PHILIPPINE REPORTS

VOL. 606

MAY 21, 2009 TO JUNE 8, 2009

VOLUME 606

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

MAY 21, 2009 TO JUNE 8, 2009

SUPREME COURT
MANILA
2013

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2013

EDNA BILOG-CAMBA
DEPUTY CLERK OF COURT & REPORTER

MA. VIRGINIA OLIVIA VILLARUZ-DUEÑAS
COURT ATTORNEY VI & CHIEF, RECORDS DIVISION

FE CRESCENCIA QUIMSON-BABOR
COURT ATTORNEY VI

MA. VICTORIA JAVIER-IGNACIO
COURT ATTORNEY V

FLOYD JONATHAN LIGOT TELAN
COURT ATTORNEY V & CHIEF, EDITORIAL DIVISION

JOSE ANTONIO CANCINO BELLO
COURT ATTORNEY IV

LEUWELYN TECSON-LAT
COURT ATTORNEY IV

DIANA DIAZ-GARRA
COURT ATTORNEY IV

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY IV

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY IV

FREDERICK INTE ANCIANO
COURT ATTORNEY III

SUPREME COURT OF THE PHILIPPINES

HON. REYNATO S. PUNO, Chief Justice
HON. LEONARDO A. QUISUMBING, Associate Justice
HON. CONSUELO YNARES-SANTIAGO, Associate Justice
HON. ANTONIO T. CARPIO, Associate Justice
HON. RENATO C. CORONA, Associate Justice
HON. CONCHITA CARPIO MORALES, Associate Justice
HON. MINITA V. CHICO-NAZARIO, Associate Justice
HON. PRESBITERO J. VELASCO, JR., Associate Justice
HON. ANTONIO EDUARDO B. NACHURA, Associate Justice
HON. TERESITA J. LEONARDO-DE CASTRO, Associate Justice
HON. ARTURO D. BRION, Associate Justice
HON. DIOSDADO M. PERALTA, Associate Justice
HON. LUCAS P. BERSAMIN, Associate Justice

FIRST DIVISION

Chairman

Hon. Reynato S. Puno

Members

Hon. Antonio T. Carpio
Hon. Renato C. Corona
Hon. Teresita J. Leonardo-De Castro
Hon. Lucas P. Bersamin

Division Clerk of Court

Atty. Enriqueta E. Vidal

SECOND DIVISION

Chairman

Hon. Leonardo A. Quisumbing

Members

Hon. Conchita Carpio Morales
Hon. Arturo D. Brion

Division Clerk of Court

Atty. Ludichi Y. Nunag

THIRD DIVISION

Chairperson

Hon. Consuelo Ynares-Santiago

Members

Hon. Minita V. Chico-Nazario
Hon. Presbitero J. Velasco, Jr.
Hon. Antonio Eduardo B. Nachura
Hon. Diosdado M. Peralta

Division Clerk of Court

Atty. Lucita A. Soriano

PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.M. No. P-07-2356. May 21, 2009]

VIRGINIA L. APRIETO, *complainant, vs.* **NOEL C. LINDO, Sheriff IV, Regional Trial Court, Branch 83, Quezon City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHERIFFS; A SHERIFF MUST PERFORM FAITHFULLY AND ACCURATELY WHAT IS INCUMBENT UPON HIM AND SHOW AT ALL TIMES A HIGH DEGREE OF PROFESSIONALISM ON THE PERFORMANCE OF HIS DUTIES.— A sheriff, as an officer of the court, is expected to discharge his duties with great care and diligence. He is also expected to perform faithfully and accurately what is incumbent upon him and show at all times a high degree of professionalism in the performance of his duties.

2. REMEDIAL LAW; LEGAL FEES; SHERIFFS AND OTHER PERSONS SERVING PROCESSES; DEPOSIT AND PAYMENT OF EXPENSES INCURRED IN ENFORCING WRITS; RULES; NOT COMPLIED WITH IN CASE AT BAR.— The deposit and payment of expenses incurred in enforcing writs are governed by Section 9, Rule 141 of the Rules of Court: SEC. 9. Sheriffs and other persons serving processes. — x x x (I) For money collected by him by order, execution, attachment, or any other process, judicial or extrajudicial, the following sums, to wit:

1. On the first four thousand (₱4,000.00) pesos, five (5%) per centum; 2. On all sums in excess of four thousand (₱4,000.00) pesos, two and one-half (2.5%) per centum. In addition to the fees hereinabove fixed, **the party requesting the process of any court, preliminary; incidental, or final, shall pay the sheriff's expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.** In this case, Sheriff Lindo failed to comply with the prescribed rule. His act of receiving an amount for expenses to be incurred in the execution of the writ, without having made an estimate and without securing prior approval of the court, is a violation of the prescribed rule. Sheriff Lindo should not have received from Aprieto any money without having submitted the expenses for approval of the court. He did not even advise Aprieto that he was not authorized to receive any amount from her and that the money for expenses should be deposited with the clerk of court.

3. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; CLASSIFICATION OF OFFENSES; VIOLATION OF RULES OF COURT WHICH IS OF A SERIOUS NATURE IS CLASSIFIED AS A LESS GRAVE OFFENSE; PENALTY.— The conduct and behavior of everyone connected with an office charged with the dispensation of justice is circumscribed with a heavy burden of responsibility. A sheriff may be properly dismissed, fined or suspended from office by this Court for actions committed in violation of the Rules of Court that impede and detract from a fair and just administration of justice. Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service classifies the violation of rules of serious nature as a less grave offense with the

corresponding penalty: Section 52. *Classification of Offenses.* — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service. x x x B. The following are less grave offenses with the corresponding penalties: x x x 4. Violation of existing Civil Service Law and rules of serious nature 1st Offense – Suspension 1 mo. 1 day to 6 mos. 2nd Offense – Dismissal.

D E C I S I O N

CARPIO, *J.*:

The Case

This is an administrative complaint filed by Virginia L. Aprieto (Aprieto) against Noel C. Lindo (Sheriff Lindo), Sheriff IV of the Regional Trial Court (trial court), Branch 83, Quezon City, for Misrepresentation of Facts and Extortion, relative to Civil Case No. Q-02-47453, entitled *"Virginia L. Aprieto, et al. v. Spouses Felix Mindajao and Balacuit, et al."*

The Facts

In her Complaint dated 28 December 2006, Aprieto stated that the trial court rendered a decision in her favor with regard to an action for recovery of possession of land. The dispositive portion of the decision states:

WHEREFORE, judgment is hereby rendered in favor of plaintiffs Virginia L. Aprieto, Alejandro Aprieto, Susan Aprieto and Diana Aprieto and against defendant-spouses Felix Mindajao and Juanita Bala[c]uit and Pelagia Sabarillo ordering the latter and all persons claiming rights under them to vacate the premises occupied by them on Lot 6 of the subdivision plan (LRC) Psd-46690 covered by Transfer Certificate of Title No. 129492 located in Pasong Tamo, Quezon City and to surrender the possession thereof to the plaintiffs.

Defendants are likewise hereby ordered to remove or demolish the houses they constructed on the property of plaintiffs within fifteen (15) days from finality of this decision, otherwise, plaintiffs are hereby

authorized to demolish said houses and whatever structures existing thereon at the expense of the defendants.

Defendants-spouses Felix Mindajao and Juanita Balacuit and defendant Pelagia Sabarillo are hereby further ordered to each pay the plaintiffs One Thousand Pesos (₱1,000.00) per month as reasonable compensation for the use and occupation of the premises in question starting August 6, 2002 and every month thereafter until they vacate the premises in question and deliver the possession thereof to the plaintiffs.

The claims of the plaintiffs for moral and exemplary damages are hereby denied for being necessary consequences of litigation.

Defendants' counterclaim is hereby dismissed for lack of merit.

SO ORDERED.[1]

On 1 September 2006, a Writ of Execution was issued and Sheriff Lindo was ordered to enforce the writ.

Aprieto alleged that Sheriff Lindo compelled her to pay a total of ₱255,000 for sheriff fees and execution expenses covering the period from 14 September to 24 November 2006. Sheriff Lindo also engaged the services of a geodetic engineer and security guards and charged Aprieto an additional ₱48,000. Prior to the execution, Aprieto repeatedly asked Sheriff Lindo for a breakdown of payments of fees but he never complied.

On 24 November 2006, Sheriff Lindo, Sheriff Nilo Cabang, and several policemen went to the house of Aprieto and informed her that the eviction had been completed and all the dwellings had been demolished. They invited Aprieto to go with them to inspect the property. Fearing that the squatters in the area might retaliate, Aprieto did not get out of the police car and trusted Sheriff Lindo and the others that they were able to secure the place and complete the demolition. Aprieto then paid the balance of ₱159,000 for execution expenses to Sheriff Lindo.

---

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

On 3 December 2006, Aprieto brought workers to the property to install a lot perimeter for fencing. However, to her dismay, she discovered that less than 30% of the property was cleared. She called up Sheriff Lindo and asked him why he collected the total balance of execution expenses when the demolition had not yet been completed. Sheriff Lindo allegedly replied by saying that he disliked making repeated collections.

On 4 December 2006, Aprieto wrote a confidential letter to Judge Ralph S. Lee (Judge Lee), the trial court Presiding Judge, about the exorbitant fees collected by Sheriff Lindo and inquired if such amount had been approved by the trial court. Judge Lee did not respond to this confidential letter.

On 15 December 2006, Sheriff Lindo informed Aprieto that another demolition work had been conducted and all the houses had been cleared. However, the boundary markers were not installed since the surveyor was already on break for the holidays and would not return until 18 January 2007.

Aprieto sought for a partial return of the money she paid to Sheriff Lindo because the expenses for execution of the writ were exorbitant.

Sheriff Lindo filed his Comment dated 19 February 2007. He acknowledged that he did receive a check from Aprieto on 17 October 2006. He added that he issued a receipt to cover the mobilization expenses needed for the implementation of the writ. He again gave a receipt for the ₱159,000 remaining balance after the inspection of the eviction and demolition on 24 October 2006.

Sheriff Lindo further explained that he went back to the property on the 6th and 7th of December 2006 to continue and finish the eviction and demolition of all structures. According to him, Aprieto allegedly refused to accept the turnover of possession until the property had been fenced. Aprieto also demanded a full accounting of all the expenses but Sheriff Lindo declined because the police did not issue receipts.

On 2 March 2007, Judge Lee also filed his Comment dated 27 February 2007. He admitted that he received the confidential letter of Aprieto on 4 December 2006. The next day, he called Sheriff Lindo to a conference to discuss the matter. Judge Lee stated that when asked about the letter and the acknowledgment receipts attached, Sheriff Lindo admitted having received such amounts but reasoned that the money was legitimately spent for execution of the writ and for the demolition expenses. He added that he would submit a list or breakdown of expenses immediately.

In the presence of the branch clerk of court and a legal researcher, Sheriff Lindo allegedly promised to complete the work in connection with Aprieto's case and to transfer and turnover the possession of the property at the soonest possible time. Judge Lee attached a copy of the Sheriff's Return dated 15 December 2006 allegedly submitted by Sheriff Lindo.

Judge Lee further stated that he did not reply to Aprieto's letter and just decided to wait for her to file an appropriate pleading or motion in court since he could not issue any order based on a confidential letter.

Aprieto filed a Reply dated 13 March 2007 to the Comment submitted by Sheriff Lindo. She asserted that she had not been informed of the three dates of eviction mentioned by Sheriff Lindo, namely 24 October, 6 December and 7 December 2006. Aprieto clarified that the inspection of the demolition site occurred on 24 November 2006 and not 24 October 2006.

Aprieto stated further that she only recently learned about the Sheriff's Report dated 15 December 2006 and admitted that she did not accept the turnover of the property since no boundary markers were placed. Aprieto again demanded a full accounting and liquidation of the expenses.

Sheriff Lindo filed a Manifestation dated 14 March 2007. He agreed that the exact date of the first demolition and issuance of the check transpired on 24 November 2006 and not 24 October 2006. He reiterated that as stated in the Sheriff's Report, he

was able to evict the occupants from the premises but Aprieto refused to receive the turnover of the property.

The OCA's Report and Recommendation

On 25 May 2007, the Office of the Court Administrator (OCA) submitted its Report, recommending that:

(1) the instant case be redocketed as a regular administrative matter; and

(2) respondent sheriff be suspended for four months.

The Court's Ruling

The Court agrees with the finding of the OCA that Sheriff Lindo is guilty of violation of existing rules of serious nature for disregarding Section 9, Rule 141 of the Rules of Court.

A sheriff, as an officer of the court, is expected to discharge his duties with great care and diligence. He is also expected to perform faithfully and accurately what is incumbent upon him and show at all times a high degree of professionalism in the performance of his duties.[2]

The deposit and payment of expenses incurred in enforcing writs are governed by Section 9, Rule 141 of the Rules of Court:

SEC. 9. Sheriffs and other persons serving processes. —

xxx xxx xxx

(I) For money collected by him by order, execution, attachment, or any other process, judicial or extrajudicial, the following sums, to wit:

1. On the first four thousand (₱4,000.00) pesos, five (5%) per centum;

2. On all sums in excess of four thousand (₱4,000.00) pesos, two and one-half (2.5%) per centum

In addition to the fees hereinabove fixed, **the party requesting the process of any court, preliminary; incidental, or final, shall pay the sheriff's expenses in serving or executing the process, or**

[2] *Villanueva-Fabella v. Lee*, 464 Phil. 548 (2004).

safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor. (Emphasis supplied)

The rule clearly requires that the sheriff executing writs shall provide an estimate of the expenses to be incurred, and such estimated amount must be approved by the court. Upon approval, the interested party shall then deposit the amount with the clerk of court and *ex-officio* sheriff. The expenses shall be disbursed to the assigned deputy sheriff to execute the writ, subject to liquidation upon the return of the writ. Any amount unspent shall be returned to the interested party.

In this case, Sheriff Lindo failed to comply with the prescribed rule. His act of receiving an amount for expenses to be incurred in the execution of the writ, without having made an estimate and without securing prior approval of the court, is a violation of the prescribed rule. Sheriff Lindo should not have received from Aprieto any money without having submitted the expenses for approval of the court. He did not even advise Aprieto that he was not authorized to receive any amount from her and that the money for expenses should be deposited with the clerk of court.

The conduct and behavior of everyone connected with an office charged with the dispensation of justice is circumscribed with a heavy burden of responsibility.[3] A sheriff may be properly dismissed, fined or suspended from office by this Court for actions

[3] *Letter of Atty. Socorro M. Villamer-Basilla, Clerk of Court V, Regional Trial Court, Branch 4, Legaspi City on the Alleged Improper Conduct of Manuel L. Arimado, Sheriff IV,* A.M. No. P-06-2128, 16 February 2006, 482 SCRA 455.

committed in violation of the Rules of Court that impede and detract from a fair and just administration of justice.[4]

Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service classifies the violation of rules of serious nature as a less grave offense with the corresponding penalty:

> Section 52. *Classification of Offenses.* — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.
>
> xxx xxx xxx
>
> B. The following are less grave offenses with the corresponding penalties:
>
> xxx xxx xxx
>
> 4. Violation of existing Civil Service Law and rules of serious nature
> 1st Offense – Suspension 1 mo. 1 day to 6 mos.
> 2nd Offense – Dismissal
>
> xxx xxx xxx

Considering that this is Sheriff Lindo's first offense, we hold that the penalty of suspension from office for six months without pay is commensurate to Sheriff Lindo's infractions. We sternly warn Sheriff Lindo that a repetition of the same or similar offense would be dealt with more severely.

WHEREFORE, we find respondent *GUILTY* of violation of existing rules of serious nature. We *SUSPEND* respondent Noel C. Lindo, Sheriff IV, Regional Trial Court, Branch 83, Quezon City, for six months without pay, and sternly warn him that a repetition of the same or similar offense shall be dealt with more severely.

SO ORDERED.

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

---

[4] *Hipolito v. Mergas,* A.M. No. P-90-412, 11 March1991, 195 SCRA 6.

FIRST DIVISION

[G.R. No. 120935. May 21, 2009]

LUCAS G. ADAMSON, THERESE JUNE D. ADAMSON, and SARA S. DE LOS REYES, in their capacities as President, Treasurer and Secretary of Adamson Management Corporation, *petitioners, vs.* **COURT OF APPEALS and LIWAYWAY VINZONS-CHATO, in her capacity as Commissioner of the Bureau of Internal Revenue,** *respondents.*

[G.R. No. 124557. May 21, 2009]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **COURT OF APPEALS, COURT OF TAX APPEALS, ADAMSON MANAGEMENT CORPORATION, LUCAS G. ADAMSON, THERESE JUNE D. ADAMSON, and SARA S. DE LOS REYES,** *respondents.*

SYLLABUS

1. TAXATION; REMEDIES; ASSESSMENT; DEFINED.— x x x [A]n assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed. A written communication containing a computation by a revenue officer of the tax liability of a taxpayer and giving him an opportunity to contest or disprove the BIR examiner's findings is not an assessment since it is yet indefinite.

2. ID.; ID.; ID.; RECOMMENDATION LETTER OF THE COMMISSIONER OF INTERNAL REVENUE CANNOT BE CONSIDERED A FORMAL ASSESSMENT OF PRIVATE RESPONDENTS' TAX LIABILITY; EXPLAINED.— We rule that the recommendation letter of the Commissioner cannot be considered a formal assessment. Even a cursory perusal of the said letter would reveal three key points: 1. It was not addressed to the taxpayers. 2. There was no demand made on the taxpayers to pay the tax liability, nor a period for payment set therein. 3. The letter was never mailed or sent to the taxpayers by the

Commissioner. In fine, the said recommendation letter served merely as the *prima facie* basis for filing criminal informations that the taxpayers had violated Section 45 (a) and (d), and 110, in relation to Section 100, as penalized under Section 255, and for violation of Section 253, in relation to Section 252 9(b) and (d) of the Tax Code.

3. ID.; ID.; ID.; IN CASES OF FRAUDULENT TAX RETURNS, AN ASSESSMENT OF A DEFICIENCY IS NOT NECESSARY TO A CRIMINAL PROSECUTION.— x x x When fraudulent tax returns are involved as in the cases at bar, **a proceeding in court after the collection of such tax may be begun without assessment**. Here, the private respondents had already filed the capital gains tax return and the VAT returns, and paid the taxes they have declared due therefrom. Upon investigation of the examiners of the BIR, there was a preliminary finding of gross discrepancy in the computation of the capital gains taxes due from the sale of two lots of AAI shares, first to APAC and then to APAC Philippines, Limited. The examiners also found that the VAT had not been paid for VAT-liable sale of services for the third and fourth quarters of 1990. Arguably, the gross disparity in the taxes due and the amounts actually declared by the private respondents constitutes badges of fraud. Thus, the applicability of ***Ungab v. Cusi*** is evident to the cases at bar. In this seminal case, this Court ruled that there was no need for precise computation and formal assessment in order for criminal complaints to be filed against him. It quoted Merten's Law of Federal Income Taxation, Vol. 10, Sec. 55A.05, p. 21, thus: An assessment of a deficiency is not necessary to a criminal prosecution for willful attempt to defeat and evade the income tax. A crime is complete when the violator has knowingly and willfully filed a fraudulent return, with intent to evade and defeat the tax. The perpetration of the crime is grounded upon knowledge on the part of the taxpayer that he has made an inaccurate return, and the government's failure to discover the error and promptly to assess has no connections with the commission of the crime.

4. REMEDIAL LAW; JURISDICTION; EXCLUSIVE APPELLATE JURISDICTION; THE COURT OF APPEALS HAS JURISDICTION TO TAKE COGNIZANCE OF BOTH THE CRIMINAL AND CIVIL CASES AT BAR FOR FAILURE OF

THE COMMISSIONER OF INTERNAL REVENUE TO ISSUE AN ASSESSMENT.— Under Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) as amended, the rulings of the Commissioner are appealable to the CTA, x x x Republic Act No. 8424, titled "An Act Amending the National Internal Revenue Code, As Amended, And For Other Purposes," later expanded the jurisdiction of the Commissioner and, correspondingly, that of the CTA, x x x The latest statute dealing with the jurisdiction of the CTA is Republic Act No. 9282. x x x These laws have expanded the jurisdiction of the CTA. However, they did not change the jurisdiction of the CTA to entertain an appeal only from a final decision or assessment of the Commissioner, or in cases where the Commissioner has not acted within the period prescribed by the NIRC. In the cases at bar, the Commissioner has not issued an assessment of the tax liability of private respondents.

APPEARANCES OF COUNSEL

Abello Concepcion Regala & Cruz for Lucas G. Adamson, *et al.*

Redentor G. Liboro for petitioners.

The Solicitor General for Commissioner of Internal Revenue.

D E C I S I O N

PUNO, *C.J.*:

Before the Court are the consolidated cases of **G.R. No. 120935** and **G.R. No. 124557**.

G.R. No. 120935 involves a petition for review on *certiorari* filed by petitioners LUCAS G. ADAMSON, THERESE JUNE D. ADAMSON, and SARA S. DE LOS REYES (private respondents), in their respective capacities as president, treasurer and secretary of Adamson Management Corporation (AMC) against then Commissioner of Internal Revenue Liwayway Vinzons-Chato (COMMISSIONER), under Rule 45 of the Revised Rules of Court. They seek to review and reverse the Decision promulgated on March 21, 1995 and Resolution issued on July 6, 1995 of the Court

of Appeals in CA-G.R. SP No. 35488 (*Liwayway Vinzons-Chato, et al. v. Hon. Judge Erna Falloran-Aliposa, et al.*).

G.R. No. 124557 is a petition for review on *certiorari* filed by the Commissioner, assailing the Decision dated March 29, 1996 of the Court of Appeals in CA-G.R. SP No. 35520, titled *Commissioner of Internal Revenue v. Court of Tax Appeals, Adamson Management Corporation, Lucas G. Adamson, Therese June D. Adamson and Sara S. de los Reyes.* In the said Decision, the Court of Appeals upheld the Resolution promulgated on September 19, 1994 by the Court of Tax Appeals (CTA) in C.T.A. Case No. 5075 (*Adamson Management Corporation, Lucas G. Adamson, Therese Adamson and Sara de los Reyes v. Commissioner of Internal Revenue*).

The facts, as culled from the findings of the appellate court, follow:

On June 20, 1990, Lucas Adamson and AMC sold 131,897 common shares of stock in Adamson and Adamson, Inc. (AAI) to APAC Holding Limited (APAC). The shares were valued at ₱7,789,995.00.[1] On June 22, 1990, ₱159,363.21 was paid as capital gains tax for the transaction.

On October 12, 1990, AMC sold to APAC Philippines, Inc. another 229,870 common shares of stock in AAI for ₱17,718,360.00. AMC paid the capital gains tax of ₱352,242.96.

On October 15, 1993, the Commissioner issued a "Notice of Taxpayer" to AMC, Lucas G. Adamson, Therese June D. Adamson and Sara S. de los Reyes, informing them of deficiencies on their payment of capital gains tax and Value Added Tax (VAT). The notice contained a schedule for preliminary conference.

---

[1] *Lucas G. Adamson and AMC v. CA and APAC Holding Limited,* G.R. No. 106879, May 27, 1994, 232 SCRA 602.

The events preceding **G.R. No. 120935** are the following:

On October 22, 1993, the Commissioner filed with the Department of Justice (DOJ) her Affidavit of Complaint[2] against AMC, Lucas G. Adamson, Therese June D. Adamson and Sara S. de los Reyes for violation of Sections 45 (a) and (d)[3], and 110[4], in

---

[2] I.S. No. 93-581.

[3] *The NIRC of the Philippines, Annotated*, 16th and Revised Edition, Nolledo, J. and Nolledo, M. (1993), p. 414.

Section 45. *Corporation Returns. —*

(A) Requirements. — Every corporation, subject to the tax herein imposed, except foreign corporations not engaged in trade or business in the Philippines shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return in accordance with the provisions of Chapter IX of this Title. The return shall be filed by the president, vice-president or other principal officer, and shall be sworn to by such officer and by the treasurer or assistant treasurer.

x x x x x x x x x

(D) Return on Capital Gains Realized from Sale of Shares of Stock. — Every corporation deriving capital gains from the sale or exchange of shares of stock not traded thru a local stock exchange as prescribed under Sections 24 (e) 2 A, 25 (a) (6) (C) (i), 25(b)(5)(C) (i), shall file a return within thirty (30) days after each transactions and a final consolidated return of all transactions during the taxable year on or before the fifteenth (15th) day of the fourth (4th) month following the close of the taxable year.

[4] **SECTION 110.** *Return and Payment of Value-Added Tax. —*

(A) Where to File the Return and Pay the Tax. — Every person subject to value-added tax shall file a quarterly return of his gross sales or receipts and pay the tax due thereon to a bank duly accredited by the Commissioner located in the revenue district where such person is registered or required to be registered. However, in cases where there are no duly accredited agent banks within the city or municipality, the return shall be filed and any amount due shall be paid to any duly accredited bank within the district, or to the Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality where such taxpayer has his principal place of business. Only one consolidated

relation to Section 100[5], as penalized under Section

return shall be filed by the taxpayer for all the branches and lines of business subject to value-added tax. If no tax is payable because the amount of input tax and any amount authorized to be offset against the output tax is equal to or is in excess of the output tax due on the return, the taxpayer shall file the return with the Revenue District Officer, Collection Agent or authorized municipal treasurer where the taxpayer's principal place of business is located.

(B) Time for filing of return and payment of tax. — The return shall be filed and the tax paid within 20 days following the end of each quarter specifically prescribed for a VAT-registered person under regulations to be promulgated by the Secretary of Finance: Provided, however, That any person whose registration is cancelled in accordance with paragraph (e) of Section 107 shall file a return within 20 days from the cancellation of such registration.

(C) Initial returns. — The Commissioner may prescribe an initial taxable period for any VAT-registered person for his first return, which in no case shall exceed 5 months.

[5] *Supra* note 3 at pp. 588-590.

Section 100. *Value-Added Tax on Sale of Goods.* —

(A) Rate and Base of Tax. — There shall be levied, assessed and collected on every sale, barter or exchange of goods, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor: Provided, That the following sales by VAT-registered persons shall be subject to zero percent (0%):

(1) Export sales; and

(2) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate.

"Export Sales" means the sale and shipment or exportation of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported, or foreign currency denominated sales. "Foreign currency denominated sales," means sales to nonresidents of goods assembled or manufactured in the Philippines, for delivery to residents in the Philippines and paid for in convertible foreign currency remitted through the banking system in the Philippines.

(B) Transactions Deemed Sale. — The following transactions shall be deemed sale:

(1) Transfer, use or consumption not in the course of business of goods originally intended for sale or for use in the course of business;

(2) Distribution or transfer to:

(a) Shareholders or investors as share in the profits of the registered person; or

(b) Creditors in payment of debt;

(3) Consignment of goods if actual sale is not made within sixty (60) days following the date such goods were consigned;

(4) Retirement from or cessation of business, with respect to inventories of taxable goods existing as of such retirement or cessation.

(C) Changes in or Cessation of Status of a VAT-registered Person. — The tax imposed in paragraph (a) of this Section shall also apply to goods disposed of or existing as of a certain date if under circumstances to be prescribed in Regulations to be promulgated by the Secretary of Finance, the status of a person as a VAT-registered person changes or is terminated.

(D) Determination of the Tax. —

(1) Tax billed as a separate item in the invoice. — If the tax is billed as a separate item in the invoice, the tax shall be based on the gross selling price, excluding the tax. "Gross selling price" means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price.

(2) Tax not billed separately or is billed erroneously in the invoice. — In case the tax is not billed separately or is billed erroneously in the invoice, the tax shall be determined by multiplying the gross selling price, including the amount intended by the seller to cover the tax or the tax billed erroneously, by the factor 1/11 or such factor as may be prescribed by regulations in case of persons partially exempt under special laws.

255,[6] and for violation of Section 253[7], in relation to Section 252 (b) and (d) of the National Internal Revenue Code (NIRC).[8]

---

(3) Sales Returns, Allowances and Sales Discounts. — The value of goods sold and subsequently returned or for which allowances were granted by a VAT-registered person may be deducted from the gross sales or receipts for the quarter in which a refund is made or a credit memorandum or refund is issued. Sales discount granted and indicated in the invoice at the time of sale may be excluded from the gross sales within the same quarter.

(4) Authority of the Commissioner to Determine the Appropriate Tax Base.— The Commissioner shall, by regulations, determine the appropriate tax base in cases where a transaction is deemed a sale, barter or exchange of goods under paragraph (b) hereof, or where the gross selling price is unreasonably lower than the actual market value.

[6] *Id.* at 1022.

Section 255. Penal Liability of Corporations. — Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners or employees, shall, upon conviction, for each act or omission be fined for not less than ten thousand pesos but not more than one hundred thousand pesos.

[7] *Id.* at 1021.

Section 253. Attempt to evade or defeat tax. — Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be fined not more than ten thousand pesos or imprisoned for not more than two years, or both.

[8] *Id.*, pp. 1020-1021.

Section 252. General provisions.

x x x x x x x x x

(b) Any person who willfully aids or abets in the commission of a crime penalized herein or who causes the commission of any such offense by another, shall be liable in the same manner as the principal.

AMC, Lucas G. Adamson, Therese June D. Adamson and Sara S. de los Reyes filed with the DOJ a motion to suspend proceedings on the ground of prejudicial question, pendency of a civil case with the Supreme Court, and pendency of their letter-request for re-investigation with the Commissioner. After the preliminary investigation, State Prosecutor Alfredo P. Agcaoili found probable cause. The Motion for Reconsideration against the findings of probable cause was denied by the prosecutor.

On April 29, 1994, Lucas G. Adamson, Therese June D. Adamson and Sara S. de los Reyes were charged before the Regional Trial Court (RTC) of Makati, Branch 150 in Criminal Case Nos. 94-1842 to 94-1846. They filed a Motion to Dismiss or Suspend the Proceedings. They invoked the grounds that there was yet no final assessment of their tax liability, and there were still pending relevant Supreme Court and CTA cases. Initially, the trial court denied the motion. A Motion for Reconsideration was however filed, this time assailing the trial court's lack of jurisdiction over the nature of the subject cases. On August 8, 1994, the trial court granted the Motion. It ruled that the complaints for tax evasion filed by the Commissioner should be regarded as a decision of the Commissioner regarding the tax liabilities of Lucas G. Adamson, Therese June D. Adamson and Sara S. de los Reyes, and appealable to the CTA. It further held that the said cases cannot proceed independently of the assessment case pending before the CTA, which has jurisdiction to determine the civil and criminal tax liability of the respondents therein.

On October 10, 1994, the Commissioner filed a Petition for Review with the Court of Appeals assailing the trial court's dismissal of the criminal cases. She averred that it was not a condition prerequisite that a formal assessment should first be given to the private respondents before she may file the

---

x x x x x x x x x

(d) In the case of associations, partnerships, or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation.

aforesaid criminal complaints against them. She argued that the criminal complaints for tax evasion may proceed independently from the assessment cases pending before the CTA.

On March 21, 1995, the Court of Appeals reversed the trial court's decision and reinstated the criminal complaints. The appellate court held that**, in a criminal prosecution for tax evasion, assessment of tax deficiency is not required because the offense of tax evasion is complete or consummated when the offender has knowingly and willfully filed a fraudulent return with intent to evade the tax.**[9] **It ruled that private respondents filed false and fraudulent returns with intent to evade taxes, and acting thereupon, petitioner filed an Affidavit of Complaint with the Department of Justice, without an accompanying assessment of the tax deficiency of private respondents, in order to commence criminal action against the latter for tax evasion.**[10]

Private respondents filed a Motion for Reconsideration, but the trial court denied the motion on July 6, 1995. Thus, they filed the petition in **G.R. No. 120935**, raising the following issues:

1. WHETHER OR NOT THE RESPONDENT HONORABLE COURT OF APPEALS ERRED IN APPLYING THE DOCTRINE IN *UNGAB V. CUSI* (Nos. L-41919-24, May 30, 1980, 97 SCRA 877) TO THE CASE AT BAR.
2. WHETHER OR NOT AN ASSESSMENT IS REQUIRED UNDER THE SECOND CATEGORY OF THE OFFENSE IN SECTION 253 OF THE NIRC.
3. WHETHER OR NOT THERE WAS A VALID ASSESSMENT MADE BY THE COMMISSIONER IN THE CASE AT BAR.
4. WHETHER OR NOT THE FILING OF A CRIMINAL COMPLAINT SERVES AS AN IMPLIED ASSESSMENT ON THE TAX LIABILITY OF THE TAXPAYER.

---

[9] *Rollo*, p. 65.

[10] *Id.* at 64.

5. WHETHER OR NOT THE FILING OF THE CRIMINAL INFORMATION FOR TAX EVASION IN THE TRIAL COURT IS PREMATURE BECAUSE THERE IS YET NO BASIS FOR THE CRIMINAL CHARGE OF WILLFULL INTENT TO EVADE THE PAYMENT OF A TAX.

6. WHETHER OR NOT THE DOCTRINES LAID DOWN IN THE CASES OF *YABES V. FLOJO* (No. L-46954, July 20, 1982, 115 SCRA 286) AND *CIR V. UNION SHIPPING CORP.* (G.R. No. 66160, May 21, 1990, 185 SCRA 547) ARE APPLICABLE TO THE CASE AT BAR.

7. WHETHER OR NOT THE COURT OF TAX APPEALS HAS JURISDICTION OVER THE DISPUTE ON WHAT CONSTITUTES THE PROPER TAXES DUE FROM THE TAXPAYER.

In parallel circumstances, the following events preceded **G.R. No. 124557**:

On December 1, 1993, AMC, Lucas G. Adamson, Therese June D. Adamson and Sara S. de los Reyes filed a letter request for re-investigation with the Commissioner of the "Examiner's Findings" earlier issued by the Bureau of Internal Revenue (BIR), which pointed out the tax deficiencies.

On March 15, 1994 before the Commissioner could act on their letter-request, AMC, Lucas G. Adamson, Therese June D. Adamson and Sara S. de los Reyes filed a Petition for Review with the CTA. They assailed the Commissioner's finding of tax evasion against them. The Commissioner moved to dismiss the petition, on the ground that it was premature, as she had not yet issued a formal assessment of the tax liability of therein petitioners. On September 19, 1994, the CTA denied the Motion to Dismiss. It considered the criminal complaint filed by the Commissioner with the DOJ as an implied formal assessment, and the filing of the criminal informations with the RTC as a denial of petitioners' protest regarding the tax deficiency.

The Commissioner repaired to the Court of Appeals on the ground that the CTA acted with grave abuse of discretion. She contended that, with regard to the protest provided under

Section 229 of the NIRC, there must first be a formal assessment issued by the Commissioner, and it must be in accord with Section 6 of Revenue Regulation No. 12-85. She maintained that she had not yet issued a formal assessment of tax liability, and the tax deficiency amounts mentioned in her criminal complaint with the DOJ were given only to show the difference between the tax returns filed and the audit findings of the revenue examiner.

The Court of Appeals sustained the CTA's denial of the Commissioner's Motion to Dismiss. Thus, the Commissioner filed the petition for review under **G.R. No. 124557**, raising the following issues:

1. WHETHER OR NOT THE INSTANT PETITION SHOULD BE DISMISSED FOR FAILURE TO COMPLY WITH THE MANDATORY REQUIREMENT OF A CERTIFICATION UNDER OATH AGAINST FORUM SHOPPING;
2. WHETHER OR NOT THE CRIMINAL CASE FOR TAX EVASION IN THE CASE AT BAR CAN PROCEED WITHOUT AN ASSESSMENT;
3. WHETHER OR NOT THE COMPLAINT FILED WITH THE DEPARTMENT OF JUSTICE CAN BE CONSTRUED AS AN IMPLIED ASSESSMENT; and
4. WHETHER OR NOT THE COURT OF TAX APPEALS HAS JURISDICTION TO ACT ON PRIVATE RESPONDENTS' PETITION FOR REVIEW FILED WITH THE SAID COURT.

The issues in **G.R. No. 124557 and G.R. No. 120935** can be compressed into three:

1. **WHETHER THE COMMISSIONER HAS ALREADY RENDERED AN ASSESSMENT (FORMAL OR OTHERWISE) OF THE TAX LIABILITY OF AMC, LUCAS G. ADAMSON, THERESE JUNE D. ADAMSON AND SARA S. DE LOS REYES;**
2. **WHETHER THERE IS BASIS FOR THE CRIMINAL CASES FOR TAX EVASION TO PROCEED AGAINST AMC, LUCAS G. ADAMSON, THERESE JUNE D. ADAMSON AND SARA S. DE LOS REYES; and**

3. WHETHER THE COURT OF TAX APPEALS HAS JURISDICTION TO TAKE COGNIZANCE OF BOTH THE CIVIL AND THE CRIMINAL ASPECTS OF THE TAX LIABILITY OF AMC, LUCAS G. ADAMSON, THERESE JUNE D. ADAMSON AND SARA S. DE LOS REYES.

The case of ***CIR v. Pascor Realty, et al.***[11] is relevant. In this case, then BIR Commissioner Jose U. Ong authorized revenue officers to examine the books of accounts and other accounting records of Pascor Realty and Development Corporation (PRDC) for 1986, 1987 and 1988. This resulted in a recommendation for the issuance of an assessment in the amounts of ₱7,498,434.65 and ₱3,015,236.35 for the years 1986 and 1987, respectively.

On March 1, 1995, the Commissioner filed a criminal complaint before the DOJ against PRDC, its President Rogelio A. Dio, and its Treasurer Virginia S. Dio, alleging evasion of taxes in the total amount of ₱10,513,671.00. Private respondents filed an Urgent Request for Reconsideration/Reinvestigation disputing the tax assessment and tax liability.

The Commissioner denied the urgent request for reconsideration/reinvestigation because she had not yet issued a formal assessment.

Private respondents then elevated the Decision of the Commissioner to the CTA on a petition for review. The Commissioner filed a Motion to Dismiss the petition on the ground that the CTA has no jurisdiction over the subject matter of the petition, as there was yet no formal assessment issued against the petitioners. The CTA denied the said motion to dismiss and ordered the Commissioner to file an answer within thirty (30) days. The Commissioner did not file an answer nor did she move to reconsider the resolution. Instead, the Commissioner filed a petition for review of the CTA decision with the Court of Appeals. The Court of Appeals upheld the CTA order. However, this Court reversed the Court of Appeals decision and the CTA order, and ordered the dismissal of the petition. We held:

---

[11] G.R. No. 128315, June 29, 1999, 309 SCRA 402.

An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. Accordingly, an affidavit, which was executed by revenue officers stating the tax liabilities of a taxpayer and attached to a criminal complaint for tax evasion, cannot be deemed an assessment that can be questioned before the Court of Tax Appeals.

Neither the NIRC nor the revenue regulations governing the protest of assessments[12] provide a specific definition or form of an assessment. However, the NIRC defines the specific functions and effects of an assessment. To consider the affidavit attached to the Complaint as a proper assessment is to subvert the nature of an assessment and to set a bad precedent that will prejudice innocent taxpayers.

True, as pointed out by the private respondents, an assessment informs the taxpayer that he or she has tax liabilities. But not all documents coming from the BIR containing a computation of the tax liability can be deemed assessments.

To start with, an assessment must be sent to and received by a taxpayer, and must demand payment of the taxes described therein within a specific period. Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20 percent per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment.[13]

The issuance of an assessment is vital in determining the period of limitation regarding its proper issuance and the period within which

---

[12] Revenue Regulation No. 12-85.

[13] NIRC (1997)

"**Sec. 205**. Remedies for the Collection of Delinquent Taxes. — The civil remedies for the collection of internal revenue, fees, or charges, and increment thereto resulting from delinquency shall be:

to protest it. Section 203[14] of the NIRC provides that internal revenue taxes must be assessed within three years from the last day within which to file the return. Section 222,[15] on the other hand, specifies a period of ten years in case a fraudulent return with intent to evade was submitted or in case of failure to file a return. Also, Section

---

(a) By distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property; and

(b) By civil or criminal action.

Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: *Provided, however*, That the remedies of distraint and levy shall not be availed of where the amount of tax involved is not more than One hundred pesos (₱100).

The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner. The Bureau of Internal Revenue shall advance the amounts needed to defray costs of collection by means of civil or criminal action, including the preservation or transportation of personal property distrained and the advertisement and sale thereof, as well as of real property and improvements thereon."

[14] *Id*.

"**SEC. 203**. *Period of Limitation Upon Assessment and Collection*. — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

[15] *Id*.

"**Sec. 222**. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.—*

228[16] of the same law states that said assessment may be protested only within thirty days from receipt thereof. Necessarily, the taxpayer must be certain that a specific document constitutes an assessment. Otherwise, confusion would arise regarding the period within which to make an assessment or to protest the same, or whether interest and penalty may accrue thereon.

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(b) If before the expiration of the time prescribed in the Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon writing before the expiration of the five (5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

(e) *Provided, however*, That nothing in the immediately preceding Section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree."

[16] *Id*.

"**Section 228**. *Protesting of Assessment*. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a reassessment notice shall not be required in the following cases:

It should also be stressed that the said document is a notice duly sent to the taxpayer. Indeed, an assessment is deemed made only when the collector of internal revenue releases, mails or sends such notice to the taxpayer.[17]

In the present case, the revenue officers' Affidavit merely contained a computation of respondents' tax liability. It did not state a demand or a period for payment. Worse, it was addressed to the justice secretary, not to the taxpayers.

Respondents maintain that an assessment, in relation to taxation, is simply understood to mean:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings."

[17] *Basilan Estates v. Commissioner of Internal Revenue*, No. L-22492, September 5, 1967, 21 SCRA 17.

"A notice to the effect that the amount therein stated is due as tax and a demand for payment thereof."[18]

"Fixes the liability of the taxpayer and ascertains the facts and furnishes the data for the proper presentation of tax rolls."[19]

Even these definitions fail to advance private respondents' case. That the BIR examiners' Joint Affidavit attached to the Criminal Complaint contained some details of the tax liabilities of private respondents does not *ipso facto* make it an assessment. The purpose of the Joint Affidavit was merely to support and substantiate the Criminal Complaint for tax evasion. Clearly, it was not meant to be a notice of the tax due and a demand to the private respondents for payment thereof.

The fact that the Complaint itself was specifically directed and sent to the Department of Justice and not to private respondents shows that the intent of the commissioner was to file a criminal complaint for tax evasion, not to issue an assessment. Although the revenue officers recommended the issuance of an assessment, the commissioner opted instead to file a criminal case for tax evasion. What private respondents received was a notice from the DOJ that a criminal case for tax evasion had been filed against them, not a notice that the Bureau of Internal Revenue had made an assessment.

Private respondents maintain that the filing of a criminal complaint must be preceded by an assessment. This is incorrect, because Section 222 of the NIRC specifically states that in cases where a false or fraudulent return is submitted or in cases of failure to file a return such as this case, proceedings in court may be commenced *without an assessment*. Furthermore, Section 205 of the same Code clearly mandates that the civil and criminal aspects of the case may be pursued simultaneously. In *Ungab v. Cusi,*[20] petitioner therein sought the dismissal of the criminal Complaints for being premature, since his protest to the CTA had not yet been resolved. The Court held that such protests could not stop or suspend the criminal action which was independent of the resolution of the protest in the CTA. This was because the commissioner of internal revenue had, in such tax evasion cases, discretion on whether to issue an assessment or to file a criminal case against the taxpayer or to do both.

---

[18] Citing *Philippine Law Dictionary*, 2nd ed., p. 49.

[19] Citing Black's *Law Dictionary*, 5th ed., p. 107.

[20] Nos. L-41919-24, May 30, 1980, 97 SCRA 877.

Private respondents insist that Section 222 should be read in relation to Section 255 of the NIRC,[21] which penalizes failure to file a return. They add that a tax assessment should precede a criminal indictment. We disagree. To reiterate, said Section 222 states that an assessment is not necessary before a criminal charge can be filed. This is the general rule. Private respondents failed to show that they are entitled to an exception. Moreover, the criminal charge need only be supported by a *prima facie* showing of failure to file a required return. This fact need not be proven by an assessment.

The issuance of an assessment must be distinguished from the filing of a complaint. Before an assessment is issued, there is, by practice, a pre-assessment notice sent to the taxpayer. The taxpayer is then given a chance to submit position papers and documents to prove that the assessment is unwarranted. If the commissioner is unsatisfied, an assessment signed by him or her is then sent to the taxpayer informing the latter specifically and clearly that an assessment has been made against him or her. In contrast, the criminal charge need not go through all these. The criminal charge is filed directly with the DOJ. Thereafter, the taxpayer is notified that a criminal case had been filed against him, not that the commissioner has issued an assessment. It must be stressed that a criminal complaint is instituted not to demand payment, but to penalize the taxpayer for violation of the Tax Code.

---

[21] "**SEC 255**. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation. — Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate any information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than one (1) year but not more than ten (10) years.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of an internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (₱10,000) but not more than Twenty thousand pesos (₱20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years."

In the cases at bar, the Commissioner denied that she issued a formal assessment of the tax liability of AMC, Lucas G. Adamson, Therese June D. Adamson and Sara S. de los Reyes. She admits though that she wrote the recommendation letter[22] addressed to the Secretary of the DOJ recommending the filing of criminal complaints against AMC and the aforecited persons for fraudulent returns and tax evasion.

The first issue is whether the Commissioner's recommendation letter can be considered as a formal assessment of private respondents' tax liability.

In the context in which it is used in the NIRC, an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed. A written communication containing a computation by a revenue officer of the tax liability of a taxpayer and giving him an opportunity to contest or disprove the BIR examiner's findings is not an assessment since it is yet indefinite.[23]

We rule that the recommendation letter of the Commissioner cannot be considered a formal assessment. Even a cursory perusal of the said letter would reveal three key points:

1. It was not addressed to the taxpayers.
2. There was no demand made on the taxpayers to pay the tax liability, nor a period for payment set therein.
3. The letter was never mailed or sent to the taxpayers by the Commissioner.

In fine, the said recommendation letter served merely as the *prima facie* basis for filing criminal informations that the taxpayers had violated Section 45 (a) and (d), and 110, in relation to Section 100, as penalized under Section 255, and for violation

---

[22] Annex "F", *rollo* (G.R. No. 120935), pp. 252-258.

[23] *Tax Law and Jurisprudence, 2nd Edition*, Vitug, J. and Acosta, E., (2000), p. 282.

of Section 253, in relation to Section 252 9(b) and (d) of the Tax Code.[24]

The next issue is whether the filing of the criminal complaints against the private respondents by the DOJ is premature for lack of a formal assessment.

Section 269 of the NIRC (now Section 222 of the Tax Reform Act of 1997) provides:

> Sec. 269. Exceptions as to period of limitation of assessment and collection of taxes.-(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court after the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for collection thereof…

The law is clear. When fraudulent tax returns are involved as in the cases at bar, **a proceeding in court after the collection of such tax may be begun without assessment.** Here, the private respondents had already filed the capital gains tax return and the VAT returns, and paid the taxes they have declared due therefrom. Upon investigation of the examiners of the BIR, there was a preliminary finding of gross discrepancy in the computation of the capital gains taxes due from the sale of two lots of AAI shares, first to APAC and then to APAC Philippines, Limited. The examiners also found that the VAT had not been paid for VAT-liable sale of services for the third and fourth quarters of 1990. Arguably, the gross disparity in the taxes due and the amounts actually declared by the private respondents constitutes badges of fraud.

Thus, the applicability of ***Ungab v. Cusi***[25] is evident to the cases at bar. In this seminal case, this Court ruled that there was no need for precise computation and formal assessment

---

[24] *Supra*, 3-8.

[25] Nos. L-41919-24, May 30, 1980, 97 SCRA 877.

in order for criminal complaints to be filed against him. It quoted Merten's Law of Federal Income Taxation, Vol. 10, Sec. 55A.05, p. 21, thus:

> An assessment of a deficiency is not necessary to a criminal prosecution for willful attempt to defeat and evade the income tax. A crime is complete when the violator has knowingly and willfully filed a fraudulent return, with intent to evade and defeat the tax. The perpetration of the crime is grounded upon knowledge on the part of the taxpayer that he has made an inaccurate return, and the government's failure to discover the error and promptly to assess has no connections with the commission of the crime.

This hoary principle still underlies Section 269 and related provisions of the present Tax Code.

We now go to the issue of whether the CTA has no jurisdiction to take cognizance of both the criminal and civil cases here at bar.

Under Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) as amended, the rulings of the Commissioner are appealable to the CTA, thus:

> SEC. 7. *Jurisdiction.* — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided —
>
> > (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue;

Republic Act No. 8424, titled "An Act Amending the National Internal Revenue Code, As Amended, And For Other Purposes," later expanded the jurisdiction of the Commissioner and, correspondingly, that of the CTA, thus:

> SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases*. — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original

jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

The latest statute dealing with the jurisdiction of the CTA is Republic Act No. 9282.[26] It provides:

SEC. 7. Section 7 of the same Act is hereby amended to read as follows:

Sec. 7. *Jurisdiction*. — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

(3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

---

[26] An Act Expanding The Jurisdiction Of The Court Of Tax Appeals (CTA), Elevating Its Rank To The Level Of A Collegiate Court With Special Jurisdiction And Enlarging Its Membership, Amending For The Purpose Certain Sections Of Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes.

x x x x x x x x x

(b) Jurisdiction over cases involving criminal offenses as herein provided:

(1) Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: *Provided, however*, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (₱1,000,000.00) or where there is no specified amount claimed shall be tried by the regular courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filling of such civil action separately from the criminal action will be recognized.

(2) Exclusive appellate jurisdiction in criminal offenses:

(a) Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax cases originally decided by them, in their respected territorial jurisdiction.

(b) Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in their respective jurisdiction.

(c) Jurisdiction over tax collection cases as herein provided:

(1) Exclusive original jurisdiction in tax collection cases involving final and executory assessments for taxes, fees, charges and penalties: Provided, however, That collection cases where the principal amount

> of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (₱1,000,000.00) shall be tried by the proper Municipal Trial Court, Metropolitan Trial Court and Regional Trial Court.
>
> (2) Exclusive appellate jurisdiction in tax collection cases:
>
> (a) Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax collection cases originally decided by them, in their respective territorial jurisdiction.
>
> (b) Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax collection cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, in their respective jurisdiction.

These laws have expanded the jurisdiction of the CTA. However, they did not change the jurisdiction of the CTA to entertain an appeal only from a final decision or assessment of the Commissioner, or in cases where the Commissioner has not acted within the period prescribed by the NIRC. In the cases at bar, the Commissioner has not issued an assessment of the tax liability of private respondents.

Finally, we hold that contrary to private respondents' stance, the doctrines laid down in ***CIR v. Union Shipping Co.*** and ***Yabes v. Flojo*** are not applicable to the cases at bar. In these earlier cases, the Commissioner already rendered an assessment of the tax liabilities of the delinquent taxpayers, for which reason the Court ruled that the filing of the civil suit for collection of the taxes due was a final denial of the taxpayers' request for reconsideration of the tax assessment.

IN VIEW WHEREOF, premises considered, judgment is rendered:

1. In G.R. No. 120935, *AFFIRMING* the CA decision dated March 21, 1995, which set aside the Regional

Trial Court's Order dated August 8, 1994, and *REINSTATING* Criminal Case Nos. 94-1842 to 94-1846 for further proceedings before the trial court; and

2. In G.R. No. 124557, *REVERSING* and *SETTING ASIDE* the Decision of the Court of Appeals dated March 29, 1996, and *ORDERING* the dismissal of C.T.A. Case No. 5075.

No costs.

SO ORDERED.

Carpio, Corona, Leonardo-de Castro, and *Bersamin, JJ.*, concur.

