATINUM grounded on the alleged gross violations of the "Operating Agreement" by PLATINUM. The said complaint was docketed as Civil Case No. 4181.

On April 26, 2006, Branch 52 of the RTC of Puerto Princesa City issued a TRO, directing private respondent PLATINUM to stop conducting mining operations on the subject mining areas and to stop disposing of its mineral products. In an Order dated April 28, 2006, the same court extended the effectivity of the TRO to twenty (20) days. However, on May 16, 2006, the RTC denied OLYMPIC's application for a writ of preliminary injunction. On May 17, 2006, OLYMPIC filed a Notice of Dismissal. **However, before the filing of the said Notice of Dismissal, Branch 52 of the RTC of Puerto Princesa City had already issued an Order dated May 16, 2006 dismissing the complaint on the ground, among others, that the unilateral termination of the "Operating Agreement" was legally impermissible.**

In a letter-complaint dated May 18, 2006 filed with the PMRB of Palawan, docketed as PMRB Case No. 001-06, OLYMPIC asked for the revocation of the SSMP-PLW-039 and SSMP-PLW-040 of private respondent PLATINUM on the ground of its termination of the "Operating Agreement" because of the alleged gross violations thereof by private respondent PLATINUM. In its Resolution dated August 16, 2006, the PMRB of Palawan dismissed the complaint on the ground that the decision of the RTC of Puerto Princesa City, Branch 52, in Civil Case No. 4181, that the unilateral termination by OLYMPIC of the "Operating Agreement" was illegal, had already become final and executory.

OLYMPIC sent a letter dated June 8, 2006 to private respondent PLATINUM giving notice to PLATINUM of OLYMPIC's intent to file legal action against PLATINUM for PLATINUM's alleged gross violations of the "Operating Agreement," among others.

Alleging that OLYMPIC's claims and misrepresentations in the letters dated April 24, 2006, May 18, 2006 and June 8, 2006 and in the complaint dated April 25, 2006 had cast doubt on its rights and interests over the subject mining areas, private respondent PLATINUM filed with Branch 95 of the RTC of Puerto Princesa City on June 14, 2006, a complaint to quiet PLATINUM's title/interest over the subject mining areas, to recover damages and to compel OLYMPIC to perform its obligations under the "Operating Agreement," which case was docketed as Civil Case No. 4199.

In a Petition dated June 8, 2006, which was filed by OLYMPIC with the Panel of Arbitrators (POA) of the DENR, Region IV-B, that was docketed as **DENR POA Case No. 2006-01-B**, OLYMPIC also sought the cancellation of the "Operating Agreement" dated July 18, 2003 and the revocation of the SSMPs issued to private respondent PLATINUM. On June 20, 2006, however, OLYMPIC filed a Notice of Withdrawal of the said petition.

Unable to secure a termination of its "Operating Agreement" with private respondent PLATINUM, OLYMPIC, without the knowledge and consent of private respondent PLATINUM, executed a Deed of Assignment on June 9, 2006, transferring its AMA-IVB-040 to petitioner CITINICKEL, which was approved per Order dated September 6, 2006 of OIC, Regional Director Roland de Jesus of the Mines and Geosciences Bureau (MGB), Region IV-B.

On June 21, 2006, petitioner CITINICKEL filed with the RTC of Parañaque City, Branch 258, a complaint for rescission of the "Operating Agreement" dated July 18, 2003, and prayed for damages, which case was docketed as Civil Case No. 06-0185, on the ground of alleged violations by PLATINUM of the terms of the "Operating Agreement." In an Order dated December 22, 2006, the RTC of Parañaque City, Branch 258, dismissed the said complaint on the ground of forum shopping, among others.

On July 12, 2006, petitioner CITINICKEL also filed with the PMRB of Palawan a petition for cancellation of the SSMPs issued to private respondent PLATINUM, which case was docketed as **PMRB Case No. 002-06**, alleging that private respondent PLATINUM had been

divested of its mining rights over the subject mining areas by virtue of the Deed of Assignment of the Operating Agreement executed by OLYMPIC in favor of petitioner CITINICKEL. On September 12, 2006, the PMRB of Palawan issued a Resolution dismissing the petition.

On July 19, 2006, petitioner CITINICKEL, for itself and on behalf of OLYMPIC, filed with the POA, MGB Region IV-B of the DENR, a complaint, which case was docketed as **DENR Case No. 2006-02B**, that sought the issuance of a cease and desist order and a writ of injunction against private respondent PLATINUM and the cancellation of the "Operating Agreement." During the pendency of DENR Case No. 2006-02B, petitioner CITINICKEL filed an appeal with the Secretary of the DENR, docketed as DENR Case No. 8240. **On October 30, 2006, the POA of MGB Region IV-B issued a Resolution canceling the "Operating Agreement" as well as the SSMPs issued to private respondent PLATINUM, and enjoining private respondent PLATINUM to cease and desist from operating the subject mining areas**.

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On July 21, 2006, upon private respondent PLATINUM's motion, public respondent BLANCAFLOR, in his capacity as the Presiding Judge of the RTC of Puerto Princesa City, Branch 95, issued the assailed Order, in Civil Case No. 4199, granting private respondent PLATINUM's application for the issuance of a writ of preliminary injunction, thereby directing OLYMPIC and its successor-in-interest, petitioner CITINICKEL, to cease and desist from performing any act that would tend to impede, hamper, limit or adversely affect private respondent PLATINUM's full enjoyment of its rights under the "Operating Agreement" dated July 18, 2003, the pertinent portion of which provides as follows:

xxx xxx xxx

On August 1, 2006, public respondent BLANCAFLOR issued the corresponding Writ of Preliminary Injunction.

Despite the issuance of the said Writ of Preliminary Injunction, petitioner CITINICKEL filed with the Environmental Management Bureau (EMB) of the DENR, Region IV-B, **two (2) letter-complaints** dated July 31, 2006, for the cancellation of the ECCs issued to private respondent PLATINUM and OLYMPIC. In the other letter-complaint dated August 18, 2006, petitioner CITINICKEL followed up its

complaint for the cancellation of the ECCs issued to private respondent PLATINUM. While the said letter-complaints were pending with the EMB, petitioner CITINICKEL filed with the Secretary of the DENR an appeal, docketed as **DENR Case No. 8253**, grounded on the alleged "*inaction*" by the EMB.

On September 25, 2006, the Secretary of the DENR issued an Order in DENR Case No. 8253 canceling the ECCs issued to private respondent PLATINUM and OLYMPIC on the ground of private respondent PLATINUM's violation of Condition No. 8 of the ECCs by exceeding the allowable volume of extraction of minerals per year. In an Order dated November 22, 2006, the Secretary of the DENR denied private respondent PLATINUM's motion for reconsideration.

On December 13, 2006, private respondent PLATINUM appealed the September 25, 2006 and November 22, 2006 Orders of the Secretary of the DENR to the Office of the President (OP), docketed as **OP Case No. 06-L-433**.

On January 22, 2007, acting on private respondent PLATINUM's Urgent Motion for Issuance of Cease and Desist Order, the OP issued an Order directing petitioner CITINICKEL, the Secretary of DENR, the POA, the DENR Region IV-B or any of its representatives to cease and desist from issuing any order, resolution or directive implementing the September 25, 2006 and November 22, 2006 Orders of the Secretary of the DENR.

On February 6, 2007, the OP rendered a Decision reversing the September 25, 2006 and November 22, 2006 Orders of the Secretary of the DENR. Petitioner CITINICKEL then filed a Motion for Reconsideration dated February 12, 2007 and an Urgent Motion for Issuance of Cease and Desist Order dated February 15, 2007 to enjoin private respondent PLATINUM from removing the mineral ores stockpiled at the Palawan pier.

During the pendency of the said motions, petitioner CITINICKEL filed with the RTC of Quezon City, Branch 76, a petition for *mandamus*, docketed as Civil Case No. Q-0759855, to compel the DENR Secretary to continue to hold, seize and confiscate the mineral ores stockpiled at the Palawan pier pending final determination of the rights of petitioner CITINICKEL and private respondent PLATINUM. On February 27, 2007, Branch 76 of the RTC of Quezon City issued a *status*

***quo* Order. On March 19, 2007, Branch 100 of the RTC of Quezon City, to which Civil Case No. Q007-59855 was subsequently re-raffled, recalled and set aside the February 27, 2007 *status quo* Order. On May 4, 2007, the RTC of Quezon City, Branch 100, rendered a Decision dismissing the petition for *mandamus* for lack of merit.**

Meanwhile, on August 28, 2006, private respondent PLATINUM filed a Motion for Leave to Amend Complaint attaching thereto the Amended Complaint, which impleaded OLYMPIC's Board of Directors and Rockworks Resources Corporation (ROCKWORKS) and the latter's Board of Directors as additional defendants.

Subsequently, private respondent PLATINUM filed an Urgent Motion for Issuance of Expanded Writ of Preliminary Injunction to:

xxx xxx xxx

In another assailed Order dated April 13, 2007, the RTC granted PLATINUM's application for the issuance of an expanded writ of preliminary injunction.[4] [Emphasis supplied]

G.R. No. 178188
Olympic Mines and Development Corporation v. Platinum Group Metals Corporation

Olympic questions the Decision[5] dated February 28, 2007 and Resolution[6] dated May 30, 2007, of the Court of Appeals in **CA-G.R. SP No. 97259**. The assailed Decision affirmed the Orders dated October 4 and 5, 2006, of the RTC, Branch 95,

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[4] *Id*. at 892-900.

[5] *Rollo* (G.R. No. 178188), pp. 41-58; Penned by Associate Justice Normandie B. Pizarro with the concurrence of Associate Justices Edgardo P. Cruz and Fernando Lampas Peralta.

The dispositive portion of the Decision states:

WHEREFORE, above premises considered, the instant Petition is **DISMISSED**. The October 4, 2006 and October 5, 2006 ***Order(s)*** of the Regional Trial Court, Br. 95, Puerto Princesa City, Palawan, in Civil Case No. 4199 hereby **STAND**. Costs against Petitioner.

SO ORDERED.

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

Puerto Princesa City, Palawan, in **Civil Case No. 4199**. The Order dated October 4, 2006, denied Olympic's motion for reconsideration of the Orders dated July 21[7] and 31,[8] 2006, which respectively granted Platinum's application for a writ of preliminary injunction and approved the bond therefor. The Order[9] dated October 5, 2006, on the other hand, denied

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[7] *Id*. at 258-273.

The dispositive portion of the Order states:

WHEREFORE, premises considered, let a writ of PRELIMINARY INJUNCTION BE ISSUED directing defendant Olympic Mines and Development Corporation, its assignees and successors-in-interest Citinickel Mines and Development Corp., agents, representatives, or persons or entities acting on its behalf or under its authority, control or influence, to CEASE and DESIST from performing any act that will tend to impede, hamper, limit or adversely affect the full enjoyment by plaintiff corporation of its rights under the operating agreement such as and including, but not limited to the following:

1. Making representations of claims with any person, including the proper government agencies, that the operating agreement has already been terminated or is no longer in effect;
2. Making representations or claims with any person, including the proper government agencies, that plaintiff has violated any of defendant's rights under the operating agreement; and
3. Interfering with the possession, control and/or operation of the Pulot Nickel Mine and the Toronto Nickel Mine;
4. Performing any act which will disturb the status quo.
5. In view of the several complaints and petitions already filed by defendant and dismissed at its own instance, from filing further complaints/ petitions on the basis of the alleged termination of the operating agreement.

Considering that the complaint filed by the assignee of defendant corporation, Citinickel Mines and Development Corporation also contains a prayer for the issuance of a writ of preliminary injunction against herein plaintiff-corporation, in the interest of good order and conflicting resolutions, let a copy of the writ of Preliminary Injunction be furnished the RTC of Parañaque City for its reference.

The plaintiff shall immediately post a bond of Two Million Pesos (₱2,000,000.00) in favor of defendant corporation should the latter incur any loss or damage relative to the enforcement of above writ.

SO ORDERED. (*Id*. at 271-273).

[8] *Id*. at 274.

[9] *Id*. at 285-286.

Olympic's motion for reconsideration of the Order[10] dated August 15, 2006, denying Olympic's motion to dismiss and motion to suspend proceedings.

In the assailed Decision dated February 28, 2007, the Court of Appeals ruled that the trial court properly exercised jurisdiction over the complaint (for quieting of title/interest and removal of cloud, breach of contract and damages, and specific performance) in Civil Case No. 4199, because the main issue raised therein was whether Platinum had a claim and/or right over the subject mining areas pursuant to the parties' Operating Agreement. The resolution of this issue, according to the appellate court, does not require the technical expertise of the DENR's Panel of Arbitrators (POA).

The Court of Appeals also declared that the venue was properly laid in the RTC of Palawan where the disputed mining areas are situated because actions affecting title to or possession of real property or the assertion of any interest therein should be commenced and tried in the court that has jurisdiction over the area where the real property involved or a portion thereof is situated. The appellate court further found that there was no grave abuse of discretion attendant in the issuance of a writ of preliminary injunction in favor of Platinum.

Reconsideration was denied in the Resolution dated May 30, 2007 for lack of merit.

In its Petition for Review[11] dated June 20, 2007, Olympic asserts that it is the POA which has jurisdiction over the complaint (for quieting of title) filed by Platinum because the case involves a mining dispute requiring the technical expertise of the POA. The case, which involves the existence of the grounds for the cancellation of the Operating Agreement, among which are over-extraction of mineral ores and failure to install adequate pollution control measures, is allegedly within the exclusive cognizance of the POA under Republic Act No. 7942. Moreover, Olympic

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[10] *Id*. at 275-278.

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

asserts that the complaint is a personal action seeking, as it does, the court's declaration that Platinum did not violate the Operating Agreement and is entitled to the enforcement thereof. As a personal action, the complaint should have been filed with the court of the place where the plaintiff or defendant resides at the election of the plaintiff, and not the court where the property is situated.

Considering the foregoing, preliminary injunction as an ancillary remedy should not have been granted. More so, because there exists a clear challenge, in the form of Olympic's cancellation of the Operating Agreement, to the right asserted by Platinum.

Olympic objects to the tenor of the injunction particularly as it directs the parties to cease and desist from making representations or claims and from filing complaints or petitions in connection with the termination of the Operating Agreement because the injunction allegedly effectively stifles Olympic's right to free expression and from pursuing appropriate legal remedies to vindicate its claims.

Platinum filed a Comment[12] dated October 1, 2007, asserting that its complaint involves title to and possession of real property within the jurisdiction of the RTC. Platinum points out that Olympic had itself invoked the jurisdiction of the trial court as it filed two complaints first with the RTC of Puerto Princesa City, Branch 52, and second, with the RTC of Parañaque City. Both complaints were grounded on Platinum's alleged violations of the Operating Agreement and sought to enjoin it from conducting mining operations on the disputed areas, effectively ousting Platinum from its possession thereof. The complaint also seeks a determination of the validity of the Operating Agreement, a decidedly judicial function.

The main objective of the complaint is to retain possession of the disputed mining areas. It is thus a real action and venue was properly laid in the RTC of Palawan where the disputed properties are located, Platinum argues.

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[12] *Id.* at 326-381.

Platinum avers that Olympic cannot challenge the factual basis for the preliminary injunction issued by the trial court in its petition for review before this Court. At any rate, Platinum insists that there was paramount necessity for the injunction because Olympic's acts were causing incalculable harm to its business interests.

Perhaps most importantly, Platinum points out that Olympic and its assignee, Citinickel, are guilty of forum shopping because their complaint dated July 18, 2006 filed with the POA; petition dated July 11, 2006 filed with the Provincial Mining and Regulatory Board (PMRB) of Palawan; complaint dated June 20, 2006 filed with the RTC of Parañaque City; and the EMB letter-complaints all relate to the Operating Agreement, and contain a common prayer for the cancellation of the Operating Agreement and for an injunction to issue against Platinum.

Olympic filed a Reply dated March 7, 2008, reiterating its argument that the trial court has no jurisdiction over Platinum's complaint.

G.R. No. 180674
Citinickel Mines and Development Corporation v. Judge Bienvenido C. Blancaflor and Platinum Group Metals Corporation

Citinickel questions the Decision[13] dated November 20, 2007, of the Court of Appeals in **CA-G.R. SP No. 99422**, which dismissed for lack of merit its petition for *certiorari* assailing the July 21, 2006 and April 13, 2007[14] Orders of the RTC in **Civil Case No. 4199**.

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[13] *Supra* note 1.

[14] *Id.* at 125-142.

The dispositive portion of the Order states:

WHEREFORE, premises considered, this Court GRANTS the issuance of an expanded writ of preliminary injunction as prayed for to wit:

Directing the DENR, Office of the Secretary of the DENR, the Secretary of DENR, as well as the Panel of Arbitrators, Environmental Management Bureau (EMB) and the Mines and Geosciences Bureau (MGB), their agents, representatives or persons entities acting on their behalf or under their authority,

In dismissing Citinickel's petition, the Court of Appeals held that the October 30, 2006 Resolution of the POA of MGB Region IV-B (POA Resolution),[15] canceling the Operating

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control or influence, from interfering in any way with the possession, control and/or operation of the Pulot Nickel Mine and the Toronto Nickel Mine, including the custody, control and disposition of the mineral ores extracted pursuant to the Operating Agreement and stockpiled at the stockyards; and further, from performing any act which will disturb the status quo; and from doing any act — including the implementation/enforcement of the Order dated 27 February 2007 issued by Judge Alexander Balut and the Memorandum dated 27 February 2007 issued by the Secretary of the DENR — that will tend to impede, hamper, limit or adversely affect the full enjoyment by Platinum of its rights under the Operating Agreement.

The plaintiff-movant is directed to increase its bond from ₱2,000,000.00 to ₱2,500,000.00 effective immediately to answer for any damage that may arise as a result of the enforcement of the original writ of preliminary injunction and this new expanded writ of preliminary injunction.

IT IS SO ORDERED. (*Id*. at 142)

[15] *Rollo* (G.R. 181141), pp. 468-477.

The dispositive portion of the Resolution states:

WHEREFORE, premises considered, the complaint, dated July 18, 2006, filed by Olympic Mines and Development Corporation, as represented by Citinickel Mines and Development Corporation, and the earlier Petition, dated June 8, 2006, filed by Olympic Mines and Development Corporation are, as they are hereby given due course.

1. The Operating Agreement, dated July 18, 2003, by and between Olympic Mines and Development Corporation and Platinum Group Metals Corporation is hereby cancelled and declared as without force and effect.
2. The Small Scale Mining Permits SSMP PLW No. 39 and 40, issued under the name of Platinum Group Metals Corporation are, as they are hereby cancelled and withdrawn.
3. In order to prevent respondent, their privies and all other persons working in their behalf from further inflicting wanton damage and prejudice to the environment, it is recommended to the Mines Adjudication Board that an order be issued directing that they cease and desist from operating the mining areas subject of this case.
4. Enjoining the Mines and Geosciences Bureau and the Environmental Management Bureau, of DENR Region IV-B MIMAROPA to conduct an in depth investigation and accounting of the environmental damage brought upon the areas covered for proper assessment.

SO ORDERED.

Agreement and the SSMPs issued to Platinum, and enjoining the latter to cease and desist from conducting mining operations in the disputed areas violated the writ of preliminary injunction previously issued by the RTC in its Order dated July 21, 2006. The POA Resolution also contravened the Order dated May 16, 2006 of the RTC of Puerto Princesa City, Branch 52, in Civil Case No. 4181, which dismissed Olympic's complaint for injunction against Platinum; the Order dated December 22, 2006 of the RTC of Parañaque City, Branch 258, in Civil Case No. 06-0185, which dismissed Citinickel's complaint for rescission of the Operating Agreement on the ground of forum shopping; and the Decision dated May 4, 2007 of the RTC of Quezon City, Branch 100, in Civil Case No. Q-07-59855, which dismissed for lack of merit Citinickel's petition for *mandamus* (to compel the DENR Secretary to continue to hold, seize and confiscate the mineral ores stockpiled at the Palawan pier pending final determination of the rights of Citinickel and Platinum).

The appellate court also berated Citinickel for trying to circumvent the foregoing RTC Orders by pursuing through administrative means the cancellation of the SSMPs and ECCs issued to Platinum. Thus, it assessed triple costs against Citinickel for blatant forum shopping.

In its Petition[16] dated December 26, 2007, Citinickel asserts that by virtue of the Deed of Assignment dated June 9, 2006, it became an assignee of Olympic before Platinum's complaint was filed on June 14, 2006. Since it was not impleaded as a party to Civil Case No. 4199 notwithstanding its indispensability to the case, it is not bound by the preliminary injunction issued by the trial court. For the same reason, the POA Resolution issued in the case filed by Citinickel cannot be deemed to have contravened the preliminary injunction.

Citinickel argues that the POA Resolution had already attained finality because of the appellate court's dismissal via the Resolution dated January 18, 2007 of Platinum's petition assailing the POA Resolution. In this connection, Citinickel avers that it was the

[16] *Rollo* (G.R. No. 180674), pp. 10-50.

appellate court's Special Fifth Division in CA-G.R. SP No. 97288 which first acquired jurisdiction to resolve the question of the validity of the POA Resolution. Thus, the Eleventh Division in CA-G.R. SP No. 99422 wielded no authority to declare that the POA Resolution was void.

Further, *res judicata* as a consequence of the cases enumerated by the Court of Appeals in its assailed Decision does not apply because Citinickel was not a party to two of the cases cited. For the same reason, Citinickel claims that it cannot be held to have committed forum shopping.

It allegedly cannot be held to have indirectly circumvented the preliminary injunction issued by the trial court by seeking the cancellation of Platinum's SSMPs and ECCs because the injunction covered only acts which tend to interfere with Platinum's rights under the Operating Agreement.

In a Resolution[17] dated January 16, 2008, the Court issued a temporary restraining order (TRO) enjoining the implementation of the assailed Decision dated November 20, 2007, as well as the enforcement of the injunction Orders dated July 21, 2006 and April 13, 2007 issued in Civil Case No. 4199.

Platinum filed a Comment with Motion for Reconsideration[18] dated January 25, 2008, arguing that it had earlier assailed the validity of the POA Resolution via a petition for *certiorari* dated December 18, 2006 docketed as CA-G.R. SP No. 97288. That case was still pending when Citinickel filed its petition dated June 25, 2007 docketed as CA-G.R. SP No. 99422, founded on the alleged validity of the POA Resolution. Moreover, the Court of Appeals in CA-G.R. SP No. 97259 had earlier affirmed the jurisdiction of the trial court in Civil Case No. 4199 and its authority to issue the preliminary injunction therein. Citinickel's filing of the petition in CA-G.R. SP No. 99422, despite Platinum's previously filed petition for *certiorari* in CA-G.R. SP No. 97288 and the appellate court's Decision and Resolution in CA-G.R. SP No. 97259, was allegedly a clear abuse of judicial process.

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[17] *Id.* at 820.

[18] *Id.* at 831-886.

Since the preliminary injunction and the expanded writ did not enjoin Citinickel from performing any act, Platinum claims that it has no standing to challenge the legal validity of the trial court's Orders. Nonetheless, Platinum claims that the injunction orders are binding on Citinickel. Allegedly, the assignment of Olympic's rights took effect only upon the approval thereof by the Regional Director concerned. This approval was issued by the Regional Director of the MGB Regional Office No. IV-B on September 6, 2006 or after Civil Case No. 4199 was filed on June 14, 2006. Thus, Citinickel is a successor-in-interest by title subsequent to the commencement of the action. It is therefore bound by the injunction orders issued in the case. Platinum further alleges that Citinickel merely stepped into the shoes of Olympic and acted as the latter's agent.

Platinum sought the reconsideration of the TRO issued by the Court.

In its Reply with Opposition[19] dated February 8, 2008, Citinickel insists that its right to due process was violated by the trial court in Civil Case No. 4199 because the effect of the injunction orders was made to encompass Citinickel notwithstanding the fact that it was not a party to the case. The injunction orders, while not specifically directed against Citinickel, have the effect of frustrating the exercise of its rights over the disputed mining areas.

Citinickel claims that the approval of the Regional Director concerned is not a prerequisite to the validity of the Deed of Assignment executed between it and Olympic. At best, such approval is only a requisite for the effectivity of the agreement and does not negate the fact that prior to the filing of Platinum's complaint, Olympic's rights have already been validly ceded to Citinickel.

Citinickel denies that an agency was created as a consequence of the Memorandum of Agreement between Olympic and another mining company, Rockworks Resources Corporation (Rockworks), because the MOA does not confer on either Olympic or Rockworks the right to participate in the management or direct the affairs of Citinickel.

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[19] *Id*. at 1415-1442.

G.R. No. 181141
Platinum Group Metals Corporation
v. Citinickel Mines and Development Corporation

Platinum assails the Resolution[20] dated January 18, 2007 of the Court of Appeals in **CA-G.R. SP No. 97288**, which dismissed outright its petition for *certiorari* questioning the POA Resolution for having failed to file a motion for reconsideration thereof.

The Court of Appeals denied reconsideration in its Resolution[21] dated December 21, 2007.

In its Petition for Review[22] dated February 28, 2008, Platinum defends its non-filing of a motion for reconsideration of the POA Resolution in DENR Case No. 2006-02-B on the ground that such motion would have been denied by the POA as it had already affirmed the cancellation of Platinum's ECCs in DENR Case No. 8253. Further, an appeal with the Mines Adjudication Board (MAB) would also have been useless because the POA had declared that the decision to cancel the SSMPs and the Operating Agreement was not entirely its own but also that of the DENR, which includes the MAB. Platinum claims that its filing of a petition for *certiorari* was necessitated by the patent illegality of the POA Resolution and the fact that Platinum had been denied the opportunity to controvert Citinickel's complaint, its motion to dismiss having been treated as its answer.

Platinum contends that the POA Resolution effectively nullified the injunctive writ previously issued by the trial court in Civil Case No. 4199. The POA also allegedly impinged not only on the jurisdiction of the trial court in Civil Case No. 4199 but also on the jurisdiction of the RTC of Parañaque City before which Citinickel had also filed a complaint grounded on the alleged violation by Platinum of the Operating Agreement.

[20] G.R. No. 181141, *rollo*, pp. 79-82; Penned by Associate Justice Edgardo F. Sundiam with the concurrence of Associate Justices Mario L. Guariña III and Monina Arevalo-Zenarosa.

[21] *Id.* at 84-87.

[22] *Id.* at 14-78.

Moreover, Platinum argues that Citinickel is bound by the Resolution dated August 16, 2006 of the PMRB denying for lack of merit Olympic's letter-complaint seeking the revocation of Platinum's SSMPs.

In a Resolution[23] dated July 2, 2008, the Court resolved to consolidate G.R. Nos. 180674 and 181141 with G.R. No. 178188.

In view of the consolidation of these cases, Citinickel filed a Supplemental Petition and Comment[24] (on Platinum's petition in G.R. No. 181141) dated August 11, 2008, reiterating its argument that the injunctive orders in Civil Case No. 4199 were issued without jurisdiction and that its non-inclusion as an indispensable party in the said case warranted the dismissal of the same.

Citinickel asserts that the POA Resolution had already become final and executory by virtue of Platinum's withdrawal of its motion for reconsideration filed with the POA. Further, Citinickel avers that on January 3, 2007, it was granted, as Olympic's assignee, a Mineral Production Sharing Agreement (MPSA) covering the disputed mining area. Thus, after the damage incurred by Platinum has been assessed and determined, Citinickel contends that possession of the disputed mining area should be turned over to it so that it may then proceed with mining operations pursuant to the MPSA.

Platinum filed a Reply[25] dated October 17, 2008, reiterating its arguments.

G.R. No. 183527
Platinum Group Metals Corporation
v. Court of Appeals and Polly C. Dy

Platinum seeks to set aside on *certiorari* the Resolution[26] dated March 3, 2008, of the Court of Appeals in **CA-G.R. SP**

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[23] *Id.* at 667-668.

[24] *Id.* at 711-768.

[25] *Id.* at 1425-1456.

[26] *Rollo* (G.R. No. 183527), pp. 37-40; Penned by Associate Justice Amelita G. Tolentino with the concurrence of Associate Justices Lucenito N. Tagle and Agustin S. Dizon.

No. 101544, which directed the issuance of a writ of preliminary injunction enjoining Hon. Bienvenido C. Blancaflor from conducting further proceedings in Civil Case No. 4199 and from implementing his Orders dated July 21, 2006, October 26, 2006 and April 13, 2007. Platinum also assails the appellate court's Resolution[27] dated May 14, 2008 which denied its motion for reconsideration.

In its Petition for *Certiorari*[28] dated July 18, 2008, Platinum contends that the appellate court should have dismissed the petition for *certiorari* filed by Polly Dy (questioning the injunctive orders issued by the trial court in Civil Case No. 4199 and the Order of the same court dated October 26, 2006, admitting Platinum's amended complaint and allowing Polly Dy to be impleaded as a party-defendant in the case) on the ground of prematurity. According to Platinum, Polly Dy's petition was filed without first seeking the reconsideration of the trial court's Orders.

Platinum argues that none of the questioned Orders of the trial court were directed against Polly Dy; the latter being merely a member of the Board of Directors of Rockworks which, in turn, is a mere stockholder of Citinickel. The Order dated July 21, 2006 is allegedly directed against Olympic and Citinickel, while the Order dated April 13, 2007 is directed against the DENR, the Office of the Secretary of the DENR, the Secretary of the DENR, the POA, the EMB, and the MGB. Not being mentioned in any of the assailed Orders, Polly Dy allegedly has no legal personality to question the same.

Polly Dy filed a Manifestation and Motion[29] dated July 22, 2008, claiming that the Decision dated July 14, 2008 rendered by the Court of Appeals in CA-G.R. No. 101544 has rendered Platinum's petition moot and academic.

Platinum, on the other hand, filed a Counter-Manifestation/ Opposition with Motion for Consolidation and to Cite in

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[27] *Id*. at 42-43.

[28] *Id*. at 3-35.

[29] *Id*. at 298-305.

Contempt[30] dated August 15, 2008, arguing that the appellate court's Decision dated July 14, 2008 contravened the TRO issued by this Court on January 16, 2008.

In a Resolution[31] dated September 24, 2008, G.R. No. 183527 was consolidated with the previously consolidated cases of G.R. Nos. 178188, 180674 and 181141.

II.

Foremost among the issues that beg the Court's resolution is whether the trial court had jurisdiction over the subject matter of Platinum's complaint in Civil Case No. 4199.

A.

The well-entrenched principle is that the jurisdiction of the court over the subject matter of the action is determined by the material allegations of the complaint and the law, irrespective of whether or not the plaintiff is entitled to recover all or some of the claims or reliefs sought therein.[32]

Platinum's complaint, styled as one for Quieting of Title/Interest and Removal of Cloud, Breach of Contract and Damages, and Specific Performance, alleges:

3. Plaintiff is engaged in mining operations. Defendant holds mining rights/claims over the Toronto Nickel Mine in the Municipality of Narra and the Pulot Nickel Mine in the Municipality of Española (hereinafter, the "subject mining areas") in Palawan.

4. On 18 July 2003, plaintiff, as the SECOND PARTY, and defendant, as the FIRST PARTY, entered into an Operating Agreement. The said Agreement vested plaintiff with, among others, the following rights and interests:

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[30] *Id.* at 322-327.

[31] *Id.* at 349-350.

[32] *Hilado v. Chavez*, G.R. No. 134742, September 22, 2004, 438 SCRA 623, 641.

2.1. To enter, occupy, possess, explore, develop, utilize and control the mineral properties subject to Section 2, hereof;

2.2. To conduct mining and all subsidiaries, associated and other related operations in the mineral properties at a rate it deems appropriate;

2.3. To mill, beneficiate and process the ores by appropriate methods or process within or outside the area of the mineral properties;

xxx xxx xxx

5. **Section 23 of the Operating Agreement states that it shall be effective for twenty-five (25) years or for the life of the subject mining areas. Under Section 19**[33] **thereof, it may only be [pre]terminated for gross violations of its terms and provisions.**

xxx xxx xxx

9. **On 24 April 2006, plaintiff was shocked when it received a letter of even date from defendant's counsel alleging that plaintiff has committed gross violations of the Operating Agreement, informing plaintiff of its immediate termination and the suspension of the mining operations, and demanding that plaintiff surrender the possession of the subject mining areas.**

xxx xxx xxx

17. **Defendant claims and declares in the letter dated 24 April 2006, the complaint dated 25 April 2006, the letter dated 18 May 2006 and the letter dated 8 June 2006 that it has already terminated the Operating Agreement. As ground for termination as well as purported basis for its complaint and its application for TRO, defendant insidiously alleged that plaintiff committed gross violations of the Operating Agreement.**

18. Defendant's claims and misrepresentations in said letters and complaint have cast a cloud on plaintiff's rights and interests over the subject mining areas. The said letters and complaint unequivocally give the impression that, since the Operating

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[33] The relevant section of the Operating Agreement on termination due to gross violation of the terms and conditions thereof is actually contained in Sec. 20 which the complaint quotes in par. 22.

Agreement has already been terminated, plaintiff no longer possesses any right or interest over the subject mining areas.

xxx xxx xxx

21. **Defendant's actions are clearly in breach of the Operating Agreement. To repeat, the Operating Agreement provides that it may only be [pre]terminated for gross violations of its terms and provisions. As stated above, however, defendant's allegations with respect to plaintiff's violations of the terms and conditions of the Operating Agreement are merely imagined.**

22. In any case, even assuming *in gratia argumenti* that there is factual basis for defendant to terminate the Operating Agreement, defendant's termination thereof is clearly bereft of legal basis and in breach of the Operating Agreement. Section 20 unambiguously provides:

> The FIRST PARTY may terminate this agreement by giving thirty (30) days notice to the SECOND PARTY based on gross violation of the terms and conditions of this agreement.

23. Clearly, the Operating Agreement may only be considered terminated after the lapse of 30 days. In the instant case, defendant served plaintiff the letter dated 24 April 2006 on even date and filed a complaint the following day. The complaint if filed and the TRO it caused to be issued were thus premature and violative of the Operating Agreement.[34]

It would seem, at first glance, that the complaint involves title to, or possession of, real property, or an interest therein, bringing the complaint within the exclusive original jurisdiction of the RTC.[35] A thorough examination of the complaint, however, reveals an underlying question which makes the jurisdiction of the RTC over the complaint not so indubitable.

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[34] *Rollo* (G.R. No. 180674), pp. 210-216.

[35] BATAS PAMBANSA BLG. 129, Sec. 19 (2).

In its Motion to Dismiss[36] dated June 23, 2006, Olympic promptly objected to the jurisdiction of the trial court, arguing that it is the POA which, under Republic Act No. 7942, otherwise known as the Mining Act of 1995 (Mining Act), has jurisdiction over the case.

Sec. 77 of the Mining Act provides:

> Sec. 77. *Panel of Arbitrators*.— There shall be a panel of arbitrators in the regional office of the Department composed of three (3) members, two (2) of whom must be members of the Philippine Bar in good standing and one a licensed mining engineer or a professional in a related field, and duly designated by the Secretary as recommended by the Mines and Geosciences Bureau Director. Those designated as members of the panel shall serve as such in addition to their work in the Department without receiving any additional compensation. As much as practicable, said members shall come down from the different bureaus of the Department in the region. The presiding officer thereof shall be selected by the drawing of lots. His tenure as presiding officer shall be on a yearly basis. The members of the panel shall perform their duties and obligations in hearing and deciding cases until their designation is withdrawn or revoked by the Secretary. Within thirty (30) working days, after the submission of the case by the parties for decision, the panel shall have exclusive and original jurisdiction to hear and decide the following:
>
> **(a) Disputes involving rights to mining areas;**
>
> **(b) Disputes involving mineral agreements or permits;**
>
> **(c) Disputes involving surface owners, occupants and claim-holders/concessionaires; and**
>
> (d) Disputes pending before the bureau and the Department at the date of the effectivity of this act. [Emphasis supplied]

In *Gonzales v. Climax Mining Ltd.*,[37] one of the questions brought before the Court was whether the complaint filed by petitioner (for the annulment of several mining contracts) raised a mining dispute over which the POA has jurisdiction, or a judicial question which should properly be brought before the

[36] *Rollo* (G.R. No. 178188), pp. 207-211.

[37] G.R. No. 161957, February 28, 2005, 452 SCRA 607.

regular courts. Petitioner therein alleged that respondents, conspiring and confederating with one another, misrepresented under the Addendum Contract and the Financial and Technical Assistance Agreement (FTAA) that respondent Climax-Arimco had possessed financial and technical capacity to put the project into commercial production, when in truth it had no such qualification whatsoever to do so. By so doing, respondents had allegedly caused damage not only to petitioner but also to the Republic of the Philippines.

The Court in *Gonzales* distinguished between a mining dispute within the exclusive and original jurisdiction of the POA and a judicial question properly resolved by regular courts. We held:

> A judicial question is a question that is proper for determination by the courts, as opposed to a moot question or one properly decided by the executive or legislative branch. A judicial question is raised when the determination of the question involves the exercise of a judicial function; that is, the question involves the determination of what the law is and what the legal rights of the parties are with respect to the matter in controversy.
>
> On the other hand, a mining dispute is a dispute involving (a) rights to mining areas, (b) mineral agreements, FTAAs, or permits, and (c) surface owners, occupants and claimholders/concessionaires. Under Republic Act No. 7942 (otherwise known as the Philippine Mining Act of 1995), the Panel of Arbitrators has exclusive and original jurisdiction to hear and decide these mining disputes. The Court of Appeals, in its questioned decision, correctly stated that the Panel's jurisdiction is limited only to those mining disputes which raise questions of fact or matters requiring the application of technological knowledge and experience.[38]

Since the main question raised in *Gonzales* was the very validity of the Addendum Contract, the FTAA and subsequent contracts, the Court ruled that the POA was bereft of jurisdiction. It would have been otherwise had the main question been the rights of petitioner or respondents to the mining area pursuant to these contracts.[39]

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[38] *Id.* at 620.

[39] See also *Asaphil Construction and Development Corporation v. Tuason, Jr.,* G.R. No. 134030, April 25, 2006, 488 SCRA 126.

The majority argues that following our ruling in *Celestial Mining v. Macroasia,*[40] the POA cannot exercise jurisdiction over Citinickel's complaint on the basis on Section 77 (a), the key phrase of the provision being "disputes involving rights to mining areas." We said in *Celestial*:

> [T]he power of the POA to resolve any adverse claim, opposition, or protest relative to mining rights under Section 77 (a) of RA 7942 is confined only to adverse claims, conflicts, and oppositions **relating to applications for the grant of mineral rights**. x x x Clearly, POA's jurisdiction over "disputes involving rights to mining areas" has nothing to do with the cancellation of existing mineral agreements.

The complaint herein did not pertain to "applications for the grant of mineral rights," hence Section 77 (a) need not apply. **Verily though, the POA properly exercised jurisdiction over Citinickel's complaint, on the basis of Section 77 (b), which relates to "disputes involving mineral agreements or permits.**"

It is essential to understand the antecedents of this case. Citinickel's predecessor-in-interest, Olympic Mines Development Corporation (Olympic) was granted by the Secretary of Natural Resources several mining lease contracts, which can be properly classified as "mineral agreements" under Section 3(ab) of the Mining Act. [41] Olympic then entered into an Operating Agreement with Platinum where it granted the latter "the exclusive privilege and right to occupy, explore, develop, utilize, mine, mill beneficiate and undertake other activities which [Platinum] deems necessary to comply with the terms of this Agreement in accordance with applicable laws and regulations within the areas covered by the mining leases as listed . . ."[42] Effectively, Olympic ceded to Platinum the right to implement the mineral agreement between the Government and Olympic.

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[40] G.R. Nos. 169080, 172936, 176226 & 176319, 19 December 2007.

[41] "Mineral Agreement" — refers to a contract between the government and a contractor, involving mineral production-sharing agreement, co-production agreement, or joint-venture agreement.

[42] G.R. No. 181141 *Rollo*, p. 123.

The majority claims it is erroneous to assert that the execution of the operating agreement resulted in the cession by Olympic in favor of Platinum of the right to implement the mineral agreement because under Section 30 of the Mining Act, assignment or transfer of rights and obligations under any mineral agreement shall be subject to the prior approval of the Secretary.[43] **However, this argument is debunked by Section 112 of the same Mining Act, which guards against the impairment of existing mining rights, providing that all valid and existing mining lease contracts "shall remain valid, shall not be impaired, and shall be recognized by the government.**"

Returning to the complaint filed with the POA, Citinickel alleged the following acts on the part of Platinum:

(1) Platinum engaged in illegal large scale mining, extracting 78,320.48 metric tons of ore in the months of June and July 2005, which is well in excess of the 50,000 metric tons allowed per annum under small scale mining operations. Platinum did not have a permit to engage in operations other than small scale mining.[44]

(2) Platinum entered into unauthorized Memorandum of Agreements with indigenous communities where it represented itself as the owner of the mining area.[45]

(3) Platinum violated Section 69 of the Mining Act which required that every contractor undertake "an environmental protection and enhancement program covering the period of the mineral agreement or permit" Platinum's mining activities were so severe as to cause

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[43] **By making this argument, the majority contradicts its own position since following the supposed nullity of the operating agreement between Olympic and Platinum, Platinum would have no subsisting rights at all which could be asserted, especially in its civil case before the RTC of Palawan.**

[44] *Id.*, at 174-175.

[45] *Id.*, at 175-176.

> resident farmers to write complaints as to the environmental damage.[46]

It thus emerges that at least two of the key questions raised in the complaint: whether or not Platinum had engaged in illegal large scale mining by extracting more ore than it was allowed under the law, and whether Platinum's mining activity had caused environmental damage, are questions that involve the expertise of the POA, rooted as they are in the determination of scientific facts and technical issues. Notably, among the members of the POA is a mining engineer or a professional in a related field who would be adept at evaluating the technical issues involved. In contrast, a degree in the mining sciences is not a prerequisite to assume a judicial seat, and it would come as an eccentric surprise if there are actually judges out there conversant with the technical aspects of mining. We held in *Gonzales v. Climax Mining* that the POA's jurisdiction "is limited only to those mining disputes which raise questions of fact or matters requiring the application of technological knowledge and experience."[47]

It is at once obvious that the technical expertise of the POA would have been required to determine, for instance, whether Platinum had violated environmental regulations or misdeclared its mine extraction and ore shipment. Contrary to Platinum's allegation that the POA's technical expertise was not required to resolve the issues between the parties, the following excerpts from the POA Resolution evinces that the POA's technical expertise was distinctly critical:

> A small scale mining operation under an SSMP permit is delimited by the use of manual labor and the prohibition in the use of heavy and sophisticated equipments and machineries. The main requirement for the permit, however, is that the production of ore must not exceed 50,000 metric tons per year, a fact that has been openly violated by herein respondent, to the prejudice of the petitioner and of course of the state, that tends to gain from revenues from the same.

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[46] *Id*., at 177-178.

[47] *Gonzales v. Climax Mining*, G.R. Nos. 161957, 28 February 2005.

Fraudulent misrepresentation is also evident in the instant case, when Platinum sought to have in its own name a similar application for Mineral Production Sharing Agreement over the areas covered by its Small-Scale Mining Permit. Respondent knows fully well that there is a pending application for MPSA over the same areas by its principal, Olympic Mines and Development Corporation. Such act is not only deplorable, but also an insult to the DENR who will be called upon to act on such application with the conscious knowledge that there is already one pending. Obviously, respondent is not taking the DENR seriously, as can be gleaned from their non appearance and the ignoring of invitations for technical conferences by the EMB and MGB Offices of this Region.

Respondent, Platinum Group Metals Corporation, has not denied the allegation that it violated the terms and conditions of its permit under the Small Scale Mining Permit granted them by the Provincial Mining Regulatory Board with the consent of Olympic Mines and Development Corporation over areas within the MPSA application of the latter. Under its SSMP PLW No. 40, Platinum is only allowed to extract the volume of 50,000 metric tons annually as provided by law. Result of the investigation conducted by both the Environmental Management Bureau and the Mines and Geosciences Bureau of MIMAROPA region reveal that the company has already over extracted ores from within their permit areas. Likewise, the use of heavy machineries in the operations clearly indicates the violation of the terms and conditions of the small scale mining permit issued to respondent. The over extraction of ore did not only prejudice the rights and interest of its principal, Olympic, but also the government due to the non declaration of or withholding of the true volume extracted which should be the basis for the payment of royalties, taxes and others due the government. The other environmental violations which caused degradations in the area could not have been foreseen by the courts in issuing the injunction in favor of Platinum. Such findings of violations of the terms and conditions of the permit and the environmental compliance certificates were the very reasons for the cancellation of and withdrawal of the ECC issued to Olympic Mines and Development Corporation (OMDC) denominated as ECC No. 4B-218-PA-2140-2004 and ECC No. 4B-220-PA-2140-2004, and Beck's issued to Platinum Group Metals Corporation (PGMC) denominated as ECC No. 4B-219-PA-2140-2004 and ECC No. 4B-221-PA-2140-2004, per the Order of the Secretary, dated September 25, 2006.[48]

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[48] *Id.*, at 712-713.