FIRST DIVISION

[G.R. No. 141001. May 21, 2009]

BANK OF AMERICA, NT & SA, *petitioner, vs.* **ASSOCIATED CITIZENS BANK, BA-FINANCE CORPORATION, MILLER OFFSET PRESS, INC., UY KIAT CHUNG, CHING UY SENG, UY CHUNG GUAN SENG, and COURT OF APPEALS,** *respondents.*

[G.R. No. 141018. May 21, 2009]

ASSOCIATED CITIZENS BANK (now UNITED OVERSEAS BANK PHILS.), *petitioner, vs.* **BA-FINANCE CORPORATION, MILLER OFFSET PRESS, INC., UY KIAT CHUNG, CHING UY SENG, UY CHUNG GUAN SENG, and BANK OF AMERICA, NT & SA,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; NEGOTIABLE INSTRUMENTS LAW; NEGOTIABLE INSTRUMENTS; CHECKS; DRAWEE BANK; HAS THE LIABILITY TO PAY THE CHECK ONLY TO THE PAYEE OR THE PAYEE'S ORDER. — The bank on which a check is drawn, known as the drawee bank, is under strict liability, based on the contract between the bank and its customer (drawer), to pay the check only to the payee or the payee's order. The drawer's instructions are reflected on the face and by the terms of the check. When the drawee bank pays a person other than the payee named on the check, it does not comply with the terms of the check and violates its duty to charge the drawer's account only for properly payable items. Thus, we ruled in *Philippine National Bank v. Rodriguez* that a drawee should charge to the drawer's accounts only the payables authorized by the latter; otherwise, the drawee will be violating the instructions of the drawer and **shall be liable for the amount charged to the drawer's account.**

2. ID.; ID.; ID.; ID.; CROSSED CHECKS; EFFECTS OF CROSSING A CHECK. — Among the different types of checks issued by a drawer is the crossed check. The Negotiable Instruments Law is silent with respect to crossed checks, although the Code of Commerce makes reference to such instruments. This Court has taken judicial cognizance of the practice that a check with two parallel lines in the upper left hand corner means that it could only be deposited and could not be converted into cash. Thus, the effect of crossing a check relates to the mode of payment, meaning that the drawer had intended the check for deposit only by the rightful person, *i.e.*, the payee named therein. The crossing may be "special" wherein between the two parallel lines is written the name of a bank or a business institution, in which case the drawee should pay only with the intervention of that bank or company, or "general" wherein between two parallel diagonal lines are written the words "and Co." or none at all, in which case the drawee should not encash the same but merely accept the same for deposit. In *Bataan Cigar v. Court of Appeals*, we enumerated the effects of crossing a check as follows: (a) the check may not be encashed but only deposited in the bank; (b) the check may be negotiated only once – to one who has an account with a bank; and (c) the act of crossing

the check serves as a warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose; otherwise, he is not a holder in due course.

3. ID.; ID.; ID.; LIABILITIES OF PARTIES; LIABILITY OF GENERAL ENDORSER; A COLLECTING BANK WHERE A CHECK IS DEPOSITED, AND WHICH ENDORSES THE CHECK UPON PRESENTMENT WITH THE DRAWEE BANK, IS AN ENDORSER; CASE AT BAR. — A collecting bank where a check is deposited, and which endorses the check upon presentment with the drawee bank, is an endorser. Under Section 66 of the Negotiable Instruments Law, an endorser warrants "that the instrument is genuine and in all respects what it purports to be; that he has good title to it; that all prior parties had capacity to contract; and that the instrument is at the time of his endorsement valid and subsisting." This Court has repeatedly held that in check transactions, the collecting bank or last endorser generally suffers the loss because it has the duty to ascertain the genuineness of all prior endorsements considering that the act of presenting the check for payment to the drawee is an assertion that the party making the presentment has done its duty to ascertain the genuineness of the endorsements. When Associated Bank stamped the back of the four checks with the phrase "all prior endorsements and/or lack of endorsement guaranteed," that bank had for all intents and purposes treated the checks as negotiable instruments and, accordingly, assumed the warranty of an endorser. Being so, Associated Bank cannot deny liability on the checks.

4. ID.; ID.; ID.; CHECKS; CROSSED CHECKS; A BANK WHICH ALLOWS ITS CLIENT TO COLLECT ON CROSSED CHECKS ISSUED IN THE NAME OF ANOTHER IS GUILTY OF NEGLIGENCE; CASE AT BAR. — Associated Bank was also clearly negligent in disregarding established banking rules and regulations by allowing the four checks to be presented by, and deposited in the personal bank account of, a person who was not the payee named in the checks. The checks were issued to the "Order of Miller Offset Press, Inc.," but were deposited, and paid by Associated Bank, to the personal joint account of Ching Uy Seng (*a.k.a*. Robert Ching) and Uy Chung Guan Seng. It could not have escaped Associated Bank's attention that the payee of the checks is a corporation while the person who

deposited the checks in his own account is an individual. Verily, when the bank allowed its client to collect on crossed checks issued in the name of another, the bank is guilty of negligence. As ruled by this Court in *Jai-Alai Corporation of the Philippines v. Bank of the Philippine Islands,* one who accepts and encashes a check from an individual knowing that the payee is a corporation does so at his peril. Accordingly, we hold that Associated Bank is liable for the amount of the four checks and should reimburse the amount of the checks to Bank of America.

5. CIVIL LAW; HUMAN RELATIONS; RULE ON UNJUST ENRICHMENT; APPLIED IN CASE AT BAR. — It is well-settled that a person who had not given value for the money paid to him has no right to retain the money he received. This Court, therefore, quotes with approval the ruling of the Court of Appeals in its decision: "It appearing, however, from the evidence on record that since Ching Uy Seng and/or Uy Chung Guan Seng received the proceeds of the checks as they were deposited in their personal joint account with Associated Bank, they should, therefore, be obliged to reimburse Associated Bank for the amount it has to pay to Bank of America, in line with the rule that no person should be allowed to unjustly enrich himself at the expense of another."

6. ID.; DAMAGES; ATTORNEY'S FEES; AWARD THEREOF NECESSITATES A FACTUAL, LEGAL, OR EQUITABLE JUSTIFICATION. — An award of attorney's fees necessitates a factual, legal, or equitable justification. Without such justification, the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture.

APPEARANCES OF COUNSEL

Agcaoili and Associates and *Villanueva Caña & Associates Law Offices* for Associated Citizens Bank.

Brillantes (Nachura) Navarro Jumanil Arcilla & Bello Law Offices for Bank of America Corporation.

Oscar Bati for Miller Offset Press, Inc., *et al.*

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court are consolidated cases docketed as G.R. No. 141001 and G.R. No. 141018. These two cases are petitions for review on *certiorari*[1] of the Decision[2] dated 26 February 1999 and the Resolution dated 6 December 1999 of the Court of Appeals in CA-G.R. CV No. 48821. The Court of Appeals affirmed with modifications the Decision of the Regional Trial Court of Makati, Branch 64 (RTC).

The Antecedent Facts

On 6 October 1978, BA-Finance Corporation (BA-Finance) entered into a transaction with Miller Offset Press, Inc. (Miller), through the latter's authorized representatives, *i.e.*, Uy Kiat Chung, Ching Uy Seng, and Uy Chung Guan Seng. BA-Finance granted Miller a credit line facility through which the latter could assign or discount its trade receivables with the former. On 20 October 1978, Uy Kiat Chung, Ching Uy Seng, and Uy Chung Guan Seng executed a Continuing Suretyship Agreement with BA-Finance whereby they jointly and severally guaranteed the full and prompt payment of any and all indebtedness which Miller may incur with BA-Finance.

Miller discounted and assigned several trade receivables to BA-Finance by executing Deeds of Assignment in favor of the latter. In consideration of the assignment, BA-Finance issued four checks payable to the "Order of Miller Offset Press, Inc." with the notation "For Payee's Account Only." These checks were drawn against Bank of America and had the following details:[3]

---

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

[2] Penned by Associate Justice Artemon D. Luna with Associate Justices Delilah Vidallon-Magtolis and Rodrigo V. Cosico, concurring.

[3] Records, pp. 107-110.

Check No.	Date	Amount
128274	13 February 1981	₱222,363.33
129067	26 February 1981	252,551.16
132133	20 April 1981	206,450.57
133057	7 May 1981	59,862.72
	Total	₱741,227.78

The four checks were deposited by Ching Uy Seng (*a.k.a.* Robert Ching), then the corporate secretary of Miller, in Account No. 989 in Associated Citizens Bank (Associated Bank). Account No. 989 is a joint bank account under the names of Ching Uy Seng and Uy Chung Guan Seng. Associated Bank stamped the checks with the notation "all prior endorsements and/or lack of endorsements guaranteed," and sent them through clearing. Later, the drawee bank, Bank of America, honored the checks and paid the proceeds to Associated Bank as the collecting bank.

Miller failed to deliver to BA-Finance the proceeds of the assigned trade receivables. Consequently, BA-Finance filed a Complaint against Miller for collection of the amount of ₱731,329.63 which BA-Finance allegedly paid in consideration of the assignment, plus interest at the rate of 16% per annum and penalty charges.[4] Likewise impleaded as party defendants in the collection case were Uy Kiat Chung, Ching Uy Seng, and Uy Chung Guan Seng.

Miller, Uy Kiat Chung, and Uy Chung Guan Seng filed a Joint Answer (to the BA-Finance's Complaint) with Cross-Claim against Ching Uy Seng, wherein they denied that (1) they received the amount covered by the four Bank of America checks, and (2) they authorized their co-defendant Ching Uy Seng to transact business with BA-Finance on behalf of Miller. Uy Kiat Chung and Uy Chung Guan Seng also denied having signed the Continuing Suretyship Agreement with BA-Finance. In view thereof, BA-Finance filed an Amended Complaint

[4] *Id.* at 3.

impleading Bank of America as additional defendant for allegedly allowing encashment and collection of the checks by person or persons other than the payee named thereon. Ching Uy Seng, on the other hand, did not file his Answer to the complaint.

Bank of America filed a Third Party Complaint against Associated Bank. In its Answer to the Third Party Complaint, Associated Bank admitted having received the four checks for deposit in the joint account of Ching Uy Seng (*a.k.a.* Robert Ching) and Uy Chung Guan Seng, but alleged that Robert Ching, being one of the corporate officers of Miller, was duly authorized to act for and on behalf of Miller.

On 28 September 1994, the RTC rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered against defendant Bank of America to pay plaintiff BA Finance Corporation the sum of ₱741,277.78, the value of the four (4) checks subject matter of this case, with legal interest thereon from the time of the filing of this complaint until payment is made and attorney's fees corresponding to 15% of the amount due and to pay the costs of the suit.
>
> Judgment is likewise rendered ordering the third-party defendant Associated Citizens Bank to reimburse Bank of America, the defendant third-party plaintiff, of the aforestated amount.
>
> SO ORDERED.[5]

The Court of Appeals' Ruling

On appeal, the Court of Appeals rendered judgment,[6] affirming with modifications the decision of the RTC, thus:

> WHEREFORE, judgment is hereby rendered, as follows:
>
> (1) Defendant and third-party plaintiff-appellant, Bank of America, NT & SA, is ordered to pay plaintiff-appellee BA-Finance Corporation

---

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

[6] Promulgated on 26 February 1999.

the sum of ₱741,277.78, with legal interest thereon from the time of the filing of the complaint until the whole amount is fully paid;

(2) Third-party defendant-appellant Associated Citizens Bank is likewise ordered to reimburse Bank of America the aforestated amount;

(3) Defendants Ching Uy Seng and/or Uy Chung Guan Seng are also ordered to pay Associated Citizens Bank the aforestated amount; and

(4) The award of attorney's fees is ordered deleted.

SO ORDERED.[7]

Associated Bank and Bank of America filed their respective Motions for Reconsideration, but these were denied by the Court of Appeals in its Resolution of 6 December 1999.[8]

Hence, these petitions.

The Issue

The issues raised in these consolidated cases may be summarized as follows:

Whether the Court of Appeals erred in rendering judgment finding (1) Bank of America liable to pay BA-Finance the amount of the four checks; (2) Associated Bank liable to reimburse Bank of America the amount of the four checks; and (3) Ching Uy Seng and/or Uy Chung Guan Seng liable to pay Associated Bank the amount of the four checks.

The Court's Ruling

We find the petitions unmeritorious.

The Court of Appeals did not err in finding Bank of America liable to pay BA-Finance the amount of the four checks.

Bank of America denies liability for paying the amount of the four checks issued by BA-Finance to Miller, alleging that

---

[7] *Rollo* (G.R. No. 141001), pp. 25-26.

[8] *Id.* at 34-35.

it (Bank of America) relied on the stamps made by Associated Bank stating that "all prior endorsement and/or lack of endorsement guaranteed," through which Associated Bank assumed the liability of a general endorser under Section 66 of the Negotiable Instruments Law. Moreover, Bank of America contends that the proximate cause of BA-Finance's injury, if any, is the gross negligence of Associated Bank which allowed Ching Uy Seng (Robert Ching) to deposit the four checks issued to Miller in the personal joint bank account of Ching Uy Seng and Uy Chung Guan Seng.

We are not convinced.

The bank on which a check is drawn, known as the drawee bank, is under strict liability, based on the contract between the bank and its customer (drawer), to pay the check only to the payee or the payee's order. The drawer's instructions are reflected on the face and by the terms of the check. When the drawee bank pays a person other than the payee named on the check, it does not comply with the terms of the check and violates its duty to charge the drawer's account only for properly payable items.[9] Thus, we ruled in *Philippine National Bank v. Rodriguez*[10] that a drawee should charge to the drawer's accounts only the payables authorized by the latter; otherwise, the drawee will be violating the instructions of the drawer and **shall be liable for the amount charged to the drawer's account**.

Among the different types of checks issued by a drawer is the crossed check. The Negotiable Instruments Law is silent with respect to crossed checks, although the Code of Commerce[11] makes reference to such instruments.[12] This Court has taken

---

[9] *Associated Bank v. Court of Appeals*, 322 Phil. 677, 697 (1996).

[10] G.R. No. 170325, 26 September 2008.

[11] Article 541 of the Code of Commerce states: "The maker or any legal holder of a check shall be entitled to indicate therein that it be paid to a certain banker or institution, which he shall do by writing across the face the name of said banker or institution, or only the words 'and company.'"

[12] *Yang v. Court of Appeals*, 456 Phil. 378, 395 (2003); *Bataan Cigar and Cigarette Factory, Inc. v. Court of Appeals*, G.R. No. 93048, 3 March 1994, 230 SCRA 643.

judicial cognizance of the practice that a check with two parallel lines in the upper left hand corner means that it could only be deposited and could not be converted into cash.[13] Thus, the effect of crossing a check relates to the mode of payment, meaning that the drawer had intended the check for deposit only by the rightful person, *i.e.*, the payee named therein.[14] The crossing may be "special" wherein between the two parallel lines is written the name of a bank or a business institution, in which case the drawee should pay only with the intervention of that bank or company, or "general" wherein between two parallel diagonal lines are written the words "and Co." or none at all, in which case the drawee should not encash the same but merely accept the same for deposit.[15] In *Bataan Cigar v. Court of Appeals*,[16] we enumerated the effects of crossing a check as follows: (a) the check may not be encashed but only deposited in the bank; (b) the check may be negotiated only once – to one who has an account with a bank; and (c) the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose; otherwise, he is not a holder in due course.[17]

In this case, the four checks were drawn by BA-Finance and made payable to the "Order of Miller Offset Press, Inc." The checks were also crossed and issued "For Payee's Account Only." Clearly, the drawer intended the check for deposit only by Miller Offset Press, Inc. in the latter's bank account. Thus, when a person other than Miller, *i.e.*, Ching Uy Seng, *a.k.a.*

---

[13] *State Investment House v. IAC*, G.R. No. 72764, 3 July 1989, 175 SCRA 310, 315.

[14] *Id.*

[15] *Id.*

[16] *Supra*.

[17] Citing *Ocampo v. Gatchalian*, G.R. No. L-15126, 30 November 1961, 3 SCRA 596; *Associated Bank v. Court of Appeals*, G.R. No. 89802, 7 May 1992, 208 SCRA 465; and *State Investment House v. IAC*, *supra* note 13. See also *Gempesaw v. Court of Appeals*, G.R. No. 92244, 9 February 1993, 218 SCRA 682.

Robert Ching, presented and deposited the checks in his own personal account (Ching Uy Seng's joint account with Uy Chung Guan Seng), and the drawee bank, Bank of America, paid the value of the checks and charged BA-Finance's account therefor, the drawee Bank of America is deemed to have violated the instructions of the drawer, and therefore, is liable for the amount charged to the drawer's account.

The Court of Appeals did not err in finding Associated Bank liable to reimburse Bank of America the amount of the four checks.

A collecting bank where a check is deposited, and which endorses the check upon presentment with the drawee bank, is an endorser.[18] Under Section 66 of the Negotiable Instruments Law, an endorser warrants "that the instrument is genuine and in all respects what it purports to be; that he has good title to it; that all prior parties had capacity to contract; and that the instrument is at the time of his endorsement valid and subsisting." This Court has repeatedly held that in check transactions, the collecting bank or last endorser generally suffers the loss because it has the duty to ascertain the genuineness of all prior endorsements considering that the act of presenting the check for payment to the drawee is an assertion that the party making the presentment has done its duty to ascertain the genuineness of the endorsements.[19]

When Associated Bank stamped the back of the four checks with the phrase "all prior endorsements and/or lack of endorsement guaranteed," that bank had for all intents and purposes treated the checks as negotiable instruments and, accordingly, assumed the warranty of an endorser. Being so, Associated Bank cannot deny liability on the checks. In *Banco de Oro Savings and Mortgage Bank v. Equitable Banking Corporation*,[20] we held that:

---

[18] *Associated Bank v. Court of Appeals, supra* note 9.

[19] *Id.*, citing *BPI v. Court of Appeals*, G.R. No. 102383, 26 November 1992, 216 SCRA 51, 63; *Banco de Oro Savings and Mortgage Bank v. Equitable Banking Corporation*, 241 Phil. 187 (1988); and *Great Eastern Life Insurance Co. v. HSBC*, 43 Phil. 678 (1922).

[20] *Supra* at 200-201.

x x x the law imposes a duty of diligence on the collecting bank to scrutinize checks deposited with it for the purpose of determining their genuineness and regularity. The collecting bank being primarily engaged in banking holds itself out to the public as the expert and the law holds it to a high standard of conduct. x x x In presenting the checks for clearing and for payment, the defendant [collecting bank] made an express guarantee on the validity of "all prior endorsements." Thus, stamped at the back of the checks are the defendant's clear warranty: ALL PRIOR ENDORSEMENTS AND/OR LACK OF ENDORSEMENTS GUARANTEED. Without such warranty, plaintiff [drawee] would not have paid on the checks. No amount of legal jargon can reverse the clear meaning of defendant's warranty. As the warranty has proven to be false and inaccurate, the defendant is liable for any damage arising out of the falsity of its representation.

Associated Bank was also clearly negligent in disregarding established banking rules and regulations by allowing the four checks to be presented by, and deposited in the personal bank account of, a person who was not the payee named in the checks. The checks were issued to the "Order of Miller Offset Press, Inc.," but were deposited, and paid by Associated Bank, to the personal joint account of Ching Uy Seng (*a.k.a.* Robert Ching) and Uy Chung Guan Seng. It could not have escaped Associated Bank's attention that the payee of the checks is a corporation while the person who deposited the checks in his own account is an individual. Verily, when the bank allowed its client to collect on crossed checks issued in the name of another, the bank is guilty of negligence.[21] As ruled by this Court in *Jai-Alai Corporation of the Philippines v. Bank of the Philippine Islands*,[22] one who accepts and encashes a check from an individual knowing that the payee is a corporation does so at his peril. Accordingly, we hold that Associated Bank is liable for the amount of the four checks and should reimburse the amount of the checks to Bank of America.

---

[21] *Id.*; *Associated Bank v. Court of Appeals*, *supra* note 9; *Philippine Commercial International Bank v. Court of Appeals*, 403 Phil. 361 (2001).

[22] 160 Phil. 741, 747-748 (1975).

The Court of Appeals did not err in finding Ching Uy Seng and/or Uy Chung Guan Seng liable to pay Associated Bank the amount of the four checks.

It is well-settled that a person who had not given value for the money paid to him has no right to retain the money he received.[23] This Court, therefore, quotes with approval the ruling of the Court of Appeals in its decision:

> It appearing, however, from the evidence on record that since Ching Uy Seng and/or Uy Chung Guan Seng received the proceeds of the checks as they were deposited in their personal joint account with Associated Bank, they should, therefore, be obliged to reimburse Associated Bank for the amount it has to pay to Bank of America, in line with the rule that no person should be allowed to unjustly enrich himself at the expense of another.[24]

As regards the trial court's grant of attorney's fees to BA-Finance, the Court of Appeals found that there was no sufficient justification therefor; hence, the deletion of the award is proper. An award of attorney's fees necessitates a factual, legal, or equitable justification. Without such justification, the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture.[25]

We note that the Decision of the Court of Appeals provides for the amount of ₱741,277.78 as the sum of the four checks subject of this case.[26] This amount should be modified as records show that the total value of the four checks is ₱741,227.78.[27]

---

[23] Applying Article 22 of the Civil Code of the Philippines which provides: "Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him."

[24] *Rollo* (G.R. No. 141001), p. 25.

[25] *Buanv. Camaganacan*, 123 Phil. 131, 135 (1966).

[26] *Rollo* (G.R. No. 141001), pp. 25-26.

[27] Records, pp. 107-110.

WHEREFORE, we *DENY* the petitions. We *AFFIRM* the Court of Appeals' Decision dated 26 February 1999 in CA-G.R. CV No. 48821 with the *MODIFICATION* that Bank of America, NT & SA is ordered to pay BA-Finance Corporation the amount of ₱741,227.78, with legal interest from the timeof filing of the complaint until the amount is fully paid. Associated Citizens Bank is ordered to reimburse Bank of America the abovementioned amount. Ching Uy Seng and/or Uy Chung Guan Seng are also ordered to pay Associated Citizens Bank the abovementioned amount.

SO ORDERED.

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

FIRST DIVISION

[G.R. Nos. 156687-88. May 21, 2009]

PANFILO D. BONGCAC, *petitioner, vs.* **SANDIGANBAYAN, PEOPLE OF THE PHILIPPINES, SPECIAL PROSECUTOR FORTUNATO LIM, and TORIBIO BON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; DOCTRINE OF IMMUTABILITY OF FINAL JUDGMENTS; APPLIED IN CASE AT BAR. — Petitioner cannot perpetually file any petition or pleading to forestall the execution of a final judgment. Execution of a final judgment is the fruit and end of the suit. While a litigant's right to initiate an action in court is fully respected, once his case has been adjudicated by a competent court in a valid final judgment, he should not be permitted to initiate similar suits

in the hope of securing a favorable ruling. The 28 March 2001 Sandiganbayan Decision has attained finality. Such definitive judgment is no longer subject to change, revision, amendment or reversal. Upon finality of the judgment, the Court loses its jurisdiction to amend, modify or alter the same. Except for correction of clerical errors or the making of *nunc pro tunc* entries which cause no prejudice to any party, or where the judgment is void, the judgment can neither be amended nor altered after it has become final and executory. This is the principle of immutability of final judgment. In *Lim v. Jabalde*, this Court further explained the necessity of adhering to the doctrine of immutability of final judgments, thus: "Litigation must end and terminate sometime and somewhere and it is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party be not, through a mere subterfuge, deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them." Every litigation must come to an end once a judgment becomes final, executory and unappealable. For just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case by the execution and satisfaction of the judgment, which is the "life of the law." To frustrate it by dilatory schemes on the part of the losing party is to frustrate all the efforts, time and expenditure of the courts. It is in the interest of justice that we should write *finis* to this litigation. Consequently, we find no grave abuse of discretion when the Sandiganbayan denied petitioner's motion to hold in abeyance the execution of judgment.

2. ID.; CRIMINAL PROCEDURE; BAIL; CANCELLATION OF BAIL; AUTOMATIC UPON EXECUTION OF THE JUDGMENT OF CONVICTION. — On the cancellation of petitioner's cash bailbond as ordered in the Resolution of 10 January 2003 of the Sandiganbayan, the cancellation of the bailbond was due to the execution of the final judgment of conviction. Section 22 of Rule 114 of the Revised Rules of Criminal Procedure expressly provides: "SEC. 22. *Cancellation of bail.* — Upon application of the bondsmen, with due notice to the prosecutor, the bail may be cancelled upon surrender of the accused or

proof of his death. **The bail shall be deemed automatically cancelled upon** acquittal of the accused, dismissal of the case, or **execution of the judgment of conviction**. In all instances, the cancellation shall be without prejudice to any liability on the bail." From this provision, it is clear that the cancellation of bail is automatic upon execution of the judgment of conviction. The Sandiganbayan did not err in cancelling petitioner's cash bailbond after the judgment of conviction became final and executory and its execution became ministerial.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Artemio C. Villas for Fortunato Lim.

D E C I S I O N

CARPIO, *J.*:

The Facts

The Mayor of Tagbilaran City, Jose V. Torralba, designated his secretary, petitioner Panfilo D. Bongcac (petitioner), as the "Mayor's representative to the City Market Committee," "Consultant and Coordinator on market matters," and "adviser to the Acting Market Administrator." In January 1991, respondents Engr. Fortunato Lim (Lim) and Toribio Bon (Bon) applied for stalls or *tiendas* in the Cogon Public Market in Tagbilaran City and were referred to petitioner. Petitioner showed them the Minutes of the City Market Committee meeting held on 9 January 1991 which included their names as among the awardees of the market stalls. Petitioner informed Lim and Bon that the city government could not afford to construct a new market and if they were interested, they should give him more money for the construction of the stalls or *tiendas* they were applying for. Accordingly, Lim issued and delivered to petitioner a BPI check, pay to cash, in the amount of ₱62,000. Bon issued and delivered to petitioner two Metrobank checks, pay to cash, in the amounts of ₱30,000 and ₱10,000. Petitioner

issued handwritten receipts to Lim and Bon. Petitioner assured Lim that his stalls would be finished on or before 30 June 1991 and promised Bon that his stall would be finished before the fiesta in Tagbilaran City. The checks were subsequently encashed.

Thereafter, Lim and Bon read in the 30 June 1991 issue of a local newspaper that petitioner was "sacked" as market body consultant and was terminated as secretary to the Mayor. They looked for him and demanded that he either make an accounting of the money he received or deliver the stalls or *tiendas* already constructed.

Petitioner failed to do so. Thus, he was charged with two counts of Estafa defined and penalized under Article 315, 1(b) of the Revised Penal Code before the Sandiganbayan. The cases were docketed as Criminal Case Nos. 18005 and 18006.

Upon arraignment, petitioner pleaded not guilty. Trial ensued and the cases were tried jointly.

On 28 March 2001, the Fourth Division[1] of the Sandiganbayan rendered judgment finding petitioner guilty of Estafa, the dispositive portion of which reads:

WHEREFORE, in **Criminal Case No. 18005,** the accused, PANFILO D. BONGCAC, is hereby found guilty beyond reasonable doubt of the crime of ESTAFA (of the amount of ₱54,000.00) defined under subdivision 1, paragraph (b), and penalized under the 1st paragraph, both of Article 315, Revised Rules of Court, and he is hereby sentenced to suffer the indeterminate penalty of imprisonment of from (sic) Four (4) Years and Two (2) Months of *prision correccional*, as minimum, to Eleven (11) Years of *prision mayor*, as maximum, to indemnify Engr. Fortunato Lim in the amount of ₱54,000.00 plus ₱10,000.00 as attorney's fees; and

In **Criminal Case No. 18006,** the same accused, PANFILO D. BONGCAC, is likewise found guilty beyond reasonable doubt of the same crime of ESTAFA (of the amount of ₱35,000.00) defined and

[1] Penned by Justice Nicodemo T. Ferrer, with Justices Narciso S. Nario and Rodolfo G. Palattao, concurring.

penalized under the aforestated law, and he is hereby sentenced to suffer the indeterminate penalty of Two (2) Years, Three (3) Months and Five (5) Days of *prision correccional*, as minimum, to Nine (9) Years of *prision mayor*, as maximum, to indemnify Toribio Bon in the amount of ₱35,000.00; and to pay the costs.[2]

Petitioner filed a motion for reconsideration of the 28 March 2001 Decision of the Sandiganbayan. The motion was denied in the Resolution dated 3 September 2001.[3]

Thereafter, petitioner filed a petition for review on *certiorari*[4] with this Court, which was docketed as G.R. Nos. 149711-12. The petition sought the reversal of the 28 March 2001 Decision of the Sandiganbayan.

On 20 February 2002, this Court, in G.R. Nos. 149711-12, issued a Resolution denying the petition for: (a) failure of the petition to sufficiently show that the Sandiganbayan committed any reversible error in the challenged decision and resolution; and (b) failure of the petition to show extraordinary circumstance justifying a departure from the established doctrine that findings of facts of the Sandiganbayan are well-nigh conclusive on this Court and will not be reviewed or disturbed on appeal.[5] No motion for reconsideration was filed. Consequently, the Resolution of 20 February 2002 became final and executory on 2 April 2002.[6]

On 4 December 2002, the Sandiganbayan issued a notice to petitioner and counsel directing them to be present on 8 January 2003 for the execution of judgment in the criminal cases.[7]

On 26 December 2002, petitioner filed in G.R. Nos. 149711-12 a Very Urgent Petition for Extraordinary Relief with this

---

[2] *Rollo*, p. 41.

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

[4] *Id.* at 46-51.

[5] *Id.* at 52-53.

[6] *Id.* at 54-55.

[7] *Id.* 56.

Court. The petition sought to "reverse and set aside the decision of the Sandiganbayan" and to "declare that petitioner is acquitted of the offense charged."[8]

Meanwhile, petitioner filed with the Sandiganbayan, in Criminal Case Nos. 18005 and 18006, a Manifestation and Very Urgent Motion to Suspend Further Proceedings praying that the execution of judgment be held in abeyance to await the action of this Court on the Very Urgent Petition for Extraordinary Relief he filed in G.R. Nos. 149711-12.[9]

On 10 January 2003, the Fourth Division[10] of the Sandiganbayan issued a Resolution in Criminal Case Nos. 18005 and 18006 denying, for lack of merit, petitioner's Manifestation and Very Urgent Motion to Suspend Further Proceedings. It further directed the issuance of a bench warrant of arrest against petitioner to serve the sentence imposed upon him. The cash bond posted by petitioner for his temporary liberty was ordered cancelled. Petitioner was given five days to voluntarily surrender.[11]

On 3 March 2003, this Court issued a Resolution in G.R. Nos. 149711-12 denying, for lack of merit, the Very Urgent Petition for Extraordinary Relief.

Petitioner filed the present petition for *certiorari* and prohibition, with prayer for issuance of a writ of preliminary injunction or temporary restraining order praying that the Resolution dated 10 January 2003 issued by the Sandiganbayan be set aside and that the bench warrant of arrest and the order cancelling the bail bond pending resolution of the Very Urgent Petition for Extraordinary Relief be recalled. Petitioner likewise sought to suspend the final execution of the 28 March 2001 Sandiganbayan Decision until after the resolution of the Very Urgent Petition for Extraordinary Relief.

---

[8] *Id.* at 57-64.

[9] *Id.* at 65-74.

[10] Composed of Justices Gregory S. Ong, Rodolfo G. Palattao and Ma. Cristina G. Cortez-Estrada.

[11] *Rollo*, pp. 75-76.

Respondents People of the Philippines (People) and Lim filed their respective Comments to the petition. Respondent Bon did not file his comment and the Court resolved to dispense with the filing of the comment as the notices sent to him were returned with the notation "RTS party abroad, USA."[12]

The People, in its Comment, asserted that this Court had no more jurisdiction to entertain the Very Urgent Petition for Extraordinary Relief because the Court's Resolution of 20 February 2002 in G.R. Nos. 149711-12 had already become final and executory. Petitioner's bail bond was deemed automatically cancelled upon execution of the judgment of conviction.

In his Comment, respondent Lim alleged that the instant petition should be dismissed outright. He argued that the present petition was filed beyond the reglementary period of 60 days and that the Very Urgent Petition for Extraordinary Relief was not sanctioned by the Rules of Civil Procedure and was barred by *res judicata*. He further argued that the Very Urgent Petition for Extraordinary Relief and the present petition are obviously dilatory tactics to delay the execution of judgment in the criminal cases.

Issue

The resolution of the present petition hinges on the sole issue of whether or not the Sandiganbayan acted with grave abuse of discretion, amounting to lack of jurisdiction, in denying petitioner's motion to hold in abeyance the execution of judgment.

The Court's Ruling

We dismiss the petition.

Petitioner appealed the 28 March 2001 Sandiganbayan Decision via a petition for review on *certiorari* before this Court. The appeal was docketed as G.R. Nos. 149711-12. This Court, however, denied that petition in the Resolution of 20 February 2002. The Resolution of 20 February 2002 became

[12] *Id.* at 141.

final and executory on 2 April 2002 after petitioner failed to file a timely motion for reconsideration. Consequently, the 28 March 2001 Sandiganbayan Decision likewise became final and executory. Petitioner could no longer seek a reversal of the judgment of conviction rendered by the Sandiganbayan, as what petitioner did when he filed the Very Urgent Petition for Extraordinary Relief.

In the present petition, petitioner prayed that the execution of the 28 March 2001 Sandiganbayan Decision be "suspended until after final resolution of petitioner's Very Urgent Petition for Extraordinary Relief." The Very Urgent Petition for Extraordinary Relief filed in G.R. Nos. 149711-12 sought to "reverse and set aside the decision of the Sandiganbayan" and to "declare that petitioner is acquitted of the offense charged." While technically, the Very Urgent Petition for Extraodinary Relief filed in G.R. Nos. 149711-12 is not sanctioned by the rules, nonetheless, that petition was likewise denied in the Court's Resolution of 3 March 2003. It is clear, therefore, that the Very Urgent Petition for Extraordinary Relief and the instant petition are merely dilatory tactics employed by petitioner in his efforts to delay the execution of the judgment in the criminal cases for estafa which had long become final and executory.

Petitioner cannot perpetually file any petition or pleading to forestall the execution of a final judgment. Execution of a final judgment is the fruit and end of the suit. While a litigant's right to initiate an action in court is fully respected, once his case has been adjudicated by a competent court in a valid final judgment, he should not be permitted to initiate similar suits in the hope of securing a favorable ruling. The 28 March 2001 Sandiganbayan Decision has attained finality. Such definitive judgment is no longer subject to change, revision, amendment or reversal. Upon finality of the judgment, the Court loses its jurisdiction to amend, modify or alter the same. Except for correction of clerical errors or the making of *nunc pro tunc* entries which cause no prejudice to any party, or where the judgment is void, the judgment can neither be amended nor altered after it has become final and executory. This is the

principle of immutability of final judgment. In *Lim v. Jabalde,*[13] this Court further explained the necessity of adhering to the doctrine of immutability of final judgments, thus:

> Litigation must end and terminate sometime and somewhere and it is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party be not, through a mere subterfuge, deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them.

Every litigation must come to an end once a judgment becomes final, executory and unappealable. For just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case by the execution and satisfaction of the judgment, which is the "life of the law."[14] To frustrate it by dilatory schemes on the part of the losing party is to frustrate all the efforts, time and expenditure of the courts. It is in the interest of justice that we should write *finis* to this litigation. Consequently, we find no grave abuse of discretion when the Sandiganbayan denied petitioner's motion to hold in abeyance the execution of judgment.

On the cancellation of petitioner's cash bailbond as ordered in the Resolution of 10 January 2003 of the Sandiganbayan, the cancellation of the bailbond was due to the execution of the final judgment of conviction. Section 22 of Rule 114 of the Revised Rules of Criminal Procedure expressly provides:

> SEC. 22. *Cancellation of bail.* — Upon application of the bondsmen, with due notice to the prosecutor, the bail may be cancelled upon surrender of the accused or proof of his death.

---

[13] G.R. No. L-36786, 17 April 1989, 172 SCRA 211, 224.

[14] *Yau v. Silverio, Sr.,* G.R. Nos. 158848 and 171994, 4 February 2008, 543 SCRA 520.

The bail shall be deemed automatically cancelled upon acquittal of the accused, dismissal of the case, or **execution of the judgment of conviction.**

In all instances, the cancellation shall be without prejudice to any liability on the bail. (emphasis supplied).

From this provision, it is clear that the cancellation of bail is automatic upon execution of the judgment of conviction. The Sandiganbayan did not err in cancelling petitioner's cash bailbond after the judgment of conviction became final and executory and its execution became ministerial.

WHEREFORE, we *DISMISS* the petition. We *AFFIRM* the Resolution dated 10 January 2003 of the Sandiganbayan in Criminal Case Nos. 18005 and 18006. Costs against petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 162987. May 21, 2009]

SOFIA M. GUILLANG, represented by SUSAN GUILLANG-CABATBAT, REYNALDO, GERARDO, BIENVENIDO, DAWNA, and NELLIE, all surnamed GUILLANG, GENARO GUILLANG, JOSE DIGNADICE, and ALVIN LLANILLO, *petitioners, vs.* **RODOLFO BEDANIA and RODOLFO DE SILVA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI* UNDER RULE 45 OF THE RULES OF

COURT; LIMITED TO REVIEW OF QUESTIONS OF LAW; EXCEPTIONS. — The principle is well-established that this Court is not a trier of facts. Therefore, in an appeal by *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised. The resolution of factual issues is the function of the lower courts whose findings on these matters are received with respect and are, as a rule, binding on this Court. However, this rule is subject to certain exceptions. One of these is when the findings of the appellate court are contrary to those of the trial court. Findings of fact of the trial court and the Court of Appeals may also be set aside when such findings are not supported by the evidence or where the lower courts' conclusions are based on a misapprehension of facts.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICTS; CLAIM BASED ON QUASI-DELICT; REQUISITES. — Article 2176 of the Civil Code provides that 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 relations between the parties, is called a quasi-delict. To sustain a claim based on quasi-delict, the following requisites must concur: (a) damage suffered by the plaintiff; (b) fault or negligence of defendant; and (c) connection of cause and effect between the fault or negligence of defendant and the damage incurred by the plaintiff.

3. ID.; ID.; ID.; ID.; ID.; NEGLIGENCE; DEFINED. — Negligence is defined as the failure to observe for the protection of the interest of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury. In *Picart v. Smith*, we held that the test of negligence is whether the defendant in doing the alleged negligent act used that reasonable care and caution which an ordinary person would have used in the same situation.

4. ID.; ID.; ID.; ID.; ID.; ID.; A PERSON DRIVING A VEHICLE IS PRESUMED NEGLIGENT IF AT THE TIME OF THE MISHAP, HE WAS VIOLATING ANY TRAFFIC REGULATION; CASE AT BAR. — Under Article 2185 of the Civil Code, unless there is proof to the contrary, a person driving a vehicle is presumed negligent if at the time of the mishap, he was violating any traffic regulation. In this case, the report showed that the truck,

while making the U-turn, failed to signal, a violation of traffic rules. The police records also stated that, after the collision, Bedania escaped and abandoned the petitioners and his truck. This is another violation of a traffic regulation. Therefore, the presumption arises that Bedania was negligent at the time of the mishap.

5. ID.; ID.; ID.; ID.; ID.; PROXIMATE CAUSE; DEFINED; CASE AT BAR. — Bedania's negligence was the proximate cause of the collision which claimed the life of Antero and injured the petitioners. Proximate cause is that which, in the natural and continuous sequence, unbroken by any efficient, intervening cause, produces the injury, and without which the result would not have occurred. The cause of the collision is traceable to the negligent act of Bedania for if the U-turn was executed with the proper precaution, the mishap in all probability would not have happened. The sudden U-turn of the truck without signal lights posed a serious risk to oncoming motorists. Bedania failed to prevent or minimize that risk. The truck's sudden U-turn triggered a series of events that led to the collision and, ultimately, to the death of Antero and the injuries of petitioners.

6. ID.; DAMAGES; INDEMNITY FOR DEATH AND MORAL DAMAGES; AWARDED IN CASE AT BAR. — According to prevailing jurisprudence, civil indemnity for death caused by a quasi-delict is pegged at ₱50,000. Moral damages in the amount of ₱50,000 is also awarded to the heirs of the deceased taking into consideration the pain and anguish they suffered. Bienvenido Guillang (Bienvenido), Antero's son, testified that Sofia, Antero's wife and his mother, became depressed after Antero's death and that Sofia died a year after. Bienvenido also testified on the pain and anguish their family suffered as a consequence of their father's death. We sustain the trial court's award of ₱50,000 as indemnity for death and ₱50,000 as moral damages to the heirs of Antero.

7. ID.; ID.; MORAL DAMAGES; MAY BE RECOVERED IN QUASI-DELICTS CAUSING PHYSICAL INJURIES. — Moral damages may be recovered in quasi-delicts causing physical injuries. However, in accordance with prevailing jurisprudence, we reduce the award of moral damages from ₱50,000 to ₱30,000 each to Llanillo, Dignadice, and Genaro since they only suffered physical injuries brought about by the collision.

8. ID.; ID.; EXEMPLARY DAMAGES; GRANTED IN QUASI-DELICTS IF THE DEFENDANT ACTED WITH GROSS NEGLIGENCE. — In quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence. While the amount of exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. In this case, Bedania was grossly negligent in suddenly making a U-turn in the highway without signal lights. To serve as an example for the public good, we affirm the trial court's award of exemplary damages in the amount of ₱50,000.

9. ID.; ID.; ATTORNEY'S FEES; MAY BE RECOVERED WHEN EXEMPLARY DAMAGES ARE AWARDED. — [W]e affirm the trial court's award of attorney's fees in the amount of ₱100,000. Under Article 2208 of the Civil Code, attorney's fees may be recovered when, as in this case, exemplary damages are awarded.

APPEARANCES OF COUNSEL

Nelson A. Loyola for petitioners.
Abrogar Valerio Maderazo Law Offices for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 3 June 2003 Decision[2] and the 23 March 2004 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 69289. The 3 June 2003 Decision set aside the 5 December 2000 Decision[4] of the Regional Trial Court,

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

[2] *Rollo*, pp. 63-72. Penned by Associate Justice Conrado M. Vasquez, Jr. (now Presiding Justice), with Associate Justices Mercedes Gozo-Dadole and Danilo B. Pine, concurring.

[3] *Id.* at 74-75.

[4] *Id.* at 76-84. Penned by Judge Senecio O. Ortile.

Branch 30, Manila (trial court). The 23 March 2004 Resolution denied the motion for reconsideration.

The Facts

On 25 October 1994, at about 5:45 in the afternoon, petitioner Genaro M. Guillang (Genaro) was driving his brand new Toyota Corolla GLI sedan with conduction sticker no. 54-DFT (car) along Emilio Aguinaldo Highway (highway) in Cavite. Genaro, Antero Guillang (Antero), Felipe Jurilla, Jose Dignadice (Dignadice), and Alvin Llanillo (Llanillo) had all just left from Golden City, Dasmariñas, Cavite, and were on their way to Manila. At the other side of the highway, respondent Rodolfo A. Bedania (Bedania) was driving a ten-wheeler Isuzu cargo truck with plate no. CAC-923 (truck) towards Tagaytay City. The truck was owned by respondent Rodolfo de Silva (de Silva).

Along the highway and the road leading to the Orchard Golf Course, Bedania negotiated a U-turn. When the truck entered the opposite lane of the highway, Genaro's car hit the right portion of the truck. The truck dragged Genaro's car some five meters to the right of the road.

As a consequence, all the passengers of the car were rushed to the De La Salle University Medical Center in Dasmariñas, Cavite for treatment. Because of severe injuries, Antero was later transferred to the Philippine General Hospital. However, on 3 November 1994, Antero died due to the injuries he sustained from the collision. The car was a total wreck while the truck sustained minor damage.

On 24 April 1995, petitioners Genaro, Llanillo, Dignadice, and the heirs of Antero[5] instituted a complaint for damages based on quasi-delict against respondents Bedania and de Silva.

On 5 December 2000, the trial court rendered a decision in favor of petitioners. The trial court found Bedania grossly

[5] Sofia Guillang, wife of Antero, was the one who filed the case before the trial court. However, Sofia died and was later represented by their children, Susan Guillang-Cabatbat, Reynaldo, Gerardo, Bienvenido, Dawna, and Nellie, all surnamed Guillang.

negligent for recklessly maneuvering the truck by making a sudden U-turn in the highway without due regard to traffic rules and the safety of other motorists. The trial court also declared de Silva grossly negligent in the selection and supervision of his driver, Bedania. The dispositive portion of the decision provides:

> WHEREFORE, judgment is hereby rendered ordering defendants Rodolfo A. Bedania and Rodolfo de Silva, jointly and severally, to pay plaintiffs, as follows:
>
> 1. The sum of ₱508,566.03 representing the damage/repair costs of the Toyota to plaintiff Genaro M. Guillang.
> 2. The sum of ₱50,000.00 for the death of Antero Guillang plus ₱185,000.00 for his burial expenses, to the heirs of Antero Guillang.
> 3. For hospital and medical expenses as reflected in Exhibits E, E-1 to E-30 to plaintiffs Genaro M. Guillang, Jose Dignadice and Alvin Llanillo.
> 4. The sum of ₱50,000.00 as moral damages for the heirs of the deceased Antero Guillang.
> 5. The sum of ₱50,000.00 as moral damages each to plaintiffs Jose Dignadice, Alvin Llanillo and Genaro Guillang.
> 6. The sum of ₱50,000.00 as exemplary damages.
> 7. The sum of ₱100,000.00 as and for attorney's fess (sic).
> 8. The costs of the suit.
>
> SO ORDERED.[6]

Respondents appealed to the Court of Appeals.

On 3 June 2003, the Court of Appeals rendered its decision in favor of respondents. The dispositive portion of the decision provides:

---

[6] *Rollo*, p. 84.

IN VIEW OF ALL THE FOREGOING, the appealed decision is REVERSED and SET ASIDE. The complaint of the herein appellees in Civil Case No. 95-73666 is DISMISSED, for lack of merit. The appellants' counterclaims in the instant case are likewise DISMISSED. No pronouncement as to cost.

SO ORDERED.[7]

Petitioners filed a motion for reconsideration. On 23 March 2004, the Court of Appeals denied the motion.

Hence, this petition.

The Ruling of the Regional Trial Court

According to the trial court, there is a presumption that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation.[8] In this case, the trial court found that the Traffic Accident Investigation Report (report),[9] corroborated by the testimonies of the witnesses, showed that the truck committed a traffic violation by executing a U-turn without signal lights. The trial court also declared that Bedania violated Sections 45(b),[10] 48,[11] and

[7] *Id.* at 72.

[8] CIVIL CODE, Art. 2185.

[9] Exhibit "A", records, p. 280.

[10] Section 45 of Republic Act No. 4136 provides:

Sec. 45. Turning at intersections. — x x x

(b) The driver of a vehicle intending to turn to the left shall approach such intersection in the lane for traffic to the right of and nearest to the center line of the highway, and, in turning, shall pass to the left of the center of the intersection, except that, upon highways laned for traffic and upon one-way highways, a left turn shall be made from the left lane of traffic in the direction in which the vehicle is proceeding.

[11] Section 48 of Republic Act No. 4136 provides:

Sec. 48. Reckless driving. — No person shall operate a motor vehicle on any highway recklessly or without reasonable caution considering the width, traffic, grades, crossing, curvatures, visibility and other conditions of the highway and the conditions of the atmosphere and weather, or so as to endanger the property or safety or rights of any person or so as to cause excessive or unreasonable damage to the highway.

54[12] of Republic Act No. 4136[13] when he executed the sudden U-turn. The trial court added that Bedania violated another traffic rule when he abandoned the victims after the collision.[14] The trial court concluded that Bedania was grossly negligent in his driving and held him liable for damages.

Moreover, the trial court found that Bedania did not make the U-turn at an intersection. According to the trial court, vehicles trying to maneuver to change directions must seek an intersection where it is safer to maneuver and not recklessly make a U-turn in a highway. The trial court said Bedania should have observed extreme caution in making a U-turn because it was unexpected that a long cargo truck would execute a U-turn along the highway.

The trial court also said that Bedania's gross negligence raised the legal presumption that de Silva, as Bedania's

---

[12] Section 54 of Republic Act No. 4136 provides:

Sec. 54. Obstruction of traffic. — No person shall drive his motor vehicle in such a manner as to obstruct or impede the passage of any vehicle, nor, while discharging or taking on passengers or loading or unloading freight, obstruct the free passage of other vehicles on the highway.

[13] "An Act to Compile the Laws Relative to Land Transportation and Traffic Rules, to Create a Land Transportation Commission and for Other Purposes" approved on 20 June 1964. Also known as the "Land Transportation and Traffic Code."

[14] Section 55 of Republic Act No. 4136 provides:

Sec. 55. Duty of driver in case of accident. — In the event that any accident should occur as a result of the operation of a motor vehicle upon a highway, the driver shall stop immediately, and, if requested by any person present, shall show his driver's license, give his true name and address and also the true name and address of the owner of the motor vehicle.

No driver of a motor vehicle concerned in a vehicular accident shall leave the scene of the accident without aiding the victim, except under any of the following circumstances:

1. If he is in imminent danger of being seriously harmed by any person or persons by reason of the accident;
2. If he reports the accident to the nearest officer of the law; or
3. If he has to summon a physician or nurse to aid the victim.

employer, was negligent in the selection and supervision of his employees. The trial court said that, under Articles 2176[15] and 2180[16] of the Civil Code, de Silva's liability was based on *culpa aquiliana* which holds the employer primarily liable for tortious acts of his employees, subject to the defense that he exercised all the diligence of a good father of a family in the selection and supervision of his employees. The trial court ruled that de Silva failed to prove this defense and, consequently, held him liable for damages.

The Ruling of the Court of Appeals

The Court of Appeals reversed the trial court's decision and said that the trial court overlooked substantial facts and circumstances which, if properly considered, would justify a different conclusion and alter the results of the case.

The Court of Appeals dismissed the testimonies of the witnesses and declared that they were "contrary to human observation, knowledge and experience." The Court of Appeals also said that the following were the physical evidences in the case:

---

[15] Article 2176 of the Civil Code provides:

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 relations between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

[16] Article 2180 of the Civil Code provides:

The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

x x x x x x x x x

Employers shall be liable for the damages caused by their employees and household help acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

x x x x x x x x x

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent the damage.

1. It was not yet dark when the incident transpired;
2. The four-lane highway the appellees were cruising on was wide, straight, dry, relatively plain and with no obstructions to the driver's vision;
3. The point of impact of the collision is on the lane where the car was cruising and the car hit the gas tank of the truck located at its right middle portion, which indicates that the truck had already properly positioned itself and had already executed the U-turn before the impact occurred;
4. Genaro Guillang was not able to stop the car in time and the car's front portion was totally wrecked. This negates appellees' contention that they were traveling at a moderate speed; and
5. The sheer size of the truck makes it improbable for the said vehicle to negotiate a U-turn at a sudden and fast speed – as appellees vigorously suggest – without toppling over on its side.[17] (Citations omitted)

The Court of Appeals concluded that the collision was caused by Genaro's negligence. The Court of Appeals declared that the truck arrived at the intersection way ahead of the car and had already executed the U-turn when the car, traveling at a fast speed, hit the truck's side. The Court of Appeals added that considering the time and the favorable visibility of the road and the road conditions, Genaro, if he was alert, had ample time to react to the changing conditions of the road. The Court of Appeals found no reason for Genaro not to be prudent because he was approaching an intersection and there was a great possibility that vehicles would be traversing the intersection either going to or from Orchard Golf Course. The Court of Appeals said Genaro should have slowed down upon reaching the intersection. The Court of Appeals concluded that Genaro's failure to observe the necessary precautions was the proximate cause of Antero's death and the injuries of the petitioners.

The Court of Appeals also relied on the testimony of Police Traffic Investigator Efren Videna (Videna) that the car was

[17] *Rollo*, pp. 67-68.

running at a fast speed and overtook another vehicle just before the collision occurred.[18] The Court of Appeals concluded that Genaro did not see the truck as the other vehicle temporarily blocked his view of the intersection. The Court of Appeals also gave weight to Videna's testimony that it was normal for a ten-wheeler truck to make a U-turn on that part of the highway because the entrance to Orchard Golf Course was spacious.[19]

The Issues

Petitioners raise the following issues:

1. Did the Court of Appeals decide a question of substance in this case in a way probably not in accord with law or with the applicable decisions of the Honorable Supreme Court?
2. Did the Court of Appeals depart from the accepted and usual course of judicial proceedings particularly when it revised, and recast the findings of facts of the trial court pertaining to credibility of witnesses of which the trial court was at the vantage point to evaluate?
3. Did the Court of Appeals act with grave abuse of discretion amounting to lack of jurisdiction when it rendered the palpably questionable Court of Appeals' Decision that tampered with the findings of fact of the trial court for no justifiable reason?
4. Is the Court of Appeals' judgment and resolution versing the decision of the trial court supported by the evidence and the law and jurisprudence applicable?[20]

The issue in this case is who is liable for the damages suffered by petitioners. The trial court held Bedania and de Silva, as Bedania's employer, liable because the proximate cause of the collision was the sudden U-turn executed by Bedania without any signal lights. On the other hand, the Court of Appeals reversed the trial court's decision and held Genaro liable because

---

[18] TSN, 13 December 1999, pp. 12-13.

[19] *Id.* at 18.

[20] *Rollo*, pp. 10-11.

the proximate cause of the collision was Genaro's failure to stop the car despite seeing that Bedania was making a U-turn.

The Ruling of the Court

The principle is well-established that this Court is not a trier of facts. Therefore, in an appeal by *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised. The resolution of factual issues is the function of the lower courts whose findings on these matters are received with respect and are, as a rule, binding on this Court.[21]

However, this rule is subject to certain exceptions. One of these is when the findings of the appellate court are contrary to those of the trial court.[22] Findings of fact of the trial court and the Court of Appeals may also be set aside when such findings are not supported by the evidence or where the lower courts' conclusions are based on a misapprehension of facts.[23] Such is the situation in this case and we shall re-examine the facts and evidence presented before the lower courts.

Article 2176 of the Civil Code provides that 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 relations between the parties, is called a quasi-delict. To sustain a claim based on quasi-delict, the following requisites must concur: (a) damage suffered by the plaintiff; (b) fault or negligence of defendant; and (c) connection of cause and effect between the fault or negligence of defendant and the damage incurred by the plaintiff.[24]

---

[21] *McKee v. Intermediate Appellate Court*, G.R. Nos. 68102-03, 16 July 1992, 211 SCRA 517.

[22] *Philippine Rabbit Bus Lines, Inc. v. Intermediate Appellate Court*, G.R. Nos. 66102-04, 30 August 1990, 189 SCRA 158.

[23] *McKee v. Intermediate Appellate Court, supra*.

[24] *Dy Teban Trading, Inc. v. Ching*, G.R. No. 161803, 4 February 2008, 543 SCRA 560.

There is no dispute that petitioners suffered damages because of the collision. However, the issues on negligence and proximate cause are disputed.

On the Presumption of Negligence and Proximate Cause

Negligence is defined as the failure to observe for the protection of the interest of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury. In *Picart v. Smith*,[25] we held that the test of negligence is whether the defendant in doing the alleged negligent act used that reasonable care and caution which an ordinary person would have used in the same situation.

The conclusion of the Court of Appeals that Genaro was negligent is not supported by the evidence on record. In ruling that Genaro was negligent, the Court of Appeals gave weight and credence to Videna's testimony. However, we find that Videna's testimony was inconsistent with the police records and report that he made on the day of the collision. First, Videna testified that the car was running fast and overtook another vehicle that already gave way to the truck.[26] But this was not indicated in either the report or the police records. Moreover, if the car was speeding, there should have been skid marks on the road when Genaro stepped on the brakes to avoid the collision. But the sketch of the accident showed no skid marks made by the car.[27] Second, Videna testified that the petitioners came from a drinking spree because he was able to smell liquor.[28] But in the report,[29] Videna indicated that the condition of Genaro was "normal." Videna did not indicate in the report that Genaro

---

[25] 37 Phil. 809 (1918).

[26] TSN, 13 December 1999, pp. 11-13.

[27] Exhibit "I", records, p. 345.

[28] TSN, 13 December 1999, p. 20.

[29] Exhibit "A," records, p. 281.

"had been drinking liquor" or that Genaro "was obviously drunk." Third, Videna testified that when he arrived at the scene, Bedania was inside his truck.[30] This contradicts the police records where Videna stated that after the collision Bedania escaped and abandoned the victims.[31] The police records also showed that Bedania was arrested by the police at his barracks in Anabu, Imus, Cavite and was turned over to the police only on 26 October 1994.[32]

Under Article 2185 of the Civil Code, unless there is proof to the contrary, a person driving a vehicle is presumed negligent if at the time of the mishap, he was violating any traffic regulation.

In this case, the report[33] showed that the truck, while making the U-turn, failed to signal, a violation of traffic rules. The police records also stated that, after the collision, Bedania escaped and abandoned the petitioners and his truck.[34] This is another violation of a traffic regulation.[35] Therefore, the presumption arises that Bedania was negligent at the time of the mishap.

The evidence presented in this case also does not support the conclusion of the Court of Appeals that the truck had already executed the U-turn before the impact occurred. If the truck had fully made the U-turn, it should have been hit on its rear.[36] If the truck had already negotiated even half of the turn and is almost on the other side of the highway, then the truck should have been hit in the middle portion of the trailer or cargo compartment. But the evidence clearly shows, and the Court of Appeals even declared, that the car hit the truck's gas tank, located at the truck's right middle portion, which disproves the

---

[30] TSN, 13 December 1999, p. 13.

[31] Exhibit "A-2", records, p. 282.

[32] Exhibit "A-3", *id.* at 283.

[33] Exhibit "A", *id.* at 280.

[34] Exhibit "A-2", *id.* at 282.

[35] Section 55 of Republic Act No. 4136.

[36] *Thermochem Incorporated v. Naval*, 397 Phil. 934 (2000).

conclusion of the Court of Appeals that the truck had already executed the U-turn when it was hit by the car.

Moreover, the Court of Appeals said that the point of impact was on the lane where the car was cruising. Therefore, the car had every right to be on that road and the car had the right of way over the truck that was making a U-turn. Clearly, the truck encroached upon the car's lane when it suddenly made the U-turn.

The Court of Appeals also concluded that Bedania made the U-turn at an intersection. Again, this is not supported by the evidence on record. The police sketch[37] does not indicate an intersection and only shows that there was a road leading to the Orchard Golf Course near the place of the collision. Furthermore, U-turns are generally not advisable particularly on major streets.[38] Contrary to Videna's testimony, it is not normal for a truck to make a U-turn on a highway. We agree with the trial court that if Bedania wanted to change direction, he should seek an intersection where it is safer to maneuver the truck. Bedania should have also turned on his signal lights and made sure that the highway was clear of vehicles from the opposite direction before executing the U-turn.

The finding of the Court of Appeals that it was not yet dark when the collision occurred is also not supported by the evidence on record. The report stated that the daylight condition at the time of the collision was "darkness."[39]

Contrary to the conclusion of the Court of Appeals, the sheer size of the truck does not make it improbable for the truck to execute a sudden U-turn. The trial court's decision did not state that the truck was traveling at a fast speed when it made the U-turn. The trial court said the truck made a "sudden" U-turn, meaning the U-turn was made unexpectedly and with no warning, as shown by the fact that the truck's signal lights were not turned on.

---

[37] Exhibit "I", records, p. 345.

[38] *Thermochem Incorporated v. Naval*, *supra*.

[39] Exhibit "A", records, p. 280.

Clearly, Bedania's negligence was the proximate cause of the collision which claimed the life of Antero and injured the petitioners. Proximate cause is that which, in the natural and continuous sequence, unbroken by any efficient, intervening cause, produces the injury, and without which the result would not have occurred.[40] The cause of the collision is traceable to the negligent act of Bedania for if the U-turn was executed with the proper precaution, the mishap in all probability would not have happened. The sudden U-turn of the truck without signal lights posed a serious risk to oncoming motorists. Bedania failed to prevent or minimize that risk. The truck's sudden U-turn triggered a series of events that led to the collision and, ultimately, to the death of Antero and the injuries of petitioners.

We agree with the trial court that de Silva, as Bedania's employer, is also liable for the damages suffered by petitioners. De Silva failed to prove that he exercised all the diligence of a good father of a family in the selection and supervision of his employees.

On the Award of Damages and Attorney's Fees

According to prevailing jurisprudence, civil indemnity for death caused by a quasi-delict is pegged at ₱50,000.[41] Moral damages in the amount of ₱50,000 is also awarded to the heirs of the deceased taking into consideration the pain and anguish they suffered.[42] Bienvenido Guillang (Bienvenido), Antero's son, testified that Sofia, Antero's wife and his mother, became depressed after Antero's death and that Sofia died a year after.[43] Bienvenido also testified on the pain and anguish their family suffered as a consequence of their father's death.[44] We sustain

---

[40] *Lambert v. Heirs of Castillon*, G.R. No. 160709, 23 February 2005, 452 SCRA 285.

[41] *Id.*; *Pestaño v. Spouses Sumayang*, 400 Phil. 740 (2000).

[42] *Lambert v. Heirs of Castillon*, *supra* note 40; *People v. Hapa*, 413 Phil. 679 (2001).

[43] TSN, 30 March 1998, p. 3.

[44] *Id*.

the trial court's award of ₱50,000 as indemnity for death and ₱50,000 as moral damages to the heirs of Antero.

As to funeral and burial expenses, the court can only award such amount as are supported by proper receipts.[45] In this case, petitioners proved funeral and burial expenses of ₱55,000 as evidenced by Receipt No. 1082,[46] ₱65,000 as evidenced by Receipt No. 1146[47] and ₱15,000 as evidenced by Receipt No. 1064,[48] all issued by the Manila South Cemetery Association, Inc., aggregating ₱135,000. We reduce the trial court's award of funeral and burial expenses from ₱185,000 to ₱135,000.

As to hospitalization expenses, only substantiated and proven expenses, or those that appear to have been genuinely incurred in connection with the hospitalization of the victims will be recognized in court.[49] In this case, the trial court did not specify the amount of hospitalization expenses to be awarded to the petitioners. Since petitioners presented receipts for hospitalization expenses during the trial, we will determine the proper amounts to be awarded to each of them. We award hospitalization expenses of ₱27,000.98 to the heirs of Antero,[50] ₱10,881.60 to Llanillo,[51] ₱5,436.77 to Dignadice,[52] and ₱300 to Genaro[53] because these are the amounts duly substantiated by receipts.

We affirm the trial court's award of ₱508,566.03 for the repair of the car. The Court notes that there is no dispute that

---

[45] *People v. Sumalinog, Jr.*, 466 Phil. 637 (2004).

[46] Exhibit "F", records, p. 342.

[47] Exhibit "F-1", *id*.

[48] Exhibit "F-2", *id*.

[49] *People v. Manlapaz,* 375 Phil. 930 (1999).

[50] Exhibits "E-33", "E-63", "E-70" and "E-71", records, pp. 300, 312 and 316.

[51] Exhibits "E-73" "E-74", and "E-75", *id.* at 318-319.

[52] Exhibits "E-76", "E-104," and "E-107", *id.* at 319, 331 and 333.

[53] Exhibits "E-27" and "E-29", *id.* at 297-298.

Genaro was driving a brand new Toyota Corolla GLI sedan and that, after the collision, the car was a total wreck. In this case, the repair order presented by Genaro is sufficient proof of the damages sustained by the car.[54]

Moral damages may be recovered in quasi-delicts causing physical injuries.[55] However, in accordance with prevailing jurisprudence, we reduce the award of moral damages from ₱50,000 to ₱30,000 each to Llanillo, Dignadice, and Genaro since they only suffered physical injuries brought about by the collision.[56]

In quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence.[57] While the amount of exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded.[58] In this case, Bedania was grossly negligent in suddenly making a U-turn in the highway without signal lights. To serve as an example for the public good, we affirm the trial court's award of exemplary damages in the amount of ₱50,000.

Finally, we affirm the trial court's award of attorney's fees in the amount of ₱100,000. Under Article 2208 of the Civil Code, attorney's fees may be recovered when, as in this case, exemplary damages are awarded.

WHEREFORE, we *REVERSE* the 3 June 2003 Decision and 23 March 2004 Resolution of the Court of Appeals in CA-G.R. CV No. 69289. We *REINSTATE* with *MODIFICATIONS* the 5 December 2000 Decision of the Regional Trial Court, Branch 30, Manila. We *ORDER* Rodolfo Bedania and Rodolfo de Silva, jointly and severally, to pay the following amounts:

---

[54] Exhibits "K" to "K-3", *id.* at 347-350.

[55] CIVIL CODE, Article 2219.

[56] *B.F. Metal Corporation v. Spouses Lomotan,* G.R. No. 170813, 16 April 2008, 551 SCRA 618 citing *People v. Tambis*, 370 Phil. 459 (1999).

[57] CIVIL CODE, Article 2232.

[58] CIVIL CODE, Article 2334.

1. Funeral and Burial Expenses of ₱135,000 to the heirs of Antero Guillang;
2. Hospitalization Expenses of ₱27,000.98 to the heirs of Antero Guillang, ₱10,881.60 to Alvin Llanillo, ₱5,436.77 to Jose Dignadice, and ₱300 to Genaro Guillang; and
3. Moral damages of ₱30,000 each to Alvin Llanillo, Jose Dignadice, and Genaro Guillang.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 163891. May 21, 2009]

CHARTER CHEMICAL AND COATING CORPORATION, *petitioner, vs.* **HERBERT TAN and AMALIA SONSING,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEALS; TEN-DAY REGLEMENTARY PERIOD TO PERFECT AN APPEAL; MANDATORY AND JURISDICTIONAL IN NATURE. — Article 223 of the Labor Code, the governing law on the timeliness of an appeal from the decisions, awards or orders of the Labor Arbiter, is explicit that the aggrieved party has 10 calendar days from receipt thereof to appeal to the NLRC. Accordingly, this 10-day reglementary period to perfect an appeal is mandatory and jurisdictional in nature. The failure to file an appeal within the reglementary period renders the assailed decision final and executory and deprives the appellate court of jurisdiction to alter the judgment, much less to entertain the appeal.

2. REMEDIAL LAW; CIVIL PROCEDURE; FILING OF PLEADINGS; WHERE THE SERVICES OF A PRIVATE LETTER-FORWARDING AGENCY IS AVAILED OF TO DELIVER THE

PLEADING, THE DATE OF ACTUAL RECEIPT BY THE COURT, AND NOT THE DATE OF DELIVERY TO THE PRIVATE CARRIER, IS DEEMED THE DATE OF FILING OF THAT PLEADING; CASE AT BAR. — In *Benguet Electric Cooperative, Inc. v. NLRC*, we ruled: The established rule is that the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing thereof in court, and that in such cases, the date of actual receipt by the court, and not the date of delivery to the private carrier, is deemed the date of filing of that pleading. In this case, petitioner availed of the services of LBC, a private carrier, to deliver its notice of appeal to the NLRC. Had petitioner sent its notice of appeal by registered mail, the date of mailing would have been deemed the date of filing with the NLRC. But petitioner, for reasons of its own, chose to send its notice of appeal through a private letter-forwarding agency. Therefore, the date of actual receipt by the NLRC of the notice of appeal, and not the date of delivery to LBC, is deemed to be the date of the filing of the notice of appeal. Since the NLRC received petitioner's notice of appeal on 26 February 2001, the appeal was clearly filed out of time. Petitioner had thus lost its right to appeal from the decision of the Labor Arbiter and the NLRC should have dismissed its notice of appeal.

APPEARANCES OF COUNSEL

King Capuchino Tan and Associates for petitioner.
Dominguez Paderna & Tan Law Office for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 9 March 2004 Decision[2] and 4 June 2004 Resolution[3] of the Court of Appeals in CA-G.R.

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

[2] *Rollo*, pp. 23-27. Penned by Associate Justice Eloy R. Bello, Jr., with Associate Justices Amelita G. Tolentino and Magdangal M. De Leon, concurring.

[3] *Id.* at 29.

SP No. 72086. In the 9 March 2004 Decision, the Court of Appeals ruled that the National Labor Relations Commission (NLRC) acted with grave abuse of discretion when it reversed its earlier dismissal of and, subsequently, gave due course to the appeal of petitioner Charter Chemical and Coating Corporation (petitioner). The 4 June 2004 Resolution denied petitioner's motion for reconsideration.

The Facts

Respondents Herbert Tan and Amalia Sonsing (respondents) were employed as officer-in-charge and office secretary, respectively, at petitioner's Davao branch. On 4 March 2000, respondents were placed under preventive suspension for their failure to satisfactorily explain the discrepancies in the stock inventory at the Davao depot warehouse. Respondents were also asked to explain the alleged dishonesty in the punching of their time cards. On 24 March 2000, petitioner advised respondents that they were being terminated from the service. On 7 June 2000, respondents filed a complaint for illegal dismissal and money claims against petitioner.

On 18 January 2001, Labor Arbiter Nicolas S. Sayson ruled in favor of respondents. The dispositive portion of the 18 January 2001 Decision[4] provides:

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered declaring the dismissal of complainants Herbert Tan and Amalia Sonsing as ILLEGAL.
>
> Respondent Charter Chemical and Coating Corporation is hereby directed to pay herein complainants their separation pay, backwages, 13th month pay and damages, to wit:
>
> 1. Herbert Tan - ₱372,800.00; and
> 2. Amalia Sonsing - 136,800.00
>
> or in the total amount of Five Hundred Nine Thousand Six Hundred Pesos (₱509,600) plus ten (10%) per cent thereof as attorney's fees.
>
> Total award: ₱560,560.00

[4] *Id.* at 31-40.

SO ORDERED.[5]

Petitioner received a copy of the Labor Arbiter's Decision on 7 February 2001. On 16 February 2001, petitioner sent its notice of appeal to the NLRC through Luzon Brokerage Corporation (LBC). The NLRC received the notice of appeal on 26 February 2001.

In its 11 October 2001 Resolution,[6] the NLRC dismissed petitioner's appeal for having been filed beyond the 10-day reglementary period.

Petitioner filed a motion for reconsideration. In its 6 February 2002 Resolution,[7] the NLRC granted the motion and gave due course to petitioner's appeal. Subsequently, the NLRC dismissed respondents' complaint for illegal dismissal.

Respondents filed a motion for reconsideration. In its 22 April 2002 Resolution, the NLRC denied respondents' motion.

Respondents then filed a petition for *certiorari* before the Court of Appeals. In its 9 March 2004 Decision, the Court of Appeals granted respondents' petition and ruled that the NLRC acted with grave abuse of discretion in admitting petitioner's belated appeal.

Petitioner filed a motion for reconsideration. In its 4 June 2004 Resolution, the Court of Appeals denied the motion.

Hence, this petition.

The 6 February 2002 Resolution of the NLRC

In its 6 February 2002 Resolution, the NLRC reversed its earlier dismissal of petitioner's appeal. According to the NLRC, in the ordinary course of events, the NLRC would have received petitioner's notice of appeal on time because of LBC's assurance that delivery shall be made within 24 hours. However, the NLRC

---

[5] *Id.* at 40.

[6] *Id.* at 42-44. Penned by Presiding Commissioner Salic B. Dumarpa, with Commissioners Oscar N. Abella and Leon G. Gonzaga, Jr., concurring.

[7] *Id.* at 46-53.

transferred its office to another location and the DOLE refused to accept petitioner's notice of appeal when it was delivered by LBC. The NLRC said these unforeseen circumstances led to the failure of the NLRC to receive the notice of appeal on time. The NLRC added that strict observance of the period to appeal need not be exacted on petitioner since it exerted diligent efforts to file its notice of appeal on time but failed to do so through no fault of its own. The NLRC said the supervening events constitute excusable negligence which would vest the NLRC with discretion to admit the appeal which was filed out of time.

The Ruling of the Court of Appeals

According to the Court of Appeals, the NLRC acted with grave abuse of discretion in admitting petitioner's belated appeal. The Court of Appeals said that the NLRC should have adhered to the rule that the appeal should be filed within 10 calendar days from the receipt of the decision as mandated by Article 223[8] of the Labor Code. The Court of Appeals added that the delay in the delivery of the notice of appeal committed by LBC did not fall under any of the circumstances that would justify the relaxation of the rigid technicality of the rule on appeal.

The Issue

Petitioner raises the issue of whether the 9 March 2004 Decision and the 4 June 2004 Resolution of the Court of Appeals are contrary to existing law and jurisprudence.

The Court's Ruling

The petition has no merit.

Petitioner argues that the NLRC acted within its jurisdiction when it relaxed the application of the rules on appeal in labor

---

[8] Article 223 of the Labor Code provides:

ART. 223. *Appeal*. — Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. x x x

cases because the failure to comply with the reglementary period to appeal was brought about by LBC's difficulty in finding the new address of the NLRC. Petitioner adds that there was substantial compliance with the rules on appeal as the notice of appeal was consigned for delivery to LBC on 16 February 2001 or three days before the expiration of the period to appeal. Petitioner also insists that the date of delivery to LBC was the date of filing of its notice of appeal.

Article 223 of the Labor Code, the governing law on the timeliness of an appeal from the decisions, awards or orders of the Labor Arbiter, is explicit that the aggrieved party has 10 calendar days from receipt thereof to appeal to the NLRC. Accordingly, this 10-day reglementary period to perfect an appeal is mandatory and jurisdictional in nature. The failure to file an appeal within the reglementary period renders the assailed decision final and executory and deprives the appellate court of jurisdiction to alter the judgment, much less to entertain the appeal.[9]

There is no dispute that petitioner received a copy of the Labor Arbiter's decision on 7 February 2001. Thus, pursuant to Article 223 of the Labor Code, petitioner had only until 17 February 2001, the 10th calendar day from 7 February 2001, within which to file an appeal. However, as 17 February 2001 fell on a Saturday, petitioner had until the next working day, or until 19 February 2001, to file its appeal. On 16 February 2001, petitioner consigned its notice of appeal to LBC for delivery to the NLRC. The NLRC received petitioner's notice of appeal only on 26 February 2001.

In *Benguet Electric Cooperative, Inc. v. NLRC*,[10] we ruled:

> The established rule is that the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date

---

[9] *Benguet Electric Cooperative, Inc. v. National Labor Relations Commission*, G.R. No. 89070, 18 May 1992, 209 SCRA 55.

[10] *Id.*

of filing thereof in court, and that in such cases, the date of actual receipt by the court, and not the date of delivery to the private carrier, is deemed the date of filing of that pleading.[11]

In this case, petitioner availed of the services of LBC, a private carrier, to deliver its notice of appeal to the NLRC. Had petitioner sent its notice of appeal by registered mail, the date of mailing would have been deemed the date of filing with the NLRC.[12] But petitioner, for reasons of its own, chose to send its notice of appeal through a private letter-forwarding agency. Therefore, the date of actual receipt by the NLRC of the notice of appeal, and not the date of delivery to LBC, is deemed to be the date of the filing of the notice of appeal. Since the NLRC received petitioner's notice of appeal on 26 February 2001, the appeal was clearly filed out of time. Petitioner had thus lost its right to appeal from the decision of the Labor Arbiter and the NLRC should have dismissed its notice of appeal.

WHEREFORE, we *DENY* the petition and *AFFIRM* the 9 March 2004 Decision and 4 June 2004 Resolution of the Court of Appeals in CA-G.R. SP No. 72086.

SO ORDERED.

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

---

[11] *Id.* at 60-61. See also *Industrial Timber Corp. v. National Labor Relations Commission*, G.R. No. 111985, 30 June 1994, 233 SCRA 597.

[12] RULES OF COURT, Section 3, Rule 13.

FIRST DIVISION

[G.R. Nos. 168992-93. May 21, 2009]

IN RE: PETITION FOR ADOPTION OF MICHELLE P. LIM, MONINA P. LIM, *petitioner*.

IN RE: PETITION FOR ADOPTION OF MICHAEL JUDE P. LIM, MONINA P. LIM, *petitioner*.

SYLLABUS

1. CIVIL LAW; FAMILY CODE; ADOPTION; REPUBLIC ACT 8552 (DOMESTIC ADOPTION ACT OF 1998); WHO MAY ADOPT. — Section 7, Article III of RA 8552 reads: SEC. 7. *Who May Adopt*. — The following may adopt: (a) Any Filipino citizen of legal age, in possession of full civil capacity and legal rights, of good moral character, has not been convicted of any crime involving moral turpitude, emotionally and psychologically capable of caring for children, at least sixteen (16) years older than the adoptee, and who is in a position to support and care for his/her children in keeping with the means of the family. The requirement of sixteen (16) year difference between the age of the adopter and adoptee may be waived when the adopter is the biological parent of the adoptee, or is the spouse of the adoptee's parent; (b) Any alien possessing the same qualifications as above stated for Filipino nationals: *Provided*, That his/her country has diplomatic relations with the Republic of the Philippines, that he/she has been living in the Philippines for at least three (3) continuous years prior to the filing of the application for adoption and maintains such residence until the adoption decree is entered, that he/she has been certified by his/her diplomatic or consular office or any appropriate government agency that he/she has the legal capacity to adopt in his/her country, and that his/her government allows the adoptee to enter his/her country as his/her adopted son/daughter: *Provided, further*, That the requirements on residency and certification of the alien's qualification to adopt in his/her country may be waived for the following: (i) a former Filipino citizen who seeks to adopt a relative within the fourth (4^{th}) degree of consanguinity or affinity; or (ii) one who seeks to

adopt the legitimate son/daughter of his/her Filipino spouse; or (iii) one who is married to a Filipino citizen and seeks to adopt jointly with his/her spouse a relative within the fourth (4th) degree of consanguinity or affinity of the Filipino spouses; or (c) The guardian with respect to the ward after the termination of the guardianship and clearance of his/her financial accountabilities.

2. ID.; ID.; ID.; ID.; JOINT ADOPTION BY THE HUSBAND AND WIFE IS MANDATORY; EXCEPTIONS. — Husband and wife shall jointly adopt, except in the following cases: (i) if one spouse seeks to adopt the legitimate son/daughter of the other; or (ii) if one spouse seeks to adopt his/her own illegitimate son/daughter: *Provided, however,* That the other spouse has signified his/her consent thereto; or (iii) if the spouses are legally separated from each other. In case husband and wife jointly adopt, or one spouse adopts the illegitimate son/daughter of the other, joint parental authority shall be exercised by the spouses. The use of the word "shall" in the above-quoted provision means that joint adoption by the husband and the wife is mandatory. This is in consonance with the concept of joint parental authority over the child which is the ideal situation. As the child to be adopted is elevated to the level of a legitimate child, it is but natural to require the spouses to adopt jointly. The rule also insures harmony between the spouses. The law is clear. There is no room for ambiguity. Petitioner, having remarried at the time the petitions for adoption were filed, must jointly adopt. Since the petitions for adoption were filed only by petitioner herself, without joining her husband, Olario, the trial court was correct in denying the petitions for adoption on this ground.

3. ID.; ID.; ID.; ID.; REQUIREMENTS ON RESIDENCY AND CERTIFICATION OF THE ALIEN'S QUALIFICATION TO ADOPT; CANNOT BE WAIVED IN CASE AT BAR. — The fact that Olario gave his consent to the adoption as shown in his Affidavit of Consent does not suffice. There are certain requirements that Olario must comply being an American citizen. He must meet the qualifications set forth in Section 7 of RA 8552 such as: (1) he must prove that his country has diplomatic relations with the Republic of the Philippines; (2) he must have been living in the Philippines for at least three continuous years prior to the filing of the application for adoption; (3) he must

maintain such residency until the adoption decree is entered; (4) he has legal capacity to adopt in his own country; and (5) the adoptee is allowed to enter the adopter's country as the latter's adopted child. None of these qualifications were shown and proved during the trial. These requirements on residency and certification of the alien's qualification to adopt cannot likewise be waived pursuant to Section 7. The children or adoptees are not relatives within the fourth degree of consanguinity or affinity of petitioner or of Olario. Neither are the adoptees the legitimate children of petitioner.

4. ID.; ID.; PARENTAL AUTHORITY; EXPLAINED. — Parental authority includes caring for and rearing the children for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being. The father and the mother shall jointly exercise parental authority over the persons of their common children. Even the remarriage of the surviving parent shall not affect the parental authority over the children, unless the court appoints another person to be the guardian of the person or property of the children. It is true that when the child reaches the age of emancipation — that is, when he attains the age of majority or 18 years of age — emancipation terminates parental authority over the person and property of the child, who shall then be qualified and responsible for all acts of civil life. However, parental authority is merely just one of the effects of legal adoption.

5. ID.; ID.; ADOPTION; REPUBLIC ACT 8552 (DOMESTIC ADOPTION ACT OF 1998); EFFECTS OF ADOPTION. — Adoption x x x has the following effects: (1) sever all legal ties between the biological parent(s) and the adoptee, except when the biological parent is the spouse of the adopter; (2) deem the adoptee as a legitimate child of the adopter; and (3) give adopter and adoptee reciprocal rights and obligations arising from the relationship of parent and child, including but not limited to: (i) the right of the adopter to choose the name the child is to be known; and (ii) the right of the adopter and adoptee to be legal and compulsory heirs of each other. Therefore, even if emancipation terminates parental authority, the adoptee is still considered a legitimate child of the adopter with all the rights of a legitimate child such as: (1) to bear the surname of the father and the mother; (2) to receive support from their parents; and (3) to be entitled to the legitime and other

successional rights. Conversely, the adoptive parents shall, with respect to the adopted child, enjoy all the benefits to which biological parents are entitled such as support and successional rights.

APPEARANCES OF COUNSEL

Sale Nalangan Law Office for petitioner.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review on *certiorari* filed by Monina P. Lim (petitioner) seeking to set aside the Decision[1] dated 15 September 2004 of the Regional Trial Court, General Santos City, Branch 22 (trial court), in SPL. PROC. Case Nos. 1258 and 1259, which dismissed without prejudice the consolidated petitions for adoption of Michelle P. Lim and Michael Jude P. Lim.

The Facts

The following facts are undisputed. Petitioner is an optometrist by profession. On 23 June 1974, she married Primo Lim (Lim). They were childless. Minor children, whose parents were unknown, were entrusted to them by a certain Lucia Ayuban (Ayuban). Being so eager to have a child of their own, petitioner and Lim registered the children to make it appear that they were the children's parents. The children[2] were named Michelle P. Lim (Michelle) and Michael Jude P. Lim (Michael). Michelle

[1] Penned by Judge Antonio C. Lubao. Records of SPL. PROC. Case No. 1258, pp. 161-162 and SPL. PROC. Case No. 1259, pp. 163-164.

[2] Three children were actually entrusted to petitioner and Lim. The third, who was named Primo Jude P. Lim, was still a minor at the time the petition for adoption was filed. The case was docketed as SPL. PROC. Case No. 1260. Petitioner opted not to appeal the decision insofar as the minor Primo Jude P. Lim was concerned.

was barely eleven days old when brought to the clinic of petitioner. She was born on 15 March 1977.[3] Michael was 11 days old when Ayuban brought him to petitioner's clinic. His date of birth is 1 August 1983.[4]

The spouses reared and cared for the children as if they were their own. They sent the children to exclusive schools. They used the surname "Lim" in all their school records and documents. Unfortunately, on 28 November 1998, Lim died. On 27 December 2000, petitioner married Angel Olario (Olario), an American citizen.

Thereafter, petitioner decided to adopt the children by availing of the amnesty[5] given under Republic Act No. 8552[6] (RA 8552) to those individuals who simulated the birth of a child. Thus, on 24 April 2002, petitioner filed separate petitions for the adoption of Michelle and Michael before the trial court docketed as SPL. PROC. Case Nos. 1258 and 1259, respectively. At the time of the filing of the petitions for adoption, Michelle was 25 years old and already married, while Michael was 18 years and seven months old.

---

[3] Records (SPL. PROC. Case No. 1258), pp. 94-96.

[4] Records (SPL. PROC. Case No. 1259), pp. 69-71.

[5] Section 22 of RA 8552 provides:

SEC. 22. *Rectification of Simulated Births.*— A person who has, prior to the effectivity of this Act, simulated the birth of a child shall not be punished for such act: *Provided,* That the simulation of birth was made for the best interest of the child and that he/she has been consistently considered and treated by that person as his/her own son/daughter: *Provided, further,* That the application for correction of the birth registration and petition for adoption shall be filed within five (5) years from the effectivity of this Act and completed thereafter: *Provided, finally,* That such person complies with the procedure as specified in Article IV of this Act and other requirements as determined by the Department.

[6] An Act Establishing the Rules and Policies on the Domestic Adoption of Filipino Children and For Other Purposes, otherwise known as the "Domestic Adoption Act of 1998." Approved on 25 February 1998.

Michelle and her husband gave their consent to the adoption as evidenced by their Affidavits of Consent.[7] Michael also gave his consent to his adoption as shown in his Affidavit of Consent.[8] Petitioner's husband Olario likewise executed an Affidavit of Consent[9] for the adoption of Michelle and Michael.

In the Certification issued by the Department of Social Welfare and Development (DSWD), Michelle was considered as an abandoned child and the whereabouts of her natural parents were unknown.[10] The DSWD issued a similar Certification for Michael.[11]

The Ruling of the Trial Court

On 15 September 2004, the trial court rendered judgment dismissing the petitions. The trial court ruled that since petitioner had remarried, petitioner should have filed the petition jointly with her new husband. The trial court ruled that joint adoption by the husband and the wife is mandatory citing Section 7(c), Article III of RA 8552 and Article 185 of the Family Code.

Petitioner filed a Motion for Reconsideration of the decision but the motion was denied in the Order dated 16 June 2005. In denying the motion, the trial court ruled that petitioner did not fall under any of the exceptions under Section 7(c), Article III of RA 8552. Petitioner's argument that mere consent of her husband would suffice was untenable because, under the law, there are additional requirements, such as residency and certification of his qualification, which the husband, who was not even made a party in this case, must comply.

As to the argument that the adoptees are already emancipated and joint adoption is merely for the joint exercise of parental authority, the trial court ruled that joint adoption is not only for the purpose of exercising parental authority because an emancipated child acquires certain rights from his parents and assumes certain obligations and responsibilities.

---

[7] Records (SPL. PROC. Case No. 1258), pp. 147-148.

[8] *Id.* at 147.

[9] *Id.* at 149.

[10] *Id.* at 145.

[11] Records (SPL. PROC. Case No. 1259), p. 8.

Hence, the present petition.

Issue

Petitioner appealed directly to this Court raising the sole issue of whether or not petitioner, who has remarried, can singly adopt.

The Court's Ruling

Petitioner contends that the rule on joint adoption must be relaxed because it is the duty of the court and the State to protect the paramount interest and welfare of the child to be adopted. Petitioner argues that the legal maxim "*dura lex sed lex*" is not applicable to adoption cases. She argues that joint parental authority is not necessary in this case since, at the time the petitions were filed, Michelle was 25 years old and already married, while Michael was already 18 years of age. Parental authority is not anymore necessary since they have been emancipated having attained the age of majority.

We deny the petition.

Joint Adoption by Husband and Wife

It is undisputed that, at the time the petitions for adoption were filed, petitioner had already remarried. She filed the petitions by herself, without being joined by her husband Olario. We have no other recourse but to affirm the trial court's decision denying the petitions for adoption. *Dura lex sed lex.* The law is explicit. Section 7, Article III of RA 8552 reads:

SEC. 7. *Who May Adopt*. — The following may adopt:

(a) Any Filipino citizen of legal age, in possession of full civil capacity and legal rights, of good moral character, has not been convicted of any crime involving moral turpitude, emotionally and psychologically capable of caring for children, at least sixteen (16) years older than the adoptee, and who is in a position to support and care for his/her children in keeping with the means of the family. The requirement of sixteen (16) year difference between the age of the adopter and adoptee may be waived when the adopter is the biological parent of the adoptee, or is the spouse of the adoptee's parent;

(b) Any alien possessing the same qualifications as above stated for Filipino nationals: *Provided*, That his/her country has diplomatic relations with the Republic of the Philippines, that he/she has been living in the Philippines for at least three (3) continuous years prior to the filing of the application for adoption and maintains such residence until the adoption decree is entered, that he/she has been certified by his/her diplomatic or consular office or any appropriate government agency that he/she has the legal capacity to adopt in his/her country, and that his/her government allows the adoptee to enter his/her country as his/her adopted son/daughter: *Provided, further*, That the requirements on residency and certification of the alien's qualification to adopt in his/her country may be waived for the following:

(i) a former Filipino citizen who seeks to adopt a relative within the fourth (4th) degree of consanguinity or affinity; or

(ii) one who seeks to adopt the legitimate son/daughter of his/her Filipino spouse; or

(iii) one who is married to a Filipino citizen and seeks to adopt jointly with his/her spouse a relative within the fourth (4th) degree of consanguinity or affinity of the Filipino spouses; or

(c) The guardian with respect to the ward after the termination of the guardianship and clearance of his/her financial accountabilities.

Husband and wife shall jointly adopt, except in the following cases:

(i) if one spouse seeks to adopt the legitimate son/daughter of the other; or

(ii) if one spouse seeks to adopt his/her own illegitimate son/daughter: *Provided, however*, That the other spouse has signified his/her consent thereto; or

(iii) if the spouses are legally separated from each other.

In case husband and wife jointly adopt, or one spouse adopts the illegitimate son/daughter of the other, joint parental authority shall be exercised by the spouses. (Emphasis supplied)

The use of the word "shall" in the above-quoted provision means that joint adoption by the husband and the wife is mandatory. This is in consonance with the concept of joint parental

authority over the child which is the ideal situation. As the child to be adopted is elevated to the level of a legitimate child, it is but natural to require the spouses to adopt jointly. The rule also insures harmony between the spouses.[12]

The law is clear. There is no room for ambiguity. Petitioner, having remarried at the time the petitions for adoption were filed, must jointly adopt. Since the petitions for adoption were filed only by petitioner herself, without joining her husband, Olario, the trial court was correct in denying the petitions for adoption on this ground.

Neither does petitioner fall under any of the three exceptions enumerated in Section 7. First, the children to be adopted are not the legitimate children of petitioner or of her husband Olario. Second, the children are not the illegitimate children of petitioner. And third, petitioner and Olario are not legally separated from each other.

The fact that Olario gave his consent to the adoption as shown in his Affidavit of Consent does not suffice. There are certain requirements that Olario must comply being an American citizen. He must meet the qualifications set forth in Section 7 of RA 8552 such as: (1) he must prove that his country has diplomatic relations with the Republic of the Philippines; (2) he must have been living in the Philippines for at least three continuous years prior to the filing of the application for adoption; (3) he must maintain such residency until the adoption decree is entered; (4) he has legal capacity to adopt in his own country; and (5) the adoptee is allowed to enter the adopter's country as the latter's adopted child. None of these qualifications were shown and proved during the trial.

These requirements on residency and certification of the alien's qualification to adopt cannot likewise be waived pursuant to Section 7. The children or adoptees are not relatives within the fourth degree of consanguinity or affinity of petitioner or of Olario. Neither are the adoptees the legitimate children of petitioner.

---

[12] *Republic v. Toledano*, G.R. No. 94147, 8 June 1994, 233 SCRA 9.

Effects of Adoption

Petitioner contends that joint parental authority is not anymore necessary since the children have been emancipated having reached the age of majority. This is untenable.

Parental authority includes caring for and rearing the children for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being.[13] The father and the mother shall jointly exercise parental authority over the persons of their common children.[14] Even the remarriage of the surviving parent shall not affect the parental authority over the children, unless the court appoints another person to be the guardian of the person or property of the children.[15]

It is true that when the child reaches the age of emancipation — that is, when he attains the age of majority or 18 years of age[16] — emancipation terminates parental authority over the person and property of the child, who shall then be qualified and responsible for all acts of civil life.[17] However, parental authority is merely just one of the effects of legal adoption. Article V of RA 8552 enumerates the effects of adoption, thus:

ARTICLE V

EFFECTS OF ADOPTION

SEC. 16. *Parental Authority.* — Except in cases where the biological parent is the spouse of the adopter, all legal ties between the biological parent(s) and the adoptee shall be severed and the same shall then be vested on the adopter(s).

SEC. 17. *Legitimacy.* — The adoptee shall be considered the legitimate son/daughter of the adopter(s) for all intents and purposes and as such is entitled to all the rights and obligations provided by

---

[13] Article 209, Family Code.

[14] Article 210, Family Code.

[15] Article 212, Family Code.

[16] Republic Act No. 6809, An Act Lowering the Age of Majority from Twenty-One to Eighteen Years, Amending for the Purpose Executive Order Numbered Two Hundred Nine, and For Other Purposes.

[17] Article 236, Family Code, as amended by Republic Act No. 6809.

law to legitimate sons/daughters born to them without discrimination of any kind. To this end, the adoptee is entitled to love, guidance, and support in keeping with the means of the family.

SEC. 18. *Succession.* — In legal and intestate succession, the adopter(s) and the adoptee shall have reciprocal rights of succession without distinction from legitimate filiation. However, if the adoptee and his/her biological parent(s) had left a will, the law on testamentary succession shall govern.

Adoption has, thus, the following effects: (1) sever all legal ties between the biological parent(s) and the adoptee, except when the biological parent is the spouse of the adopter; (2) deem the adoptee as a legitimate child of the adopter; and (3) give adopter and adoptee reciprocal rights and obligations arising from the relationship of parent and child, including but not limited to: (i) the right of the adopter to choose the name the child is to be known; and (ii) the right of the adopter and adoptee to be legal and compulsory heirs of each other.[18] Therefore, even if emancipation terminates parental authority, the adoptee is still considered a legitimate child of the adopter with all the rights[19] of a legitimate child such as: (1) to bear the surname of the father and the mother; (2) to receive support from their parents; and (3) to be entitled to the legitime and other successional rights. Conversely, the adoptive parents shall, with respect to the adopted child, enjoy all the benefits to which biological parents are entitled[20] such as support[21] and successional rights.[22]

We are mindful of the fact that adoption statutes, being humane and salutary, hold the interests and welfare of the child to be of paramount consideration. They are designed to provide homes, parental care and education for unfortunate, needy or orphaned children and give them the protection of society and family, as

[18] Section 33, Article VI, Rules and Regulations to Implement the Domestic Adoption Act of 1998.

[19] Article 174, Family Code.

[20] Section 34, Article VI, Rules and Regulations to Implement the Domestic Adoption Act of 1998.

[21] Article 195, Family Code.

[22] Section 18, Article V, RA 8552.

well as to allow childless couples or persons to experience the joys of parenthood and give them legally a child in the person of the adopted for the manifestation of their natural parental instincts. Every reasonable intendment should be sustained to promote and fulfill these noble and compassionate objectives of the law.[23] But, as we have ruled in *Republic v. Vergara*:[24]

> We are not unmindful of the main purpose of adoption statutes, which is the promotion of the welfare of the children. Accordingly, the law should be construed liberally, in a manner that will sustain rather than defeat said purpose. The law must also be applied with compassion, understanding and less severity in view of the fact that it is intended to provide homes, love, care and education for less fortunate children. Regrettably, the Court is not in a position to affirm the trial court's decision favoring adoption in the case at bar, **for the law is clear and it cannot be modified without violating the proscription against judicial legislation.** Until such time however, that the law on the matter is amended, we cannot sustain the respondent-spouses' petition for adoption. (Emphasis supplied)

Petitioner, being married at the time the petitions for adoption were filed, should have jointly filed the petitions with her husband. We cannot make our own legislation to suit petitioner.

Petitioner, in her Memorandum, insists that subsequent events would show that joint adoption could no longer be possible because Olario has filed a case for dissolution of his marriage to petitioner in the Los Angeles Superior Court.

We disagree. The filing of a case for dissolution of the marriage between petitioner and Olario is of no moment. It is not equivalent to a decree of dissolution of marriage. Until and unless there is a judicial decree for the dissolution of the marriage between petitioner and Olario, the marriage still subsists. That being the case, joint adoption by the husband and the wife is required. We reiterate our ruling above that since, at the time the petitions for adoption were filed, petitioner was married to Olario, joint adoption is mandatory.

---

[23] *Bobanovic v. Montes*, 226 Phil. 404 (1986).

[24] 336 Phil. 944, 948-949 (1997).

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision dated 15 September 2004 of the Regional Trial Court, General Santos City, Branch 22 in SPL. PROC. Case Nos. 1258 and 1259. Costs against petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 173049. May 21, 2009]

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), *petitioner, vs.* **TERESITA S. DE GUZMAN,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PRESIDENTIAL DECREE NO. 626 (EMPLOYEES' COMPENSATION LAW); SICKNESS, WHEN COMPENSABLE; CASE AT BAR. — According to the Amended Rules on Employees' Compensation implementing P.D. No. 626, as amended, "[f]or the sickness and the resulting disability or death to be compensable, the sickness must be the result of an occupational disease listed under Annex 'A' of these Rules with the conditions set therein satisfied, otherwise, proof must be shown that the risk of contracting the disease is increased by the working conditions." Stated otherwise, in order for a sickness to be compensable, it must have resulted from any illness which is (a) definitely accepted as an occupational disease or (b) caused by employment, subject to proof that the risk of contracting the same is increased by working conditions. The List of Occupational and Compensable Diseases provided under P.D. No. 626 only allows for the compensation of a specific kind of cataract, *viz.*:

Occupational Diseases	Nature of Employment
xxx xxx xxx	xxx xxx xxx
Cataract produced by exposure to the glare of or rays from molten glass or molten red hot metal.	Frequent and prolonged exposure to the glare, of or rays from molten glass or red hot metal.
xxx xxx xxx	xxx xxx xxx

As the ECC explained, the cataract compensable under the law is limited to what is known as "glass blower's cataract" common among furnace men, glass blowers, bakers, blacksmiths, foundry workers, and other workers exposed to infrared rays. However, inasmuch as respondent's illness does not squarely fall within the abovementioned category, respondent is still not precluded from claiming reimbursement as she has proven the merit of her claim by showing that her risk of contracting cataracts was increased by her working conditions.

2. ID.; ID.; ID.; A REASONABLE-WORK CONNECTION AND NOT A DIRECT CAUSAL RELATION IS REQUIRED TO PROVE COMPENSABILITY. — The degree of proof required under P.D. No. 626 is merely substantial evidence, or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." We have repeatedly held that to prove compensability, the claimant must adequately show that the development of the disease is brought largely by the conditions present in the nature of the job. What the law requires is a reasonable work-connection and not a direct causal relation. It is enough that the hypothesis on which the workmen's claim is based is probable. Medical opinion to the contrary can be disregarded especially where there is some basis in the facts for inferring a work-connection. Probability, not certainty, is the touchstone.

APPEARANCES OF COUNSEL

Chief Legal Counsel (GSIS) for petitioner

D E C I S I O N

PUNO, *C.J.*:

For resolution is a petition for review on *certiorari* under Rule 45 seeking to reverse and set aside the Decision[1] of the Court of Appeals in CA-G.R. SP No. 91046, which overturned the Decision[2] of the Employees' Compensation Commission (ECC) in ECC Case No. GM-16855-0214-05 affirming the denial by the GSIS of respondent's claim under Presidential Decree (P.D.) No. 626, as amended, for reimbursement of her medical expenses incurred in the operation of her left eye due to cataract.

Respondent Teresita S. De Guzman, 53 years old, joined the Public Attorney's Office (PAO) as Citizens' Attorney I in April 1988.[3] After three months, she was promoted to Citizens' Attorney II, and in November 1997, she was promoted to Public Attorney III.[4] A year thereafter, respondent was promoted to the position of Section Chief/Supervisor of Section "C" at the Special and Appealed Cases Division.[5] In May 2004, she transferred to the Field Services and Statistics Division of the PAO.[6]

Respondent's medical history reveals that she was diagnosed with hyperthyroidism in 1992, and in 1997, with hypertension. In 1999, respondent was diagnosed with diabetes mellitus, type 2.

During a routine visit to her nephrologist/endocrinologist, Dr. Romulo Ramos, at the University of the East-Ramon Magsaysay Medical Center, respondent was referred to opthalmologist Dr. Rizalino Jose Felarca for an eye check-up. Upon examination

---

[1] Promulgated on June 7, 2006.

[2] Promulgated on June 20, 2005.

[3] *Rollo*, p. 84.

[4] *Ibid.*

[5] *Ibid.*

[6] *Id.* at p. 88.

on June 15, 2002, it was discovered that respondent had "near mature cataract OD and an immature cataract OS."[7]

After further examination, respondent decided to undergo a cataract extraction procedure to be performed by Dr. Harvey S. Uy of the Asian Eye Institute in Makati City. In preparation for said procedure, Dr. Uy asked respondent's endocrinologist, Dr. Romulo Ramos, and cardiologist, Dr. Norbert Uy, for endocrine and cardio-pulmonary clearance, respectively.[8] His referral letter to Dr. Ramos read:

Dear Dr. Ramos:

Ms. De Guzman has mature cataract, left eye from diabetes. She wants to undergo cataract extraction left eye under local with sedation. I am referring her back to you for endocrine clearance. Thank you.

(signed)

Harvey S. Uy, M.D.[9]

On the other hand, Dr. Uy's referral letter to respondent's cardiologist read:

Dear Dr. Uy:

We are refererring Ms. Teresita Guzman for cardiopulmonary clearance. She wishes to undergo cataract extraction, left eye under local with sedation. Thank you.

(signed)

Harvey S. Uy, M.D.[10]

After the necessary medical clearances were given, respondent's cataract was successfully extracted on August 22, 2004 at the Asian Eye Institute.

---

[7] *Id.* at p. 89.

[8] *Ibid.*

[9] *Id.* at p. 248.

[10] *Id.* at p. 247.

On October 27, 2004, respondent filed with petitioner a claim for medical reimbursement in the amount of ₱40,000.000 under the Employees' Compensation Law (P.D. No. 626, as amended). In her letter to petitioner, respondent insisted that "[my] ailment was work-related although some doctors say it was caused by [my] diabetes."[11] She pointed out that inasmuch as her eye developed a cataract due to decades of use and abuse from reading voluminous law books, commentaries, transcripts of stenographic notes and pleadings, she should be entitled to her claim for reimbursement.[12]

On December 14, 2004, petitioner denied respondent's claim, reasoning that cataract is associated with aging, diabetes mellitus, genetic abnormalities and trauma in the eyes, but not with decades of reading. Moreover, petitioner found no concrete and substantial proof that the illness was directly caused by respondent's performance of her daily duties.

On appeal, the ECC affirmed the findings of petitioner denying respondent's claim. Per the decision, respondent's ailment was not included in the exclusive list of compensable occupational diseases under the Amended Rules on Employees' Compensation.[13] Likewise, the ECC found that respondent's ailment could not be categorically attributed to her working conditions because of the presence of another major causative factor— respondent's diabetes.[14] Dissatisfied with the decision of the ECC, respondent filed a petition for review before the Court of Appeals.

In its decision promulgated on June 7, 2006, the Court of Appeals reversed the ECC, reasoning that petitioner had clearly demonstrated and explained through substantial evidence how her cataract was effectively affected because of the readings

[11] *Id.* at p. 91.

[12] *Id.* at p. 229.

[13] *Id.* at p. 320.

[14] *Ibid.*

she had to do in relation to her work.[15] Further, it noted that notwithstanding the abandonment of the presumption of compensability established by the old law, the present law has not ceased to be a social legislation, and that therefore, all doubts must be resolved in favor of the claimant.

Dissatisfied, petitioner comes before us arguing that the Court of Appeals erred in granting respondent's claim in the face of evidence that the latter's cataract was caused, not by her work but, by her diabetes.

We deny the petition.

Respondent is claiming reimbursement under Articles 185, 189 and 190[16] of P.D. No. 626, as amended, for expenses incurred

---

[15] *Id.* at p. 54.

[16] ART. 185. Medical services. — Immediately after an employee contracts sickness or sustains an injury, he shall be provided by the System during the subsequent period of his disability with such medical services and appliances as the nature of his sickness or injury and progress of his recovery may require, subject to the expense limitation prescribed by the Commission.

x x x x x x x x x

ART. 189. Fees and other charges. — All fees and other charges for hospital services, medical care and appliances excluding professional fees shall not be higher than those prevailing in wards of hospitals for similar services to injured or sick persons in general and shall be subject to the regulations of the Commission. Professional fees shall only be appreciably higher than those prescribed under Republic Act numbered sixty-one hundred eleven, as amended, otherwise known as the Philippine Medical Care Act of 1969.

ART. 190. Rehabilitation services.

(a) The System shall, as soon as practicable, establish a continuing program for the rehabilitation of injured and handicapped employees, who shall be entitled to rehabilitation services, which shall consist of medical, surgical or hospital treatment, including appliances if they have been handicapped by the injury, to help them become physically independent.