The majority argues that the POA does not have jurisdiction over Citinickel's complaint because it concerns an Operating Agreement, a purely civil contract between two private entities. This view is highly myopic. **It was Platinum which was exercising the rights under the mineral agreements accorded to Olympic**.

The complaint filed with the POA can be accommodated with ease under Section 77(b), which states "disputes involving mineral agreements." The subject dispute involves mineral agreements, since it was under the indispensable authority of the mineral agreements that Platinum had allegedly committed the assailed acts. The violations complained of Platinum are indisputably contrary to the mineral agreements themselves, which Platinum was bound to observe under the terms of the Operating Agreement. The POA certainly has the jurisdiction to prevent further violations on the part of Platinum, and there is nothing in Section 77(b) that would prevent the POA from restraining Platinum's continued abuse of the earth under the authority of the Operating Agreement.

Is there anything in *Celestial* that precludes the POA from exercising jurisdiction over Citinickel's complaint under Section 77(b)? This is what the Court said in *Celestial* concerning Section 77(b):

> On the other hand, Celestial and Blue Ridge contend that POA has jurisdiction over their petitions for the cancellation of Macroasia's lease agreements banking on POA's jurisdiction over "disputes involving mineral agreements or permits" under Sec. 77(b) of RA 7942.
>
> Such position is bereft of merit.
>
> As earlier discussed, the DENR Secretary, by virtue of his powers as administrative head of his department in charge of the management and supervision of the natural resources of the country under the 1987 Administrative Code, RA 7942, and other laws, rules, and regulations, can cancel a mineral agreement for violation of its terms, even without a petition or request filed for its cancellation, provided there is compliance with due process. Since the cancellation of the mineral agreement is approved by the DENR Secretary, then the

recourse of the contractor is to elevate the matter to the OP pursuant to AO 18, Series of 1987 but not with the POA.

Matched with the legal provisions empowering the DENR Secretary to cancel a mineral agreement is Sec. 77 (b) of RA 7942 which grants POA jurisdiction over disputes involving mineral agreements.

A dispute is defined as "a conflict or controversy; a conflict of claims or rights; an assertion of a right, claim or demand on one side; met by contrary claims or allegations on the other." It is synonymous to a cause of action which is "an act or omission by which a party violates a right of another."

A petition or complaint originating from a dispute can be filed or initiated only by a real party-in-interest. The rules of court define a real party-in-interest as "the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit." Every action, therefore, can only be prosecuted in the name of the real party-in-interest. It has been explained that "a real party-in-interest plaintiff is one who has a legal right, while a real party-in-interest-defendant is one who has a correlative legal obligation whose act or omission violates the legal right of the former."

On the other hand, interest "means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest." It is settled in this jurisdiction that "one having no right or interest to protect cannot invoke the jurisdiction of the court as a party-plaintiff in an action." Real interest is defined as "a present substantial interest, as distinguished from a mere expectancy, or a future, contingent, subordinate or consequential interest."

From the foregoing, a petition for the cancellation of an existing mineral agreement covering an area applied for by an applicant based on the alleged violation of any of the terms thereof, is not a "dispute" involving a mineral agreement under Sec. 77 (b) of RA 7942. It does not pertain to a violation by a party of the right of another. The applicant is not a real party-in-interest as he does not have a material or substantial interest in the mineral agreement but only a prospective or expectant right or interest in the mining area. He has no legal right to such mining claim and hence no dispute can arise between the applicant and the parties to the mineral agreement. The court rules therefore that a petition for cancellation of a mineral agreement anchored on the breach thereof even if filed by an applicant to a

mining claim, like Celestial and Blue Ridge, falls within the jurisdiction of the DENR Secretary and not POA. Such petition is excluded from the coverage of the POA's jurisdiction over disputes involving mineral agreements under Sec. 77 (b) of RA 7942.

With respect to Section 77 (b), the Court in *Celestial* concluded that the POA had no jurisdiction over a petition for the cancellation of an existing mineral agreement based on the alleged violation of any of the terms thereof. That conclusion aligns with the *ponencia* since the instant cases do not involve the cancellation of the mineral agreements themselves. The Court in *Celestial* also required the existence of a "dispute" for Section 77(b) to apply, pertaining "to a violation by a party of the right to another." Herein, there is clearly a dispute between the rights of Citinickel (as successor-in-interest of Olympic) and Platinum, where the latter's violations have jeopardized the former's highly regulated rights and privileges under a subsisting mineral agreements. Citinickel, as Olympic's successor-in-interest, is a real party-in-interest with a material and substantial interest in the mineral agreements which it had legally taken over. In addition, the determination of the claims involve the terms of the mineral agreements themselves, relating as they do to violations of the law and environmental regulations with which the contractee to a mineral agreement is obliged to comply. Under the framework set forth in *Celestial*, the complaint filed by Citinickel falls within the jurisdiction of the POA under Section 77(b) of the Mining Act.

Significantly, the issue in *Celestial* is who or which between the DENR Secretary and the POA had jurisdiction over the petition for the cancellation of the mining lease agreements entered into by the DENR Secretary with a lessee filed by entities who had no privity at all with the lessee. The role of the courts in the adjudication of the issue was not even brought up.

B.

Given the trial court's lack of jurisdiction over Platinum's complaint in Civil Case No. 4199, it is unnecessary to resolve the question of whether venue was properly laid in the RTC of

Puerto Princesa City. Nonetheless, it is obligatory to discuss the trial court's injunctive orders.

Citinickel claims that prior to Platinum's filing of its complaint in Civil Case No. 4199 on June 14, 2006, the Deed of Assignment, whereby Olympic assigned to Citinickel all its rights and interests over its mining claims, had already been executed on June 9, 2006. Citinickel became an indispensable party to the suit by virtue of the prior assignment to it of Olympic's mining rights, which included the latter's rights over the disputed areas occupied by Platinum. As an indispensable party without whom no final determination can be had in the case, Citinickel's presence was a *sine qua non* to the trial court's exercise of judicial power.[49]

Platinum avers that upon learning of the execution of the Deed of Assignment, it filed on August 22, 2006 a motion for leave of court to file an amended complaint to implead Polly Dy as an additional defendant. However, it was more than a year later, or on September 4, 2007, that Citinickel itself was impleaded in the suit. Platinum's claim that it only learned of the assignment to Citinickel of Olympic's mining rights at the earliest on August 22, 2006 is itself suspect. Such contention is belied by the questioned Order of July 21, 2006, granting Platinum's prayer for the issuance of a writ of preliminary injunction directed against *both* Olympic and Citinickel.

The majority claims that because Citinickel is the successor-in-interest of Olympic, there exists a privity of interest between them, and thus Citinickel is bound by the injunctive writs issued by the Palawan RTC in the case filed by Platinum against Olympic alone. Given that **the Deed of Assignment was executed by Olympic in favor of Citinickel prior to the institution of Civil Case No. 4199 by Platinum with the Palawan RTC, the majority, with due respect, runs contrary to jurisprudence**.

In *Matuguina v. Court of Appeals*,[50] the Court invalidated a DENR Order of Execution directed against one which was never a party to the assailed proceeding resulting in the issuance of

[49] *Arcelona v. Court of Appeals*, 345 Phil. 250, 267 (1997).

[50] 263 SCRA 490.

such Order and, without affording the same an opportunity to be heard before it was adjudged liable. We stated:

> Generally accepted is the principle that no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by judgment rendered by the court. In the same manner an execution can be issued only against a party and not against one who did not have his day in court.[51]

In *Santana-Cruz v. Court of Appeals*, we declared:

> **Owners of property over which reconveyance is asserted are indispensable parties, without whom no relief is available and without whom the court can render no valid judgment.** Section 7, Rule 3 of the Revised Rules of Court provides for the compulsory joinder of indispensable parties without whom no final determination can be had of an action. It is the duty of the plaintiffs (private respondents herein) to implead all the necessary or indispensable parties for the complete determination of the action. **Considering that private respondents knew that the lots, subject of the reconveyance, were already sold to third parties, and yet did not implead them as indispensable defendants in their complaint for reconveyance, private respondents have only themselves to blame. In other words, the judgment ordering the reconveyance of the subject lots is not binding on the third-party vendees who were not impleaded as defendants in the case at bar. A person not included as a party to a case cannot be bound by the decision made by a court.**

In a similar vein, the failure to implead Citinickel even though Olympic had ceded its rights to Citinickel **prior to the filing of Platinum's complaint** necessarily relieves Citinickel from the jurisdiction of the Palawan RTC. At the time of the filing of the complaint, Citinickel was already a real party-in-interest and an indispensable party which should have been impleaded. The cases cited above clearly refute the majority's contentions on those points.

It is unacceptable that the trial court proceeded to include Citinickel in its injunctive order when it had never acquired

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[51] *Id.*

jurisdiction over Citinickel in the first place. For the same reason, it should be said that the expanded writ of injunction against the DENR, the DENR Secretary, the POA, the EMB, and the MGB, all of whom were never impleaded in the case, should be nullified. Indeed, the complaint should have been dismissed, failing which, all subsequent actions of the court are deemed null and void for want of authority to act, not only as to the absent parties such as Citinickel and the above-mentioned DENR agencies but even as to those present.[52]

III.

The claim of forum-shopping, on which the majority primarily centers, is ultimately a false issue for the purposes of adjudicating these petitions.

The majority is unable to debunk the dissent's key holding — that the POA has exclusive jurisdiction, to the exclusion of regular courts, over the subject dispute involving the conflicting rights of the parties to the mining areas. This conclusion affects Civil Case No. 4199, ostensibly a complaint for quieting of title, filed with the Regional Trial Court (RTC) of Puerto Princesa, Branch 95. Simply put, the RTC of Puerto Princesa has no jurisdiction over Civil Case No. 4199.

What should be the implications of this conclusion to the dispositions of these four petitions?

In G.R. No. 178188, Olympic assails the decision of the Court of Appeals in CA-G.R. SP No. 97259, affirming the orders dated 5 and 6 October 2006 of the Puerto Princesa RTC in Civil Case No. 4199. Since the RTC of Puerto Princesa has no jurisdiction over the case in the first place, the assailed decision of the Court of Appeals obviously warrants reversal.

In G.R. No. 180675, Citinickel assails the decision of the Court of Appeals in CA-G.R. SP No. 99422, affirming another set of orders of the Puerto Princesa RTC in Civil Case No. 4199, these ones dated 21 July 2006 and 13 April 2007. Since the RTC has no jurisdiction over the dispute in the first place, this

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[52] *Id*.

assailed decision of the Court of Appeals again obviously warrants reversal. Moreover, these orders were directed by name against Citinickel, which was not a party to Civil Case No. 4199.

In G.R. No. 183527, Platinum assails a resolution issued by the Court of Appeals in CA-G.R. SP No. 101544, the said resolution directing the issuance of a writ of preliminary injunction enjoining the Puerto Princesa RTC from conducting further proceedings in Civil Case No. 4199. Since the Puerto Princesa RTC has no jurisdiction over Civil Case No. 4199, Platinum's claim that the RTC should be allowed to continue hearing the case should be denied.

The sole petition that did not find genesis in Civil Case No. 4199 is G.R. No. 181141, where Platinum assailed a Court of Appeals Resolution dismissing outright its petition for *certiorari* questioning a POA Resolution for failing to exhaust administrative remedies. Obviously, the key issue therein is whether it was necessary for Platinum to exhaust administrative remedies before filing its petition with the Court of Appeals.

The majority takes advantage of the number of actions involved in this case filed either by Olympic or Citinickel. The facts as presented in the majority opinion can lead one to conclude that forum-shopping had happened at some stage in these cases. Yet there are only two cases that spawned these four petitions — Civil Case No. 4199 which was instituted by Platinum, and the complaint filed by Citinickel with the POA.

Given these premises, how does the question of forum-shopping affect the disposition of these cases? Obviously, the question of forum-shopping becomes relevant only with respect to Civil Case No. 4199 before the Puerto Princesa RTC and the three cases in the Court of Appeals that it spawned, as well as the POA case. Even assuming that there was forum-shopping in the various cases instituted by Olympic or Citinickel in those other cases enumerated in tabular form by the majority opinion, this is not the proper instance to act on such premise, since none of those cases are before us.

Civil Case No. 4199 was filed by Platinum. No argument is raised that Platinum committed forum-shopping when it filed such case against Olympic.

The Puerto Princesa RTC then issued a set of orders against Olympic, the defendant in Civil Case No. 4199. Did Olympic commit forum-shopping when it filed a petition with the Court of Appeals challenging these RTC Orders? No, for it is the sole remedy that Olympic employed to seek the reversal of the RTC Orders.

Thereafter, the Puerto Princesa RTC issued a set of orders in Civil Case No. 4199 against Citinickel, which was not a party to the said civil case. Did Citinickel commit forum-shopping when it filed a petition with the Court of Appeals challenging these RTC orders against it? Again, how else could Citinickel have assailed these RTC orders, issued by a court which had not acquired jurisdiction over their person? Even though there were pending administrative proceedings relating to the same issue, Citinickel could not have sought the nullification of the RTC orders through those administrative proceedings.

Let us now turn to the POA case, G.R. No. 181141. After the same had been filed by Citinickel, Platinum filed a motion to dismiss, citing among others, forum-shopping. The POA did not resolve the motion to dismiss, but instead promulgated a decision on the merits, granting the complaint of Citinickel and canceling the Operating Agreement. From this decision, Platinum filed a petition for *certiorari* with the Court of Appeals. The Court of Appeals dismissed the petition for *certiorari* on the ground of failure to exhaust administrative remedies, in light of Section 78 of Rep. Act No. 7941 providing that rulings of the POA are appealable to the Mines Adjudication Board (MAB), a point which the majority opinion does not rebut.

On face value, G.R. No. 181141 requires only the application of principles on exhaustion of administrative remedies for its proper resolution. G.R. No. 181141 provides the possible context where ostensibly, the issue of forum-shopping can be made to bear upon by this Court, but in doing so, it would be necessary

to bypass the Court of Appeals, which had dismissed the petition outright, ignore the POA Resolution, and rule that the POA should have dismissed the case outright on the ground of forum-shopping. By hinging its decision on forum-shopping, the majority has evidently overreached. Even Platinum concedes in its petition that annulling the POA Resolution would "abbreviate the proceedings," rather than allow the resolution of the case in due course.

The matter of forum shopping could be adequately addressed if this case were referred to the Integrated Bar of the Philippines for due investigation. But as demonstrated above, it cannot be determinative of any of these petitions.

IV.

I now turn to a discussion on why the petition in G.R. No. 181141 cannot be indulged. Platinum has only itself to blame for the dismissal of that petition by the Court of Appeals, since it is the MAB and not that court which has appellate jurisdiction over decisions or order of the POA. Sec. 78 of the Mining Act confers such appellate jurisdiction to the POA. Thus:

> SEC. 78. *Appellate Jurisdiction*. — The decision or order of the panel of arbitrators may be appealed by the party not satisfied thereto to the Mines Adjudication Board within fifteen (15) days from receipt thereof which must decide the case within thirty (30) days from submission thereof for decision.

Implementing this provision, Sec. 1, Rule IV of the Rules on Pleading, Practice and Procedure Before the Panel of Arbitrators and the Mines Adjudication Board states that a decision of the POA shall become final and executory 15 days from its receipt by the aggrieved party unless an appeal is duly filed, within the same period, with the MAB. It provides:

> Section 1. Period of Appeal. — **The decision of the Panel of Arbitrators shall become final and executory after the lapse of (15) days from receipt of the notice of decision by the aggrieved party, unless the latter appeals to the Board within the same period.** x x x

Upon the finality of the decision of the Panel, no appeal having been taken therefrom, the Presiding Officer of the Panel of Arbitrators shall issue a writ of execution directing the Sheriff of the Regional Trial Courts, with jurisdiction overt the area, to implement and execute the writ. [Emphasis supplied]

In obvious disregard of the foregoing rule, Platinum filed on November 20, 2006, a Motion for Reconsideration of the POA Resolution instead of the requisite appeal. However, without waiting for the resolution of its motion and based on its apprehension that its motion will be denied anyway, Platinum withdrew its Motion for Reconsideration and forthwith filed a petition for *certiorari* with the Court of Appeals.

The Court of Appeals, in a Resolution dated January 18, 2007 in CA-G.R. SP No. 97288, dismissed Platinum's petition for failure to first exhaust the available remedies before resorting to the extraordinary remedy of *certiorari*.

It cannot be overemphasized that the extraordinary remedy of *certiorari* will not lie when there are other remedies available to the petitioner.[53] Indeed, Platinum cannot be allowed to forgo procedure simply based on its belief, misguided at that, that filing an appeal with the MAB would have been futile. It was indeed rash for Platinum to suppose that just because the DENR Secretary, who also heads the MAB, issued an Order canceling Platinum's ECC's, he would not give due regard to his duty to review and, if need be, reconsider an Order he had issued.

The foregoing rule is clear enough. The filing of an appeal to the MAB is the only procedural recourse that would have effectively prevented the POA Resolution from attaining finality. Given that Platinum deliberately ignored the remedy laid out in the POA and MAB Rules, the appellate court's dismissal of its petition for *certiorari* was proper. The finality of the POA Resolution followed *ipso facto*.

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[53] *First Corporation v. Court of Appeals*, G.R. No. 171989, July 4, 2007, 526 SCRA 564.

V.

The dismissal of Platinum's petition for *certiorari* through the Resolution dated January 18, 2007 issued by the appellate court's Special Fifth Division, and the consequent affirmation of the POA Resolution, should have been taken into account by the Eleventh Division when Citinickel invoked its jurisdiction in CA-G.R. SP No. 180674. Had the Eleventh Division prudently stayed its hand, the Court would not have to contend with the two conflicting dispositions of the Court of Appeals, one affirming and the other annulling the POA Resolution.

Nonetheless, the nullity of the injunctive orders issued by the trial court in Civil Case No. 4199, which proceeded from its lack of jurisdiction over the same, together with the finality of the POA Resolution, leave no doubt as to the outcome of this case.

Platinum's right to conduct mining operations in the disputed mining areas proceeds solely from the Operating Agreement, from which also emanates Platinum's privilege to apply for SSMPs and ECCs. It should be noted that Platinum is not a grantee of a mining concession nor was any mining permit issued in its favor by the DENR independent of the Operating Agreement. Moreover, the POA Resolution cancelled and withdrew the SSMPs issued to Platinum. These same SSMPs (SSMP-PLW-039 and SSMP-PLW-040) issued by the Provincial Governor on November 4, 2004 had already expired two years thence, or on November 3, 2006, as provided for under Sec. 13[54] of Republic

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[54] Sec. 13. *Terms and Conditions of the Contract*. — A contract shall have a term of two (2) years, renewable subject to verification by the Board for like periods as long as the contractor complies with the provisions set forth in this Act, and confers upon the contractor the right to mine within the contract area: *Provided*, that the holder of a small-scale mining contract shall have the following duties and obligations:

(a) Undertake mining activities only in accordance with a mining plan duly approved by the Board;

(b) Abide by the Mines and Geosciences Bureau and the Small-Scale Mining Safety Rules and Regulations;

Act No. 7076, otherwise known as the People's Small-Scale Mining Act of 1991. It follows, too, that the ECCs issued by the DENR have become *functus officio*.

In view of the cancellation of the Operating Agreement as decreed by the POA and the cancellation and expiration of the SSMPs issued to Platinum, the latter clearly has no right to possess and occupy the mining areas that now belong to Citinickel by virtue of the Deed of Assignment dated June 9, 2006.

VI.

It is improper for the Court of Appeals to have issued its Resolution dated March 3, 2008 in CA-G.R. SP No. 101544, enjoining Hon. Bienvenido C. Blancaflor from conducting further proceedings in Civil Case No. 4199 and from implementing his Orders dated July 21, 2006, October 26, 2006 and April 13, 2007, in light of the TRO which we issued on January 16, 2008.

Our TRO already enjoined the implementation of the injunction orders dated July 21, 2006 and April 13, 2007 issued by Judge Blancaflor. The Court of Appeals deserves admonition for duplicating our previous order.

In view of the foregoing, I vote to reverse and set aside the Decision dated February 28, 2007 and Resolution dated May 30, 2007 of the Court of Appeals in CA-G.R. SP No. 97259; the Decision dated November 20, 2007 of the Court of Appeals in CA-G.R. SP No. 99422; and the Resolution dated March 3, 2008 of the Court of Appeals in CA-G.R. SP No. 101544.

(c) Comply with his obligations to the holder of an existing mining right;

(d) Pay all taxes, royalties or government production share as are now or may hereafter be provided by law;

(e) Comply with pertinent rules and regulations on environmental protection and conservation, particularly those on tree-cutting, mineral-processing and pollution control;

(f) File under oath at the end of each month a detailed production and financial report to the Board; and

(g) Assume responsibility for the safety of persons working in the mines.

SEPARATE OPINION

LEONARDO-DE CASTRO, *J.*:

I concur with the disposition of these cases by our esteemed colleague Justice Brion and offer my own opinion on some of the issues raised.

The resolution of these four (4) consolidated petitions hinges upon the issue of jurisdiction over disputes arising from the Operating Agreement between Olympic Mines Development Corporation (Olympic), the recognized applicant for several mining claims, and Platinum Group Metals Corporation (Platinum), the operator of portions of Olympic's mining claims.

A perusal of the Operating Agreement dated July 18, 2003 shows that Olympic, in consideration of royalty payments from Platinum, authorized the latter to operate its mines or conduct mining activities on portions of its mining claims for a period of 25 years. Pursuant to this agreement, both Olympic and Platinum secured and were granted Small-Scale Mining Permits (SSMPs) and Environmental Compliance Certificates (ECCs) over the portions under their respective responsibilities. Notwithstanding the fact Platinum was issued SSMPs and ECCs, the Operating Agreement did not assign to Platinum ownership of any portion of the mining claims and Olympic continued to be the applicant for a Mineral Production Sharing Agreement (MPSA) with the government over all the mining areas involved.

In April 2006, Olympic gave notice to Platinum that the former was terminating the Operating Agreement on the ground of purported gross violations of the terms of said Operating Agreement committed by Platinum. Subsequently, Olympic assigned all its rights and interests in its MSPA application to Citinickel Mining Corporation (Citinickel), a joint venture company that Olympic had formed with Rockworks Resources Corporation (Rockworks).

As noted in the *ponencia*, Olympic and Citinickel individually or jointly pursued several legal actions to secure judicial or administrative confirmation or approval of the termination/

cancellation of the Operating Agreement with Platinum. One such legal remedy pursued by Olympic and Citinickel was a petition with the Panel of Arbitrators for Region IV-B (MIMAROPA) of the Department of Environment and Natural Resources (DENR). In the petition before the Panel of Arbitrators (POA), it was alleged that Platinum was guilty of "abuse of mining rights" and had violated certain mining laws and regulations. Petitioners therein prayed for the cancellation of the Operating Agreement and the SSMPs of Platinum. The POA issued a resolution (a) declaring the Operating Agreement cancelled and of no force or effect and (b) canceling Platinum's SSMPs. This POA decision was appealed directly to the Court of Appeals (CA) by Platinum but was dismissed for failure to file a motion for reconsideration with the Mines Adjudication Board (MAB). In **G.R. No. 181141**, Platinum prayed that this Court order either (a) the reinstatement of its petition by the CA or (b) the setting aside of the POA resolution without remand to the CA in order to abbreviate the proceedings.

Meanwhile, prior to the filing of the above-mentioned petition with the POA, Platinum filed Civil Case No. 4199 against Olympic with the Regional Trial Court (RTC) of Puerto Princesa City, Palawan, Branch 95 for quieting of title, breach of contract, damages and specific performance.[1] Essentially, Platinum contended that Olympic's termination of the Operating Agreement was invalid and Olympic's contract(s) with Rockworks were in breach of the Operating Agreement and violated Platinum's rights therein. The RTC issued a writ of preliminary injunction, which directed Olympic, its assignees, successors-in-interest, agents and representatives to respect the rights of Platinum under the Operating Agreement. Subsequently, the RTC likewise issued writs enjoining the DENR and its various offices and agencies from, among others, acts that will disturb the *status quo* or impede or affect the full enjoyment of Platinum's rights under the Operating Agreement. These injunctive writs were questioned by Olympic, Citinickel and a certain Polly Dy in separate petitions

[1] Platinum would later amend its complaint to implead Rockworks, its directors and Olympic's directors as additional defendants and to include tortious interference and nullity of contract as additional causes of action.

filed with the CA. The resolutions of different CA divisions on the matter of validity of the RTC's issuance of injunctive writs are the subject matter of **G.R. Nos. 183527, 178188** and **180674**. Also assailed before this Court in **G.R. No. 178188** is the RTC's denial of Olympic's motion to dismiss, which asserted as a ground, that the RTC had no jurisdiction over the subject matter of the complaint for it is the POA that had jurisdiction over the same.

The jurisdiction of the POA is embodied in the Section 77 of Republic Act No. 7942 (The Philippine Mining Act of 1995), to wit:

SEC. 77. *Panel of Arbitrators*.––There shall be a panel of arbitrators in the regional office of the Department composed of three (3) members, two (2) of whom must be members of the Philippine Bar in good standing and one [1] licensed mining engineer or a professional in a related field, and duly designated by the Secretary as recommended by the Mines and Geosciences Bureau Director. Those designated as members of the panel shall serve as such in addition to their work in the Department without receiving any additional compensation. As much as practicable, said members shall come from the different bureaus of the Department in the region. The presiding officer thereof shall be selected by the drawing of lots. His tenure as presiding officer shall be on a yearly basis. The members of the panel shall perform their duties and obligations in hearing and deciding cases until their designation is withdrawn or revoked by the Secretary. Within thirty (30) working days, after the submission of the case by the parties for decision, the panel shall have exclusive and original jurisdiction to hear and decide on the following:

(a) **Disputes involving rights to mining areas**;

(b) **Disputes involving mineral agreements or permits**;

(c) Disputes involving surface owners, occupants and claimholders/concessionaires; and

(d) Disputes pending before the Bureau and the Department at the date of the effectivity of this Act. (emphasis supplied)

Both the *ponencia* and the dissent opine that the present controversy does not fall under Section 77(a), under the

parameters laid down in *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation*.[2] However, they disagree whether the dispute falls under Section 77(b).

On this point, I agree with the *ponencia* that the Operating Agreement does not come within the ambit of Section 77(b) for it is not a "mineral agreement" as defined under RA No. 7942. As defined by statute, a "mineral agreement" is a contract **between the government and a contractor**, involving mineral production-sharing agreement, co-production agreement, or joint-venture agreement.[3] A "mineral production sharing agreement," "co-production agreement" and "joint venture agreement" likewise have technical definitions under the law and suffice it to say, that the Operating Agreement did not fit any of those definitions.

Neither did the Operating Agreement involve an assignment or transfer of rights and obligations under a mineral agreement as contemplated by Section 30 of RA No. 7942.[4]

To begin with, it is unclear if Olympic had a subsisting grant from the government over the subject mining areas at the time the Operating Agreement was executed. What is apparent from the pleadings is that Olympic was previously granted mining lease contracts over the mining areas and that Olympic was also the applicant for an MPSA for the same mining areas.

In any event, whatever rights and obligations Olympic had as the previous grantee of mining concessions or as the recognized applicant for an MPSA over the said mining areas, none of those mining rights and obligations were transferred or assigned to Platinum. Under the Operating Agreement, Olympic was simply

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[2] G.R. Nos. 169080, 172936, 176226, and 176319, December 19, 2007.

[3] Section 3(ab), RA No. 7942.

[4] Section 30 of RA No. 7942 provides:

Section 30. Assignment/Transfer.— Any assignment or transfer of rights and obligations under any mineral agreement except a financial or technical assistance agreement shall be subject to the prior approval of the Secretary. Such assignment or transfer shall be deemed automatically approved if not acted upon by the Secretary within thirty (30) working days from official receipt thereof, unless patently unconstitutional or illegal.

allowing Platinum to undertake mining activities on Olympic's mining claims or to operate Olympic's mines on the former's behalf. Their relationship under the Operating Agreement is akin to the concept of agency under civil law. Olympic allowed Platinum to do acts within the mining areas that Olympic itself could lawfully do but only for and on Olympic's behalf. In fact, Olympic and Citinickel referred to Platinum as an "agent" in their petition before the POA.

To be sure, it is Olympic's vehement view that the Operating Agreement did not give Platinum a right to apply for an MPSA in its own name. For despite the existence of the Operating Agreement, it was Olympic who was still the grantee of, or the applicant for, mining rights from the government and it was still the one who was principally liable for compliance with the conditions of such grant or the laws governing such an application. Contrasting the Operating Agreement with the Deed of Assignment that Olympic executed in favor of Citinickel, the latter clearly stated that Olympic was transferring all its rights and interest in its MPSA application over the mining areas to Citinickel. Pursuant to this Deed of Assignment, the government eventually issued an MPSA over the mining areas in the name of Citinickel. I believe it is the Deed of Assignment that Olympic executed in favor Citinickel that is akin to the assignment/transfer of rights contemplated by Section 30, not the Operating Agreement.

It is also doubtful that the present controversy is the sort of "dispute" over which the POA has jurisdiction. In *Celestial,* the Court held that a dispute is defined as "a conflict or controversy; a conflict of claims or rights; an assertion of a right, claim or demand on one side; met by contrary claims or allegations on the other." Taking this definition of a "dispute" and interpreting the provisions of DENR AO 96-40, the Court held in *Celestial* that the phrase "disputes involving rights to mining areas" in Section 77(a) refers to any adverse claim, protest, or opposition to an **application** for mineral agreement. Analogous to the reasoning in *Celestial*, to my mind, Section 77(b) should likewise be interpreted as referring to conflicting interests and claims with respect to a **granted** mineral agreement or permit.

In the cases at bar, there were no conflicting claims or rival interests in a mineral agreement or permit granted by the government. There was only one grantee of, or applicant for, a mineral agreement and that was Olympic (later substituted by Citinickel). Any mining rights that Platinum enjoyed or exercised under the Operating Agreement was in representation of Olympic. It is conceded that Platinum had no mining grant or concession from the government in its own name over the same mining areas. Platinum was issued mining permits, not as a grantee or applicant in its own right, but as Olympic's agent/operator. In other words, there is an identity of interests between Olympic and Platinum. There could be no rival or disputing claims to a granted mineral agreement or permit.

Premises considered, the POA had no jurisdiction to cancel the Operating Agreement nor to declare it of no force and effect. To reiterate, the Operating Agreement is not a mineral agreement. Notwithstanding the technical nature of some of the undertakings in the Operating Agreement and despite the State's interest in ensuring compliance with mining laws by the parties thereto, the Operating Agreement is primarily a civil contract between private persons and the rights and obligations of the parties thereto is properly determined by the civil courts. Platinum's commitment under the Operating Agreement to faithfully comply with mining laws and regulations was only one of the obligations involved in said agreement. The causes of action raised by Platinum in its complaint, such as the alleged (a) invalid termination of the Operating Agreement, (b) bad faith attending the termination, (c) entitlement to damages and specific performance, are well within the jurisdiction of the RTC.

As for the POA's cancellation of the SSMPs of Platinum, I am also of the considered view that the POA had no jurisdiction to issue such an order. The underlying principle in *Celestial* is that it is the approving/granting authority that has the power to cancel or withdraw a mineral agreement or permit on the ground of violation of the terms and conditions of the agreement or permit. SSMPs are not issued by the POA. Under Section 103 of DENR Administrative Order No. 96-40, it is the Provincial Governor/City Mayor, through the Provincial/City Mining

Regulatory Board, that has the power to approve SSMPs for areas outside mineral reservations. The records show that Platinum's SSMPs were approved by the Provincial Governor, through the proper provincial mining regulatory board. I believe the proposed cancellation of an SSMP for any violation of the terms thereof should be brought before the issuing/approving authority and not the POA.

As for the purported violations by Platinum of the terms and conditions of its ECCs, I likewise believe that the Environmental Management Bureau of the DENR, as the issuing/approving authority, has the jurisdiction to investigate and pass upon the matter. Thus, the parties should exhaust their administrative remedies on the matter of environmental compliance.

As for the injunctive writs issued by the RTC and the CA, I concur with the *ponencia* on the propriety of setting aside the writ of preliminary injunction issued by the CA against the RTC in Civil Case No. 4199 and in affirming the validity of the injunctive writs issued by the RTC for substantially the same reasons stated in the *ponencia*. I qualify my vote, however, with respect to the RTC's injunctive order against the DENR and its offices/ agencies. The RTC's order should be understood as only preventing the said agencies from taking jurisdiction over disputes pertaining to the Operating Agreement. However, the RTC should not enjoin the DENR and its offices, or other executive/ administrative agencies, from exercising their jurisdiction over alleged violations of the terms of Platinum's ECCs or other mining permits. To my mind, breaches of the Operating Agreement and breaches of the terms of Platinum's ECCs or mining permits are different matters. The former belongs to the jurisdiction of the regular courts while the latter belongs to the jurisdiction of the appropriate executive/administrative agencies. Each should respect the jurisdiction of the others.

In conclusion, my vote on each of the petitions involved herein is in line with the *ponencia* subject only to the qualifications stated above.

SECOND DIVISION

[G.R. No. 179652. May 8, 2009]

PEOPLE'S BROADCASTING (BOMBO RADYO PHILS., INC.), *petitioner, vs.* **THE SECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT, THE REGIONAL DIRECTOR, DOLE REGION VII, and JANDELEON JUEZAN,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; DEPARTMENT OF LABOR AND EMPLOYMENT; VISITORIAL AND ENFORCEMENT POWER; APPLIES ONLY IN CASES WHEN THE RELATIONSHIP OF EMPLOYER-EMPLOYEE STILL EXISTS.—** To resolve this pivotal issue, one must look into the extent of the visitorial and enforcement power of the DOLE found in Article 128 (b) of the Labor Code, as amended by Republic Act 7730. xxx. The provision is quite explicit that the visitorial and enforcement power of the DOLE comes into play only "in cases when the relationship of employer-employee still exists." It also underscores the avowed objective underlying the grant of power to the DOLE which is "to give effect to the labor standard provision of this Code and other labor legislation." Of course, a person's entitlement to labor standard benefits under the labor laws presupposes the existence of employer-employee relationship in the first place.

2. **ID.; ID.; ID.; ID.; WHEN NOT APPLICABLE.—** The clause "in cases where the relationship of employer-employee still exists" signifies that the employer-employee relationship must have existed even before the emergence of the controversy. **Necessarily, the DOLE's power does not apply in two instances, namely: (a) where the employer-employee relationship has ceased; and (b) where no such relationship has ever existed**. The first situation is categorically covered by Sec. 3, Rule 11 of the *Rules on the Disposition of Labor Standards Cases* issued by the DOLE Secretary. xxx. In the first situation, the claim has to be referred to the NLRC because

it is the NLRC which has jurisdiction in view of the termination of the employer-employee relationship. The same procedure has to be followed in the second situation since it is the NLRC that has jurisdiction in view of the absence of employer-employee relationship between the evidentiary parties from the start. Clearly the law accords a prerogative to the NLRC over the claim when the employer-employee relationship has terminated or such relationship has not arisen at all. The reason is obvious. In the second situation especially, the existence of an employer-employee relationship is a matter which is not easily determinable from an ordinary inspection, necessarily so, because the elements of such a relationship are not verifiable from a mere ocular examination. The intricacies and implications of an employer-employee relationship demand that the level of scrutiny should be far above the cursory and the mechanical. While documents, particularly documents found in the employer's office are the primary source materials, what may prove decisive are factors related to the history of the employer's business operations, its current state as well as accepted contemporary practices in the industry. More often than not, the question of employer-employee relationship becomes a battle of evidence, the determination of which should be comprehensive and intensive and therefore best left to the specialized quasi-judicial body that is the NLRC.

3. ID.; ID.; ID.; ID.; DETERMINATION OF THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP IS PRIMARILY LODGED WITH THE NATIONAL LABOR RELATIONS COMMISSION.— It can be assumed that the DOLE in the exercise of its visitorial and enforcement power somehow has to make a determination of the existence of an employer-employee relationship. Such prerogatival determination, however, cannot be coextensive with the visitorial and enforcement power itself. Indeed, such determination is merely preliminary, incidental and collateral to the DOLE's primary function of enforcing labor standards provisions. The determination of the existence of employer-employee relationship is still primarily lodged with the NLRC. This is the meaning of the clause "in cases where the relationship of employer-employee still exists" in Art. 128 (b). Thus, before the DOLE may exercise its powers under Article 128, two important

questions must be resolved: (1) Does the employer-employee relationship still exist, or alternatively, was there ever an employer-employee relationship to speak of; and (2) Are there violations of the Labor Code or of any labor law?

4. **ID.; ID.; ID.; ID.; EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP IS A STATUTORY PREREQUISITE TO AND A LIMITATION ON THE POWER OF THE SECRETARY OF LABOR; RATIONALE.— The existence of an employer-employee relationship is a statutory prerequisite to and a limitation on the power of the Secretary of Labor, one which the legislative branch is entitled to impose**. The rationale underlying this limitation is to eliminate the prospect of competing conclusions of the Secretary of Labor and the NLRC, on a matter fraught with questions of fact and law, which is best resolved by the quasi-judicial body, which is the NRLC, rather than an administrative official of the executive branch of the government. If the Secretary of Labor proceeds to exercise his visitorial and enforcement powers absent the first requisite, as the dissent proposes, his office confers jurisdiction on itself which it cannot otherwise acquire.

5. **ID.; ID.; ID.; ID.; ELABORATED; MERE ASSERTION OF ABSENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP DOES NOT DEPRIVE THE DEPARTMENT OF LABOR AND EMPLOYMENT OF JURISDICTION OVER MONEY CLAIMS.—** A more liberal interpretative mode, "pragmatic or functional analysis," has also emerged in ascertaining the jurisdictional boundaries of administrative agencies whose jurisdiction is established by statute. Under this approach, the Court examines the intended function of the tribunal and decides whether a particular provision falls within or outside that function, rather than making the provision itself the determining centerpiece of the analysis. Yet even under this more expansive approach, the dissent fails. A reading of Art. 128 of the Labor Code reveals that the Secretary of Labor or his authorized representatives was granted visitorial and enforcement powers for the purpose of determining violations of, and enforcing, the Labor Code and any labor law, wage order, or rules and regulations issued pursuant thereto. Necessarily, the actual existence of an employer-employee relationship affects the

complexion of the putative findings that the Secretary of Labor may determine, since employees are entitled to a different set of rights under the Labor Code from the employer as opposed to non-employees. Among these differentiated rights are those accorded by the "labor standards" provisions of the Labor Code, which the Secretary of Labor is mandated to enforce. If there is no employer-employee relationship in the first place, the duty of the employer to adhere to those labor standards with respect to the non-employees is questionable. This decision should not be considered as placing an undue burden on the Secretary of Labor in the exercise of visitorial and enforcement powers, nor seen as an unprecedented diminution of the same, but rather a recognition of the statutory limitations thereon. A mere assertion of absence of employer-employee relationship does not deprive the DOLE of jurisdiction over the claim under Article 128 of the Labor Code. At least a *prima facie* showing of such absence of relationship, as in this case, is needed to preclude the DOLE from the exercise of its power. The Secretary of Labor would not have been precluded from exercising the powers under Article 128 (b) over petitioner if another person with better-grounded claim of employment than that which respondent had. Respondent, especially if he were an employee, could have very well enjoined other employees to complain with the DOLE, and, at the same time, petitioner could ill-afford to disclaim an employment relationship with all of the people under its aegis. Without a doubt, petitioner, since the inception of this case had been consistent in maintaining that respondent is not its employee. Certainly, a preliminary determination, based on the evidence offered, and noted by the Labor Inspector during the inspection as well as submitted during the proceedings before the Regional Director puts in genuine doubt the existence of employer-employee relationship. From that point on, the prudent recourse on the part of the DOLE should have been to refer respondent to the NLRC for the proper dispensation of his claims. Furthermore, as discussed earlier, even the evidence relied on by the Regional Director in his order are mere self-serving declarations of respondent, and hence cannot be relied upon as proof of employer-employee relationship.

6. ID.; ID.; ID.; ID.; SUBSTANTIAL EVIDENCE IS REQUIRED TO RESOLVE ISSUE OF EXISTENCE OF EMPLOYER-

EMPLOYEE RELATIONSHIP.— Aside from lack of jurisdiction, there is another cogent reason to set aside the Regional Director's 27 February 2004 Order. A careful study of the case reveals that the said Order, which found respondent as an employee of petitioner and directed the payment of respondent's money claims, is not supported by substantial evidence, and was even made in disregard of the evidence on record. It is not enough that the evidence be simply considered. The standard is substantial evidence as in all other quasi-judicial agencies. The standard employed in the last sentence of Article 128(b) of the Labor Code that the documentary proofs be "considered in the course of inspection" does not apply. It applies only to issues other than the fundamental issue of existence of employer-employee relationship. A contrary rule would lead to controversies on the part of labor officials in resolving the issue of employer-employee relationship. The onset of arbitrariness is the advent of denial of substantive due process.

7. **REMEDIAL LAW; APPEALS; FINDINGS OF FACTS OF QUASI-JUDICIAL AGENCIES ACCORDED GREAT RESPECT AND EVEN FINALITY; EXCEPTIONS.—** As a general rule, the Supreme Court is not a trier of facts. This applies with greater force in cases before quasi-judicial agencies whose findings of fact are accorded great respect and even finality. To be sure, the same findings should be supported by substantial evidence from which the said tribunals can make its own independent evaluation of the facts. Likewise, it must not be rendered with grave abuse of discretion; otherwise, this Court will not uphold the tribunals' conclusion. In the same manner, this Court will not hesitate to set aside the labor tribunal's findings of fact when it is clearly shown that they were arrived at arbitrarily or in disregard of the evidence on record or when there is showing of fraud or error of law.

8. **ID.; ID.; ID.; ID.; CASE AT BAR.—** At the onset, it is the Court's considered view that the existence of employer-employee relationship could have been easily resolved, or at least *prima facie* determined by the labor inspector, during the inspection by looking at the records of petitioner which can be found in the work premises. Nevertheless, even if the labor inspector had noted petitioner's manifestation and documents in the *Notice*

of Inspection Results, it is clear that he did not give much credence to said evidence, as he did not find the need to investigate the matter further. Considering that the documents shown by petitioner, namely: cash vouchers, checks and statements of account, summary billings evidencing payment to the alleged real employer of respondent, letter-contracts denominated as "Employment for a Specific Undertaking," *prima facie* negate the existence of employer-employee relationship, the labor inspector could have exerted a bit more effort and looked into petitioner's payroll, for example, or its roll of employees, or interviewed other employees in the premises. After all, the labor inspector, as a labor regulation officer is given "access to employer's records and premises at any time of day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labor law, wage order or rules and regulations pursuant thereto." Despite these far-reaching powers of labor regulation officers, records reveal that no additional efforts were exerted in the course of the inspection.

9. **LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; EMPLOYER-EMPLOYEE RELATIONSHIP; FINDINGS OF THE EXISTENCE THEREOF MUST REST ON SUBSTANTIAL EVIDENCE; CASE AT BAR.—** It has long been established that in administrative and quasi-judicial proceedings, substantial evidence is sufficient as a basis for judgment on the existence of employer-employee relationship. Substantial evidence, which is the quantum of proof required in labor cases, is "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." No particular form of evidence is required to prove the existence of such employer-employee relationship. Any competent and relevant evidence to prove the relationship may be admitted. Hence, while no particular form of evidence is required, a finding that such relationship exists must still rest on some substantial evidence. Moreover, the substantiality of the evidence depends on its quantitative as well as its *qualitative* aspects. In the instant case, save for respondent's self-serving allegations and self-defeating evidence, there is no substantial

basis to warrant the Regional Director's finding that respondent is an employee of petitioner. Interestingly, the Order of the Secretary of Labor denying petitioner's appeal dated 27 January 2005, as well as the decision of the Court of Appeals dismissing the petition for *certiorari,* are silent on the issue of the existence of an employer-employee relationship, which further suggests that no real and proper determination the existence of such relationship was ever made by these tribunals. Even the dissent skirted away from the issue of the existence of employer-employee relationship and conveniently ignored the dearth of evidence presented by respondent.