(b) As soon as practicable, the System shall establish centers equipped and staffed to provide a balanced program of remedial treatment, vocational assessment and preparation designed to meet the individual needs of each handicapped employee to restore him to suitable employment, including assistance as may be within its resources to help each rehabilitee to develop his mental, vocational or social potential.

in her cataract extraction procedure.[17] According to the Amended Rules on Employees' Compensation implementing P.D. No. 626, as amended, "[f]or the sickness and the resulting disability or death to be compensable, the sickness must be the result of an occupational disease listed under Annex 'A' of these Rules with the conditions set therein satisfied, otherwise, proof must be shown that the risk of contracting the disease is increased by the working conditions."[18] Stated otherwise, in order for a sickness to be compensable, it must have resulted from any illness which is (a) definitely accepted as an occupational disease or (b) caused by employment, subject to proof that the risk of contracting the same is increased by working conditions.[19]

The List of Occupational and Compensable Diseases provided under P.D. No. 626[20] only allows for the compensation of a specific kind of cataract, *viz.*:

Occupational Diseases	**Nature of Employment**
x x x x x x x x x	x x x x x x x x x
Cataract produced by exposure to the glare of, or rays from molten glass or molten or red hot metal.	Frequent and prolonged exposure to the glare of, or rays from molten glass or red metal.
x x x x x x x x x	x x x x x x x x x

As the ECC explained, the cataract compensable under the law is limited to what is known as "glass blower's cataract" common among furnace men, glass blowers, bakers, blacksmiths, foundry workers, and other workers exposed to infrared rays.[21] However, inasmuch as respondent's illness does not squarely fall within the abovementioned category, respondent is still not precluded from claiming reimbursement as she has proven the

[17] *Rollo,* p. 95.

[18] Rule III, Section 1(b).

[19] *De Guia v. Employees' Compensation Commission,* G.R. No. 95595, July 8, 1991, 198 SCRA 834, 836.

[20] Annex "A" of the Amended Rules on Employees' Compensation.

[21] *Rollo,* p. 64.

merit of her claim by showing that her risk of contracting cataracts was increased by her working conditions.

The degree of proof required under P.D. No. 626 is merely substantial evidence, or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[22] We have repeatedly held that to prove compensability, the claimant must adequately show that the development of the disease is brought largely by the conditions present in the nature of the job.[23] What the law requires is a reasonable work-connection and not a direct causal relation.[24] It is enough that the hypothesis on which the workmen's claim is based is probable.[25] Medical opinion to the contrary can be disregarded especially where there is some basis in the facts for inferring a work-connection.[26] Probability, not certainty, is the touchstone.[27]

Respondent's theory hinges on her contention that her cataract was a result of "decades of use and abuse" to which her eyes were subjected in connection with her job as a public attorney. In support thereof, respondent cites "Healthy Women, Healthy Lives, A Guide to Preventing Diseases from the Landmark Nurse's Health Study," thus:

A cataract is the gradual clouding of the eye's lens. The rigid disc of protein sits near the front of the eye, right behind the pupil. Its job is to focus light onto the retina, the light sensitive tissue that lines the back of the eye. In a child, the lens is crystal clear. Unfortunately, decades of use and abuse can change that. Sunlight,

---

[22] *GSIS v. Cuntapay*, G.R. No. 168862, April 30, 2008; *Salalima v. Employees' Compensation Commission***,** G.R. No. 146360, May 20, 2004, 428 SCRA 715, 722-723.

[23] *Salalima v. Employees' Compensation Commission*, *supra*; *Salmone v. Employees' Compensation Commission*, G.R. No. 142392, September 26, 2000, 341 SCRA 150, 155; *Sarmiento v. Employees' Compensation Commission*, G.R. No. 68648, September 24, 1986, 144 SCRA 421, 426.

[24] *Id*.

[25] *Id*.

[26] *Id*.

[27] *Id*.

cigarette smoke, and other noxious agents can damage the proteins in the lens, often by generating free radicals. These are highly reactive particles that damage many of our tissues.[28]

Respondent's hypothesis that her years of reading thick appellate pleadings and documents can serve as basis for inferring a probable nexus between respondent's illness and the nature of respondent's work as a causative factor. Hence, we find the said work-connection herein reasonable despite findings that respondent's cataract was caused by her diabetes.

Moreover, we are well to be reminded that P.D. No. 626 still stands as a social legislation. As we expressed in ***Salalima v. ECC:***

> P.D. 626, as amended, is said to have abandoned the presumption of compensability and the theory of aggravation prevalent under the Workmen's Compensation Act. Despite such abandonment, however, the present law has not ceased to be an employees' compensation law or a social legislation; hence, the liberality of the law in favor of the working man and woman still prevails, and the official agency charged by law to implement the constitutional guarantee of social justice should adopt a liberal attitude in favor of the employee in deciding claims for compensability, especially in light of the compassionate policy towards labor which the 1987 Constitution vivifies and enhances.[29]

Therefore, considering the reasonable work-connection herein proven and respondent's plight as a government lawyer who has dedicated the best years of her life to public service, we deem it proper to give full effect to the humanitarian spirit of the law.

IN VIEW WHEREOF, the instant petition is *DENIED*. The decision of the Court of Appeals dated June 7, 2006 is hereby *AFFIRMED*. No costs.

SO ORDERED.

Carpio, Corona, Leonardo-de Castro, and *Bersamin, JJ.,* concur.

---

[28] *Rollo,* p. 93.

[29] *Supra,* see note 23, at p. 723.

FIRST DIVISION

[G.R. No. 173215. May 21, 2009]

CEBU WINLAND DEVELOPMENT CORPORATION, *petitioner, vs.* **ONG SIAO HUA,** *respondent.*

SYLLABUS

1. CIVIL LAW; PROPERTY; OWNERSHIP; CONCEPT OF DELIVERY; EXPLAINED. — Under the Civil Code, ownership does not pass by mere stipulation but only by delivery. Manresa explains, "**the delivery of the thing . . . signifies that title has passed from the seller to the buyer.**" According to Tolentino, the purpose of delivery is not only for the enjoyment of the thing but also a mode of acquiring dominion and determines the transmission of ownership, the birth of the real right. The delivery under any of the forms provided by Articles 1497 to 1505 of the Civil Code **signifies that the transmission of ownership from vendor to vendee has taken place.** Article 1497 above contemplates what is known as real or actual delivery, when the thing sold is placed in the control and possession of the vendee. Article 1498, on the one hand, refers to symbolic delivery by the execution of a public instrument. It should be noted, however, that Article 1498 does not say that the execution of the deed provides a conclusive presumption of the delivery of possession. It confines itself to providing that the execution thereof is equivalent to delivery, which means that the presumption therein can be rebutted by means of clear and convincing evidence. Thus, the presumptive delivery by the execution of a public instrument can be negated by the failure of the vendee to take actual possession of the land sold. In *Equatorial Realty Development, Inc. v. Mayfair Theater, Inc.*, the concept of "delivery" was explained as follows: Delivery has been described as a composite act, a thing in which both parties must join and the minds of both parties concur. **It is an act by which one party parts with the title to and the possession of the property, and the other acquires the right to and the possession of the same**. In its natural sense, delivery means something in addition to the delivery of property or title; it means transfer of possession. **In the Law on Sales, delivery may be either actual or constructive, but both forms of delivery contemplate "the absolute giving up of the control and custody of the property on**

the part of the vendor, and the assumption of the same by the vendee." In light of the foregoing, "delivery" as used in the Law on Sales refers to the concurrent transfer of two things: (1) possession and (2) ownership. This is the rationale behind the jurisprudential doctrine that presumptive delivery *via* execution of a public instrument is negated by the reality that the vendee actually failed to obtain material possession of the land subject of the sale. **In the same vein, if the vendee is placed in actual possession of the property, but by agreement of the parties ownership of the same is retained by the vendor until the vendee has fully paid the price, the mere transfer of the possession of the property subject of the sale is not the "delivery" contemplated in the Law on Sales or as used in Article 1543 of the Civil Code.**

2. ID.; SPECIAL CONTRACTS; SALES; SALE OF REAL ESTATE WITH A STATEMENT OF AREA DISTINGUISHED FROM A SALE FOR A LUMP SUM. — Article 1539 provides that "If the sale of real estate should be made with a statement of its area, at the rate of a certain price for a unit of measure or number, the vendor shall be obliged to deliver to the vendee…all that may have been stated in the contract; but, should this be not possible, the vendee may choose between a proportional reduction of the price and the rescission of the contract…." Article 1542, on the one hand, provides that "In the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price, although there be a greater or lesser area or number than that stated in the contract." The distinction between Article 1539 and Article 1542 was explained by Manresa as follows: . . . If the sale was made for a price per unit of measure or number, the consideration of the contract with respect to the vendee, is the number of such units, or, if you wish, the thing purchased as determined by the stipulated number of units. But if, on the other hand, the sale was made for a lump sum, the consideration of the contract is the object sold, independently of its number or measure, the thing as determined by the stipulated boundaries, which has been called in law a *determinate object*. This difference in consideration between the two cases implies a distinct regulation of the obligation to deliver the object, because, for an acquittance delivery must be made in accordance with the agreement of the parties, and the performance of the agreement must show the confirmation, in fact, of the consideration which induces each of the parties to enter into the contract.

3. ID.; CONTRACTS; ANNULMENT OF CONTRACT; MISTAKE AS A GROUND; DEGREE OF MISTAKE, CONSTRUED. — In order that mistake may invalidate consent and constitute a ground for annulment of contract based on Article 1331, the mistake must be material as to go to the essence of the contract; that without such mistake, the agreement would not have been made. The effect of error must be determined largely by its influence upon the party. If the party would have entered into the contract even if he had knowledge of the true fact, then the error does not vitiate consent. In the case at bar, the relief sought by respondent was for a refund and he continued to occupy the subject properties after he found out that the same were smaller in area. All these show that respondent did not consider the error in size significant enough to vitiate the contract. Hence, the Court of Appeals erred in affirming the Board's decision to grant rescission based on Articles 1330 and 1331 of the Civil Code.

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices for petitioner.
Saludo Agpalo Fernandez & Aquino for respondent.

D E C I S I O N

PUNO, *C.J.*:

Before us is a Petition for Review[1] filed under Rule 45 of the Rules of Court assailing the Decision[2] dated February 14, 2006 of the Court of Appeals and its Resolution[3] dated June 2, 2006 denying petitioner's motion for reconsideration of the said decision.

The facts are undisputed.

Petitioner, Cebu Winland Development Corporation, is the owner and developer of a condominium project called the Cebu Winland

---

[1] *Rollo*, pp. 4-14.

[2] *Id*. at 16-24; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr.

[3] *Id.* at 31-32.

Tower Condominium located in Juana Osmeña Extension, Cebu City.

Respondent, Ong Siao Hua, is a buyer of two condominium units and four parking slots from petitioner.

Sometime before January 6, 1995 while the Cebu Winland Tower Condominium was under construction, petitioner offered to sell to respondent condominium units at promotional prices. As an added incentive, petitioner offered a 3% discount provided 30% of the purchase price is paid as down payment and the balance paid in 24 equal monthly installments.

On January 6, 1995, respondent accepted the offer of petitioner and bought two condominium units designated as Unit Nos. 2405 and 2406, as well as four parking slots designated as slots 91, 99, 101 and 103 (subject properties).

The area per condominium unit as indicated in petitioner's price list is 155 square meters and the price per square meter is ₱22,378.95. The price for the parking slot is ₱240,000 each. Respondent, therefore, paid ₱2,298,655.08 as down payment and issued 24 postdated checks in the amount of ₱223,430.70 per check for the balance of the purchase price in the total amount of ₱5,362,385.19 computed as follows:[4]

155 sq.m./unit x 2 units x ₱22,378.95/sq.m.	₱ 6,937,474.50
4 parking slots at ₱240,000/slot	960,000.00
Sub-total	₱ 7,897,474.50
Less: 3% discount	(236,924.23)
Net purchase price	₱ 7,660,550.27
30% down payment	(2,298,165.08)
Balance at ₱223,430.70 per month for 24 months	₱ 5,362,385.19

The parties did not execute any written document setting forth the said transaction.

[4] CA *rollo*, p. 62.

On October 10, 1996, possession of the subject properties was turned over to respondent.[5]

After the purchase price was fully paid with the last check dated January 31, 1997, respondent requested petitioner for the condominium certificates of title evidencing ownership of the units. Petitioner then sent to respondent, for the latter's signature, documents denominated as Deeds of Absolute Sale for the two condominium units.

Upon examination of the deed of absolute sale of Unit No. 2405 and the identical document for Unit No. 2406, respondent was distressed to find that the stated floor area is only 127 square meters contrary to the area indicated in the price list which was 155 square meters. Respondent caused a verification survey of the said condominium units and discovered that the actual area is only 110 square meters per unit. Respondent demanded from petitioner to refund the amount of ₱2,014,105.50 representing excess payments for the difference in the area, computed as follows:[6]

155 sq.m.-110 = 45 x 2 units = 90 sq.m. x ₱22,378.95 = ₱2,014,105.50

Petitioner refused to refund the said amount to respondent. Consequently, respondent filed a Complaint[7] on August 7, 1998 in the Regional Office of the Housing and Land Use Regulatory Board (HLURB) in Cebu City, praying for the refund of ₱2,014,105.50 plus interest, moral damages and attorney's fees, including the suspension of petitioner's license to sell. The case was docketed as HLURB Case No. REM-0220-080798.

On December 6, 1999, the Housing and Land Use Arbiter (the Arbiter) rendered a Decision[8] dismissing the complaint. The Arbiter found petitioner not guilty of misrepresentation. Considering further that the subject properties have been delivered

---

[5] *Id.* at 42.

[6] *Id.* at 63.

[7] *Id.* at 49-54.

[8] *Id.* at 61-76.

on October 10, 1996 and respondent filed his complaint only on August 7, 1998, the Arbiter further ruled that respondent's action had already prescribed pursuant to Article 1543,[9] in relation to Articles 1539 and 1542,[10] of the Civil Code. The dispositive portion of the said decision reads:

---

[9] ARTICLE 1543. The actions arising from Articles 1539 and 1542 shall prescribe in six months, counted from the day of delivery. (1472a)

[10] ARTICLE 1539. The obligation to deliver the thing sold includes that of placing in the control of the vendee all that is mentioned in the contract, in conformity with the following rules:

If the sale of real estate should be made with a statement of its area, at the rate of a certain price for a unit of measure or number, the vendor shall be obliged to deliver to the vendee, if the latter should demand it, all that may have been stated in the contract; but, should this be not possible, the vendee may choose between a proportional reduction of the price and the rescission of the contract, provided that, in the latter case, the lack in the area be not less than one-tenth of that stated.

The same shall be done, even when the area is the same, if any part of the immovable is not of the quality specified in the contract.

The rescission, in this case, shall only take place at the will of the vendee, when the inferior value of the thing sold exceeds one-tenth of the price agreed upon.

Nevertheless, if the vendee would not have bought the immovable had he known of its smaller area or inferior quality, he may rescind the sale. (1469a)

ARTICLE 1542. In the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price, although there be a greater or lesser area or number than that stated in the contract.

The same rule shall be applied when two or more immovables are sold for a single price; but if, besides mentioning the boundaries, which is indispensable in every conveyance of real estate, its area or number should be designated in the contract, the vendor shall be bound to deliver all that is included within said boundaries, even when it exceeds the area or number specified in the contract; and, should he not be able to do so, he shall suffer a reduction in the price, in proportion to what is lacking in the area or number, unless the contract is rescinded because the vendee does not accede to the failure to deliver what has been stipulated. (1471)

WHEREFORE**, Premises Considered,** judgment is hereby rendered **DISMISSING** this Complaint, and ordering the parties to do the following, to wit:

1. For the Complainant to SIGN the two (2) Deed[s] of Absolute Sale which this Board finds to be in order within 30 days from finality of this decision; and

2. For the Respondent to DELIVER the corresponding condominium certificate of title for the two units namely units 2405 and 2406 free from all liens and encumbrances.

Consequently, the counterclaim is likewise dismissed for it finds no evidence that Complainant acted in bad faith in filing this complaint.

Cost against the parties.

SO ORDERED.[11]

Aggrieved, respondent filed a Petition for Review of said decision with the Board of Commissioners of the HLURB (the Board). In the course of its proceedings, the Board ordered that an ocular inspection of Unit Nos. 2405 and 2406 be conducted by an independent engineer. The Board further ordered that there should be two measurements of the areas in controversy, one based on the master deed and another based on the internal surface of the perimeter wall. After the ocular inspection, the independent geodetic engineer found the following measurements:

Unit 2405- Based on internal face of perimeter wall = 109 sq. m.
Based on master deed = 115 sq. m.

Unit 2406- Based on internal face of perimeter wall = 110 sq. m.
Based on master deed = 116 sq. m.[12]

Thereafter, the Board rendered its Decision[13] dated June 8, 2004 affirming the Arbiter's finding that respondent's action had already prescribed. However, the Board found that there was a mistake regarding the object of the sale constituting a

---

[11] CA *rollo*, p. 76.

[12] *Rollo*, p. 38.

[13] *Id.* at 36-41.

ground for rescission based on Articles 1330 and 1331[14] of the Civil Code. Hence, the Board modified the decision of the Arbiter as follows:

> Wherefore[,] the decision of the [O]ffice below is hereby modified with the following additional directive:
>
> In the alternative, and at the option of the complainant, the contract is rescinded and the respondent is directed to refund to (sic) ₱7,660,550[.]27 while complainant is directed to turn over possession of the units 2405, 2406 and the four parking lots to the respondent.
>
> So ordered.[15]

Not satisfied with the decision of the Board, petitioner filed an appeal to the Office of the President arguing that the Board erred in granting relief to respondent considering that the latter's action had already prescribed. On March 11, 2005, the Office of the President rendered a Decision[16] finding that respondent's action had already prescribed pursuant to Article 1543 of the Civil Code. The dispositive portion of said decision reads as follows:

> WHEREFORE, premises considered, the Decision dated June 8, 2004 of the HLURB is hereby **MODIFIED** and the Decision dated December 6, 1999 of the Housing and Land Use Arbiter is hereby **REINSTATED**.

---

[14] ARTICLE 1330. A contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable. (1265a)

ARTICLE 1331. In order that mistake may invalidate consent, it should refer to the substance of the thing which is the object of the contract, or to those conditions which have principally moved one or both parties to enter into the contract.

Mistake as to the identity or qualifications of one of the parties will vitiate consent only when such identity or qualifications have been the principal cause of the contract.

A simple mistake of account shall give rise to its correction. (1266a)

[15] *Rollo*, p. 40.

[16] *Id.* at 42-49.

SO ORDERED.[17]

Respondent filed a Motion for Reconsideration but the same was denied by the Office of the President in a Resolution[18] dated June 20, 2005. Hence, respondent filed a Petition for Review before the Court of Appeals.

On February 14, 2006, the Court of Appeals rendered the assailed Decision finding that respondent's action has not prescribed. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **GRANTING** the petition filed in this case, **REVERSING and SETTING ASIDE** the assailed Decision and Resolution of the Office of the President dated March 11, 2005 and June 20, 2005, respectively, and reinstating the Decision promulgated by the Board of Commissioners of the HLURB on June 8, 2004.

SO ORDERED.[19]

Petitioner's Motion for Reconsideration[20] of the assailed decision having been denied in the Resolution dated June 2, 2006, petitioner is now before us, in this petition for review raising the following grounds:

I.

The Court of Appeals Erred in Holding That in A Contract of Sale Ownership Is Not Transferred by Delivery[.]

II.

The Court of Appeals Erred in Holding That Respondent's Action Has Not Prescribed.

III.

The Court of Appeals Erred And Exceeded Its Jurisdiction When It Found Petitioner Guilty Of Misrepresentation As The Decision Of The HLURB Board of Commissioners On The Same Matter Is Final

---

[17] *Id.* at 49.

[18] CA *rollo*, p. 48.

[19] *Supra* note 2 at 23-24.

[20] *Rollo*, pp. 25-29.

With Respect To Respondent Who Did Not Appeal Said Decision That Petitioner Did Not Commit Misrepresentation.[21]

The issue before us is whether respondent's action has prescribed pursuant to Article 1543, in relation to Articles 1539 and 1542 of the Civil Code, *to wit*:

ARTICLE 1539. The obligation to deliver the thing sold includes that of placing in the control of the vendee all that is mentioned in the contract, in conformity with the following rules:

If the sale of real estate should be made **with a statement of its area**, **at the rate of a certain price for a unit of measure or number**, the vendor shall be obliged to deliver to the vendee, if the latter should demand it, all that may have been stated in the contract; but, should this be not possible, the vendee may choose between a proportional reduction of the price and the rescission of the contract, provided that, in the latter case, the lack in the area be not less than one-tenth of that stated.

The same shall be done, even when the area is the same, if any part of the immovable is not of the quality specified in the contract.

The rescission, in this case, shall only take place at the will of the vendee, when the inferior value of the thing sold exceeds one-tenth of the price agreed upon.

Nevertheless, if the vendee would not have bought the immovable had he known of its smaller area or inferior quality, he may rescind the sale. (1469a) [Emphasis supplied]

ARTICLE 1542. In the sale of real estate, made for a **lump sum** and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price, although there be a greater or lesser area or number than that stated in the contract.

The same rule shall be applied when two or more immovables are sold for a single price; but if, besides mentioning the boundaries, which is indispensable in every conveyance of real estate, its area or number should be designated in the contract, the vendor shall be bound to deliver all that is included within said boundaries, even when it exceeds the area or number specified in the contract; and, should he not be able to do so, he shall suffer a reduction in the

[21] *Supra* note 1 at 7.

price, in proportion to what is lacking in the area or number, unless the contract is rescinded because the vendee does not accede to the failure to deliver what has been stipulated. (1471) [Emphasis supplied]

ARTICLE 1543. The actions arising from Articles 1539 and 1542 shall **prescribe in six months, counted from the day of delivery**. (1472a) [Emphasis supplied]

Petitioner argues that it delivered possession of the subject properties to respondent on October 10, 1996, hence, respondent's action filed on August 7, 1998 has already prescribed.

Respondent, on the one hand, contends that his action has not prescribed because the prescriptive period has not begun to run as the same must be reckoned from the execution of the deeds of sale which has not yet been done.

The resolution of the issue at bar necessitates a scrutiny of the concept of "delivery" in the context of the Law on Sales or as used in Article 1543 of the Civil Code. Under the Civil Code, the vendor is bound to transfer the ownership of and deliver the thing which is the object of the sale. The pertinent provisions of the Civil Code on the obligation of the vendor to deliver the object of the sale provide:

ARTICLE 1495. The vendor is bound to transfer the ownership of and deliver, as well as warrant the thing which is the object of the sale. (1461a)

ARTICLE 1496. The 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. (n)

ARTICLE 1497. The thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee. (1462a)

ARTICLE 1498. 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.

xxx xxx xxx

Under the Civil Code, ownership does not pass by mere stipulation but only by delivery.[22] Manresa explains, "**the delivery of the thing . . . signifies that title has passed from the seller to the buyer.**"[23] According to Tolentino, the purpose of delivery is not only for the enjoyment of the thing but also a mode of acquiring dominion and determines the transmission of ownership, the birth of the real right. The delivery under any of the forms provided by Articles 1497 to 1505 of the Civil Code **signifies that the transmission of ownership from vendor to vendee has taken place**.[24]

Article 1497 above contemplates what is known as real or actual delivery, when the thing sold is placed in the control and possession of the vendee. Article 1498, on the one hand, refers to symbolic delivery by the execution of a public instrument. It should be noted, however, that Article 1498 does not say that the execution of the deed provides a conclusive presumption of the delivery of possession. It confines itself to providing that the execution thereof is equivalent to delivery, which means that the presumption therein can be rebutted by means of clear and convincing evidence. Thus, the presumptive delivery by the execution of a public instrument can be negated by the failure of the vendee to take actual possession of the land sold.[25]

In ***Equatorial Realty Development, Inc. v. Mayfair Theater, Inc.***,[26] the concept of "delivery" was explained as follows:

Delivery has been described as a composite act, a thing in which both parties must join and the minds of both parties concur**. It is an act by which one party parts with the title to and the possession of**

---

[22] *Danguilan v. Intermediate Appellate Court*, G.R. No. 69970, November 28, 1999, 168 SCRA 22, 31, citing *Gachitorena v. Almeda*, 48 O.G. 3432.

[23] COMMENTARIES ON THE CIVIL CODE, Vol. 10, p. 120, cited in *Ocejo v. International Banking Corporation*, 37 Phil. 631, 636 (1918).

[24] TOLENTINO, *CIVIL CODE OF THE PHILIPPINES*, Vol. V, 51 (1999).

[25] *Id.* at 52-54.

[26] G.R. No. 133879, November 21, 2001, 370 SCRA 56, 70-71.

the property, and the other acquires the right to and the possession of the same. In its natural sense, delivery means something in addition to the delivery of property or title; it means transfer of possession. **In the Law on Sales, delivery may be either actual or constructive, but both forms of delivery contemplate "the absolute giving up of the control and custody of the property on the part of the vendor, and the assumption of the same by the vendee."** (Emphasis supplied)

In light of the foregoing, "delivery" as used in the Law on Sales refers to the concurrent transfer of two things: (1) possession and (2) ownership. This is the rationale behind the jurisprudential doctrine that presumptive delivery *via* execution of a public instrument is negated by the reality that the vendee actually failed to obtain material possession of the land subject of the sale.[27] **In the same vein, if the vendee is placed in actual possession of the property, but by agreement of the parties ownership of the same is retained by the vendor until the vendee has fully paid the price, the mere transfer of the possession of the property subject of the sale is not the "delivery" contemplated in the Law on Sales or as used in Article 1543 of the Civil Code.**

In the case at bar, it appears that respondent was already placed in possession of the subject properties. However, it is crystal clear that the deeds of absolute sale were still to be executed by the parties upon payment of the last installment. This fact shows that ownership of the said properties was withheld by petitioner. Following case law, it is evident that the parties did not intend to immediately transfer ownership of the subject properties until full payment and the execution of the deeds of absolute sale.[28] Consequently, there is no "delivery" to speak of in this case since what was transferred was possession only and not ownership of the subject properties.

---

[27] *Pasagui v. Villablanca*, G.R. No. L-21998, November 10, 1975, 68 SCRA 18, 21.

[28] *Roque v. Lapuz*, G.R. No. L-32811, March 31, 1980, 96 SCRA 741, 758; *Adelfa Properties, Inc. v. Court of Appeals*, G.R. No. 111238, January 25, 1995, 240 SCRA 565, 577-578.

We, therefore, hold that the transfer of possession of the subject properties on October 10, 1996 to respondent cannot be considered as "delivery" within the purview of Article 1543 of the Civil Code. It follows that since there has been no transfer of ownership of the subject properties since the deeds of absolute sale have not yet been executed by the parties, the action filed by respondent has not prescribed.

The next issue is whether the sale in the case at bar is one made with a statement of its area or at the rate of a certain price for a unit of measure and not for a lump sum. Article 1539 provides that "If the sale of real estate should be made with a statement of its area, at the rate of a certain price for a unit of measure or number, the vendor shall be obliged to deliver to the vendee…all that may have been stated in the contract; but, should this be not possible, the vendee may choose between a proportional reduction of the price and the rescission of the contract…." Article 1542, on the one hand, provides that "In the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price, although there be a greater or lesser area or number than that stated in the contract."

The distinction between Article 1539 and Article 1542 was explained by Manresa[29] as follows:

> . . . If the sale was made for a price per unit of measure or number, the consideration of the contract with respect to the vendee, is the number of such units, or, if you wish, the thing purchased as determined by the stipulated number of units. But if, on the other hand, the sale was made for a lump sum, the consideration of the contract is the object sold, independently of its number or measure, the thing as determined by the stipulated boundaries, which has been called in law a *determinate object.*
>
> This difference in consideration between the two cases implies a distinct regulation of the obligation to deliver the object, because, for an acquittance delivery must be made in accordance with the

---

[29] *Cited* in *Azarraga v. Gay*, 52 Phil. 599, 605-606 (1928).

agreement of the parties, and the performance of the agreement must show the confirmation, in fact, of the consideration which induces each of the parties to enter into the contract.

In ***Rudolf Lietz, Inc. v. Court of Appeals***,[30] we held:

Article 1539 governs a sale of immovable by the unit, that is, at a stated rate per unit area. In a unit price contract, the statement of area of immovable is not conclusive and the price may be reduced or increased depending on the area actually delivered. If the vendor delivers less than the area agreed upon, the vendee may oblige the vendor to deliver all that may be stated in the contract or demand for the proportionate reduction of the purchase price if delivery is not possible. If the vendor delivers more than the area stated in the contract, the vendee has the option to accept only the amount agreed upon or to accept the whole area, provided he pays for the additional area at the contract rate.

In some instances, a sale of an immovable may be made for a lump sum and not at a rate per unit. The parties agree on a stated purchase price for an immovable the area of which may be declared based on an estimate or where both the area and boundaries are stated.

In the case where the area of the immovable is stated in the contract based on an estimate, the actual area delivered may not measure up exactly with the area stated in the contract. According to Article 1542 of the Civil Code, in the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price although there be a greater or lesser area or number than that stated in the contract. However, the discrepancy must not be substantial. A vendee of land, when sold in gross or with the description "more or less" with reference to its area, does not thereby *ipso facto* take all risk of quantity in the land. The use of "more or less" or similar words in designating quantity covers only a reasonable excess or deficiency.

Where both the area and the boundaries of the immovable are declared, the area covered within the boundaries of the immovable prevails over the stated area. In cases of conflict between areas and boundaries, it is the latter which should prevail. What really defines a piece of ground is not the area, calculated with more or less certainty, mentioned in its description, but the boundaries therein

[30] G.R. No. 122463, December 19, 2005, 478 SCRA 451, 457-459.

laid down, as enclosing the land and indicating its limits. In a contract of sale of land in a mass, it is well established that the specific boundaries stated in the contract must control over any statement with respect to the area contained within its boundaries. It is not of vital consequence that a deed or contract of sale of land should disclose the area with mathematical accuracy. It is sufficient if its extent is objectively indicated with sufficient precision to enable one to identify it. An error as to the superficial area is immaterial. Thus, the obligation of the vendor is to deliver everything within the boundaries, inasmuch as it is the entirety thereof that distinguishes the determinate object.

In the case at bar, it is undisputed by the parties that the purchase price of the subject properties was computed based on the price list prepared by petitioner, or ₱22,378.95 per square meter. Clearly, the parties agreed on a sale at a rate of a certain price per unit of measure and not one for a lump sum. Hence, it is Article 1539 and not Article 1542 which is the applicable law. Accordingly, respondent is entitled to the relief afforded to him under Article 1539, that is, either a proportional reduction of the price or the rescission of the contract, at his option. Respondent chose the former remedy since he prayed in his Complaint for the refund of the amount of ₱2,014,105.50 representing the proportional reduction of the price paid to petitioner.

In its decision, the Court of Appeals held that the action filed by respondent has not prescribed and reinstated the decision of the Board. It is an error to reinstate the decision of the Board. The Board, in its decision, held that there was a mistake regarding the object of the sale constituting a ground for rescission based on Articles 1330 and 1331 of the Civil Code. It then granted the relief of rescission at the option of respondent. Articles 1330 and 1331 of the Civil Code provide:

ARTICLE 1330. A contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable. (1265a)

ARTICLE 1331. In order that mistake may invalidate consent, it should refer to the substance of the thing which is the object of the contract, or to those conditions which have principally moved one or both parties to enter into the contract.

We find that these articles are inapplicable to the case at bar. In order that mistake may invalidate consent and constitute a ground for annulment of contract based on Article 1331, the mistake must be material as to go to the essence of the contract; that without such mistake, the agreement would not have been made.[31] The effect of error must be determined largely by its influence upon the party. If the party would have entered into the contract even if he had knowledge of the true fact, then the error does not vitiate consent.[32]

In the case at bar, the relief sought by respondent was for a refund and he continued to occupy the subject properties after he found out that the same were smaller in area. All these show that respondent did not consider the error in size significant enough to vitiate the contract. Hence, the Court of Appeals erred in affirming the Board's decision to grant rescission based on Articles 1330 and 1331 of the Civil Code.

IN VIEW WHEREOF, the petition is *DENIED*. The decision of the Court of Appeals is *AFFIRMED* but with the *MODIFICATION* that the decision of the HLURB is not reinstated. Petitioner is ordered to refund the amount of Two Million Fourteen Thousand One Hundred Five Pesos and Fifty Centavos (₱2,014,105.50) to respondent with legal interest of six percent (6%) per annum from August 7, 1998, the date of judicial demand. A twelve percent (12%) interest per annum, in lieu of six percent (6%), shall be imposed on such amount from the date of promulgation of this decision until the payment thereof. Costs against petitioner.

SO ORDERED.

Carpio, Corona, Leonardo-de Castro, and *Bersamin, JJ.*, concur.

---

[31] *Asiain v. Jalandoni,* 45 Phil. 296, 310-313 (1923).

[32] TOLENTINO, *CIVIL CODE OF THE PHILIPPINES*, VOL. IV, 481 (1985).

FIRST DIVISION

[G.R. No. 176832. May 21, 2009]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **MARIAN T. VICENCIO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; AMENDED RULES ON EMPLOYEES' COMPENSATION; FOR SICKNESS OR THE RESULTING DEATH TO BE COMPENSABLE; REQUIREMENTS. — P.D. No. 626, as amended, defines compensable sickness as "any illness definitely accepted as an occupational disease listed by the Commission, or any illness caused by employment subject to proof by the employee that the risk of contracting the same is increased by the working conditions." Under Section 1 (b), Rule III, of the Amended Rules on Employees' Compensation, for the sickness and the resulting disability or death to be compensable, the same must be an "occupational disease" included in the list provided (Annex "A"), with the conditions set therein satisfied; otherwise, the claimant must show proof that the risk of contracting it is increased by the working conditions. Otherwise stated, for sickness and the resulting death of an employee to be compensable, the claimant must show either: (1) that it is a result of an occupational disease listed under Annex "A" of the Amended Rules on Employees' Compensation with the conditions set therein satisfied; or (2) if not so listed, that the risk of contracting the disease is increased by the working conditions.

2. ID.; ID.; PROVISIONS THEREOF INCLUDING ITS IMPLEMENTING RULES AND REGULATIONS SHOULD BE RESOLVED IN FAVOR OF LABOR; RATIONALE. — It must be remembered that P.D. No. 626, as amended, is a social legislation whose primordial purpose is to provide meaningful protection to the working class against the hazards of disability, illness and other contingencies resulting in the loss of income. Thus, the official agents charged by law to implement social justice guaranteed by the Constitution should adopt a liberal

attitude in favor of the employee in deciding claims for compensability especially where there is some basis in the facts for inferring a work-connection with the illness or injury, as the case may be. It is only this kind of interpretation that can give meaning and substance to the compassionate spirit of the law as embodied in Article 4 of the New Labor Code which states that all doubts in the implementation and interpretation of the provisions of the Labor Code including their implementing rules and regulations should be resolved in favor of labor.

3. ID.; ID.; SUBSTANTIAL EVIDENCE; DEGREE OF PROOF REQUIRED UNDER P.D. NO. 628; CONSTRUED; APPLICATION IN CASE AT BAR. — It is well-settled that the degree of proof required under P.D. No. 626 is merely substantial evidence, which means, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." What the law requires is a reasonable work-connection and not a direct causal relation. It is enough that the hypothesis on which the workman's claim is based is probable. Medical opinion to the contrary can be disregarded especially where there is some basis in the facts for inferring a work-connection. Probability, not certainty, is the touchstone. It is not required that the employment be the sole factor in the growth, development or acceleration of a claimant's illness to entitle him to the benefits provided for. It is enough that his employment contributed, even if to a small degree, to the development of the disease. The late Judge Vicencio was a frontline officer in the administration of justice, being the most visible living representation of this country's legal and judicial system. It is undisputed that throughout his noble career from Fiscal to Metropolitan Trial Court Judge, and, finally, to RTC Judge, his work dealt with stressful daily work hours, and constant and long-term contact with voluminous and dusty records. We also take judicial notice that Judge Vicencio's workplace at the Manila City Hall had long been a place with sub-standard offices of judges and prosecutors overflowing with records of cases covered up in dust and are poorly ventilated. All these, taken together, necessarily contributed to the development of his lung illness.

APPEARANCES OF COUNSEL

Chief Legal Counsel for petitioner.
Del Rosario and Del Rosario for respondent.

D E C I S I O N

PUNO, *C.J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 74790 which set aside the Decision[3] of the Employees' Compensation Commission (ECC) in ECC Case No. GM-14245-702. The ECC denied respondent Marian T. Vicencio's (Mrs. Vicencio's) claim for the death benefits of her husband, the late Judge Honorato S. Vicencio (Judge Vicencio).

The facts are established.

Judge Vicencio entered government service in 1964 as a Legal Researcher of the Development Bank of the Philippines (DBP). In 1966, after passing the bar examinations, he became an Assistant Attorney. He rose from the ranks until he was promoted to Senior Bank Attorney, which position he held until his retirement from DBP in 1985.

In 1987, Judge Vicencio re-entered government service as Assistant Fiscal for the City of Manila. In 1992, he was appointed as Judge of Branch 27, Metropolitan Trial Court of Manila. In 1999, he was appointed as Regional Trial Court (RTC) Judge of Branch 17, Manila and served as such until his death in 2001.

---

[1] *Rollo*, pp. 15-55.

[2] *Id.* at 56-68; dated September 27, 2006, penned by Justice Normandie B. Pizarro and concurred in by Justices Regalado E. Maambong and Jose Catral Mendoza.

[3] *Id.* at 72-74; dated November 6, 2002.

Records[4] show that on November 30, 2000, Judge Vicencio suffered loss of consciousness due to pericardial effusion. He was admitted at the Makati Medical Center where he was diagnosed with Adenocarcinoma of the Left Lung with Metastases to Pedicardium. He underwent intravenous chemotherapy. He was confined from November 30, 2000 to May 7, 2001.

On May 31, 2001, Judge Vicencio died. Per his Death Certificate,[5] the immediate cause of his death was Cardiopulmonary Arrest, and the antecedent cause was T/C Fatal Arrythmia. No underlying cause of death was indicated in his Death Certificate. He was survived by his wife, respondent Mrs. Vicencio, and daughter, Mary Joy Celine Vicencio.

Respondent Mrs. Vicencio applied for the death benefits of her late husband with petitioner Government Service Insurance System (GSIS) but her application was denied by Mr. Marcelino S. Alejo, Manager of the GSIS Employees Compensation Department, on the ground that the illness which caused Judge Vicencio's death is not considered an occupational disease and there is no showing that his work as RTC Judge has increased his risk of contracting said ailment.[6] Respondent Mrs. Vicencio filed a motion for reconsideration, but the same was denied.[7]

On June 17, 2002, respondent Mrs. Vicencio appealed to the ECC but the same was dismissed.[8]

Respondent Mrs. Vicencio filed a petition for review under Rule 43 of the Rules of Court with the CA. The CA reversed and set aside the Decision of the ECC as follows:

---

[4] Attending Physician's Certification signed by Dr. Deogracias B. Custodio; *id.* at 77.

[5] CA *rollo*, p. 52.

[6] Letter addressed to Mrs. Vicencio dated November 27, 2001; *id.* at 41.

[7] Letter addressed to Mrs. Vicencio dated May 20, 2002; *id.* at 54.

[8] *Supra* note 3.

WHEREFORE**,** premises considered, this Petition is **GRANTED**. The Decision of the Employees Compensation Commission, dated November 6, 2002, in ECC Case No. GM-14245-702 is hereby **REVERSED** and **SET ASIDE.** The GSIS is **ORDERED** to grant the claim for the death benefits of Judge Honorato S. Vicencio under the *Employees Compensation Act.* No costs.[9]

Petitioner GSIS filed a motion for reconsideration, but the same was denied by the CA in its Resolution dated February 26, 2007.[10]

Hence, this Petition.

The sole issue is whether or not respondent Mrs. Vicencio's claim for death benefits under Presidential Decree No. 626 (P.D. No. 626), as amended, is compensable.

Petitioner GSIS argues that based on the medical records in this case, Judge Vicencio's underlying cause of death was Adenocarcinoma of the Lungs with Metastases. According to petitioner GSIS, the cause of death stated in his Death Certificate, Cardiopulmonary Arrest T/C Fatal Arrythmia, was a mere complication of his lung cancer. However, the attending physician did not fill up the portion on the Death Certificate to indicate that the underlying cause (which was left in blank) was Adenocarcinoma of the Lungs with Metastases. Adenocarcinoma of the Lungs is not an occupational disease listed under the law. Pursuant to Annex "A" of the Amended Rules on Employees' Compensation, lung cancer is occupational only with respect to vinyl chloride workers and plastic workers. According to petitioner GSIS, respondent Mrs. Vicencio failed to show by substantial evidence that the risk of contracting the same was increased by his working conditions.

On the one hand, respondent Mrs. Vicencio contends that per the Death Certificate of her husband, the cause of his death was Cardiopulmonary Arrest T/C Fatal Arrythmia. According to respondent Mrs. Vicencio, the CA correctly found that the

---

[9] *Supra* note 2 at 67-68.

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

requisites for cardiovascular disease to be compensable under paragraph (r) of ECC Resolution No. 432[11] were satisfied; hence, the death of her husband is compensable.

Respondent Mrs. Vicencio adds that assuming only lung cancer was the cause of death of her husband, the same is still compensable. She argues that the CA correctly held that the nature of work and the corresponding difficulties brought about by Judge Vicencio's duties and work contributed to the development of his illness.

We affirm the decision of the CA.

P.D. No. 626, as amended, defines compensable sickness as "any illness definitely accepted as an occupational disease listed by the Commission, or any illness caused by employment subject to proof by the employee that the risk of contracting the same is increased by the working conditions." Under Section 1 (b), Rule III, of the Amended Rules on Employees' Compensation, for the sickness and the resulting disability or death to be compensable, the same must be an "occupational disease" included in the list provided (Annex "A"), with the conditions set therein satisfied; otherwise, the claimant must show proof that the risk of contracting it is increased by the working conditions. Otherwise stated, for sickness and the resulting death of an employee to be compensable, the claimant

---

[11] ECC Resolution No. 432 dated July 20, 1977 states in part:

The following are deemed compensable:

x x x x x x x x x

r) **Cardiovascular Disease —** Under any of the following conditions:

(i) If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation [was] clearly precipitated by the unusual strain by reason of the nature of [his] work.

(ii) The strain of work that brings about an acute attack must be of sufficient severity and must be followed within twenty-four (24) hours by the clinical signs of a cardiac insult to constitute causal relationship.

(iii) If a person who was apparently [asymptomatic] before [being subjected] to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship.

must show either: (1) that it is a result of an occupational disease listed under Annex "A" of the Amended Rules on Employees' Compensation with the conditions set therein satisfied; or (2) if not so listed, that the risk of contracting the disease is increased by the working conditions.

First, we hold that the CA correctly considered Cardiopulmonary Arrest T/C Fatal Arrythmia in this case a cardiovascular disease – a listed disease under Annex "A" of the Amended Rules on Employees' Compensation.

The Death Certificate of Judge Vicencio clearly indicates that the cause of his death is Cardiopulmonary Arrest T/C Fatal Arrythmia. Whether, however, the same was a mere complication of his lung cancer as contended by petitioner GSIS or related to an underlying cardiovascular disease is not established by the records of this case and, thus, remains uncertain.

It must be remembered that P.D. No. 626, as amended, is a social legislation whose primordial purpose is to provide meaningful protection to the working class against the hazards of disability, illness and other contingencies resulting in the loss of income. Thus, the official agents charged by law to implement social justice guaranteed by the Constitution should adopt a liberal attitude in favor of the employee in deciding claims for compensability especially where there is some basis in the facts for inferring a work-connection with the illness or injury, as the case may be. It is only this kind of interpretation that can give meaning and substance to the compassionate spirit of the law as embodied in Article 4 of the New Labor Code which states that all doubts in the implementation and interpretation of the provisions of the Labor Code including their implementing rules and regulations should be resolved in favor of labor.[12]

Guided by this policy, we therefore hold that Cardiopulmonary Arrest T/C Fatal Arrythmia, the cause of death stated in Judge Vicencio's Death Certificate, should be considered as a

[12] *Buena Obra v. Social Security System*, G.R. No. 147745, April 9, 2003, 401 SCRA 206, 216.

cardiovascular disease — a listed disease under Annex "A" of the Amended Rules on Employees' Compensation.

Considering the stress and pressures of work inherent in the duties of a judge and it was established that Judge Vicencio was doing work in his office a few days immediately before the moment of his cardiac arrest,[13] we sustain the findings of the CA that the requisites for cardiovascular disease to be compensable under paragraph (r) of ECC Resolution No. 432 are satisfied in the case at bar.

Granting, however, that the only cause of Judge Vicencio's death is lung cancer, we are still one with the CA in its finding that the working conditions of the late Judge Vicencio contributed to the development of his lung cancer.

It is true that under Annex "A" of the Amended Rules on Employees' Compensation, lung cancer is occupational only with respect to vinyl chloride workers and plastic workers. However, this will not bar a claim for benefits under the law if the complainant can adduce substantial evidence that the risk of contracting the illness is increased or aggravated by the working conditions to which the employee is exposed to.

It is well-settled that the degree of proof required under P.D. No. 626 is merely substantial evidence, which means, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." What the law requires is a reasonable work-connection and not a direct causal relation. It is enough that the hypothesis on which the workman's claim is based is probable. Medical opinion to the contrary can be disregarded especially where there is some basis in the facts for inferring a work-connection. Probability, not certainty, is the touchstone.[14] It is not required that the employment be the

---

[13] *Supra* note 2 at 62.

[14] *Salalima v. Employees' Compensation Commission*, G.R. No. 146360, May 20, 2004, 428 SCRA 715, 722-723, citing *Salmone v. Employees' Compensation Commission and Social Security System*, G.R. No. 142392, 26 September 2000, 341 SCRA 150.

sole factor in the growth, development or acceleration of a claimant's illness to entitle him to the benefits provided for. It is enough that his employment contributed, even if to a small degree, to the development of the disease.[15]

The late Judge Vicencio was a frontline officer in the administration of justice, being the most visible living representation of this country's legal and judicial system.[16] It is undisputed that throughout his noble career from Fiscal to Metropolitan Trial Court Judge, and, finally, to RTC Judge, his work dealt with stressful daily work hours, and constant and long-term contact with voluminous and dusty records. We also take judicial notice that Judge Vicencio's workplace at the Manila City Hall had long been a place with sub-standard offices of judges and prosecutors overflowing with records of cases covered up in dust and are poorly ventilated. All these, taken together, necessarily contributed to the development of his lung illness.

The case of ***Dator v. Employees' Compensation Commission***[17] should be instructive:

> Until now the cause of cancer is not known. Despite this fact, however, the Employees' Compensation Commission has listed some kinds of cancer as compensable. There is no reason why cancer of the lungs should not be considered as a compensable disease. The deceased worked as a librarian for about 15 years. **During all that period she was exposed to dusty books and other deleterious substances in the library under unsanitary conditions.** (emphasis added)

On a final note, it bears stressing that the late Judge Vicencio worked in the government for a total of 37 years.[18] He is survived

---

[15] *La O v. Employees' Compensation Commission*, G.R. No. 50918, May 17, 1980, 97 SCRA 780, 790, citing *Manila Railroad Co. v. Workmen's Compensation Commission*, G.R. No. L-19773, May 30, 1964, 11 SCRA 305.

[16] *Government Service Insurance System v. Vallar*, G.R. No. 156023, October 18, 2007, 536 SCRA 620, 625.

[17] 197 Phil. 590, 593 (1982).

[18] CA *rollo*, pp. 49-51.

by his wife, respondent Mrs. Vicencio, and a daughter. Their claim for death benefits has been pending since 2001. As the public agency charged by law in implementing P.D. No. 626, petitioner GSIS should not lose sight of the fact that the constitutional guarantee of social justice towards labor demands a liberal attitude in favor of the employee in deciding claims for compensability.

IN VIEW WHEREOF, the petition is *DENIED*. The decision of the Court of Appeals is affirmed. No costs.

SO ORDERED.

Carpio, Corona, Leonardo-de Castro, and *Bersamin, JJ.*, concur.

FIRST DIVISION

[G.R. No. 179934. May 21, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* ERLINDA ABORDO and VINA CABANLONG, *appellants.*

SYLLABUS

1. CRIMINAL LAW; ILLEGAL RECRUITMENT; ELEMENTS. — The elements of illegal recruitment are (1) the offender has no valid license or authority required by law to lawfully engage in the recruitment and placement of workers; and (2) he undertakes any activity within the meaning of "recruitment and placement" defined under Article 13(b) of the Labor Code. Recruitment and placement is "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers; and includes referrals, contact services, promising or advertising for employment, locally or abroad, whether for profit or not: Provided, that any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement."

2. ID.; ID.; CONVICTION OF THE ACCUSED FOR ILLEGAL RECRUITMENT IN LARGE SCALE REQUIRES ONE INFORMATION TO INCLUDE ALL THE COMPLAINANTS; NOT PRESENT IN CASE AT BAR. — Since the accused were prosecuted under several informations for different complainants, the penalty imposed should be for each information charged. To convict the accused for illegal recruitment in large scale, there must be one information that must include all the complainants. Otherwise, the accused should be convicted only for simple illegal recruitment. Accordingly, the penalties imposed by the Court of Appeals in Criminal Case Nos. V-0655, V-0768, V-0770, and V-0771 (for simple illegal recruitment) are likewise correct.

3. ID.; ESTAFA; CONVICTION FOR ILLEGAL RECRUITMENT UNDER THE LABOR CODE DOES NOT PRECLUDE PROSECUTION FOR ESTAFA; ELEMENTS; PRESENT IN CASE AT BAR. — Conviction under the Labor Code for illegal recruitment does not preclude punishment under the Revised Penal Code for the felony of estafa. The prosecution proved beyond reasonable doubt that the accused committed estafa under Article 315, 2(a) of the Revised Penal Code, which states: 2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud: (a) By using fictitious name or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits. The prosecution established that in falsely pretending to possess power to deploy persons for overseas employment, the accused deceived the complainants into believing that they would provide them overseas work. Their assurances made complainants pay the placement fees required in exchange for the promised jobs. The elements of deceit and damage for this form of estafa are indisputably present; hence, the conviction for estafa in Criminal Case Nos. V-0654 (against Abordo), V-0767, V-0769, and V-0772 (against Abordo and Cabanlong) should be affirmed.

4. ID.; ID.; PENALTY. — Under Article 315 of the Revised Penal Code, estafa is punished by "the penalty of *prision correccional* in its maximum period (4 years, 2 months and 1 day to 6 years) to *prision mayor* in its minimum period (6 years and 1 day to 8 years), if the amount of the fraud is over 12,000 but does not exceed 22,000 pesos, and if such amount exceeds the latter sum,

the penalty x x x shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. x x x."

5. ID.; ID.; ID.; UNDER INDETERMINATE SENTENCE LAW, CONSTRUED. — The penalty prescribed for estafa is composed of only two, not three, periods. In such a case, Article 65 of the Revised Penal Code requires the division into three equal portions of time included in the penalty prescribed, and forming one period of each of the three portions. Therefore, the maximum, medium, and minimum periods of the penalty prescribed are: Minimum - 4 years, 2 months, 1 day to 5 years, 5 months, 10 days Medium - 5 years, 5 months, 11 days to 6 years, 8 months, 20 days Maximum - 6 years, 8 months, 21 days to 8 years If the amount defrauded does not exceed ₱22,000 and there is no aggravating or mitigating circumstance, the penalty prescribed shall be imposed in its medium period, or 5 years, 5 months and 11 days of *prision correccional* to 6 years, 8 months and 20 days of *prision mayor.* Under the Indeterminate Sentence Law, the maximum term of the prison sentence shall be that which, in view of the attending circumstances, could be properly imposed. On the other hand, the minimum term shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code for the crime. The penalty next lower to that prescribed by Article 315 is *prision correccional* in its minimum period (6 months, 1 day to 2 years and 4 months) to *prision correccional* in its medium period (2 years, 4 months and 1 day to 4 years and 2 months). From this, the minimum term of the indeterminate sentence shall be taken.

6. ID.; ID.; ID.; SERVICE OF SENTENCE; EXPLAINED IN CASE AT BAR. — The penalties in this case consisting in deprivation of liberty cannot be served simultaneously by reason of the nature of such penalties. Hence, since the accused are sentenced to two or more terms of imprisonment, the terms should be served successively.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellants.

D E C I S I O N

CARPIO, *J.*:

The Case

This is an appeal from the 21 June 2007 Decision[1] of the Court of Appeals in CA-G.R. CR HC No. 01701. The Court of Appeals affirmed with modification the 10 May 2001 Decision[2] of the Regional Trial Court of Villasis, Pangasinan, Branch 50, convicting Erlinda Abordo (Abordo) of estafa in Criminal Case No. V-0654 and of illegal recruitment in Criminal Case No. V-0655, and convicting Abordo and Vina Cabanlong (Cabanlong) of estafa in Criminal Case Nos. V-0767, V-0769, and V-0772 and of illegal recruitment in Criminal Case Nos. V-0768, V-0770, and V-0771.