10. **ID.; ID.; ID.; IN THE ABSENCE THEREOF, THE REGIONAL DIRECTOR OF THE DEPARTMENT OF LABOR AND EMPLOYMENT HAS NO JURISDICTION OVER THE EMPLOYEE'S COMPLAINT.—** Although substantial evidence is not a function of quantity but rather of quality, the peculiar environmental circumstances of the instant case demand that something more should have been proffered. Had there been other proofs of employment, such as respondent's inclusion in petitioner's payroll, or a clear exercise of control, the Court would have affirmed the finding of employer-employee relationship. The Regional Director, therefore, committed grievous error in ordering petitioner to answer for respondent's claims. Moreover, with the conclusion that no employer-employee relationship has ever existed between petitioner and respondent, it is crystal-clear that the DOLE Regional Director had no jurisdiction over respondent's complaint. Thus, the improvident exercise of power by the Secretary of Labor and the Regional Director behooves the court to subject their actions for review and to invalidate all the subsequent orders they issued.

11. **ID.; LABOR RELATIONS; APPEAL FROM THE REGIONAL DIRECTOR TO THE SECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT; BOND REQUIREMENT; REQUIREMENTS FOR PERFECTING AN APPEAL MUST BE STRICTLY FOLLOWED; EXCEPTIONS.—** The provision on appeals from the DOLE Regional Offices to the DOLE Secretary is in the last paragraph of Art. 128 (b) of the Labor Code xxx. While the requirements for perfecting an appeal must be strictly followed as they are considered

indispensable interdictions against needless delays and for orderly discharge of judicial business, the law does admit exceptions when warranted by the circumstances. Technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties. Thus, in some cases, the bond requirement on appeals involving monetary awards had been relaxed, such as when (i) there was substantial compliance with the Rules; (ii) the surrounding facts and circumstances constitute meritorious ground to reduce the bond; (iii) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits; or (iv) the appellants, at the very least exhibited their willingness and/or good faith by posting a partial bond during the reglementary period.

12. ID.; ID.; ID.; ID.; PURPOSE; DEED OF ASSIGNMENT IN CASE AT BAR CONSTITUTES SUBSTANTIAL COMPLIANCE WITH THE BOND REQUIREMENT; REASONS.— The purpose of an appeal bond is to ensure, during the period of appeal, against any occurrence that would defeat or diminish recovery by the aggrieved employees under the judgment if subsequently affirmed. The Deed of Assignment in the instant case, like a cash or surety bond, serves the same purpose. First, the Deed of Assignment constitutes not just a partial amount, but rather the entire award in the appealed Order. Second, it is clear from the Deed of Assignment that the entire amount is under the full control of the bank, and not of petitioner, and is in fact payable to the DOLE Regional Office, to be withdrawn by the same office after it had issued a writ of execution. For all intents and purposes, the Deed of Assignment in tandem with the Letter Agreement and Cash Voucher is as good as cash. Third, the Court finds that the execution of the Deed of Assignment, the Letter Agreement and the Cash Voucher were made in good faith, and constituted clear manifestation of petitioner's willingness to pay the judgment amount.

13. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* WHEN PROPER.— A petition for *certiorari* is the proper remedy when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, nor

any plain speedy, and adequate remedy at law. There is "grave abuse of discretion" when respondent acts in a capricious or whimsical manner in the exercise of its judgment as to be equivalent to lack of jurisdiction.

14. **ID.; ID.; ID.; AVAILABILITY OF AN APPEAL DOES NOT FORECLOSE RECOURSE TO THE EXTRAORDINARY REMEDIES WHERE APPEAL IS NOT ADEQUATE OR EQUALLY BENEFICIAL, SPEEDY AND SUFFICIENT.—** Respondent may have a point in asserting that in this case a Rule 65 petition is a wrong mode of appeal, as indeed the writ of *certiorari* is an extraordinary remedy, and *certiorari* jurisdiction is not to be equated with appellate jurisdiction. Nevertheless, it is settled, as a general proposition, that the availability of an appeal does not foreclose recourse to the extraordinary remedies, such as *certiorari* and prohibition, where appeal is not adequate or equally beneficial, speedy and sufficient, as where the orders of the trial court were issued in excess of or without jurisdiction, or there is need to promptly relieve the aggrieved party from the injurious effects of the acts of an inferior court or tribunal, *e.g*., the court has authorized execution of the judgment. This Court has even recognized that a recourse to *certiorari* is proper not only where there is a clear deprivation of petitioner's fundamental right to due process, but so also where other special circumstances warrant immediate and more direct action.

15. **ID.; ID.; ID.; WHEN MAY BE ALLOWED DESPITE AVAILABILITY OF APPEAL; CASE AT BAR.—** In one case, it was held that the extraordinary writ of *certiorari* will lie if it is satisfactorily established that the tribunal acted capriciously and whimsically in total disregard of evidence material to or even decisive of the controversy, and if it is shown that the refusal to allow a Rule 65 petition would result in the infliction of an injustice on a party by a judgment that evidently was rendered whimsically and capriciously, ignoring and disregarding uncontroverted facts and familiar legal principles without any valid cause whatsoever. It must be remembered that a wide breadth of discretion is granted a court of justice in *certiorari* proceedings. The Court has not too infrequently given due course to a petition for *certiorari*, even when the proper remedy would have been an appeal, where valid and

compelling considerations would warrant such a recourse. Moreover, the Court allowed a Rule 65 petition, despite the availability of plain, speedy or adequate remedy, in view of the importance of the issues raised therein. The rules were also relaxed by the Court after considering the public interest involved in the case; when public welfare and the advancement of public policy dictates; when the broader interest of justice so requires; when the writs issued are null and void; or when the questioned order amounts to an oppressive exercise of judicial authority. "The peculiar circumstances of this case warrant, as we held in *Republic v. Court of Appeals*, 107 SCRA 504, 524, the 'exercise once more of our exclusive prerogative to suspend our own rules or to exempt a particular case from its operation as in x x *Republic of the Philippines v. Court of Appeals, et al.,* (83 SCRA 453, 478-480 [1978]), thus: 'xxx The Rules have been drafted with the primary objective of enhancing fair trials and expediting justice. As a corollary, if their applications and operation tend to subvert and defeat instead of promote and enhance it, their suspension is justified."

16. **ID.; ID.; ID.; WILL LIE IF IT IS SATISFACTORILY ESTABLISHED THAT THE TRIBUNAL HAD ACTED CAPRICIOUSLY AND WHIMSICALLY IN TOTAL DISREGARD OF EVIDENCE MATERIAL TO OR EVEN DECISIVE OF THE CONTROVERSY.—** The Regional Director fully relied on the self-serving allegations of respondent and misinterpreted the documents presented as evidence by respondent. To make matters worse, DOLE denied petitioner's appeal based solely on petitioner's alleged failure to file a cash or surety bond, without any discussion on the merits of the case. Since the petition for *certiorari* before the Court of Appeals sought the reversal of the two aforesaid orders, the appellate court necessarily had to examine the evidence anew to determine whether the conclusions of the DOLE were supported by the evidence presented. It appears, however, that the Court of Appeals did not even review the assailed orders and focused instead on a general discussion of due process and the jurisdiction of the Regional Director. Had the appellate court truly reviewed the records of the case, it would have seen that there existed valid and sufficient grounds for finding grave abuse of discretion on the part of the DOLE

Secretary as well the Regional Director. In ruling and acting as it did, the Court finds that the Court of Appeals may be properly subjected to its *certiorari* jurisdiction. After all, this Court has previously ruled that the extraordinary writ of *certiorari* will lie if it is satisfactorily established that the tribunal had acted capriciously and whimsically in total disregard of evidence material to or even decisive of the controversy.

CARPIO MORALES, *J.*, *separate opinion:*

LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; THE LABOR SECRETARY OR HIS AUTHORIZED REPRESENTATIVE IS COMPETENT TO FULLY DETERMINE WHETHER AN EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS.— Justice Brion correctly opines that the Labor Secretary or his authorized representative is competent to *fully* determine whether an employer-employee relationship exists, which, in turn, must "always be open to inquiry in the superior court," as proffered this time by the *ponente,* subject only, of course, to the usual conditions for the availment of the remedy.

BRION, *J.*, *dissenting opinion*:

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; PROPER REMEDY TO CORRECT ERRORS OF LAW.— I submit that the petitioner's wrong mode of appeal in coming to this Court cannot be glossed over and simply hidden behind general statements made by this Court in the context of the unique and appropriate factual settings of the cited cases, generally applied to the *ponencia's* distorted view of the circumstances of this case. A comparison of the grounds cited in the present petition and the petition before the CA shows that in coming to this Court, the petitioner simply repeated the same issues it submitted to the Court of Appeals. The only difference is that it now cites the CA as the tribunal committing the grave abuse of discretion amounting to lack or excess of jurisdiction. In coming to this Court, on the same grounds cited before and ruled upon by the CA, the petitioner is merely asking this Court to review the CA ruling on the "grave abuse of discretion" issues the petitioner raised before

the CA. Such a review is an appeal that, under our Rules, should fall under Rule 45 – a petition for review on *certiorari*. It is not accurate therefore for the petitioner to say that there is no remedy available to it in the ordinary course of law. Neither is it correct to characterize this situation as an extraordinary one that merits the suspension of the Rules. The appropriate remedy is a Rule 45 petition for review on *certiorari* which is envisioned to correct errors of law, precisely the errors cited by the petitioner as having been committed by the CA.

2. ID.; ID.; A PETITION FOR REVIEW ON *CERTIORARI* AND A PETITION FOR *CERTIORARI* ARE MUTUALLY EXCLUSIVE.— Much harder to accept is the *ponencia's* cavalier attitude towards the petitioner's statement that *there is no appeal, or any plain and adequate remedy in the ordinary course of law available to the petitioner,* when a Rule 45 appeal is readily available to it and would have been the proper course since it cited errors of law against the CA. By accepting the present Rule 65 petition in place of a Rule 45 petition for review on *certiorari* without any sufficiently demonstrated meritorious ground for exceptional treatment, we are effectively negating our ruling in the recent *Cecilia B. Estinozo v. Court of Appeals, et al.* that a petition for review on *certiorari* under Rule 45 and a petition for *certiorari* under Rule 65 are mutually exclusive.

3. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; VISITORIAL AND ENFORCEMENT POWERS OF THE SECRETARY OF LABOR; EXTENT.— A major issue for the *ponencia* is the Director's determination that employer-employee relationship existed between the petitioner and the respondent at the time of the inspection. **It can be assumed that the DOLE in the exercise of its visitorial and enforcement power somehow has to make a determination of the existence of an employer-employee relationship. Such prerogatival determination, however, cannot be coextensive with the visitorial and enforcement power itself. Indeed, such determination of the existence of employer-employee relationship is still primarily lodged with the NLRC. This is the meaning of the clause "in cases where the relationship of employer-employee still exists" in Art. 128 (b).** This approach is legally incorrect due mainly to the *ponencia's*

lack of appreciation of the extent of the DOLE Secretary's visitorial and enforcement powers under the Labor Code, as amended, and a mis-reading of the current law and the applicable implementing rules. The present law gives the Secretary or his representative the authority to fully determine whether employer-employee relationship exists; only upon a showing that it does not, is the DOLE divested of jurisdiction over the case.

4. **ID.; ID.; ID.; DISTINCTION BETWEEN THE ORIGINAL AND THE AMENDED ARTICLE 128 (B) OF THE LABOR CODE.—** In the first place, the *ponencia* is fixated on the application of the Rules on the Disposition of Labor Standards Cases in the Regional Offices which cannot now be cited and used in their totality in light of the amendment of the Article 128(b) by Republic Act No. 7730. **Prior to the amendment,** Section 128(b) stated that – xxx **As amended, Section 128(b) now states: xxx.** This amendment is critical in viewing the Secretary's visitorial and enforcement powers as they introduced new features that expanded these powers, thereby affecting the cited Rules as well as the process of referring an inspection case to the NLRC. A first distinction between the original and the amended Article 128(b) is the reference to Article 217 of the Labor Code in the "notwithstanding" clause. As amended, Article 129 is also referred to. Read in relation with Article 217, the effect is the removal of the ₱5,000.00 ceiling in the Secretary's visitorial powers – a conclusion that the *ponencia* fully supports. Another distinction relates to the present clause *"except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection"* (the *"excepting clause"*). In the original version of Article 128(b), this clause states – *"except in cases where the employer contests the findings of the labor regulation officer and raises issues which cannot be resolved without considering evidentiary matters that are not verifiable in the normal course of inspection."* Thus, previously, the law referred to matters that the labor regulation officer could not have ruled upon because they are not verifiable in the normal course of inspection. Under the present formulation, reference is only to "documentary proofs which were not considered in the course

of inspection" used in a different context explained below. Textually, the present formulation refers only to documentary evidence that might or might not have been available during inspection but were not considered. The difference can be explained by the new and unique formulation of the whole Article 128(b). In the original provision, the visitorial and enforcement power of the Minister of Labor and Employment generally prevailed over the jurisdiction over arbitration cases granted to Labor Arbiters and the Commission under Article 217. Excepted from this rule is what the *original and unamended* excepting clause, quoted above, provides – *i.e.*, when inspection would not suffice because of evidentiary matters that have to be threshed out at an arbitration hearing.

5. ID.; ID.; ID.; ARTICLE 128 (B) OF THE LABOR CODE, AS AMENDED; MERE ALLEGATION THAT EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS, DOES NOT BY ITSELF, DIVEST THE REGIONAL DIRECTOR OF JURISDICTION TO RULE ON THE CASE.— The *n***ew and amended Article 128(b)** did not retain the formulation of the original **as it broke up the original version into two sentences.** In the *first sentence,* it recognized the primacy of the visitorial and enforcement powers of the Secretary of Labor over the terms of Articles 129 and 217. In other words, the Secretary or his delegate can inspect without being fettered by the limitations under these provisions. The **second sentence** *is devoted wholly to the issuance of writs of execution* to enforce the issued orders. It exists as an independent statement from what the first sentence states and is limited only by the exception – when the employer cites a documentary proof that was not considered during the inspection. Thus, under the amended Article 128(b), as written, the power of the Secretary of Labor or his representative to enforce the labor standards provisions of the Labor Code and other labor legislations has been vastly expanded, being unlimited by Articles 129 and 217 of the Labor Code, provided only that employer-employee relationship still exists. The existence of the relationship, however, is still a matter for the Secretary or the appropriate regional office to determine, unfettered by Articles 129 and 217 of the Labor Code. The mere allegation – *whether prima facie or not* – that employer-employee relationship exists, does not, by itself, divests the Regional Director of jurisdiction

to rule on the case; the Director can at least fully determine whether or not employer-employee relationship exists.

6. **ID.; ID.; ID.; ID.; THE SECRETARY OF LABOR MAY ISSUE A WRIT TO EXECUTE THE RULING OF THE LABOR EMPLOYMENT OFFICER; EXCEPTION.—** The present "excepting clause" (**which refers only to the issuance of a writ of execution**) suggests that after the labor employment officer has issued its inspection ruling, the Secretary may issue a writ to execute the ruling, unless the employer "contests the findings of the labor employment officer and raises issues supported by documentary evidence which were not considered in the course of inspection." *Stated otherwise, there is now a window in the law for immediate execution pending appeal when the employer's objection does not relate to documentary evidence that has not been raised in the course of inspection.*

7. **ID.; ID.; ID.; ID.; BOND REQUIREMENT TO PERFECT AN APPEAL APPLIES TO ALL ISSUES, WHETHER ON THE EMPLOYER-EMPLOYEE ISSUE OR ON THE INSPECTION FINDINGS.—** What happens to the **inspection ruling itself** is governed by the next paragraph of Article 128(b) which expressly provides for an appeal to the Secretary of Labor, with the requirement for the filing of a cash or surety bond to perfect the appeal. This requirement, stated without distinctions or qualifications, should apply to all issues, whether on the employer-employee issue or on the inspection findings.

8. **ID.; ID.; ID.; ID.; THE SECRETARY OF LABOR HAS FULL AUTHORITY TO RULE ON THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP; ABSENT SUCH RELATIONSHIP, THE SECRETARY OF LABOR MUST ENDORSE THE MONETARY CLAIM TO THE NATIONAL LABOR RELATIONS COMMISSION INSTEAD OF DISMISSING IT FOR LACK OF JURISDICTION.—** A necessary question that arises is the status of the current rule implementing Article 128(b) as amended, which is an exact copy of the law except for the addition of a new sentence — ". . . In such cases the Regional Director shall endorse the dispute to the appropriate regional branch of the National Labor Relations Commission for proper action." This rule *antedates the R.A. 7730 amendment* but is not necessarily negated by the Secretary's expanded powers because of the limitation that

the Secretary or his representation has jurisdiction only where an employment relationship exists. *Properly understood, it should now be read as a confirmation of the Secretary's expanded power that includes the full authority to rule on whether employer-employee relationship exists. It is only upon a ruling that no such relationship exists that the Secretary and the Director are divested of jurisdiction to rule on the monetary claim. The Secretary or the Director must then endorse the monetary claim to the NLRC instead of dismissing it for lack of jurisdiction. However, whatever action the Director takes is a matter that can be appealed to the Secretary of Labor pursuant to the second paragraph of Article 128(b).* In the present case, the petitioner did appeal as allowed by Article 128(b), but unfortunately blew its chance to secure a review on appeal before the Secretary of Labor as it failed to post the cash or surety bond that the present law expressly requires. This reading of the law totally invalidates the *ponencia's* position in the present case that the Regional Director and the Secretary of Labor have no jurisdiction to issue an enforcement order and the case should have been turned over to the NLRC for compulsory arbitration after the petitioner claimed or has shown *prima facie* that no employer-employee relationship existed.

9. **ID.; ID.; ID.; ID.; DISMISSAL OF THE APPEAL FOR ABSENCE OF CASH BOND AND MISREPRESENTATION OF COMPLIANCE WITH THE BOND REQUIREMENT, PROPER IN CASE AT BAR.—** The parties do not dispute that the remedy from the Regional Director's ruling is an appeal to the Secretary, as the petitioner did indeed appeal to the Office of the Secretary of Labor. The *ponencia,* however, rules that the DOLE erred in declaring that the appeal was not perfected; the *ponencia* holds that the Deed of Assignment of Bank Deposits that the petitioner submitted in lieu of a cash or surety bond substantially satisfied the requirements of Section 128 (b) of the Labor Code. xxx. The *ponencia's* position is legally incorrect as it conveniently fails to consider both the wording of the law and the spirit that led to this wording. The law expressly states that an appeal is perfected ***"only"*** upon the posting of a cash or surety bond; no other document or instrument is allowed. What aggravates the *ponencia's* disregard of the express wording of the law is the petitioner's knowledge, on record, that a cash or surety bond is required. This knowledge

is clearly demonstrated by the petitioner's motion for extension of time to file appeal, filed on June 17, 2004, on the ground of fortuitous event. The fortuitous event referred to was the South Sea Surety and Insurance Co.'s alleged lack of the required legal forms for the bond; to support the motion, the surety company committed to issue the bond the following day, June 18, 2004. Further, in a submission entitled "Appeal" filed with the DOLE Regional Office on June 18, 2004, the petitioner made the following statement: xxx No cash bond was however submitted, showing that the petitioner was less than candid when it made its claim. It was under these circumstances – *i.e.,* the petitioner's knowledge that a cash or surety bond is required; the absence of a cash bond; and misrepresentation that a cash bond was attached when there was none – that the DOLE Secretary dismissed the appeal. The CA correctly supported the Secretary's action and ruled that the Secretary did not act with grave abuse of discretion in dismissing the appeal.

10. **ID.; ID.; ID.; ID.; ID.; POSTING OF CASH OR SURETY BOND ISSUED BY A REPUTABLE BONDING COMPANY DULY ACCREDITED BY THE SECRETARY OF LABOR AND EMPLOYMENT IS MANDATORY FOR THE PERFECTION OF EMPLOYER'S APPEAL.—** Separately from these factual incidents are reasons proceeding from established jurisprudence as the indispensability of a bond to perfect an appeal is not a new issue for the Court. In *Borja Estate, et al. v. Spouses R. Ballad and R. Ballad*, we ruled that – The intention of the lawmakers to make the bond an indispensable requisite for the perfection of an appeal by the employer is underscored by the provision that an appeal may be perfected "only upon the posting of a cash bond." The word "only" makes it perfectly clear that the LAWMAKERS intended the posting of a cash or surety bond by the employer to be the exclusive means by which an employer's appeal may be considered complete. x x x Evidently, the posting of a cash or surety bond is mandatory. And the perfection of an appeal *in the manner and within the period prescribed by law* is not only mandatory but jurisdictional. Interestingly, the same adverb – "only" – that this Court construed in *Borja*, is the very same adverb that Article 128(b) of the Labor Code contains. Thus, this Article states in part – *an appeal by the employer may be perfected* ***only*** *upon the posting of a cash or surety bond*

issued by a reputable bonding company duly accredited by the Secretary of Labor and Employment. All these safeguards would be for naught if the *ponencia's* understanding of the requirements for the perfection of an appeal will prevail. To reiterate, the bond must be in cash or a surety issued by a reputable bonding company, not by any bonding company. The reputation alone of the bonding company will not suffice to satisfy the law; the bonding company must be accredited by the Secretary. "Cash," on the other hand, whether in lay or its legal signification, means a sum of money; cash bail (the sense in which a cash bond is used) is a sum of money posted by a criminal defendant to ensure his presence in court, used in place of a surety bond and real estate.

11. ID.; ID.; ID.; ID.; ID.; EXECUTION OF DEED OF ASSIGNMENT IN LIEU OF A CASH OR SURETY BOND NOT SUFFICIENT TO SATISFY THE BOND REQUIREMENT; REASON.— How the aforequoted Deed of Assignment can satisfy the above legal requirements requires an act of bending that goes beyond the intent of the law. What the Deed extends is a *guarantee* using a sum of money placed with a bank, not with the DOLE. The guarantee is made by a certain Greman B. Solante, described in the Deed as Station Manager signing for and in behalf of the petitioner, a corporation. **There is no indication anywhere, however, that Mr. Solante was authorized by the Board of the corporation to commit the corporate funds as a guarantee. This lack of clear authority is replete with legal implications that render the Deed of Assignment less than the cash bond that it purports to be; among others, these implications impose on the DOLE added burdens that a cash bond is designed to avoid.** Under Article 1878 of the Civil Code, a special power of attorney is required to bind a principal as guarantor or surety. Under Section 23 and 35 of the Corporation Code of the Philippines, authority over corporate funds is exercised by the Board of Directors who, in the absence of an appropriate delegation of authority, are the only ones who can act for and in behalf of the corporation. Under Article 1403 of the Civil Code, a contract entered into without any legal authority or legal representation is unenforceable. To state the obvious, all these are stumbling blocks for the DOLE when enforcement against the Deed of Assignment comes. To be sure, these are not the terms the framers of the law intended when they required that perfection

of appeal requires the filing "only" of a cash or surety bond. **Effectively, what the Deed of Assignment and its allied documents have committed to support the perfection of the petitioner's appeal, with the intent to pass it off as a cash bond, is an amount whose control is not clearly with the DOLE and which may require a lot of clarifications and prior actions before it can be used to pay the monetary claim secured by the bond. This is what the ponencia wishes to recognize as a substitute for the cash bond requirement of the law.** To say the least, a ruling from this Court of this tenor would severely and adversely affect the effectiveness and efficiency of the DOLE's handling of appeals before it; it would be a precedent that effectively negates the certainties the law wishes to foster, and would be a welcome development to those who would wish to submit guarantees other than the cash or surety bonds the law demands.

12. **ID.; ID.; ID.; ID.; ID.; ABSENT GRAVE ABUSE OF DISCRETION, THE COURT IS BOUND BY THE SECRETARY OF LABOR'S DETERMINATION OF THE INSUFFICIENCY OF THE GUARANTEE AS A SUBSTITUTE FOR THE BOND REQUIREMENT.—** I submit that the determination of what satisfies the bonding requirement in labor appeals is a matter for the Secretary of Labor and Employment to determine in the first instance, and should be free from judicial interference, provided that the Secretary does not substantially depart from the letter and intent of the law. Once the Secretary – the entity with primary jurisdiction over labor appeals – has ruled that a guarantee other than the strict cash and surety bonds that the law requires is not sufficient, then this Court should be bound by the determination in the absence of any attendant grave abuse of discretion on the part of the Secretary. Otherwise stated, this Court cannot and should not second guess or in hindsight control an administrative tribunal in the exercise of its powers, even "in the interest of justice," where there is no attendant grave abuse of discretion amounting to lack or excess of jurisdiction. Only in this manner can this Court accord due respect to the constitutional separation of powers that it is duty-bound to enforce.

13. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; THE DECISION MAKER IS ONLY DUTY-BOUND TO**

STATE THE FACTS AND THE LAW ON WHICH ITS DECISION IS BASED; CASE AT BAR.— Let it be clarified that the Secretary did not need to go into a full discussion of the merits of the appeal because no appeal was ever perfected. The CA understandably focused on this aspect of the case as it renders moot all other issues. To the CA's credit it made sure that there was no denial of due process that tainted the DOLE decisions and it found that there was none. In this light, the CA complied with what the Constitution requires as a decision maker is only duty-bound to state the facts and the law on which its decision is based. In this respect, it should be considered that the petitioner was given every opportunity to be heard at the DOLE Regional Office. The plant inspection was conducted at the petitioner's own establishment where its officials were present. No complaint exists regarding this aspect of the case. A notice of inspection results was duly sent to the petitioner, which it contested. Thus, the Regional Director directed the parties to file their position papers on the inspection results. The parties duly complied, with parties both focusing on the employer-employee relationship issue. In the Order dated February 27, 2004, the Director fully considered the parties' positions in light of the inspection results and ruled that there was employer-employee relationship. The petitioner reacted by filing a motion for reconsideration and a supplemental motion for reconsideration, to which additional supporting exhibits were attached. These submissions were taken into account but still failed to convince the Director.

14. **LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; EMPLOYER-EMPLOYEE RELATIONSHIP; EXIST BETWEEN THE PETITIONER AND PRIVATE RESPONDENT IN CASE AT BAR.—** Correctly understood, these rulings do not indicate in any way that the petitioner's evidence were not considered. To be sure, the parties' various pieces of evidence the parties submitted were not all *mentioned* in these rulings. What it does mention are its findings from the parties' conflicting factual assertions. Interestingly, it implies that, at least nominally, the respondent was a program employee. This is the ruling's concession to the petitioner's evidence. However, it also asserts that despite this *seeming* status, the respondent was in fact a station employee for the reasons the ruling outlined, namely: (1) the respondent initially hired the

respondent as a radio talent/spinner; (2) his work was six [6] days a week from 8:00 A.M. to 5:00 P.M., Monday thru Saturday; (3) he is required to observe normal working hours and deductions are made for tardiness; (4) the respondent paid the complainant's salary every *quincena*; (5) the petitioner required the respondent to sign payrolls; (6) notwithstanding the employment contract stipulating herein complainant as a program employee, his actual duty pertains to that of a station employee; and (7) the petitioner failed to register the respondent's employment contract with the Broadcast Media Counsel as required. Thus viewed, the *ponencia's* conclusion that the Director did not consider the petitioner's evidence is misplaced. In fact, the factors the Director pointed out decisively show that an employer-employee relationship existed between the petitioner and the respondent.

15. **ID.; LABOR STANDARDS; ARTICLE 128(B) OF THE LABOR CODE, AS AMENDED; PHRASE "DOCUMENTARY PROOF WHICH WERE NOT CONSIDERED IN THE COURSE OF INSPECTION," CONSTRUED.—** What the *ponencia* apparently refers to is that portion of Article 128(b) that was amended by R.A. 7730, heretofore discussed. To reiterate what has been stated above, the "documentary proofs which were not considered in the course of inspection" refers to the objection that a party may raise in relation with the issuance of a writ of execution, and does not relate to the extent of the visitorial and enforcement power of the Secretary defined in the first sentence of the Article. Thus, no writ may immediately issue if such objection exists. Rather, a full hearing shall ensue as in this case where the Director allowed the petitioner to submit evidence as late as the motion for reconsideration stage. After the Director shall have ruled on all the submitted issues, then a writ of execution shall issue if no appeal is taken; otherwise, an appeal may be taken to the Secretary. Under the Rules, the perfection of an appeal holds in abeyance the issuance of a writ of execution or suspends one already issued. R.A. 7730 effectively changes this rule by giving the authority to issue a writ of execution unless the "excepting clause" mentioned above applies.

16. **ID.; ID.; ID.; ID.; EXTENT OF THE VISITORIAL AND ENFORCEMENT POWER OF THE SECRETARY OF**

LABOR.— That the employment relationship issue is for the Secretary or his representative to rule upon is clear from the wording of the 1st paragraph of Article 128(b) when it defines the extent of the Secretary's power. In this definition of authority, the issue cannot be anywhere else but with the Secretary who has been granted visitorial and enforcement power when an employment relationship exists. This grant must be read with the 2nd paragraph of the same Article that identifies an appeal as the remedy to take from an inspection decision made under the 1st paragraph. For the *ponencia* to imply that the NLRC is more fitted to rule on the employment relationship issue misunderstands the power that Article 128 grants the Secretary. It is a full fact-finding power that includes whatever is necessary for the enforcement of the grant, including the authority to determine when the limits of the power apply and to call the parties and hear and decide their submissions.

17. ID.; ID.; ID.; ID.; NATURE OF THE PROCEEDINGS BEFORE THE REGIONAL DIRECTOR.— Significantly, the nature of the proceedings before the Regional Director is not different from the proceedings before the Labor Arbiter. Section 2, Rule V of the Revised Rules of Procedure of the National Labor Relations Commission (2005) provides that: Section 2. Nature of Proceedings. The proceedings before the Labor Arbiter shall be non-litigious in nature. Subject to the requirements of due process, the technicalities of law and procedure and the rules obtaining in courts of law shall not strictly apply thereto. The Labor Arbiter may avail himself of all reasonable means to ascertain the facts of the controversy speedily, including the ocular inspection and examination of well-informed persons. Thus, the view that one tribunal has primacy over another because of the nature of their proceedings, the quantum of evidence required, or their level of expertise, is misplaced. Properly understood, the structure that Article 128(b) provides in relation with monetary claims within and employment relationship, as well as the delineation of powers between the Secretary of Labor and Employment and the NLRC are not at all complicated nor confusing, and need not lead to controversies on the part of labor officials in resolving the issue of employer-employee relationship, as the *ponencia* fears.

APPEARANCES OF COUNSEL

Redula Boholst Sanchez Borbajo Ceniza Montealegre & Bauzon Law Offices for petitioner.

Public Attorney's Office for private respondent.

D E C I S I O N

TINGA, *J.*:

The present controversy concerns a matter of first impression, requiring as it does the determination of the demarcation line between the prerogative of the Department of Labor and Employment (DOLE) Secretary and his duly authorized representatives, on the one hand, and the jurisdiction of the National Labor Relations Commission, on the other, under Article 128 (b) of the Labor Code in an instance where the employer has challenged the jurisdiction of the DOLE at the very first level on the ground that no employer-employee relationship ever existed between the parties.

I.

The instant petition for *certiorari* under Rule 65 assails the decision and the resolution of the Court of Appeals dated 26 October 2006 and 26 June 2007, respectively, in C.A. G.R. CEB-SP No. 00855.[1]

The petition traces its origins to a complaint filed by Jandeleon Juezan (respondent) against People's Broadcasting Service, Inc. (Bombo Radyo Phils., Inc) (petitioner) for illegal deduction, non-payment of service incentive leave, 13th month pay, premium pay for holiday and rest day and illegal diminution of benefits, delayed payment of wages and non-coverage of SSS, PAG-IBIG and Philhealth before the Department of Labor and

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[1] *People's Broadcasting Service (Bombo Radyo Phils., Inc) v. The Secretary of the Department of Labor and Employment, the Regional Director, DOLE Region VII and Jandeleon Juezan*, *rollo*, pp. 38-43 and 56, respectively. Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Agustin S. Dizon and Priscilla Baltazar-Padilla, concurring.

Employment (DOLE) Regional Office No. VII, Cebu City.[2] On the basis of the complaint, the DOLE conducted a plant level inspection on 23 September 2003. In the *Inspection Report Form*,[3] the Labor Inspector wrote under the heading "Findings/ Recommendations" "non-diminution of benefits" and "Note: Respondent deny employer-employee relationship with the complainant— see Notice of Inspection results." In the *Notice of Inspection Results*[4] also bearing the date 23 September 2003, the Labor Inspector made the following notations:

> Management representative informed that complainant is a drama talent hired on a per drama " participation basis" hence no employer-employeeship [sic] existed between them. As proof of this, management presented photocopies of cash vouchers, billing statement, employments of specific undertaking (a contract between the talent director & the complainant), summary of billing of drama production *etc*. They (mgt.) has [sic] not control of the talent if he ventures into another contract w/ other broadcasting industries.
>
> On the other hand, complainant Juezan's alleged violation of non-diminution of benefits is computed as follows:
>
> @-₱ 2,000/15 days + 1.5 mos = ₱ 6,000
> (August 1/03 to Sept 15/03)
>
> Note: Recommend for summary investigation or whatever action deem proper.[5]

Petitioner was required to rectify/restitute the violations within five (5) days from receipt. No rectification was effected by petitioner; thus, summary investigations were conducted, with the parties eventually ordered to submit their respective position papers.[6]

In his Order dated 27 February 2004,[7] DOLE Regional Director Atty. Rodolfo M. Sabulao (Regional Director) ruled that

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[2] Complaint dated 18 September 2003, *id.* at 95.

[3] *Id.* at 92.

[4] *Id.* at 94.

[5] *Id.*

[6] Per Minutes of the 11 November 2003 Summary Proceeding, DOLE records, p. 24.

[7] *Rollo*, pp. 96-99.

respondent is an employee of petitioner, and that the former is entitled to his money claims amounting to ₱203,726.30. Petitioner sought reconsideration of the Order, claiming that the Regional Director gave credence to the documents offered by respondent without examining the originals, but at the same time he missed or failed to consider petitioner's evidence. Petitioner's motion for reconsideration was denied.[8] On appeal to the DOLE Secretary, petitioner denied once more the existence of employer-employee relationship. In its Order dated 27 January 2005, the Acting DOLE Secretary dismissed the appeal on the ground that petitioner did not post a cash or surety bond and instead submitted a Deed of Assignment of Bank Deposit.[9]

Petitioner elevated the case to the Court of Appeals, claiming that it was denied due process when the DOLE Secretary disregarded the evidence it presented and failed to give it the opportunity to refute the claims of respondent. Petitioner maintained that there is no employer-employee relationship had ever existed between it and respondent because it was the drama directors and producers who paid, supervised and disciplined respondent. It also added that the case was beyond the jurisdiction of the DOLE and should have been considered by the labor arbiter because respondent's claim exceeded ₱5,000.00.

The Court of Appeals held that petitioner was not deprived of due process as the essence thereof is only an opportunity to be heard, which petitioner had when it filed a motion for reconsideration with the DOLE Secretary. It further ruled that the latter had the power to order and enforce compliance with labor standard laws irrespective of the amount of individual claims because the limitation imposed by Article 29 of the Labor Code had been repealed by Republic Act No. 7730.[10] Petitioner sought reconsideration of the decision but its motion was denied.[11]

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[8] DOLE Records, pp. 151-152.

[9] *Id.* at 217-219.

[10] *Rollo*, pp. 38-43.

[11] Resolution dated 26 June 2007, *id.* at 56.

Before this Court, petitioner argues that the National Labor Relations Commission (NLRC), and not the DOLE Secretary, has jurisdiction over respondent's claim, in view of Articles 217 and 128 of the Labor Code.[12] It adds that the Court of Appeals committed grave abuse of discretion when it dismissed petitioner's appeal without delving on the issues raised therein, particularly the claim that no employer-employee relationship had ever existed between petitioner and respondent. Finally, petitioner avers that there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law available to it.

On the other hand, respondent posits that the Court of Appeals did not abuse its discretion. He invokes Republic Act No. 7730, which "removes the jurisdiction of the Secretary of Labor and Employment or his duly authorized representatives, from the effects of the restrictive provisions of Article 129 and 217 of the Labor Code, regarding the confinement of jurisdiction based on the amount of claims."[13] Respondent also claims that petitioner was not denied due process since even when the case was with the Regional Director, a hearing was conducted and pieces of evidence were presented. Respondent stands by the propriety of the Court of Appeals' ruling that there exists an employer-employee relationship between him and petitioner. Finally, respondent argues that the instant petition for certiorari is a wrong mode of appeal considering that petitioner had earlier filed a Petition for *Certiorari*, *Mandamus* and Prohibition with the Court of Appeals; petitioner, instead, should have filed a Petition for Review.[14]

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[12] Petitioner maintains that the instant case is beyond the jurisdiction of the Regional Director because respondent's claim exceeds ₱5,000. The argument must be struck down at once, as it is well settled, following the amendment of the Labor Code by R.A. 7730 on 2 June 1994, that the visitorial and enforcement powers of the Regional Director can be exercised even if the individual claim exceeds ₱5,000. See *Allied Investigation Bureaus, Inc. v. Secretary of Labor,* G.R. No. 122006, 24 November 1999, 319 SCRA 175, *Cirineo Bowling Plaza, Inc. v. Sensing*, G.R. No. 146572, 14 January 2005, 448 SCRA 175. *Ex-Bataan Veterans Security Agency, Inc. v. Laguesma,* G.R. No. 152396, 20 November 2007, 537 SCRA 2007.

[13] *Rollo*, p. 131.

[14] Comment, *id.* at 125-140.

II.

The significance of this case may be reduced to one simple question—does the Secretary of Labor have the power to determine the existence of an employer-employee relationship?

To resolve this pivotal issue, one must look into the extent of the visitorial and enforcement power of the DOLE found in Article 128 (b) of the Labor Code, as amended by Republic Act 7730. It reads:

> Article 128 (b) Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and **in cases where the relationship of employer-employee still exists**, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders **to give effect to the labor standards provisions of this Code and other labor legislation** based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representative shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection. (emphasis supplied)
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> xxx xxx xxx

The provision is quite explicit that the visitorial and enforcement power of the DOLE comes into play only "in cases when the relationship of employer-employee still exists." It also underscores the avowed objective underlying the grant of power to the DOLE which is "to give effect to the labor standard provision of this Code and other labor legislation." Of course, a person's entitlement to labor standard benefits under the labor laws presupposes the existence of employer-employee relationship in the first place.

The clause "in cases where the relationship of employer-employee still exists" signifies that the employer-employee relationship must have existed even before the emergence of the controversy. **Necessarily, the DOLE's power does not**

apply in two instances, namely: (a) where the employer-employee relationship has ceased; and (b) where no such relationship has ever existed.

The first situation is categorically covered by Sec. 3, Rule 11 of the *Rules on the Disposition of Labor Standards Cases*[15] issued by the DOLE Secretary. It reads:

Rule II MONEY CLAIMS ARISING FROM COMPLAINT/ROUTINE INSPECTION

Sec. 3. *Complaints where no employer-employee relationship actually exists.* Where employer-employee relationship no longer exists by reason of the fact that it has already been severed, claims for payment of monetary benefits fall within the exclusive and original jurisdiction of the labor arbiters. Accordingly, if on the face of the complaint, it can be ascertained that employer-employee relationship no longer exists, the case, whether accompanied by an allegation of illegal dismissal, shall immediately be endorsed by the Regional Director to the appropriate branch of the National Labor Relations Commission (NLRC).

In the recent case of *Bay Haven, Inc. v. Abuan*,[16] this Court recognized the first situation and accordingly ruled that a complainant's allegation of his illegal dismissal had deprived the DOLE of jurisdiction as per Article 217 of the Labor Code.[17]

In the first situation, the claim has to be referred to the NLRC because it is the NLRC which has jurisdiction in view of the termination of the employer-employee relationship. The same procedure has to be followed in the second situation since it is the NLRC that has jurisdiction in view of the absence of employer-employee relationship between the evidentiary parties from the start.

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[15] Dated 16 September 1987 issued by then DOLE Secretary Franklin M. Drilon. The same Rules are used up to the present.

[16] G.R. No. 160859, 30 July 2008, 560 SCRA 457.

[17] *Id.* at 469. The Court made the ruling only as regards respondent Abuan who had made a claim of illegal dismissal but qualified that "the same (the ruling) does not hold for the rest of respondents, who do not claim to have illegally dismissed."

Clearly the law accords a prerogative to the NLRC over the claim when the employer-employee relationship has terminated or such relationship has not arisen at all. The reason is obvious. In the second situation especially, the existence of an employer-employee relationship is a matter which is not easily determinable from an ordinary inspection, necessarily so, because the elements of such a relationship are not verifiable from a mere ocular examination. The intricacies and implications of an employer-employee relationship demand that the level of scrutiny should be far above the cursory and the mechanical. While documents, particularly documents found in the employer's office are the primary source materials, what may prove decisive are factors related to the history of the employer's business operations, its current state as well as accepted contemporary practices in the industry. More often than not, the question of employer-employee relationship becomes a battle of evidence, the determination of which should be comprehensive and intensive and therefore best left to the specialized quasi-judicial body that is the NLRC.

It can be assumed that the DOLE in the exercise of its visitorial and enforcement power somehow has to make a determination of the existence of an employer-employee relationship. Such prerogatival determination, however, cannot be coextensive with the visitorial and enforcement power itself. Indeed, such determination is merely preliminary, incidental and collateral to the DOLE's primary function of enforcing labor standards provisions. The determination of the existence of employer-employee relationship is still primarily lodged with the NLRC. This is the meaning of the clause "in cases where the relationship of employer-employee still exists" in Art. 128 (b).

Thus, before the DOLE may exercise its powers under Article 128, two important questions must be resolved: (1) Does the employer-employee relationship still exist, or alternatively, was there ever an employer-employee relationship to speak of; and (2) Are there violations of the Labor Code or of any labor law?

The existence of an employer-employee relationship is a statutory prerequisite to and a limitation on the power of the Secretary of Labor, one which the legislative branch is entitled to impose. The rationale underlying this limitation is to eliminate the prospect of competing conclusions of the Secretary of Labor and the NLRC, on a matter fraught with questions of fact and law, which is best resolved by the quasi-judicial body, which is the NLRC, rather than an administrative official of the executive branch of the government. If the Secretary of Labor proceeds to exercise his visitorial and enforcement powers absent the first requisite, as the dissent proposes, his office confers jurisdiction on itself which it cannot otherwise acquire.

The approach suggested by the dissent is frowned upon by common law. To wit:

> [I]t is a general rule, **that no court of limited jurisdiction can give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limit to its jurisdiction depends**; and however its decision may be final on all particulars, making up together that subject matter which, if true, is within its jurisdiction, and however necessary in many cases it may be for it to make a preliminary inquiry, whether some collateral matter be or be not within the limits, yet, upon this preliminary question, its decision must always be open to inquiry in the superior court.[18]

A more liberal interpretative mode, "pragmatic or functional analysis," has also emerged in ascertaining the jurisdictional boundaries of administrative agencies whose jurisdiction is established by statute. Under this approach, the Court examines the intended function of the tribunal and decides whether a particular provision falls within or outside that function, rather than making the provision itself the determining centerpiece of

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[18] *Bunbury v. Fuller,* 9 Ex. 111, 140 (1853), cited in **CASES, MATERIALS AND COMMENTARY ON ADMINISTRATIVE LAW** by S.H. Bailey, B.L. Jones, A.R. Mowbray, p. 423. This view is more popularly called the "preliminary or collateral question."

the analysis.[19] Yet even under this more expansive approach, the dissent fails.

A reading of Art. 128 of the Labor Code reveals that the Secretary of Labor or his authorized representatives was granted visitorial and enforcement powers for the purpose of determining violations of, and enforcing, the Labor Code and any labor law, wage order, or rules and regulations issued pursuant thereto. Necessarily, the actual existence of an employer-employee relationship affects the complexion of the putative findings that the Secretary of Labor may determine, since employees are entitled to a different set of rights under the Labor Code from the employer as opposed to non-employees. Among these differentiated rights are those accorded by the "labor standards" provisions of the Labor Code, which the Secretary of Labor is mandated to enforce. If there is no employer-employee relationship in the first place, the duty of the employer to adhere to those labor standards with respect to the non-employees is questionable.