The Facts

The Informations against the accused read as follows:

Criminal Case No. V-0654 (Estafa)

That during the period from February 3, 1994 to March 3, 1994, at Poblacion Zone II, Municipality of Villasis, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused (Erlinda Abordo), by means of deceit, deliberately misrepresenting herself to be capable of causing the employment of laborers abroad, knowing fully well that she is not duly or legally authorized to recruit laborers for employment abroad, did then and there willfully, unlawfully and feloniously demand and receive from Jesus Rayray *y* Bascos the sum of ₱14,000.00, Philippine currency with the undertaking of working for his employment abroad and thereafter, despite repeated demands, the said accused who failed to cause complainant's employment abroad, failed and refused to return the said amount of ₱14,000.00, thereby appropriating and converting the same for her own use and benefit to the damage and prejudice of said Jesus Rayray *y* Bascos in the said amount.[3]

---

[1] *Rollo*, pp. 3-19. Penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Mariano C. Del Castillo and Romeo F. Barza, concurring.

[2] CA *rollo*, pp. 54-74. Penned by Judge Rosario C. Cruz.

[3] *Id.* at 32.

Criminal Case No. V-0655 (Illegal Recruitment)

That during the period from February 3, 1994 to March 3, 1994 at Barangay Poblacion Zone II, Municipality of Villasis, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused (Erlinda Abordo), did then and there willfully, unlawfully and feloniously recruit Jesus Rayray *y* Bascos for employment abroad, without first securing the requisite license or authority from the Department of Labor and Employment.[4]

Criminal Case No. V-0767 (Estafa)

That during the month of December, 1994 at Barangay San Blas, Municipality of Villasis, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused (Erlinda Abordo and Vina Cabanlong), conspiring, confederating and mutually helping one another, by means of deceit, deliberately misrepresenting [themselves] to be capable of causing the employment of laborers abroad, knowing fully well that they are not duly or legally authorized to recruit laborers for employment abroad, did then and there willfully, unlawfully and feloniously demand and receive from Jaime Fernandez *y* Simon the sum of ₱45,000.00, Philippine currency with the undertaking of working for his employment abroad and thereafter, despite repeated demands, the said accused who failed to cause complainant's employment abroad, failed and refused to return the said amount of ₱45,000.00, thereby appropriating and converting the same for their own use and benefit to the damage and prejudice of said Jaime Fernandez *y* Simon in the said amount.[5]

Criminal Case No. V-0768 (Illegal Recruitment)

That during the month of December, 1994 at Barangay San Blas, Municipality of Villasis, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused (Erlinda Abordo and Vina Cabanlong), conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously recruit Jaime Fernandez *y* Simon for employment abroad, without first securing the requisite license or authority from the Department of Labor and Employment.[6]

---

[4] *Id.* at 33.

[5] *Id.* at 34.

[6] *Id.* at 35.

Criminal Case No. V-0769 (Estafa)

That during the month of December, 1994 at Barangay San Blas, Municipality of Villasis, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused (Erlinda Abordo and Vina Cabanlong), conspiring, confederating and mutually helping one another, by means of deceit, deliberately misrepresenting [themselves] to be capable of causing the employment of laborers abroad, knowing fully well that they are not duly or legally authorized to recruit laborers for employment abroad, did then and there willfully, unlawfully and feloniously demand and receive from Exequiel Mendoza *y* Olivar the sum of ₱45,000.00, Philippine currency with the undertaking of working for his employment abroad and, thereafter, despite repeated demands, the said accused who failed to cause complainant's employment abroad, failed and refused to return the said amount of ₱45,000.00, thereby appropriating and converting the same for their own use and benefit to the damage and prejudice of said Exequiel Mendoza *y* Olivar in the said amount.[7]

Criminal Case No. V-0770 (Illegal Recruitment)

That during the month of December, 1994 at Barangay San Blas, Municipality of Villasis, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused (Erlinda Abordo and Vina Cabanlong), conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously recruit Exequiel Mendoza *y* Olivar for employment abroad, without first securing the requisite license or authority from the Department of Labor and Employment.[8]

Criminal Case No. V-0771 (Illegal Recruitment)

That during the month of September, 1994 at Barangay San Blas, Municipality of Villasis, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused (Erlinda Abordo and Vina Cabanlong), conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously recruit Esmenia Cariño *y* Millano for employment abroad, without first securing the requisite license or authority from the Department of Labor and Employment.[9]

---

[7] *Id.* at 36.

[8] *Id.* at 37.

[9] *Id.* at 38.

Criminal Case No. V-0772 (Estafa)

That during the month of September, 1994 at Barangay San Blas, Municipality of Villasis, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused (Erlinda Abordo and Vina Cabanlong), conspiring, confederating and mutually helping one another, by means of deceit, deliberately misrepresenting [themselves] to be capable of causing the employment of laborers abroad, knowing fully well that they are not duly or legally authorized to recruit laborers for employment abroad, did then and there willfully, unlawfully and feloniously demand and receive from Esmenia Cariño *y* Millano the sum of ₱15,000.00, Philippine currency with the undertaking of working for [her] employment abroad and, thereafter, despite repeated demands, the said accused who failed to cause complainant's employment abroad, failed and refused to return the said amount of ₱15,000.00, thereby appropriating and converting the same for their own use and benefit to the damage and prejudice of said Esmenia Cariño *y* Millano in the said amount.[10]

The prosecution established that sometime in January 1994, Abordo recruited Jesus Rayray (Rayray) for possible employment abroad and collected a total of ₱14,000 as placement fee. Abordo assured Rayray that he could soon leave for abroad. Rayray was unable to leave as promised and only saw Abordo again when she was already in jail.[11]

Sometime in September 1994, Abordo and Cabanlong went to the house of Esmenia Cariño (Cariño) in Lipay, Villasis, Pangasinan, to persuade her to work as a domestic helper in Hong Kong. Cariño and Cabanlong used to be neighbors in San Blas, Villasis, Pangasinan. Upon being convinced by the accused, Cariño gave a total of ₱15,000 as placement fee. Despite this payment, Cariño was unable to leave for abroad.[12]

Sometime in December 1994, Abordo and Cabanlong went to the house of Segundina Fernandez (Segundina) in Caramitan,

---

[10] *Id.* at 39.

[11] *Rollo,* p. 8.

[12] *Id.*

Villasis, Pangasinan. Cabanlong and Segundina are first cousins. Cabanlong introduced Abordo as a recruiter. The accused told Segundina that they could secure employment for her son, Jaime, in Hong Kong upon payment of the placement fee. Segundina and Jaime agreed to the proposition. Segundina gave the accused cash and other valuables amounting to ₱45,000. Abordo gave a plane ticket to Jaime, which turned out to be fake; hence, Jaime was unable to leave for abroad.[13]

Sometime in December 1994, the accused went to the house of Exequiel Mendoza (Mendoza) in San Blas, Villasis, Pangasinan to convince him to work in Hong Kong as a security guard. Mendoza agreed to be recruited and to pay ₱45,000 as placement fee. Abordo assured him that as soon as he could pay the placement fee, he could work abroad. Mendoza gave Abordo cash and pieces of jewelry amounting to ₱39,000. Despite several promises from Abordo, Mendoza was unable to leave for Hong Kong. Thus, he demanded from the accused the return of his money and pieces of jewelry, but to no avail.[14]

Adonis Peralta, Dagupan District Officer of the Department of Labor and Employment, issued certifications dated 29 September 1993 and 3 August 1993 stating that the accused were not included in the Philippine Overseas and Employment Agency list of those licensed to recruit in Pangasinan.[15]

The accused denied the charges against them. In their brief, the accused claimed that they could not be held liable for estafa under Article 315, 2(a) of the Revised Penal Code since the element of deceit was not established. They alleged that they received the placement fees on behalf of the travel agency. They argued that it was unclear whether the false statements or fraudulent representations were made prior to or simultaneously with the delivery of the money by the complainants.

---

[13] CA *rollo*, pp. 163-164.

[14] *Id.* at 164-165.

[15] *Id.* at 166.

The Ruling of the Trial Court

After the trial, the Regional Trial Court, Branch 50, Villasis, Pangasinan rendered a Decision dated 10 May 2001 disposing of the cases as follows:

WHEREFORE, foregoing premises considered, the Court finds the accused Erlinda Abordo and Vina Cabanlong guilty beyond reasonable doubt of the crime of Illegal Recruitment in large scale in Crim. Case Nos. V-0655, V-0768, V-0770 and V-0771, defined and penalized under Art. 38, par. (a) in relation to Art. 39, par. (a) of the Labor Code of the Philippines, as amended by P.D. 2018, and hereby sentences them to suffer the penalty of life imprisonment and to pay, jointly and severally, fine of ONE HUNDRED THOUSAND PESOS (₱100,000.00).

Accused Erlinda Abordo is, likewise, found guilty beyond reasonable doubt of the crime of Estafa in Crim. Case No. V-0654, as provided under Art. 315, par. 2(a), and hereby sentences her to suffer the indeterminate penalty of SIX (6) MONTHS and ONE (1) DAY of *prision correccional* in its minimum and medium periods, as the minimum, to FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of *prision correccional* in its maximum period to *prision mayor* in its minimum period, as the maximum, and to reimburse Jesus Rayray the amount of FOURTEEN THOUSAND PESOS (₱14,000.00).

Further, accused Erlinda Abordo and Vina Cabanlong are found guilty beyond reasonable doubt of three (3) counts of estafa and hereby sentences them to suffer the indeterminate penalty of:

1) SIX (6) MONTHS and ONE (1) DAY of *prision correccional* in it (sic) minimum and medium periods, as the minimum to TEN (10) YEARS of *prision mayor*, medium, as the maximum and to reimburse Jaime Fernandez the amount of FORTY FIVE THOUSAND PESOS (₱45,000.00) in Crim. Case No. V-0767;

2) SIX (6) MONTHS and ONE (1) DAY of *prision correccional* in its minimum and medium periods, as the minimum, to NINE (9) YEARS of *prision mayor*, medium, as the maximum and to reimburse Exequiel Mendoza the amount of THIRTY NINE THOUSAND PESOS (₱39,000.00) in Crim. Case No. V-0769; and

3) SIX (6) MONTHS and ONE (1) DAY of *prision correccional* in its minimum and medium periods, as the minimum to FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of *prision*

correccional in its maximum period to *prision mayor* in its minimum period, as the maximum, and to reimburse Esmenia Carino the amount of FIFTEEN THOUSAND PESOS (₱15,000.00) in Crim. Case No. V-0772.

SO ORDERED.[16]

The Ruling of the Court of Appeals

The Court of Appeals found that the prosecution sufficiently established the accused's guilt for illegal recruitment. The accused cooperated with each other in convincing complainants to pay placement fees for employment abroad. The accused received money from the complainants. The act of the accused of recruiting complainants for employment abroad without the necessary license from the POEA constitutes the offense of illegal recruitment.

The Court of Appeals also found that the prosecution has established accused's guilt for estafa. The Court of Appeals stated that the very same evidence proving the accused's commission of the offense of illegal recruitment also established that the accused connived in defrauding complainants by misrepresenting that they had the power, influence, agency and business to obtain overseas employment for complainants upon payment of placement fees. Complainants suffered damages to the extent of the various sums of money they delivered to accused.

The Court of Appeals modified the penalties imposed on the accused as each information involved only one complainant. The accused cannot be convicted for illegal recruitment in large scale based on several informations each filed by only one complainant. The trial court erred in considering the three complainants in the two criminal cases when it convicted the accused of illegal recruitment in large scale. Since the accused were prosecuted under several informations for different complainants, the penalty imposed should be for each information. To convict the accused of illegal recruitment in large scale,

[16] *Id.* at 73-74.

there must be one information that must include all the complainants. Otherwise, the accused should be held liable only for simple illegal recruitment.

The dispositive portion of the 21 June 2007 Decision of the Court of Appeals reads:

(1) In Criminal Case No. V-0655, accused-appellant Erlinda Abordo is found GUILTY beyond reasonable doubt of the crime of Simple Illegal Recruitment and is sentenced to suffer a prison term of Six (6) years and One (1) day as minimum, to Twelve (12) years as maximum, and to pay a fine of ₱200,000.

(2) In Criminal Case Nos. V-0768, V-0770 and V-0771, Erlinda Abordo and Vina Cabanlong are found Guilty of three (3) counts of Simple Illegal Recruitment, and are sentenced to suffer a prison term of Six (6) years and one (1) day as minimum, to twelve (12) years as maximum, and to pay a fine of ₱200,000 on each count.

(3) Accused Erlinda Abordo is, likewise, found guilty beyond reasonable doubt of the crime of Estafa in Crim. Case No. V-0654, as provided for under Art. 315, par. 2(a), and is hereby sentenced to suffer the indeterminate penalty of SIX (6) MONTHS and ONE (1) DAY of *prision correccional* in its minimum and medium periods, as minimum, to FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of *prision correccional* in its maximum period to *prision mayor* in its minimum period, as maximum, and to reimburse Jesus Rayray in the amount of FOURTEEN THOUSAND PESOS (₱14,000).

(4) Further, accused Erlinda Abordo and Vina Cabanlong are found guilty beyond reasonable doubt of three (3) counts of estafa and are hereby sentenced to suffer the indeterminate penalty of:

a) SIX (6) MONTHS AND ONE (1) DAY of *prision correccional* in its minimum and medium periods, as the minimum, to TEN (10) YEARS of *prision mayor*, medium, as the maximum and to reimburse Jaime Fernandez in the amount of FORTY FIVE THOUSAND PESOS (₱45,000) in Crim. Case No. V-0767;

b) SIX (6) MONTHS AND ONE (1) DAY of *prision correccional* in its minimum and medium periods, as the minimum, to NINE (9) YEARS of *prision mayor*, medium, as the maximum and to reimburse Exequiel Mendoza in the amount of THIRTY NINE THOUSAND PESOS (₱39,000) in Crim. Case No. V-0769; and

c) SIX (6) MONTHS AND ONE (1) DAY of *prision correccional* in its minimum and medium periods, as the minimum to FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of *prision correccional* in its maximum period to *prision mayor* in its minimum period, as maximum, and to reimburse Esmenia Cariño in the amount of FIFTEEN THOUSAND (₱15,000) in Crim. Case No. V-0772.[17]

The Issue

The sole issue in this case is whether the accused are guilty of simple illegal recruitment and estafa under Article 315, 2(a) of the Revised Penal Code.

The Ruling of this Court

The Court affirms the conviction of the accused for the crimes charged. However, the Court modifies the penalties imposed on the accused in the estafa cases.

The elements of illegal recruitment are (1) the offender has no valid license or authority required by law to lawfully engage in the recruitment and placement of workers; and (2) he undertakes any activity within the meaning of "recruitment and placement" defined under Article 13(b) of the Labor Code.[18] Recruitment and placement is "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers; and includes referrals, contact services, promising or advertising for employment, locally or abroad, whether for profit or not: Provided, that any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement."[19]

The prosecution sufficiently established Abordo's guilt beyond reasonable doubt for the offense of simple illegal recruitment in Criminal Case No. V-0655. Without the necessary license,

---

[17] *Rollo*, pp. 17-19.

[18] *People v. Hu*, G.R. No. 182232, 6 October 2008.

[19] Article 13(b) of the Labor Code of the Philippines; Section 6 of Republic Act No. 8042 or the "Migrant Workers and Overseas Filipinos Act of 1995."

Abordo unlawfully recruited Rayray for deployment abroad. In exchange for this promised overseas job, Rayray paid Abordo ₱14,000.

Conniving with Cabanlong, Abordo also illegally recruited Jaime, Mendoza, and Cariño who paid the accused ₱45,000, ₱39,000 and ₱15,000, respectively, as placement fees. Despite their payments of the placement fees, all the complainants were unable to depart the country for work abroad.

The Court of Appeals did not err in holding that the accused are guilty of simple illegal recruitment only, modifying the trial court's ruling that the accused are guilty of illegal recruitment in large scale. Since the accused were prosecuted under several informations for different complainants, the penalty imposed should be for each information charged.[20] To convict the accused for illegal recruitment in large scale, there must be one information that must include all the complainants.[21] Otherwise, the accused should be convicted only for simple illegal recruitment.[22] Accordingly, the penalties imposed by the Court of Appeals in Criminal Case Nos. V-0655, V-0768, V-0770, and V-0771 (for simple illegal recruitment) are likewise correct.[23]

The Court also affirms the conviction of Abordo for estafa committed against Rayray and the conviction of Abordo and Cabanlong for estafa committed against Jaime, Mendoza, and Cariño. Conviction under the Labor Code for illegal recruitment does not preclude punishment under the Revised Penal Code for the felony of estafa.[24] The prosecution proved beyond

---

[20] *Rollo*, p. 16. See *People v. Dela Piedra*, 403 Phil. 31 (2001); *People v. Ordoño,* 390 Phil. 649 (2000).

[21] *Id*.

[22] *Id*.

[23] Section 7(a) of RA 8042 provides:

Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than Two hundred thousand pesos (₱200,000) nor more than Five hundred thousand pesos (₱500,000).

[24] *People v. Ortiz-Miyake*, 344 Phil. 598, 614 (1997).

reasonable doubt that the accused committed estafa under Article 315, 2(a) of the Revised Penal Code, which states:

> 2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
>
> (a) By using fictitious name or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

The prosecution established that in falsely pretending to possess power to deploy persons for overseas employment, the accused deceived the complainants into believing that they would provide them overseas work. Their assurances made complainants pay the placement fees required in exchange for the promised jobs. The elements of deceit and damage for this form of estafa are indisputably present; hence, the conviction for estafa in Criminal Case Nos. V-0654 (against Abordo), V-0767, V-0769, and V-0772 (against Abordo and Cabanlong) should be affirmed.

Under Article 315 of the Revised Penal Code, estafa is punished by "the penalty of *prision correccional* in its maximum period (4 years, 2 months and 1 day to 6 years) to *prision mayor* in its minimum period (6 years and 1 day to 8 years), if the amount of the fraud is over 12,000 but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty x x x shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. x x x."

The penalty prescribed for estafa is composed of only two, not three, periods. In such a case, Article 65 of the Revised Penal Code requires the division into three equal portions of time included in the penalty prescribed, and forming one period of each of the three portions. Therefore, the maximum, medium, and minimum periods of the penalty prescribed are:

Minimum - 4 years, 2 months, 1 day to 5 years, 5 months, 10 days

Medium - 5 years, 5 months, 11 days to 6 years, 8 months, 20 days

Maximum - 6 years, 8 months, 21 days to 8 years[25]

If the amount defrauded does not exceed ₱22,000 and there is no aggravating or mitigating circumstance, the penalty prescribed shall be imposed in its medium period, or 5 years, 5 months and 11 days of *prision correccional* to 6 years, 8 months and 20 days of *prision mayor*.

Under the Indeterminate Sentence Law, the maximum term of the prison sentence shall be that which, in view of the attending circumstances, could be properly imposed.

On the other hand, the minimum term shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code for the crime. The penalty next lower to that prescribed by Article 315 is *prision correccional* in its minimum period (6 months, 1 day to 2 years and 4 months) to *prision correccional* in its medium period (2 years, 4 months and 1 day to 4 years and 2 months). From this, the minimum term of the indeterminate sentence shall be taken.[26]

Accordingly, in Criminal Case No. V-0654 (for estafa involving ₱14,000), Abordo is sentenced to an indeterminate penalty of 6 months and 1 day of *prision correccional*, as minimum, to 5 years, 5 months and 11 days of *prision correccional*, as maximum. Abordo should also refund to Rayray the amount of ₱14,000 with legal interest from the filing of the information until this amount is fully paid.

In Criminal Case No. V-0767 (for estafa involving ₱45,000), Abordo and Cabanlong are sentenced to an indeterminate penalty of 6 months and 1 day of *prision correccional*, as minimum, to 10 years of *prision mayor*, as maximum. The accused should also refund to Jaime the amount of ₱45,000 with legal interest from the filing of the information until this amount is fully paid.

---

[25] *People v. Billaber*, 465 Phil. 726, 744 (2004).

[26] *Id.* at 745.

In Criminal Case No. V-0769 (for estafa involving ₱39,000), Abordo and Cabanlong are sentenced to an indeterminate penalty of 6 months and 1 day of *prision correccional*, as minimum, to 9 years of *prision mayor*, as maximum. The accused should also refund to Mendoza the amount of ₱39,000 with legal interest from the filing of the information until this amount is fully paid.

In Criminal Case No. V-0772 (for estafa involving ₱15,000), Abordo and Cabanlong are sentenced to an indeterminate penalty of 6 months and 1 day of *prision correccional*, as minimum, to 5 years, 5 months and 11 days of *prision correccional*, as maximum. The accused should also refund to Cariño the amount of ₱15,000 with legal interest from the filing of the information until this amount is fully paid.

The penalties in this case consisting in deprivation of liberty cannot be served simultaneously by reason of the nature of such penalties.[27] Hence, since the accused are sentenced to two or more terms of imprisonment, the terms should be served successively.[28]

WHEREFORE, the Court *AFFIRMS* the 21 June 2007 Decision of the Court of Appeals in CA-G.R. CR HC No. 01701 with the following *MODIFICATIONS*:

1. In Criminal Case No. V-0654 (for estafa involving ₱14,000), Erlinda Abordo is sentenced to an indeterminate penalty of 6 months and 1 day of *prision correccional*, as minimum, to 5 years, 5 months and 11 days of *prision correccional*, as maximum. Abordo should also refund to Jesus Rayray the amount of ₱14,000 with legal interest from the filing of the information until this amount is fully paid.

---

[27] Article 70 of the Revised Penal Code. See *In the Matter of the Petition for Habeas Corpus of Lagran*, 415 Phil. 506, 510 (2001) citing Reyes, *Revised Penal Code Book I*, 13th ed. (1993), p. 748.

[28] *In the Matter of the Petition for Habeas Corpus of Lagran*, *supra* citing *Gordon v. Wolfe*, 6 Phil. 76 (1906).

2. In Criminal Case No. V-0767 (for estafa involving ₱45,000), Erlinda Abordo and Vina Cabanlong are sentenced to an indeterminate penalty of 6 months and 1 day of *prision correccional*, as minimum, to 10 years of *prision mayor*, as maximum. The accused should also refund to Jaime Fernandez the amount of ₱45,000 with legal interest from the filing of the information until this amount is fully paid.

3. In Criminal Case No. V-0769 (for estafa involving ₱39,000), Erlinda Abordo and Vina Cabanlong are sentenced to an indeterminate penalty of 6 months and 1 day of *prision correccional*, as minimum, to 9 years of *prision mayor*, as maximum. The accused should also refund to Exequiel Mendoza the amount of ₱39,000 with legal interest from the filing of the information until this amount is fully paid.

4. In Criminal Case No. V-0772 (for estafa involving ₱15,000), Erlinda Abordo and Vina Cabanlong are sentenced to an indeterminate penalty of 6 months and 1 day of *prision correccional*, as minimum, to 5 years, 5 months and 11 days of *prision correccional*, as maximum. The accused should also refund to Esmenia Cariño the amount of ₱15,000 with legal interest from the filing of the information until this amount is fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 174981. May 25, 2009]

TELECOMMUNICATIONS DISTRIBUTORS SPECIALIST, INC., GREGORIO A. ATIENZA, SMART COMMUNICATIONS, INC., and NAPOLEON L. NAZARENO, *petitioners, vs.* **RAYMUND GARRIEL,**[1] *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE QUASI-JUDICIAL AGENCIES ARE NOT REVIEWABLE BY THE SUPREME COURT; EXCEPTION, WHEN WARRANTED. — As a general rule, the findings of fact of the quasi-judicial agencies are not reviewable in this Court in a petition for review. However, in instances where the judgment was premised on a misapprehension of facts or when certain material facts and circumstances were overlooked and which, if taken into account, would alter the result of the case, a review of the facts by this Court is warranted.

2. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; RETRACTION DOES NOT NECESSARILY NEGATE AN EARLIER DECLARATION; RATIONALE.— Ratcliffe's retraction did not diminish respondent's liability. A retraction does not necessarily negate an earlier declaration. It is in such instance where the rules of evidence come into play. The court should exercise its discretion on which statement is more credible based on established rules. The reason for this is: [I]t was more reasonable to believe that the affidavits of retraction were, as claimed by petitioner, a mere afterthought, executed out of compassion to enable private respondent to extricate himself from the consequence of his malfeasance. As such, the affidavits have no probative value. This Court is of course aware of the usual ploy of people "caught in the act" of asking for forgiveness and playing on the emotions of the victim or

[1] The National Labor Relations Commission was originally impleaded as a respondent but the Court excluded it pursuant to Section 4, Rule 45 of the Rules of Court.

disciplining authority to extract pity. The retraction executed by Ratcliffe was illogical and not credible, coming as it did from out of the blue after her angry complaint against respondent.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; EMPLOYEE'S DISMISSAL MUST BE SUPPORTED BY SUBSTANTIAL EVIDENCE; PRESENT IN CASE AT BAR. — An employee's dismissal must be supported by substantial evidence. This burden of proof is on the employer. This TDSI was able to discharge. Respondent failed to make Ratcliffe and Huilar sign the coverage waivers. Such failure, in itself, although a misconduct, was not serious enough to warrant dismissal. The serious misconduct was respondent's act of forging the signatures of Ratcliffe and Huilar to cover up his negligence. In fact, he even instructed Ratcliffe to lie and "just say yes" to the questions that may be asked of her by the company. x x x The forgery attributed to him was plainly the act of falsely and fraudulently making or altering a writing or other instrument that, if genuine, might apparently be of legal effect on the rights of another. When he passed off the signatures in the coverage waiver as those of Ratcliffe and Huilar, respondent committed forgery though not necessarily those in Articles 161 to 168 of the RPC. It might as well have been considered as falsification punishable under Article 172 (2) in relation to Art. 171 of the RPC. Respondent's defense was therefore off-tangent and failed to squarely refute the overwhelming evidence against him.

4. ID.; ID.; ID.; SERIOUS MISCONDUCT, AS A GROUND; DEFINED. — In *Philippine Long Distance Telephone Company v. Bolso*, we held: Misconduct is improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. The misconduct, to be serious within the meaning of the Labor Code must be of such grave and aggravated character and not merely trivial or unimportant. Such misconduct, however serious, must nevertheless be in connection with the employee's work to constitute just cause for his separation.

5. ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE, AS A GROUND; REQUISITES. — Respondent's acts were likewise grounds for loss of trust and confidence, another valid cause

for termination of employment. Only employees occupying positions of trust and confidence or those who are routinely charged with the care and custody of the employer's money or property may be validly dismissed for this reason. Respondent fell within the latter category as the following requisites were met: (a) the loss of confidence must not be simulated; (b) it should not be used as a subterfuge for causes which are illegal, improper or unjustified; (c) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; (d) it must be genuine, not a mere afterthought, to justify earlier action taken in bad faith and (e) the employee involved holds a position of trust and confidence.

6. ID.; ID.; ID.; ESSENCE OF DUE PROCESS IS SIMPLY THE OPPORTUNITY TO BE HEARD; SUSTAINED. — Respondent was given ample opportunity to explain and rebut the evidence against him. A full adversarial hearing was not required. The essence of due process is simply the opportunity to be heard. As applied in administrative proceedings, it is merely an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. As held in *Perez and Doria v. Philippine Telegraph and Telephone Company and Santiago*: After receiving the first notice apprising him of the charges against him, the employee may submit a written explanation xxx and offer evidence in support thereof xxx and the sworn statements of his witnesses. For this purpose, he may prepare his explanation personally or with the assistance of a representative or counsel. He may also ask the employer to provide him copy of records material to his defense. His written explanation may also include a request that a formal hearing or conference be held. In such a case, the conduct of a formal hearing or conference becomes mandatory, just as it is where there exist substantial evidentiary disputes or where company rules or practice requires an actual hearing as part of employment pretermination procedure. This interpretation of Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code reasonably implements the "ample opportunity to be heard" standard under Article 277 (b) of the Labor Code **without unduly restricting the language of the law or excessively burdening the employer**. This not only respects the power vested in the Secretary of Labor and Employment to promulgate rules and regulations that will lay down the guidelines for the

implementation of Article 277 (b). More importantly, this is faithful to the mandate of Article 4 of the Labor Code that "[a]ll doubts in the implementation and interpretation of the provisions of [the Labor Code], including its implementing rules and regulations shall be resolved in favor of labor." In sum, the following are the guiding principles in connection with the hearing requirement in dismissal cases: (a) "ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way. (b) A formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it. (c) The "ample opportunity to be heard" standard in the Labor Code prevails over the "hearing or conference" requirement in the implementing rules and regulations.

APPEARANCES OF COUNSEL

Español Syquia-Santos Plaza-Cortez Tuaño & Malagar and *Villanueva Gabionza & De Santos* for petitioners.
Carlos S. Mesticampo for respondent.

D E C I S I O N

CORONA, *J.*:

This petition for review on *certiorari*[2] assails the June 28, 2006 decision[3] and September 29, 2006 resolution[4] of the Court of Appeals (CA) finding that respondent Raymund Garriel was illegally dismissed.

---

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

[3] Penned by Associate Justice Isaias P. Dicdican (retired) and concurred in by Associate Justices Apolinario D. Brusuelas, Jr. and Agustin S. Dizon (retired) of the Nineteenth Division of the CA. *Rollo*, pp. 631-640.

[4] *Id.*, pp. 649-651.

Respondent was a Customer Sales Assistant (CSA)[5] of petitioner Telecommunications Distributors Specialist, Inc. (TDSI).[6] He had direct access to company assets and property, in terms of cash collections from subscribers and customers as well as goods and inventory to be sold to subscribers and customers.

Three incidents triggered the filing of this case. The first incident involved one Lourdes Ratcliffe who subscribed to mobile phone services and purchased a mobile phone unit from TDSI through respondent, the attending CSA. Respondent failed to make Ratcliffe sign a coverage waiver.[7] Days later, respondent called up Ratcliffe and asked her to just answer "yes" in case she was questioned by the company regarding her application.[8] It was later found that Ratcliffe's signature in the coverage waiver was forged. (Respondent's instruction for Ratcliffe to say "yes" was apparently meant to validate the forged signature he affixed on the coverage waiver.)

A similar incident involving one Mila Huilar occurred. Respondent also failed to ask Huilar to sign the coverage waiver. Huilar's signature was likewise found to have been forged.

---

[5] In other parts of the *rollo*, the position was referred to as Counter Sales Assistant.

[6] TDSI and Smart are corporations duly established and existing under Philippine laws. Petitioner Gregorio A. Atienza was TDSI president while petitioner Napoleon L. Nazareno was the president of Smart Telecommunications, Inc. (Smart). TDSI was engaged in the business of selling mobile phone products and accessories. Smart was and still is engaged in the business of providing telecommunication services. In the last quarter of 2002, TDSI sold substantially all its assets to Smart. Consequently, the employees of TDSI were absorbed by Smart.

[7] The waiver provided: "I am aware that there are areas where SMART has no coverage yet. However, this will not be detrimental to my application for subscription to the SMART Gold GSM service, as I plan to use my celfone as a mobile where SMART has coverage." Petitioners averred that it was imperative that this waiver be signed by the subscriber because it was obviously intended to protect petitioners from any complaints for breach of contract in view of the fact that there were then areas not yet served by petitioners or areas which had no service.

[8] Affidavit of Lourdes Ratcliffe dated October 3, 2000.

In the third incident, a subscriber named Helcon Mabesa purchased a mobile phone unit from TDSI. Respondent attended to him but did not issue an official receipt. It was later discovered that respondent sold a defective mobile phone personally owned by him to Mabesa who eventually demanded a replacement. Respondent replaced the defective unit with a similar unit from one of TDSI's counters. Respondent thereafter attempted to influence Jason Mapa, his co-employee and fellow CSA, to declare a cash shortage of ₱5,000 as he (respondent) could not pay for the unit he filched to replace Mabesa's defective phone.

These incidents came to the attention of TDSI's human resources department manager, Joann P. Hizon, who lost no time in meeting with Ratcliffe, Huilar and Mabesa. The latter reiterated their complaints. On October 17, 2000, respondent was issued a notice to explain which served as a formal notice of violation of company rules and procedures.[9]

In a memorandum dated October 20, 2000,[10] respondent categorically denied the accusations against him. He relied on Ratcliffe's retraction[11] to exculpate himself, insisted that Huilar's signature on the coverage waiver was genuine and that no such transaction with Mabesa occurred on the pertinent date.

Respondent was formally investigated. In a notice dated February 7, 2001,[12] respondent was dismissed on grounds of serious misconduct and loss of trust and confidence.

Respondent filed a complaint for illegal dismissal[13] in the Regional Arbitration Branch No. VI of Bacolod City. In a decision dated March 23, 2004,[14] the labor arbiter ruled that respondent was illegally dismissed. Respondent was awarded separation pay in lieu of reinstatement which was no longer possible due

---

[9] *Rollo*, p. 689.

[10] *Id.*, p. 695.

[11] Dated October 20, 2000.

[12] *Rollo*, pp. 702-704.

[13] Docketed as NLRC RAB VI CASE NO. 06-05-10311-01.

[14] *Rollo*, pp. 783-786.

to strained relations between the parties. The labor arbiter did not award backwages.

Petitioners appealed to the NLRC. The labor arbiter's finding of illegal dismissal was affirmed, with the observation that due process was not observed in dismissing respondent.

Petitioners elevated the case to the CA. The NLRC decision was affirmed with modification. The CA held that due process had been observed and awarded backwages in favor of respondent.

In this petition, petitioners seek a reversal of the CA decision. They argue that substantial evidence showed that respondent was dismissed for just and lawful causes when he committed acts of dishonesty and disloyalty against petitioners constituting serious misconduct and resulting in loss of trust and confidence.

We agree with petitioners.

As a general rule, the findings of fact of the quasi-judicial agencies are not reviewable in this Court in a petition for review. However, in instances where the judgment was premised on a misapprehension of facts or when certain material facts and circumstances were overlooked and which, if taken into account, would alter the result of the case, a review of the facts by this Court is warranted.[15]

---

[15] *Nombrefia v. People*, G.R. No. 157919, 30 January 2007, 513 SCRA 368, 375-376. Other exceptions include: (1) When the conclusion is a finding grounded entirely on speculations, surmise or conjecture; (2) When the inference made is manifestly absurd, mistaken or impossible; (3) When there is grave abuse of discretion in the appreciation of facts; (4) When the judgment is premised on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals in making its findings went beyond the issues of the case and the same are contrary to the admission of both appellants and appellees; (7) When the findings of fact of the Court of Appeals are at variance with those of the trial court, the Supreme Court has to review the evidence in order to arrive at the correct findings based on the record; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The findings of fact of the Court of Appeals are premised on the supposed absence of evidence and are contradicted by the evidence on record.

RESPONDENT'S ACTS OF DISLOYALTY AND DISHONESTY CONSTITUTED SERIOUS MISCONDUCT AND LOSS OF TRUST AND CONFIDENCE

Respondent's tasks included the following:

(a) efficiently, effectively and accurately screen/validate pertinent cellphone application requirements submitted by the agent dealers, agent coordinators and walk-in subscribers,

(b) as cashier, ensures the proper reconciliation of stocks and collection with BA at the end of the day. Submits cash account summary report to BA attached to the DSCR,

(c) prepares Daily Sales Collection Reports (DSCR) for submission to DA, daily,

(d) acceptance of payments from walk-in clients, agents and AC and issues OR/SI (Official Receipts/Sales Invoice) for said payment, and

(e) ensure completeness of remittances received from customers, agents, dealers and agent coordinators.[16]

An employee's dismissal must be supported by substantial evidence.[17] This burden of proof is on the employer. This TDSI was able to discharge.

Respondent failed to make Ratcliffe and Huilar sign the coverage waivers. Such failure, in itself, although a misconduct, was not serious enough to warrant dismissal. The serious misconduct was respondent's act of forging the signatures of Ratcliffe and Huilar to cover up his negligence. In fact, he even instructed Ratcliffe to lie and "just say yes" to the questions that may be asked of her by the company.

Respondent claims he cannot be held liable for forgery because the act was not among the forgeries punishable under Articles 161 to 168, Chapter One, Title Four, Book Two of the Revised

---

[16] *Rollo*, p. 688.

[17] *PLDT v. Bolso*, G.R. No. 159701, 17 August 2007, 530 SCRA 550, 560.

Penal Code (RPC).[18] We disagree. The forgery attributed to him was plainly the act of falsely and fraudulently making or altering a writing or other instrument that, if genuine, might apparently be of legal effect on the rights of another.[19]

When he passed off the signatures in the coverage waiver as those of Ratcliffe and Huilar, respondent committed forgery though not necessarily those in Articles 161 to 168 of the RPC. It might as well have been considered as falsification punishable under Article 172 (2) in relation to Art. 171 of the RPC.[20] Respondent's defense was therefore off-tangent and failed to squarely refute the overwhelming evidence against him.

Ratcliffe's retraction did not diminish respondent's liability. A retraction does not necessarily negate an earlier declaration.[21] It is in such instance where the rules of evidence come into play. The court should exercise its discretion on which statement

---

[18] The forgeries contemplated in this chapter of the RPC are:
(a) Art. 161 – Counterfeiting the great seal of the Government of the Philippine Islands, forging the signature or stamp of the Chief Executive;
(b) Art. 162 – Using forged signature or counterfeit seal or stamps;
(c) Art. 163 – Making and importing and uttering false coins;
(d) Art. 164 – Mutilation of coins;
(e) Art. 165 – Selling of false or mutilated coin;
(f) Art. 166 – Forging treasury or bank notes or other documents payable to bearer, importing and uttering such false or forged notes and documents;
(g) Art. 167 – Counterfeiting, importing and uttering instruments not payable to bearer;
(h) Art. 168 – Illegal possession and use of false treasury or bank notes and other instruments of credit.

[19] *WEBSTER'S THIRD INTERNATIONAL DICTIONARY,* 1993 ed., p. 891.

[20] Art. 172 (2) of the RPC provides: " Art. 172. *Falsification by private individuals and use of falsified documents.* — xxx (2) Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article." In this case, the act of falsification is counterfeiting or imitating any handwriting or signature, punishable under Art. 171 (1).

[21] *Supra* note 17 at 562.

is more credible based on established rules. The reason for this is:

> [I]t was more reasonable to believe that the affidavits of retraction were, as claimed by petitioner, a mere afterthought, executed out of compassion to enable private respondent to extricate himself from the consequence of his malfeasance. As such, the affidavits have no probative value.[22]

This Court is of course aware of the usual ploy of people "caught in the act" of asking for forgiveness and playing on the emotions of the victim or disciplining authority to extract pity. The retraction executed by Ratcliffe was illogical and not credible, coming as it did from out of the blue after her angry complaint against respondent.

With respect to the charge of selling his own (defective) phone and passing it off as brand-new from the company, respondent failed to rebut the overwhelming evidence presented by petitioners. Mabesa testified that respondent, as the attending CSA, did not issue an official receipt when he bought a mobile phone unit. Jasmin Jayme, respondent's immediate supervisor, testified that Mabesa's mobile phone had several defects and irregularities, including the fact that the particular unit was not from the stock sold by their branch. Jason Mapa and Jonalyn Camarista, respondent's co-employees, testified that they saw respondent attending to Mabesa and selling his personally owned mobile phone. In the face of all these testimonies, respondent's denial and evidence failed to rebut evidence that such a transaction took place.

Respondent's acts of forging subscribers' signatures, attempting to cover up his failure to secure their signatures on the coverage waivers, selling a personally owned mobile phone to a company customer (a defective one at that) and attempting to connive with other TDSI employees to cover up his illicit schemes were serious acts of dishonesty, according to TDSI's Code of Discipline:

---

[22] *PLDT v. NLRC*, G.R. No. 74562, 31 July 1987, 152 SCRA 702, 707.

Item 11. Falsification of other company records, documents or forging signature of company officials.

Item 12. Conniving with employees, superiors, customers, competitors or anybody to defraud the Company or to commit an offense under the established rules and regulations of the Company.

Item 15. Engaging in the same business activities which are part of the same nature with the operations or business of the Company.

Item 18. All other acts of dishonesty which cause or may tend to cause prejudice to the Company shall be subject to disciplinary action depending upon the gravity of the offense.[23]

In *Philippine Long Distance Telephone Company v. Bolso*,[24] we held:

Misconduct is improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. The misconduct, to be serious within the meaning of the Labor Code must be of such grave and aggravated character and not merely trivial or unimportant. Such misconduct, however serious, must nevertheless be in connection with the employee's work to constitute just cause for his separation.

Respondent's acts clearly constituted serious misconduct which is a ground for termination of employment by an employer.[25]

Respondent's acts were likewise grounds for loss of trust and confidence, another valid cause for termination of employment.[26] Only employees occupying positions of trust and confidence or those who are routinely charged with the care and custody of the employer's money or property may be validly dismissed for this reason. Respondent fell within the latter category as the following requisites were met:

---

[23] *Rollo*, p. 777.

[24] *Supra* note 17 at 560.

[25] LABOR CODE, Book VI, Title I, Art. 282 (a).

[26] LABOR CODE, Book VI, Title I, Art. 282 (c).

(a) the loss of confidence must not be simulated;

(b) it should not be used as a subterfuge for causes which are illegal, improper or unjustified;

(c) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary;

(d) it must be genuine, not a mere afterthought, to justify earlier action taken in bad faith; and

(e) the employee involved holds a position of trust and confidence.[27]

DUE PROCESS WAS NOT VIOLATED

Respondent was given ample opportunity[28] to explain and rebut the evidence against him. A full adversarial hearing was not required. The essence of due process is simply the opportunity to be heard. As applied in administrative proceedings, it is merely an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.[29] As held in *Perez and Doria v. Philippine Telegraph and Telephone Company and Santiago*:[30]

After receiving the first notice apprising him of the charges against him, the employee may submit a written explanation xxx and offer evidence in support thereof xxx and the sworn statements of his witnesses. For this purpose, he may prepare his explanation personally

[27] *Ballao v. CA*, G.R. No. 162342, 11 October 2006, 504 SCRA 227, 236.

[28] LABOR CODE, Book V, Title IX, Art. 277(b) which provides: "Art. 277. Miscellaneous provisions. — xxx (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause xxx, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and **shall afford the latter ample opportunity to be heard and to defend himself** with the assistance of his representative if he so desires xxx" (emphasis supplied).

[29] *Supra* note 17 at 564-565.

[30] G.R. No. 152048, 7 April 2009.

or with the assistance of a representative or counsel. He may also ask the employer to provide him copy of records material to his defense. His written explanation may also include a request that a formal hearing or conference be held. In such a case, the conduct of a formal hearing or conference becomes mandatory, just as it is where there exist substantial evidentiary disputes or where company rules or practice requires an actual hearing as part of employment pretermination procedure.

This interpretation of Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code reasonably implements the "ample opportunity to be heard" standard under Article 277 (b) of the Labor Code **without unduly restricting the language of the law or excessively burdening the employer**. This not only respects the power vested in the Secretary of Labor and Employment to promulgate rules and regulations that will lay down the guidelines for the implementation of Article 277 (b). More importantly, this is faithful to the mandate of Article 4 of the Labor Code that "[a]ll doubts in the implementation and interpretation of the provisions of [the Labor Code], including its implementing rules and regulations shall be resolved in favor of labor."

In sum, the following are the guiding principles in connection with the hearing requirement in dismissal cases:

(a) "ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way.

(b) A formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it.

(c) The "ample opportunity to be heard" standard in the Labor Code prevails over the "hearing or conference" requirement in the implementing rules and regulations. (emphasis supplied)

Petitioners complied with the twin-notice requirement.[31] The notice dated October 17, 2000 served on respondent was the

[31] Omnibus Rules Implementing the Labor Code, Book V, Rule XXIII, Sec. 2(b), as amended by Department of Labor and Employment Order No. 9 (1997).

written notice specifying the charges against him. The subsequent notice dated February 7, 2001 (notice of adjudication specifying therein the causes for respondent's termination and the decision to dismiss him) served as the written notice of termination.

In view of respondent's valid dismissal due to serious misconduct and loss of trust and confidence, respondent is not entitled to separation pay. As held in *Ha Yuan Restaurant v. NLRC*:[32]

> The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty but it certainly will not condone the offense. xxx Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character.

WHEREFORE, the petition is hereby *GRANTED*. The decision of the Court of Appeals dated June 28, 2006 and its resolution dated September 29, 2006 in CA-G.R. CEB-SP No. 01567 finding that respondent Raymund Garriel was illegally dismissed are *REVERSED* and *SET ASIDE*. The National Labor Relations Commission-Cebu City (Fourth Division) is likewise ordered to discharge and/or release Supersedeas Bond No. JCL (15)-0503/04 dated June 17, 2004 posted by petitioners.

SO ORDERED.

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

---

[32] G.R. No. 147719, 27 January 2007, 480 SCRA 328, 332 citing *PLDT v. NLRC*, G.R. No. 80609, 23 August 1988, 164 SCRA 671, 682.

FIRST DIVISION

[G.R. No. 153983. May 26, 2009]

SAN MIGUEL CORPORATION, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION and WILLIAM L. FRIEND, JR.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; EMPLOYER BEARS THE BURDEN OF PROVING THAT THE DISMISSAL OF THE EMPLOYEE IS FOR A JUST CAUSE OR AN AUTHORIZED CAUSE. — In termination cases, the employer bears the burden of proving that the dismissal of the employee is for a just or an authorized cause. Failure to dispose of the burden would imply that the dismissal is not lawful, and that the employee is entitled to reinstatement, back wages and accruing benefits. Moreover, dismissed employees are not required to prove their innocence of the employer's accusations against them.

2. ID.; ID.; ID.; LOSS OF CONFIDENCE AS A GROUND; ORDINARY BREACH DOES NOT SUFFICE; RATIONALE. — Under the law, loss of confidence must be based on "fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative." In this regard, the Court has ruled that ordinary breach does not suffice. A breach of trust is willful if it is done intentionally, knowingly and purposely, without any justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.

3. ID.; ID.; ID.; ID.; THE RIGHT OF EMPLOYER TO DISMISS EMPLOYEE ON ACCOUNT OF LOSS OF TRUST AND CONFIDENCE MUST NOT BE EXERCISED WHIMSICALLY; APPLICATION IN CASE AT BAR. — Petitioner utterly failed to establish that respondent or somebody pecuniarily or materially benefited from the falsification through paper renewal committed by respondent that could have warranted his dismissal for the first offense. Neither was there clear and convincing

evidence that petitioner suffered any material loss by the respondent's act of paper renewal. Regarding petitioner's sweeping charge of misappropriation of company funds against respondent, we quote with approval the disquisition of the Labor Arbiter as cited by the CA: Respondent failed to prove that complainant misappropriated company funds though. The padding was merely for the purpose of maintaining the line account of complainant's clients. We find the penalty of dismissal too severe a penalty for the offense committed. Firstly, there is no showing that complainant's service record was replete with offenses. It appears that this is the first time he was charged of violation of company rule. Secondly, there is no convincing evidence that he materially benefited from the acts committed. Thirdly, SMC did not suffer from any damage or losses by reason thereof. We find no reversible error committed by the CA in reinstating the decision of the Labor Arbiter which held that respondent should have been suspended rather than dismissed outright. The right of an employer to dismiss an employee on account of loss of trust and confidence must not be exercised whimsically. To countenance an arbitrary exercise of that prerogative is to negate the employee's constitutional right to security of tenure. In other words, the employer must clearly and convincingly prove by substantial evidence the facts and incidents upon which loss of confidence in the employee may be fairly made to rest; otherwise, the latter's dismissal will be rendered illegal.

APPEARANCES OF COUNSEL

De La Rosa Tejero Nograles for petitioner.
Kapunan Imperial Panaguiton and Bongolan for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Court assailing the Decision[1] of the Court

[1] Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Romeo J. Callejo, Sr. (retired Associate Justice of this Court) and Perlita J. Tria-Tirona (retired); *rollo*, pp. 49-60.

of Appeals (CA) in CA-G.R. SP No. 65528 dated March 15, 2002, and its Resolution[2] dated June 11, 2002.

Respondent William L. Friend, Jr. was a route salesman of petitioner San Miguel Corporation Bacoor Sales Office for ten (10) years with a monthly salary of ₱30,000.00.

On April 3, 1995, Rene de Jesus, respondent's supervisor, conducted an audit of his route on account of complaints of the following customers:

1. Perla Tibayan, Salitan, Dasmariñas, Cavite;
2. Estelita Galay-de Leon, Dara Subd., Salitran, Dasmariñas, Cavite;
3. Clarita Javier/Helena Abay, Topacio, Imus, Cavite;
4. Ester Saguilayan, Malagasan, Imus, Cavite;
5. Generoso Bayot, Anober II, Imus, Cavite;
6. Cynthia Zapanta, Anober II, Imus, Cavite.

These customers complained to the supervisor that respondent padded their accounts in the total amount of ₱20,540.00.

After the audit, the supervisor found reasonable ground to hold respondent liable for misappropriation of company funds through falsification of private documents. On April 19, 1995, respondent was summoned to petitioner's Canlubang Bottling Plant for investigation.

Petitioner found the following:[3]

(1) Case of Perla Tibayan

Mr. William Friend issued TCI No. 677539 on March 31, 1995, for the account of Perla Tibayan (Annex'1'). The TCI was for 148 empties and 32 bottles valued at ₱17,568.00. Perla Tibayan only confirmed that the outstanding account was 82 cases empties in the amount of ₱9,840.00 (Confirmation Slip of Perla Tibayan dated April 4, 1995 is hereby attached as Annex '1-A'). On April 10, 1995, Perla Tibayan executed an affidavit before notary public Bernard R. Paredes, denying

[2] *Id*. at 61.

[3] Noted in the Decision of the Labor Arbiter, pp. 3-6; *rollo*, pp. 294-297; as well as in the NLRC Resolution, pp. 5-7; *rollo*, pp. 345-347.

her signature appearing in Invoice No. 677539 and that she received partial only of the products stated in Invoice No. 677539 in the amount of ₱9,840.00 or 82 complete empties of PP-320. The affidavit also includes statement that the 40 complete empties PP-320 plus 32 empties bottles were for the account of William Friend and 24 complete empties PP320 were borrowed by Generoso Bayot (Annex '1-B').

(2) Case of Estelita Galay (de Leon)

TCI #677540 was issued by complainant on March 31, 1995, supposedly to cover 116 empties valued at ₱13,920.00 for the account of Ms. Estelita Galay (Annex '2'). When audited by DSS Rene de Jesus on April 4, 1995, the outlet, Ms. Estelita Galay only confirmed her outstanding account of ₱6,240.00 for 52 empties cases PP320 (Annex 'A'). In support of her claim, she executed an affidavit on April 10, 1995, before Notary Public Bernard Paredes stating that PP52 complete empties was her account while PP40 complete empties were for William Friend and PP24 complete empties were borrowed by Generoso Bayot (Annex 'B').

(3) Case of Clarita Javier/Helena Abay

Helena Abay, the caretaker of Clarita Javier, claimed that Mr. William Friend only delivered 25 cases full goods and her container loan was only for 19 cases empties with a total value of ₱6,530.00 (Confirmation Slip Annex '3') as against the 25 full goods and 29 cases empties reflected in the Temporary Credit Invoice #677531 issued by complainant, William Friend to Clarita Javier in the total amount of ₱7,730.00 on March 31, 1995 (annex '3-A'). On April 10, 1995, Helena Abay executed an affidavit before Notary Public Bernard R. Paredes, stating among others the fact, that I only receive partial of the products stated in Invoice No. 677531 in the amount of ₱6,530.00 the breakdown of which is 25 PP-320 content only and 19 cases PP empties (annex'3-B').

(4) Case of Cynthia Zapanta

Temporary Credit Invoice (TCI) #677542 was issued by Mr. William Friend on March 31, 1995, supposedly to cover 99 cases of full goods and 69 cases empties (Annex '4'). However, upon audit, customer confirmed that her outstanding account is only 79 cases full goods and 50 cases empties valued at ₱19,430.00 (Confirmation Slip, Annex '4-A').

On April 10, 1995, Cynthia B. Zapanta, executed an affidavit before Notary Public Bernard R. Paredes, stating among others:

a) The signature appearing in Invoice No. 677542 is not my signature;

b) That I only receive partial of the products stated in Invoice No. 677542 in the amount of ₱19,430.00 – breakdown, 70PP content only and 50 cases PP empties; and

c) The discount appearing on TCI #677542 amounting to ₱140 was not given to me (Annex '4-B')."