This decision should not be considered as placing an undue burden on the Secretary of Labor in the exercise of visitorial and enforcement powers, nor seen as an unprecedented diminution of the same, but rather a recognition of the statutory limitations thereon. A mere assertion of absence of employer-employee relationship does not deprive the DOLE of jurisdiction over the claim under Article 128 of the Labor Code. At least a *prima facie* showing of such absence of relationship, as in this case, is needed to preclude the DOLE from the exercise of its power. The Secretary of Labor would not have been precluded from exercising the powers under Article 128 (b) over petitioner if another person with better-grounded claim of employment than that which respondent had. Respondent, especially if he were an employee, could have very well enjoined other employees to complain with the DOLE, and, at the same time, petitioner could ill-afford to disclaim an employment relationship with all of the people under its aegis.

[19] *Re Ontario Nurses Association v. Pay Equity Hearings Tribunal and Glengarry Memorial Hospital,* 10 April 1995, Decision of the Ontario Court of Appeals.

Without a doubt, petitioner, since the inception of this case had been consistent in maintaining that respondent is not its employee. Certainly, a preliminary determination, based on the evidence offered, and noted by the Labor Inspector during the inspection as well as submitted during the proceedings before the Regional Director puts in genuine doubt the existence of employer-employee relationship. From that point on, the prudent recourse on the part of the DOLE should have been to refer respondent to the NLRC for the proper dispensation of his claims. Furthermore, as discussed earlier, even the evidence relied on by the Regional Director in his order are mere self-serving declarations of respondent, and hence cannot be relied upon as proof of employer-employee relationship.

III.

Aside from lack of jurisdiction, there is another cogent reason to to set aside the Regional Director's 27 February 2004 Order. A careful study of the case reveals that the said Order, which found respondent as an employee of petitioner and directed the payment of respondent's money claims, is not supported by substantial evidence, and was even made in disregard of the evidence on record.

It is not enough that the evidence be simply considered. The standard is substantial evidence as in all other quasi-judicial agencies. The standard employed in the last sentence of Article 128(b) of the Labor Code that the documentary proofs be "considered in the course of inspection" does not apply. It applies only to issues other than the fundamental issue of existence of employer-employee relationship. A contrary rule would lead to controversies on the part of labor officials in resolving the issue of employer-employee relationship. The onset of arbitrariness is the advent of denial of substantive due process.

As a general rule, the Supreme Court is not a trier of facts. This applies with greater force in cases before quasi-judicial agencies whose findings of fact are accorded great respect and even finality. To be sure, the same findings should be supported by substantial evidence from which the said tribunals can make

its own independent evaluation of the facts. Likewise, it must not be rendered with grave abuse of discretion; otherwise, this Court will not uphold the tribunals' conclusion.[20] In the same manner, this Court will not hesitate to set aside the labor tribunal's findings of fact when it is clearly shown that they were arrived at arbitrarily or in disregard of the evidence on record or when there is showing of fraud or error of law.[21]

At the onset, it is the Court's considered view that the existence of employer-employee relationship could have been easily resolved, or at least *prima facie* determined by the labor inspector, during the inspection by looking at the records of petitioner which can be found in the work premises. Nevertheless, even if the labor inspector had noted petitioner's manifestation and documents in the *Notice of Inspection Results*, it is clear that he did not give much credence to said evidence, as he did not find the need to investigate the matter further. Considering that the documents shown by petitioner, namely: cash vouchers, checks and statements of account, summary billings evidencing payment to the alleged real employer of respondent, letter-contracts denominated as "Employment for a Specific Undertaking," *prima facie* negate the existence of employer-employee relationship, the labor inspector could have exerted a bit more effort and looked into petitioner's payroll, for example, or its roll of employees, or interviewed other employees in the premises. After all, the labor inspector, as a labor regulation officer is given "access to employer's records and premises at any time of day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labor law, wage order or rules and regulations pursuant thereto."[22] Despite these far-reaching powers of labor

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[20] *Ropali Trading Corporation v. NLRC*, G.R. No. 122409, 25 September 1998.

[21] *Felix v. Enertech Systems Industries, Inc.*, G.R. No. 142007, 28 March 2001, 355 SCRA 680.

[22] LABOR CODE, Art. 128 (a).

regulation officers, records reveal that no additional efforts were exerted in the course of the inspection.

The Court further examined the records and discovered to its dismay that even the Regional Director turned a blind eye to the evidence presented by petitioner and relied instead on the self-serving claims of respondent.

In his position paper, respondent claimed that he was hired by petitioner in September 1996 as a radio talent/spinner, working from 8:00 am until 5 p.m., six days a week, on a gross rate of ₱60.00 per script, earning an average of ₱15,0000.00 per month, payable on a semi-monthly basis. He added that the payment of wages was delayed; that he was not given any service incentive leave or its monetary commutation, or his 13th month pay; and that he was not made a member of the Social Security System (SSS), Pag-Ibig and PhilHealth. By January 2001, the number of radio programs of which respondent was a talent/spinner was reduced, resulting in the reduction of his monthly income from ₱15,000.00 to only ₱4,000.00, an amount he could barely live on. Anent the claim of petitioner that no employer-employee relationship ever existed, respondent argued that that he was hired by petitioner, his wages were paid under the payroll of the latter, he was under the control of petitioner and its agents, and it was petitioner who had the power to dismiss him from his employment.[23] In support of his position paper, respondent attached a photocopy of an identification card purportedly issued by petitioner, bearing respondent's picture and name with the designation "Spinner"; at the back of the I.D., the following is written: " This certifies that the card holder is a duly Authorized MEDIA Representative of BOMBO RADYO PHILIPPINES … THE NO.1 Radio Network in the Country ***BASTA RADYO BOMBO***"[24] Respondent likewise included a Certification which reads:

> This is to certify that MR. JANDELEON JUEZAN is a program employee of PEOPLE'S BROADCASTING SERVICES, INC. (DYMF- Bombo Radyo Cebu) since 1990 up to the present.

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[23] Respondent's position paper, DOLE Records, pp. 29-37.

[24] *Id.* at 28.

Furtherly certifies that Mr. Juezan is receiving a monthly salary of FIFTEEN THOUSAND (₱15,000.00) PESOS.

This certification is issued upon the request of the above stated name to substantiate loan requirement.

Given this 18th day of April 2000, Cebu City , Philippines.

(signed)
GREMAN B. SOLANTE
Station Manager

On the other hand, petitioner maintained in its position paper that respondent had never been its employee. Attached as annexes to its position paper are photocopies of cash vouchers it issued to drama producers, as well as letters of employment captioned "Employment for a Specific Undertaking," wherein respondent was appointed by different drama directors as spinner/narrator for specific radio programs.[25]

In his Order, the Regional Director merely made a passing remark on petitioner's claim of lack of employer-employee relationship—a token paragraph—and proceeded to a detailed recitation of respondent's allegations. The documents introduced by petitioner in its position paper and even those presented during the inspection were not given an iota of credibility. Instead, full recognition and acceptance was accorded to the claims of respondent—from the hours of work to his monthly salary, to his alleged actual duties, as well as to his alleged "evidence." In fact, the findings are anchored almost verbatim on the self-serving allegations of respondent.

Furthermore, respondent's pieces of evidence—the identification card and the certification issued by petitioner's Greman Solante— are not even determinative of an employer-employee relationship. The certification, issued upon the request of respondent, specifically stated that "MR. JANDELEON JUEZAN is a program employee of PEOPLE'S BROADCASTING SERVICES, INC. (DYMF- Bombo Radyo Cebu)," it is not therefore "crystal clear that complainant is a station employee

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[25] *Id.* at 44-49.

rather than a program employee hence entitled to all the benefits appurtenant thereto,"[26] as found by the DOLE Regional Director. Respondent should be bound by his own evidence. Moreover, the classification as to whether one is a "station employee" and "program employee," as lifted from Policy Instruction No. 40,[27] dividing the workers in the broadcast industry into only two groups is not binding on this Court, especially when the classification has no basis either in law or in fact.[28]

Even the identification card purportedly issued by petitioner is not proof of employer-employee relationship since it only identified respondent as an "Authorized Representative of Bombo Radyo…," and not as an employee. The phrase gains significance when compared *vis-a-vis* the following notation in the sample identification cards presented by petitioner in its motion for reconsideration:

1. This is to certify **that the person whose picture and signature appear hereon is an employee of Bombo Radio Philippines.**
2. This ID must be worn at all times within Bombo Radyo Philippines premises for proper identification and security. Furthermore, this is the property of Bombo Radyo Philippines and must be surrendered upon separation from the company.

HUMAN RESOURCE DEPARMENT
(Signed)
JENALIN D. PALER
HRD HEAD

Respondent tried to address the discrepancy between his identification card and the standard identification cards issued by petitioner to its employees by arguing that what he annexed to his position paper was the old identification card issued to

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[26] Order dated 27 February 2004, *id.* at 64.

[27] Issued by then Minister of Labor Blas F. Ople on 8 January 1979, it governs the employer-employee relationship, hours of work and disputes settlement in the broadcast industry.

[28] *Sonza v. ABS-CBN Broadcasting Corporation*, G.R. No. 138051, 10 June 2004, 431 SCRA 583,606.

him by petitioner. He then presented a photocopy of another "old" identification card, this time purportedly issued to one of the employees who was issued the new identification card presented by petitioner.[29] Respondent's argument does not convince. If it were true that he is an employee of petitioner, he would have been issued a new identification card similar to the ones presented by petitioner, and he should have presented a copy of such new identification card. His failure to show a new identification card merely demonstrates that what he has is only his "Media" ID, which does not constitute proof of his employment with petitioner.

It has long been established that in administrative and quasi-judicial proceedings, substantial evidence is sufficient as a basis for judgment on the existence of employer-employee relationship. Substantial evidence, which is the quantum of proof required in labor cases, is "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[30] No particular form of evidence is required to prove the existence of such employer-employee relationship. Any competent and relevant evidence to prove the relationship may be admitted.[31] Hence, while no particular form of evidence is required, a finding that such relationship exists must still rest on some substantial evidence. Moreover, the substantiality of the evidence depends on its quantitative as well as its *qualitative* aspects.[32]

In the instant case, save for respondent's self-serving allegations and self-defeating evidence, there is no substantial basis to warrant the Regional Director's finding that respondent is an employee of petitioner. Interestingly, the Order of the Secretary of Labor

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[29] The argument was made in respondent's Comments on Respondent's Motion for Reconsideration, DOLE Records, pp. 135-138, photocopy of the identification card is on p. 134.

[30] RULES OF COURT, Rule 133, Sec. 5.

[31] *Opulencia Ice Plant and Storage v. NLRC*, G.R. No. 98368, 15 December 1993, 228 SCRA 473.

[32] *Insular Life Assurance Co., Ltd. Employees Association-Natu, et al. v. Insular Life Assurance Co., Ltd., et al.*, G.R. No. L-25291, 10 March 1977, 76 SCRA 51.

denying petitioner's appeal dated 27 January 2005, as well as the decision of the Court of Appeals dismissing the petition for *certiorari*, are silent on the issue of the existence of an employer-employee relationship, which further suggests that no real and proper determination the existence of such relationship was ever made by these tribunals. Even the dissent skirted away from the issue of the existence of employer-employee relationship and conveniently ignored the dearth of evidence presented by respondent.

Although substantial evidence is not a function of quantity but rather of quality, the peculiar environmental circumstances of the instant case demand that something more should have been proffered.[33] Had there been other proofs of employment, such as respondent's inclusion in petitioner's payroll, or a clear exercise of control, the Court would have affirmed the finding of employer-employee relationship. The Regional Director, therefore, committed grievous error in ordering petitioner to answer for respondent's claims. Moreover, with the conclusion that no employer-employee relationship has ever existed between petitioner and respondent, it is crystal-clear that the DOLE Regional Director had no jurisdiction over respondent's complaint. Thus, the improvident exercise of power by the Secretary of Labor and the Regional Director behooves the court to subject their actions for review and to invalidate all the subsequent orders they issued.

IV.

The records show that petitioner's appeal was denied because it had allegedly failed to post a cash or surety bond. What it attached instead to its appeal was the *Letter Agreement*[34] executed by petitioner and its bank, the cash voucher,[35] and the *Deed of Assignment of Bank Deposits.*[36] According to the DOLE,

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[33] *Pacific Maritime Services, Inc., et al. v. Nicanor Ranay, et al.*, G.R. No. 111002, July 21, 1997, 275 SCRA 717.

[34] DOLE Records, p. 209.

[35] *Id.* at 208.

[36] *Id.* at 207.

these documents do not constitute the cash or surety bond contemplated by law; thus, it is as if no cash or surety bond was posted when it filed its appeal.

The Court does not agree.

The provision on appeals from the DOLE Regional Offices to the DOLE Secretary is in the last paragraph of Art. 128 (b) of the Labor Code, which reads:

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

While the requirements for perfecting an appeal must be strictly followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business, the law does admit exceptions when warranted by the circumstances. Technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties.[37] Thus, in some cases, the bond requirement on appeals involving monetary awards had been relaxed, such as when (i) there was substantial compliance with the Rules; (ii) the surrounding facts and circumstances constitute meritorious ground to reduce the bond; (iii) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits; or (iv) the appellants, at the very least exhibited their willingness and/or good faith by posting a partial bond during the reglementary period.[38]

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[37] *Orozco v. Court of Appeals*, G.R. No. 155207, 29 April 2005, 457 SCRA 700, 709, citations omitted.

[38] *Nicol v. Footjoy Industrial Corp.*, G.R. No. 159372, 27 July 2007, 528 SCRA 300, 318.

A review of the documents submitted by petitioner is called for to determine whether they should have been admitted as or in lieu of the surety or cash bond to sustain the appeal and serve the ends of substantial justice.

The Deed of Assignment reads:

DEED OF ASSIGNMENT OF BANK DEPOSIT
WITH SPECIAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That I, GREMAN B. SOLANTE in my capacity as Station Manager of DYMF Cebu City, PEOPLE'S BROADCASTING SERVICES, INC., a corporation duly authorized and existing under and by virtue of the laws of the Philippines, for and in consideration of the sum of PESOS: TWO HUNDRED THREE THOUSAND SEVEN HUNDRED TWENTY SIX PESOS & 30/100 ONLY (₱203,726.30) Phil. Currency, as CASH BOND GUARANTEE for the monetary award in favor to the Plaintiff in the Labor Case docketed as LSED Case No. R0700-2003-09-CI-09, now pending appeal.

That Respondent-Appellant do hereby undertake to guarantee available and sufficient funds covered by Platinum Savings Deposit (PSD) No. 010-8-00038-4 of PEOPLE'S BROADCASTING SERVICES, INC. in the amount of PESOS: TWO HUNDRED THREE THOUSAND SEVEN HUNDRED TWENTY SIX PESOS & 30/100 ONLY (₱203,726.30) payable to Plaintiff-Appellee/Department of Labor and Employment Regional Office VII at Queen City Development Bank, Cebu Branch, Sanciangko St. Cebu City.

It is understood that the said bank has the full control of Platinum Savings Deposit (PSD) No. 010-8-00038-4 from and after this date and that said sum cannot be withdrawn by the Plaintiff-Appellee/ Department of Labor and Employment Regional Office VII until such time that a Writ of Execution shall be ordered by the Appellate Office.

FURTHER, this Deed of Assignment is limited to the principal amount of PESOS: TWO HUNDRED THREE THOUSAND SEVEN HUNDRED TWENTY SIX PESOS & 30/100 ONLY (₱203,726.30) Phil. Currency, therefore, any interest to be earned from the said Deposit will be for the account holder.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 18th day if June, 2004, in the City of Cebu, Philippines.

PEOPLE'S BROADCASTING SERVICES, INC.

By:

(Signed)
GREMAN B. SOLANTE
Station Manager

As priorly mentioned, the Deed of Assignment was accompanied by a Letter Agreement between Queen City Development Bank and petitioner concerning Platinum Savings Deposit (PSD) No. 010-8-00038-4,[39] and a Cash Voucher issued by petitioner showing the amount of ₱203,726.30 deposited at the said bank.

Casting aside the technical imprecision and inaptness of words that mark the three documents, a liberal reading reveals the documents petitioner did assign, as cash bond for the monetary award in favor of respondent in LSED Case NO. RO700-2003-CI-09, the amount of ₱203,726.30 covered by petitioner's PSD Account No. 010-8-00038-4 with the Queen City Development Bank at Sanciangko St. Cebu City, with the depositary bank authorized to remit the amount to, and upon withdrawal by respondent and or the Department of Labor and Employment Regional Office VII, on the basis of the proper writ of execution. The Court finds that the Deed of Assignment constitutes substantial compliance with the bond requirement.

The purpose of an appeal bond is to ensure, during the period of appeal, against any occurrence that would defeat or diminish recovery by the aggrieved employees under the judgment if subsequently affirmed.[40] The Deed of Assignment in the instant

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[39] The Letter Agreement contains the interest rate for the deposit, the maturity date, the stipulated interest rates in case the principal is withdrawn within a certain period, as well as the 20% withholding tax.

[40] *Cordova v. Keysa's Boutique,* G.R. No. 156379, 16 September 2005, 470 SCRA 144, 154, citing *Your Bus Lines v. NLRC*, G.R. No. 93381, 28 September 1990, 190 SCRA 160.

case, like a cash or surety bond, serves the same purpose. First, the Deed of Assignment constitutes not just a partial amount, but rather the entire award in the appealed Order. Second, it is clear from the Deed of Assignment that the entire amount is under the full control of the bank, and not of petitioner, and is in fact payable to the DOLE Regional Office, to be withdrawn by the same office after it had issued a writ of execution. For all intents and purposes, the Deed of Assignment in tandem with the Letter Agreement and Cash Voucher is as good as cash. Third, the Court finds that the execution of the Deed of Assignment, the Letter Agreement and the Cash Voucher were made in good faith, and constituted clear manifestation of petitioner's willingness to pay the judgment amount.

The Deed of Assignment must be distinguished from the type of bank certification submitted by appellants in *Cordova v. Keysa's Boutique*,[41] wherein this Court found that such bank certification did not come close to the cash or surety bond required by law. The bank certification in *Cordova* merely stated that the employer maintains a depository account with a balance of ₱23,008.19, and that the certification was issued upon the depositor's request for whatever legal purposes it may serve. There was no indication that the said deposit was made specifically for the pending appeal, as in the instant case. Thus, the Court ruled that the bank certification had not in any way ensured that the award would be paid should the appeal fail. Neither was the appellee in the case prevented from making withdrawals from the savings account. Finally, the amount deposited was measly compared to the total monetary award in the judgment.[42]

V.

Another question of technicality was posed against the instant petition in the hope that it would not be given due course.

[41] *Id.*

[42] *Id.* In this case, the bank certification merely stated that the spouses/ employer have/has a depository account containing a certain amount, and that the certification was issued upon the clients' request for whatever legal purposes it may serve them. There was no indication that the said deposit was made specifically for the pending appeal, as in the instant case.

Respondent asserts that petitioner pursued the wrong mode of appeal and thus the instant petition must be dismissed. Once more, the Court is not convinced.

A petition for *certiorari* is the proper remedy when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, nor any plain speedy, and adequate remedy at law. There is "grave abuse of discretion" when respondent acts in a capricious or whimsical manner in the exercise of its judgment as to be equivalent to lack of jurisdiction.[43]

Respondent may have a point in asserting that in this case a Rule 65 petition is a wrong mode of appeal, as indeed the writ of *certiorari* is an extraordinary remedy, and *certiorari* jurisdiction is not to be equated with appellate jurisdiction. Nevertheless, it is settled, as a general proposition, that the availability of an appeal does not foreclose recourse to the extraordinary remedies, such as *certiorari* and prohibition, where appeal is not adequate or equally beneficial, speedy and sufficient, as where the orders of the trial court were issued in excess of or without jurisdiction, or there is need to promptly relieve the aggrieved party from the injurious effects of the acts of an inferior court or tribunal, *e.g.*, the court has authorized execution of the judgment.[44] This Court has even recognized that a recourse to *certiorari* is proper not only where there is a clear deprivation of petitioner's fundamental right to due process, but so also where other special circumstances warrant immediate and more direct action.[45]

In one case, it was held that the extraordinary writ of *certiorari* will lie if it is satisfactorily established that the tribunal acted

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

[44] *Provident International Resources Corp. v. Court of Appeals*, G.R. No. 119328, 26 July 1996, 259 SCRA 510.

[45] *Conti v. Court of Appeals*, G. R. No. 134441, 19 May 1999, 307 SCRA 486 citing *Detective & Protective Bureau v. Cloribel*, L-23428, 29 November 1968, 26 SCRA 255 and *Matute v. Court of Appeals*, L-26085, 31 January 1969, 26 SCRA 768.

capriciously and whimsically in total disregard of evidence material to or even decisive of the controversy,[46] and if it is shown that the refusal to allow a Rule 65 petition would result in the infliction of an injustice on a party by a judgment that evidently was rendered whimsically and capriciously, ignoring and disregarding uncontroverted facts and familiar legal principles without any valid cause whatsoever.[47]

It must be remembered that a wide breadth of discretion is granted a court of justice in *certiorari* proceedings.[48] The Court has not too infrequently given due course to a petition for *certiorari*, even when the proper remedy would have been an appeal, where valid and compelling considerations would warrant such a recourse.[49] Moreover, the Court allowed a Rule 65 petition, despite the availability of plain, speedy or adequate remedy, in view of the importance of the issues raised therein.[50] The rules were also relaxed by the Court after considering the public interest involved in the case;[51] when public welfare and the advancement of public policy dictates; when the broader interest of justice so requires; when the writs issued are null and void; or when the questioned order amounts to an oppressive exercise of judicial authority.[52]

"The peculiar circumstances of this case warrant, as we held in *Republic v. Court of Appeals*, 107 SCRA 504, 524, the

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[46] *Zarate v. Olegario*, G.R. No. 90655, 7 October 1996,263 SCRA 1.

[47] *Destileria Limtuaco & Co., Inc. v. IAC*, 74369, 29 January 1988, 157 SCRA 706,715.

[48] *Gutib v. Court of Appeals*, G.R. No. 131209, 13 August 1999, 312 SCRA 365.

[49] *Santo Tomas University Hospital v. Surla*, G.R. No. 129718, 17 August 1998, 294 SCRA 382.

[50] *Filoteo v. Sandiganbayan*, G.R. No. 79543, 16 October 1996, 263 SCRA 222.

[51] *Osmeña III, et al. v. Sandiganbayan*, G.R. No. 116941, 31 May 2001.

[52] *Chua, et al. v. Santos,* G.R. No. 132467, 440 SCRA 365, 374-375, citing *MMDA v. JANCON Environmental Corp.*, G.R. No. 147465, 30 January 2002, 375 SCRA 320.

exercise once more of our exclusive prerogative to suspend our own rules or to exempt a particular case from its operation as in x x *Republic of the Philippines v. Court of Appeals, et al.,* (83 SCRA 453, 478-480 [1978]), thus: x x The Rules have been drafted with the primary objective of enhancing fair trials and expediting justice. As a corollary, if their applications and operation tend to subvert and defeat instead of promote and enhance it, their suspension is justified."[53]

The Regional Director fully relied on the self-serving allegations of respondent and misinterpreted the documents presented as evidence by respondent. To make matters worse, DOLE denied petitioner's appeal based solely on petitioner's alleged failure to file a cash or surety bond, without any discussion on the merits of the case. Since the petition for *certiorari* before the Court of Appeals sought the reversal of the two aforesaid orders, the appellate court necessarily had to examine the evidence anew to determine whether the conclusions of the DOLE were supported by the evidence presented. It appears, however, that the Court of Appeals did not even review the assailed orders and focused instead on a general discussion of due process and the jurisdiction of the Regional Director. Had the appellate court truly reviewed the records of the case, it would have seen that there existed valid and sufficient grounds for finding grave abuse of discretion on the part of the DOLE Secretary as well the Regional Director. In ruling and acting as it did, the Court finds that the Court of Appeals may be properly subjected to its *certiorari* jurisdiction. After all, this Court has previously ruled that the extraordinary writ of *certiorari* will lie if it is satisfactorily established that the tribunal had acted capriciously and whimsically in total disregard of evidence material to or even decisive of the controversy.[54]

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[53] *Destileria Limtuaco & Co., Inc. v. IAC*, 74369, 29 January 1988, 157 SCRA 706, 716, citing *Republic v. Court of Appeals*, 54886, 10 September 1981, 107 SCRA 504 and *Republic v. Court of Appeals*, L-31303-04, 31 May 1978, 83 SCRA 459.

[54] *Supra* note 46.

The most important consideration for the allowance of the instant petition is the opportunity for the Court not only to set the demarcation between the NLRC's jurisdiction and the DOLE's prerogative but also the procedure when the case involves the fundamental challenge on the DOLE's prerogative based on lack of employer-employee relationship. As exhaustively discussed here, the DOLE's prerogative hinges on the existence of employer-employee relationship, the issue is which is at the very heart of this case. And the evidence clearly indicates private respondent has never been petitioner's employee. But the DOLE did not address, while the Court of Appeals glossed over, the issue. The peremptory dismissal of the instant petition on a technicality would deprive the Court of the opportunity to resolve the novel controversy.

WHEREFORE, the petition is *GRANTED*. The Decision dated 26 October 2006 and the Resolution dated 26 June 2007 of the Court of Appeals in C.A. G.R. CEB-SP No. 00855 are *REVERSED* and *SET ASIDE*. The Order of the then Acting Secretary of the Department of Labor and Employment dated 27 January 2005 denying petitioner's appeal, and the Orders of the Director, DOLE Regional Office No. VII, dated 24 May 2004 and 27 February 2004, respectively, are *ANNULLED*. The complaint against petitioner is *DISMISSED*.

SO ORDERED.

Velasco, Jr., J., concurs.

Leonardo-de Castro,[**] *J.,* concurs in the result.

Carpio Morales,[*] *J.,* joins the dissent of *J*. Brion. Please see separate dissenting opinion.

Brion, J., dissents.

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[*] Acting Chairperson.

[**] Per Spercial Order No. 619. Justice Teresita J. Leonardo-De Castro is hereby designated as additional member of the Second Division in lieu of |Justice Leonardo A. Quisumbing, who is on official leave.

SEPARATE DISSENTING OPINION

CARPIO MORALES, *J.*:

I join the dissent of Justice Arturo Brion in pointing out the obvious: the petition is wrecked beyond salvage.

The course taken by the *ponencia* leads labor cases to the iceberg of protracted proceedings and unsecured execution. Unless the *ponencia* can justify the consequential ripples resulting from the decision that could place the whole vessel of labor rights in distress, I am constrained to drop an anchor to keep it at bay. I could not thus join the majority in charting such troubled sea.

I join Justice Brion in his observation that the *ponencia* bends over beyond the law's breaking point in order to accommodate the rectification of a perceived error. Methinks the *ponencia* was too willing to give up the stability of settled doctrines like the proper mode of appeal, due process in administrative proceedings, requirement of an appeal bond, all for a porridge of "genuine doubt" in one factual finding which in this case was resolved by all public respondents[1] in favor of labor. There is, therefore, utter lack of justification for this Court to excuse petitioner from hurdling the basic preliminary requirements of the remedies.

Let me add a few points for the further illumination of the principal issue on the exercise of the visitorial and enforcement power of the Labor Secretary under Article 128 (b) of the Labor Code, as amended by Republic Act No. 7730 which legislated the expanded power of the Labor Secretary.

In complaints such as that filed by private respondent for illegal deduction, non-payment of service incentive leave, 13th month pay, premium pay for holiday and rest day, illegal diminution of benefits, delayed payment of wages, and non-coverage of SSS, Pag-ibig and Philhealth, it becomes commonly convenient for the employer to immediately raise the defense of the absence of an employer-employee relationship.

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[1] The present petition is one for *certiorari*.

Although the *ponencia* concedes that the Labor Secretary is empowered to preliminarily determine the presence or absence of an employer-employee relationship, it is quick to add that such preliminary determination may be clipped by a mere *prima facie* showing of the absence of an employer-employee relationship. This position, however, effectively dilutes the expanded power emanating from the spirit of the amendatory law, for it limits the exercise of the visitorial and enforcement power to cases where the relationship of employer-employee is not contested. In such scenario, the employer could, by a quantum of proof *lower* than substantial evidence, oust the Labor Secretary of jurisdiction and have the case thrown to the more tedious and docket-clogged process of arbitration.

Justice Brion correctly opines that the Labor Secretary or his authorized representative is competent to *fully* determine whether an employer-employee relationship exists, which, in turn, must "always be open to inquiry in the superior court," as proffered this time by the *ponente*, subject only, of course, to the usual conditions for the availment of the remedy.

Justice Brion offers an incisive and comparative analysis between the original version of Article 128 (b) of the Labor Code and the amendment introduced by Republic Act No. 7730. The changes in the phraseology and sequencing of the excepting clause are definitely not inconsequential. Of course, the removal of the ₱5,000 ceiling in the exercise of the visitorial power is already settled by jurisprudence.

Notatu dignum is that the clause "issues which cannot be resolved without considering the evidentiary matters that are not verifiable in the normal course of inspection" was already replaced by "issues supported by documentary proofs which were not considered in the course of inspection," not to mention the change in antecedent such that the clause previously referred to the enumerated powers but now only refers to the issuance of the writ of execution. Despite the change in the statute, current jurisprudence still relies on the rules and regulations implementing the old Article 128 (b) and still echoes the outmoded cases applying the old Article 128 (b). It is highly opportune for the

Court to modify this antiquated doctrine and principle in view of the amendment of Article 128 (b) of the Labor Code.

I, therefore, vote to dismiss the petition.

DISSENTING OPINION

BRION, *J*.:

I dissent and vote for the dismissal of the petition.

This case originated from a Department of Labor and Employment (*DOLE)* inspection conducted pursuant to Article 128 of the Labor Code.[1] The DOLE Regional Director (*Director*), the DOLE Secretary (*Secretary*), and the Court of Appeals (*CA*) consistently ruled that an employer-employee relationship existed between petitioner Bombo Radyo and the respondent, and that the petitioner is liable for the payment of the respondent's monetary claims. The *ponencia*, ***repetitively bending over backwards***, reverses all these rulings and holds that the result should be otherwise.

I. Grounds for Dissent.

I vote to dismiss the petition for the following reasons:

1. The petitioner chose the wrong recourse in seeking the review by this Court of the CA's decision on the petitioner's Rule 65 petition for *certiorari*; the petitioner came to us *via* another petition for *certiorari* under Rule 65 when the appropriate mode is a petition for review on *certiorari* under Rule 45. **The *ponencia* bends over backwards to accommodate Bombo Radyo's *legally erroneous petition* to open the way for its review of the administrative (DOLE) decisions and the support the CA gave these decisions.**

2. The Director originally ordered the payment of the respondent's monetary claim in his Order of February 27, 2004.

a. The petitioner was given all the opportunity to present evidence to oppose the Labor Inspector's findings; hence,

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[1] The Visitorial and Enforcement Powers of the DOLE Secretary.

it cannot plead lack of due process for lack of opportunity to be heard.

b. The Director duly considered the evidence on the issue of employer-employee relationship in both his initial decision[2] and in his resolution of May 24, 2004.[3] **The *ponencia*, nitpicking the Director's decision for not stating how each piece of evidence was ruled upon, charges that the decision disregarded the petitioner's evidence. This stance ignores the legal reality that the Constitution only requires the factual and legal bases for the decision to be stated,[4] and that the decision maker is not under any obligation to state in its decision every fact and bit of evidence the parties submitted.[5]**

c. The nature of the proceedings, level of evidence required, and level of expertise between Labor Arbiters and the Regional Director are not different and one tribunal holds no primacy over the other in the determination of the employment relationship issue. **The terms and structure of Article 128(b), as amended by R.A. 7730, are clear and need not give rise to the *ponencia's* fear of confusion in determining the employment relationship issue.**

3. The Secretary has expanded visitorial and enforcement powers under Article 128 of the Labor Code, as amended by R.A. 7730;[6] he or his representative has full authority under the amended Article 128 to determine whether employer-employee relationship exists.

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[2] Order dated February 27, 2004, p. 3, last paragraph.

[3] DOLE records, p. 152.

[4] *Chan v. Court of Appeals*, G.R. No. 159922, April 28, 2005, 457 SCRA 502.

[5] *People v. Maguikay*, G.R. Nos. 103226-28, October 14, 1994, 237 SCRA 587.

[6] Approved on June 2, 1994; published on June 20, 1994.

4. Article 128 of the Labor Code clearly provides that an appeal is perfected ***"only"*** by the posting of cash or surety bond; the Deed of Assignment the petitioner submitted to the DOLE is neither a cash nor a surety bond, and the Secretary correctly dismissed the petitioner's appeal because it was not duly perfected. **The *ponencia* bends over beyond the law's breaking point to admit the petitioner's appeal despite its infirmity under the clear terms and intent of the law.**

a. The Secretary fully explained the reasons for the non-perfection of appeal in an original Order dated January 29, 2005 and in her subsequent Order dated May 23, 2005 on the petitioner's motion for reconsideration. **The *ponencia* sees not only legal error but grave abuse of discretion although the Secretary followed the letter and intent of the law, as plainly stated in the law itself and as interpreted by this Court in its rulings.**

b. Petitioners have only themselves to blame for their lost appeal to the Labor Secretary for their failure to post the required bond for the perfection of their appeal.

c. The Director's Order lapsed to finality when the petitioner failed to perfect its appeal to the DOLE Secretary. **The *ponencia* digs deep into this Court's review power, effectively bending established rules and jurisprudence, to reach and nullify the effects of this first level decision.**

5. The Court of Appeals correctly dismissed the petitioner's petition for *certiorari* for lack of merit.

a. The CA cannot be wrong when it refused to recognize that no grave abuse of discretion attended the Secretary's dismissal of an appeal that was never perfected based on the letter and intent of the law;

b. The CA cannot be wrong in its conclusion that no violation of due process attended the Director's ruling, as stated above;

c. The CA could not have ruled on other issues after it recognized that no appeal was perfected and no abuse of discretion attended the assailed decisions; likewise, it could not have recognized any legal error on the part of the Secretary for not discussing other issues after recognizing that the petitioner did not perfect its appeal.

6. The petitioner's evidence, *at the most*, established a doubt on the employer-employee relationship issue, which doubt should be resolved in favor of the respondent-worker.[7]

II. Background

DOLE Regional Office No. VII conducted an inspection of the premises of the petitioner resulting in an inspection report/recommendation ordering Bombo Radyo to rectify/restitute, within five (5) days from notice, the violation discovered during the inspection. Radyo Bombo failed to undertake any rectification so that a summary investigation ensued where the parties were required to submit their respective position papers. Radyo Bombo reiterated its position, made during inspection, that the respondent was not an employee; he was a drama talent hired on a per drama "participation basis." Both parties presented evidence in support of their respective positions.

DOLE Director Rodolfo M. Sabulao, in an order dated February 27, 2004, required Bombo Radyo to pay the respondent ₱203,726.30 in satisfaction of his money claims. To directly cite the Director's ruling to avoid the *ponencia's* selectively chosen presentation, we quote:

> A careful perusal of the records of this case showed that complainant Jandeleon Juezan was hired by the respondent as a radio talent/spinner and work six (6) days a week from 8:00 A.M. to 5:00 P.M., Monday thru Saturday. It was the respondent who paid complainant's salary every *quincena* and was required by the former to sign payrolls. Notwithstanding the employment contract stipulating herein complainant as a program employee, his actual duty pertains to that

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[7] *Prangan v. NLRC,* G.R. No. 126529, April 15, 1998, 289 SCRA 142; see *Nicario v. NLRC, Mancao Supermarket, et al.*, G.R. No. 125340, September 17, 1998.

of a station employee. Moreover, respondent failed to register said employment contract with the Broadcast Media Counsel as required. He is required to observe normal working hours that deductions are made for tardiness. Therefore, it is crystal clear that complainant is a station employee rather than a program employee hence entitled to all benefits appurtenant thereto.

In doing so, the Director upheld the existence of employer-employee relationship between the broadcasting station and the respondent. Bombo Radyo moved for reconsideration, attaching additional evidence to his motion, but the Director denied the motion.

Bombo Radyo appealed to the DOLE Secretary, mainly contending that the respondent was not its employee, pursuant to Rule X-A of the Implementing Rules of the Labor Code[8] in relation with the Rules on Disposition of Labor Standards Cases in the Regional Office.[9] **The appeal was dismissed in an order dated January 27, 2005 by the Acting DOLE Secretary due to Bombo Radyo's failure to post a cash or surety bond as required by Article 128 of the Labor Code.** The petitioner's next recourse was to go to the Court of Appeals (CA).

The petitioner **filed with the CA a petition for *certiorari* under Rule 65** of the Rules of Court alleging grave abuse of discretion. The petition cited the following grounds, which I quote for purposes of certainty –

1. The public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied due course to the petition;

2. The public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when it assumed jurisdiction over the claim of the private respondent even as under R.A. 6715 jurisdiction lies with the NLRC, hence, clearly, the Honorable Secretary of Labor and Employment, with due respect, committed errors of law;

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[8] Incorporated in the Implementing Rules under Department Order No. 7-A, Series of 1995.

[9] Rule 3, Section 1 (a) and (b).

3. The public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed the appeal by the respondent without delving on the issues raised by the petitioner;

4. There is no appeal or any claim, speedy and adequate remedy in the ordinary course of law available to the petitioner.

The CA duly considered the points raised, but ultimately dismissed the petition for lack of merit. Petitioner now comes to the Court, ***again under Rule 65*** **of the Rules of Court** alleging the following grounds:

1. The Honorable Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction when it rules that the Secretary of Labor and Employment has jurisdiction over the claim of the private respondent even as under R.A. 6715 jurisdiction over it lies with the NLRC, hence, clearly, the Honorable Court Appeals committed errors of law.

2. The Honorable Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction when it upheld the Order of the Secretary of Labor and Employment despite the patent lack of due process.

3. The Honorable Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed the appeal without delving on the issues raised by the petitioner. Its decision dated October 26, 2006 did not even rule on the issue raised by the petition that there is no employer-employee relationship between it and respondent Juezan.

4. There is no appeal or any plain and adequate remedy in the ordinary course of law available to the petition.

III. Discussion

These discussions address the above grounds for dissent, not necessarily in the order posed above in light of the inter-relationships of these grounds with one another.

Propriety of a Rule 65 Petition for *Certiorari*

The *ponencia* justifies the grant of extraordinary treatment to the petitioner's Rule 65 petition for *certiorari*: (1) by general statements, supported by cited jurisprudence, on when a Rule 65 petition for *certiorari* may be admitted in lieu of the Rule 45 petition for review on *certiorari* that is the required mode of review from a ruling of the Court of Appeals; and (2) by urging a relaxation of the rules in view of the attendant legal and factual circumstances of the present case.[10] It thereafter urges the suspension of the applicable rule on mode of review, as follows:

> The peculiar circumstances of this case warrant, as we held in *Republic v. Court of Appeals*, 107 SCRA 504, 524, the exercise once more of our exclusive prerogative to suspend our own rules or to exempt a particular case from its operation as in x x x *Republic of the Philippines v. Court of Appeals, et al*., (83 SCRA 453, 478-480 [1978]), thus: x x x the rules have been drafted with the primary objective of enhancing fair trials and expediting justice. As corollary, if their application and operation tend to subvert and defeat instead of promote and enhance it, their suspension is justified.

With these general statements, as premises, the *ponencia* generally adverts to the Regional Director's alleged irregular handling of the case and misinterpretation of the respondent's documents; the DOLE Secretary's failure to discuss the merits of the case after she found the appeal to have failed for failure to post the required bond; and the alleged failure of the CA to examine the records and its focus on the discussion of due process and the jurisdiction of the Regional Director.

Under these terms, the *ponencia* hopes to open the door for the admission of the petition, thereby giving its imprimatur to the petitioner's claim that it resorted to a Rule 65 petition because it had no appeal, or any plain and adequate remedy in the ordinary course of law.

I submit that the petitioner's wrong mode of appeal in coming to this Court cannot be glossed over and simply hidden behind

[10] See: *ponencia,* pp. 6-7.

general statements made by this Court in the context of the unique and appropriate factual settings of the cited cases, generally applied to the *ponencia's* distorted view of the circumstances of this case.

The CA decision under review simply and plainly holds that the Secretary committed no grave abuse of discretion when she dismissed an appeal that was supported by neither a cash nor a surety bond that the law requires, and that the DOLE Director did not violate the petitioner's right to due after it was given full and ample hearing opportunities and its submitted evidence were considered and found wanting. In fact, on its face, the petition for *certiorari before the CA* does not deserve any merit as it simply hid behind the magic formula – *grave abuse of discretion amounting to lack or excess of jurisdiction* – to justify a review of a decision that has lapsed to finality for the petitioner's failure to perfect its appeal. Fully examined, what the petition cites are really inconsequential grounds dismissible on their face or perceived errors of law (as in fact the petition so states in its cited 2nd ground).[11]

A comparison of the grounds cited in the present petition and the petition before the CA shows that in coming to this Court, the petitioner simply repeated the same issues it submitted to the Court of Appeals. The only difference is that it now cites the CA as the tribunal committing the grave abuse of discretion amounting to lack or excess of jurisdiction. In coming to this Court, on the same grounds cited before and ruled upon by the CA, the petitioner is merely asking this Court to review the CA ruling on the "grave abuse of discretion" issues the petitioner raised before the CA. Such a review is an appeal that, under our Rules, should fall under Rule 45 – a petition for review on *certiorari*. It is not accurate therefore for the petitioner to say

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[11] Its 1st ground is a generic allegation of grave abuse of discretion for denial of due course to the petition; the 2nd ground, using the "grave abuse" magic formula, at the same time states that the Secretary committed an error of law; the 3rd ground alleges grave abuse for not "delving on the issues raised by the petitioner;" the 4th in the list is not a cited ground at all but a statement that there is no adequate remedy in the course of law other than a petition for *certiorari*.

that there is no remedy available to it in the ordinary course of law. Neither is it correct to characterize this situation as an extraordinary one that merits the suspension of the Rules. The appropriate remedy is a Rule 45 petition for review on *certiorari* which is envisioned to correct errors of law,[12] precisely the errors cited by the petitioner as having been committed by the CA.

Much harder to accept is the *ponencia's* cavalier attitude towards the petitioner's statement that *there is no appeal, or any plain and adequate remedy in the ordinary course of law available to the petitioner,* when a Rule 45 appeal is readily available to it and would have been the proper course since it cited errors of law against the CA. By accepting the present Rule 65 petition in place of a Rule 45 petition for review on *certiorari* without any sufficiently demonstrated meritorious ground for exceptional treatment, we are effectively negating our ruling in the recent *Cecilia B. Estinozo v. Court of Appeals, et al.*[13] that a petition for review on *certiorari* under Rule 45 and a petition for *certiorari* under Rule 65 are mutually exclusive.

The legal and factual circumstances the *ponencia* cites as justificatory reasons are in fact the issues discussed in this case; for this reason, there need not be discussed here for purposes of an orderly presentation, and will be fully discussed in their proper places below – suffice it to say for now that the proceedings below were conducted properly as the CA found. **If there is anything extraordinary about this case at this point, it is the lengths the *ponencia* has gone to bend over backwards and justify the grant of the petition. It thus glosses over the wrong mode of appeal to this Court and the petitioner's failure to perfect its appeal to the DOLE Secretary, and even minutely analyzes the facts before the Regional Director to show that the Regional Director's ruling is legally incorrect. Finally, it grossly misinterprets Section 128(b) of the Labor Code, even citing an implementing rule that had been overtaken by the amendment of the cited section of the Code, and, for the purpose, even cited the common law.**

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[12] RULES OF COURT, Section 1, Rule 45.

[13] *Estino v. CA,* G.R. No. 150276, February 12, 2008, 544 SCRA 422.

I cite all these to stress that we should examine the *ponencia* carefully, particularly its justifications for the grant of extraordinary treatment to the petitioner, before joining the *ponencia.*

The Secretary's Visitorial Powers

A major issue for the *ponencia* is the Director's determination that employer-employee relationship existed between the petitioner and the respondent at the time of the inspection. Citing mainly Section 3, Rule 11 of the Rules on the Disposition of Labor Standards Cases,[14] the *ponencia* rationalizes:

> The clause "in cases where the relationship of employer-employee still exists" signifies that the employer-employee relationship must have existed even before the emergence of the controversy. **Necessarily, the DOLE's power does not apply in two instances, namely: (a) where the employer-employee relationship has ceased; and (b) where no such relationship has ever existed.**
>
> The first situation is categorically covered by Sec. 3, Rule 11 of the *Rules on the Disposition of Labor Standards Cases* issued by the DOLE Secretary. It reads:
>
> > Sec. 3. *Complaints where no employer-employee relationship actually exists.* Where employer-employee relationship no longer exists by reason of the fact that it has already been severed, claims for payment of monetary benefits fall within the exclusive and original jurisdiction of the labor arbiters. Accordingly, if on the face of the complaint, it can be ascertained that employer-employee relationship no longer exists, the case, whether accompanied by an allegation of illegal dismissal, shall immediately be endorsed by the Regional Director to the appropriate branch of the National Labor Relations Commission (NLRC).
>
> xxx xxx xxx
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> In the first situation, the claim has to be referred to the NLRC because it is the NLRC which has jurisdiction in view of the termination of the employer-employee relationship. The same procedure has to be followed in the second situation since it is the

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[14] Dated September 16, 1987, issued by then DOLE Secretary Franklin M. Drilon.

NLRC that has jurisdiction in view of the absence of employer-employee relationship between the evidentiary parties from the start.

Clearly the law accords a prerogative to the NLRC over the claim when the employer-employee relationship has terminated or such relationship has not arisen at all. The reason is obvious. In the second situation especially, the existence of an employer-employee relationship is a matter which is not easily determinable from an ordinary inspection, necessarily so, because the elements of such a relationship are not verifiable from a mere ocular examination. The intricacies and implications of an employer-employee relationship demand that the level of scrutiny should be far above the cursory and the mechanical. While documents, particularly documents found in the employer's office are the primary source materials, what may prove decisive are factors related to the history of the employer's business operations, its current state as well as accepted contemporary practices in the industry. More often than not, the question of employer-employee relationship becomes a battle of evidence, the determination of which should be comprehensive and intensive and therefore best left to the specialized quasi-judicial body that is the NLRC.

It can be assumed that the DOLE in the exercise of its visitorial and enforcement power somehow has to make a determination of the existence of an employer-employee relationship. Such prerogatival determination, however, cannot be coextensive with the visitorial and enforcement power itself. Indeed, such determination of the existence of employer-employee relationship is still primarily lodged with the NLRC. This is the meaning of the clause "in cases where the relationship of employer-employee still exists" in Art. 128 (b).

This approach is legally incorrect due mainly to the *ponencia's* lack of appreciation of the extent of the DOLE Secretary's visitorial and enforcement powers under the Labor Code, as amended, and a mis-reading of the current law and the applicable implementing rules. The present law gives the Secretary or his representative the authority to fully determine whether employer-employee relationship exists; only upon a showing that it does not, is the DOLE divested of jurisdiction over the case.

In the first place, the *ponencia* is fixated on the application of the Rules on the Disposition of Labor Standards Cases in the Regional Offices which cannot now be cited and used in their totality in light of the amendment of the Article 128(b) by Republic Act No. 7730.[15] **Prior to the amendment**, Section 128(b) stated that –

Art. 128(b). The provisions of Article 217 of this Code to the contrary notwithstanding and in cases where the relationship of employer-employee still exist, the Minister of Labor and Employment or his duly authorized representatives shall have the power to order and administer, after due notice and hearing, compliance with the labor standards provisions of this Code and other labor legislation based on the findings of labor relation officers or industrial safety engineers made in the course of inspection, and to issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor regulation officer and raises issues which cannot be resolved without considering evidentiary matters that are not verifiable in the normal course of inspection.

As amended, Section 128(b) now states:

Art. 128. Visitorial and Enforcement Power. —

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

An order issued by the duly authorized representative of the Secretary of Labor and Employment under this article may be appealed

[15] Approved on June 2, 1994; published on June 20, 1994.

to the latter. In case said order involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Secretary of Labor and Employment in the amount equivalent to the monetary award in the order appealed from.

This amendment is critical in viewing the Secretary's visitorial and enforcement powers as they introduced new features that expanded these powers, thereby affecting the cited Rules as well as the process of referring an inspection case to the NLRC.

A first distinction between the original and the amended Article 128(b) is the reference to Article 217 of the Labor Code in the "notwithstanding" clause. As amended, Article 129 is also referred to. Read in relation with Article 217, the effect is the removal of the ₱5,000.00 ceiling in the Secretary's visitorial powers – a conclusion that the *ponencia* fully supports.

Another distinction relates to the present clause *"except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection"* (the *"excepting clause"*). In the original version of Article 128(b), this clause states – *"except in cases where the employer contests the findings of the labor regulation officer and raises issues which cannot be resolved without considering evidentiary matters that are not verifiable in the normal course of inspection."* Thus, previously, the law referred to matters that the labor regulation officer could not have ruled upon because they are not verifiable in the normal course of inspection. Under the present formulation, reference is only to "documentary proofs which were not considered in the course of inspection" used in a different context explained below. Textually, the present formulation refers only to documentary evidence that might or might not have been available during inspection but were not considered.

The difference can be explained by the new and unique formulation of the whole Article 128(b). In the original provision, the visitorial and enforcement power of the Minister of Labor and Employment generally prevailed over the jurisdiction over arbitration cases granted to Labor Arbiters and the Commission

under Article 217. Excepted from this rule is what the *original and unamended* excepting clause, quoted above, provides – *i.e.*, when inspection would not suffice because of evidentiary matters that have to be threshed out at an arbitration hearing.

The ***new and amended*** **Article 128(b)** did not retain the formulation of the original **as it broke up the original version into two sentences.** In the **first sentence**, it recognized the primacy of the visitorial and enforcement powers of the Secretary of Labor over the terms of Articles 129 and 217. In other words, the Secretary or his delegate can inspect without being fettered by the limitations under these provisions. The **second sentence** *is devoted wholly to the issuance of writs of execution* to enforce the issued orders. It exists as an independent statement from what the first sentence states and is limited only by the exception – when the employer cites a documentary proof that was not considered during the inspection.

Thus, under the amended Article 128(b), as written, the power of the Secretary of Labor or his representative to enforce the labor standards provisions of the Labor Code and other labor legislations has been vastly expanded, being unlimited by Articles 129 and 217 of the Labor Code, provided only that employer-employee relationship still exists. The existence of the relationship, however, is still a matter for the Secretary or the appropriate regional office to determine, unfettered by Articles 129 and 217 of the Labor Code. The mere allegation – *whether prima facie or not* – that employer-employee relationship exists, does not, by itself, divests the Regional Director of jurisdiction to rule on the case;[16] the Director can at least fully determine whether or not employer-employee relationship exists.

The present "excepting clause" (**which refers only to the issuance of a writ of execution**) suggests that after the labor employment officer has issued its inspection ruling, the Secretary may issue a writ to execute the ruling, unless the employer

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[16] *Bay Haven, Inc., et al. v. Abuan, et al.,* G.R. No. 160859, July 30, 2008.

"contests the findings of the labor employment officer and raises issues supported by documentary evidence which were not considered in the course of inspection." *Stated otherwise, there is now a window in the law for immediate execution pending appeal when the employer's objection does not relate to documentary evidence that has not been raised in the course of inspection.*

What happens to the **inspection ruling itself** is governed by the next paragraph of Article 128(b) which expressly provides for an appeal to the Secretary of Labor, with the requirement for the filing of a cash or surety bond to perfect the appeal. This requirement, stated without distinctions or qualifications, should apply to all issues, whether on the employer-employee issue or on the inspection findings.

A necessary question that arises is the status of the current rule implementing Article 128(b) as amended, which is an exact copy of the law except for the addition of a new sentence — ". . . In such cases the Regional Director shall endorse the dispute to the appropriate regional branch of the National Labor Relations Commission for proper action." This rule *antedates the R.A. 7730 amendment* but is not necessarily negated by the Secretary's expanded powers because of the limitation that the Secretary or his representation has jurisdiction only where an employment relationship exists. *Properly understood, it should now be read as a confirmation of the Secretary's expanded power that includes the full authority to rule on whether employer-employee relationship exists. It is only upon a ruling that no such relationship exists that the Secretary and the Director are divested of jurisdiction to rule on the monetary claim. The Secretary or the Director must then endorse the monetary claim to the NLRC instead of dismissing it for lack of jurisdiction. However, whatever action the Director takes is a matter that can be appealed to the Secretary of Labor pursuant to the second paragraph of Article 128(b).* In the present case, the petitioner did appeal as allowed by Article 128(b), but unfortunately blew its chance to secure a review on appeal before the Secretary of Labor as it failed to post the cash or surety bond that the present law expressly requires.

This reading of the law totally invalidates the *ponencia's* position in the present case that the Regional Director and the Secretary of Labor have no jurisdiction to issue an enforcement order and the case should have been turned over to the NLRC for compulsory arbitration after the petitioner claimed or has shown *prima facie* that no employer-employee relationship existed.

The *ponencia* makes a final desperate effort to circumvent the plain import of Section 128(b) and its history by **appealing to and urging the use of the common law in reading the DOLE Secretary's visitorial and enforcement powers under the cited Section**. The *ponencia* suggests a "functional or pragmatic analysis" to ascertain the jurisdictional boundaries of administrative agencies. Why the common law approach is to be used in the Philippines' statutory regime is puzzling. Why there is a need for such an analysis to understand the terms of Section 128(b) and the Labor Code, is more so. The suggested common law approach is simply irrelevant and deserves no further discussion.

Petitioner Failed to Validly Appeal to the Secretary

The parties do not dispute that the remedy from the Regional Director's ruling is an appeal to the Secretary, as the petitioner did indeed appeal to the Office of the Secretary of Labor. The *ponencia,* however, rules that the DOLE erred in declaring that the appeal was not perfected; the *ponencia* holds that the Deed of Assignment of Bank Deposits that the petitioner submitted in lieu of a cash or surety bond substantially satisfied the requirements of Section 128 (b) of the Labor Code. This provision states:

xxx xxx xxx

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

by the Secretary of Labor and Employment in the amount equivalent to the monetary award in the order appealed from.

The Deed of Assignment[17] was accompanied by a Letter Agreement between Queen City Development Bank and the petitioner covering Platinum Savings Deposit (PSD) No. 010-8-00038-4,[18] and a Cash Voucher[19] issued by the petitioner indicating the amount of ₱203,726.30 deposited at the bank. The Deed of Assignment reads:

DEED OF ASSIGNMENT OF BANK DEPOSIT WITH SPECIAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That, I, **GREMAN B. SOLANTE** in my capacity as Station Manager of DYMF Cebu City, **PEOPLE'S BROADCASTING SERVICES, INC.**, a corporation duly authorized and existing under and by virtue of the laws of the Philippines, for and in consideration of the sum of **PESOS: TWO HUNDRED THREE THOUSAND SEVEN HUNDRED TWENTY SIX PESOS & 30/100 (Php203,726.30),** Phil. Currency, **CASH BOND GUARANTEE** for the monetary award in favor to the Plaintiff in the Labor Case docketed as **LSED Case No. RO700-2003-09-CI-091**, now pending appeal.

That Respondent-Appellant do hereby undertake to guarantee available and sufficient funds covered by **Platinum Savings Deposit (PSD) No. 010-8-00038-4** of **PEOPLE'S BROADCASTING SERVICES, INC**., in the amount of **PESOS: TWO HUNDRED THREE THOUSAND SEVEN HUNDRED TWENTY PESOS & 30/100 ONLY (Php203,726.30)** payable to **Plaintiff-Appellee/ Department of Labor and Employment Regional Office VII** at **Queen City Development Bank**, Cebu Branch, Sanciangko St., Cebu City.

It is understood that the bank has the full control of **Platinum Savings Deposit (PSD) No. 010-8-00038-4** from and after this date and that said sum cannot be withdrawn by the **Plaintiff-Appellee/ Department of Labor and Employment Regional Office VII** until

[17] DOLE Records, p. 207.

[18] *Id.*, p. 209.

[19] *Id.*, p. 208.

such time that a **Writ of Execution** shall be ordered by the Appellate Office.

FURTHER, this **Deed of Assignment** is limited to the principal amount of **PESOS: TWO HUNDRED THREE THOUSAND SEVEN HUNDRED TWENTY SIX PESOS & 30/100** from the said Deposit will be for the account holder.

IN WITNESS WHEREOF, I have hereto affixed my signature this 18th day of June, 2004, in the City of Cebu, Philippines.

PEOPLE'S BROADCASTING SERVICES, INC.
By:

(Sgd.)
GREMAN B. SOLANTE
Station Manager

The *ponencia's* position is legally incorrect as it conveniently fails to consider both the wording of the law and the spirit that led to this wording. The law expressly states that an appeal is perfected ***"only"*** upon the posting of a cash or surety bond;[20] no other document or instrument is allowed. What aggravates the *ponencia's* disregard of the express wording of the law is the petitioner's knowledge, on record, that a cash or surety bond is required. This knowledge is clearly demonstrated by the petitioner's motion for extension of time to file appeal, filed on June 17, 2004, on the ground of fortuitous event.[21] The fortuitous event referred to was the South Sea Surety and Insurance Co.'s alleged lack of the required legal forms for the bond; to support the motion, the surety company committed to issue the bond the following day, June 18, 2004. Further, in a submission entitled "Appeal" filed with the DOLE Regional Office on June 18, 2004, the petitioner made the following statement:

Accompanying this APPEAL are –

1. APPEAL MEMORANDUM;

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[20] Art. 128 (b), last par., Labor Code.

[21] DOLE Records, pp. 153 and 154.

2. Cash bond pursuant to the specifications in RESOLUTION;

3. Proof of payment of required filing fee.

No cash bond was however submitted, showing that the petitioner was less than candid when it made its claim. It was under these circumstances – *i.e.,* the petitioner's knowledge that a cash or surety bond is required; the absence of a cash bond; and misrepresentation that a cash bond was attached when there was none – that the DOLE Secretary dismissed the appeal. The CA correctly supported the Secretary's action and ruled that the Secretary did not act with grave abuse of discretion in dismissing the appeal.

Separately from these factual incidents are reasons proceeding from established jurisprudence as the indispensability of a bond to perfect an appeal is not a new issue for the Court. In *Borja Estate, et al. v. Spouses R. Ballad and R. Ballad,*[22] we ruled that –

> The intention of the lawmakers to make the bond an indispensable requisite for the perfection of an appeal by the employer is underscored by the provision that an appeal may be perfected "only upon the posting of a cash bond". The word "only" makes it perfectly clear that the LAWMAKERS intended the posting of a cash or surety bond by the employer to be the exclusive means by which an employer's appeal may be considered complete.
>
> xxx xxx xxx
>
> Evidently, the posting of a cash or surety bond is mandatory. And the perfection of an appeal *in the manner and within the period prescribed by law* is not only mandatory but jurisdictional. [emphasis supplied].

Interestingly, the same adverb – "only" – that this Court construed in *Borja*, is the very same adverb that Article 128(b) of the Labor Code contains. Thus, this Article states in part – *an appeal by the employer may be perfected **only** upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Secretary of Labor and*

[22] G.R. No. 152550, June 8, 2005, 459 SCRA 657.

Employment. All these safeguards would be for naught if the *ponencia's* understanding of the requirements for the perfection of an appeal will prevail. To reiterate, the bond must be in cash or a surety issued by a reputable bonding company, not by any bonding company. The reputation alone of the bonding company will not suffice to satisfy the law; the bonding company must be accredited by the Secretary. "Cash," on the other hand, whether in lay or its legal signification, means a sum of money; cash bail (the sense in which a cash bond is used) is a sum of money posted by a criminal defendant to ensure his presence in court, used in place of a surety bond and real estate.[23]

How the aforequoted Deed of Assignment can satisfy the above legal requirements requires an act of bending that goes beyond the intent of the law. What the Deed extends is a *guarantee* using a sum of money placed with a bank, not with the DOLE. The guarantee is made by a certain Greman B. Solante, described in the Deed as Station Manager signing for and in behalf of the petitioner, a corporation. **There is no indication anywhere, however, that Mr. Solante was authorized by the Board of the corporation to commit the corporate funds as a guarantee.**[24] **This lack of clear authority is replete with legal implications that render the Deed of Assignment less than the cash bond that it purports to be; among others, these implications impose on the DOLE added burdens that a cash bond is designed to avoid.** Under Article 1878 of the Civil Code, a special power of attorney is required to bind a principal as guarantor or surety. Under Section 23 and 35 of the Corporation Code of the Philippines, authority over corporate funds is exercised by the Board of Directors who, in the absence of an appropriate delegation of authority, are the only ones who can act for and in behalf of the corporation. Under Article 1403 of the Civil Code, a contract entered into without any legal authority or legal representation is unenforceable.

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[23] Black's Law Dictionary, 6th Ed. p. 216.

[24] Under Article 1878 of the Civil Code, a special power of attorney is necessary to bind the principal as a guarantor or surety.

To state the obvious, all these are stumbling blocks for the DOLE when enforcement against the Deed of Assignment comes.

It is noteworthy, too, that the guarantee is under the condition that "said sum cannot be withdrawn by the Plaintiff-Appellee/ Department of Labor and Employment Regional Office VII until such time that a Writ of Execution shall be ordered by the Appellate Office." What this limitation means is not at all certain. But on its face, it means that the bond is in favor of the DOLE Regional Office, not to the Office to the DOLE Secretary where the appeal has been filed. Thus, the DOLE Secretary herself has no authority to call on the guarantee. Even Regional Office VII cannot, until a writ of execution is ordered by the Appellate Office. What this Appellate Office is, is again not certain and can mean the highest appellate levels all the way up to this Court. Another uncertainty is the bank's commitment to the guarantee as the Deed only contains a "CONFORME" signed by the Officer-in-Charge of the Queen City Development Bank, not the exact terms of the bank's own commitment to the DOLE in whose favor any bond should be made. What is certain about the Deed is provided in its penultimate paragraph" "any interest to be earned from said Deposit will be for the account holder."

The Platinum Savings Deposit mentioned in the Deed is itself very interesting as it carries the heading "Deposit Insured by PDIC Maximum Amount of Php 100,000.00. Yet, the amount of deposit is stated to be Php 203,726.30, with interest rate of 4.25%, and maturity date of July 19, 2004 (31 days). Thus, if anything happened to the depositary bank, in the way that banks under the Legacy group of banks currently has problems, the DOLE Regional Office VII would be holding an empty guarantee and would still have to file a claim with the PDIC for the maximum amount covered.

To be sure, these are not the terms the framers of the law intended when they required that perfection of appeal requires the filing "only" of a cash or surety bond. **Effectively, what the Deed of Assignment and its allied documents have committed to support the perfection of the petitioner's**

appeal, with the intent to pass it off as a cash bond, is an amount whose control is not clearly with the DOLE and which may require a lot of clarifications and prior actions before it can be used to pay the monetary claim secured by the bond. ***This is what the ponencia wishes to recognize as a substitute for the cash bond requirement of the law.*** To say the least, a ruling from this Court of this tenor would severely and adversely affect the effectiveness and efficiency of the DOLE's handling of appeals before it; it would be a precedent that effectively negates the certainties the law wishes to foster, and would be a welcome development to those who would wish to submit guarantees other than the cash or surety bonds the law demands.

I submit that the determination of what satisfies the bonding requirement in labor appeals is a matter for the Secretary of Labor and Employment to determine in the first instance, and should be free from judicial interference, provided that the Secretary does not substantially depart from the letter and intent of the law. Once the Secretary – the entity with primary jurisdiction over labor appeals – has ruled that a guarantee other than the strict cash and surety bonds that the law requires is not sufficient, then this Court should be bound by the determination in the absence of any attendant grave abuse of discretion on the part of the Secretary. Otherwise stated, this Court cannot and should not second guess or in hindsight control an administrative tribunal in the exercise of its powers, even "in the interest of justice," where there is no attendant grave abuse of discretion amounting to lack or excess of jurisdiction. Only in this manner can this Court accord due respect to the constitutional separation of powers that it is duty-bound to enforce.

Failure of the CA to review the evidence

In light of the above discussions, the CA could not have been wrong in concluding that no grave abuse of discretion attended the CA's conclusion that the petitioner indeed failed to perfect its appeal before the Secretary. Over and above this objection, however, the *ponencia*, faults the CA for not examining

the evidence to determine whether the conclusions of the DOLE in the assailed orders were supported by the evidence presented. It finds that the CA focused instead on a general discussion of due process and the jurisdiction of the Regional Director.

Let it be clarified that the Secretary did not need to go into a full discussion of the merits of the appeal because no appeal was ever perfected. The CA understandably focused on this aspect of the case as it renders moot all other issues. To the CA's credit it made sure that there was no denial of due process that tainted the DOLE decisions and it found that there was none. In this light, the CA complied with what the Constitution requires as a decision maker is only duty-bound to state the facts and the law on which its decision is based.[25]

In this respect, it should be considered that the petitioner was given every opportunity to be heard at the DOLE Regional Office. The plant inspection was conducted at the petitioner's own establishment where its officials were present. No complaint exists regarding this aspect of the case. A notice of inspection results was duly sent to the petitioner, which it contested. Thus, the Regional Director directed the parties to file their position papers on the inspection results. The parties duly complied, with parties both focusing on the employer-employee relationship issue. In the Order dated February 27, 2004, the Director fully considered the parties' positions in light of the inspection results and ruled that there was employer-employee relationship. The petitioner reacted by filing a motion for reconsideration and a supplemental motion for reconsideration, to which additional supporting exhibits were attached. These submissions were taken into account but still failed to convince the Director.

Unfortunately, the petitioner equated the Regional Director's failure to rule in its favor to be denial of due process for the alleged failure to consider the evidence it submitted. The CA, of course, noting the above-described developments in the case saw the fallacy of the petitioner's submission and dismissed the petition, thus affirming the DOLE level decisions.

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[25] Section 14, Article VIII, Constitution.

The Director's ruling that the *ponencia* now sees as objectionable states in its material portion:

> Under the said Policy Instructions, there are two (2) types of employees in the broadcast industry, namely: 1) "Station employees – are those whose services are engaged to discharge functions which are usually necessary and desirable to the operation of the station and whose usefulness is not affected by changes of programs, ratings or formats and who observe normal working hours. These shall include employees whose talents, skills or services are engaged as such by the station without particular reference to any specific program or undertaking, and are not allowed by the station to be engaged or hired by other stations or persons even if such employees do not observe normal working hours. 2) Program employees – are those whose skills, talents or services are engaged by the station for a particular or specific program or undertaking and who are not required to observe normal working hours such that on some days they work for less than eight (8) hours and on other days beyond the normal work hours observed by the station employees and are allowed to enter into employment contracts with other persons, stations, advertising agencies or sponsoring companies. The engagement of program employees, including those hired by advertising agencies or sponsoring companies, shall be under a written contract specifying, among other things, the nature of the work to be performed, rates to pay, and the programs in which they will work. The contract shall be duly registered by the station with the Broadcast Media Council within three (3) days from its consummation."
>
> A careful perusal of the records of this case showed that complainant Jandeleon Juezan was hired by the respondent as a radio talent/spinner and work six (6) days a week from 8:00 A.M. to 5:00 P.M., Monday thru Saturday. It was the respondent who paid complainant's salary every *quincena* and was required by the former to sign payrolls. Notwithstanding the employment contract stipulating herein complainant as a program employee, his actual duty pertains to that of a station employee. Moreover, respondent failed to register said employment contract with the Broadcast Media Counsel as required. He is required to observe normal working hours that deductions are made for tardiness. Therefore, it is crystal clear that complainant is a station employee rather than a program employee hence entitled to all benefits appurtenant thereto.

In the motion for reconsideration that followed, the Director ruled as follows:

> For resolution is the Motion for Reconsideration filed by the respondent on March 15, 2004 to the Order of this Office dated February 27, 2004 on the ground that due process is not observed.
>
> The motion was set for clarificatory hearing on April 2, 2004 wherein the parties through their respective counsel appeared. Counsel for complaint asked for 15 days from April 2, 2004 to file its comment to the Motion for Reconsideration after which the case is submitted for resolution.
>
> Respondent in its Motion for Reconsideration alleged to have been denied due process because it was not given the opportunity to examine the identification card which was not presented for scrutiny and verification.
>
> The contention sought by the respondent is without merit.
>
> The identification card presented by complainant that he was an authorized Media Representative is not material to this case nor fatal to respondent's case. Presentation of employment records is the burden of employer and not of complaint worker.
>
> Respondent's passing the buck of employer-employee relationship to its drama Directors and Producers is of no moment. Granting without admitting that herein complainant is indeed under the employ of respondents' drama directors. Such partakes of a sub-contracting relationship which will not absolve herein respondent from its solidary liability to complainant's claims pursuant to Art. 106 to Art. 109 of the Labor Code.

Correctly understood, these rulings do not indicate in any way that the petitioner's evidence were not considered. To be sure, the parties' various pieces of evidence the parties submitted were not all *mentioned* in these rulings. What it does mention are its findings from the parties' conflicting factual assertions. Interestingly, it implies that, at least nominally, the respondent was a program employee. This is the ruling's concession to the petitioner's evidence. However, it also asserts that despite this *seeming* status, the respondent was in fact a station employee for the reasons the ruling outlined, namely: (1) the respondent

initially hired the respondent as a radio talent/spinner; (2) his work was six [6] days a week from 8:00 A.M. to 5:00 P.M., Monday thru Saturday; (3) he is required to observe normal working hours and deductions are made for tardiness; (4) the respondent paid the complainant's salary every *quincena*; (5) the petitioner required the respondent to sign payrolls; (6) notwithstanding the employment contract stipulating herein complainant as a program employee, his actual duty pertains to that of a station employee; and (7) the petitioner failed to register the respondent's employment contract with the Broadcast Media Counsel as required.

Thus viewed, the *ponencia's* conclusion that the Director did not consider the petitioner's evidence is misplaced. In fact, the factors the Director pointed out decisively show that an employer-employee relationship existed between the petitioner and the respondent.

Confusion between the DOLE and the NLRC in resolving employment relationship issues.

As last point that is hard to leave alone is the *ponencia's* interpretation that the standard laid down in the last sentence of Article 128 (b) of the Labor Code that the documentary proofs be "considered in the course of inspection" applies only to issues other than the fundamental issue of the existence of employer-employee relationship. A contrary rule according to the *ponencia* would lead to controversies on the part of labor officials in resolving the issue of employer-employee relationship.

What the *ponencia* apparently refers to is that portion of Article 128(b) that was amended by R.A. 7730, heretofore discussed. To reiterate what has been stated above, the "documentary proofs which were not considered in the course of inspection" refers to the objection that a party may raise in relation with the issuance of a writ of execution, and does not relate to the extent of the visitorial and enforcement power of the Secretary defined in the first sentence of the Article. Thus, no writ may immediately issue if such objection exists. Rather,

a full hearing shall ensue as in this case where the Director allowed the petitioner to submit evidence as late as the motion for reconsideration stage. After the Director shall have ruled on all the submitted issues, then a writ of execution shall issue if no appeal is taken; otherwise, an appeal may be taken to the Secretary. Under the Rules, the perfection of an appeal holds in abeyance the issuance of a writ of execution or suspends one already issued.[26] R.A. 7730 effectively changes this rule by giving the authority to issue a writ of execution unless the "excepting clause" mentioned above applies.

That the employment relationship issue is for the Secretary or his representative to rule upon is clear from the wording of the 1st paragraph of Article 128(b) when it defines the extent of the Secretary's power. In this definition of authority, the issue cannot be anywhere else but with the Secretary who has been granted visitorial and enforcement power when an employment relationship exists. This grant must be read with the 2nd paragraph of the same Article that identifies an appeal as the remedy to take from an inspection decision made under the 1st paragraph.

For the *ponencia* to imply that the NLRC is more fitted to rule on the employment relationship issue misunderstands the power that Article 128 grants the Secretary. It is a full fact-finding power that includes whatever is necessary for the enforcement of the grant, including the authority to determine when the limits of the power apply and to call the parties and hear and decide their submissions. For this reason, Sections 5(a) and 6 of Department Order No. 7-A, Series of 1995 states:

Sec 5. Field investigation and hearing. – (a) In case of complaint inspection where no proof of compliance is submitted by the employer after seven (7) calendar days from receipt of the inspection results, the Regional Director shall summon the employer and the employees/ complainants to a summary hearing at the regional office.

xxx xxx xxx

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[26] Section 10, Department Order No. 7-A, Series of 1995.

Sec. 6. Nature of Proceedings. The proceedings shall be summary and non-litigious in character. Subject to the requirements of due process, the technicalities of law and procedure and the rules governing admissibility and sufficiency of evidence obtaining in the courts of law shall not strictly apply. The regional director or his designated representative may, however, avail of all reasonable means to ascertain the facts of the controversy speedily and objectively, including the conduct of ocular inspection and examination of well-informed persons. Substantial evidence shall be sufficient to support a decision.

Significantly, the nature of the proceedings before the Regional Director is not different from the proceedings before the Labor Arbiter. Section 2, Rule V of the Revised Rules of Procedure of the National Labor Relations Commission (2005) provides that:

Section 2. Nature of Proceedings. The proceedings before the Labor Arbiter shall be non-litigious in nature. Subject to the requirements of due process, the technicalities of law and procedure and the rules obtaining in courts of law shall not strictly apply thereto. The Labor Arbiter may avail himself of all reasonable means to ascertain the facts of the controversy speedily, including the ocular inspection and examination of well-informed persons.

Thus, the view that one tribunal has primacy over another because of the nature of their proceedings, the quantum of evidence required, or their level of expertise, is misplaced. Properly understood, the structure that Article 128(b) provides in relation with monetary claims within and employment relationship, as well as the delineation of powers between the Secretary of Labor and Employment and the NLRC are not at all complicated nor confusing, and need not lead to controversies on the part of labor officials in resolving the issue of employer-employee relationship, as the *ponencia* fears.

SECOND DIVISION

[G.R. No. 182191. May 8, 2009]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **LORENZO LAYCO, SR.,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; STATUTORY RAPE; ELEMENTS; PROVEN IN CASE AT BAR.—** Statutory rape is committed by sexual intercourse with a woman below twelve (12) years of age regardless of her consent, or the lack of it, to the sexual act. To convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (1) the age of the complainant; (2) the identity of the accused; and (3) the sexual intercourse between the accused and the complainant. All the required elements were proven by the prosecution. The victim's ages are evidenced by their birth certificates that AAA only 11 years old at the time of the incidents, having been born on 22 May 1982, while BBB was only seven (7) years old and born on 18 April 1986. Their identification of their father as the rapist was positive, clear and categorical. They also gave a vivid description of the sexual acts committed by appellant. Moreover, their accusation finds support in the medical reports on the physical injuries AAA and BBB had sustained.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT RELATIVE TO THE CREDIBILITY OF THE RAPE VICTIM NORMALLY RESPECTED AND NOT DISTURBED ON APPEAL; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.—** With respect to the credibility of the witnesses, this Court is bound by the factual findings of the trial court. As a general rule, the findings of the trial court relative to the credibility of the rape victim are normally respected and not disturbed on appeal. More so, if they are affirmed by the appellate court. It is only in exceptional circumstances that this rule is brushed aside, such as when the court's evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance which could affect the result of the case. The Court does not find any of

these exceptions present in the case at bar.

3. CRIMINAL LAW; STATUTORY RAPE; CIVIL LIABILITIES OF THE ACCUSED-APPELLANT.— With respect to damages, we agree with the OSG that following prevailing case law, appellant is liable for exemplary damages amounting to ₱30,000.00 for each count of rape, by way of public example and to protect the young from sexual abuse, as well as payment of ₱75,000.00 as civil indemnity, and ₱75,000.00 as moral damages.

APPEARANCES OF COUNSEL

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

R E S O L U T I ON

TINGA, *J.*:

Subject of this appeal is the 13 September 2007 Decision promulgated by the Court of Appeals,[1] affirming the Regional Trial Court's (RTC) judgment in Criminal Case Nos. 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256 and 1257 finding Lorenzo Layco, Sr. (appellant) guilty of nine (9) counts of qualified rape.

Appellant was charged with nine (9) counts of rape committed against his own 11-year old daughter, AAA, on 6, 7, 8, 9 January 1993 and his 7-year old daughter, BBB, sometime in 1993, 1994, 1995, 1996 and 1997.

Both victims testified that they were raped by their father inside their house. On these occasions, each incident of rape was always preceded by physical violence[2] on their persons. AAA stowed away on 10 January 1993 and lived first with her

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[1] Penned by Associate Justice Ramon M. Bato, Jr., concurred in by Associate Justices Andres B. Reyes and Jose C. Mendoza; *rollo,* pp. 2-21.

[2] CA *rollo*, p. 77.

grandmother in Dupax del Sur, Nueva Vizcaya, before settling down with her aunt in Baguio City. Five years later, she went home to Aritao, Nueva Vizcaya for a vacation. Thereat, she saw her sister BBB washing dishes and crying while her father was doing the pumping motion behind her in a standing position. When AAA went back to Baguio City, she asked her aunt to take custody of BBB. Finally, BBB was reunited with AAA in Baguio. Together, they revealed to her the rapes their father had committed on them. After convincing their mother to go with them, AAA, BBB and their aunt proceeded to the National Bureau of Investigation (NBI) in Baguio to report the incidents. The victims were subjected to physical examination. Dra. Elizabeth J. Batino (Dra. Batino) noted that AAA's hymen had sustained several lacerations which were more than a year old counting from the time of examination. Dra. Batino likewise attended to BBB and discovered that she had incomplete lacerations in the hymen. On both victims, however, Dra. Batino testified that their vaginas can easily admit of two (2) fingers.

Appellant interposed denial and alibi. He claims that on the dates when AAA was supposedly raped, the latter was no longer living with him. As to BBB, appellant also alleges that BBB was then living with different relatives.

Appellant's wife, as well as his two sons testified in his favor, denying knowledge of any rape committed against AAA and BBB.

On 22 June 2004, the trial court rendered its Decision finding appellant guilty as charged and decreeing the penalties therefor:

WHEREFORE, premises considered, finding accused, Lorenzo Layco, Sr., **GUILTY** beyond reasonable doubt of nine counts of rape, 4 of which were committed against his first daughter, [AAA], and 5 against his second daughter, [BBB], he is hereby sentenced to suffer the following penalties, namely:

Reclusion Perpetua for Criminal Case No. 1249;
Reclusion Perpetua for Criminal Case No. 1250;
Reclusion Perpetua for Criminal Case No. 1251;
Reclusion Perpetua for Criminal Case No.1252;

Reclusion Perpetua for Criminal Case No. 1253;

Death by lethal injection for Criminal Case No. 1254;

Death by lethal injection for Criminal Case No. 1255;

Death by lethal injection for Criminal Case No. 1256; and,

Death by lethal injection for Criminal Case No. 1257.

The accused is further ordered to indemnify the victim [AAA] the amount of ₱50,000.00 for each of the 4 rapes committed against her and the like amount of ₱50,000.00 to victim [BBB] for each of the 5 rapes committed against her and another amount of ₱50,000.00 to each of them as moral damages.

The Provincial Warden is directed to cause the immediate transfer of accused Lorenzo P. Layco, Sr. to the National Penitentiary.[3]

The trial court gave full credence to the testimonies of the victim and concluded that their testimonies correspond with the medical reports.

In view of the death penalty imposed, the case was brought to this Court on automatic review. Pursuant to *People v. Mateo,*[4] the case was transferred to the Court of Appeals for appropriate action and disposition.[5]

On 13 September 2007, the Court of Appeals affirmed with modification the RTC's Decision. The dispositive portion of the decision reads:

WHEREFORE, the questioned Decision dated June 22, 2004 in Criminal case Nos. 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256 and 1257 is **AFFIRMED** with **MODIFICATION**. The penalty of death imposed in Criminal Case Nos. 1254, 1255, 1256 and 1257 is commuted to *reclusion perpetua* in accordance with Republic Act No. 9346.

SO ORDERED.[6]

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

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

[5] CA *rollo*, p. 86.

[6] *Id*. at 287.

The Office of the Solicitor General (OSG) and appellant both manifested that they would not file supplemental briefs and would instead adopt the briefs they had previously filed.

In his appellant's brief, appellant essentially questions the credibility of AAA and BBB in their narration of the instances of alleged rape. Appellant argues that their testimonies were either uncorroborated or denied by their brother, who testified for the defense. Furthermore, appellant notes that BBB failed to recall the exact date of the commission of the rape, which effectively renders doubt on their claims.[7]

On the other hand, the OSG dismisses the inconsistencies as minor which has no relation to the gravamen of the offense. The OSG also asserts that appellant's denial cannot prevail over his positive identification by the victims. It also counters that an absolute exactitude of date when the complained rapes were committed is not an essential element of the crime of rape.[8]

After a careful review of the records, this Court finds no reason to overturn the decisions of the RTC, as affirmed by the Court of Appeals.

Statutory rape is committed by sexual intercourse with a woman below twelve (12) years of age regardless of her consent, or the lack of it, to the sexual act. To convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (1) the age of the complainant; (2) the identity of the accused; and (3) the sexual intercourse between the accused and the complainant.[9]

All the required elements were proven by the prosecution. The victim's ages are evidenced by their birth certificates that AAA only 11 years old at the time of the incidents, having been born on 22 May 1982, while BBB was only seven (7) years old and born on 18 April 1986. Their identification of their father as the rapist was positive, clear and categorical. They also gave

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[7] *Id.* at 105-123.

[8] *Id.* at 216-259.

[9] *People v. Mingming*, G.R. No. 174195, 10 December 2008.

a vivid description of the sexual acts committed by appellant. Moreover, their accusation finds support in the medical reports on the physical injuries AAA and BBB had sustained.

Appellant's denial cannot prevail over AAA's and BBB's positive identification of appellant as the perpetrator of the crime.

With respect to the credibility of the witnesses, this Court is bound by the factual findings of the trial court. As a general rule, the findings of the trial court relative to the credibility of the rape victim are normally respected and not disturbed on appeal. More so, if they are affirmed by the appellate court. It is only in exceptional circumstances that this rule is brushed aside, such as when the court's evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance which could affect the result of the case.[10]

The Court does not find any of these exceptions present in the case at bar.

With respect to damages, we agree with the OSG that following prevailing case law, appellant is liable for exemplary damages amounting to ₱30,000.00 for each count of rape, by way of public example and to protect the young from sexual abuse, as well as payment of ₱75,000.00 as civil indemnity, and ₱75,000.00 as moral damages.[11]

WHEREFORE, the Decision of the Court of Appeals affirming the Decision dated 22 June 2004 of the Regional Trial Court (RTC) of Bayombong, Nueva Vizcaya, Branch 30 in Criminal Case Nos. 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256 and 1257, finding appellant Lorenzo Layco, Sr. guilty beyond reasonable doubt of rape and sentencing him to suffer the penalty of *reclusion perpetua* is hereby *AFFIRMED* with *MODIFICATION*. Appellant is ordered to pay AAA and BBB the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

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[10] *People v. Coja,* G.R. No. 179277, 18 June 2008.

[11] *People v. Tormis,* G.R. No. 183456, 18 December 2008.

SO ORDERED.

Carpio Morales,[*] *Velasco, Jr., Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 182418. May 8, 2009]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **EDWIN PARTOZA *y* EVORA,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In order to successfully prosecute an accused for illegal sale of drugs, the prosecution must be able to prove the following elements: (1) identities of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale or had actually taken place, coupled with the presentation in court of evidence of *corpus delicti*.

2. ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— Otherwise stated, in illegal possession of dangerous drugs, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. Similarly, in this case, the evidence of the *corpus delicti* must be established beyond doubt.

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[*] Acting Chairperson as replacement of Justice Leonardo A. quisumbing who is on official leave per Special Order No. 618.

[**] Additional member of the Second Divison per Special Order No. 619.

3. ID.; REPUBLIC ACT NO. 9165, SECTION 21 THEREOF; CUSTODY AND DISPOSITION OF CONFISCATED DANGEROUS DRUGS, PROCEDURAL REQUIREMENTS; NOT COMPLIED WITH IN CASE AT BAR.— Section 21(1) of R.A. No. 9165 mandates that *the apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.* In *People v. Obmiranis*, appellant was acquitted due to the flaws in the conduct of the post-seizure custody of the dangerous drug allegedly recovered from appellant, taken together with the failure of the key persons who handled the same to testify on the whereabouts of the exhibit before it was offered in evidence in court. In *Bondad v. People*, this Court held that the failure to comply with the requirements of the law compromised the identity of the items seized, which is the *corpus delicti* of each of the crimes charged against appellant, hence his acquittal is in order. And in *People v. De la Cruz*, the apprehending team's omission to observe the procedure outlined by R.A. No. 9165 in the custody and disposition of the seized drugs significantly impairs the prosecution's case. In the instant case, it is indisputable that the procedures for the custody and disposition of confiscated dangerous drugs in Section 21 of R.A. No. 9165 were not complied with.

4. ID.; ID.; ID.; NON-COMPLIANCE THEREWITH NOT FATAL; CONDITIONS; NOT MET IN CASE AT BAR.— While this Court recognizes that non-compliance by the buy-bust team with Section 21 is not fatal as long as there is a justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items are properly preserved by the apprehending team, yet these conditions were not met in the case at bar. No explanation was offered by PO3 Tougan for his failure to observe the rule.

5. ID.; ID.; ID.; FAILURE TO ESTABLISH THE CHAIN OF CUSTODY IS FATAL.— Furthermore, while PO3 Tougan

admitted to have in his possession the *shabu* from the time appellant was apprehended at the crime scene to the police station, records are bereft of proof on how the seized items were handled from the time they left the hands of PO3 Tougan. PO3 Tougan mentioned a certain Inspector Manahan as the one who signed the request for laboratory examination. He did not however relate to whom the custody of the drugs was turned over. Furthermore, the evidence of the prosecution did not reveal the identity of the person who had the custody and safekeeping of the drugs after its examination and pending presentation in court. The failure of the prosecution to establish the chain of custody is fatal to its cause. All told, the identity of the *corpus delicti* in this case was not proven beyond reasonable doubt.

6. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; NOT APPLICABLE WHERE THE POLICE OFFICERS FAILED TO COMPLY WITH THE STANDARD PROCEDURES PRESCRIBED BY LAW.—** The courts below heavily relied on the testimony of PO3 Tougan and in the same breadth, banked on the presumption of regularity. In *People v. Garcia*, we said that the presumption only arises *in the absence of contrary details in the case* that raise doubt on the regularity in the performance of official duties. Where, as in the present case, the police officers failed to comply with the standard procedures prescribed by law, there is no occasion to apply the presumption.

APPEARANCES OF COUNSEL

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

DECISION

TINGA, *J.*:

On appeal is the Decision[1] of the Court of Appeals promulgated on 5 October 2007 affirming the conviction by the Regional Trial Court[2] (RTC) of San Mateo, Rizal of Edwin Partoza *y* Evora (appellant) for the crime of possession and sale of dangerous drug.

Appellant was charged in two (2) separate Informations before the Regional RTC with possession and sale of *shabu*, *viz*:

Criminal Case No. 6524

That on or about the 2nd day of November 2002, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and knowingly have in his possession, direct custody and control one (1) heat-sealed transparent plastic sachet of white crystalline substance weighing 0.04 gram, which substance, after confirmatory test, was found positive to the test of *Methamphetamine Hydrochloride*, a dangerous, popularly known as "*shabu*" a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[3]

Criminal Case No. 6525

That on or about the 2nd day of November 2002, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to another person one (1) heat-sealed transparent plastic sachet weighing 0.04 gram of white crystalline substance which gave positive result to the screening

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[1] *Rollo,* pp. 2-18; Penned by Associate Justice Andres B. Reyes, Jr., concurred in by Associate Justices Arcangelita Romilla-Lontok and Ramon M. Bato, Jr.

[2] Presided by Pairing Judge Elizabeth Balquin-Reyes.

[3] Records, p. 1.

and confirmatory test for *Methamphetamine Hydrochloride*, a dangerous, popularly known as "*shabu*" a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[4]

Upon arraignment, appellant pleaded not guilty to both Informations. Trial ensued.

PO3 Juanito Tougan (PO3 Tougan) testified for the prosecution and narrated that on 2 November 2002 at around 7:30 p.m., the police received an information from an informant that a certain Parto was selling *shabu* at Sta. Barbara Subdivision, Brgy. Ampid I, San Mateo, Rizal. Parto had apparently been under surveillance by the police for selling prohibited drugs. They immediately planned a buy-bust operation, with PO3 Tougan acting as the poseur-buyer. Tougan received a ₱100.00 bill from the police chief and placed the serial numbers of the bill on the police blotter.[5]

PO3 Tougan, together with PO2 Pontilla and the civilian informant then proceeded to Sta. Maria Subdivision. However, before the actual buy-bust operation, the group responded to a commotion in the area where they arrested a certain Noel Samaniego.[6] Thereafter, they went to Neptune corner Jupiter Street and spotted Parto in the tricycle terminal. The informant initially approached appellant. The latter then went near the tricycle where PO3 Tougan was in and asked him, "How much[?]" PO3 Tougan replied, "*Piso lang*," which means ₱100.00. Upon exchange of the money and the plastic sachet containing the white crystalline substance, PO3 Tougan immediately alighted from the tricycle, grabbed Parto's hand and introduced himself as a policeman. PO3 Tougan was able to recover another plastic sachet from the hand of Parto.[7]

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[4] *Id.* at 67-68.