(5) Case of Generoso Bayot

Outlet confirmed that his total outstanding account was in the amount of ₱29,406.50 which was covered by TCI #667668 issued on March 2, 1995 by complainant, Mr. William Friend for 103 cases full goods, valued at ₱17,510.00 and 103 empties valued at ₱12,360.00 or a total value of ₱29,406.50 (Annex '5'). Mr. William Friend issued on March 31, 1995 TCI #677541 in the name of Generoso Bayot for 245 empties valued at ₱29,400.00 (Annex '5-A'). In the audit, Mr. Generoso Bayot confirmed his temporary sales account in the amount of ₱29,400.00 but disclaimed ownership of the signature appearing in TCI #677541 (Annex '5-B'). Allegation of Mr. Bayot was again reiterated, when he executed an affidavit (Annex '5-C') before Notary Public Bernard R. Paredes on April 10, 1995, wherein he stated that, 'the signature appearing on Invoice No. 677541 is not my signature'. This particular transaction was a 'paper renewal' wherein complainant changed the original goods ordered by the outlet from 103 cases full goods and 103 cases empties to 245 empties for the same amount of ₱29,406.50.

(6) Case of Ester Sacquilayan

Temporary Credit Invoice No. 677537 was issued by com[plainant Mr. William Friend for 29 cases empties, valued at ₱3,480.00 for a total amount of ₱8,400.00 (Annex '6'). Upon audit, customer said that TCI #677537 was a paper renewal of her outstanding account of 15 cases full goods and 15 cases empties with a total value of ₱4,350.00 only (Confirmation Slip, Annex '6-A'). she (sic) also executed an affidavit wherein she confirmed that, 'I only received partial of the products stated in Invoice No. 677537 in the amount of ₱4,350.00 representing 15 cases PP full goods (Annex '6-B').

On October 3, 1995, respondent received a notice of termination[4] from petitioner which states as follows:

> Mr. William L. Friend, Jr.
> 314 Molave St., Andres Village 2
> Bacoor. Cavite
>
> Mr. Friend, Jr.,
>
> After a thorough evaluation of the results of the investigation, please be informed that your services with the company is being terminated effective at the close of business hours of October 5, 1995 for **misappropriation of company funds through falsification of company documents**. Company rules and regulations states that misappropriation of company funds is punishable by discharge for the offense.
>
> Also, you are being given thirty (30) days in which to pay back the company the amount of ₱20,540.00 which you have misappropriated or corresponding criminal case as well as civil case will be filed against you.
>
> (SGD) DOMINGO C. MISA, JR.
> Manager Sales Operation
> Southeastern Tagalog Beer Region.
> (emphasis ours)

Hence, respondent filed a complaint for illegal suspension and illegal dismissal docketed as NLRC Case No. RAB-IV-10-7644-95-C. On November 11, 1997, after both parties submitted their respective position paper, the Labor Arbiter rendered a Decision[5] ordering petitioner to reinstate respondent, thus:

> In a case of illegal dismissal, the burden of proving the legality or illegality of the dismissal, once the prior employment was admitted, rests upon the employer. In the case at bar since respondent admits having employed complainant and terminated his employment later, respondents has to prove with convincing evidence that there was valid cause to dismiss him and that he was afforded due process.

[4] Position Paper- Annex "A", Records, p. 99.

[5] *Rollo*, pp. 306-308.

It is an established fact that complainant was afforded the opportunity to explain his side anent the charge against him thru question-and-answer form of formal investigation during which, he was even represented by a lawyer of his own choice. This is due process.

On the existence of valid, just or authorized cause, we have these to say:

There is no doubt that complainant committed the acts complained against him.

Admittedly by the complainant, what he committed were acts of paper renewal, resorted to by the salesman to make it appear that the account of a customer is moving. This is done by the salesman so that his customer's account will not "slide" for if it happens, the customer's credit line would be cut-off. In fine, it gives the customer more time to pay his/her account to SMC.

The acts of paper renewal described above, in legal parlance, constitute falsification of private documents.

Under company rule No. 15, falsification of company records or documents is punishable with dismissal (discharge, if the offender or somebody benefits from the falsification.

In the case at bar, certainly the customers benefits from such falsification as it prolonged the time for them to pay their account to SMC.

Respondent failed to prove that complainant misappropriated company funds though. The padding was merely for the purpose of maintaining the line account of complainant's clients.

We find the penalty of dismissal too severe a penalty for the offense committed. Firstly, there is no showing that complainant's service record was replete with offenses. It appears that this is the first time he was charged of violation of company rule. Secondly, there is no convincing evidence that he materially benefited from the acts committed. Thirdly, SMC did not suffer from any damage or losses by reason thereof.

Suspension of two years and two months would be more appropriate a penalty and would serve complainant a lesson not to repeat the same acts in the future, which penalty is deemed served from October 5, 1995 to December 5, 1997.

WHEREFORE, respondent is hereby directed to reinstate the complainant effective December 6, 1997 to his former position.

SO ORDERED. (emphasis supplied)

Both parties appealed to the NLRC. In a Decision[6] dated February 23, 2001, the NLRC reversed the decision of the Labor Arbiter, to wit:

We find merit in the appeal.

Paper renewal is falsification of private document because the author makes it appear that the accounts of his customers were moving otherwise the customers' credit line would be severed. When the time frame within which the customers should settle their obligations is extended through "paper renewal" the rule of respondent collection of credit within one (1) week is circumvented to the prejudice of the company.

A high degree of confidence is reposed in salesman as they are entrusted with funds or properties of their employer (*CCBPI vs. NLRC*, 172 SCRA 751). By his own wrongdoing, it would be an act of oppression to compel his employer to welcome him anew to its fold.

The paper renewal is also beneficial to the salesman because the good credit standing of his customers is a boost to his performance level and continuous employment. This is the moving force for the salesman to resort to paper renewal. And we cannot countenance the salesman's self-interest to the prejudice of the company. We cannot lose sight that under Article 282 © of the Labor Code, an employer is allowed to terminate an employee for willful breach of trust reposed in him.

In short, we sustain respondent's prerogative to dismiss complainant.

However, we find complainant to have been illegally suspended. Complainant was placed under suspension on April 3, 1995 which should end thirty (30) days thereafter. Since he was not allowed to return to his position nor given an assignment after May 3, 1995 complainant is entitled to his wages from May 3 to October 3, 1995 when he was terminated.

---

[6] *Id*. at 349-351.

WHEREFORE, premises considered, the appeal of San Miguel Corporation is hereby Granted. Accordingly, the Decision of the Labor Arbiter dated 11 November 1997 directing the reinstatement of William L. Friend is SET ASIDE. Respondent is however directed to pay complainant his wages from May 3 to October 3, 1995, the period for which he was illegally suspended.

SO ORDERED.

Respondent filed a motion for partial reconsideration but the NLRC denied the same for lack of merit.

Respondent elevated the case to the CA through a petition for *certiorari*. On March 15, 2002, the CA rendered the assailed Decision,[7] granting the petition, reversing and setting aside the Decision of the NLRC and reinstating the Decision of the Labor Arbiter. The CA ratiocinated as follows:

> The issue in this case is whether petitioner's act of "paper renewal" warrants his termination.
>
> This Court agrees with the Labor Arbiter that petitioner did in fact violate company rules by his act of "paper renewal" but this should not warrant his dismissal.
>
> The Labor Arbiter noted as follows:
>
> > "Under company rule No. 15, falsification of company records or documents is punishable with dismissal (discharge) if the offender or somebody benefits from the falsification."
>
> In the case of *Sanchez vs. National Labor Relations Commission*, (G.R. No. 124348, 312 SCRA 727) the Supreme Court said:
>
> > "In *Coca-Cola Bottlers Philippines, Inc. vs. NLRC*, we said that the life of a softdrinks company depends not so much on the bottling or production of the product since this is primarily done by automatic machines and personnel who are easily supervised, but upon mobile and far-ranging salesman who go from store to store all over the country or region. Salesmen are highly individualistic personnel who have to be trusted and left essentially on their own. A high degree of confidence is

[7] *Id.* at 55-58.

> reposed in them when they are entrusted with funds or properties of their employer. Such is petitioner Dominador Sanchez who was then a salesman of respondent Pepsi-Cola Products Philippines, Inc. (PEPSI-COLA), until he was terminated after twenty-three (23) years of service for loss of trust and confidence for violation of company rules."

The effect of petitioner's "paper renewal" was determined by the Labor Arbiter when he stated the following:

> "In the case at bar, certainly the customers benefited from such falsification as it prolonged the time for them to pay their account to SMC.
>
> Respondent failed to prove that complainant misappropriated company funds though. The padding was merely for the purpose of maintaining the line account of complainant's clients."

For its part, the NLRC found as follows:

> "Paper renewal is falsification of private document because the author makes it appear that the accounts of his customers were moving otherwise the customers' credit line would be severed. When the time frame within which the customers should settle their obligations is extended through 'paper renewal' the rule of respondent collection of credit within one (1) week is circumvented to the prejudice of the company.
>
> x x x x x x x x x
>
> The paper renewal is also beneficial to the salesman because the good credit standing of his customers is a boost to his performance level and continuous employment. This is the moving force for the salesman to resort to proper (sic) renewal. And we cannot countenance the salesman's self-interest to the prejudice of the company. We cannot lose sight that under Article 282 © of the Labor Code, an employer is allowed to terminate an employee for willful breach trust (sic) reposed in him."

It is therefore clear that petitioner did in fact violate company Rule No. 15 by falsifying company records and documents. However, there is a qualification. Such falsification must benefit the offender (herein petitioner) or somebody else.

According to the NLRC, the benefit to petitioner was "a boost to his performance level and continuing employment"' while according to the Labor Arbiter, the benefit to the customers was "it prolonged the time for them to pay their account to SMC". Such are hardly the benefits obtained that would warrant the supreme penalty of dismissal for the first offense. This is unlike the aforecited *Sanchez* case wherein petitioner Sanchez was not only caught "padding", but he also converted 200 cases of empties to cash to defray the medical expenses of his ailing wife, an act of gross dishonesty, resulting in his termination which he richly deserved.

This Court thus agrees with the Labor Arbiter when she ruled as follows:

> "We find the penalty of dismissal too severe a penalty for the offense committed. Firstly, there is no showing that complainant's service record was replete with offenses. It appears that this is the first time he was charged of violation of company rule. Secondly, there is no convincing evidence that he materially benefited from the acts committed. Thirdly, SMC did not suffer from any damage or losses by reason thereof."

This is not to say however that petitioner should be completely absolved from his acts of "paper renewal". Petitioner did not help matters when he failed to cite the specific company rule or its number which penalizes the offense of "paper renewal" which, according to him, warrants only the suspension for two (2) days, in contrast to private respondent's submission of the specific company rule allegedly violated by petitioner, No. 15. This Court therefore also agrees with the Labor Arbiter when she considered suspension of two (2) years and four (4) months as an appropriate penalty, as follows:

> "Suspension of two years and two months would be more appropriate a penalty and would serve complainant a lesson not to repeat the same acts in the future, which penalty is deemed served from October 4, 1995 to December 5, 1997."

Should petitioner be caught again in the act of "paper renewal", he should no longer expect the sympathy of this Court, or of the Labor arbiter and the NLRC for that matter, for this is clear recidivism which is an absolute ground for his termination due to loss of trust and confidence in him by his employer, private respondent SMC, considering his position as a salesman.

In view of the foregoing, the NLRC committed grave abuse of discretion in reversing the decision of Labor Arbiter Nieves V. De Castro.

WHEREFORE, the instant petition is GRANTED. The decision of the National Relations Commission Third Division in NLRC NCR CA No. 014383-98 (NLRC RAB IV 10-7644-95-C) is REVERSED and SET ASIDE, and the decision of Labor Arbiter Nieves V. De Castro is hereby REINSTATED.

SO ORDERED.

Petitioner filed a motion for reconsideration but the CA denied the same in the assailed Resolution[8] dated June 11, 2002. Hence, the present petition raising the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN SETTING ASIDE THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION DESPITE THE COURT'S FINDING THAT RESPONDENT INDEED FALSIFIED NUMEROUS COMPANY RECORDS.

II.

THE HONORABLE COURT OF APPEALS' DECISION IS NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THE SUPREME COURT IN SIMILAR CASES.

Petitioner argues that even on the assumption that respondent did not benefit from the misdeeds, still, the mere act of falsifying company records and documents is already sufficient to warrant respondent's termination from employment. Moreover, such an act is pure and simple dishonesty and reflects on the moral character of the employee and his fitness to continue in employment as a salesman. Citing the cases of *Filipro, Inc. v. NLRC,*[9] *Bernardo v. NLRC,*[10] *Mirano, et al. v. NLRC,*[11]

---

[8] *Id.* at 61.

[9] G.R. No. L-20946, October 16, 1986, 145 SCRA 123.

[10] G.R. No. 105819, March 15, 1996, 255 SCRA 108.

[11] G.R. No. 121112, March 19, 1997, 270 SCRA 96.

and, *Gonzales v. NLRC,*[12] petitioner maintains that the right of management to terminate the services of employees found to have falsified company records or documents has been repeatedly upheld by this Court.

Lastly, petitioner submits that the position of respondent as a salesman is imbued with trust and confidence, hence, he may be validly dismissed from employment on the ground of loss of trust and confidence pursuant to Article 282 of the Labor Code.

Respondent admits having committed paper renewals, but he vehemently denies having materially benefited therefrom by misappropriating company funds amounting to ₱20,540.00.[13] He directs the Court's attention to the pronouncement of the Labor Arbiter, concurred in by the CA, that no evidence exists to support petitioner's claim of misappropriation.[14] Hence, since, he neither incurred any actual damages nor enjoyed any correlative benefit that can be considered as a material gain, his dismissal is illegal.

Respondent added that even assuming *arguendo* that he padded the customers' accounts, he could not have misappropriated a single centavo therefrom simply because said *padded* accounts were mere collectibles. Thus, it was impossible for him to misappropriate the same.

He further submits that it could not have been possible for him to misappropriate or steal company funds amounting to about ₱20,540.00. He claims that he will not destroy or tarnish his name for such an insignificant amount. Respondent was receiving a monthly salary of ₱30,000.00, affording him a comfortable life. If he wanted to steal from petitioner, he would have done so when he was entrusted with petitioner's money amounting to millions as *bodegero* or warehouseman during the absence of the latter. He also points out that in 1994, he was named *Outstanding Salesman* and was twice honored as a *grand slam awardee*

[12] G.R. No. 131653, March 26, 2001, 355 SCRA 195.

[13] Private respondent's Memorandum, *rollo*, pp. 601-621.

[14] Labor Arbiter's Decision at 16.

in 1988 when he was given an Award of Excellence and in 1994 when he topped the year's quarterly sales.

We rule for the respondent.

In termination cases, the employer bears the burden of proving that the dismissal of the employee is for a just or an authorized cause.[15] Failure to dispose of the burden would imply that the dismissal is not lawful, and that the employee is entitled to reinstatement, back wages and accruing benefits.[16] Moreover, dismissed employees are not required to prove their innocence of the employer's accusations against them.[17]

Petitioner cites Article 282[18] of the Labor Code, specifically loss of trust and confidence as the ground for validly dismissing respondent. Under the law, loss of confidence must be based on "fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative." In this regard, the Court has ruled that ordinary breach does not

---

[15] *Philippine Long Distance and Telephone Company v. NLRC*, G.R. No. 111933, July 23, 1997, 276 SCRA 1, 7.

[16] *Me-Shurn Corporation v. Me-Shurn Worker's Union*, G.R. No. 156292, January 11, 2005, 448 SCRA 41.

[17] *Garcia v. NLRC*, G.R. No. 113774, April 15, 1998, 289 SCRA 36, 46.

[18] Article 282 of the Labor Code, an employee's services can be terminated for the following just causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly-authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duty-authorized representative; and

(e) Other causes analogous to the foregoing.

suffice.[19] A breach of trust is willful if it is done intentionally, knowingly and purposely, without any justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.[20]

Here, respondent was investigated on and dismissed for misappropriation of company funds through falsification of company documents, as shown in the termination letter.[21]

Company Rule No. 16 of petitioner's *Disciplinary Actions for Violations of Company Rules*[22] specifically provides that "Misappropriation of Company Funds/Withholding Funds Due to the Company" is punishable with discharge even for the first offense.

Records, nevertheless, neither showed nor convinced us that there was misappropriation of funds that benefited anybody which warranted the dismissal of respondent for the first offense. Respondent admittedly committed padding of accounts and/or paper renewal, which respondent claims to be a practice among salesmen and such claim was not disputed by petitioner.

Company Rule No. 15 of the same *Disciplinary Actions for Violations of Company Rules*[23] provides that Falsification of Company Records or Documents is classified into two (2) types, thus:

Violations	1st offense	2nd offense	3rd offense
A. If no one benefits or would have benefited from falsification	6 days suspension	15 days suspension	Discharge
B. If offender or somebody benefits from falsification or would have benefited, if falsification is not found on time	Discharge		

[19] *Philippine National Construction Corporation v. Matias*, G.R. No. 156283, May 6, 2005, 458 SCRA 148, 159.

[20] *Supra* note 12, p. 207.

[21] Position Paper- Annex "A", Records at 99.

[22] *Id.* at 225.

[23] *Id.* at 220-229.

The paper renewal committed by respondent may be considered as falsification, but we agree with the Labor Arbiter and the CA that such paper renewal did not amount to misappropriation that could justify outright dismissal for the first offense, as what petitioner did to respondent. Otherwise, the company rules would not have separated these two offenses under Rule Nos. 15 and 16. Besides, we agree with the CA that although petitioner did in fact violate company Rule No. 15 by falsifying company records and documents through paper renewal, such falsification has to be qualified, thus:

> It is therefore clear that petitioner did in fact violate company Rule No. 15 by falsifying company records and documents. However, there is a qualification. Such falsification must benefit the offender (herein petitioner) or somebody else.
>
> According to the NLRC, the benefit to petitioner was "a boost to his performance level and continuing employment"' while according to the Labor Arbiter, the benefit to the customers was "it prolonged the time for them to pay their account to SMC." Such are hardly the benefits obtained that would warrant the supreme penalty of dismissal for the first offense.

Petitioner utterly failed to establish that respondent or somebody pecuniarily or materially benefited from the falsification through paper renewal committed by respondent that could have warranted his dismissal for the first offense. Neither was there clear and convincing evidence that petitioner suffered any material loss by the respondent's act of paper renewal. Regarding petitioner's sweeping charge of misappropriation of company funds against respondent, we quote with approval the disquisition of the Labor Arbiter as cited by the CA:

> Respondent failed to prove that complainant misappropriated company funds though. The padding was merely for the purpose of maintaining the line account of complainant's clients.
>
> We find the penalty of dismissal too severe a penalty for the offense committed. Firstly, there is no showing that complainant's service record was replete with offenses. It appears that this is the first time he was charged of violation of company rule. Secondly, there

is no convincing evidence that he materially benefited from the acts committed. Thirdly, SMC did not suffer from any damage or losses by reason thereof.

We find no reversible error committed by the CA in reinstating the decision of the Labor Arbiter which held that respondent should have been suspended rather than dismissed outright.

To recapitulate, the right of an employer to dismiss an employee on account of loss of trust and confidence must not be exercised whimsically. To countenance an arbitrary exercise of that prerogative is to negate the employee's constitutional right to security of tenure. In other words, the employer must clearly and convincingly prove by substantial evidence the facts and incidents upon which loss of confidence in the employee may be fairly made to rest; otherwise, the latter's dismissal will be rendered illegal.[24]

WHEREFORE, the petition is *DENIED*. The assailed Decision of the Court of Appeals dated March 15, 2002 and its assailed Resolution dated June 11, 2002, both in CA-G.R. SP No. 65528, are *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and *Bersamin, JJ.,* concur.

---

[24] *Philippine National Construction Corporation v. Matias, supra,* citing *Jardine Davies, Inc. v. NLRC,* 311 SCRA 289.

FIRST DIVISION

[G.R. No. 180668. May 26, 2009]

MARIETTA C. AZCUETA, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES and THE COURT OF APPEALS,** *respondents.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; MARRIAGE; IMPORTANCE OF FAMILY, EXPLAINED. — Prefatorily, it bears stressing that it is the policy of our Constitution to protect and strengthen the family as the basic autonomous social institution and marriage as the foundation of the family. Our family law is based on the policy that marriage is not a mere contract, but a social institution in which the state is vitally interested. The State can find no stronger anchor than on good, solid and happy families. The break up of families weakens our social and moral fabric and, hence, their preservation is not the concern alone of the family members.

2. ID.; ID.; ID.; VOID MARRIAGES; PSYCHOLOGICAL INCAPACITY AS A GROUND; GUIDELINES IN THE INTERPRETATION AND APPLICATION THEREOF, SUSTAINED. — Thus, the Court laid down in *Republic of the Philippines v. Court of Appeals and Molina* stringent guidelines in the interpretation and application of Article 36 of the Family Code, to wit: (1) **The burden of proof to show the nullity of the marriage belongs to the plaintiff.** Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation." It decrees marriage as legally "inviolable," thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state. The Family Code echoes this constitutional edict on marriage and the family and emphasizes their permanence, inviolability and solidarity. (2) **The root cause**

of the psychological incapacity must be: (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical. **The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis* (*Salita v. Magtolis,* 233 SCRA 100, 108), nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.** (3) **The incapacity must be proven to be existing at "the time of the celebration" of the marriage.** The evidence must show that the illness was existing when the parties exchanged their "I do's." **The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.** (4) **Such incapacity must also be shown to be medically or clinically permanent or incurable.** Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, **such incapacity must be relevant to the assumption of marriage obligations,** not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage. (5*)* **Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage**. Thus, "mild characteriological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. **The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby**

complying with the obligations essential to marriage. (6) **The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife** as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision. (7) **Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts.** x x x.

3. ID.; ID.; ID.; ID.; ID.; CHARACTERISTICS THEREOF. — In *Santos v. Court of Appeals*, the Court declared that psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. It should refer to "no less than a mental, not physical, incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage." The intendment of the law has been to confine the meaning of "psychological incapacity" to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. At this point, the Court is not unmindful of the sometimes peculiar predicament it finds itself in those instances when it is tasked to interpret static statutes formulated in a particular point in time and apply them to situations and people in a society in flux. With respect to the concept of psychological incapacity, courts must take into account not only developments in science and medicine but also changing social and cultural mores, including the blurring of traditional gender roles. In this day and age, women have taken on increasingly important roles in the financial and material support of their families. This, however, does not change the ideal that the family should be an "autonomous" social institution, wherein the spouses cooperate and are **equally** responsible for the support and well-being of the family. In the case at bar, the spouses from the outset failed to form themselves into a family, a cohesive unit based on mutual love, respect and support, due to the failure of one to perform the essential duties of marriage.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CONCLUSION OF THE TRIAL COURT IS GENERALLY

ENTITLED TO GREAT RESPECT; RATIONALE. — It is a settled principle of civil procedure that the conclusions of the trial court regarding the credibility of witnesses are entitled to great respect from the appellate courts because the trial court had an opportunity to observe the demeanor of witnesses while giving testimony which may indicate their candor or lack thereof. Since the trial court itself accepted the veracity of petitioner's factual premises, there is no cause to dispute the conclusion of psychological incapacity drawn therefrom by petitioner's expert witness.

APPEARANCES OF COUNSEL

M.C. Santos Law Office for petitioner.
The Solicitor General for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision of the Court of Appeals (CA) in CA-G.R. CV No. 86162 dated August 31, 2007,[1] and its Resolution dated November 20, 2007.[2]

Petitioner Marietta C. Azcueta and Rodolfo Azcueta met in 1993. Less than two months after their first meeting, they got married on July 24, 1993 at St. Anthony of Padua Church, Antipolo City. At the time of their marriage, petitioner was 23 years old while respondent was 28. They separated in 1997 after four years of marriage. They have no children.

On March 2, 2002, petitioner filed with the Regional Trial Court (RTC) of Antipolo City, Branch 72, a petition for declaration of absolute nullity of marriage under Article 36 of the Family Code, docketed as Civil Case No. 02-6428.

---

[1] Penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Jose L. Sabio, Jr. and Myrna Dimaranan Vidal; *rollo*, pp. 37-50.

[2] *Id.* at 36.

Meanwhile, respondent failed to appear and file an answer despite service of summons upon him. Because of this, the trial court directed the City Prosecutor to conduct an investigation whether there was collusion between the parties. In a report dated August 16, 2002, Prosecutor Wilfredo G. Oca found that there was no collusion between the parties.

On August 21, 2002, the Office of the Solicitor General entered its appearance for the Republic of the Philippines and submitted a written authority for the City Prosecutor to appear in the case on the State's behalf under the supervision and control of the Solicitor General.

In her petition and during her testimony, petitioner claimed that her husband Rodolfo was psychologically incapacitated to comply with the essential obligations of marriage. According to petitioner, Rodolfo was emotionally immature, irresponsible and continually failed to adapt himself to married life and perform the essential responsibilities and duties of a husband.

Petitioner complained that Rodolfo never bothered to look for a job and instead always asked his mother for financial assistance. When they were married it was Rodolfo's mother who found them a room near the Azcueta home and it was also his mother who paid the monthly rental.

Petitioner also testified that she constantly encouraged her husband to find employment. She even bought him a newspaper every Sunday but Rodolfo told her that he was too old and most jobs have an age limit and that he had no clothes to wear to job interviews. To inspire him, petitioner bought him new clothes and a pair of shoes and even gave him money. Sometime later, her husband told petitioner that he already found a job and petitioner was overjoyed. However, some weeks after, petitioner was informed that her husband had been seen at the house of his parents when he was supposed to be at work. Petitioner discovered that her husband didn't actually get a job and the money he gave her (which was supposedly his salary) came from his mother. When she confronted him about the matter, Rodolfo allegedly cried like a child and told her that he

pretended to have a job so that petitioner would stop nagging him about applying for a job. He also told her that his parents can support their needs. Petitioner claimed that Rodolfo was so dependent on his mother and that all his decisions and attitudes in life should be in conformity with those of his mother.

Apart from the foregoing, petitioner complained that every time Rodolfo would get drunk he became physically violent towards her. Their sexual relationship was also unsatisfactory. They only had sex once a month and petitioner never enjoyed it. When they discussed this problem, Rodolfo would always say that sex was sacred and it should not be enjoyed nor abused. He did not even want to have a child yet because he claimed he was not ready. Additionally, when petitioner requested that they move to another place and rent a small room rather than live near his parents, Rodolfo did not agree. Because of this, she was forced to leave their residence and see if he will follow her. But he did not.

During the trial of the case, petitioner presented Rodolfo's first cousin, Florida de Ramos, as a witness. In 1993, Ramos, the niece of Rodolfo's father, was living with Rodolfo's family. She corroborated petitioner's testimony that Rodolfo was indeed not gainfully employed when he married petitioner and he merely relied on the allowance given by his mother. This witness also confirmed that it was respondent's mother who was paying the rentals for the room where the couple lived. She also testified that at one time, she saw respondent going to his mother's house in business attire. She learned later that Rodolfo told petitioner that he has a job but in truth he had none. She also stated that respondent was still residing at the house of his mother and not living together with petitioner.

Petitioner likewise presented Dr. Cecilia Villegas, a psychiatrist. Dr. Villegas testified that after examining petitioner for her psychological evaluation, she found petitioner to be mature, independent, very responsible, focused and has direction and ambition in life. She also observed that petitioner works hard for what she wanted and therefore, she was not psychologically incapacitated to perform the duties and responsibilities of

marriage. Dr. Villegas added that based on the information gathered from petitioner, she found that Rodolfo showed that he was psychologically incapacitated to perform his marital duties and responsibilities. Dr. Villegas concluded that he was suffering from Dependent Personality Disorder associated with severe inadequacy related to masculine strivings.

She explained that persons suffering from Dependent Personality Disorder were those whose response to ordinary way of life was ineffectual and inept, characterized by loss of self-confidence, constant self-doubt, inability to make his own decisions and dependency on other people. She added that the root cause of this psychological problem was a cross-identification with the mother who was the dominant figure in the family considering that respondent's father was a seaman and always out of the house. She stated that this problem began during the early stages in his life but manifested only after the celebration of his marriage. According to Dr. Villegas, this kind of problem was also severe because he will not be able to make and to carry on the responsibilities expected of a married person. It was incurable because it started in early development and therefore deeply ingrained into his personality.

Based on petitioner's evidence, the RTC rendered a Decision dated October 25, 2004, declaring the marriage between petitioner and Rodolfo as null and *void ab initio*, thus:

> With the preponderant evidence presented by the petitioner, the court finds that respondent totally failed in his commitments and obligations as a husband. Respondent's emotional immaturity and irresponsibility is grave and he has no showing of improvement. He failed likewise to have sexual intercourse with the wife because it is a result of the unconscious guilt felling (sic) of having sexual relationship since he could not distinguish between the mother and the wife and therefore sex relationship will not be satisfactory as expected.
>
> The respondent is suffering from dependent personality disorder and therefore cannot make his own decision and cannot carry on his responsibilities as a husband. The marital obligations to live

together, observe mutual love, respect, support was not fulfilled by the respondent.

Considering the totality of evidence of the petitioner clearly show that respondent failed to comply with his marital obligations.

Thus the marriage between petitioner and respondent should be declared null and void on the account of respondent's severe and incurable psychological incapacity.

xxx xxx xxx

Wherefore premises considered, the marriage between Marietta Azcueta and Rodolfo B. Azcuata (sic) is hereby declared null and void *abinitio* (sic) pursuant to Article 36 fo (sic)the Family Code.

The National Statistics Office and the Local Civil Registrar of Antipolo City are ordered to make proper entries into the records of the parties pursuant to judgment of the court.

Let copies of this decision be furnished the Public Prosecutor and the Solicitor General.

SO ORDERED.[3]

On July 19, 2005, the RTC rendered an Amended Decision[4] to correct the first name of Rodolfo which was erroneously typewritten as "Gerardo" in the caption of the original Decision.

The Solicitor General appealed the RTC Decision objecting that (a) the psychiatric report of Dr. Villegas was based solely on the information provided by petitioner and was not based on an examination of Rodolfo; and (b) there was no showing that the alleged psychological defects were present at the inception of marriage or that such defects were grave, permanent and incurable.

Resolving the appeal, the CA reversed the RTC and essentially ruled that petitioner failed to sufficiently prove the psychological incapacity of Rodolfo or that his alleged psychological disorder existed prior to the marriage and was grave and incurable. In

[3] CA Records pp. 36-37.

[4] *Id.* at p. 41.

setting aside the factual findings of the RTC, the CA reasoned that:

> **The evidence on record failed to demonstrate that respondent's alleged irresponsibility and over-dependence on his mother is symptomatic of psychological incapacity as above explained.**
>
> x x x x x x x x x
>
> **Also worthy of note is petitioner-appellee's failure to prove that respondent's supposed psychological malady existed even before the marriage. Records however show that the parties were living in harmony in the first few years of their marriage and were living on their own in a rented apartment**. That respondent often times asks his mother for financial support **may be brought about by his feeling of embarrassment that he cannot contribute at all to the family coffers**, considering that it was his wife who is working for the family. Petitioner-appellee likewise stated **that respondent does not like to have a child on the pretense that respondent is not yet ready to have one. However this is not at all a manifestation of irresponsibility. On the contrary, respondent has shown that he has a full grasp of reality and completely understands the implication of having a child especially that he is unemployed. The only problem besetting the union is respondent's alleged irresponsibility and unwillingness to leave her** (sic) **mother, which was not proven in this case to be psychological-rooted.**
>
> **The behavior displayed by respondent was caused only by his youth and emotional immaturity which by themselves, do not constitute psychological incapacity** (*Deldel vs. Court of Appeals*, 421 SCRA 461, 466 [2004]). At all events, petitioner-appellee has utterly failed, both in her allegations in the complaint and in her evidence, to make out a case of psychological incapacity on the part of respondent, let alone at the time of solemnization of the contract, so immaturity and irresponsibility, invoked by her, cannot be equated with psychological incapacity (*Pesca vs. Pesca*, 356 SCRA 588, 594 [2001]). As held by the Supreme Court:
>
> > Psychological incapacity must be more than just a difficulty, refusal or neglect in the performance of some marital obligations, it is essential that they must be shown to be incapable of doing so, due to some psychological illness existing at the time of the celebration of the marriage. (*Navarro, Jr. vs. Cecilio-Navarro*, G.R. No. 162049, April 13, 2007).

x x x x x x x x x

WHEREFORE, in the light of the foregoing, the appealed decision dated July 19, 2005 fo (sic)the Regional Trial Court (RTC) of Antipolo City, Branch 72 in Civil Case No. 02-6428 is REVERSED and SET ASIDE. The marriage berween (sic) petitioner-appellee Marietta C. Azcueta and respondent Rodolfo B. Azcueta remains VALID.[5] (emphasis ours)

The basic issue to be resolved in the instant case is whether or not the totality of the evidence presented is adequate to sustain a finding that Rodolfo is psychologically incapacitated to comply with his essential marital obligations.

The Office of the Solicitor General, in its Comment, submits that the appellate court correctly ruled that the "totality of evidence presented by petitioner" failed to prove her spouse's psychological incapacity pursuant to Article 36 of the Family Code and settled jurisprudence.

We grant the petition.

Prefatorily, it bears stressing that it is the policy of our Constitution to protect and strengthen the family as the basic autonomous social institution and marriage as the foundation of the family.[6] Our family law is based on the policy that marriage is not a mere contract, but a social institution in which the state is vitally interested. The State can find no stronger anchor

[5] *Rollo,* pp. 45-49.

[6] Section 12 of Article II of the 1987 Constitution provides:

SEC. 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. x x x

Sections 1 and 2 of Article XV of the 1987 Constitution state:

SECTION 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

SEC. 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

than on good, solid and happy families. The break up of families weakens our social and moral fabric and, hence, their preservation is not the concern alone of the family members.[7]

Thus, the Court laid down in *Republic of the Philippines v. Court of Appeals and Molina*[8] stringent guidelines in the interpretation and application of Article 36 of the Family Code, to wit:

(1) **The burden of proof to show the nullity of the marriage belongs to the plaintiff.** Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation." It decrees marriage as legally "inviolable," thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.

The Family Code echoes this constitutional edict on marriage and the family and emphasizes their permanence, inviolability and solidarity.

(2) **The root cause of the psychological incapacity must be: (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision.** Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical. **The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof**. **Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis* (*Salita v. Magtolis*, 233 SCRA 100, 108), nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.**

---

[7] *Ancheta v. Ancheta*, G.R. No. 145370, March 4, 2004, 424 SCRA 725, 740; *Tuason v. Court of Appeals*, 326 Phil. 169, 180-181 (1996).

[8] G.R. No. 108763, February 13, 1997, 268 SCRA 198.

(3) **The incapacity must be proven to be existing at "the time of the celebration" of the marriage**. The evidence must show that the illness was existing when the parties exchanged their "I do's." **The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto**.

(4) **Such incapacity must also be shown to be medically or clinically permanent or incurable**. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, **such incapacity must be relevant to the assumption of marriage obligations**, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

(5) **Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage**. Thus, "mild characteriological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. **The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will**. **In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage**.

(6) **The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife** as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

(7**) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts**. x x x.[9] (Emphasis supplied)

---

[9] *Id.* at 209-213.

In *Santos v. Court of Appeals*,[10] the Court declared that psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability.[11] It should refer to "no less than a mental, not physical, incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage."[12] The intendment of the law has been to confine the meaning of "psychological incapacity" to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.[13]

However, in more recent jurisprudence, we have observed that notwithstanding the guidelines laid down in *Molina,* there is a need to emphasize other perspectives as well which should govern the disposition of petitions for declaration of nullity under Article 36.[14] Each case must be judged, not on the basis of *a priori* assumptions, predilections or generalizations but according to its own facts. In regard to psychological incapacity as a ground for annulment of marriage, it is trite to say that no case is on "all fours" with another case. The trial judge must take pains in examining the factual milieu and the appellate court must, as much as possible, avoid substituting its own judgment for that of the trial court.[15] With the advent of *Te v. Te*,[16] the Court encourages a reexamination of jurisprudential trends on the interpretation of Article 36 although there has been no major deviation or paradigm shift from the *Molina* doctrine.

---

[10] 310 Phil. 21 (1995).

[11] *Id.* at 39.

[12] *Id.* at 40.

[13] *Id*.

[14] *Antonio v. Reyes*, G.R. No. 155800, March 10, 2006, 484 SCRA 353, 370.

[15] *Republic of the Philippines v. Dagdag*, G.R. No. 109975, February 9, 2001, 351 SCRA 425, 431.

[16] G.R. No. 161793, February 13, 2009.

After a thorough review of the records of the case, we find that there was sufficient compliance with *Molina* to warrant the annulment of the parties' marriage under Article 36.

First, petitioner successfully discharged her burden to prove the psychological incapacity of her husband.

The Solicitor General, in discrediting Dr. Villegas' psychiatric report, highlights the lack of personal examination of Rodolfo by said doctor and the doctor's reliance on petitioner's version of events. In *Marcos v. Marcos*,[17] it was held that there is no requirement that the defendant/respondent spouse should be personally examined by a physician or psychologist as a condition *sine qua non* for the declaration of nullity of marriage based on psychological incapacity. What matters is whether the totality of evidence presented is adequate to sustain a finding of psychological incapacity.

It should be noted that, apart from her interview with the psychologist, petitioner testified in court on the facts upon which the psychiatric report was based. When a witness testified under oath before the lower court and was cross-examined, she thereby presented evidence in the form of testimony.[18] Significantly, petitioner's narration of facts was corroborated in material points by the testimony of a close relative of Rodolfo. Dr. Villegas likewise testified in court to elaborate on her report and fully explain the link between the manifestations of Rodolfo's psychological incapacity and the psychological disorder itself. It is a settled principle of civil procedure that the conclusions of the trial court regarding the credibility of witnesses are entitled to great respect from the appellate courts because the trial court had an opportunity to observe the demeanor of witnesses while giving testimony which may indicate their candor or lack thereof.[19] Since the trial court itself accepted

---

[17] 397 Phil. 840 (2000).

[18] *Tsoi v. Court of Appeals,* G.R. No. 119190, January 16, 1997, 266 SCRA 324, 330.

[19] *Limketkai Sons Milling, Inc. v. Court of Appeals*, 321 Phil. 105, 126 (1995), citing *Serrano v. Court of Appeals*, G.R. No. L-45125, April 22, 1991,196 SCRA 107, 110.

the veracity of petitioner's factual premises, there is no cause to dispute the conclusion of psychological incapacity drawn therefrom by petitioner's expert witness.[20]

Second, the root cause of Rodolfo's psychological incapacity has been medically or clinically identified, alleged in the petition, sufficiently proven by expert testimony, and clearly explained in the trial court's decision.

The petition alleged that from the beginning of their marriage, Rodolfo was not gainfully employed and, despite pleas from petitioner, he could not be persuaded to even attempt to find employment; that from the choice of the family abode to the couple's daily sustenance, Rodolfo relied on his mother; and that the couple's inadequate sexual relations and Rodolfo's refusal to have a child stemmed from a psychological condition linked to his relationship to his mother.

These manifestations of incapacity to comply or assume his marital obligations were linked to medical or clinical causes by an expert witness with more than forty years experience from the field of psychology in general and psychological incapacity, in particular. In a portion of her psychiatric evaluation, Dr. Villegas elucidated the psychodynamics of the case of petitioner and Rodolfo, thus:

> Marietta is the eldest of 5 siblings, whose parents has very limited education. Being the eldest, she is expected to be the role model of younger siblings. In so doing, she has been restricted and physically punished, in order to tow the line. But on the other hand, she developed growing resentments towards her father and promised herself that with the first opportunity, she'll get out of the family. When Rodolfo came along, they were married 1 ½ months after they met, without really knowing anything about him. Her obsession to leave her family was her primary reason at that time and she did not exercise good judgment in her decision making in marriage. During their 4 years marital relationship, she came to realize that Rodolfo cannot be responsible in his duties and responsibilities, in terms of loving, caring, protection, financial support and sex.

---

[20] *Supra* note 14.

On the other hand, Rodolfo is the 3rd among 5 boys. The father, who was perceived to be weak, and his two elder brothers were all working as seaman. Rodolfo who was always available to his mother's needs, became an easy prey, easily engulfed into her system. The relationship became symbiotic, that led to a prolonged and abnormal dependence to his mother. The mother, being the stronger and dominant parent, is a convenient role model, but the reversal of roles became confusing that led to ambivalence of his identity and grave dependency. Apparently, all the boys were hooked up to his complexities, producing so much doubts in their capabilities in a heterosexual setting. Specifically, Rodolfo tried, but failed. His inhibitions in a sexual relationship, is referable to an unconscious guilt feelings of defying the mother's love. At this point, he has difficulty in delineating between the wife and the mother, so that his continuous relationship with his wife produces considerable anxiety, which he is unable to handle, and crippled him psychologically.

Based on the above clinical data, family background and outcome of their marriage, it is the opinion of the examiner, that Mrs. Marietta Cruz-Azcueta is mature, independent and responsible and is psychologically capacitated to perform the duties and obligations of marriage. Due to her numerous personal problems she has difficulty in handling her considerable anxiety, at present. There are strong clinical evidences that Mr. Rodolfo Azcueta is suffering from a Dependent Personality Disorder associated with severe inadequacy that renders him psychologically incapacitated to perform the duties and responsibilities of marriage.

The root cause of the above clinical condition is due to a strong and prolonged dependence with a parent of the opposite sex, to a period when it becomes no longer appropriate. This situation crippled his psychological functioning related to sex, self confidence, independence, responsibility and maturity. It existed prior to marriage, but became manifest only after the celebration due to marital stresses and demands. It is considered as permanent and incurable in nature, because it started early in his life and therefore became so deeply ingrained into his personality structure. It is severe or grave in degree, because it hampered and interfered with his normal functioning related to heterosexual adjustment.[21]

---

[21] *Rollo,* pp. 63-64.

These findings were reiterated and further explained by Dr. Villegas during her testimony, the relevant portion of which we quote below:

xxx xxx xxx

Q: Now, Madame Witness, after examining the petitioner, what was your psychological evaluation?

A: I've found the petitioner in this case, Mrs. Marietta Azcueta as matured, independent, very responsible, focused, she has direction and ambition in life and she work hard for what she wanted, ma'am, and therefore, I concluded that she is psychologically capacitated to perform the duties and responsibilities of the marriage, ma'am.

Q: How about the respondent, Madame Witness, what was your psychological evaluation with regards to the respondent?

A: Based on my interview, I've found out that the husband Mr. Rodolfo Azcueta is psychologically incapacitated to perform the duties and responsibilities of marriage suffering from a psychiatric classification as Dependent Personality Disorder associated with severe inadequacy related to masculine strivings, ma'am.

Q: In layman's language, Madame Witness, can you please explain to us what do you mean by Dependent Personality Disorder?

A: Dependent Personality Disorder are (sic) those persons in which their response to ordinary way of life are ineffectual and inept characterized by loss of self confidence, always in doubt with himself and inability to make his own decision, quite dependent on other people, and in this case, on his mother, ma'am.

Q: And do you consider this, Madame Witness, as a psychological problem of respondent, Rodolfo Azcueta?

A: Very much, ma'am.

Q: Why?

A: Because it will always interfered, hampered and disrupt his duties and responsibilities as a husband and as a father, ma'am.

Q: And can you please tell us, Madame Witness, what is the root cause of this psychological problem?

A: The root cause of this psychological problem is a cross identification with the mother who is the dominant figure in the family, the mother has the last say and the authority in the family while the father was a seaman and always out of the house, and if present is very shy, quiet and he himself has been very submissive and passive to the authority of the wife, ma'am.

Q: And can you please tell us, Madame Witness, under what circumstance this kind of psychological problem manifested?

A: This manifested starting his personality development and therefore, during his early stages in life, ma'am.

Q: So, you mean to say, Madame Witness, this kind of problem existed to Rodolfo Azcueta, the respondent in this case, before the celebration of the marriage?

A: Yes, ma'am.

Q: And it became manifested only after the celebration of the marriage?

A: Yes, ma'am.

Q: And can you please tell us the reason why it became manifested with the…that the manifestation came too late?

A: The manifestation came too late because the history of Mr. Rodolfo Azcueta was very mild, no stresses, no demand on his life, at 24 years old despite the fact that he already finished college degree of Computer Science, there is no demand on himself at least to establish his own, and the mother always would make the decision for him, ma'am.

Q: Okay, Madame Witness, is this kind of psychological problem severe?

A: Yes ma'am.

Q: Why do you consider this psychological problem severe, Madame Witness?

A: Because he will not be able to make and to carry on the responsibility that is expected of a married person, ma'am.

Q: Is it incurable, Madame Witness?

A: It is incurable because it started early in development and therefore it became so deeply ingrained into his personality, and therefore, it cannot be changed nor cured at this stage, ma'am.

Q: So, you mean to say, Madame Witness, that it is Permanent?

A: It is permanent in nature, sir.

Q: And last question as an expert witness, what is the effect of the psychological problem as far as the marriage relationship of Rodolfo Azcueta is concerned?

A: The effect of this will really be a turbulent marriage relationship because standard expectation is, the husband has to work, to feed, to protect, to love, and of course, to function on (sic) the sexual duties of a husband to the wife, but in this case, early in their marriage, they had only according to the wife, experienced once sexual relationship every month and this is due to the fact that because husband was so closely attached to the mother, it is a result of the unconscious guilt feeling of the husband in defying the mother's love when they will be having heterosexual relationship and therefore, at that point, he will not be able to distinguish between the mother and the wife and therefore, sex relationship will not be satisfactory according to expectation, ma'am.[22]

In *Te v. Te*, we held that "[b]y the very nature of Article 36, courts, despite having the primary task and burden of decision-making, **must not discount but, instead, must consider as decisive evidence the expert opinion on the psychological and mental temperaments of the parties."**[23]

Based on the totality of the evidence, the trial court clearly explained the basis for its decision, which we reproduce here for emphasis:

With the preponderant evidence presented by the petitioner, the court finds that respondent totally failed in his commitments and obligations

[22] TSN dated February 26, 2004, at pp. 13-20.

[23] *Supra* note 16.

as a husband. Respondent's emotional immaturity and irresponsibility is grave and he has no showing of improvement. He failed likewise to have sexual intercourse with the wife because it is a result of the unconscious guilt felling (sic) of having sexual relationship since he could not distinguish between the mother and the wife and therefore sex relationship will not be satisfactory as expected.

The respondent is suffering from **dependent personality disorder** and therefore cannot make his own decision and cannot carry on his responsibilities as a husband. The marital obligations to live together, observe mutual love, respect, support was not fulfilled by the respondent.

Considering the totality of evidence of the petitioner clearly show that respondent failed to comply with his marital obligations.

Thus the marriage between petitioner and respondent should be declared null and void on the account of respondent's severe and incurable psychological incapacity.

Third, Rodolfo's psychological incapacity was established to have clearly existed at the time of and even before the celebration of marriage. Contrary to the CA's finding that the parties lived harmoniously and independently in the first few years of marriage, witnesses were united in testifying that from inception of the marriage, Rodolfo's irresponsibility, overdependence on his mother and abnormal sexual reticence were already evident. eTo be sure, these manifestations of Rodolfo's dependent personality disorder must have existed even prior to the marriage being rooted in his early development and a by product of his upbringing and family life.

Fourth, Rodolfo's psychological incapacity has been shown to be sufficiently grave, so as to render him unable to assume the essential obligations of marriage.

The Court is wary of the CA's bases for overturning factual findings of the trial court on this point. The CA's reasoning that Rodolfo's requests for financial assistance from his mother *might have been* due to his embarrassment for failing to contribute to the family coffers and that his motive for not wanting a child was his "responsible" realization that he should not have a child since he is unemployed are all purely speculative. There is no evidence on record to support these views. Again, we must point

out that appellate courts should not substitute their discretion with that of the trial court or the expert witnesses, save only in instance where the findings of the trial court or the experts are contradicted by evidence.

We likewise cannot agree with the CA that Rodolfo's irresponsibility and overdependence on his mother can be attributed to his immaturity or youth. We cannot overlook the fact that at the time of his marriage to petitioner, he was nearly 29 years old or the fact that the expert testimony has identified a grave clinical or medical cause for his abnormal behavior.

In *Te*, the Court has had the occasion to expound on the nature of a dependent personality disorder and how one afflicted with such a disorder would be incapacitated from complying with marital obligations, to wit:

> Indeed, petitioner, who is afflicted with dependent personality disorder, cannot assume the essential marital obligations of living together, observing love, respect and fidelity and rendering help and support, for he is unable to make everyday decisions without advice from others, allows others to make most of his important decisions (such as where to live), tends to agree with people even when he believes they are wrong, has difficulty doing things on his own, volunteers to do things that are demeaning in order to get approval from other people, feels uncomfortable or helpless when alone and is often preoccupied with fears of being abandoned. As clearly shown in this case, petitioner followed everything dictated to him by the persons around him. He is insecure, weak and gullible, has no sense of his identity as a person, has no cohesive self to speak of, and has no goals and clear direction in life.[24]

Of course, this is not to say that anyone diagnosed with dependent personality disorder is automatically deemed psychologically incapacitated to comply with the obligations of marriage. We realize that psychology is by no means an exact science and the medical cases of patients, even though suffering from the same disorder, may be different in their symptoms or manifestations and in the degree of severity. It is the duty of the court in its evaluation of the facts, as guided by expert opinion, to carefully

---

[24] *Id*.

scrutinize the type of disorder and the gravity of the same before declaring the nullity of a marriage under Article 36.

Fifth, Rodolfo is evidently unable to comply with the essential marital obligations embodied in Articles 68 to 71 of the Family Code.[25] As noted by the trial court, as a result of Rodolfo's dependent personality disorder, he cannot make his own decisions and cannot fulfill his responsibilities as a husband. Rodolfo plainly failed to fulfill the marital obligations to live together, observe mutual love, respect, support under Article 68. Indeed, one who is unable to support himself, much less a wife; one who cannot independently make decisions regarding even the most basic and ordinary matters that spouses face everyday; one who cannot contribute to the material, physical and emotional well-being of his spouse is psychologically incapacitated to comply with the marital obligations within the meaning of Article 36.

Sixth, the incurability of Rodolfo's condition which has been deeply ingrained in his system since his early years was supported by evidence and duly explained by the expert witness.

At this point, the Court is not unmindful of the sometimes peculiar predicament it finds itself in those instances when it is tasked to interpret static statutes formulated in a particular point in time and

---

[25] ART. 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

ART. 69. The husband and wife shall fix the family domicile. In case of disagreement, the court shall decide.

The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family.

ART. 70. The spouses are jointly responsible for the support of the family. The expenses for such support and other conjugal obligations shall be paid from the community property and, in the absence thereof, from the income or fruits of their separate properties. In case [of] insufficiency or absence of said income or fruits, such obligations shall be satisfied from their separate properties.

ART. 71. The management of the household shall be the right and duty of both spouses. The expenses for such management shall be paid in accordance with the provisions of Article 70.

apply them to situations and people in a society in flux. With respect to the concept of psychological incapacity, courts must take into account not only developments in science and medicine but also changing social and cultural mores, including the blurring of traditional gender roles. In this day and age, women have taken on increasingly important roles in the financial and material support of their families. This, however, does not change the ideal that the family should be an "autonomous" social institution, wherein the spouses cooperate and are equally responsible for the support and well-being of the family. In the case at bar, the spouses from the outset failed to form themselves into a family, a cohesive unit based on mutual love, respect and support, due to the failure of one to perform the essential duties of marriage.

This brings to mind the following pronouncement in *Te:*

> In dissolving marital bonds on account of either party's psychological incapacity, the Court is not demolishing the foundation of families, but it is actually protecting the sanctity of marriage, because it refuses to allow a person afflicted with a psychological disorder, who cannot comply with or assume the essential marital obligations, from remaining in that sacred bond. It may be stressed that the infliction of physical violence, constitutional indolence or laziness, drug dependence or addiction, and psychosexual anomaly are manifestations of a sociopathic personality anomaly. **Let it be noted that in Article 36, there is no marriage to speak of in the first place, as the same is void from the very beginning. To indulge in imagery, the declaration of nullity under Article 36 will simply provide a decent burial to a stillborn marriage**.[26] (emphasis ours)

In all, we agree with the trial court that the declaration of nullity of the parties' marriage pursuant to Article 36 of the Family Code is proper under the premises.

WHEREFORE, the petition is *GRANTED*. The Amended Decision dated July 19, 2005 of the Regional Trial Court, Branch 72, Antipolo City in Civil Case No. 02-6428 is *REINSTATED.*

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and *Bersamin, JJ.,* concur.