[5] TSN, 6 March 2003, p. 3.

[6] TSN, 13 March 2003, p. 3.

[7] TSN, 6 March 2003, pp. 4-5.

At the police station, the two (2) plastic sachets confiscated from Parto were marked. After marking, the police immediately prepared the request for laboratory examination.[8]

Chemistry Report No. D-2157-02E confirmed that the two (2) plastic sachets seized from appellant were positive for methamphetamine hydrochloride, or *shabu*.[9]

Appellant denied the charges against him. He claimed that he was driving a female passenger in his tricycle at around 7:00 p.m. on 2 November 2002 going to Sta. Maria. Upon reaching Jupiter Street, appellant turned left and noticed the police officers trying to arrest a person who was then causing trouble. PO2 then Pontilla approached appellant and asked why he was driving drunk. Appellant explained that he had been offered a drink by his friends. He was asked to alight from his tricycle, took his driver's license and invited him to go to the police station.[10]

On 28 April 2005, the trial court convicted appellant beyond reasonable doubt of illegal possession and illegal sale of dangerous drugs. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in these two cases, as follows:
>
> 1. In Criminal Case No. 6524 finding accused EDWIN PARTOZA *Y* EVORA GUILTY BEYOND REASONABLE DOUBT of the crime of Possession of Dangerous Drug (Violation of Section 11, 2nd par.[,] No. 3 of Art. II of R.A. [No.] 9165) and sentencing him to suffer the penalty of imprisonment of Twelve (12) years and one (1) day to Twenty (20) years and a fine of Three Hundred Thousand Pesos (₱300,000.00);
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> 2. In Criminal Case No. 6525 finding accused EDWIN PARTOZA *Y* EVORA GUILTY BEYOND REASONABLE DOUBT of the crime of Sale of Dangerous Drug (Violation of Sec. 5, 1st par.[,] Art. II of R.A. No. 9165) and sentencing him to suffer the penalty of life imprisonment and a fine of ₱500.000.00.

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[8] *Id.* at 6.

[9] Records, p. 8.

[10] TSN, 6 August 2003, p. 3.

The drugs "*shabu*" confiscated from accused's possession are forfeited in favor of the government and is directed to be turned over to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

SO ORDERED.[11]

The trial court ruled that the prosecution was able to prove that appellant had taken the money in exchange for the *shabu*. It gave full faith and credence to the testimony of PO3 Tougan.

On appeal, the Court of Appeals affirmed the conviction.

The appellate court held that the prosecution had successfully adduced evidence which proved beyond reasonable doubt that appellant had sold one (1) sachet of *shabu* to PO3 Tougan, who had acted as the poseur buyer during a legitimate buy-bust operation. The Court of Appeals held further that appellant, after having been validly arrested and in the course of the subsequent incidental search, had been found with another sachet of *shabu* in his body.[12]

Appellant elevated the case to this Court via Notice of Appeal.[13] In its Resolution[14] dated 30 June 2008, this Court resolved to notify the parties that they may file their respective supplemental briefs, if they so desire, within thirty (30) days from notice. Both parties adopted their respective appellant's and appellee's briefs, instead of filing supplemental briefs.[15]

Appellant maintains that the presumption of regularity, upon which his conviction rests, should not take precedence over the presumption of innocence. He challenges PO3 Tougan's account of the events that transpired on 2 November 2002 considering that the police were present in the vicinity to respond to a report that Samaniego had been causing trouble and not to conduct a

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[11] CA *rollo*, p. 56.

[12] *Id.* at 111.

[13] *Id.* at 122-123.

[14] *Rollo*, pp. 24-25.

[15] *Id.* at 28-32.

buy-bust operation. Appellant also questions the integrity of the evidence used against him on the grounds of failure to mark the items seized from him immediately and failure to observe the chain of custody as required under Section 21 of R.A. No. 9165.[16]

The Office of the Solicitor-General (OSG), on the other hand, insists that the direct testimony of PO3 Tougan sufficiently established the elements of illegal sale and possession of *shabu*. With respect to the marking, the OSG argues that PO3 Tougan held on to the sachets from the time he confiscated them from appellant until such time that he was able to place his initials on them and submitted the duly accomplished request for examination of said sachets to the crime laboratory. Finally, the OSG avers that Section 21 of R.A. No. 9165 which pertains to the chain of custody and disposition of confiscated or seized drugs was not yet applicable at the time appellant committed his crimes.

In order to successfully prosecute an accused for illegal sale of drugs, the prosecution must be able to prove the following elements: (1) identities of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[17] What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale or had actually taken place, coupled with the presentation in court of evidence of *corpus delicti*.[18]

Otherwise stated, in illegal possession of dangerous drugs, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[19] Similarly, in this case, the evidence of the *corpus delicti* must be established beyond doubt.

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[16] CA *rollo*, pp. 44-46.

[17] *People v.Agulay*, G.R. No. 181747, 26 September 2008.

[18] *People v. Dela Cruz*, G.R. No. 181545, 8 October 2008.

[19] *People v. Naquita*, G.R. No. 180511, 28 July 2008.

Section 21(1) of R.A. No. 9165 mandates that *the apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.*

In *People v. Obmiranis*,[20] appellant was acquitted due to the flaws in the conduct of the post-seizure custody of the dangerous drug allegedly recovered from appellant, taken together with the failure of the key persons who handled the same to testify on the whereabouts of the exhibit before it was offered in evidence in court.[21] In *Bondad v. People*,[22] this Court held that the failure to comply with the requirements of the law compromised the identity of the items seized, which is the *corpus delicti* of each of the crimes charged against appellant, hence his acquittal is in order.[23] And in *People v. De la Cruz*,[24] the apprehending team's omission to observe the procedure outlined by R.A. No. 9165 in the custody and disposition of the seized drugs significantly impairs the prosecution's case.[25]

In the instant case, it is indisputable that the procedures for the custody and disposition of confiscated dangerous drugs in Section 21 of R.A. No. 9165 were not complied with.

PO3 Tougan stated that he marked the two plastic sachets containing white crystalline substance in the police station, thus:

Q And after handing to him the ₱100.00 bill[,] what reaction was there, if any, from this alias Parto?

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[20] G.R. No. 181492, 16 December 2008.

[21] *Id.*

[22] G.R. No. 173804, 10 December 2008.

[23] *Id.*

[24] G.R. No. 177222, 29 October 2008.

[25] *Id.*

A He immediately handed to me one (1) plastic sachet containing *shabu*, sir.

xxx xxx xxx

Q After placing him under arrest what, if any, did you do next?

A After holding his hand, I immediately introduced myself as a policeman, sir.

Q What else did you do after that?

A I was able to recover another plastic sachet from his hand and also the ₱100.00 bill that I used in buying the *shabu* with serial number EN-668932, sir.

xxx xxx xxx

Q And having informed him of his constitutional rights[,] where did you take him, if any?

A It did not take long PO2 Pontilla arrived [*sic*] and we brought him to the police station together with his tricycle, sir.

xxx xxx xxx

Q At the station[,] what happened to the two (2) plastic sachets, one that was the subject of the sale and one which was the subject of your confiscation?

A I placed my initial, sir.[26]

PO3 Tougan did not mark the seized drugs immediately after he arrested appellant in the latter's presence. Neither did he make an inventory and take a photograph of the confiscated items in the presence of appellant. There was no representative from the media and the Department of Justice, or any elected public official who participated in the operation and who were supposed to sign an inventory of seized items and be given copies thereof. None of these statutory safeguards were observed.

While this Court recognizes that non-compliance by the buy-bust team with Section 21 is not fatal as long as there is a justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items are properly

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[26] TSN, 6 March 2003, pp. 5-6.

preserved by the apprehending team,[27] yet these conditions were not met in the case at bar. No explanation was offered by PO3 Tougan for his failure to observe the rule.

Furthermore, while PO3 Tougan admitted to have in his possession the *shabu* from the time appellant was apprehended at the crime scene to the police station, records are bereft of proof on how the seized items were handled from the time they left the hands of PO3 Tougan. PO3 Tougan mentioned a certain Inspector Manahan as the one who signed the request for laboratory examination. He did not however relate to whom the custody of the drugs was turned over. Furthermore, the evidence of the prosecution did not reveal the identity of the person who had the custody and safekeeping of the drugs after its examination and pending presentation in court. The failure of the prosecution to establish the chain of custody is fatal to its cause.

All told, the identity of the *corpus delicti* in this case was not proven beyond reasonable doubt.

The courts below heavily relied on the testimony of PO3 Tougan and in the same breadth, banked on the presumption of regularity. In *People v. Garcia*,[28] we said that the presumption only arises *in the absence of contrary details in the case* that raise doubt on the regularity in the performance of official duties. Where, as in the present case, the police officers failed to comply with the standard procedures prescribed by law, there is no occasion to apply the presumption.[29]

WHEREFORE, in view of the foregoing, the Decision dated 5 October 2007 of the Court of Appeals affirming the judgment of conviction of the Regional Trial Court, Branch 76, San Mateo, Rizal is hereby *REVERSED* and *SET ASIDE.* Appellant Edwin Partoza *y* Evora is *ACQUITTED* based on reasonable doubt and is ordered immediately *RELEASED* from detention, unless he is confined for any other lawful cause.

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[27] *People v. Sanchez*, G.R.No. 175832, 15 October 2008.

[28] G.R. No. 173480, 25 February 2009.

[29] *Id*.

The Director of the Bureau of Corrections is DIRECTED to IMPLEMENT this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.

Carpio Morales,[*] *Velasco, Jr., Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 183566. May 8, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BONIFACIO BADRIAGO,**[*] *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; HOMICIDE; ELEMENTS.— To successfully prosecute the crime of homicide, the following elements must be proved beyond reasonable doubt: (1) that a person was killed; (2) that the accused killed that person without any justifying circumstance; (3) that the accused had the intention to kill, which is presumed; and (4) that the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide. Moreover, the offender is said to have performed all the acts of execution if the wound inflicted on the victim is mortal and could cause the death of the victim without medical intervention or attendance.

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[*] Acting Chairperson as replacement of Justice Leonardo A. Quisumbing who is on official leave per Special Order No. 618.

[**] Additional member of the Second Division per Special Order No. 619.

[*] Bonifacio **Bardiago** in some parts of the records.

2. **ID.; FRUSTRATED FELONY; ELEMENTS; PRESENT IN CASE AT BAR.—**On the other hand, the essential elements of a frustrated felony are as follows: (1) The offender performs all the acts of execution; (2) all the acts performed would produce the felony as a consequence; (3) but the felony is not produced; and (4) by reason of causes independent of the will of the perpetrator. From the evidence presented to the trial court, it is very much clear that accused-appellant was able to perform all the acts that would necessarily result in Adrian's death. His intention to kill can be presumed from the lethal hacking blows Adrian received. His attack on Adrian with a bolo was not justified. His claim of self-defense was not given credence by both the trial and appellate courts. Neither are there any of the qualifying circumstances of murder, parricide, and infanticide. The circumstances, thus, make out a case for frustrated homicide as accused-appellant performed all the acts necessary to kill Adrian; Adrian only survived due to timely medical intervention as testified to by his examining physician.

3. **ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; ESSENCE.—** The essence of treachery is a deliberate and sudden attack, offering an unarmed and unsuspecting victim no chance to resist or to escape. There is treachery even if the attack is frontal if it is sudden and unexpected, with the victims having no opportunity to repel it or defend themselves, for what is decisive in treachery is that the execution of the attack made it impossible for the victims to defend themselves or to retaliate. The records show that Adrian was suddenly attacked with a bolo, and the most he could do at that moment was to shield himself somehow from the blow with his arm. Another blow to Adrian's back showed the vulnerability of his position as he had his back turned to accused-appellant and was not able to flee from attack. Treachery may also be appreciated even if the victims were warned of the danger to their lives where they were defenseless and unable to flee at the time of the infliction of the *coup de grace*.

4. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT FOR CONVICTION.—** We hold that the circumstantial evidence available was enough to convict accused-appellant. Circumstantial evidence may be competent to establish guilt as long as it is sufficient to establish beyond a reasonable doubt

that the accused, and not someone else, was responsible for the killing. Circumstantial evidence is sufficient for conviction as long as there is (1) more than one circumstance; (2) the facts from which the inferences are derived are proved; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

5. **ID.; ID.; ID.; ID.; SUFFICIENT TO CONVICT ACCUSED-APPELLANT OF THE CRIME CHARGED IN CASE AT BAR; PRESENTATION OF MURDER WEAPON NOT ESSENTIAL FOR CONVICTION.—** We go back to accused-appellant's own admission that he indeed injured Adrian, causing him near-fatal injuries. From this admission the rest of the evidence, albeit circumstantial, made out a clear case for Oliver's murder. *First*, the victims were together in Adrian's pedicab when the attack took place; *second*, accused-appellant hacked Adrian with a bolo; *third*, Adrian's injuries were caused by a bolo; *fourth*, Adrian tried to push Oliver to safety before he lost unconsciousness; *fifth*, Oliver's wounds were found to have been caused by a weapon that made similar hacking wounds as the one made by accused-appellant when he assaulted Adrian; and *sixth*, Oliver died on the same day Adrian sustained stab wounds. Although there is no direct evidence of Oliver's actual wounding, the circumstantial evidence presented sufficiently established that it was accused-appellant who perpetrated the twin attacks on the brothers. Accused-appellant, thus, cannot argue that the prosecution's evidence was insufficient to convict him. Furthermore, we have long ago held that the presentation of the murder weapon is not even essential for a conviction.

6. **CRIMINAL LAW; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; REQUISITES IN ORDER TO BE APPRECIATED IN FAVOR OF THE ACCUSED; NOT PRESENT IN CASE AT BAR.—** For the mitigating circumstance of voluntary surrender to be appreciated, the surrender must be spontaneous and in a manner that shows that the accused made an unconditional surrender to the authorities, either based on recognition of guilt or from the desire to save the authorities from the trouble and expenses that would be involved in the accused's search and capture. Moreover, it is imperative that the accused was not actually arrested, the surrender is before a person in authority or an agent of a person in authority, and the surrender was voluntary. None of these

requisites are present in accused-appellant's case. In fact, jurisprudence holds that merely reporting the incident cannot be considered voluntary surrender within contemplation of the law. By accused-appellant's own admission, he only went to the authorities to inform them that Adrian was injured. What is more, accused-appellant claims he had nothing to do with the murder of Oliver. Even if we were to consider voluntary surrender as mitigating, this would only apply to the injury inflicted on Adrian. Accused-appellant denies culpability in Oliver's death and this negates any acknowledgement of guilt.

7. ID.; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; REQUISITES.— We likewise find implausible accused-appellant's assertion that he employed self-defense. The records show that the requisites of a successful claim of self-defense were not met. As found in the Revised Penal Code, these are: Art. 11. *Justifying circumstances*.—The following do not incur any criminal liability: 1. Any one who acts in defense of his person or rights, provided that the following circumstances concur: First. Unlawful aggression. Second. Reasonable necessity of the means employed to prevent or repel it. Third. Lack of sufficient provocation on the part of the person defending himself.

8. ID.; ID.; ID.; INCOMPLETE SELF-DEFENSE; UNLAWFUL AGGRESSION; AN INDISPENSABLE REQUISITE.— In incomplete self-defense, the indispensable requisite is unlawful aggression. What is missing is either reasonable necessity of the means employed to prevent or repel it or lack of sufficient provocation on the part of the persons defending themselves. In the instant case, accused-appellant's self-serving claim of self-defense coupled with the fact that he did not sustain any injuries from his supposed attacker, Adrian, fails to support any claim of unlawful aggression, the crucial requisite to his defense. As the appellate court noted, there was no clear, credible, and convincing evidence that Adrian was the one who instigated the fight and that accused-appellant was merely fending off an attack. Unlawful aggression by the victim must be clearly shown.

9. ID.; MITIGATING CIRCUMSTANCES; LACK OF INTENTION TO COMMIT SO GRAVE A WRONG; BELIED BY THE NUMBER, LOCATION AND NATURE OF THE STAB

WOUNDS SUFFERED BY THE VICTIM.— Under Article 13(3) of the Code, the circumstance that the offender had no intention to commit so grave a wrong as that committed mitigates criminal liability. This mitigating circumstance addresses itself to the intention of the offender at the particular moment when the offender executes or commits the criminal act. Looking at the victims' wounds, however, we cannot count the circumstance in accused-appellant's favor. Adrian suffered a hacking wound on his left forearm that caused near amputation, and another one on his lumbar area. These wounds would have been fatal were it not for timely medical assistance. Oliver, on the other hand, bore the brunt of the attack with eleven (11) different stab wounds, including one on the skull and on the chest. The number, location, and nature of these stab wounds belie accused-appellant's claim of lack of intention to commit so grave a wrong against his victim.

10. **REMEDIAL LAW; APPEALS; FINDINGS OF FACTS OF THE TRIAL COURT, AS AFFIRMED BY THE APPELLATE COURT, ARE CONCLUSIVE; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.—** We agree with the findings by the trial and appellate courts on the particulars of the case. Findings of facts of the trial court, as affirmed by the appellate court, are conclusive absent any evidence that both courts ignored, misconstrued, or misinterpreted cogent facts and circumstances of substance which, if considered, would warrant a modification or reversal of the outcome of the case. Since the aforementioned exceptions are not present, accused-appellant's conviction is warranted.

11. **ID.; DAMAGES; MORAL DAMAGES; WARRANTED IN CASE AT BAR.—** Finally, we affirm the sentence imposed on accused-appellant in both criminal cases. In accordance with jurisprudence, we, however, additionally award moral damages of PhP 50,000 to Adrian. His physical, psychological, and moral sufferings from the wounds inflicted on him serve as the basis for the award and this does not require proof or pleading as ground for this award.

APPEARANCES OF COUNSEL

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

DECISION

VELASCO, JR., *J*.:

On automatic review is the Decision dated April 22, 2008 of the Court of Appeals (CA) in CA G.R. CR-H.C. No. 00129, which found accused-appellant Bonifacio Badriago guilty of Frustrated Homicide in Criminal Case No. 4255 and Murder in Criminal Case No. 4276.

The Facts

Accused-appellant was charged before the Regional Trial Court (RTC) under the following Informations:

Criminal Case No. 4255

That on or about the 13th day of September 2002 in the Municipality of Carigara, [P]rovince of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and hack one ADRIAN QUINTO, with the use of a long sharp bolo (sundang) which the accused had provided himself for the purpose, thereby inflicting upon the latter the following wounds, to wit:

SURGERY NOTES:

(+) hacked wounds transverse approximately 16 cms. Linear (L) lumbar area level of L-L5
(+) hacked wound (L) forearm.

ORTHO NOTES:

A) Near amputation M/3rd (L) forearm 2^0 to hack wound.

DIAGNOSIS:

Hack wound 15 cms. oblique level of L_2 posterior lumbar area, transecting underlying muscle.
Fracture both radius and ulna.

OPERATION: September 14, 2002.

Wound Debridement and Repair
ORIF (Pinning)

Which wounds required a period of from thirty (30) days to ninety (90) days to heal and incapacitated said offended party from performing his habitual work for the same period of time; thus the accused performed all the acts of execution which [would] have produced the crime of Homicide as a consequence thereof, but nevertheless did not produce it by reason or causes independent of the will of the accused, that is the timely and able medical assistance rendered to the said Adrian Quinto which prevented his death.

CONTRARY TO LAW.

Criminal Case No. 4276

That on or about the 13th day of September, 2002, in the Municipality of Carigara, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab one OLIVER QUINTO with the use of a long sharp bolo (sundang) which the accused had provided himself for the purpose, thereby inflicting upon the latter the following wounds, to wit:

1. [Stab] wound 4 cm. x 1.5 cm. x 16 cm. (L) ant. chest at the level of 5th ICS along the (L) ICL;
2. [Stab] wound 6.5 x 3 cm. x 22 cm. (L) ant. chest at the level of 6th ICS along (L) anterior AAL;
3. [Stab] wound 3.5 cm. x 1.5 x 2 cm., (L) arm proximal 3rd lateral aspect;
4. Amputating wound (L) 3rd, 4th and 5th finger;
5. [Stab] wound 5 cm. x 3.5 cm. x 6 cm. umbilical area with intestinal and omental prolapsed;
6. Hacking wound 9 cm. x 2 cm. (L) occipital area with skull fracture;
7. [Stab] wound 3 cm. x 1 cm. x 15 cm. (L) posterior back at the level of T 12, 3 cm. away from vertebral line;
8. [Stab] wound 2 cm. x 1 cm. x 9 cm. (L) posterior back 8 cm. away from vertebral line;
9. Hacking wound 11 cm. x 2 cm. x 9 cm. (L) posterior iliac with fracture of hip bone;

10. [Stab] wound 3 cm. x 2 cm. x 3 cm. (L) buttocks;

11. [Stab] wound 5.5 cm. x 1.5 cm. x 2.5 cm. lumbar area along the vertebral line.

which wounds caused the death of said Oliver Quinto.

CONTRARY TO LAW.[1]

Upon arraignment, accused-appellant pleaded not guilty to both charges. The parties later agreed to try the case jointly. During trial, the prosecution presented the following witnesses: Dr. Ma. Bella Profetana, Adrian Quinto, Dr. Frederic Joseph Asanza, and Victoriano Quinto. The defense witnesses consisted of accused-appellant and Rodolfo Gabon.

The prosecution's presentation of evidence is summarized as follows: Adrian testified that on the morning of September 13, 2002, he was asked by his mother to bring a letter to one Berting Bello at *Barangay* Guindapunan, Leyte. He drove a tricycle to deliver the letter along with his younger brother, Oliver. After finishing the errand they headed back to the town plaza where their mother was waiting for them. Before they could reach their destination, however, they were approached by accused-appellant at *Sitio* Mombon in Carigara. Accused-appellant then suddenly hacked him with a *sundang* or long bolo on his lumbar area.[2] Accused-appellant aimed a second time but Adrian was able to somehow shield himself. His lower left arm suffered a hack wound as a result. Struck with panic, he jumped off the tricycle but could not run away. He was able to push Oliver off the tricycle so he could run away and call for help. He could no longer testify on what happened thereafter as he lost consciousness and only woke up while confined at Carigara District Hospital. His mother later informed him that Oliver was also attacked and did not survive.

Dr. Asanza's testimony showed that Adrian suffered from two wounds that could have been fatal: the hack wound on the lumbar area and on his left arm. He explained that Adrian could

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[1] CA *rollo*, pp. 16-18.

[2] *Id.* at 19.

have died had he not been brought to the hospital. When cross-examined, he stated that there was a possibility that Adrian could still crawl or walk despite the infliction of the wound on the lumbar area. He also testified that it was possible that Adrian was first hit on the forearm as he was facing accused-appellant and that he could have been hit on the lumbar area while he was running.[3]

Dr. Profetana told the court that her post-mortem examination of Oliver showed that eight of the 11 wounds inflicted on him were fatal. She identified hypovolemic shock as Oliver's cause of death. Furthermore, she stated that it was impossible for the victim to have survived the wounds as these severed the blood vessels and caused hemorrhage.[4]

Victoriano, father of the victims, testified that his family incurred PhP 20,000 in expenses for the stainless bar placed on Adrian's injured arm. According to his estimate, they spent about PhP 50,000 for Adrian's two-month hospitalization but they were not able to keep the receipts. For the death of his other son, Oliver, they spent PhP 9,000 for the coffin and about PhP 10,000 for the wake. He likewise testified that if his family's losses could be quantified they would claim the amount of PhP 100,000.[5]

In his defense, accused-appellant stated under oath that on the morning of September 13, 2002, he was on his pedicab looking for passengers. While he was on his way to the bus terminal in Carigara, Leyte, he was accosted by Adrian and Oliver, who carried stones with them. Adrian called out to him, "Now Boning, let us fight." He tried to speed away but the two chased him, with Adrian driving his pedicab and Oliver standing on the cargo compartment. They bumped accused-appellant's pedicab, causing him to swerve to the middle of the road.[6] When accused-appellant looked back, Adrian got out of his pedicab and approached him with a knife about 10 inches long.

[3] *Id.* at 20.

[4] *Id.* at 18-19.

[5] *Id.* at 20-21.

[6] *Id.* at 74.

Seeing Adrian was about to stab him, he grabbed a bolo from his pedicab's passenger seat and used it to strike at Adrian, injuring his left hand. Adrian's knife fell and when he bent to pick it up, accused-appellant again hacked at him with his bolo. Adrian then managed to run away from accused-appellant and head towards *Barangay* Guindapunan. Accused-appellant, meanwhile, ran towards the municipal building to inform the police that he had injured someone. He denied killing Oliver as while he was fighting with Adrian he did not even see Oliver.[7]

When cross-examined accused-appellant admitted that he did not suffer any injury following the confrontation with Adrian. He claimed not to know what happened to Oliver.

The other defense witness, Rodolfo, testified that he knew accused-appellant as a pedicab driver. On the day of the incident he saw two pedicabs engaged in a chase. He noticed that accused-appellant was in one pedicab and he was being chased by the pedicab driven by Adrian. The bumper of accused-appellant's pedicab was bumped by Adrian's pedicab. From a distance of about four arms' length, he saw the two go down from their respective pedicabs. Adrian said "let's have a fight" while drawing a short bolo from his waist. Adrian tried to stab accused-appellant but was unable to hit him. He then saw accused-appellant draw his own *bolo* from his waist and hit the left arm of Adrian. Adrian's bolo fell to the ground and when he was about to pick it up he was again hit by accused-appellant.

On cross-examination, Rodolfo stated that he had not seen if Adrian had a passenger on board his pedicab, and that the incident occurred along a national road with many houses and shrubbery.[8]

On July 29, 2004, the RTC rendered its judgment. Accused-appellant was found guilty of the crimes charged. The *fallo* of the Decision is as follows:

WHEREFORE, premises considered, with the aggravating circumstance of treachery, the Court [finds] accused BONIFACIO

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[7] *Id.* at 74-75.

[8] *Id.* at 75.

BARDIAGO, GUILTY beyond reasonable doubt of the crime of FRUSTRATED MURDER instead of Frustrated Homicide in Criminal Case No. 4255, and [sentences him] to suffer an indeterminate penalty of SIX (6) YEARS and ONE (1) DAY OF *Prision Mayor* as Minimum to TWELVE (12) YEARS and one (1) DAY of *Reclusion Temporal* as Maximum, and to pay Adrian Quinto actual damages in the amount of Twenty Thousand (P20,000.00) Pesos and exemplary damages in the amount of Ten Thousand (₱10,000.00) pesos.

Likewise, pursuant to Art. 248 of the Revised Penal Code as amended and further amended by R.A. No. 7659 (The Death Penalty Law) the Court found accused BONIFACIO BARDIAGO, GUILTY beyond reasonable doubt of the crime of MURDER charged under the information in Criminal Case No. 4276, and sentenced to suffer the maximum penalty of DEATH, and pay the heirs of Oliver Quinto civil indemnity in the amount of Seventy Five Thousand (₱75,000.00) and exemplary damages in the amount of Twenty Five Thousand (₱25,000.00) Pesos; and [to] pay the cost.

SO ORDERED.[9]

On September 14, 2004, the records of the case were transferred to this Court on automatic review as the death penalty was involved. But conformably with *People v. Mateo*,[10] the case was transferred to the CA via a Resolution dated February 15, 2005.

Accused-appellant, in his Brief filed before the CA, claimed that the trial court erred in convicting him of frustrated murder as what was read to him at his arraignment was a charge for frustrated homicide, and the trial court likewise erred in convicting him of frustrated murder and murder as his guilt was not proved beyond reasonable doubt. He also challenged the conviction on the ground that the mitigating circumstances of voluntary surrender, incomplete self-defense, and lack of intention to commit so grave a wrong were not appreciated by the trial court.

The CA sustained accused-appellant's first contention. It ruled that his conviction for frustrated murder was a gross violation

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[9] *Id.* at 30-31. Penned by Judge Crisostomo L. Garrido.

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

of his constitutional right to be informed of the nature and the cause of accusation against him. Accused-appellant's other arguments, however, were not given merit. The CA noted the undisputed fact that it was accused-appellant, claiming self-defense, who inflicted the wounds sustained by Adrian and Oliver. The circumstantial evidence presented showed accused-appellant's culpability. Moreover, according to the CA, his choice of weapon and the areas he hacked on the victim's bodies revealed a clear intention to kill. The CA said he was able to injure the brothers with no injury caused to himself.

Lastly, the appellate court rejected the mitigating circumstances proffered by accused-appellant. It ruled that there was no voluntary surrender as accused-appellant himself testified that he had merely reported the injury and did not surrender. As to the self-defense theory, the CA stated that accused-appellant failed to establish the victims' unlawful aggression, a requisite in such a mitigating circumstance.

In view of Republic Act No. 9346 or *An Act Prohibiting the Imposition of Death*,[11] the CA reduced accused-appellant's penalty to *reclusion perpetua* with respect to the murder charge in Criminal Case No. 4276.

The decretal portion of the CA Decision reads:

WHEREFORE, all the foregoing taken into account, the instant appeal is **partially granted.**

Accordingly, in Criminal Cases No. 4255 accused-appellant is found guilty only of **FRUSTRATED HOMICIDE** and is hereby penalized to suffer an indeterminate sentence of 2 years, 4 months and 1 day of *prision correccional* as minimum to 8 years and 1 day of *prison mayor* as maximum and to pay Adrian Quinto the sum of twenty five thousand pesos (₱25,000.00) by way of temperate damages.

In criminal case no. 4276 accused-appellant is found guilty of **MURDER** and is hereby sentenced to *Reclusion Perpetua* and to pay the amount of fifty thousand pesos (Php50,000.00) as civil indemnity; twenty five thousand pesos (₱25,000.00) by way of

[11] Effective June 24, 2006.

temperate damages, fifty thousand pesos (₱50,000.00) as moral damages and twenty-five thousand pesos (₱25,000.00) as exemplary damages.

With costs.

SO ORDERED.[12]

The Issues

On September 1, 2008, this Court notified the parties that they may file supplemental briefs if they so desired. The parties manifested that they were dispensing with such filing. Accused-appellant, thus, re-pleads his arguments first made before the CA. His appeal being partially granted, the only remaining issues to be resolved are the following:

I

THE COURT OF APPEALS ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF FRUSTRATED HOMICIDE AND MURDER DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT

II

THE COURT OF APPEALS ERRED IN NOT APPRECIATING THE MITIGATING CIRCUMSTANCES OF VOLUNTARY SURRENDER, INCOMPLETE SELF-DEFENSE, AND LACK OF INTENTION TO COMMIT SO GRAVE A WRONG

Our Ruling

We affirm accused-appellant's conviction.

Frustrated Homicide

To successfully prosecute the crime of homicide, the following elements must be proved beyond reasonable doubt: (1) that a person was killed; (2) that the accused killed that person without any justifying circumstance; (3) that the accused had the intention to kill, which is presumed; and (4) that the killing was not attended

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[12] *Rollo*, pp. 19-20. Penned by Associate Justice Priscilla Baltazar-Padilla and concurred in by Associate Justices Franchito N. Diamante and Florito A. Macalino.

by any of the qualifying circumstances of murder, or by that of parricide or infanticide.[13] Moreover, the offender is said to have performed all the acts of execution if the wound inflicted on the victim is mortal and could cause the death of the victim without medical intervention or attendance.[14]

On the other hand, the essential elements of a frustrated felony are as follows: (1) The offender performs all the acts of execution; (2) all the acts performed would produce the felony as a consequence; (3) but the felony is not produced; and (4) by reason of causes independent of the will of the perpetrator.[15]

From the evidence presented to the trial court, it is very much clear that accused-appellant was able to perform all the acts that would necessarily result in Adrian's death. His intention to kill can be presumed from the lethal hacking blows Adrian received. His attack on Adrian with a bolo was not justified. His claim of self-defense was not given credence by both the trial and appellate courts. Neither are there any of the qualifying circumstances of murder, parricide, and infanticide. The circumstances, thus, make out a case for frustrated homicide as accused-appellant performed all the acts necessary to kill Adrian; Adrian only survived due to timely medical intervention as testified to by his examining physician.

Murder Qualified by Treachery

It is also argued by the defense that the attendant qualifying circumstance of treachery was not proved by clear and convincing evidence. Accused-appellant reasons that Adrian was still able to put up a defense by parrying the blow made by accused-appellant and was even able to jump off from the pedicab he was driving. He, thus, maintains that the trial court erroneously characterized the incident as a sudden attack.

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[13] *Nerpio v. People*, G.R. No. 155153, July 24, 2007, 528 SCRA 93, 100.

[14] *People v. Tolentino*, G.R. No. 176385, February 26, 2008, 546 SCRA 671, 695.

[15] *Martinez v. Court of Appeals*, G.R. No. 168827, April 13, 2007, 521 SCRA 176, 202.

The essence of treachery is a deliberate and sudden attack, offering an unarmed and unsuspecting victim no chance to resist or to escape.[16] There is treachery even if the attack is frontal if it is sudden and unexpected, with the victims having no opportunity to repel it or defend themselves, for what is decisive in treachery is that the execution of the attack made it impossible for the victims to defend themselves or to retaliate.[17] The records show that Adrian was suddenly attacked with a bolo, and the most he could do at that moment was to shield himself somehow from the blow with his arm. Another blow to Adrian's back showed the vulnerability of his position as he had his back turned to accused-appellant and was not able to flee from attack. Treachery may also be appreciated even if the victims were warned of the danger to their lives where they were defenseless and unable to flee at the time of the infliction of the *coup de grace*.[18]

Sufficiency of the Prosecution's Evidence

Accused-appellant speculates that if the incident happened in broad daylight and near a bus terminal, there should have been independent eyewitnesses identifying accused-appellant as Oliver's killer. Much is made of the fact that not even Adrian was able to identify accused-appellant as Oliver's assailant.

The failure by the prosecution to present the weapon allegedly used in the attack is, in accused-appellant's mind, yet another obstacle to the State's obligation to prove guilt beyond reasonable doubt.

We hold that the circumstantial evidence available was enough to convict accused-appellant. Circumstantial evidence may be competent to establish guilt as long as it is sufficient to establish beyond a reasonable doubt that the accused, and not someone else, was responsible for the killing.[19] Circumstantial evidence

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[16] *Tolentino*, *supra* note 14, at 697.

[17] *People v. Segobre*, G.R. No. 169877, February 14, 2008, 545 SCRA 341, 348-349.

[18] *People v. Sison*, G.R. No. 172752, June 18, 2008, 555 SCRA 156, 172.

[19] *Commonwealth v. Conkey*, 819 N.E.2d 176, December 16, 2004.

is sufficient for conviction as long as there is (1) more than one circumstance; (2) the facts from which the inferences are derived are proved; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[20]

We go back to accused-appellant's own admission that he indeed injured Adrian, causing him near-fatal injuries. From this admission the rest of the evidence, albeit circumstantial, made out a clear case for Oliver's murder. *First*, the victims were together in Adrian's pedicab when the attack took place; *second*, accused-appellant hacked Adrian with a bolo; *third*, Adrian's injuries were caused by a bolo; *fourth*, Adrian tried to push Oliver to safety before he lost unconsciousness; *fifth*, Oliver's wounds were found to have been caused by a weapon that made similar hacking wounds as the one made by accused-appellant when he assaulted Adrian; and *sixth*, Oliver died on the same day Adrian sustained stab wounds. Although there is no direct evidence of Oliver's actual wounding, the circumstantial evidence presented sufficiently established that it was accused-appellant who perpetrated the twin attacks on the brothers.

Accused-appellant, thus, cannot argue that the prosecution's evidence was insufficient to convict him. Furthermore, we have long ago held that the presentation of the murder weapon is not even essential for a conviction.[21]

Voluntary Surrender

For the mitigating circumstance of voluntary surrender to be appreciated, the surrender must be spontaneous and in a manner that shows that the accused made an unconditional surrender to the authorities, either based on recognition of guilt or from the desire to save the authorities from the trouble and expenses

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[20] *People v. Garcia*, G.R. No. 174479, June 17, 2008, 554 SCRA 616, 633.

[21] *People v. Chavez*, G.R. No. 116294, August 21, 1997, 278 SCRA 230, 242; citing *People v. Bello*, G.R. No. 92597, October 4, 1994, 237 SCRA 347, 352.

that would be involved in the accused's search and capture.[22] Moreover, it is imperative that the accused was not actually arrested, the surrender is before a person in authority or an agent of a person in authority, and the surrender was voluntary.[23]

None of these requisites are present in accused-appellant's case. In fact, jurisprudence holds that merely reporting the incident cannot be considered voluntary surrender within contemplation of the law.[24] By accused-appellant's own admission, he only went to the authorities to inform them that Adrian was injured. What is more, accused-appellant claims he had nothing to do with the murder of Oliver. Even if we were to consider voluntary surrender as mitigating, this would only apply to the injury inflicted on Adrian. Accused-appellant denies culpability in Oliver's death and this negates any acknowledgement of guilt.

Incomplete Self-Defense

We likewise find implausible accused-appellant's assertion that he employed self-defense. The records show that the requisites of a successful claim of self-defense were not met. As found in the Revised Penal Code, these are:

> Art. 11. *Justifying circumstances*.––The following do not incur any criminal liability:
>
> 1. Any one who acts in defense of his person or rights, provided that the following circumstances concur:
>
> First. Unlawful aggression.
>
> Second. Reasonable necessity of the means employed to prevent or repel it.
>
> Third. Lack of sufficient provocation on the part of the person defending himself.

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[22] *Garcia*, *supra* note 20, at 637.

[23] *People v. Concepcion*, G.R. No. 169060, February 6, 2007, 514 SCRA 660, 672.

[24] *People v. Valles*, G.R. No. 110564, January 28, 1997, 267 SCRA 103, 118.

In incomplete self-defense, the indispensable requisite is unlawful aggression.[25] What is missing is either reasonable necessity of the means employed to prevent or repel it or lack of sufficient provocation on the part of the persons defending themselves. In the instant case, accused-appellant's self-serving claim of self-defense coupled with the fact that he did not sustain any injuries from his supposed attacker, Adrian, fails to support any claim of unlawful aggression, the crucial requisite to his defense. As the appellate court noted, there was no clear, credible, and convincing evidence that Adrian was the one who instigated the fight and that accused-appellant was merely fending off an attack. Unlawful aggression by the victim must be clearly shown.[26]

Lack of Intention to Commit So Grave a Wrong

Under Article 13(3) of the Code, the circumstance that the offender had no intention to commit so grave a wrong as that committed mitigates criminal liability. This mitigating circumstance addresses itself to the intention of the offender at the particular moment when the offender executes or commits the criminal act.[27] Looking at the victims' wounds, however, we cannot count the circumstance in accused-appellant's favor. Adrian suffered a hacking wound on his left forearm that caused near amputation, and another one on his lumbar area. These wounds would have been fatal were it not for timely medical assistance. Oliver, on the other hand, bore the brunt of the attack with eleven (11) different stab wounds, including one on the skull and on the chest. The number, location, and nature of these stab wounds belie accused-appellant's claim of lack of intention to commit so grave a wrong against his victim.[28]

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[25] *Mendoza v. People*, G.R. No. 139759, January 14, 2005, 448 SCRA 158, 161.

[26] *Id.* at 162.

[27] *People v. Abueg*, No. 54901, November 24, 1986, 145 SCRA 622, 634.

[28] *People v. Cardel*, G.R. No. 105582, July 19, 2000, 336 SCRA 144, 161.

Conclusion

We agree with the findings by the trial and appellate courts on the particulars of the case. Findings of facts of the trial court, as affirmed by the appellate court, are conclusive absent any evidence that both courts ignored, misconstrued, or misinterpreted cogent facts and circumstances of substance which, if considered, would warrant a modification or reversal of the outcome of the case.[29] Since the aforementioned exceptions are not present, accused-appellant's conviction is warranted.

Finally, we affirm the sentence imposed on accused-appellant in both criminal cases. In accordance with jurisprudence,[30] we, however, additionally award moral damages of PhP 50,000 to Adrian. His physical, psychological, and moral sufferings from the wounds inflicted on him serve as the basis for the award and this does not require proof or pleading as ground for this award.[31]

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 00129 which found accused-appellant guilty of Frustrated Homicide in Criminal Case No. 4255 and Murder in Criminal Case No. 4276 is *AFFIRMED* with the *MODIFICATION* that he is likewise ordered to pay Adrian the amount of PhP 50,000 as moral damages.

SO ORDERED.

Carpio Morales,[*] *Tinga, Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

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[29] *People v. Dilao*, G.R. No. 170359, July 27, 2007, 528 SCRA 427, 439.

[30] *People v. Soriano*, G.R. No. 148123, June 30, 2008, 556 SCRA 595.

[31] *Id.* at 613.

[*] As per Special Order No. 618 dated April 14, 2009.

[**] Additional member as per Special Order No. 619 dated April 14, 2009.

SECOND DIVISION

[G.R. No. 184050. May 8, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BIENVENIDO MARA *y* BOLAQUEÑA *alias* "LOLOY",** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; AS A RULE, THE DETERMINATION BY THE TRIAL COURT OF THE CREDIBILITY OF WITNESSES ARE GIVEN FULL WEIGHT AND RESPECT ON APPEAL.—** As to the claim of accused-appellant that he acted in self-defense, it cannot be appreciated. There is only his testimony that there was an attempt by the victim to stab him, as opposed to the testimonies of the two witnesses presented against him. The credibility of the witnesses had been weighed by the trial court, and it found the testimonies of Marcelino and Ramel to be more convincing. As a rule, the appellate court gives full weight and respect to the determination by the trial court of the credibility of witnesses since the trial court judge has the best opportunity to observe the demeanor of the witness.

2. **CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS; UNLAWFUL AGGRESSION; ELUCIDATED.—** One who admits killing or fatally injuring another in the name of self-defense bears the burden of proving: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person claiming self-defense. By invoking self defense, the burden is placed on the accused to prove its elements clearly and convincingly. While all three elements must concur, self-defense relies first and foremost on proof of unlawful aggression on the part of the victim. If no unlawful aggression is proved, no self-defense may be successfully pleaded. Accused-appellant has failed to discharge his burden of proving unlawful aggression. His version of the events is uncorroborated, and his testimony has been found to be less credible by the trial court. The victim

was not in the process of attacking accused-appellant from behind, but rather had been seated at a table during a birthday celebration. Accused-appellant was the instigator, not the victim, Gaudencio. As the element of unlawful aggression on the part of the victim is absent, accused-appellant's claim of self-defense must fail.

3. **ID.; ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; ESSENCE THEREOF.—** x x x The essence of treachery is the sudden and unexpected attack by the aggressors on unsuspecting victims, depriving the latter of any real chance to defend themselves, thereby ensuring its commission without risk to the aggressors, and without the slightest provocation on the part of the victims. From the evidence gleaned by the trial court, the facts are enough to show the treachery employed by accused-appellant. The attack was sudden, as testified by the witnesses, and unexpected, considering it happened at a birthday celebration, without any warning. No provocation was proved on the part of the victim, as the testimony of accused-appellant that the victim was about to attack him was uncorroborated and not given weight by the trial court. Thus, the victim had no inkling that an attack was forthcoming and had no opportunity to mount a defense. What is decisive is that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate. At the birthday celebration where the attack occurred, the victim's guard would be down, even assuming that there was bad blood between him and accused-appellant. He would not have expected his life to be in danger in such surroundings, and accused-appellant took advantage of this.

4. **CIVIL LAW; DAMAGES; MORAL AND EXEMPLARY DAMAGES; PROPER IN CASE AT BAR.—** The CA modified the ruling of the trial court, correctly setting the civil indemnity at PhP 50,000, with the addition of moral and exemplary damages. Moral damages are justified under par. 1 of Art. 2219 of the Civil Code, which provides that moral damages may be recovered from a criminal offense resulting in physical injuries. The addition of exemplary damages is also justified. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of exemplary damages is justified under Art. 2230 of the Civil Code.