---

[26] *Supra* note 16.

FIRST DIVISION

[A.C. No. 5688. June 4, 2009]

FELIPE E. ABELLA, *complainant, vs.* **ATTY. ASTERIA E. CRUZABRA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; REPUBLIC ACT NO. 6713 (THE CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES; GOVERNMENT EMPLOYEES IN THE EXECUTIVE DEPARTMENT; ALLOWED TO ENGAGE DIRECTLY IN THE PRIVATE PRACTICE OF THEIR PROFESSION PROVIDED THERE IS A WRITTEN PERMISSION FROM THE DEPARTMENT HEAD. — Section 7(b)(2) of RA 6713 provides: Section 7. *Prohibited Acts and Transactions.* — In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful: x x x (b) Outside employment and other activities related thereto. — Public officials and employees during their incumbency shall not: x x x (2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions; or x x x Memorandum Circular No. 17 of the Executive Department allows government employees to engage directly in the private practice of their profession provided there is a written permission from the Department head. It provides: The authority to grant permission to any official or employee shall be granted by the head of the ministry or agency in accordance with Section 12, Rule XVIII of the Revised Civil Service Rules, which provides: "Sec. 12. No officer or employee shall engage directly in any private business, vocation, or profession or be connected with any commercial, credit, agricultural, or industrial undertaking without **a written permission from the head of Department;** Provided, That this prohibition will be absolute in the case of those officers and employees whose duties and responsibilities

require that their entire time be at the disposal of the Government: Provided, further, That if an employee is granted permission to engage in outside activities, the time so devoted outside of office hours should be fixed by the chief of the agency to the end that it will not impair in any way the efficiency of the other officer or employee: And provided, finally, That no permission is necessary in the case of investments, made by an officer or employee, which do not involve any real or apparent conflict between his private interests and public duties, or in any way influence him in the discharge of his duties, and he shall not take part in the management of the enterprise or become an officer or member of the board of directors", Subject to any additional conditions which the head of the office deems necessary in each particular case in the interest of the service, as expressed in the various issuances of the Civil Service Commission. It is clear that when respondent filed her petition for commission as a notary public, she did not obtain a written permission from the Secretary of the DOJ. Respondent's superior, the Register of Deeds, cannot issue any authorization because he is not the head of the Department. And even assuming that the Register of Deeds authorized her, respondent failed to present any proof of that written permission. Respondent cannot feign ignorance or good faith because respondent filed her petition for commission as a notary public after Memorandum Circular No. 17 was issued in 1986.

2. ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; UNAUTHORIZED PRIVATE PRACTICE OF PROFESSION; CLASSIFIED AS LIGHT OFFENSE PUNISHABLE BY REPRIMAND. — Under the Uniform Rules on Administrative Cases in the Civil Service, engaging in the private practice of profession, when unauthorized, is classified as a light offense punishable by reprimand.

APPEARANCES OF COUNSEL

Nestor S. Romulo for complainant.

R E S O L U T I O N

CARPIO, *J.*:

Felipe E. Abella (complainant) filed a complaint for violation of Canon 1 of the Code of Professional Responsibility and Section 7(b)(2) of Republic Act No. 6713[1] (RA 6713) or the Code of Conduct and Ethical Standards for Public Officials and Employees against Atty. Asteria E. Cruzabra (respondent). In his affidavit-complaint[2] dated 8 May 2002, complainant charged respondent with engaging in private practice while employed in the government service.

Complainant alleged that respondent was admitted to the Philippine Bar on 30 May 1986 and was appointed as Deputy Register of Deeds of General Santos City on 11 August 1987.[3] Complainant asserted that as Deputy Register of Deeds, respondent filed a petition for commission as a notary public and was commissioned on 29 February 1988 without obtaining prior authority from the Secretary of the Department of Justice (DOJ).[4] Complainant claimed that respondent has notarized some 3,000 documents.[5] Complainant pointed out that respondent only stopped notarizing documents when she was reprimanded by the Chief of the Investigation Division of the Land Registration Authority.[6]

---

[1] An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees, to Uphold the Time-Honored Principle of Public Office Being a Public Trust, Granting Incentives and Rewards for Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations Thereof and For Other Purposes, 20 February 1989.

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

[3] *Id.* at 438.

[4] *Id.* at 439.

[5] *Id.* at 440.

[6] *Id.* at 439.

Complainant contended that respondent could not justify her act by pretending to be in good faith because even non-lawyers are not excused from ignorance of the law. Complainant branded as incredible respondent's claim that she was merely motivated by public service in notarizing 3,000 documents. Complainant pointed out that respondent spent money to buy the Notarial Register Books and spent hours going over the documents subscribed before her, thereby prejudicing her efficiency and performance as Deputy Register of Deeds. Complainant believed that even if respondent had obtained authority from the DOJ, respondent would still be guilty of violating Section 7(b)(2) of RA 6713 because her practice as a notary public conflicts with her official functions.[7]

In her Comment, respondent admitted that she was a notary public from 29 February 1988 to 31 December 1989.[8] Respondent stated that she was authorized by her superior, the Register of Deeds, to act as a notary public. Respondent pointed out that the Register of Deeds, Atty. Pelagio T. Tolosa, also subscribed petitions and documents that were required to be registered.[9] Respondent explained that the Register of Deeds imposed the following conditions for her application as a notary public:

xxx xxx xxx

4. That the application for commission was on the condition that respondent cannot charge fees for documents required by the Office to be presented and under oath.[10]

Respondent contended that when she filed her petition for commission as a notary public, the requirement of approval from the DOJ Secretary was still the subject of a pending query by one of the Registrars and this fact was not known to respondent.[11] Respondent maintained that she had no intention

[7] *Id.* at 440-441.

[8] *Id.* at 487.

[9] *Id.* at 44.

[10] *Id.* at 45.

[11] *Id.* at 487.

to violate any rule of law. Respondent, as a new lawyer relying on the competence of her superior, admitted that an honest mistake may have been committed but such mistake was committed without willfulness, malice or corruption.[12]

Respondent argued that she was not engaged in illegal practice as a notary public because she was duly commissioned by the court.[13] Respondent denied that she violated Section 7(b)(2) of RA 6713 because she was authorized by her superior to act as a notary public. Respondent reasoned that her being a notary public complemented her functions as Deputy Register of Deeds because respondent could immediately have documents notarized instead of the registrants going out of the office to look for a notary public. Respondent added that she did not charge fees for the documents required by the office to be presented under oath.[14]

Respondent insisted that contrary to complainant's claims, she only notarized 135 documents as certified by the Clerk of Court of the 11th Judicial Region, General Santos City.[15]

In her Report and Recommendation (Report) dated 25 January 2005, Investigating Commissioner Lydia A. Navarro recommended to the IBP Board of Governors the dismissal of the complaint against respondent for lack of merit. The Report reads in part:

> However, the fact that she applied for commission as Notary Public without securing the approval of the proper authority although she was allowed to do so by her superior officer, was not her own undoing for having relied on the ample authority of her superior officer, respondent being a neophyte in the law profession for having newly passed the bar a year after at that time.
>
> Records further showed that after having been reprimanded by Atty. Flestado for said mistake which was done in good faith respondent ceased and desisted to perform notarial work since then

---

[12] *Id.* at 47.

[13] *Id.* at 486-487.

[14] *Id.* at 487.

[15] *Id*.

up to the present as could be gleaned from the Certification issued by Clerk of Court VI Atty. Elmer D. Lastimosa of the 11th Judicial Region General Santos City; dated December 23, 2004 that 135 documents have been notarized by the respondent from February 29, 1988 to December 31, 1989 and there was no record of any notarized documents from January 19, 1990 to December 21, 1991.[16]

In a Resolution dated 12 March 2005, the IBP Board of Governors, in adopting and approving the Report, dismissed the case for lack of merit.

Complainant claims that in dismissing the complaint for "lack of merit" despite respondent's admission that she acted as a notary public for two years, the IBP Board of Governors committed a serious error amounting to lack of jurisdiction or authority.[17]

Section 7(b)(2) of RA 6713 provides:

Section 7. *Prohibited Acts and Transactions.* — In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

xxx xxx xxx

(b) Outside employment and other activities related thereto. — Public officials and employees during their incumbency shall not:

xxx xxx xxx

(2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions; or

xxx xxx xxx

[16] *Id.* at 431-432.

[17] *Id.* at 430.

Memorandum Circular No. 17[18] of the Executive Department allows government employees to engage directly in the private practice of their profession provided there is a written permission from the Department head. It provides:

> The authority to grant permission to any official or employee shall be granted by the head of the ministry or agency in accordance with Section 12, Rule XVIII of the Revised Civil Service Rules, which provides:
>
> > "Sec. 12. No officer or employee shall engage directly in any private business, vocation, or profession or be connected with any commercial, credit, agricultural, or industrial undertaking without **a written permission from the head of Department**; Provided, That this prohibition will be absolute in the case of those officers and employees whose duties and responsibilities require that their entire time be at the disposal of the Government: Provided, further, That if an employee is granted permission to engage in outside activities, the time so devoted outside of office hours should be fixed by the chief of the agency to the end that it will not impair in any way the efficiency of the other officer or employee: And provided, finally, That no permission is necessary in the case of investments, made by an officer or employee, which do not involve any real or apparent conflict between his private interests and public duties, or in any way influence him in the discharge of his duties, and he shall not take part in the management of the enterprise or become an officer or member of the board of directors",
>
> Subject to any additional conditions which the head of the office deems necessary in each particular case in the interest of the service, as expressed in the various issuances of the Civil Service Commission. (Boldfacing supplied)

It is clear that when respondent filed her petition for commission as a notary public, she did not obtain a written permission from the Secretary of the DOJ. Respondent's superior, the Register of Deeds, cannot issue any authorization because

---

[18] Revoking Memorandum Circular No. 1025 dated 25 November 1977 "Prohibiting Any Government Official and Employee From Accepting Private Employment in Any Capacity Without Prior Authority of The Office of the President." Issued on 4 September 1986.

he is not the head of the Department. And even assuming that the Register of Deeds authorized her, respondent failed to present any proof of that written permission. Respondent cannot feign ignorance or good faith because respondent filed her petition for commission as a notary public after Memorandum Circular No. 17 was issued in 1986.

In *Yumol, Jr. v. Ferrer Sr.*,[19] we suspended a lawyer employed in the Commission on Human Rights (CHR) for failing to obtain a written authority and approval with a duly approved leave of absence from the CHR. We explained:

> Crystal clear from the foregoing is the fact that private practice of law by CHR lawyers is not a matter of right. Although the Commission allows CHR lawyers to engage in private practice, a written request and approval thereof, with a duly approved leave of absence for that matter are indispensable. In the case at bar, the record is bereft of any such written request or duly approved leave of absence. No written authority nor approval of the practice and approved leave of absence by the CHR was ever presented by respondent. Thus, he cannot engage in private practice.
>
> As to respondent's act of notarizing documents, records show that he applied for commission as notary public on 14 November 2000, before the Regional Trial Court (RTC) of San Fernando, Pampanga, Branch 42. This was granted by RTC Executive Judge Pedro M. Sunga, Jr., on 01 December 2000. However, the CHR authorized respondent to act as notary public only on 29 October 2001. Considering the acts of notarization are within the ambit of the term "practice of law," for which a prior written request and approval by the CHR to engage into it are required, the crucial period to be considered is the approval of the CHR on 29 October 2001 and not the approval of the RTC on 04 December 2000.[20]

In *Muring, Jr. v. Gatcho*,[21] we suspended a lawyer for having filed petitions for commission as a notary public while employed as a court attorney. We held:

---

[19] A.C. No. 6585, 21 April 2005, 456 SCRA 475.

[20] *Id.* at 488-489.

[21] A.M. No. CA-05-19-P, 31 August 2006, 500 SCRA 330.

Atty. Gatcho should have known that as a government lawyer, he was prohibited from engaging in notarial practice, or in any form of private legal practice for that matter. Atty. Gatcho cannot now feign ignorance or good faith, as he did not seek to exculpate himself by providing an explanation for his error. Atty. Gatcho's filing of the petition for commission, while not an actual engagement in the practice of law, appears as a furtive attempt to evade the prohibition.[22]

Under the Uniform Rules on Administrative Cases in the Civil Service, engaging in the private practice of profession, when unauthorized, is classified as a light offense punishable by reprimand.[23]

WHEREFORE, we find Atty. Asteria E. Cruzabra guilty of engaging in notarial practice without the written authority from the Secretary of the Department of Justice, and accordingly we *REPRIMAND* her. She is warned that a repetition of the same or similar act in the future shall merit a more severe sanction.

SO ORDERED.

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

---

[22] *Id.* at 348-349.

[23] Section 52, Rule IV. Resolution No. 991936 of the Civil Service Commission, effective 26 September 1999.

EN BANC

[A.M. No. P-04-1830. June 4, 2009]
(Formerly A.M. No. 04-6-151-MCTC)

OFFICE OF THE COURT ADMINISTRATOR, *petitioner, vs.* **SYLVIA CANQUE, Clerk of Court, 12th MCTC, Moalboal-Badian-Alcantara-Alegria, Cebu,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; GRAVE MISCONDUCT; NATURE AND PENALTY. —** Grave misconduct is a malevolent transgression of some established and definite rule of action – more particularly, unlawful behavior or gross negligence by the public officer or employee – which threatens the very existence of the system of administration of justice. It manifests itself in corruption, clear intent to violate the law or flagrant disregard of established rules. It is considered as a grave offense under the Civil Service Law with the corresponding penalty of dismissal from the service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in government service.

2. **ID.; ID.; ID.; CODE OF CONDUCT FOR COURT PERSONNEL; THE RULE THAT COURT PERSONNEL SHALL NOT SOLICIT OR ACCEPT ANY GIFT, FAVOR OR BENEFIT ON ANY EXPLICIT OR IMPLICIT UNDERSTANDING THAT SUCH GIFT SHALL INFLUENCE THEIR OFFICIAL FUNCTIONS, VIOLATED IN CASE AT BAR. —** In the case at bar, respondent violated Section 2, Canon 1 of the Code of Conduct for Court Personnel which states that "[c]ourt personnel shall not solicit or accept any gift, favor or benefit on any explicit or implicit understanding that such gift shall influence their official actions." This is sufficiently established by the evidence on record. First, respondent was caught red-handed, in a legitimate entrapment operation, demanding and receiving money from complainant Ypanto in connection with the immediate release of the latter's common-law husband Jovencio from police custody; and the dismissal of the criminal charges against him which were pending before the MCTC, Moalboal-Badian-

Alcantara-Alegria, Cebu – her official station. While respondent was in the act of counting the marked money, she was validly placed under arrest and apprised of her constitutional rights. Second, her hands were found to have smudges of the yellow fluorescent powder used to mark the bills when her hands were subjected to ultraviolet light examination. These results of the entrapment operation clearly establish the guilt of respondent who has merely denied, without support, the allegations against her.

3. ID.; ID.; ID.; CLERKS OF COURT; LIABLE FOR ANY LOSS, SHORTAGE, DESTRUCTION OR IMPAIRMENT OF COURT'S FUNDS, REVENUES, RECORDS, PROPERTIES AND PREMISES; PENALTY. — Respondent likewise failed to observe the standard of behavior required of clerks of court as the chief administrative officers of their respective courts as shown by the initial audit report of the COA finding her remiss in the performance of her administrative duties as clerk of court. These infractions consist of her failure to update the court cashbook, as well as her failure to explain the missing collection records for the Fiduciary Fund (FF) and the shortage in her cash collection amounting to ₱304,985.00. These acts of respondent are in violation of her duties and responsibilities as clerk of court in the collection and custody of legal funds and fees. Clerks of court are responsible for court records and physical facilities of their respective courts and are accountable for the court's money and property deposits under Section B, Chapter 1 of the 1991 Manual for Clerks of Court and the 2002 Revised Manual for Clerks of Court, *viz.*: "The Clerk of Court has general administrative supervision over all the personnel of the Court. As regards the Court's funds and revenues, records, properties and premises, said officer is the custodian. Thus, the Clerk of Court is generally also the treasurer, accountant, guard and physical plant manager thereof." Thus, as custodians of the court's funds, revenues, records, properties and premises, clerks of court are liable for any loss, shortage, destruction or impairment of the same. The cited acts of respondent clearly show her failure to discharge her functions as clerk of court constituting gross neglect of duty, gross dishonesty and grave misconduct. Each offense is punishable with dismissal even for the first time of commission under Section 22 (a), (b) and (c) of Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws.

4. ID.; ID.; ADMINISTRATIVE PROCEEDINGS; ADMINISTRATIVE DUE PROCESS; DOES NOT REQUIRE A FORMAL OR TRIAL-TYPE HEARING. — The essence of due process is that a party be afforded a reasonable opportunity to be heard and to present any evidence he may have in support of his defense. Technical rules of procedure and evidence are not strictly applied to administrative proceedings. Thus, administrative due process cannot be fully equated with due process in its strict judicial sense. A formal or trial-type hearing is not required.

D E C I S I O N

***PER CURIAM*:**

The instant case stemmed from the Investigation Report of the National Bureau of Investigation (NBI)-Region VII on the entrapment operation on Sylvia R. Canque, Clerk of Court, 12th Municipal Circuit Trial Court (MCTC), Moalboal-Badian-Alcantara-Alegria, Cebu.

The Investigation Report showed that on June 1, 2004, Marissa Y. Ypanto of Barangay Polo, Alcantara, Cebu filed a letter-complaint before the NBI alleging that Canque asked from her the amount of Forty Thousand (₱40,000.00) Pesos in exchange for the release of the former's common-law husband, Jovencio Patoc, and the dismissal of his criminal cases in court. Patoc was charged with violation of Republic Act No. 9165 before the sala of Judge Victor R. Teves of the said court.

The NBI operatives conducted an entrapment operation on June 3, 2004 at about 9:30 A.M. in the sala of Judge Teves. They arrested Canque after she received the amount of ₱40,000.00, previously marked with invisible ink and dusted with fluorescent powder, from Ypanto in the presence of NBI Investigator Jedidah S. Hife. Canque was brought to the Forensic Chemistry Section of the NBI for laboratory examination. Forensic Chemist Rommel D. Paglinawan, in his Physics Report,[1] found

[1] *Rollo,* p. 33.

that the right and left hands of Canque were positive for the presence of fluorescent powder.

The NBI report further stated that prior to the entrapment, Patoc's mother had already given the amount of Twenty Thousand (₱20,000.00) Pesos to Canque in the presence of Ypanto for the dismissal of Patoc's first case for possession of "*shabu*" on November 30, 2003. The case remains pending to date.

In a letter dated June 3, 2004, Atty. Reynaldo O. Esmeralda, Acting Regional Director, NBI-Region VII, endorsed to the Deputy Ombudsman for the Visayas the case of Canque for immediate inquest. Thereafter, Informations for direct bribery and violation of Sec. 3 (b) of Republic Act No. 3019, as amended, were filed in the Regional Trial Court (RTC) of Barili, Cebu and were docketed as Criminal Case Nos. CEB-BRL-1058 and CEB-BRL-1057, respectively.

In November 2003, Auditors from Region VII, Cebu City, conducted the periodic audit on the cash and accounts of accountable officers of the provinces of Cebu, Bohol and Negros Oriental. After the audit of the cash and accounts of Canque, the Auditors found that she had a cash shortage of ₱304,985.00. A letter of demand[2] was sent to her to produce the missing funds and to submit a written explanation within seventy-two (72) hours why the shortage occurred.

On August 3, 2004, the office of the Cluster Director, Commission on Audit, Quezon City received the initial report on the result of the examination of the cash and accounts of Canque.[3] Attached to said report were the chronological statements on the events that transpired in the course of the audit submitted by Ma. Violeta Lucila T. Luta, State Auditor II, Team Leader. On August 6, 2004, the Supervising Auditor forwarded to the Office of the Chief Justice the initial report on the results of the investigation conducted on the cash and

[2] *Rollo*, p. 176.

[3] *Rollo*, p. 146.

accounts of Canque. The initial report stated that Canque had a shortage in her cash collection amounting to ₱304,985.00 and recommended her immediate relief from her position and any other position involving money or property accountability.[4]

In a Resolution dated June 29, 2004, the Court treated the NBI entrapment on Canque as an administrative complaint for grave misconduct and directed her to comment thereon. She was immediately placed under suspension until further orders by the Court. The case was referred to a Consultant of the Office of the Court Administrator (OCA) for investigation, report and recommendation.

In her Comment,[5] Canque claimed that sometime in November 2003, Rebecca Patoc came to her office to inquire about the bail for her son, Jovencio. When she learned from the judge that the bail was ₱200,000.00, but that it could be reduced to ₱100,000.00 if there was no objection from the Chief of Police, Rebecca came back two (2) days later with a Motion for Reduction of Bail. After two weeks, Rebecca came with Ypanto. Canque instructed them to proceed to a bonding company in Barili. She alleged that at Shamrock Restaurant, Rebecca gave ₱20,000.00 as premium payment for the bail bond to a certain Ote Erojo, who in turn delivered to Rebecca a copy of the Release Order, promising to send her the bond undertaking by mail. On December 8, 2003, Jovencio and Ypanto brought the surety bond to Canque at the latter's office.

In May 2004, another case for drug pushing was filed against Jovencio. Canque admits to seeing Ypanto only on two (2) occasions: during the preliminary investigation on May 24 and on May 31 when Ypanto asked her when the ten-day period for the filing of Jovencio's Counter-Affidavit would expire.

Canque further averred that on June 3, 2004, the last day for the filing of the Counter-Affidavit, Ypanto came with a woman who introduced herself as Jovencio's sister who had

---

[4] *Rollo*, p. 145.

[5] Dated July 21, 2004, *rollo*, p. 108.

just arrived from Holland. The woman got an envelope from her bag and handed it to Ypanto. Ypanto tried to give it to Canque, but the latter did not touch it when she saw that it was not the Counter-Affidavit. The woman allegedly got the envelope from Ypanto and tried to place it at the back of the palm of Canque where it lightly touched her skin. The woman then showed her ID and told Canque that she was an NBI agent. Other NBI agents rushed in and arrested Canque.

In a Resolution dated November 9, 2004, the Court, upon the recommendation of the OCA, reassigned the case to the Executive Judge, RTC, Cebu City for investigation, report and recommendation, considering that all the persons concerned were residents of Cebu City.

Executive Judge Simeon P. Dumdum, Jr. conducted a hearing on October 18, 2005, attended by Canque, NBI agents Gregorio Algoso, Jr., Reynaldo Villordon and Jedidah Hife. The notice sent to Ypanto was returned with the information that she had died.

The Investigation Report[6] states, *viz*.:

> Jedidah S. Hife, a special investigator of the National Bureau of Investigation Central Visayas Regional Office, identified her Affidavit, dated June 3, 2004.
>
> In that Affidavit, Hife declared that on June 3, 2004, at about 9 o'clock in the morning of June 3, 2004, at the office of the Municipal Circuit Trial Court, Moalboal-Badian-Alcantara-Alegria, Cebu, she and other NBI agents arrested Sylvia Canque in an entrapment operation.
>
> She had been instructed to accompany Marissa Ypanto, pretending to be her friend, and to give a pre-arranged signal to other NBI agents at the proper time.
>
> Thus, she and Marissa Ypanto had entered a room inside the courtroom, and there Marissa introduced her to Sylvia Canque as her friend. Marissa had brought with her marked money in the amount of ₱40,000.00, for which Sylvia had asked from her in exchange for

[6] Dated January 13, 2006.

the dismissal of a case for violation of RA 9165 against Jovencio Patoc, and eventually the release of the latter.

Sylvia Canque and Marissa went outside. Hife followed and overheard Sylvia tell Marissa that the money was for the fiscal. Sylvia showed them a Joint Affidavit executed by PO1 Jeremias Geromo and PO3 Estanislao Avenido, the police officers who had arrested Jovencio.

They returned inside the courtroom. Sylvia Canque asked Marissa how much money she had. Marissa said that she was carrying ₱50,000.00, and gave the envelope to Canque, who wrote ₱50,000.00 on it. The latter put the envelope inside her bag, and got it out, and put it in again – she seemed undecided, and then she again asked Marissa how much the envelope contained. Marissa suggested that she count the money.

While Sylvia was counting the money, Hife gave the pre-arranged signal. NBI agents Reynaldo Villordon and Michael Angelo Abarico entered the courtroom followed by other agents, accosted Sylvia Canque and recovered from her the marked money amounting to ₱40,000.00. Thereupon, they put Canque under arrest and informed her of her Constitutional rights.

At the NBI office, laboratory examination found Sylvia Canque positive for fluorescent powder. She was then booked and fingerprinted.

NBI agents Gregorio Y. Algoso, Jr. and Reynaldo C. Villordon identified and confirmed the allegations in the Joint Affidavit which they executed on June 3, 2004.

On June 1, 2004, their office received a letter from a Jonald Ungab, concerning a certain Marissa Ypanto of Brgy. Polo, Alcantara, Cebu, who had complained about Sylvia R. Canque, Clerk of Court of the 12th Municipal Circuit Trial Court of Moalboal-Basian-Alcantara-Alegria, who had asked from her the amount of ₱40,000.00 in exchange for the release of her common-law husband, Jovencio Patoc, and the dismissal of the case filed against him, which was then being heard in the sala of Judge Victor R. Teves.

In accordance with their plan to entrap Sylvia Canque, Jedidah accompanied Marissa Ypanto, who introduced Jedidah to Sylvia Canque as a friend. Marked money prepared by the Forensic Chemistry Section of the NBI, consisting of six five-hundred-peso bills, in the

total amount of ₱40,000.00, had been given to Ypanto, who was to hand it to Sylvia Canque. When the transaction was done, and Jedidah had given the pre-arranged signal indicating that the money had been received by Sylvia Canque, they immediately went inside the office of Sylvia Canque, introduced themselves and arrested her. They brought Sylvia Canque to the NBI office to be examined for the presence of fluorescent powder on her hands, booked, photographed and fingerprinted.

Villordon added that, being just nearby, he saw Marissa give the money to Sylvia Canque, who counted it. At this point, Jedidah gave the pre-arranged signal, and the agents went inside. His co-agent Michael Albarico announced that they were NBI agents. All of which took Sylvia Canque by surprise.

Physics Report No. 04-P-3306, dated June 3, 2004, of the Forensic Chemistry Section of the National Bureau of Investigation states that the examination conducted on June 3, 2004, at 12:30 p.m. revealed that the left and right hands of Sylvia Canque bore the presence of yellow fluorescent powder.

For her part, Sylvia Canque identified and confirmed the allegations she made in her Comment, dated July 21, 2004, adding nothing to the same.

Still and all, Canque insisted that it was Jedidah who put the envelope on her forearm, and that she did not count the money inside it. In fact, it was NBI Director Esmeralda who counted the money in his office. Until then the envelope was unopened. She denied having written "₱50,000.00" on the envelope.

Findings

Canque admitted that an entrapment operation was conducted on her. Laboratory tests found her hands positive for the presence of fluorescent powder. But Canque denied touching the money herself, claiming that it was Jedidah Hife who put the envelope on the back of her palm. But if the envelope were (*sic)* just put on her forearm, and what was dusted with fluorescent powder was the money, which was inside the envelope, why were Canque's hands found positive for the presence of the powder?

The undersigned gives credence to the testimony of the NBI agents, which was coherent, and given in a forthright manner. No

ulterior motive to lie could be ascribed to the agents. Thus, the undersigned finds the facts to be as narrated by the agents.[7]

The Investigating Judge found respondent Canque guilty of grave misconduct and recommended the penalty of dismissal, with forfeiture of all her benefits and disqualification from re-employment in the government service.

In a Resolution dated February 7, 2006, the Court referred the Investigation Report to the OCA for evaluation, report and recommendation.

In its Report dated June 13, 2006, the OCA recommended that the Investigation Report of Investigating Judge Dumdum be set aside and the complaint be investigated anew upon finding that Canque was not informed of her right to be heard by herself and counsel during the investigation which allegedly amounted to a denial of her right to due process; and for the Audit Report of Shortage in the amount of ₱304,985.00 and other actuations and deficiencies of respondent Canque to be set in the next En Banc Agenda.

On September 5, 2006, the Court issued a Resolution requiring respondent to file a Comment, within a non-extendible period of ten days from notice, on the Audit Report of the COA finding a shortage in her cash collection amounting to ₱304,985.00. Respondent failed to comment. Thus, in an En Banc Resolution dated December 4, 2007, the Court considered respondent to have waived her right to file Comment and referred, for the second time, the matter to the Office of the Court Administrator for evaluation, report and recommendation.

In a Memorandum dated July 23, 2008, the Office of the Court Administrator found Canque liable for gross neglect of duty, gross dishonesty and grave misconduct and recommended her dismissal from the service with forfeiture of retirement and other benefits, except accrued leave credits, and with prejudice to re-employment in any government office or instrumentality, including government-owned and controlled

---

[7] *Rollo*, pp. 284-286.

corporations. It further recommended that she be ordered to restitute the amount of ₱304,985.00 representing the shortage in the collection of court funds.

We agree with the findings and recommendation of the Office of the Court Administrator.

Grave misconduct is a malevolent transgression of some established and definite rule of action – more particularly, unlawful behavior or gross negligence by the public officer or employee – which threatens the very existence of the system of administration of justice.[8] It manifests itself in corruption, clear intent to violate the law or flagrant disregard of established rules.[9] It is considered as a grave offense under the Civil Service Law[10] with the corresponding penalty of dismissal from the service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in government service.

In the case at bar, respondent violated Section 2, Canon 1 of the Code of Conduct for Court Personnel which states that "[c]ourt personnel shall not solicit or accept any gift, favor or benefit on any explicit or implicit understanding that such gift shall influence their official actions." This is sufficiently established by the evidence on record. First, respondent was caught red-handed, in a legitimate entrapment operation, demanding and receiving money from complainant Ypanto in connection with the immediate release of the latter's common-law husband Jovencio from police custody; and the dismissal of the criminal charges against him which were pending before the MCTC, Moalboal-Badian-Alcantara-Alegria, Cebu – her official station. While respondent was in the act of counting

---

[8] *Fernandez v. Gatan*, A.M. No. P-03-1720, May 28, 2004, 420 SCRA 19.

[9] *Bureau of Internal Revenue v. Organo*, G.R. No. 149549, February 26, 2004, 424 SCRA 9.

[10] Section 23, Rule XIV, Omnibus Rules Implementing Book V of Executive Order No. 292, as amended by CSC Memorandum Circular No. 19 (1999).

the marked money, she was validly placed under arrest and apprised of her constitutional rights. Second, her hands were found to have smudges of the yellow fluorescent powder used to mark the bills when her hands were subjected to ultraviolet light examination. These results of the entrapment operation clearly establish the guilt of respondent who has merely denied, without support, the allegations against her.

This is not all.

Respondent likewise failed to observe the standard of behavior required of clerks of court as the chief administrative officers of their respective courts as shown by the initial audit report of the COA finding her remiss in the performance of her administrative duties as clerk of court. These infractions consist of her failure to update the court cashbook, as well as her failure to explain the missing collection records[11] for the Fiduciary Fund (FF) and the shortage in her cash collection amounting to ₱304,985.00. These acts of respondent are in violation of her duties and responsibilities as clerk of court in the collection and custody of legal funds and fees. Clerks of court are responsible for court records and physical facilities of their respective courts and are accountable for the court's money and property deposits under Section B, Chapter 1 of the 1991 Manual for Clerks of Court and the 2002 Revised Manual for Clerks of Court, *viz.*:

> The Clerk of Court has general administrative supervision over all the personnel of the Court. As regards the Court's funds and revenues, records, properties and premises, said officer is the custodian. Thus, the Clerk of Court is generally also the treasurer, accountant, guard and physical plant manager thereof.

Thus, as custodians of the court's funds, revenues, records, properties and premises, clerks of court are liable for any loss, shortage, destruction or impairment of the same.

The cited acts of respondent clearly show her failure to discharge her functions as clerk of court constituting gross neglect

---

[11] Cashbook, passbook, deposit and withdrawal slips, court orders, collection reports, *etc*.

of duty, gross dishonesty and grave misconduct. Each offense is punishable with dismissal even for the first time of commission under Section 22 (a), (b) and (c) of Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws.

We have held time and again that the Court will not hesitate to impose the stiffest penalty on those who atrociously display serious lack of integrity, uprightness and honesty demanded of an employee in the judiciary. Neither shall we tolerate or condone any conduct that would violate the norms of public accountability and diminish, or even tend to diminish, the faith of the people in the justice system,[12] as in the case at bar.

Lastly, the Court does not agree with the finding of the Office of the Court Administrator in its first Report dated June 13, 2006 recommending that the Investigation Report of Investigating Judge Dumdum be set aside and that the complaint be investigated anew since Canque was not informed of her right to be heard by herself and counsel during the investigation – an omission allegedly amounting to a denial of her right to due process. The essence of due process is that a party be afforded a reasonable opportunity to be heard and to present any evidence he may have in support of his defense. Technical rules of procedure and evidence are not strictly applied to administrative proceedings. Thus, administrative due process cannot be fully equated with due process in its strict judicial sense.[13] A formal or trial-type hearing is not required.

In the case at bar, despite respondent's protestations, the records readily show that she was afforded the opportunity to present her side as she was directed to file her comment on the complaint. She was notified of the hearing and was in fact present during the entire proceedings. As to the issue on the

---

[12] *Office of the Court Administrator v. Bernardino*, A.M. No. P-97-1258, January 31, 2005, 450 SCRA 88, 119-120.

[13] *Velasquez v. Hernandez*, G.R. Nos. 150732 & 151095, August 31, 2004, 437 SCRA 357.

legality of her arrest, respondent has failed to submit evidence in support of her bare claims.

IN VIEW WHEREOF, respondent Sylvia R. Canque, Clerk of Court, 12th MCTC, Moalboal-Badian-Alcantara-Alegria, Cebu is found *GUILTY* of *GRAVE MISCONDUCT, GROSS NEGLECT OF DUTY* and *GROSS DISHONESTY.* She is hereby *DISMISSED* from the service, with forfeiture of all benefits, except accrued leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations and financial institutions. She is further ordered to *RETURN* to the Court the amount of ₱304,985.00 to cover the shortage in the collection of court funds. In case of her failure to restitute the said amount, in full or in part, the Employees Leave Division of the Office of Administrative Services–OCA is directed to compute the balance of respondent's accrued leave credits and forward such computation to the Finance Division of the Fiscal Management Office–OCA for the determination of its monetary value. The said amount plus other benefits that respondent may be entitled to shall be applied to the above shortage incurred.

SO ORDERED.

Puno, C.J. (Chairperson), Quisumbing, Ynares-Santiago, Carpio, Corona, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, and *Bersamin, JJ.,* concur.

Carpio Morales and *Chico-Nazario, JJ.,* on official on leave.

FIRST DIVISION

[G.R. No. 162538. June 4, 2009]

NISSAN NORTH EDSA BALINTAWAK, QUEZON CITY, *petitioner, vs.* **ANGELITO SERRANO, JR. and EDWIN TAGULAO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; LOSS OF TRUST AND CONFIDENCE; MUST BE BASED ON WILLFUL BREACH AND FOUNDED ON CLEARLY ESTABLISHED FACTS. — Loss of trust and confidence, to be a valid ground for an employee's dismissal, must be based on a willful breach and founded on clearly established facts. The burden of proof of dismissal rests entirely upon the employer. In the present case, Nissan illegally dismissed Tagulao and Serrano because Nissan failed to prove that Tagulao and Serrano were terminated for a valid cause. Tagulao and Serrano are thus entitled to reinstatement and to receive backwages.

2. ID.; ID.; ID.; ILLEGAL DISMISSAL; REINSTATEMENT AND PAYMENT OF BACKWAGES, REMEDIES IN ILLEGAL DISMISSAL CASES; AWARDS OF SEPARATION PAY AND BACKWAGES, NOT MUTUALLY EXCLUSIVE. — Article 279 of the Labor Code provides that "[a]n employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement." Since, in the present case, reinstatement is no longer practicable or feasible, separation pay may be awarded in lieu of reinstatement. Moreover, the awards of separation pay and backwages are not mutually exclusive and both may be given to Tagulao and Serrano. The normal consequences of a finding that an employee has been illegally dismissed are, firstly, that the employee becomes entitled to reinstatement to

his former position without loss of seniority rights and, secondly, the payment of backwages corresponding to the period from his illegal dismissal up to actual reinstatement. The statutory intent on this matter is clearly discernible. Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, that is, to his *status quo ante* dismissal, while the grant of backwages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal. These twin remedies — reinstatement and payment of backwages — make the dismissed employee whole who can then look forward to continued employment. Thus do these two remedies give meaning and substance to the constitutional right of labor to security of tenure. The two forms of relief are distinct and separate, one from the other. Though the grant of reinstatement commonly carries with it an award of backwages, the inappropriateness or non-availability of one does not carry with it the inappropriateness or non-availability of the other. x x x As the term suggests, separation pay is the amount that an employee receives at the time of his severance from the service and x x x is designed to provide the employee with "the wherewithal during the period that he is looking for another employment." x x x Put a little differently, **payment of backwages is a form of relief that restores the income that was lost by reason of unlawful dismissal; separation pay, in contrast, is oriented towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job. x x x The grant of separation pay was a proper substitute only for reinstatement; it could not be an adequate substitute both for reinstatement and for backwages.**

APPEARANCES OF COUNSEL

Felipe Antonio B. Remollo & Elmar Jay Martin I. Dejaresco for petitioner.

Pablo S. Castillo for respondents.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This is a petition for review on *certiorari*[1] assailing the Decision[2] dated 21 March 2003 and the Resolution[3] dated 13 February 2004 of the Court of Appeals (appellate court) in CA-G.R. SP No. 67662. The appellate court reinstated the Decision[4] dated 6 June 2000 of Labor Arbiter Melquiades Sol D. Del Rosario (Arbiter Del Rosario) in NLRC NCR Case No. 00-03-02755-99, holding petitioner Nissan North EDSA Balintawak (Nissan) of Quezon City liable for the illegal dismissal of respondents Angelito Serrano, Jr. (Serrano) and Edwin Tagulao (Tagulao).

The Facts

Nissan hired Serrano on 2 August 1995 as driver in the Parts Department and assigned him to drive a pick-up vehicle. Serrano's daily load was valued between ₱200,000 to ₱400,000. Serrano twice received merit increases in 1996 for his satisfactory work performance. Nissan hired Tagulao on 1 July 1996 also as driver in the Parts Department, but assigned him to drive a motorcycle. The value of Tagulao's daily load did not fall below ₱20,000. Tagulao twice received merit increases in 1997.

Nissan claimed that Serrano and Tagulao were responsible for the non-delivery of two rolls of tint on 9 July 1998. Serrano and Tagulao allegedly picked up the rolls from Joan Sokua of Sarao corner T. Yap Streets, Corinthian Gardens, Edsa, Mandaluyong City. On 3 September 1998, Jeorge Geronimo (Geronimo), head of the Parts and Accessories Department, issued a memorandum to Tagulao asking for a written explanation for the non-delivery of the two rolls of tint. Tagulao submitted

---

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

[2] *Rollo*, pp. 33-46. Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Romeo A. Brawner and Danilo B. Pine, concurring.

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

[4] *Id*. at 59-71.

his written explanation on 8 September 1998 and stated that he picked up two rolls of tint on 21 July 1998 and not on 9 July. Tagulao unloaded the rolls on 22 July 1998 and notified Teresa Catudio (Catudio) and Mon Espie of the Parts and Accessories Department. The next day, Catudio issued a memorandum which stated that she never received the delivery referred to in Tagulao's written explanation. For his part, Serrano submitted his written explanation on 26 September 1998. Serrano stated that he and Tagulao picked up two rolls of tint on 9 July 1998 but had no knowledge of actual delivery as he had already left the office by then. Tagulao submitted another written explanation on 26 September 1998, insisting that the two rolls of tint were picked up on 21, not 9, July 1998.

Steve G. Chu (Chu), Vice-President for Parts and Services, instructed Geronimo to finish the investigation and submit his report with recommendations. Nathaniel Ballares, Personnel and Administrative Manager, wrote a memorandum dated 21 October 1998 to ask Tagulao and Serrano for yet another written explanation. Tagulao and Serrano stated that they picked up two rolls of tint, endorsed the same to a Mr. David of the Accessories Department, yet could not recall the exact date.

Nissan served Tagulao and Serrano a Notice of Termination dated 3 November 1998 and severed their employment after 30 days from receipt of notice. Tagulao and Serrano filed a joint complaint for illegal dismissal and separation pay plus backwages, non-payment of salaries, service incentive leave pay, 13th month pay, overtime pay, damages, and attorney's fees before the Labor Arbiter. Their complaint was docketed as NLRC NCR Case No. 00-03-02755-99.

The Ruling of the Labor Arbiter

In his Decision dated 6 June 2000, Arbiter Del Rosario found that Tagulao and Serrano's dismissals were indeed illegal. From the memo documents, Arbiter Del Rosario inferred that Chu wanted to make it appear that despite Tagulao and Serrano's receipt of two rolls of tint, Tagulao and Serrano failed to deliver the rolls to Nissan. Chu had Catudio antedate a 28 July 1998 delivery to 9 July 1998. There was really no pick up of two rolls of tint on

the questioned 9 July 1998 date. Tagulao and Serrano picked up ten rolls of tint on 28 July 1998 and delivered them to Nissan on the same day. Because of these factual findings, Nissan failed to establish by substantial evidence the charge of asportation upon which it based Tagulao and Serrano's dismissals. The consequences of Arbiter Del Rosario's findings weighed heavily against Nissan, as shown below:

> For [Nissan's] failure to establish a valid cause to dismiss [Tagulao and Serrano], their termination from work is invalid and illegal. Consequently, they should be paid their backwages reckoned from December 3, 1998 (Annex J complainant's position paper) as the memorandum of termination is dated November 3, 1998 and it is to [take] effect 30 days thereafter.
>
> As of May 3, 2000 at ₱5,270.88 a month, Angelito Serrano, Jr.'s backwages in addition to the payment of his separation pay at one (1) month pay per year of service, a fraction of six (6) months being considered one whole year, has amounted to ₱94,875.84.
>
> With regard to Edwin Tagulao, as he was [last] receiving the monthly salary of ₱5,477.88, his accumulated backwages as of May 3, 2000 is also ₱98,601.84 in addition to his separation pay of one (1) month per year of service, a fraction of six (6) months being considered as one whole year.
>
> Both complainant[s] should likewise received [sic] their half[-]month pay for services rendered. For Serrano, Jr., the sum of ₱2,635.44; and for Tagulao the sum of ₱2,738.94.
>
> As regards overtime pay, there is nothing on record to support this claim[.] [N]ot only does the law require the claimant to prove by substantial evidence his entitlement thereto but this claim must be denied because by being drivers (not purchasers [as] claimed by [Nissan]) complainants are considered field workers who are not entitled to overtime pay.
>
> As to SIL and 13th month pay, [Nissan] admits that these benefits were not paid because of the complainants' failure to [have] their clearances processed. They are therefore entitled to proportionate reliefs.
>
> As to the claim for moral and actual damages, complainants indicated as party respondent only Nissan North EDSA Balintawak (QC) and not the persons responsible for their problems. [Nissan] being a corporate

person could not be liable for the individual acts of the employees working for the company and hence could not be sentenced to pay damages.

Since [Tagulao and Serrano] were assisted by counsel *de parte*, attorney's fees equivalent to 10% of the awarded money claims must be paid by [Nissan].

CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered finding [Tagulao and Serrano's] dismissals to be illegal. Consequently, they should be paid backwages reckoned from their dismissal on December 3, 1998 and which as of May 3, 2000 has accumulated in the sum of ₱94,875.84 for Angelito Serrano, Jr., amd (sic) ₱98,601.84 for Edwin Tagulao plus separation pay at one (1) month per year of service, a fraction of six (6) months being considered as one (1) whole year.

> [Nissan] should further pay complainants as follows:
> Angelito Serrano, Jr.
> a) ₱ 878.50 SIL;
> b) ₱4,421.57 13th month pay (proportionate);
> c) ₱2,635.44 unpaid wages; [and]
> d) 10% as attorney's fees.
>
> Edwin Tagulao
>
> a) ₱ 913.00 SIL;
> b) ₱4,595.33 13th month pay (proportionate);
> c) ₱2,738.94 unpaid wages; [and]
> d) 10% as attorney's fees.
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[5]

The Ruling of the NLRC

In its Decision[6] promulgated on 25 June 2001, the NLRC affirmed the decision of the Labor Arbiter but deleted the award of backwages and separation pay for lack of legal basis. The NLRC ruled that Arbiter Del Rosario's award of backwages to Tagulao and Serrano violated Section 3, Rule V of the NLRC Rules of Procedure. The NLRC agreed with Nissan's assertion

[5] *Id*. at 69-71.

[6] *Id*. at 72-79. Penned by Commissioner Victoriano R. Calaycay with Commissioners Raul T. Aquino and Angelita A. Gacutan, concurring.

that Arbiter Del Rosario gravely abused his discretion amounting to lack of jurisdiction when he awarded backwages to Tagulao and Serrano even if the award of backwages was not prayed for in the complaint. The *ratio* for the NLRC's decision reads as follows:

> The NLRC Rules of Procedure (Section 3, Rule V) clearly state, among others, that the verified position papers of the parties shall cover only those claims and causes of action raised in the complaint, and the parties shall thereafter not be allowed to allege, or present evidence to prove, facts not referred to and any cause or causes of action not included in the complaint. In the case at bar, the complaint of complainants never state "illegal dismissal" as one of their causes of action, as well as, "reinstatement" or "payment of backwages" as among the reliefs prayed for. Instead, they claimed for payment of "separation pay" However, the Labor Arbiter below proceeded in granting payment of backwages to complainants plus separation pay.
>
> Respondent-appellant's contention that the cause or causes of action not stated in the complaint must not be entertained and cannot be given due course, is well-taken. Since the complainants asked only for payment of separation pay in their complaint and never prayed for reinstatement with backwages, then the ruling of the Labor Arbiter below awarding backwages to complainants is in violation of the Revised NLRC Rules of Procedure above-cited. In general, the remedy for illegal dismissal is the reinstatement of the employee to his former position without loss of seniority rights and the payment to him of backwages [*Santos v. NLRC*, 154 SCRA 166 (1987)]. But, there may be instances where reinstatement is not a viable remedy or where the relations between the employer and employee have been so severely strained that it is not advisable to order reinstatement [*Asiaworld Publishing House, Inc. v. Ople*, 152 SCRA 219 (1987)], or where the employee decides not to be reinstated [*Starlite Plastic Industrial Corp. v. NLRC*, 171 SCRA 315, 326 (1989)]. In such events, the employer will instead be ordered to pay separation pay. Considering the fact that the herein complainants never decide to be reinstated as evidenced by their failure or non-inclusion of the same in the reliefs they prayed for in their complaint, it is error on the part of the Labor Arbiter to award backwages in the absence of any prayer for reinstatement. For, where the employee has manifested that he is not anymore interested in reinstatement, award of backwages is improper (*International Travel Corp. v. NLRC*, G.R. No. 70859, Dec. 12, 1986). Hence, the award of backwages made by the Labor Arbiter to

the complainants is null and void it having been issued in grave abuse of discretion amounting to lack of jurisdiction.

SO ORDERED.[7]

The Ruling of the Appellate Court

In its Decision[8] promulgated on 21 March 2003, the appellate court set aside the decision of the NLRC and reinstated the decision of Arbiter Del Rosario.

The appellate court found that a mere cursory look at the pro-forma complaint form of Tagulao and Serrano shows that they marked the following causes of action: illegal dismissal, non-payment of 15 days salary, overtime pay, separation pay, service incentive leave, moral and exemplary damages, and attorney's fees. Tagulao and Serrano prayed for reinstatement and the payment of unpaid salaries and wages for 15 days, service incentive leave, overtime pay, proportionate 13th month pay, moral and exemplary damages, and attorney's fees. The appellate court declared that the NLRC "overlooked the fact that 'illegal dismissal' was one of the causes of action and 'reinstatement' was one of the reliefs prayed for. The complaint itself was clearly very obvious. *Res ipsa loquitur*." Although the relief of backwages was not in the complaint, backwages was one of the reliefs prayed for in Tagulao and Serrano's position paper. Section 3, Rule V of the NLRC's New Rules of Procedure allows claims asserted in the position paper.

The appellate court also declared that Tagulao and Serrano's dismissals were illegal because Nissan failed to prove by substantial evidence the charge of asportation of company property by Tagulao and Serrano.

The dispositive portion of the appellate court's decision reads as follows:

WHEREOF, premises considered, the decision of the NLRC dated 25 June 2001 and the Minute Resolution dated 30 July 2001 are hereby REVERSED and SET ASIDE. The decision of Labor Arbiter Melquiades Sol D. Del Rosario dated 6 June 2000 is REINSTATED.

---

[7] *Id*. at 76-79.

[8] *Id*. at 33-46.

SO ORDERED.[9]

The appellate court denied Nissan's motion for reconsideration in a Resolution promulgated on 13 February 2004.[10]

The Issues

Nissan raises two issues before this Court. First, Nissan questions the appellate court's ruling that Nissan failed to establish the charge of asportation of company property against Tagulao and Serrano. Nissan alleges that the termination of Tagulao and Serrano is clearly supported by evidence of asportation. Second, Nissan claims that, contrary to the appellate court's ruling, Tagulao and Serrano are not entitled to backwages and separation pay.

The Ruling of the Court

The petition has no merit.

We see no reason to overturn the findings of fact of Arbiter Del Rosario, the NLRC, and the appellate court. Nissan failed to prove that Tagulao and Serrano were responsible for the loss of two rolls of tint. The records of the case show that there was a discrepancy between the dates of pick up and delivery as alleged by Nissan and as alleged by Tagulao and Serrano. Even Catudio, Nissan's employee, stated that she changed the dates on the delivery receipt of the two rolls of tint on the instruction of her boss.

Loss of trust and confidence, to be a valid ground for an employee's dismissal, must be based on a willful breach and founded on clearly established facts. The burden of proof of dismissal rests entirely upon the employer. In the present case, Nissan illegally dismissed Tagulao and Serrano because Nissan failed to prove that Tagulao and Serrano were terminated for a valid cause. Tagulao and Serrano are thus entitled to reinstatement and to receive backwages.

The NLRC's decision limited itself as to whether Tagulao and Serrano prayed for reinstatement with backwages. The appellate court's decision emphasized that Tagulao and Serrano indeed asked for these reliefs in their complaint and in their position paper. The

[9] *Id.* at 46.

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

appellate court's ruling is supported by Section 2, Rule V of The New Rules of Procedure of the NLRC which reads:

Submission of Position Papers/Memorandum. — Should the parties fail to agree upon an amicable settlement, either in whole or in part, during the conferences, the Labor Arbiter shall issue an order stating therein the matters taken up and agreed upon during the conferences and directing the parties to simultaneously file their respective verified position papers.

These verified position papers shall cover only those claims and causes of action raised in the complaint excluding those that may have been amicably settled, and shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's direct testimony. The parties shall thereafter not be allowed to allege facts, or present evidence to prove facts, not referred to and any cause or causes of action not included in the complaint or position papers, affidavits and other documents. Unless otherwise requested in writing by both parties, the Labor Arbiter shall direct both parties to submit simultaneously their position papers/memorandum with the supporting documents and affidavits within fifteen (15) calendar days from the date of the last conference, with proof of having furnished each other with copies thereof.

Article 279 of the Labor Code provides that "[a]n employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement." Since, in the present case, reinstatement is no longer practicable or feasible, separation pay may be awarded in lieu of reinstatement. Moreover, the awards of separation pay and backwages are not mutually exclusive and both may be given to Tagulao and Serrano.