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 Decision dated December 19, 2007[1] in CA-G.R. CR-H.C. No. 00163 of the Court of Appeals (CA), which affirmed the Decision dated July 16, 2002[2] in Criminal Case No. 9594-99 of the Regional Trial Court (RTC), Branch 8 in Malaybalay City.

Accused-appellant was charged in an information dated March 29, 1999, which reads:

> That on or about the 27th day of February 1999, in the evening, at CMU, Musuan, [M]unicipality of Maramag, Province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill by means of treachery and evident premeditation with the use of a sharp bladed instrument with which he was conveniently provided, did then and there willfully, unlawfully and criminally attack, assault and hack GAUDENCIO PERATER, mortally wounding the latter which injury caused the instantaneous death of GAUDENCIO PERATER; to the damage and prejudice of the legal heirs of GAUDENCIO PERATER in such amount as may be allowed by law.
>
> CONTRARY TO and in violation of Article 248 of the Revised Penal Code, as amended by R.A. 7659.[3]

On July 16, 2002, the trial court found accused-appellant guilty of murder, the dispositive portion of which reads:

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[1] Penned by Associate Justice Michael P. Elbinias and concurred in by Associate Justices Teresita Dy-Liacco Flores and Rodrigo F. Lim, Jr.

[2] Penned by Judge Jesus M. Barroso, Jr.

[3] Records, p. 14.

WHEREFORE, in view of all the foregoing, the court finds the accused Bienvenido Mara *y* [Bolaqueña] guilty beyond reasonable doubt of the crime of murder. Accused is hereby sentenced to the penalty of *reclusion perpetua*. Accused is ordered to indemnify the heirs of Gaudencio Perater the amount of Seventy Five Thousand (₱75,000.00) Pesos; and further to pay Twenty Six Thousand and Four Hundred (₱26,400.00) Pesos as actual expenses and to pay the costs.

The accused is hereby given full credit for his preventive detention.

SO ORDERED.[4]

Accused-appellant filed a Notice of Appeal dated August 2, 2002, from the aforementioned decision to this Court. The case was transferred to the CA in a resolution dated September 20, 2004, following the ruling in *People v. Mateo*.[5]

The CA modified the trial court's decision, the dispositive portion of which reads:

WHEREFORE, the appealed Decision finding appellant Bienvenido Mara *y* Bolaqueña guilty of the crime of Murder, and to suffer the penalty of *Reclusion perpetua,* is hereby **AFFIRMED, WITH THE MODIFICATION** that appellant is directed to pay the heirs of the victim the following amounts: ₱50,000.00 as civil indemnity; ₱26,400.00 as actual damages; ₱50,000.00 as moral damages, and; ₱25,000.00 as exemplary damages.

SO ORDERED.[6]

The Facts

The facts, as found by the RTC and reaffirmed by the CA, were culled from the testimonies of witnesses Marcelino Balos and his nephew, Ramel Balos. Marcelina Perater, widow of Gaudencio Perater, the victim, was presented to prove the amount of actual damages from burial expenses.

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[4] CA *rollo*, p. 18.

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

[6] *Rollo*, pp. 15-16.

Marcelino testified that the victim and accused-appellant were among the visitors in his house on February 27, 1999. He said they were seated at the table, he being seated at the right side of the victim, and a certain Mario Mara seated at the left side of the victim, when suddenly accused-appellant hacked the victim on the right side of his neck with a bolo. Marcelino wrested the bolo from accused-appellant and gave it to his wife. He also testified that there were no words exchanged between accused-appellant and the victim prior to the attack.

Ramel testified that he was in the house of his uncle on the night of February 27, 1999 along with several other guests to celebrate his birthday. He confirmed that Mario was seated at the left side of the victim and his uncle at the victim's right side. He testified that accused-appellant had been going in and out of the house. Ramel stated that he heard a snapping sound and when he looked, he saw accused-appellant holding a bolo, and the sound was the hacking done by accused-appellant on the victim's neck. Ramel then saw his uncle take away the bolo from accused-appellant.

In his defense, accused-appellant states that the trial court erred in appreciating the qualifying circumstance of treachery, and reiterates that he acted in self-defense.

As to his version of events, accused-appellant claimed he had been drinking with Marcelino and Ramel when the victim arrived and asked where Mario, brother of accused-appellant, was. When accused-appellant replied that he had not yet returned from work, the victim then told him, "This is your yard, are you going to side with your elder brother [referring to Mario] whose teeth I have broken?" The victim then pulled a knife and pointed to accused-appellant and his companions, saying, "Who among you here is offended, let him stand." Ramel then punched the victim, knocking him down. Marcelino then ran to the kitchen, telling the victim, "So you want killing?" and got hold of a bolo. Accused-appellant then grappled with Marcelino to prevent him from attacking the victim, and was able to wrest the bolo away from Marcelino. Marcelino then warned accused-appellant that the victim was about to stab him. Accused-appellant

swung the bolo towards his back, hitting the victim on his neck. He then threw the bolo away, and embraced the victim, shouting for help. They placed the body of the victim on a bench, and Marcelino reported the incident to the police.

Our Ruling

As to the claim of accused-appellant that he acted in self-defense, it cannot be appreciated. There is only his testimony that there was an attempt by the victim to stab him, as opposed to the testimonies of the two witnesses presented against him. The credibility of the witnesses had been weighed by the trial court, and it found the testimonies of Marcelino and Ramel to be more convincing. As a rule, the appellate court gives full weight and respect to the determination by the trial court of the credibility of witnesses since the trial court judge has the best opportunity to observe the demeanor of the witness.[7]

One who admits killing or fatally injuring another in the name of self-defense bears the burden of proving: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person claiming self-defense. By invoking self defense, the burden is placed on the accused to prove its elements clearly and convincingly. While all three elements must concur, self-defense relies first and foremost on proof of unlawful aggression on the part of the victim. If no unlawful aggression is proved, no self-defense may be successfully pleaded.[8] Accused-appellant has failed to discharge his burden of proving unlawful aggression. His version of the events is uncorroborated, and his testimony has been found to be less credible by the trial court. The victim was not in the process of attacking accused-appellant from behind, but rather had been seated at a table during a birthday celebration. Accused-appellant was the instigator, not the victim, Gaudencio. As the element

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[7] *People v. Roma*, G.R. No. 147996, September 30, 2005, 471 SCRA 413, 426-427.

[8] *People v. Abesamis*, G.R. No. 140985, August 28, 2007, 531 SCRA 300, 310-311.

of unlawful aggression on the part of the victim is absent, accused-appellant's claim of self-defense must fail.

Regarding the qualifying circumstance of treachery, accused-appellant argues that the trial court erred in appreciating it, and that there was in fact no treachery present in the attack.

His argument lacks merit. The essence of treachery is the sudden and unexpected attack by the aggressors on unsuspecting victims, depriving the latter of any real chance to defend themselves, thereby ensuring its commission without risk to the aggressors, and without the slightest provocation on the part of the victims.[9] From the evidence gleaned by the trial court, the facts are enough to show the treachery employed by accused-appellant. The attack was sudden, as testified by the witnesses, and unexpected, considering it happened at a birthday celebration, without any warning. No provocation was proved on the part of the victim, as the testimony of accused-appellant that the victim was about to attack him was uncorroborated and not given weight by the trial court. Thus, the victim had no inkling that an attack was forthcoming and had no opportunity to mount a defense.

What is decisive is that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate.[10] At the birthday celebration where the attack occurred, the victim's guard would be down, even assuming that there was bad blood between him and accused-appellant. He would not have expected his life to be in danger in such surroundings, and accused-appellant took advantage of this.

As treachery attended the killing of Gaudencio, the crime was correctly found to be murder under paragraph 1 of Article 248 of the Revised Penal Code.

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[9] *People v. De Guzman*, G.R. No. 169082, August 17, 2007, 530 SCRA 631, 638.

[10] *People v. Glino*, G.R. No. 173793, December 4, 2007, 539 SCRA 432, 457.

The CA modified the ruling of the trial court, correctly setting the civil indemnity at PhP 50,000, with the addition of moral and exemplary damages. Moral damages are justified under par. 1 of Art. 2219 of the Civil Code, which provides that moral damages may be recovered from a criminal offense resulting in physical injuries. The addition of exemplary damages is also justified. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of exemplary damages is justified under Art. 2230 of the Civil Code.[11]

As accused-appellant has failed to show any error in the ruling of the CA, we must uphold its decision.

WHEREFORE, we *AFFIRM* the CA Decision dated December 19, 2007 in CA-G.R. CR-H.C. No. 00163. No pronouncement as to costs.

SO ORDERED.

Carpio Morales,[*] *Tinga, Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 184172. May 8, 2009]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **LUIS ANTONIO GARCHITORENA,** *appellant.*

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[11] *Id.* at 462.

[*] As per Special Order No. 618 dated April 14, 2009.

[**] Additional member as per Special Order No. 619 dated April 14, 2009.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; AS A RULE, FACTUAL FINDINGS OF THE TRIAL COURT ARE ACCORDED GREAT WEIGHT ON APPEAL; EXCEPTION.—** Indeed, great weight is accorded to the factual findings of the trial court particularly on the ascertainment of the credibility of witnesses; this can only be discarded or disturbed when it appears in the record that the trial court had overlooked, ignored or disregarded some fact or circumstance of weight or significance which if considered would have altered the result. After a careful scrutiny of the records, this Court finds no cogent reason to depart from the rulings of the courts below.
2. **CRIMINAL LAW; CRIMES AGAINST PERSONS; PARRICIDE; ELEMENTS; PROVEN IN CASE AT BAR.—** The elements of the crime of parricide are: (1) a person is killed; (2) the deceased is killed by the accused; and (3) the deceased is the father, mother or child, whether legitimate or illegitimate, of the accused or any of his ascendants or descendants, or his spouse. All the above elements were sufficiently proven by the prosecution. It was stipulated during the pre-trial that appellant and the victim are married on 24 August 1999. That the appellant killed the victim was proven specifically by circumstantial evidence.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Law Firm of Arnold V. Guererro for appellant.

R E S O L U T I O N

TINGA, *J.*:

On appeal is the 21 January 2008 Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 00290 affirming the conviction

[1] *Rollo,* pp. 2-15; penned by Associate Justice Japar B. Dimaampao, concurred in by associate Justices Mario L. Guariña III and Sixto C. Marella, Jr.

of appellant Luis Antonio Garchitorena of the crime of parricide by the Regional Trial Court (RTC) of Quezon City.

The accusatory portion of the information reads:

Criminal Case No. Q-94720

That on or about the16th day of [August 2000], in Quezon City, Philippines, the above-named accused, being then the legitimate husband of FLORDELIZA TABLA GARCHITORENA, with intent to kill, did then and there, [willfully], unlawfully and feloniously attack, assault and employ personal violence upon the person of said FLORDELIZA TABL[A] GARCHITORENA, his wife, by then and there shooting her with a gun, hitting her on the head, thereby inflicting upon her serious and mortal wound, which was the direct and immediate cause of her untimely death, to the damage and prejudice of the heirs of said FLORDELIZA TABLA GARCHITORENA.

Contrary to law.[2]

Appellant entered a not guilty plea. Trial ensued.

The prosecution witnesses consists of PO3 Florencio Escobido, the police investigator who responded to the crime scene; P/Sr. Inspector Michael Maunahan, medico-legal officer of the Central Police District Crime Laboratory; P/Sr. Inspector Grace Eustaquio, forensic chemist; Marivic Bartolome, cousin of the victim; Rosario Tabla, mother of the victim and Dr. Edgar Savella, medico-legal officer of the NBI.

PO3 Escobido went to the house of appellant and the victim to investigate. He went inside the bedroom and found blood on the carpeted floor, a 9 mm. caliber pistol and two (2) live bullets. Appellant disclosed to PO3 Escobido that the spouses had an altercation and appellant suspected that his wife had an extramarital affair. Appellant then cocked his pistol twice, gave it to his wife, and told her *"kung guilty ka, ituloy mo."* The victim allegedly took the gun, pointed it to her head and squeezed the trigger. PO3 Escobido requested a ballistic examination of the firearm.[3]

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[2] Records, pp. 1-2.

[3] TSN, 11 September 2000, pp. 8-11.

Capt. Maunahan conducted an autopsy on the victim. In the Medico-Legal Report No. M-078-00, it was found that the victim had sustained a gunshot wound and the point of entry was at the right temporal region, measuring 3x1.8 cm, 15 cm from anterior midline, 9cm from the vertex, directed slightly anteriorwards, downwards to the left, contusion collar superiorly 0.2cm, there is blackening of bullet tract from scalp up to inner table.[4] In short, the entry of the bullet was on the right side of the victim's head and its trajectory was downward.

P/Sr. Inspector Eustaquio conducted the paraffin test, the findings of which indicates absence of powder nitrates on the hands of the victim.[5]

Bartolome attested that the victim was left-handed while Table recounted that her daughter appeared to be in trouble days before her death and that the victim had intimated that she was fearful of her husband.[6]

Dr. Savella also conducted an autopsy on the body of the victim and opined that is unnatural and unlikely that the victim's injury was self-inflicted.[7]

Appellant and Aigel Camba (Camba) testified for the defense. Appellant gave a different account of the incident. He related that on 16 August 2000, the victim, his wife had been cleaning the bedroom carpet when she noticed a burnt hole in it.[8] The victim accused-appellant of having caused the damage. They had a slight argument which apparently irked the victim. At that moment, appellant took his gun from under the pillow and was about to keep it inside the cabinet when the victim grabbed it from her. She reportedly uttered: "*Bago kita lokohin, magpapakamatay muna ako. Kaya kong magpakamatay!"* Appellant snatched the gun back and cocked it twice to show

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[4] Records, p. 133.

[5] *Id.* at 138.

[6] TSN, 7 August 2001, p. 10.

[7] CA *rollo*, p. 46.

[8] TSN, 26 February 2003, pp. 13-16.

the victim that it was loaded with bullets. Thereafter, appellant bent down to retrieve the two bullets which popped out from the gun when he saw the victim take the gun, pointed it to her head, said: *"Akala mo di ko kaya . . ."* and shot herself. Appellant quickly ran out of the room and shouted for help. [9]

Camba, a talent trained by the spouses, testified that after hearing a lone gunshot, she had heard appellant shout: *"Babe, bakit mo ginawa?*[10] Camba did not notice any quarrels between the couple.[11]

On rebuttal, the prosecution presented Police Inspector Leonard Arban who claimed that appellant narrated a different story at the time he was under interrogation from what he stated in court.[12]

On 26 April 2004, RTC rendered judgment convicting appellant of the crime of parricide. The trial court banked on circumstantial evidence to prove the guilt of appellant. The trial court disbelieved the defense of appellant that the victim had committed suicide on the ground that the testimony he gave before the police investigator and his open testimony in court are entirely and substantially inconsistent with each other. Likewise, his narration of the events was contrary to human experience.

The Court of Appeals affirmed the trial court's findings and sustained the judgment of conviction. The appellate court centered on the inconsistencies of the statement of appellant before the police investigator and the trial court. It gave weight to the findings of the trial court with respect to the credibility of appellant. Moreover, it noted that the trajectory of the bullet disproved the defense of suicide.

Indeed, great weight is accorded to the factual findings of the trial court particularly on the ascertainment of the credibility of witnesses; this can only be discarded or disturbed when it

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[9] TSN, 7 May 2003, pp. 3-15.

[10] TSN, 22 November 2002, p. 4.

[11] TSN, 23 September 2002, p. 7.

[12] CA *rollo*, p. 54.

appears in the record that the trial court had overlooked, ignored or disregarded some fact or circumstance of weight or significance which if considered would have altered the result.[13] After a careful scrutiny of the records, this Court finds no cogent reason to depart from the rulings of the courts below.

The elements of the crime of parricide are: (1) a person is killed; (2) the deceased is killed by the accused; and (3) the deceased is the father, mother or child, whether legitimate or illegitimate, of the accused or any of his ascendants or descendants, or his spouse.[14]

All the above elements were sufficiently proven by the prosecution. It was stipulated during the pre-trial that appellant and the victim are married on 24 August 1999. That the appellant killed the victim was proven specifically by circumstantial evidence. As aptly stated by the trial court:

> In the instant case, the totality of the circumstances warrant a finding that accused is guilty beyond reasonable doubt of the crime charged. The fact that accused and the deceased were the only persons in the bedroom when the shooting incident occurred is undisputed. Secondly, there was an argument between the spouses, as narrated by the accused to the police investigator and during trial. Thirdly, accused, giving no logical excuse, got a gun. In this, the Court finds criminal purpose. Also, there is a finding by this Court of improbability of the deceased shooting herself.
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> While admittedly there is no direct evidence presented by the prosecution on the killing of the deceased by the accused, the established circumstances aforestated, however, constituted an unbroken chain, consistent with each other and with the hypothesis that the accused is guilty, to the exclusion of all other [hypothesis] that he is not. And when circumstantial evidence constitutes an unbroken chain of natural and rational circumstances corroborating each other, it cannot be overcome by inaccurate and doubtful evidence submitted by the accused.[15]

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[13] *Ferrer v. People*, G.R. No. 143487, 22 February 2006, 483 SCRA 31, 50.

[14] *People v. Ayuman*, G.R. No. 133436, 14 April 2004, 427 SCRA 248, 256.

[15] CA *rollo*, pp. 59-60.

WHEREFORE, the Decision dated 21 January 2008 of the Court of Appeals convicting appellant Luis Antonio Garchitorena of the crime of parricide is *AFFIRMED*.

SO ORDERED.

*Carpio Morales,** *Velasco, Jr., Leonardo-de Castro,*** and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 164437. May 15, 2009]

HECTOR C. VILLANUEVA, *petitioner, vs.* **PHILIPPINE DAILY INQUIRER, INC., LETTY JIMENEZ MAGSANOC, ROSAURO G. ACOSTA, JOSE MARIA NOLASCO, ARTEMIO T. ENGRACIA, JR., RAFAEL CHEEKEE, and MANILA DAILY BULLETIN PUBLISHING CORPORATION, NAPOLEON G. RAMA, BEN F. RODRIGUEZ, ARTHUR S. SALES, CRIS J. ICBAN, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; NATURE THEREOF IS DETERMINED BY THE ALLEGATIONS THEREIN MADE IN GOOD FAITH, THE STAGE OF THE PROCEEDING AT WHICH IT IS FILED, AND THE PRIMARY OBJECTIVE OF THE PARTY FILING THE SAME.— Basic is the rule that what determines

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* Acting Chairperson as replacement of Justice Leonardo A. Quisumbing who is on official leave per Special Order No. 618.

** Additonal member of the Second Division per Special Order No. 619.

the nature of an action as well as which court has jurisdiction over it are the allegations of the complaint and the character of the relief sought. The nature of a pleading is determined by allegations therein made in good faith, the stage of the proceeding at which it is filed, and the primary objective of the party filing the same. The ground chosen or the rationale adopted by the court in resolving the case does not determine or change the real nature thereof.

2. ID.; EVIDENCE; MERE ALLEGATION IS NOT EVIDENCE AND IS NOT EQUIVALENT TO PROOF.— x x x [A]s the issue of malice was raised, it was incumbent on petitioner to prove the same. The basic rule is that mere allegation is not evidence, and is not equivalent to proof. As correctly stated by the Court of Appeals, while the questioned news item was found to be untrue, this does not necessarily render the same malicious.

3. CRIMINAL LAW; CRIMES AGAINST HONOR; LIBEL; DEFINED.— Libel is defined as "a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural person or juridical person, or to blacken the memory of one who is dead." x x x

4. ID.; ID.; ID.; EVERY DEFAMATORY IMPUTATION IS PRESUMED TO BE MALICIOUS; EXCEPTIONS; CASE AT BAR.— x x x [E]very defamatory imputation is presumed to be malicious. The presumption of malice, however, does not exist in the following instances: 1. A private communication made by any person to another in the performance of any legal, moral, or social duty; and 2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative, or other official proceedings which are not of confidential nature, or of any statement, report, or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions. We note that the publications or articles in question are neither private communications nor true reports of official proceedings without any comments or remarks. However, this does not necessarily mean that the questioned articles are not privileged. **The enumeration under Art. 354 is not an exclusive list of qualified privileged communications since fair**

commentaries on matters of public interest are likewise privileged and constitute a valid defense in an action for libel or slander. The rule on privileged communication had its genesis not in the nation's penal code but in the Bill of Rights of the Constitution guaranteeing freedom of speech and of the press. As early as 1918, in *United States v. Cañete*, this Court ruled that publications which are privileged for reasons of public policy are protected by the constitutional guaranty of freedom of speech. In the instant case, there is no denying that the questioned articles dealt with matters of public interest. These are matters about which the public has the right to be informed, taking into account the very public character of the election itself. For this reason, they attracted media mileage and drew public attention not only to the election itself but to the candidates. As one of the candidates, petitioner consequently assumed the status of a public figure within the purview of *Ayers Productions Pty. Ltd. v. Capulong*.

5. ID.; ID.; ID.; ID.; ID.; A PERSON NOT QUALIFYING AS A PUBLIC FIGURE COULD BE VALIDLY SUBJECT OF A PUBLIC COMMENT; EXPLAINED.— But even assuming a person would not qualify as a public figure, it would not necessarily follow that he could not validly be the subject of a public comment. For he could; for instance, if and when he would be involved in a public issue. If a matter is a subject of public or general interest, it cannot suddenly become less so merely because a private individual is involved or because in some sense the individual did not voluntarily choose to become involved. **The public's primary interest is in the event; the public focus is on the conduct of the participant and the content, effect and significance of the conduct, not the participant's prior anonymity or notoriety**.

6. ID.; ID.; ID.; TO BE CONSIDERED MALICIOUS, THE LIBELOUS STATEMENT MUST BE SHOWN TO HAVE BEEN WRITTEN OR PUBLISHED WITH THE KNOWLEDGE THAT THEY ARE FALSE OR IN RECKLESS DISREGARD OF WHETHER THEY ARE FALSE OR NOT; CASE AT BAR.— Under the current state of our jurisprudence, to be considered malicious, the libelous statement must be shown to have been written or published with the knowledge that they are false or in reckless disregard of whether they are false or not. "Reckless disregard of what is false or not" means that

the author or publisher entertains serious doubt as to the truth of the publication, or that he possesses a high degree of awareness of their probable falsity. In the instant case, we find no conclusive showing that the published articles in question were written with knowledge that these were false or in reckless disregard of what was false or not. According to Manila Bulletin reporter Edgardo T. Suarez, he got the story from a fellow reporter who told him that the disqualification case against petitioner was granted. PDI, on the other hand, said that they got the story from a press release the very same day the Manila Bulletin published the same story. PDI claims that the press release bore COMELEC's letterhead, signed by one Sonia Dimasupil, who was in-charge of COMELEC press releases. They also tried to contact her but she was out of the office. Since the news item was already published in the Manila Bulletin, they felt confident the press release was authentic. Following the narration of events narrated by respondents, it cannot be said that the publications were published with reckless disregard of what is false or not.

7. **ID.; ID.; ID.; ID.; MERE ERROR, INACCURACY OR EVEN FALSITY ALONE DOES NOT PROVE ACTUAL MALICE.—** x x x [E]ven assuming that the contents of the articles turned out to be false, mere error, inaccuracy or even falsity alone does not prove actual malice. Errors or misstatements are inevitable in any scheme of truly free expression and debate. Consistent with good faith and reasonable care, the press should not be held to account, to a point of suppression, for honest mistakes or imperfections in the choice of language. There must be some room for misstatement of fact as well as for misjudgment. Only by giving them much leeway and tolerance can they courageously and effectively function as critical agencies in our democracy.

8. **ID.; ID.; ID.; ID.; FAILURE TO COUNTER-CHECK THE REPORT OR PRESENT THE INFORMANT SHOULD NOT BE A REASON TO HOLD THE REPORTER LIABLE AS LONG AS HE DOES NOT ENTERTAIN A "HIGH DEGREE OF AWARENESS OF PROBABLE FALSITY".—** x x x [I]n our view respondents' failure to counter-check their report or present their informant should not be a reason to hold them liable. While substantiation of the facts supplied is an important reporting standard, still, a reporter may rely on information

given by a lone source although it reflects only one side of the story provided the reporter does not entertain a "high degree of awareness of [its] probable falsity." Petitioner, in this case, presented no proof that respondents entertained such awareness. Failure to present respondents' informant before the court should not be taken against them.

9. ID.; ID.; ID.; PRIVILEGED COMMUNICATION; SHOULD NOT BE SUBJECTED TO EXCESSIVE SCRUTINY SO AS NOT TO DEFEAT THE PROTECTION PROVIDED BY THE LAW THERETO.— Worth stressing, jurisprudence instructs us that a privileged communication should not be subjected to microscopic examination to discover grounds for malice or falsity. Such excessive scrutiny would defeat the protection which the law throws over privileged communications. The ultimate test is that of *bona fides*.

10. CIVIL LAW; DAMAGES; AWARD THEREOF NOT PROPER IN CASE AT BAR.— On petitioner's claim for damages, we find no evidence to support their award. Indeed, it cannot be said that respondents published the questioned articles for the sole purpose of harassing petitioner. Proof and motive that the publication was prompted by a sinister design to vex and humiliate petitioner has not been clearly and preponderantly established to entitle the petitioner to damages. There remains unfulfilled the need to prove that the publications were made with actual malice – that is, with the knowledge of the publications' falsity or with reckless disregard of whether they were false or not. Thus, from American jurisprudence as amplified in *Lopez v. Court of Appeals*: For liability to arise then without offending press freedom, there is this test to meet: "The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'— that is, with knowledge that it was false or with reckless disregard of whether it was false or not." **The United States Supreme Court went further in *Curtis Publishing Co. v. Butts*, where such immunity, was held as covering statements concerning public figures regardless of whether or not they are government officials. Why there should be such an extension is understandable in the light of the broad scope enjoyed by press freedom which certainly allows a**

full and free discussion of public issues. What can be more logical and appropriate, then, than such an expansion of the principle. As noted by a commentator: "**Since discussion of public issues cannot be meaningful without reference to the men involved on both sides of such issues, and since such men will not necessarily be public officials, one cannot but agree that the Court was right in *Curtis* to extend the *Times* rule to all public figures."** Furthermore, the guarantee of press freedom has also come to ensure that claims for damages arising from the utilization of the freedom be not unreasonable or exorbitant as to practically cause a chilling effect on the exercise thereof. Damages, in our view, could not simply arise from an inaccurate or false statement without irrefutable proof of actual malice as element of the assailed publication.

APPEARANCES OF COUNSEL

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Ortega Del Castillo Bacorro Odulio Calma and Carbonell for Philippine Daily Inquirer, *et al*.

S*iguion Reyna Montecillo and Ongsiako Law Offices* for Manila Bulletin Publishing Corporation.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review on *certiorari* assails the Amended Decision[1] dated May 25, 2004 of the Court of Appeals in CA-G.R. CV No. 54134, reversing the Decision[2] of the Regional Trial Court (RTC) of Negros Oriental, Dumaguete City, Branch 44 in Civil Case No. 206-B, which had awarded damages to petitioner for respondents' false reporting.

[1] *Rollo*, pp. 11-30. Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Roberto A. Barrios and Martin S. Villarama, Jr., concurring.

[2] Records, pp. 263-282. Dated April 18, 1996. Penned by Judge Alvin L. Tan.

The basic facts in this case are uncomplicated.

Petitioner was one of the mayoralty candidates in Bais, Negros Oriental during the May 11, 1992 elections.

On March 30, 1990, Ricardo Nolan, another mayoralty candidate, petitioned for the disqualification of petitioner from running in the elections. Said petition, however, was denied by the COMELEC.[3]

Two days before the elections, or on May 9, 1992, respondent Manila Daily Bulletin Publishing Corporation (Manila Bulletin) published the following story:

> **The Comelec has disqualified Hector G. Villanueva as Lakas-NUCD candidate for mayor of Bais City** for having been convicted in three administrative cases for grave abuse of authority and harassment in 1987, while he was officer-in-charge of the mayor's office of Bais City.[4] [Emphasis and underscoring supplied.]

A day before the elections or on May 10, 1992, respondent Philippine Daily Inquirer, Inc. (PDI) also came out with a similar story, to wit:

> **The Commission on Elections disqualified Hector G. Villanueva as Lakas-NUCD candidate for mayor of Bais City for having been convicted in three administrative cases for grave abuse of authority and harassment in 1987, while he was the officer-in-charge of the mayor's office in the city.**
>
> The Comelec upheld the recommendation of the Comelec office in Bais City, stressing that Villanueva's conviction in the administrative cases barred him from seeking any elective office.
>
> The Comelec cited Section 40 of the Local Government Code of 1991, which provides that among those who are disqualified from running for any elective position are "those removed from office as a result of an administrative case."
>
> Villanueva was appointed Bais City OIC on April 18, 1986 by then Local Government Minister Aquilino Pimentel. Sometime during

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[3] Records, pp. 10-12.

[4] *Id.* at 167.

the same year, three administrative cases were instituted against Villanueva before the Department of Local Government upon complaint of Rebecco V. Fernandez and Dr. Harte C. Fuentes.

Sometime in May 1987, the ministry found Villanueva "guilty as charged" and ordered him removed from his position as OIC of the city government, which decision was approved by Minister Jaime Ferrer.

In the same month, Francisco G. Villanueva was appointed OIC Mayor to replace Hector Villanueva who had been removed from office.

The poll body also stated that insofar as the penalty of the removal is concerned, this cannot be reversed anymore, and consequently cannot be the subject matter of an appeal.

The indefinite term as OIC to which respondent was appointed in 1986 already lapsed, with the holding of the 1988 local elections and the assumption of office of those elected therein.[5] [Emphasis and underscoring supplied.]

On May 11, 1992, the national and local elections were held as scheduled. When results came out, it turned out that petitioner failed in his mayoralty bid.

Believing that his defeat was caused by the publication of the above-quoted stories, petitioner sued respondents PDI and Manila Bulletin as well as their publishers and editors for damages before the RTC of Bais City. He alleged that the articles were "maliciously timed" to defeat him. He claimed he should have won by landslide, but his supporters reportedly believed the news items distributed by his rivals and voted for other candidates. He asked for actual damages of ₱270,000 for the amount he spent for the campaign, moral damages of ₱10,000,000, an unspecified amount of exemplary damages, attorney's fees of ₱300,000 and costs of suit.[6]

Respondents disclaimed liability. They asserted that no malice can be attributed to them as they did not know petitioner and

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[5] *Id.* at 173.

[6] *Id.* at 1-6.

had no interest in the outcome of the election, stressing that the stories were privileged in nature.[7]

According to Manila Bulletin reporter Edgardo T. Suarez, he got the story during a COMELEC commissioner's press briefing. He, however, came in late and only a fellow reporter told him that the disqualification case against petitioner was granted. He did not bother to get a confirmation from anyone as he had a deadline to beat.[8]

PDI political section editor Carlos Hidalgo, on the other hand, said that he got the story from a press release. He claimed that he found the press release on his desk the day Manila Bulletin published the same story. The press release bore COMELEC's letterhead and was signed by one Sonia Dimasupil, a former Malaya newspaper editor who was in-charge of COMELEC press releases. He tried to contact her but she was out of the office. Since the news item was also published in the Manila Bulletin, he felt confident the press release was authentic. He however failed to produce the press release in court.[9]

On April 18, 1996, the trial court rendered a decision in favor of petitioner as follows:

> WHEREFORE FOREGOING CONSIDERED, this Court holds that defendants Philippine Daily Inquirer, [Inc.] and Manila [Daily] Bulletin Publishing Corporation with their respective officers are liable [for] damages to plaintiff in the following manner:
>
> 1. As moral damages, the Philippine Daily Inquirer, [Inc.] and the Manila [Daily] Bulletin Publishing Corporation are ordered to pay ₱1,000,000.00 each to plaintiff;
>
> 2. Both defendants are likewise ordered to pay an exemplary damage in the amount of ₱500,000.00 each;
>
> 3. To pay plaintiff's attorney's fees in the amount of ₱100,000.00;
>
> 4. And to pay the costs.

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[7] *Id.* at 65 and 73.

[8] TSN, February 21, 1995, pp. 252-261.

[9] TSN, July 6, 1995, pp. 218-243.

SO ORDERED.[10]

The trial court found the news items derogatory and injurious to petitioner's reputation and candidacy. It faulted respondents for failing to verify the truth of the news tips they published and held respondents liable for negligence, citing *Policarpio v. Manila Times Pub. Co., Inc.*[11] The trial court also ruled that because the news items lacked truth and fairness, they were not privileged communications.

On appeal by respondents, the Court of Appeals dismissed the complaint. It explained that although the stories were false and not privileged, as there is no proof they were obtained from a press conference or release, respondents were not impelled by malice or improper motive. There was also no proof that petitioner's supporters junked him due to the reports. Neither was there any proof he would win, making his action unfounded.

Before us, petitioner raises the lone issue of whether:

[THE] HONORABLE APPELLATE COURT COMMITTED … GRAVE ABUSE OF DISCRETION AMOUNTING TO UTTER LACK OF JURISDICTION WHEN IT UNILATERALLY, UNPROCEDURALLY AND ARBITRARILY CHANGED THE PLEADING-BORNE AND PRE-TRIAL ORDER DELINEATED THEORY OF QUASI-DELICT OF APPELLEE, THEREBY DISMISSING THE CASE FOR FAILURE TO EVIDENCE AN ESSENTIAL REQUISITE OF ITS IMPOSED IRRELEVANT THEORY.[12]

Simply stated, we are asked to resolve the issue of whether petitioner is required to prove malice to be entitled to damages.

Petitioner argues that his cause of action is based on *quasi-delict* which only requires proof of fault or negligence, not proof of malice beyond reasonable doubt as required in a criminal prosecution for libel. He argues that the case is entirely different and separate from an independent civil action arising from libel

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[10] Records, p. 282.

[11] No. L-16027, May 30, 1962, 5 SCRA 148.

[12] *Rollo*, p. 185.

under Article 100[13] of the Revised Penal Code. He claims he proffered proofs sustaining his claim for damages under *quasi-delict*, not under the law on libel, as malice is hard to prove. He stresses that nowhere in the complaint did he mention libel, and nothing in his complaint shows that his cause of action had some shade of libel as defined in the Revised Penal Code. He also did not hint a resort to a criminal proceeding for libel.[14]

PDI and its officers argue that petitioner's complaint clearly lays a cause of action arising from libel as it highlights malice underlying the publications. And as malice is an element of libel, the appellate court committed no error in characterizing the case as one arising from libel.[15]

For their part, Manila Bulletin and its officers claim that petitioner changed his theory, which must be disallowed as it violates respondents' right to due process. Although petitioner's claim for damages before the trial court hinged on the erroneous publications, which he alleged were maliciously timed, he claims in his petition before this Court that his cause of action is actually one for *quasi-delict* or tort. They stress that the prayer and allegations in petitioner's complaint, which never alleged *quasi-delict* or tort but malicious publication as basis for the claim for damages, control his case theory. Thus, it may not be altered unless there was an amendment of the complaint to change the cause of action. They claim that petitioner's initiatory pleading and the trial court's pre-trial order and decision reveal that his cause of action for damages arose from the publications of the "malicious" articles; hence, he should have proved actual malice to be entitled to any award of damages. They added that the appellate court correctly ruled that the articles were not published with actual malice.[16]

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[13] **ART. 100.** *Civil liability of a person guilty of felony.*— Every person criminally liable for a felony is also civilly liable.

[14] *Rollo*, pp. 156-159.

[15] *Id.* at 121-122.

[16] *Id.* at 137-152.

We rule in favor of the respondents.

Basic is the rule that what determines the nature of an action as well as which court has jurisdiction over it are the allegations of the complaint and the character of the relief sought.[17] The nature of a pleading is determined by allegations therein made in good faith, the stage of the proceeding at which it is filed, and the primary objective of the party filing the same. The ground chosen or the rationale adopted by the court in resolving the case does not determine or change the real nature thereof.

The complaint was denominated as one for "damages," and a perusal of its content reveals that the factual allegations constituted a complaint for damages based on malicious publication. It specifically pointed out that petitioner lost the election because of the bad publicity created by the malicious publication of respondents PDI and Manila Bulletin. It is alleged numerous times that the action for damages stemmed from respondents' malicious publication. Petitioner sought that respondents be declared guilty of irresponsible and malicious publication and be made liable for damages. The fact that petitioner later on changed his theory to *quasi-delict* does not change the nature of petitioner's complaint and convert petitioner's action into *quasi-delict*. The complaint remains to be one for damages based on malicious publication.

Consequently, as the issue of malice was raised, it was incumbent on petitioner to prove the same. The basic rule is that mere allegation is not evidence, and is not equivalent to proof.[18] As correctly stated by the Court of Appeals, while the questioned news item was found to be untrue, this does not necessarily render the same malicious.

To fully appreciate the import of the complaint alleging malice and damages, we must recall the essence of libel.

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[17] *Sales v. Barro*, G.R. No. 171678, December 10, 2008, p. 5.

[18] *Philippine National Bank v. Court of Appeals*, G.R. No. 116181, January 6, 1997, 266 SCRA 136, 139.

Libel is defined as "a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural person or juridical person, or to blacken the memory of one who is dead."[19] Any of these imputations is defamatory and under the general rule stated in Article 354 of the Revised Penal Code, every defamatory imputation is presumed to be malicious.[20] The presumption of malice, however, does not exist in the following instances:

1. A private communication made by any person to another in the performance of any legal, moral, or social duty; and

2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative, or other official proceedings which are not of confidential nature, or of any statement, report, or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.[21]

We note that the publications or articles in question are neither private communications nor true reports of official proceedings without any comments or remarks. However, this does not necessarily mean that the questioned articles are not privileged. **The enumeration under Art. 354 is not an exclusive list of qualified privileged communications since fair commentaries on matters of public interest are likewise privileged and constitute a valid defense in an action for libel or slander.**[22] The rule on privileged communication had its genesis not in the nation's penal code but in the Bill of Rights of the Constitution guaranteeing freedom of speech and of the press. As early as 1918, in *United States v. Cañete*,[23] this Court ruled that

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[19] REVISED PENAL CODE, Art. 353.

[20] *Alonzo v. Court of Appeals*, G.R. No. 110088, February 1, 1995, 241 SCRA 51, 59.

[21] REVISED PENAL CODE, Art. 354.

[22] *Borjal v. Court of Appeals*, G.R. No. 126466, January 14, 1999, 301 SCRA 1, 21-22.

[23] 38 Phil. 253 (1918).

publications which are privileged for reasons of public policy are protected by the constitutional guaranty of freedom of speech.[24]

In the instant case, there is no denying that the questioned articles dealt with matters of public interest. These are matters about which the public has the right to be informed, taking into account the very public character of the election itself. For this reason, they attracted media mileage and drew public attention not only to the election itself but to the candidates. As one of the candidates, petitioner consequently assumed the status of a public figure within the purview of *Ayers Productions Pty. Ltd. v. Capulong*.[25]

But even assuming a person would not qualify as a public figure, it would not necessarily follow that he could not validly be the subject of a public comment. For he could; for instance, if and when he would be involved in a public issue. If a matter is a subject of public or general interest, it cannot suddenly become less so merely because a private individual is involved or because in some sense the individual did not voluntarily choose to become involved. **The public's primary interest is in the event; the public focus is on the conduct of the participant and the content, effect and significance of the conduct, not the participant's prior anonymity or notoriety**.[26]

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[24] *Id.* at 265. *Borjal v. Court of Appeals*, *supra* at 22.

[25] Nos. 82380 and 82398, April 29, 1988, 160 SCRA 861, 874-875.

x x x a person who, by his accomplishments, fame, or mode of living, or by adopting a profession or calling which gives the public a legitimate interest in his doings, his affairs, and his character, has become a 'public personage.' He is, in other words, a celebrity. Obviously to be included in this category are those who have achieved some degree of reputation by appearing before the public, as in the case of an actor, a professional baseball player, a pugilist, or any other entertainer. The list is, however, broader than this. It includes public officers, famous inventors and explorers, war heroes and even ordinary soldiers, an infant prodigy, and no less a personage than the Grand Exalted Ruler of a lodge. It includes, in short, anyone who has arrived at a position where public attention is focused upon him as a person. (Stress supplied.)

[26] *Borjal v. Court of Appeals*, *supra* at 26-27.

In any event, having been OIC-Mayor of Bais City after the People Power Revolution, petitioner in this case as early as 1992 was already a well-known official and public figure.

However, it must be stressed that the fact that a communication or publication is privileged does not mean that it is not actionable; the privileged character simply does away with the presumption of malice, which the plaintiff has to prove in such a case.[27] That proof in a civil case must of course be based on preponderance of evidence. This, however, petitioner failed to do in this case.

Under the current state of our jurisprudence, to be considered malicious, the libelous statement must be shown to have been written or published with the knowledge that they are false or in reckless disregard of whether they are false or not. "Reckless disregard of what is false or not" means that the author or publisher entertains serious doubt as to the truth of the publication, or that he possesses a high degree of awareness of their probable falsity.[28]

In the instant case, we find no conclusive showing that the published articles in question were written with knowledge that these were false or in reckless disregard of what was false or not. According to Manila Bulletin reporter Edgardo T. Suarez, he got the story from a fellow reporter who told him that the disqualification case against petitioner was granted. PDI, on the other hand, said that they got the story from a press release the very same day the Manila Bulletin published the same story. PDI claims that the press release bore COMELEC's letterhead, signed by one Sonia Dimasupil, who was in-charge of COMELEC press releases. They also tried to contact her but she was out of the office. Since the news item was already published in the Manila Bulletin, they felt confident the press release was authentic. Following the narration of events narrated by

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[27] *Lu Chu Sing and Lu Tian Chiong v. Lu Tiong Gui*, 76 Phil. 669, 676 (1946).

[28] *Borjal v. Court of Appeals*, *supra* note 22, at 28-29.

respondents, it cannot be said that the publications were published with reckless disregard of what is false or not.

Nevertheless, even assuming that the contents of the articles turned out to be false, mere error, inaccuracy or even falsity alone does not prove actual malice. Errors or misstatements are inevitable in any scheme of truly free expression and debate. Consistent with good faith and reasonable care, the press should not be held to account, to a point of suppression, for honest mistakes or imperfections in the choice of language. There must be some room for misstatement of fact as well as for misjudgment. Only by giving them much leeway and tolerance can they courageously and effectively function as critical agencies in our democracy.[29]

A newspaper, especially one national in reach and coverage, should be free to report on events and developments in which the public has a legitimate interest with minimum fear of being hauled to court by one group or another on criminal or civil charges for malice or damages, *i.e.* libel, so long as the newspaper respects and keeps within the standards of morality and civility prevailing within the general community.[30]

Likewise, in our view respondents' failure to counter-check their report or present their informant should not be a reason to hold them liable. While substantiation of the facts supplied is an important reporting standard, still, a reporter may rely on information given by a lone source although it reflects only one side of the story provided the reporter does not entertain a "high degree of awareness of [its] probable falsity."[31] Petitioner, in this case, presented no proof that respondents entertained such awareness. Failure to present respondents' informant before the court should not be taken against them.[32]

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[29] *Id.* at 30.

[30] *Id.*, citing *Bulletin Publishing Corp. v. Noel*, No. 76565, November 9, 1988, 167 SCRA 255, 265.

[31] *Flor v. People*, G.R. No. 139987, March 31, 2005, 454 SCRA 440, 459.

[32] *Id.*

Worth stressing, jurisprudence instructs us that a privileged communication should not be subjected to microscopic examination to discover grounds for malice or falsity. Such excessive scrutiny would defeat the protection which the law throws over privileged communications. The ultimate test is that of *bona fides*.[33]

Further, worthy of note, before the filing of the complaint, respondents herein received no word of protest, exception or objection from petitioner. Had the error in the news reports in question been pointed out by interested parties to the respondents, their publishers and editors could have promptly made a rectification through print and broadcast media just before and during the election day deflecting thereby any prejudice to petitioner's political or personal interest.

As aptly observed in *Quisumbing v. Lopez, et al.*:[34]

> Every citizen of course has the right to enjoy a good name and reputation, but we do not consider that the respondents, under the circumstances of this case, had violated said right or abused the freedom of the press. The newspapers **should be given such leeway and tolerance as to enable them to courageously and effectively perform their important role in our democracy**. In the preparation of stories, press reporters and edition usually have to race with their deadlines; and consistently with good faith and reasonable care, **they should not be held to account, to a point of suppression, for honest mistakes** or imperfection in the choice of words.[35] [Emphasis supplied.]

We find respondents entitled to the protection of the rules concerning qualified privilege, growing out of constitutional guaranties in our Bill of Rights. We cannot punish journalists including publishers for an honest endeavor to serve the public when moved by a sense of civic duty and prodded by their sense of responsibility as news media to report what they perceived

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[33] *Elizalde v. Gutierrez*, No. L-33615, April 22, 1977, 76 SCRA 448, 454.

[34] 96 Phil. 510 (1955).

[35] *Id.* at 515.

to be a genuine report.

Media men are always reminded of their responsibilities as such. This time, there is also a need to remind public figures of the consequences of being one. Fittingly, as held in *Time, Inc. v. Hill*,[36] one of the costs associated with participation in public affairs is an attendant loss of privacy.

> Exposure of the self to others in varying degrees is a concomitant of life in a civilized community. The risk of this exposure is an essential incident of life in a society which places a primary value on freedom of speech and of press. "Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period."[37]

On petitioner's claim for damages, we find no evidence to support their award. Indeed, it cannot be said that respondents published the questioned articles for the sole purpose of harassing petitioner. Proof and motive that the publication was prompted by a sinister design to vex and humiliate petitioner has not been clearly and preponderantly established to entitle the petitioner to damages. There remains unfulfilled the need to prove that the publications were made with actual malice – that is, with the knowledge of the publications' falsity or with reckless disregard of whether they were false or not.[38]

Thus, from American jurisprudence as amplified in *Lopez v. Court of Appeals*:

> For liability to arise then without offending press freedom, there is this test to meet: "The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'— that is, with knowledge that it was false or with reckless disregard of

[36] 385 US 374, 17 L ed 2d 456, 87 S Ct 534 (1967).

[37] *Id.* at 467.

[38] *Lopez v. Court of Appeals*, No. L-26549, July 31, 1970, 34 SCRA 116, 126.

whether it was false or not." **The United States Supreme Court went further in *Curtis Publishing Co. v. Butts*,[39] where such immunity, was held as covering statements concerning public figures regardless of whether or not they are government officials. Why there should be such an extension is understandable in the light of the broad scope enjoyed by press freedom which certainly allows a full and free discussion of public issues.** What can be more logical and appropriate, then, than such an expansion of the principle. As noted by a commentator: "**Since discussion of public issues cannot be meaningful without reference to the men involved on both sides of such issues, and since such men will not necessarily be public officials, one cannot but agree that the Court was right in *Curtis* to extend the *Times*[40] rule to all public figures."**[41] [Emphasis supplied.]

Furthermore, the guarantee of press freedom has also come to ensure that claims for damages arising from the utilization of the freedom be not unreasonable or exorbitant as to practically cause a chilling effect on the exercise thereof. Damages, in our view, could not simply arise from an inaccurate or false statement without irrefutable proof of actual malice as element of the assailed publication.

WHEREFORE, the assailed Amended Decision dated May 25, 2004 of the Court of Appeals in CA-G.R. CV No. 54134 is *AFFIRMED*.

SO ORDERED.

Carpio,[*] *Corona,*[**] *Carpio Morales,* and *Velasco, Jr., JJ.,*

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[39] 388 US 130, 18 L ed 2d 1094, 87 S Ct 1975, reh den (1967).

[40] *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964) was a United States Supreme Court case which established the actual malice standard.

[41] *Lopez v. Court of Appeals, supra* at 126-127.

[*] Designated member per Raffle of April 23, 2008 in place of Associate Justice Arturo D. Brion who took no part for being a former member of a party's counsel firm.

[**] Designated member per Raffle of April 27, 2009 in place of Associate Justice Dante O. Tinga who took no part due to his close relations to a party.

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Duties — Include the duty to attain the ends of justice by maintaining respect for the legal profession. (Kupers *vs*. Atty. Hontanosas, A.C. No. 5704, May 08, 2009) p. 397

— One of the foremost sworn duties of a lawyer is "to obey the laws of the Philippines." *(Id.)*

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Bank drafts — Liability under a Letter of Undertaking is independent from liability under the bank draft. (Producers Bank of the Phils. *vs*. Excelsa Industries, Inc., G.R. No. 152071, May 08, 2009) p. 445

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Equal protection clause — Not violated in case the immediate result of the preventive suspension order of the MTRCB is that petitioner remains temporarily gagged and unable to answer critics. (Soriano *vs*. Laguardia, G.R. Nos. 164785 & 165636, April 29, 2009) p. 43

Freedom of speech or expression — Allows no prior restraint on expression. (Soriano *vs*. Laguardia, G.R. Nos. 164785 & 165636, April 29, 2009; *Carpio, J., dissenting opinion*) p. 43

— Application of balancing of interest test. *(Id.)*

— Application of clear and present danger doctrine. *(Id.)*

— Defined. *(Id.)*

— Exercise of the right is not absolute. *(Id.)*

(Id.; Corona, J., separate opinion)

— Expression is not subject to subsequent punishment; exceptions. *(Id.; Carpio, J., dissenting opinion)*

— Fighting words are not subject to subsequent punishment. *(Id.; Id.)*

— In free speech cases, the medium is relevant and material. *(Id.)*

— Indecent language in a general patronage program is a case of unprotected speech. *(Id.)*

— Loud and public indecent or offensive speech under contemporary Filipino cultural values is subject to regulation. *(Id.; Corona, J., separate opinion)*

— Obscenity; defined. *(Id.)*

— Regulation distinguished from restriction. *(Id.)*

— Restraint on TV broadcast of offensive and indecent language; when justified. *(Id.)*

— Unprotected speech; defined. *(Id.)*

— Utterances that may be subject to prior restraint. *(Id.; Carpio, J., dissenting opinion)*

— When right to broadcast is abused, it may be reasonably restrained or subjected to administrative sanctions. *(Id.; Corona, J., separate opinion)*

Religious freedom — Plain and simple insults directed at another person cannot be elevated to the status of religious speech. (Soriano *vs*. Laguardia, G.R. Nos. 164785 & 165636, April 29, 2009) p. 43

Youth protection — A sacred obligation of state imposed by the Constitution. (Soriano *vs*. Laguardia, G.R. Nos. 164785 & 165636, April 29, 2009) p. 43

— Duty of government to act as *parens patriae*. *(Id.)*

— Duty of the state to help parents protect their children. *(Id.)*

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Broadcast indecency — Involves violations of rights to privacy, dignity and choice. (Soriano *vs*. Laguardia, G.R. Nos. 164785 & 165636, April 29, 2009; *Corona, J., separate opinion)* p. 43

— Protection of right to privacy of the home is a compelling government interest. *(Id.; Id.)*

Broadcasting — A privilege and not a right. (Soriano *vs*. Laguardia, G.R. Nos. 164785 & 165636, April 29, 2009; *Corona, J., separate opinion*) p. 43

— Premised on a marketplace of ideas. *(Id.; Id.)*

Concept — Broadcast media is a public trust. (Soriano *vs*. Laguardia, G.R. Nos. 164785 & 165636, April 29, 2009; *Corona, J., separate opinion*) p. 43

— Broadcasting has the most limited free speech protection. *(Id.; Id.)*

— Right of viewers vis-à-vis the right of broadcasters. *(Id.; Id.)*

CERTIORARI

Petition for — Availability of an appeal does not foreclose recourse to the extraordinary remedies where appeal is not adequate or equally beneficial, speedy and sufficient. (People's Broadcasting Service [Bombo Radyo Phils., Inc.] *vs*. Sec. of the DOLE, G.R. No. 179652, May 08, 2009) p. 801

— Filing of motion for reconsideration is an indispensable condition before filing a petition for certiorari; exceptions. (Soriano *vs*. Laguardia, G.R. Nos. 164785 & 165636, April 29, 2009; *Corona, J., separate opinion*) p. 43

— Issue of prescription cannot be resolved in a petition for certiorari. (People *vs*. Romualdez, G.R. No. 166510, April 29, 2009; *Brion, J., dissenting opinion)* p. 194

— Nature. *(Id.; Id.)*

— Not proper when there is a plain, speedy and adequate remedy in the ordinary course of law available to petitioner. (Soriano *vs*. Laguardia, G.R. Nos. 164785 & 165636, April 29, 2009; *Corona, J., separate opinion*) p. 43

— When available. (People's Broadcasting Service [Bombo Radyo Phils., Inc.] *vs*. Sec. of the DOLE, G.R. No. 179652, May 08, 2009) p. 801

— Will not lie when there are other remedies available. (Olympic Mines and Dev't. Corp. *vs*. Platinum Group Metals Corp., G.R. No. 178188, May 08, 2009; *Tinga, J., dissenting opinion*) p. 699

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— It must be established with exactitude that the dangerous drugs presented in court as evidence against the accused is the same as that seized from him. *(Id.)*

1987 CONSTITUTION

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— Duty of government to act as *parens patriae (Id.)*

— Duty of the state to help parents protect their children. *(Id.)*

CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC)

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CONTRACTS

Obligatory force of — Since the Philippine Airlines was already under private ownership at the time the Confidential Memorandum of Agreement was entered into, it cannot be presumed that any and all commitments made by the Philippine Government are unilaterally binding on the carrier even at the expense of diplomatic embarrassment. (Kuwait Airways, Corp. *vs.* PAL, Inc., G.R. No. 156087, May 08, 2009) p. 474

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certain provisions of Articles of Incorporation and by-laws, the recognition of the election of directors and inspection of corporate books. (GD Express Worldwide N.V. *vs*. CA, G.R. No. 136978, May 08, 2009) p. 406

— Securities and Exchange Commission's jurisdiction over said controversy was transferred to the Regional Trial Courts or Special Commercial Courts pursuant to Section 5.2 of R.A. No. 8799. *(Id.)*

COURTS

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Attorney's fees — Award thereof is the exception rather than the general rule. (Delos Santos *vs*. Papa, G.R. No. 154427, May 08, 2009) p. 460

— It is not sound public policy to set a premium to the right to litigate where such right is exercised in good faith, even if erroneously. (Mindanao Terminal and Brokerage Service, Inc. *vs*. Phoenix Assurance Co. of New York/ MCGEE & Co., Inc., G.R. No. 162467, May 08, 2009) p. 507

Damages for breach of obligation — Obligor in good faith is liable for damages that are natural and probable consequences of the breach of obligations which the parties could have foreseen at the time the obligation was constituted. (Asset Privatization Trust *vs*. T.J. Enterprises, G.R. No. 167195, May 08, 2009) p. 563

Exemplary damages — Awarded when a crime is committed with an aggravating circumstance. (People *vs*. Mara, G.R. No. 184050, May 08, 2009) p. 913

— Not awarded if moral damages are not awarded. (Delos Santos *vs*. Papa, G.R. No. 154427, May 08, 2009) p. 460

Moral damages — Filing of unfounded suit is not a ground for grant thereof. (Delos Santos *vs*. Papa, G.R. No. 154427, May 08, 2009) p. 460

— May be recovered from a criminal offense resulting in physical injuries. (People *vs*. Mara, G.R. No. 184050, May 08, 2009) p. 913

— Proper when the breach of contract was committed with bad faith and unjustified neglect. (Pantaleon *vs*. American Express Int'l., Inc., G.R. No. 174269, May 08, 2009) p. 631

— When recoverable; cited. (Delos Santos *vs*. Papa, G.R. No. 154427, May 08, 2009) p. 460

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— It must be established with exactitude that the dangerous drugs presented in court as evidence against the accused are the same as that seized from him. *(Id.)*

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Bond requirement to perfect an appeal — Applies to all issues, whether on the employer-employee issue or on the inspection findings. (People's Broadcasting Service [Bombo Radyo Phils., Inc.] *vs*. Sec. of the DOLE, G.R. No. 179652, May 08, 2009; *Brion, J., dissenting opinion*) p. 801

— When deemed satisfied. *(Id.; Id.)*

Jurisdiction over money claims — Mere assertion of absence of employer-employee relationship does not deprive the Department of its jurisdiction. (People's Broadcasting Service [Bombo Radyo Phils., Inc.] *vs*. Sec. of the DOLE, G.R. No. 179652, May 08, 2009) p. 801

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Visitorial and enforcement power — Applies only in cases when the relationship of employer-employee still exists. (People's Broadcasting Service [Bombo Radyo Phils., Inc.] *vs*. Sec. of the DOLE, G.R. No. 179652, May 08, 2009) p. 801

— Extent. *(Id.; Brion, J., dissenting opinion)*

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— Four-fold test; cited. (South Davao Dev't. Co., Inc. *vs*. Gamo, G.R. No. 171814, May 08, 2009) p. 604

— Its determination is primarily lodged with the National Labor Relations Commission. (People's Broadcasting Service [Bombo Radyo Phils., Inc.] *vs*. Sec. of the DOLE, G.R. No. 179652, May 08, 2009) p. 801

— May be determined by the Secretary of Labor or his authorized representative. *(Id.*; *Carpio-Morales, J., separate opinion)*

— Must be proved by substantial evidence. *(Id.)*

EMPLOYMENT, TERMINATION OF

Abandonment as a ground — Elements. (South Davao Dev't. Co., Inc. *vs*. Gamo, G.R. No. 171814, May 08, 2009) p. 604

— To be valid there must be a concurrence of intention to abandon and some overt act from which it may be inferred that the employee had no more interest to continue working in his job. (Harbor View Restaurant *vs*. Labro, G.R. No. 168273, April 30, 2009) p. 349

Breach of trust and confidence as a ground — Committed in case an employee did a payroll padding, sold canepoint without the knowledge and consent of management, and misappropriated the proceeds thereof. (Bacolod-Talisay Realty and Dev't. Corp. *vs*. Dela Cruz, G.R. No. 179563, April 30, 2009) p. 376

Dismissal of employees — Burden of proof rests on the employer to show that the dismissal is for just cause. (Harbor View Restaurant *vs.* Labro, G.R. No. 168273, April 30, 2009) p. 349

— Mandatory two (2) written notices to meet the requirements of due process; cited. (Bacolod-Talisay Realty and Dev't. Corp. *vs.* Dela Cruz, G.R. No. 179563, April 30, 2009) p. 376

Due process requirement — Not a mere formality that may be dispensed with. (South Davao Dev't. Co., Inc. *vs.* Gamo, G.R. No. 171814, May 08, 2009) p. 604

Illegal dismissal — Supreme Court's findings that respondents are regular employees neither frustrates nor preempts the appellate court's proceedings in the illegal dismissal. (PAL, Inc. *vs.* Ligan, G.R. No. 146408, April 30, 2009) p. 327

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— Elucidated. *(Id.)*

Circumstantial evidence — Requisites to be sufficient for conviction. (People *vs.* Badriago, G.R. No. 183566, May 08, 2009) p. 894

Denial of accused — Cannot prevail over the positive and categorical statements of the witnesses. (Sayoc *vs.* People, G.R. No. 157723, April 30, 2009) p. 338

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— Not awarded if moral damages are not awarded. (Delos Santos *vs.* Papa, G.R. No. 154427, May 08, 2009) p. 460

EXHAUSTION OF ADMINISTRATIVE REMEDIES

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FELONIES

Frustrated felony — Elements. (People *vs.* Badriago, G.R. No. 183566, May 08, 2009) p. 894

FORECLOSURE OF MORTGAGE

Foreclosure sale — The court has the ministerial duty to issue a writ of possession after the foreclosure sale and during the redemption period; exception. (DBP *vs.* Prime Neighborhood Assn., G.R. Nos. 175728 & 178914, May 08, 2009) p. 660

— The jurisdiction of the court is limited only to the issuance of the writ of possession, it has no jurisdiction to determine who is the rightful owner or lawful possessor of the property *(Id.)*

Notice of foreclosure sale — Does not oblige the mortgagee to ensure that mortgagor actually receives the notice. (Producers Bank of the Phils. *vs.* Excelsa Industries, Inc., G.R. No. 152071, May 08, 2009) p. 445

FORTUITOUS EVENTS

Concept — Not applicable when loss is found to be partly the result of a person's participation. (Asset Privatization Trust *vs*. T.J. Enterprises, G.R. No. 167195, May 08, 2009) p. 563

FORUM SHOPPING

Case of — Exists where elements of litis pendentia are present. (Malabanan *vs*. Rural Bank of Cabuyao, Inc., G.R. No. 163495, May 08, 2009) p. 523

Rule against forum shopping — When deemed violated. (Olympic Mines and Dev't. Corp. *vs*. Platinum Group Metals Corp., G.R. No. 178188, May 08, 2009) p. 699

— While a party may avail himself of the remedies prescribed by law, such party is not free to resort to them simultaneously or at his pleasure or caprice. *(Id.)*

HIGHWAY ROBBERY

Commission of — Imposable penalty. (Sayoc *vs*. People, G.R. No. 157723, April 30, 2009) p. 338

HOMICIDE

Commission of — Elements. (People *vs*. Badriago, G.R. No. 183566, May 08, 2009) p. 894

HOUSING AND LAND USE REGULATORY BOARD

Jurisdiction — Covers issue of whether the alleged subsequent sale of subdivision lots constitutes a double sale. (Cantemprate *vs*. CRS Realty Dev't. Corp., G.R. No. 171399, May 08, 2009) p. 574

— Does not include issue of ownership, possession or interest in the condominium unit sold under P.D. No. 957. *(Id.)*

— Includes action for specific performance to compel realtors to deliver buyer's Certificate of Title after full payment of subdivision lots. *(Id.)*

INDEPENDENT CONTRACTOR

Existence of — Conditions. (South Davao Dev't. Co., Inc. *vs*. Gamo, G.R. No. 171814, May 08, 2009) p. 604

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Application — Rule in case of highway robbery. (Sayoc *vs*. People, G.R. No. 157723, April 30, 2009) p. 338

INJUNCTION

Writ of injunction — Binds the party and his successor-in-interest. (Olympic Mines and Dev't. Corp. *vs*. Platinum Group Metals Corp., G.R. No. 178188, May 08, 2009) p. 699

— Strangers to the case are not bound by judgment rendered by the court. *(Id.; Tinga, J., dissenting opinion)*

INTERVENTION

Intervenor — Must have a legal interest in the case and it is not extended to creditors of a decedent whose credit is based on a contingent claim. (Hilado *vs*. CA, G.R. No. 164108, May 08, 2009) p. 547

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Dishonesty — Misleads the court and tarnishes the image of the judiciary. (Prov'l. Prosecutor Torrevillas *vs*. Judge Navidad, A.M. No. RTJ-06-1976, April 29, 2009) p. 1

Duties — Efficient court management is the responsibility of judges. (Prov'l. Prosecutor Torrevillas *vs*. Judge Navidad, A.M. No. RTJ-06-1976, April 29, 2009) p. 1

Gross ignorance of the law — Committed in case of failure of a judge to know a rule or law so elementary or to act as if he does not know it. (Prov'l. Prosecutor Torrevillas *vs*. Judge Navidad, A.M. No. RTJ-06-1976, April 29, 2009) p. 1

JUDGMENTS

Validity of — Decision rendered must express clearly and distinctly the facts and law on which it is based. (Cantemprate *vs*. CRS Realty Dev't. Corp., G.R. No. 171399, May 08, 2009) p. 574

(Sayoc *vs*. People, G.R. No. 157723, April 30, 2009) p. 338

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JURISDICTION

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(Fort Bonifacio Dev't. Corp. *vs*. Hon. Sorongon, G.R. No. 176709, May 08, 2009) p. 689

Jurisdiction over subject matter — Determined by the allegations of the complaint. (Olympic Mines and Dev't. Corp. *vs*. Platinum Group Metals Corp., G.R. No. 178188, May 08, 2009) p. 699

(Id.; Tinga, J., dissenting opinion)

JUSTIFYING CIRCUMSTANCES

Self-defense — Requisites. (People *vs*. Mara, G.R. No. 184050, May 08, 2009) p. 913

(People *vs*. Badriago, G.R. No. 183566, May 08, 2009) p. 894

— Unlawful aggression is an indispensable requisite. (People *vs*. Mara, G.R. No. 184050, May 08, 2009) p. 913

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As a mitigating circumstance — Belied by the number, location and nature of the stab wounds suffered by the victim. (People *vs*. Badriago, G.R. No. 183566, May 08, 2009) p. 894

LEGISLATIVE DEPARTMENT

Delegation of power to make laws — Distinguished from delegation of authority as to its execution. (Soriano *vs.* Laguardia, G.R. Nos. 164785 & 165636, April 29, 2009) p. 43

LIBEL

Commission of — A person not qualifying as a public figure could be validly subject of a public comment. (Villanueva *vs.* Phil. Daily Inquirer, Inc., G.R. No. 164437, May 15, 2009) p. 926

— Failure to counter-check the report or present the informant should not be a reason to hold the reporter liable as long as he does not entertain a "high degree of awareness of probable falsity." *(Id.)*

— Mere error, inaccuracy or even falsity alone does not prove actual malice. *(Id.)*

— To be considered malicious, the libelous statement must be shown to have been written or published with the knowledge that they are false or in reckless disregard of whether they are false or not. *(Id.)*

Definition — Cited. (Villanueva *vs.* Phil. Daily Inquirer, Inc., G.R. No. 164437, May 15, 2009) p. 926

Presumption — Every defamatory imputation is presumed to be malicious; exceptions. (Villanueva *vs.* Phil. Daily Inquirer, Inc., G.R. No. 164437, May 15, 2009) p. 926

Privileged communication — Should not be subjected to excessive scrutiny so as not to defeat the protection provided by the law thereto. (Villanueva *vs.* Phil. Daily Inquirer, Inc., G.R. No. 164437, May 15, 2009) p. 926

LOANS

Existence of — Relationship between the credit card provider and the card holder is that of creditor-debtor. (Pantaleon *vs.* American Express Int'l., Inc., G.R. No. 174269, May 08, 2009) p. 631

MINING ACT OF 1995 (R.A. NO. 7942)

Assignment or transfer of a mineral agreement application — When it takes effect. (Olympic Mines and Dev't. Corp. *vs*. Platinum Group Metals Corp., G.R. No. 178188, May 08, 2009) p. 699

Disputes involving rights to mining areas — Construed. (Olympic Mines and Dev't. Corp. *vs*. Platinum Group Metals Corp., G.R. No. 178188, May 08, 2009; *De Castro, J., separate opinion*) p. 699

Disputes involving surface owners, occupants and claim concessionaries — Construed. (Olympic Mines and Dev't. Corp. *vs*. Platinum Group Metals Corp., G.R. No. 178188, May 08, 2009) p. 699

Mineral agreement — Defined. (Olympic Mines and Dev't. Corp. *vs*. Platinum Group Metals Corp., G.R. No. 178188, May 08, 2009; *De Castro, J., separate opinion*) p. 699

— Power to cancel or withdraw a mineral agreement or permit for violation of the terms and conditions thereon belong to the approving authority. (Olympic Mines and Dev't. Corp. *vs*. Platinum Group Metals Corp., G.R. No. 178188, May 08, 2009; *De Castro, J., separate opinion*) p. 699

Mineral permit — An operating agreement cannot be considered as a mineral permit. (Olympic Mines and Dev't. Corp. *vs*. Platinum Group Metals Corp., G.R. No. 178188, May 08, 2009) p. 699

Mining dispute — Distinguished from a judicial question. (Olympic Mines and Dev't. Corp. *vs*. Platinum Group Metals Corp., G.R. No. 178188, May 08, 2009; *De Castro, J., separate opinion*) p. 699

Panel of Arbitrators — Has no jurisdiction to cancel the operating agreement nor declare it of no force and effect. (Olympic Mines and Dev't. Corp. *vs*. Platinum Group Metals Corp., G.R. No. 178188, May 08, 2009; *De Castro, J., separate opinion*) p. 699

— Its decision is appealable to the Mines Adjudication Board. *(Id.; Tinga, J., dissenting opinion)*

— Jurisdiction; cited. *(Id.; De Castro, J., separate opinion)*

(Id.; Tinga, J., dissenting opinion)

— Jurisdiction is limited only to those mining disputes which raise questions of fact or matters requiring the application of technological knowledge and experience. *(Id.; Id.)*

— Jurisdiction is limited to resolution of disputes involving public mineral agreements. *(Id.)*

MITIGATING CIRCUMSTANCES

Lack of intention to commit so grave a wrong — Belied by the number, location and nature of the stab wounds suffered by the victim. (People *vs*. Badriago, G.R. No. 183566, May 08, 2009) p. 894

Voluntary surrender — Surrender must be spontaneous and in a manner that shows that the accused made an unconditional surrender to the authorities. (People *vs*. Badriago, G.R. No. 183566, May 08, 2009) p. 894

MORAL DAMAGES

Award of — Filing of unfounded suit is not a ground for granting moral damages. (Delos Santos *vs*. Papa, G.R. No. 154427, May 08, 2009) p. 460

— May be recovered from a criminal offense resulting in physical injuries. (People *vs*. Mara, G.R. No. 184050, May 08, 2009) p. 913

— Proper when the breach of contract was committed with bad faith and unjustified neglect. (Pantaleon *vs*. American Express Int'l., Inc., G.R. No. 174269, May 08, 2009) p. 631

— When recoverable; cited. (Delos Santos *vs*. Papa, G.R. No. 154427, May 08, 2009) p. 460

MORTGAGES

Dragnet clause — Elucidated. (Producers Bank of the Phils. *vs*. Excelsa Industries, Inc., G.R. No. 152071, May 08, 2009) p. 445

MOTION FOR RECONSIDERATION

Second motion for reconsideration — Not allowed in the absence of an extraordinary persuasive reason. (People *vs*. Romualdez, G.R. No. 166510, April 29, 2009; *Brion, J., dissenting opinion)* p. 194

MOVIES AND TELEVISION REGULATORY AND CLASSIFICATION BOARD (P.D. NO. 1986)

Power to issue preventive suspension — Applicable not only to motion pictures. (Soriano *vs*. Laguardia, G.R. Nos. 164785 & 165636, April 29, 2009) p. 43

— Hearing is not required. *(Id.)*

— If the immediate result of the order is that petitioner remains temporarily gagged and is unable to answer his critics, this does not become a deprivation of the equal protection guarantee. *(Id.)*

Powers and functions — Cited. (Soriano *vs*. Laguardia, G.R. Nos. 164785 & 165636, April 29, 2009) p. 43

— Do not include the power to suspend a program host or certain persons from appearing in television programs. *(Id.)*

— Include the power to impose prior restraint on speech. *(Id.)*

— Include the power to issue preventive suspension which is a preliminary step in an administrative investigation. *(Id.)*

— Include the power to regulate television programming. (*Id.*; *Corona, J., separate opinion*)

— Power to cancel permits necessarily included in the power to suspend. *(Id.; Id.)*

— Power to regulate and supervise the exhibition of TV programs implies authority to take punitive action. *(Id.)*

— Power to suspend television program or a host thereof exists though not categorically included in express powers. *(Id.; Corona, J., separate opinion)*

OBLIGATIONS

Fortuitous events — Elements. (Asset Privatization Trust *vs*. T.J. Enterprises, G.R. No. 167195, May 08, 2009) p. 563

Nature of — If the law or contract does not state the degree of diligence which is to be observed in the performance of an obligation then that which is expected of a good father of a family or ordinary diligence shall be required. (Mindanao Terminal and Brokerage Service, Inc. *vs*. Phoenix Assurance Co. of New York/MCGEE & Co., Inc., G.R. No. 162467, May 08, 2009) p. 507

OBLIGATIONS, EXTINGUISHMENT OF

Novation — Not applicable in obligation to pay sum of money which expressly recognize the same, changes only the terms of payment, adds other obligations not incompatible with the old ones or that the new contract merely supplements the old one. (Transpacific Battery Corp. *vs*. Security Bank & Trust Co., G.R. No. 173565, May 08, 2009) p. 615

— Requisite to effect valid novation. *(Id.)*

— Test of incompatibility; discussed *(Id.)*

OWNERSHIP, MODES OF ACQUISITION

Prescription — Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a bona fide claim of ownership, since June 12, 1945 have acquired ownership of, and registrable title to such land; the possessor is entitled to secure confirmation of his

title as soon as it is declared alienable and disposable. (Heirs of Mario Malabanan *vs*. Republic of the Phils., G.R. No. 179987, April 29, 2009) p. 244 p. 244

PARRICIDE

Commission of — Elements. (People *vs*. Garchitorena, G.R. No. 184172, May 08, 2009) p. 920

PARTIES TO CIVIL ACTIONS

Indispensable party — Defined. (Fort Bonifacio Dev't. Corp. *vs*. Hon. Sorongon, G.R. No. 176709, May 08, 2009) p. 689

— Its presence is a *sine qua non* to the trial court's exercise of judicial power. (Olympic Mines and Dev't. Corp. *vs*. Platinum Group Metals Corp., G.R. No. 178188, May 08, 2009; *Tinga, J., dissenting opinion*) p. 699

PLEADINGS

Nature of — Determined by allegations in the pleadings made in good faith, the stage of the proceeding at which it is filed, and the primary objective of the party filing the same. (Villanueva *vs*. Phil. Daily Inquirer, Inc., G.R. No. 164437, May 15, 2009) p. 926

Verification of pleadings — Purpose and its absence is not a fatal defect. (Bacolod-Talisay Realty and Dev't. Corp. *vs*. Dela Cruz, G.R. No. 179563, April 30, 2009) p. 376

PRESCRIPTION OF OFFENSES

Computation of period — Tolling of prescriptive period during the absence of the offender from Philippine jurisdiction. (People *vs*. Romualdez, G.R. No. 166510, April 29, *2009; Carpio, J., dissenting opinion*) p. 194

PRESUMPTIONS

Regularity in the performance of official duties — Not applicable where the police officers failed to comply with the standard procedures prescribed by law. (People *vs*. Partoza, G.R. No. 182418, May 08, 2009) p. 883

PRIOR RESTRAINT

Concept — Kinds. (Soriano *vs*. Laguardia, G.R. Nos. 164785 & 165636, April 29, 2009; *Carpio, J., dissenting opinion*) p. 43

— Requisites to justify prior restraint. *(Id.; Id.)*

— Rule and exceptions. *(Id.; Id.)*

PROPERTY

Patrimonial properties — Cited. (Heirs of Mario Malabanan *vs*. Republic, G.R. No. 179987, April 29, 2009) p. 244

— Kinds of prescription by which patrimonial property may be acquired. *(Id.)*

— There must also be an express government manifestation that the property is indeed patrimonial as it has no longer been retained for public service or the development of national wealth. *(Id.)*

Properties of public dominion — Cited. (Heirs of Mario Malabanan *vs*. Republic, G.R. No. 179987, April 29, 2009) p. 244

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Application for registration — Who may apply; rule. (Heirs of Mario Malabanan *vs*. Republic, G.R. No. 179987, April 29, 2009) p. 244

PROSECUTION OF OFFENSES

Amendment of information or complaint — Cannot cure a void ab initio information. (People *vs*. Romualdez, G.R. No. 166510, April 29, 2009) p. 194

Public prosecutor — Courts cannot interfere with the public prosecutor's discretion; exception. (Prov'l. Pros. Torrevillas *vs*. Judge Navidad, A.M. No. RTJ-06-1976, April 29, 2009) p. 1

PUBLIC LAND ACT (C.A. NO. 141)

Application for free patents or confirmation of imperfect title — Prior to the declaration of alienability, a land of public domain cannot be appropriated, hence any claimed

possession cannot have legal effects. (Heirs of Mario Malabanan *vs*. Republic, G.R. No. 179987, April 29, 2009; *Brion, J., concurring and dissenting opinion*) p. 244

— Reckoning period; rule. *(Id.*; *Brion, J., concurring and dissenting opinion*)

Basic features — Cited. (Heirs of Mario Malabanan *vs*. Republic, G.R. No. 179987, April 29, 2009; *Brion, J., concurring and dissenting opinion*) p. 244

QUALIFYING CIRCUMSTANCES

Treachery — Its essence is the deliberate and sudden attack that renders the victim unable and unprepared to defend himself. (People *vs*. Mara, G.R. No. 184050, May 08, 2009) p. 913

(People *vs*. Badriago, G.R. No. 183566, May 08, 2009) p. 894

QUASI-DELICT

Claim based on quasi-delict — Allegation of negligence on the part of the defendant is sufficient to establish a cause of action. (Mindanao Terminal and Brokerage Service, Inc. *vs*. Phoenix Assurance Co. of New York/MCGEE & Co., Inc., G.R. No. 162467, May 08, 2009) p. 507

REAL PROPERTY TAX

Exemptions — Claim must be supported by evidence; the property sought to be exempted is actually, directly and exclusively used for pollution control and environmental protection. (Prov'l. Assessor of Marinduque *vs*. CA, G.R. No. 170532, April 30, 2009) p. 357

— Evidentiary requirements; cited. *(Id.)*

RECKLESS IMPRUDENCE

Definition — Elucidated. (Caminos, Jr. *vs*. People, G.R. No. 147437, May 08, 2009) p. 422

Reckless imprudence resulting in damage to property — Elements. (Caminos, Jr. *vs*. People, G.R. No. 147437, May 08, 2009) p. 422

— Inexcusable lack of precaution is the most central element to a finding of guilt. *(Id.)*

— Rate of speed is one principal consideration to determine whether a motorist had been reckless. *(Id.)*

RECKLESS IMPRUDENCE RESULTING IN DAMAGE TO PROPERTY

Prosecution of — Negligence of the injured person or of the driver of the vehicle with which the accused's vehicle collided does not constitute a defense. (Caminos, Jr. *vs*. People, G.R. No. 147437, May 08, 2009) p. 422

— The ultimate test is to be found in the reasonable foreseeability that harm might result if commensurate care is not exercised. *(Id.)*

REGALIAN DOCTRINE

Application — The doctrine postulates that all lands belong to the State, and that no public land can be acquired by a private person without any grant, express or implied, from the State. (Heirs of Mario Malabanan *vs*. Republic, G.R. No. 179987, April 29, 2009; *Brion, J., concurring and dissenting opinion*) p. 244

REGIONAL TRIAL COURT

Designation as Special Commercial Court — Does not divest the court of its general jurisdiction. (GD Express Worldwide N.V. *vs*. CA, G.R. No. 136978, May 08, 2009) p. 406

Jurisdiction — Includes issues of possession or interest in the condominium unit under P.D. No. 957. (Cantemprate *vs*. CRS Realty Dev't. Corp., G.R. No. 171399, May 08, 2009) p. 574

SALE OF SUBDIVISION LOTS AND CONDOMINIUMS (P.D. NO. 957)

Contract of sale — Binds only the parties and cannot favor or prejudice a third person. (Cantemprate *vs*. CRS Realty Dev't. Corp., G.R. No. 171399, May 08, 2009) p. 574

Duties of realtor — Consists of delivery of subdivision lot to buyer by causing transfer of corresponding Certificate of Title over the subject land; rule in case the lot is involved in other litigation and there is notice of lis pendens at the back of the title. (Cantemprate *vs.* CRS Realty Dev't. Corp., G.R. No. 171399, May 08, 2009) p. 574

— In case of violation thereof, buyer is entitled to actual or compensatory damages. *(Id.)*)

Validity of sale — Not affected by absence of license to sell of realtor. (Cantemprate *vs.* CRS Realty Dev't. Corp., G.R. No. 171399, May 08, 2009) p. 574

SALES

Contract of sale — Elements. (Cantemprate *vs.* CRS Realty Dev't. Corp., G.R. No. 171399, May 08, 2009) p. 574

Delivery of the things sold — "As-is-where-is" basis is not applicable to issue of delivery. (Asset Privatization Trust *vs.* T.J. Enterprises, G.R. No. 167195, May 08, 2009) p. 563

— When deemed consummated. *(Id.)*

Double sale — How ownership is transferred in case thereof. (Pagaduan *vs.* Sps. Ocuma, G.R. No. 176308, May 08, 2009) p. 679

Obligation of vendor — Cited. (Asset Privatization Trust *vs.* T.J. Enterprises, G.R. No. 167195, May 08, 2009) p. 563

— Risk of loss or deterioration of goods sold does not pass to the buyer until there is actual or constructive delivery thereof. *(Id.)*

SECURITIES AND EXCHANGE COMMISSION

Jurisdiction — Transferred to the Regional Trial Courts or Special Commercial Courts pursuant to Section 5.2 of R.A. No. 8799. (GD Express Worldwide N.V. *vs.* CA, G.R. No. 136978, May 08, 2009) p. 406

SELF-DEFENSE

As a justifying circumstance — Requisites. (People *vs*. Mara, G.R. No. 184050, May 08, 2009) p. 913

(People *vs*. Badriago, G.R. No. 183566, May 08, 2009) p. 894

— Unlawful aggression is an indispensable requisite. (People *vs*. Mara, G.R. No. 184050, May 08, 2009) p. 913

(People *vs*. Badriago, G.R. No. 183566, May 08, 2009) p. 894

SETTLEMENT OF ESTATE OF DECEASED PERSON

Claims against estate — Civil actions for tort or quasi-delict survive the death of the decedent and may be commenced against the administrator of estate. (Hilado *vs*. CA, G.R. No. 164108, May 08, 2009) p. 547

— Instances when notice to interested parties in estate proceedings is required. *(Id.)*

— Interested persons, including creditors are allowed to intervene to protect their interest in the estate and they have the right of access to court records. *(Id.)*

Duties of administrator — Cited. (Hilado *vs*. CA, G.R. No. 164108, May 08, 2009) p. 547

— Rule in case of administrator's incompetence; remedies available to interested party. *(Id.)*

Proceedings — Governed by the Rules of Court on Special Proceedings. (Hilado *vs*. CA, G.R. No. 164108, May 08, 2009) p. 547

STATUTORY RAPE

Commission of — Civil liability of accused. (People *vs*. Layco, Sr., G.R. No. 182191, May 08, 2009) p. 877

— Elements. *(Id.)*

TREACHERY

As a qualifying circumstance — Its essence is the deliberate and sudden attack that renders the victim unable and

unprepared to defend himself. (People *vs*. Mara, G.R. No. 184050, May 08, 2009) p. 913

(People *vs*. Badriago, G.R. No. 183566, May 08, 2009) p. 894

TRUSTS

Acquisition of land by mistake or fraud as mode — Refers to actual or constructive fraud. (Pagaduan *vs*. Sps. Ocuma, G.R. No. 176308, May 08, 2009) p. 679

— When not applicable. *(Id.)*

Express trust — Created by direct and positive acts of the parties, by some writings or deed, or will, or by words either expressly or impliedly evincing an intention to create a trust, as such, prescription and laches will run only from the time the trust is repudiated. (Heirs of Tranquilino Labiste *vs*. Heirs of Jose Labiste, G.R. No. 162033, May 08, 2009) p. 495

UNJUST ENRICHMENT

Application — Ordering payment of rentals to a person who has no right to lease the property constitutes unjust enrichment. (De la Paz *vs*. Marikina Footwear Dev't. Cooperative, Inc., G.R. No. 183232, April 30, 2009) p. 392

UNLAWFUL DETAINER

Action for — A pending action involving ownership of the same property does not bar the filing or consideration of an ejectment suit. (Malabanan *vs*. Rural Bank of Cabuyao, Inc., G.R. No. 163495, May 08, 2009) p. 523

— Elements. (Terana *vs*. Hon. De Sagun, G.R. No. 152131, April 29, 2009) p.22

— Nature. (Malabanan *vs*. Rural Bank of Cabuyao, Inc., G.R. No. 163495, May 08, 2009) p. 523

— When tenant's possession is by mere tolerance, the forbearance ceased when owner made a demand to vacate the lot, and thenceforth, tenant's occupancy had become unlawful. *(Id.)*

Claim for damages — Limited to rentals or reasonable compensation for the use of the property; rationale. (Terana *vs*. Hon. De Sagun, G.R. No. 152131, April 29, 2009) p.22

Grounds — Mere failure to pay rent does not make the lessee's possession of the premises unlawful. (Delos Santos *vs*. Papa, G.R. No. 154427, May 08, 2009) p. 460

URBAN LAND REFORM LAW (P.D. NO. 1517)

Preferential rights of landless tenants to acquire land — Requisites. (Delos Santos *vs*. Papa, G.R. No. 154427, May 08, 2009) p. 460

Right of first refusal — Shall be exercised within the time to be determined by the Urban Zone Committee which shall not exceed six (6) months, from the time the owner made a written offer to sell to the tenant or resident. (Delos Santos *vs*. Papa, G.R. No. 154427, May 08, 2009) p. 460

VENUE

Determination of — The primary objective in filing the case is the controlling factor in the determination of venue of action. (Olympic Mines and Dev't. Corp. *vs*. Platinum Group Metals Corp., G.R. No. 178188, May 08, 2009) p. 699

VOLUNTARY SURRENDER

As a mitigating circumstance — Surrender must be spontaneous and in a manner that shows that the accused made an unconditional surrender to the authorities. (People *vs*. Badriago, G.R. No. 183566, May 08, 2009) p. 894

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Salary differentials — Two reference points. (PAL, Inc. *vs*. Ligan, G.R. No. 146408, April 30, 2009) p. 327

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(People *vs*. Mara, G.R. No. 184050, May 08, 2009) p. 913

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(Sayoc *vs*. People, G.R. No. 157723, April 30, 2009) p. 338

— Not affected by minor discrepancies and inconsistencies in the testimony. (People *vs*. Dioneda, G.R. No. 180923, April 30, 2009) p. 385

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YOUTH

Youth protection — A sacred obligation of the state imposed by the Constitution. (Soriano *vs*. Laguardia, G.R. Nos. 164785 & 165636, April 29, 2009) p. 43

— Duty of government to act as *parens patriae*. *(Id.)*

— Duty of the state to help parents protect their children. *(Id.)*

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D. BOOKS

(Local)

Agbayani, Aguendo F., Commentaries and Jurisprudence
on The Commercial Laws of the Philippines, p. 560,
1993 Ed. 491
Agpalo, Administrative Law (2005) 89
Agpalo, Philippine Constitutional Law 358 (2006) 96
Agpalo, Statutory Construction (3rd Ed., 1995) at 182 269
Agpalo, Statutory Construction, Second Ed. 1990 488
Baviera, Araceli. Sales, U.P. Law Complex ©2005 p. 67 569
J.G. Bernas, S.J., The 1987 Constitution of The Republic of The
Philippines: A Commentary (2003) 104
J.G. Bernas, S.J., The Constitution of The Republic of The
Philippines: A Commentary 205 (1996) 96
1 De Leon, Philippine Constitutional Law 274 (2003) 93
Francisco, Ricardo, Evidence, 3rd (1996), p. 555 519
O. Herrera, Remedial Law Annotated, 2000 Ed., Vol. I, p. 62 223
Martin, Statutory Construction, Sixth Ed., 1984 488
2 Moran, 432, 1952 revised Ed. 558
Aquilino Pimentel, The Local Government Code Revisited,
Manila (2007), p. 444 371
Regalado, Remedial Law Compendium, Volume I,
Ninth Rev. Ed., p. 19 304
Reyes, Luis B., The Revised Penal Code,
15th Ed. (2001) p. 994-995 434-435

Page

A. Tolentino, IV Civil Code of The Philippines (1991 Ed.) at 26 283
Tolentino, Civil Code, Vol. 4, pp. 546-547 (1991) 505
Tolentino, Arturo, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. I (1990 Ed.), p. 59 132

II. FOREIGN AUTHORITIES

A. BOOKS

Ronald J. Allen, Richard B. Kuhns, An Analytical Approach To Evidence, by Little Brown & Co., U.S.A, 1989, p. 174 655
52 A.L.R.2d 1343 436
7A Am. Jur. 2d, pp. 861-862 434
16A Am Jur. 2d Constitutional Law Sec. 493 102
29A Am. Jur. 2d Evidence Sec. 946 657
S.H. Bailey, B.L. Jones, A.R. Mowbray, Cases, Materials and Commentary on Administrative Law, p. 423 830
Black's Law Dictionary, 6th Ed. p. 216 868
4 Blackstone's Commentaries 151, 152 (Tucker Ed. 1803) 175
1 C. J. S. 314-315 297
Emerson, T., The System of Freedom of Expression 506 (1970) 177
Fenwick, H., Civil Liberties and Human Rights 296 (3rd Ed. 2002) 160
Levy, L., Legacy of Suppression 104 (1960) 175
Milton, J., Areopagitica & Other Prose Works 1 (1927) 174
Roger C. Park, David P. Leonard, Steven H. Goldberg, Evidence Law, 1998, 610 Opperman Drive, St. Paul Minnesota, p. 507 656-657
Siebert, F., Freedom of The Press in England, 1476-1770, 239-41 (1965) 174-175
Siebert, F., Freedom of The Press in England, 1476-1776, pp. 91-92 (1952) 185
Tribe, L., American Constitutional Law 727 (1978) 178
Tribe, L., American Constitutional Law 725 (1975) 173
West's Encyclopedia of American Law (2nd Ed., 2008) 487