The normal consequences of a finding that an employee has been illegally dismissed are, firstly, that the employee becomes entitled to reinstatement to his former position without loss of seniority rights and, secondly, the payment of backwages corresponding to the period from his illegal dismissal up to actual reinstatement. The statutory intent on this matter is clearly discernible. Reinstatement restores

the employee who was unjustly dismissed to the position from which he was removed, that is, to his *status quo ante* dismissal, while the grant of backwages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal. These twin remedies —reinstatement and payment of backwages — make the dismissed employee whole who can then look forward to continued employment. Thus do these two remedies give meaning and substance to the constitutional right of labor to security of tenure. The two forms of relief are distinct and separate, one from the other. Though the grant of reinstatement commonly carries with it an award of backwages, the inappropriateness or non-availability of one does not carry with it the inappropriateness or non-availability of the other. x x x As the term suggests, separation pay is the amount that an employee receives at the time of his severance from the service and x x x is designed to provide the employee with "the wherewithal during the period that he is looking for another employment." In the instant case, the grant of separation pay was a substitute for immediate and continued re-employment with the private respondent Bank. The grant of separation pay did not redress the injury that is intended to be relieved by the second remedy of backwages, that is, the loss of earnings that would have accrued to the dismissed employee during the period between dismissal and reinstatement. Put a little differently, **payment of backwages is a form of relief that restores the income that was lost by reason of unlawful dismissal; separation pay, in contrast, is oriented towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job.** x x x **The grant of separation pay was a proper substitute only for reinstatement; it could not be an adequate substitute both for reinstatement and for backwages.**[11] (Emphasis added)

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision dated 21 March 2003 and the Resolution dated 13 February 2004 of the Court of Appeals in CA-G.R. SP No. 67662.

SO ORDERED.

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

---

[11] *Santos v. National Labor Relations Commission*, 238 Phil. 161, 166-168 (1987).

FIRST DIVISION

[G.R. No. 163868. June 4, 2009]

ROMUALDO PAGSIBIGAN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and ELEAZAR CABASAL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; LIMITED TO REVIEW OF QUESTIONS OF LAW; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED. — A petition for review under Rule 45 of the Rules of Court should cover only questions of law. Questions of fact are not reviewable. A question of law exists when the doubt centers on what the law is on a certain set of facts. A question of fact exists when the doubt centers on the truth or falsity of the alleged facts. There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. The issue to be resolved must be limited to determining what the law is on a certain set of facts. Once the issue invites a review of the evidence, the question posed is one of fact.

2. ID.; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, ARE BINDING ON THE SUPREME COURT; EXCEPTIONS. — The factual findings of the trial court, especially when affirmed by the Court of Appeals, are binding on the Court. The exceptions to this rule are (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the findings of the Court of Appeals are contrary to those of the trial court;

(9) when the facts set forth by the petitioner are not disputed by the respondent; and (10) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.

3. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; THE AWARD DEMANDS FACTUAL, LEGAL AND EQUITABLE JUSTIFICATION. — The award of attorney's fees and expenses of litigation must have factual and legal justification, which must be stated in the body of the decision. Otherwise, the award is disallowed. In *Consolidated Bank & Trust Corporation v. Court of Appeals,* the Court held that: The award of attorney's fees lies within the discretion of the court and depends upon the circumstances of each case. However, **the discretion of the court to award attorney's fees** under Article 2208 of the Civil Code of the Philippines **demands factual, legal and equitable justification,** without which the award is a conclusion without a premise and improperly left to speculation and conjecture. It becomes a violation of the proscription against the imposition of a penalty on the right to litigate (*Universal Shipping Lines, Inc. v. Intermediate Appellate Court,* 188 SCRA 170 [1990]). **The reason for the award must be stated in the text of the court's decision. If it is stated only in the dispositive portion of the decision, the same shall be disallowed. As to the award of attorney's fees being an exception rather than the rule, it is necessary for the court to make findings of fact and law that would bring the case within the exception and justify the grant of the award** (*Refractories Corporation of the Philippines v. Intermediate Appellate Court,* 176 SCRA 539 [1989]). In the instant case, the lower courts totally failed to justify the award of attorney's fees and expenses of litigation. There was no factual or legal justification stated in the texts of the lower courts' decisions. The RTC merely stated in the dispositive portion of its 26 February 2002 Decision that, "Accused is also ordered to pay attorney's fees in the amount of ₱20,000.00 to complainant and costs of suit." Thus, the award is disallowed.

APPEARANCES OF COUNSEL

Villanueva Gabionza and De Santos for petitioner.
The Solicitor General for respondents.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This is a petition[1] for review under Rule 45 of the Rules of Court. The petition challenges the 30 January 2004 Decision[2] and 26 May 2004 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 76291. The Court of Appeals affirmed *in toto* the 26 February 2002 Decision[4] of the Regional Trial Court (RTC), Judicial Region 3, Branch 16, Malolos, Bulacan in Criminal Case No. 1149-M-2000.

The Facts

On 29 November 1982, Elizabeth Hinal (Hinal) and the Government Service Insurance System (GSIS) entered into a deed[5] of conditional sale over a piece of property located at 1399 Kadena de Amor Street, Alido Heights Subdivision, Malolos, Bulacan. Under the deed, GSIS sold the property to Hinal payable in 25 years.

Eleazar M. Cabasal (Cabasal) was a depositor, while Romualdo A. Pagsibigan (Pagsibigan) was the manager, of the Rural Bank of Guiguinto, Bulacan (Rural Bank). Aside from being the manager of the Rural Bank, Pagsibigan acted as a real estate agent, usually to bank depositors. A certain Liza Geronimo informed Cabasal that there was a property for sale which he might like. Cabasal approached Pagsibigan and, in 1991, Pagsibigan offered for sale Hinal's property to Cabasal for ₱215,000 plus assumption of the outstanding obligation with

---

[1] *Rollo*, pp. 14-54.

[2] *Id.* at 55-61. Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Mariano C. Del Castillo and Rosalinda Asuncion-Vicente, concurring.

[3] *Id.* at 63.

[4] *Id.* at 65-68. Penned by Judge Thelma R. Piñero-Cruz.

[5] *Id.* at 76-77.

GSIS. Cabasal agreed to buy the property. In a receipt[6] dated 30 January 1992, Pagsibigan acknowledged receipt of ₱215,000 from Cabasal. Cabasal occupied the property and spent ₱400,000 on renovation.

In 1992, Cabasal received from GSIS a notice directing Hinal to settle her outstanding obligation of ₱535,000. Alarmed, Cabasal referred the matter to Pagsibigan. Pagsibigan accompanied Cabasal to the house of Hinal and asked Hinal to sign a deed of sale and transfer of rights over the property in favor of Cabasal. Hinal refused to sign the deed because she did not (1) sell the property, (2) authorize Pagsibigan to sell the property, and (3) receive ₱215,000. Pagsibigan assured Cabasal that he would settle the problem.

In 1999, Cabasal received another notice[7] from GSIS directing Hinal to settle her outstanding obligation of ₱752,157.10, otherwise the deed of conditional sale would be cancelled. Cabasal referred the matter to a certain Atty. Reyes. Upon the advice of Atty. Reyes, Cabasal made an initial payment of ₱50,000 to GSIS to forestall the cancellation of the deed of conditional sale.

Atty. Reyes sent a demand letter to Pagsibigan asking him to return Cabasal's ₱215,000. Because Pagsibigan failed to return the money, Atty. Reyes initiated a criminal case against him. In an Information[8] dated 3 April 2000, Second Assistant Provincial Prosecutor Alfredo L. Geronimo charged Pagsibigan with estafa. Pagsibigan pleaded not guilty.

The RTC's Ruling

In its 26 February 2002 Decision, the RTC did not find Pagsibigan guilty beyond reasonable doubt of estafa. However, the RTC ordered Pagsibigan to pay Cabasal ₱215,000 civil liability, ₱20,000 attorney's fees and expenses of litigation. The RTC held that:

> In the prosecution for estafa under Art. 315, paragraph 2(a) of the Revised Penal Code, it is indispensable that the element of deceit, consisting in the false statement or fraudulent representation of the

[6] Records, p. 6.

[7] *Id.* at 13-14.

[8] *Id.* at 1-2.

accused, be made prior to, or, at least simultaneously with, the delivery of the thing by complainant, it being essential that such false statement or fraudulent representation constitutes the very cause or the only motive which induces the complainant to part with the thing. If there be no such prior or simultaneous false statement or fraudulent representation, any subsequent act of the accused, cannot serve as a basis for prosecution for that class of estafa. (*People vs. Gines, et al.*, C.A. 61 O.G. 1365).

In this case it was complainant who approached accused Pagsibigan with respect to the sale of the subject property and he had known that accused was involved in realty sale, through a certain Liza Geronimo. In fact Liza Geronimo had informed him that "there was a house open for sale" which would meet his qualifications, and he was told to see Mr. Pagsibigan. (TSN dated January 18, 2001, Cabasal on Direct, p. 6).

As testified to by complainant, the lot was offered for sale by accused Pagsibigan but there is no evidence that accused Pagsibigan made false statement or fraudulent representation that he is the owner of the property or that he had the power to transfer such property to complainant, convincing enough to induce complainant to part with his ₱215,000.00.

When accused had made a reputation with respect to realty sale, it shows that he was good at it and that he could be relied upon, otherwise Liza Geronimo would not have referred complainant Cabasal to him. Evidence also shows that accused Pagsibigan tried to transfer the property to complainant Cabasal. Moreover, had the accused from the very beginning conceived an evil plan to deceive complainant he would no longer inform complainant about the status of the subject property with the GSIS.

> "In the absence of proof that the representation of the accused was actually false, criminal intent to deceive cannot be inferred" (*People vs. Urpiano*, C.A., 60 O.G. 6009, citing the ruling in the cases of *People vs. Lagasca*, G.R. No. 4230-R, June 5, 1960, and *U.S. vs. Adriatico*, 7 Phil. 187. [sic]

However, **the evidence presented shows that accused Pagsibigan received the amount of ₱215,000.00 from complainant Cabasal and he failed to return or pay the same, upon receipt of the demand letter. Hence, though the accused is not criminally liable, he is under obligation to return the same to complainant Cabasal, with legal interest from the time of demand to pay the same**.

"An acquittal based on reasonable doubt that the accused committed the crime charged does not necessarily exempt him from civil liability where a mere preponderance of evidence is required." (*Manahan, Jr., vs. Court of Appeals*, 255 SCRA 202)

However, the other expenses incurred by complainant in repairing the house same [sic] as well as the amount of ₱50,000.00 he remitted to the GSIS same [sic] cannot be recovered from the accused, since those are considered useful expenses for the convenience of the complainant.

WHEREFORE, premises considered, the prosecution evidence having failed to prove the guilt of the accused beyond reasonable doubt, his acquittal of the offense charged is hereby rendered.

However, **the prosecution having proven with clear and convincing evidence that accused received the amount of ₱215,000.00 from complainant Cabasal and had not paid the same, he is therefore adjudge** [sic] **civilly liable to pay such amount to complainant** with legal interest from the time of demand up to full payment of the same to complainant.

Accused is also ordered to pay attorney's fees in the amount of ₱20,000.00 to complainant and costs of this suit.[9] (Emphasis supplied)

Aggrieved, Pagsibigan appealed to the Court of Appeals. In his memorandum[10] dated 1 August 2001, he claimed that the RTC erred in finding him civilly liable for ₱215,000 and in ordering him to pay ₱20,000 attorney's fees. Pagsibigan claimed that he was not civilly liable because Hinal transferred her rights over the property to Cabasal.

The Court of Appeals' Ruling

In its 30 January 2004 Decision, the Court of Appeals affirmed *in toto* the 26 February 2002 Decision of the RTC. The Court of Appeals held that there was sufficient evidence to show that Pagsibigan was civilly liable and that the transfer of rights over the property did not extinguish Pagsibigan's civil liability. The Court of Appeals held that:

Contrary to the protestations of appellant, **evidence adduced by the prosecution is preponderant enough to sustain his civil liability.**

---

[9] *Rollo*, pp. 67-68.

[10] CA *rollo*, pp. 33-66.

As a matter of fact, on the strength of the affidavit of Elizabeth Hinal alone, who is the registered owner of the property in question, ample evidence is provided to prove the civil liability of the appellant. In this affidavit, Hinal declared the she never authorized appellant to sell her property nor did she receive the amount of Php215,000.00 which is the alleged consideration of the sale. From this declaration alone, it is clear already that appellant received the amount of Php215,000.00 from Cabasal on account of his misrepresentation that he has the authority to sell the house and lot of Hinal, when in fact there is no such authority. At the very least, appellant's obligation to return the money to Cabasal is sourced from Quasi-contract, particularly *solutio indebiti*, *viz*:

> Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return arises.
>
> Art. 2159. Whoever in bad faith accepts an undue payment shall pay legal interest if a sum of money is involved, or shall be liable for fruits received or which should have been received if the thing produces fruits.
>
> xxx xxx xxx

Neither had the execution of the Deed of Transfer of Rights between Hinal and Cabasal extinguished the civil liability of appellant. It should be noted that Hinal declared in open court that she did not receive any consideration for executing the Deed of Transfer of Rights to Cabasal. Thus:

> Q So you said the transfer to Cabasal was for a consideration?
> A None, sir.
>
> xxx xxx xxx
>
> Q Are you aware that Mr. Pagsibigan sold your house and lot?
> A No, sir.
>
> Q You have not received any consideration for this sale?
> A No, sir.
>
> xxx xxx xxx

Q This house and lot was transferred to Mr. Cabasal because *"naawa rin ako sa kanila dahil matagal na silang nakatira doon"*.
A Yes, sir.

Q And you are not claiming any consideration from Cabasal when you executed the transfer of right?
A Yes, sir.

Thus, even if there had been a transfer of the right over the property from Hinal to Cabasal, the amount of Php215,000.00 which was given to appellant was never the consideration of the said transfer but the sympathy of Hinal to Cabasal. In all probability, it is not far-fetch [sic] that Hinal will later on demand from Cabasal the payment of the consideration for the transfer of her right, perhaps, when the latter had already collected from appellant.[11] (Emphasis supplied)

Pagsibigan filed a motion for reconsideration. In its 26 May 2004 Resolution, the Court of Appeals denied the motion.

Hence, the instant petition. Pagsibigan claims that (1) he did not receive ₱215,000 from Cabasal, and (2) the lower courts erred in ordering him to pay ₱20,000 attorney's fees and expenses of litigation.

The Court's Ruling

The petition is partly meritorious.

A petition for review under Rule 45 of the Rules of Court should cover only questions of law. Questions of fact are not reviewable. A question of law exists when the doubt centers on what the law is on a certain set of facts. A question of fact exists when the doubt centers on the truth or falsity of the alleged facts.[12]

There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. The issue to be resolved must be limited to determining what the law is on a certain set of facts. Once the

[11] *Rollo*, pp. 59-61.

[12] *Microsoft Corp. v. Maxicorp, Inc.*, 481 Phil. 550, 561 (2004).

issue invites a review of the evidence, the question posed is one of fact.[13] In *Paterno v. Paterno*,[14] the Court held that:

> Such questions as whether certain items of evidence should be accorded probative value or weight, or rejected as feeble or spurious, or whether or not the proofs on one side or the other are clear and convincing and adequate to establish a proposition in issue, are without doubt questions of fact. Whether or not the body of proofs presented by a party, weighed and analyzed in relation to contrary evidence submitted by adverse party, may be said to be strong, clear and convincing; whether or not certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side; whether or not inconsistencies in the body of proofs of a party are of such gravity as to justify refusing to give said proofs weight — all these are issues of fact. Questions like these are not reviewable by this Court which, as a rule, confines its review of cases decided by the Court of Appeals only to questions of law raised in the petition and therein distinctly set forth.

Whether Pagsibigan received ₱215,000 from Cabasal is a question of fact. It can only be resolved after reviewing the probative value of the evidence. Thus, it is not reviewable.

The factual findings of the trial court, especially when affirmed by the Court of Appeals, are binding on the Court. The exceptions to this rule are (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioner are not disputed by the respondent; and (10) when the findings of

---

[13] *Id*.

[14] G.R. No. 63680, 23 March 1990, 183 SCRA 630, 636-637.

the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[15] After a careful review of the records, the Court finds that none of these circumstances is present.

The award of attorney's fees and expenses of litigation must have factual and legal justification, which must be stated in the body of the decision. Otherwise, the award is disallowed. In *Consolidated Bank & Trust Corporation v. Court of Appeals*,[16] the Court held that:

> The award of attorney's fees lies within the discretion of the court and depends upon the circumstances of each case. However, **the discretion of the court to award attorney's fees** under Article 2208 of the Civil Code of the Philippines **demands factual, legal and equitable justification**, without which the award is a conclusion without a premise and improperly left to speculation and conjecture. It becomes a violation of the proscription against the imposition of a penalty on the right to litigate (*Universal Shipping Lines, Inc. v. Intermediate Appellate Court*, 188 SCRA 170 [1990]). **The reason for the award must be stated in the text of the court's decision. If it is stated only in the dispositive portion of the decision, the same shall be disallowed. As to the award of attorney's fees being an exception rather than the rule, it is necessary for the court to make findings of fact and law that would bring the case within the exception and justify the grant of the award** (*Refractories Corporation of the Philippines v. Intermediate Appellate Court*, 176 SCRA 539 [1989]).

In the instant case, the lower courts totally failed to justify the award of attorney's fees and expenses of litigation. There was no factual or legal justification stated in the texts of the lower courts' decisions. The RTC merely stated in the dispositive portion of its 26 February 2002 Decision that, "Accused is also ordered to pay attorney's fees in the amount of ₱20,000.00 to complainant and costs of suit." Thus, the award is disallowed.

WHEREFORE, we *GRANT* in part the petition. We *AFFIRM* with *MODIFICATION* the 30 January 2004 Decision and 26

---

[15] *Ilagan-Mendoza v. Court of Appeals*, G.R. No. 171374, 8 April 2008, 550 SCRA 635, 647.

[16] 316 Phil. 246, 260 (1995).

May 2004 Resolution of the Court of Appeals in CA-G.R. CV No. 76291. The award of ₱20,000 attorney's fees and expenses of litigation is *DELETED*.

SO ORDERED.

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

---

THIRD DIVISION

[A.M. No. MTJ-05-1588. June 5, 2009]
(Formerly No. 04-9-511-RTC)

JUDGE DIVINA LUZ P. AQUINO-SIMBULAN, *complainant, vs.* **PRESIDING JUDGE NICASIO BARTOLOME (retired), ACTING CLERK OF COURT ROMANA C. PASCUAL, CLERK OF COURT MILAGROS P. LEREY (retired), and DOCKET CLERK AMOR DELA CRUZ, all of the Municipal Trial Court, Sta. Maria, Bulacan,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; RULES ON BAIL; VIOLATED IN CASE AT BAR. — The following provisions of the Revised Rules of Criminal Procedure apply before an accused can be released on bail: Sec. 14. *Bail, where filed*. (a) Bail in the amount fixed may be filed with the court where the case is pending, or, in the absence or unavailability of the judge thereof, with another branch of the same court within the province or city. If the accused is arrested in a province, city or municipality other than where the case is pending, bail may be filed also with any regional trial court of said place, or, if no judge thereof is available, with any metropolitan trial judge, municipal trial judge or municipal circuit trial judge therein. x x x Sec. 16. *Release on bail*. The accused

must be discharged upon approval of the bail by the judge with whom it was filed in accordance with Section 14 hereof. Whenever bail is filed with a court other than where the case is pending, the judge accepting the bail shall forward the bail, the order of release and other supporting papers to the court where the case is pending, which may, for good reason, require a different one to be filed. The OCA's Report revealed that the accused Rosalina Mercado was not arrested. The proper procedure, according to the above-cited rules, would have been to file her bail bond with the RTC Branch 41, San Fernando, Pampanga where her case was pending. Had complainant Judge been absent or was unavailable at that time, the accused could have filed for bail with another branch of the RTC in Pampanga or in San Fernando City. However, the accused filed her surety bond with the MTC of Sta. Maria, Bulacan, where it was approved by respondent Judge. Not only did respondent Judge erroneously order the release of the accused, but he also failed to require submission of the supporting documents needed in the application for a bond. There was no Certificate of Detention or Warrant of Arrest attached to the bond transmitted by the MTC to the complainant Judge. Moreover, the other supporting documents were belatedly filed. Records show that respondent Judge approved the bail bond on August 21, 2003, but the Undertaking was dated November 22, 2003, the Certification from the OCA was dated October 29, 2003, and the Certification from Summit Guaranty and Insurance Co., Inc. was dated November 22, 2003.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; CLERKS OF COURT; DUTIES. — [A] clerk of court has a vital function in the prompt and sound administration of justice since his or her office is the hub of adjudicative and administrative orders, processes, and concerns. He or she also has the duty to ensure an orderly and efficient record management system in the court and to supervise the personnel under her office to function effectively.

3. JUDICIAL ETHICS; JUDGES; A JUDGE EXERCISES ADMINISTRATIVE SUPERVISION OVER HIS PERSONNEL; CASE AT BAR. — Lerey's admission of negligence cannot excuse respondent Judge from liability in the irregular processing of the bail bond. Pertinent provisions of the Code of Judicial

Conduct state that: Rule 3.08. — A judge should diligently discharge administrative responsibilities, maintain professional competence in court management, and facilitate the performance of the administrative functions of other judges and court personnel. Rule 3.09. — A judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and finality. In *Bellena v. Judge Perello,* wherein respondent Judge attributed to her clerk of court the delay in transmittal of records, the former was still found guilty and sentenced to pay a fine. The Court held that, although the clerk of court was primarily responsible for the implementation of respondent judge's orders, the fact remains that respondent judge was tasked with administrative supervision over his or her personnel. It was the responsibility of the Judge to always see to it that his/her orders were properly and promptly enforced, and that case records are properly stored and kept. Thus, in the present case, respondent Judge himself should have verified that the documents for bail were complete and correct instead of relying on the representations of his clerk of court.

4. POLITICAL LAW; ADMINISTRATIVE LAW; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; GROSS NEGLECT OF DUTY; PENALTY. — Under the Uniform Rules on Administrative Cases in the Civil Service, the acts of respondent Judge and Lerey may be classified as gross neglect of duty, which is punishable by dismissal under Rule IV, Section 52 A(2) thereof. Neglect of duty denotes the failure of an employee to give one's attention to a task expected of him. Gross neglect is such neglect which, from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare.

APPEARANCES OF COUNSEL

Remia D. Fuentes-Bartolome for Judge Nicasio V. Bartolome.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a letter-complaint[1] dated April 27, 2004 filed by complainant Judge Divina Luz P. Aquino-Simbulan with the Office of the Court Administrator (OCA), alleging that respondents Judge Nicasio V. Bartolome, together with Romana Pascual, Milagros Lerey, and Amor dela Cruz, Acting Clerk of Court, retired Clerk of Court and Docket Clerk, respectively, all of the Municipal Trial Court (MTC) of Sta. Maria, Bulacan, committed grave errors and discrepancies in processing the surety bond for the accused Rosalina Mercado in Criminal Case No. 13360, entitled *People of the Philippines v. Rosalina Mercado, et al.*

In her complaint, Judge Simbulan alleged the following:

Criminal Case No. 13360 was originally raffled to the Regional Trial Court (RTC), Branch 41, San Fernando, Pampanga, where complainant Judge presides. On September 18, 2003, said branch of the RTC received an Indorsement from Warrant/Subpoena Officer PO3 Edwin Villacentino of the Sasmuan Municipal Police Station stating that the accused Mercado voluntarily surrendered before the MTC of Sta. Maria, Bulacan and posted her bail bond through Summit Guaranty & Insurance Co., Inc., a bond duly approved by respondent Judge Bartolome on August 21, 2003. This prompted complainant to issue an Order[2] dated October 29, 2003, directing respondent Lerey, then Clerk of Court of the MTC, to transmit to the RTC within twenty-four (24) hours from receipt of said Order, the bond which the former court approved.

When the Clerk of Court failed to comply, complainant Judge issued an Order[3] dated January 12, 2004 directing the former

---

[1] *Roll* pp. 10-13.

[2] *Id.* at 34.

[3] *Id.* at 15-16.

to explain in writing within three (3) days from receipt thereof why she should not be cited in contempt for delaying the administration of justice.

On January 29, 2004, the RTC received a letter[4] from respondent Romana Pascual, then Acting Clerk of Court of the MTC, explaining that the bail bond in Criminal Case No. 13360 was approved by respondent Judge during the tenure of Lerey, and that the latter had retired on August 26, 2003.

On February 12, 2004, the RTC received a written explanation[5] from Lerey stating that she had misplaced and overlooked the subject surety bond, which resulted in the delay of its transmission to the RTC. Attached to Lerey's letter were the following documents: (1) the Court Order dated August 21, 2003 signed by respondent Judge; (2) Bond No. 46485 dated August 21, 2003 with attachments; (3) Undertaking dated November 22, 2003; (4) Certification from the Office of the Court Administrator, dated October 29, 2003; and (5) Certification from Summit Guaranty and Insurance Company, Inc., dated November 22, 2003.

Upon perusal of the documents, complainant Judge discovered that the subject surety bond bore some erasures, and its attachments were highly anomalous. In view of these findings, the RTC issued a *subpoena* to respondents Pascual and Lerey directing them to appear before it to explain the aforementioned errors.

During the hearing held on April 26, 2004, respondents Pascual and Lerey appeared before the RTC, Branch 41, San Fernando, Pampanga, and the following facts were established therein:

1. That respondent Judge issued an Order of Release dated August 21, 2003 without a Certificate of Detention and Warrant of Arrest attached to the documents presented to him;

---

[4] *Id.* at 37.

[5] *Id.* at 43.

2. That while the Order of Release was dated August 21, 2003, the Undertaking and Certification from the bonding company were dated November 22, 2003 and October 29, 2003, respectively;

3. That it was Lerey who reviewed the documents before the surety bond was referred to respondent Judge for the latter's approval; and

4. That the delay in the transmission of the bond and its supporting documents was attributed to Amor dela Cruz, Docket Clerk of the MTC of Sta. Maria, Bulacan.[6]

After the hearing, Public Prosecutor Otto Macabulos stated that he found the explanation too shallow and self-serving, and that he would file an indirect contempt case under Rule 71, Section 3 (d) of the 1997 Rules of Civil Procedure against Lerey and Dela Cruz. He filed said complaint[7] on June 21, 2004. The RTC, Branch 41, San Fernando, Pampanga then directed Lerey and Dela Cruz to explain in writing within fifteen (15) days why they should not be cited in indirect contempt of court or improper conduct in the processing of the bail bond of accused Mercado.[8]

In her Manifestation/Compliance[9] dated October 25, 2004, Lerey admitted lapses and negligence in processing the subject bail bond and was remorseful for what happened. On the other hand, Dela Cruz stated that there was no wrongdoing on her part in the processing of the subject bail bond and that she merely followed instructions in mailing the said bail bond to the RTC.[10]

In an Order[11] dated December 14, 2004, the RTC found Lerey guilty of indirect contempt and sentenced her to pay a

---

[6] TSN dated April 26, 2004, *id.* at 69-94.

[7] *Rollo,* pp. 59-61.

[8] *Id.* at 95-96.

[9] *Id.* at 97.

[10] *Id.* at 100-102.

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

fine of ₱10,000.00, which she duly paid. However, it absolved Dela Cruz from any liability as it found her explanation meritorious.

In the meantime, in his 1st Indorsement[12] dated February 26, 2004, Deputy Court Administrator (DCA) Jose P. Perez referred to the Clerk of Court of the MTC of Sta. Maria, Bulacan the Orders issued by complainant Judge relative to the surety bond for comment. However, there was nothing on record to show that said Clerk of Court complied with the directive.

DCA Perez also issued a 1st Indorsement[13] dated June 22, 2004 to respondent Judge referring to the letter dated April 27, 2004 of complainant Judge, which discussed the errors and discrepancies regarding the approval of the bail bond of the accused in Criminal Case No. 13360, with the instruction to the former to submit his comment thereto.

In compliance, respondent Judge submitted his 2nd Indorsement[14] dated July 13, 2004, wherein he denied any liability concerning his approval of the subject surety bond. According to him, Lerey had expressly admitted her negligence and lapses which caused the delay in transmitting the bond to the RTC. He stressed that just like any other judge, his Clerk of Court (Lerey) enjoyed his trust and confidence in matters pertaining to the affairs of the court, including the review and approval of bail bonds. He added that he had no reason to doubt the official actions of Lerey, as the latter had been serving the court for around 37 years.

In a Memorandum[15] dated March 1, 2005, then Court Administrator, now Associate Justice Presbitero J. Velasco, Jr., recommended that the letter dated April 27, 2004 (and the Orders attached thereto) of complainant Judge be treated as a formal administrative complaint and redocketed as such against respondents Judge Bartolome, Pascual, Lerey, and Dela Cruz,

---

[12] *Id.* at 14.

[13] *Id.* at 7.

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

[15] *Id.* at 25-28.

with the directive that the named respondents submit their respective Comments within ten (10) days upon receipt of the Order from the Court. Said Order[16] was issued by the Court on April 13, 2005, and all the respondents submitted their Comments on May 13, 2005.

Respondent Judge and Pascual both averred that in the case for indirect contempt, only Lerey was found guilty of negligence in the performance of her duties, and no other indictment was made against them.[17]

On the other hand, Lerey stated in her Comment[18] that she had already been found guilty of indirect contempt for failure to transmit the bail bond within the period directed by the court, and paid the fine therefor, while Dela Cruz clarified that she had already been exonerated from any liability for participation in said incident.

In a Resolution[19] dated June 22, 2005, the Court referred the administrative matter to the Executive Judge of the RTC of Malolos City, Bulacan for investigation, report and recommendation within 60 days from receipt of the record.

On April 7, 2006, 2nd Vice-Executive Judge Candido Belmonte submitted his Report,[20] which contained the following findings:

> The Investigating Court takes judicial notice that certain functions of court which are not directly related to decision-making are delegated or reposed to court personnel. Under this category falls the preparation and evaluation of documents for bail, for the final approval of the judge. However, to rely solely on the representation made by the Clerk of Court without making even a perfunctory perusal of the records is also a mark of neglect. As such, this court finds the explanation of the respondent judge to be inadequate to exculpate him for the oversight he committed.

---

[16] *Id.* at 29-30.

[17] *Id.* at 31-33; 57-58.

[18] *Id.* at 47-48.

[19] *Id.* at 106.

[20] *Id.* at 153-158.

x x x x x x x x x

With respect to court personnel Romana Pascual, it was established that, at the time of the commission of the subject administrative offense, she was not yet discharging the functions of an Officer-in-Charge. She had no hand in the approval of the bail. As a matter of fact, she immediately informed respondent Milagros Lerey, the former Clerk of Court, of the Order coming from Judge Simbulan of RTC-Branch 41, Pampanga requiring them to transmit the supporting documents for bail. However, it was the inaction of Milagros Lerey on the matter which caused the delay in the transmission. The Court notes that the Order of Judge Simbulan was received at the MTC-Sta. Maria, Bulacan at a time when there was a transition between Milagros Lerey and the present Clerk of Court. During that interregnum, it was Romana Pascual who was the OIC. As such, the letter-explanation of Romana Pascual, dated February 11, 2004, addressed to Judge Simbulan is deemed sufficient explanation by this Investigating Court. Hence, she is exonerated of the charges against her.

Regarding the charge against court personnel Amor dela Cruz, it appears to this Court that although she was the one who finally delivered the supporting bail documents to RTC-Branch 41, Pamapanga, she has nothing to do with the act of delay. This seems to be the implication of the admission of Milagros Lerey that at the time of the approval of the bail bond the supporting documents were incomplete. She only put the documents in order after there was an Order from RTC-Branch 41, Pampanga to transmit the same. The delay took place during this period. Once Milagros Lerey handed the documents to Ms. Dela Cruz, she immediately transmitted them to RTC-Branch 41, Pampanga. These facts borne out by her Comment submitted in the Indirect Contempt Case before RTC-Branch 41, Pampanga dated July 19, 2004, which this Investigating Court finds sufficient.[21]

Based on the foregoing, the Investigating Judge submitted the following recommendations:

1) For respondent Judge Nicasio Bartolome, he be found to be negligent of his duty to supervise his court employees in the discharge of their respective functions. It is further recommended that a fine of ₱5,000.00 be imposed on him.

---

[21] *Id.* at 156-157.

2) For respondent Milagros Lerey, she be found to be grossly negligent of the discharge of her functions as a Clerk of Court. It is further recommended that a fine of ₱5,000.00 be imposed on her over and above the fine of ₱10,000.00 imposed on her in the Indirect Contempt Case.

3) For respondents Romana Pascual and Amor dela Cruz, there was no direct documentary or testimonial evidence that shows they have handled the bail bonds. Furthermore, they are not responsible for the delay in the transmission of the pertinent documents. As such, it is recommended that they be exonerated of the charges against them.

City of Malolos, Bulacan, April 7, 2006.[22]

In a Resolution[23] dated October 11, 2006, the Court referred the Report of the Investigating Judge to the OCA for evaluation, report and recommendation within thirty (30) days from receipt of records.

In his Memorandum[24] dated November 20, 2007, DCA Jose P. Perez observed that:

1. In approving the surety bond of the accused, respondent Judge violated Section 17, Rule 114 of the Rules of Court.[25] In the instant case, the accused Rosalina Mercado was not arrested. That being the case, she should have filed her bail bond with the court where her case was pending, *i.e.*, the Regional Trial Court, Branch 41, San Fernando City, Pampanga. In the absence of the judge thereof, it could be done at another branch of the same court within the province

[22] *Id.* at 158.

[23] *Id.* at 191.

[24] *Id.* at 199-205.

[25] SEC. 17. *Bail, where filed.*(a) Bail in the amount fixed may be filed with the court where the case is pending, or, in the absence or unavailability of the judge thereof, with any regional trial judge, metropolitan trial judge, municipal trial judge, or municipal circuit trial judge in the province, city, or municipality. If the accused is arrested in a province, city or municipality other than where the case is pending, bail may also be filed with any Regional Trial Court of said place, or, if no judge thereof is available, with any metropolitan trial judge, municipal trial judge, or municipal circuit trial judge.

of Pampanga or City of San Fernando. Instead, accused Mercado filed her bond in the Municipal Trial Court of Sta. Maria, Bulacan, where respondent Judge presides, who approved the same and ordered her release from custody.

2. Respondent Judge did not require the accused to submit the supporting documents pertinent to the application for a bond. It appears that there was no Certificate of Detention presented to him; hence, there was no legal justification for him to issue the Order of Release and process the bond since the accused was not detained within his jurisdiction. Also, there was no Warrant of Arrest attached to the documents presented to him. Moreover, all the supporting papers were belatedly filed: (a) Undertaking was dated 22 November 2003; (b) Certification from the Office of the Court Administrator was dated 29 October 2003; and (c) the Certification from Summit Guaranty & Insurance Co., Inc. was dated 22 November 2003.

3. Respondent Judge failed to live up to the standards of a good magistrate. Not only did he approve the bail bond of the accused without the requisite authority to do so, his manner of doing so showed a flagrant disregard for the applicable procedural law he had sworn to uphold and serve. He committed gross misconduct by blatantly disregarding the Rules and settled jurisprudence.

These findings led DCA Perez to recommend the following:

Considering that Judge Bartolome has compulsorily retired from the service effective on 11 October 2006, we recommend that a fine in the amount of Forty Thousand Pesos (₱40,000.00) be deducted from his retirement benefits.

With respect to Clerk of Court Milagros Lerey, who already retired from the service on 26 August 2003, we also find her guilty of gross misconduct. As can be gleaned from the records, she admitted her wrongdoing. Had she not retired, we could have meted her the extreme penalty of dismissal. We, therefore, recommend that she be fined in the amount of Forty Thousand Pesos (₱40,000.00).

With respect to respondents Romana Pascual and Amor dela Cruz, there being no evidence linking them to the processing of the questioned bond, it is recommended that the charges against them be dismissed.[26]

[26] *Id.* at 204.

In a Resolution[27] dated April 2, 2008, the Court required the parties to manifest within ten (10) days from notice whether they were willing to submit the case for decision on the basis of the pleadings/records already filed and submitted. All respondents manifested their willingness to submit the case for decision, respondents Lerey, Pascual and Dela Cruz having complied on May 13, 2008, and Judge Bartolome on May 23, 2008. The Court submitted the administrative case for resolution on July 25, 2008.

After a careful evaluation of the records and the Reports of the Investigating Judge and the OCA, the Court holds that there were indeed grave errors and discrepancies committed by respondents Judge Bartolome and Lerey in processing the surety bond for the accused in Criminal Case No. 13360.

The following provisions of the Revised Rules of Criminal Procedure apply before an accused can be released on bail:

> Sec. 14. *Bail, where filed*. (a) Bail in the amount fixed may be filed with the court where the case is pending, or, in the absence or unavailability of the judge thereof, with another branch of the same court within the province or city. If the accused is arrested in a province, city or municipality other than where the case is pending, bail may be filed also with any regional trial court of said place, or, if no judge thereof is available, with any metropolitan trial judge, municipal trial judge or municipal circuit trial judge therein. x x x
>
> Sec. 16. *Release on bail*. The accused must be discharged upon approval of the bail by the judge with whom it was filed in accordance with Section 14 hereof.
>
> Whenever bail is filed with a court other than where the case is pending, the judge accepting the bail shall forward the bail, the order of release and other supporting papers to the court where the case is pending, which may, for good reason, require a different one to be filed.

The OCA's Report revealed that the accused Rosalina Mercado was not arrested. The proper procedure, according to the above-cited rules, would have been to file her bail bond

[27] *Id.* at 231.

with the RTC Branch 41, San Fernando, Pampanga where her case was pending. Had complainant Judge been absent or was unavailable at that time, the accused could have filed for bail with another branch of the RTC in Pampanga or in San Fernando City. However, the accused filed her surety bond with the MTC of Sta. Maria, Bulacan, where it was approved by respondent Judge.

Not only did respondent Judge erroneously order the release of the accused, but he also failed to require submission of the supporting documents needed in the application for a bond. There was no Certificate of Detention or Warrant of Arrest attached to the bond transmitted by the MTC to the complainant Judge. Moreover, the other supporting documents were belatedly filed. Records show that respondent Judge approved the bail bond on August 21, 2003, but the Undertaking was dated November 22, 2003, the Certification from the OCA was dated October 29, 2003, and the Certification from Summit Guaranty and Insurance Co., Inc. was dated November 22, 2003.

Respondent Judge contends that Lerey, who has been Clerk of Court for 37 years, was given the simple matter of examining the documents attached to the application for a bail bond. For her part, Lerey admitted her negligence when she misplaced and overlooked the surety bond policy, resulting in the delay in the transmission of said documents to the RTC. Notably, she also failed to give an explanation for the erasures which complainant discovered on the surety bond. By such acts, it is evident that Lerey did not measure up to the standards required by Section 1, Canon IV of the Code of Conduct for Court Personnel[28] as quoted:

> Section 1. Court personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours.

In addition, a clerk of court has a vital function in the prompt and sound administration of justice since his or her office is

[28] A.M. No. 03-06-13-SC issued by the Supreme Court on June 1, 2004.

the hub of adjudicative and administrative orders, processes, and concerns.[29] He or she also has the duty to ensure an orderly and efficient record management system in the court and to supervise the personnel under her office to function effectively.[30]

However, Lerey's admission of negligence cannot excuse respondent Judge from liability in the irregular processing of the bail bond. Pertinent provisions of the Code of Judicial Conduct[31] state that:

> Rule 3.08. – A judge should diligently discharge administrative responsibilities, maintain professional competence in court management, and facilitate the performance of the administrative functions of other judges and court personnel.
>
> Rule 3.09. – A judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and finality.

In *Bellena v. Judge Perello,*[32] wherein respondent Judge attributed to her clerk of court the the delay in transmittal of records, the former was still found guilty and sentenced to pay a fine. The Court held that, although the clerk of court was primarily responsible for the implementation of respondent judge's orders, the fact remains that respondent judge was tasked with administrative supervision over his or her personnel. It was the responsibility of the Judge to always see to it that his/her orders were properly and promptly enforced, and that case records were properly stored and kept. Thus, in the present case, respondent Judge himself should have verified that the documents for bail were complete and correct instead of relying on the representations of his clerk of court.

---

[29] *Office of the Court Administrator v. Judge Trocino,* A.M. No. RTJ-05-1936, May 29, 2007, 523 SCRA 262, 274.

[30] *Fonghe v. Bajarias-Cartilla,* A.M. No. P-05-1987, February 10, 2006, 482 SCRA 142, 147.

[31] Issued on September 5, 1989.

[32] A.M. No. RTJ-04-1846, January 31, 2005, 450 SCRA 122, 133.

With regard to respondents Pascual and Dela Cruz, the Court observes that there is no evidence to show that they have contributed to the irregularities or delay in transmittal of the bail bond. At the time of the commission of the administrative offense, Pascual was not yet discharging the functions of an Acting Clerk of Court. Dela Cruz, on the other hand, merely delivered the supporting documents to the RTC.

Having thus established the respondents' liabilities, what remains for the Court's contention are their penalties.

Under the Uniform Rules on Administrative Cases in the Civil Service,[33] the acts of respondent Judge and Lerey may be classified as gross neglect of duty, which is punishable by dismissal under Rule IV, Section 52 A(2) thereof. Neglect of duty denotes the failure of an employee to give one's attention to a task expected of him. Gross neglect is such neglect which, from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare.[34]

In *Ulat-Marrero v. Torio, Jr.*,[35] the Court has categorized as a grave offense of gross neglect of duty the failure of a court process server to serve summons which resulted in the delayed resolution of a case. As corollarily applied to the present case, where respondents released the accused on temporary liberty despite the absence of the required supporting documents for bail, the former are likewise liable for gross neglect of duty.

Were it not for the fact that both respondents, Judge Bartolome and Lerey, have retired on October 11, 2006 and August 26, 2003, respectively, the Court would have dismissed them from the service. Instead, it orders respondents to pay a fine to be

---

[33] Promulgated by the Civil Service Commission through Resolution No. 99-1936 dated August 31, 1999 and implemented by Memorandum Circular No. 19, series of 1999.

[34] *Rodrigo-Ebron v. Adolfo*, A.M. No. P-06-2231, April 27, 2007, 522 SCRA 286, 293.

[35] A.M. No. P-01-1519, November 19, 2003, 416 SCRA 177.

deducted from their retirement benefits, in accordance with its rulings in *Moncada v. Cervantes*,[36] *Office of the Court Administrator v. Paredes*,[37] and *Soria v. Oliveros*.[38]

WHEREFORE, in view of the foregoing, the Court finds:

1. Presiding Judge Nicasio Bartolome (retired) *GUILTY* of *GROSS NEGLECT OF DUTY* for which he is meted a fine in the amount of Forty Thousand Pesos (₱40,000.00), to be deducted from his retirement benefits; and

2. Clerk of Court Milagros Lerey (retired) *GUILTY* of *GROSS NEGLECT OF DUTY* for which she is meted a fine in the amount of Forty Thousand Pesos (₱40,000.00), to be deducted from her retirement benefits.

SO ORDERED.

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

---

[36] A.M. No. MTJ-06-1639, July 28, 2006, 497 SCRA 1.

[37] AM. No. P-06-2103, April 17, 2007, 521 SCRA 365.

[38] A.M. No. P-00-1372, May 16, 2005, 458 SCRA 410.

[*] Designated to sit as an additional member, per Special Order No. 646 dated May 15, 2009.

[**] Designated to sit as an additional member, per Special Order No. 631 dated April 29, 2009.

EN BANC

[A.M. No. RTJ-06-1991. June 5, 2009]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **HON. TIBING A. ASAALI, Presiding Judge, Regional Trial Court, Branch 17, Zamboanga City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; JUDICIAL DEPARTMENT; TRIAL COURT JUDGES SHALL RESOLVE CASES WITHIN THREE MONTHS. — Judges have the sworn duty to administer justice and decide cases promptly and expeditiously because justice delayed is justice denied. No less than our Constitution requires that a trial court judge shall resolve or decide cases within three (3) months after they have been submitted for decision. In addition, the Code of Judicial Conduct mandates that judges shall dispose of the court's business promptly and decide cases within the required period.

2. ID.; ID.; ID.; ID.; ID.; WHERE A JUDGE CANNOT DECIDE A CASE PROMPTLY, HE HAS TO ASK THE SUPREME COURT FOR A REASONABLE EXTENSION OF TIME TO RESOLVE THE CASE. — Judges are constantly reminded to decide cases with dispatch. Whenever a judge cannot decide a case promptly, all he has to do is to ask this Court for a reasonable extension of time to resolve the case. Here, there is no showing that Judge Asaali asked for any extension within which to decide the cases. In fact, Judge Asaali did not even offer an explanation for his non-compliance with the directives of the Court.

3. LEGAL ETHICS; JUDGES; GROSS DISRESPECT TO THE LAWFUL ORDERS OF THE SUPREME COURT; FAILURE TO COMPLY WITH THE REPEATED DIRECTIVES OF THE SUPREME COURT, A CASE OF; CASE AT BAR. — Judge Asaali should know that judges must respect the orders and decisions of higher tribunals, especially the Supreme Court from which all other courts take their bearings. A resolution of this Court is not to be construed as a mere request, and should be

complied with promptly and completely. Such failure to comply with the repeated directives of this Court constitutes gross disrespect to its lawful orders and directives.

4. ID.; ID.; GROSS INEFFICIENCY AND GROSS MISCONDUCT; COMMITTED IN CASE AT BAR; PENALTY. — We agree with the OCA that Judge Asaali is guilty of gross inefficiency and gross misconduct. Section 8, Rule 140 of the Rules of Court provides that gross misconduct constitutes a serious charge in the discipline of judges of regular courts: "Sec. 8. Serious charges.— x x x 3. Gross misconduct constituting violations of the Code of Judicial Conduct; x x x" Accordingly, Section 11, Rule 140 of the Rules of Court provides the sanctions to be imposed if one is found to be guilty of a serious charge: "Sec. 11. Sanctions. — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed: 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided*, however, that the forfeiture of benefits shall in no case include accrued leave credits; 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or 3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00." Since Judge Asaali has already been reprimanded in a prior administrative case, we hold that the penalty of fine in the amount of ₱40,000 is commensurate to Judge Asaali's infractions. We sternly warn Judge Asaali that a repetition of the same or similar acts will be dealt with more severely.

D E C I S I O N

CARPIO, *J.*:

The Case

This administrative case arose from a Memorandum dated 28 May 2004 submitted by an audit team of the Office of the Court Administrator (OCA), reporting on the judicial audit conducted on the Regional Trial Court, Branch 17, Zamboanga City (trial court).

The Facts

From 18 to 28 August 2002, a judicial audit was conducted by the OCA audit team on the trial court presided by Judge Tibing A. Asaali (Judge Asaali). In a Memorandum dated 28 May 2004, then Deputy Court Administrator Christopher O. Lock[1] (Lock) directed Judge Asaali to:

> I. EXPLAIN within ten (10) days from notice why you shall not be ADMINISTRATIVELY held liable for your failure to (a) decide the following cases, despite the period granted to you by the Court, to wit: Criminal Cases Nos. 9478, 9479, 9480, 13739, 13850, 13851, 13923, 14087, 14357, 14360, 14682, 14700, 14768, 14896, 14736, 15032 and 18637; Civil Cases Nos. 2032, 2276, 2498, 2775, 3026, 3403, 3494, 3602, 3671, 3776 (3376), 4049, 4165, 4399, 4512, 4548, 4568, 4660, 4684, 4728, 4748, 4789, 4794, 4858, 4876, 4897, 4938, 4984, 5014, 5119, 5156, 5157, 5159, 5162, 5181, 5756, Cad. Case No. 01-49, Lot 1003-9 TCT 24,656, Cad. Case No. 99-92, SCA No. 99, SCA No. 140-4, SCA No. 187, SCA No. 209, SCA No. 245, SCA No. 336, SCA No. 346, SCA No. 365, SCA No. 428, SCA No. 432, SCA No. 435, SCA No. 442, SCA No. 452, SCA No. 465, SCA No. 469, SCA No. 470, SCA No. 471, SCA No. 472, SCA No. 473, SCA No. 474, SCA No. 477, SCA No. 407, SCA No. 478, SCA No. 479, SCA No. 495, SCA No. 496, SCA No. 497, SCA No. 498, SCA No. 527, SCA No. 534, SCA No. 535, SCA No. 536, SCA No. 537, SCA No. 538, SCA No. 556, as well as resolve the pending incidents/motions in the following cases within the reglementary period, to wit: Criminal Cases Nos. 13182, 14913, 16132, 16870 and Civil Cases Nos. 13182, 13183, 14913, 16132, 16870 and Civil Cases Nos. 428, 4049, 4360, 4807, 4823, 4858, 5007, 5159, 5181, 5191, 5203, 5257, SCA No. 443 and SCA No. 5240 (524); (b) to TAKE APPROPRIATE ACTION within thirty (30) days from notice on the following cases which have not been further acted upon (NFA) for a long time already, to wit: Criminal Cases Nos. 3133 (15641), 9478, 9479, 9480, 14111, 14621, 14622, 15079, 15223, 15565, 15566, 15842, 15930, 16215, 16216, 16476, 16522, 16675, 17726, 17852, 17857, 17964, 17995, 17999, 18030, 18089, 18091, 18096, 18153, 18154, 18175, 18327, 18347, 18489, 18509;

[1] Later appointed as Court Administrator.

and Civil Cases Nos. 99-72, 4554, 4630, 4645, 4652, 4684, 4689, 4732, 4737, 4791, 4794, 4808, 4809, 4816, 4824, 4832, 4887, 4911, 4925, 4927, 4934, 4947, 4950, 4951, 4959, 5135, 5142, 5144, 5169, 5173, 5175, 5200, 5213, 5218, 5236, 5249, 5256, Cad. 01-29, Cad. 01-118, Cad. Case No. 02-03, SCA 438, SCA 549, and SP 4636; and the following cases which have not been further set (NFS) for a long time, to wit: Criminal Cases Nos. 8332, 14666, 15032, 15211, 15649, 15685, 15713, 15714, 15930, 16278, 16396, 16461, 16667, 16852, 16880, 17050, 17066, 17252, 17289, 17534; and Civil Cases Nos. 3671, 4383, 4602, 4752, 4758, 4783, 4850, 4930, 5020, Cad. Case No. 97-40, Cad. Case No. 97-88, LRC Cad. Rec. 8267, Cad. No. 97-212, Lot Not. 1974-B, Cad. Case No. 98-07, Cad. Case No. 00-27, Cad. Case No. 01-62, Cad. Case No. 02-48, SCA No. 301, SP No. 4168, SP No. 4360, SP No. 4712, SP No. 4734, SP No. 4740, SP No. 4767, SP No. 4892, SP. No. 4928; including the following criminal cases which have not been acted upon yet (NATY) since the filing thereof, to wit: Criminal Cases Nos. 15250, 15251; Civil Cases Nos. 442, (SCA) 452, (SCA) 465, 469, 470, 471, 472, 474, 475, 3-74 (74-3), 96-153, 1158 (4479), 5235, ad. (sic) Case No. 01-18, Cad. Case No. 01-51, Cad. Case No. 02-31, Cad. Case No. 02-49 and Cad. Case No. 02-83; and the following cases with motions pending action (MPA) by the court, to wit: Criminal Case No. 15249; and Civil Cases Nos. 4579, 4938, Cad. Case No. 97-120; as well as the following cases, to wit: Criminal Case No. 18159, in accordance with Administrative Circular No. 7-A-92, dated 21 June 1993.

II. DECIDE/RESOLVE the cases mentioned in par 1 (a) within six (6) months from notice.

III. SUBMIT compliance hereof as well as copies of the decisions/resolutions/orders, *etc*. in the aforecited cases to this Court, through the Court Management Office, Office of the Court Administrator, within ten (10) days from rendition/promulgation/issuance or action taken thereon.[2]

Judge Asaali did not comply with the directives in the Memorandum even after the lapse of the six month period granted by the OCA. Thus, in another Memorandum dated February

[2] *Rollo*, pp. 44-45.

2005, the OCA directed Judge Asaali to comply with the Memorandum dated 28 May 2004 with a warning that should he still fail to fully comply with the same, the matter would be brought to the attention of the Court for appropriate action.

Again, the directives remained unheeded. Judge Asaali failed to submit any letter to inform the Court of the status of his pending cases or even offer an explanation or defense for his non-compliance with the memoranda. Thus, the OCA took action by tracing the cases which Judge Asaali had decided, through an examination of the Court's Monthly Reports and Semestral Docket Inventory, as well as the Compliances made by Judge Asaali in a previous case.[3]

The OCA submitted this report pertaining to the actions taken by Judge Asaali on the cases pending before his court:

1. Per the June 2005 Monthly Report of the court, these cases appear to have already been disposed as they no longer appear in the list of cases submitted for decision, to wit: Criminal Cases Nos. 9478, 9479, 9480, 14896, 14736, 15032, 18637; Civil Cases Nos. 2032, 2276, 3671, 4399, 4548, 4789 (4689), 4858, 4897, 4938, 4984, 5014, 5119, 5157, 5159, 5162, 5181, 5756, Cad. Case No. 01-49, Cad. Case No. 99-92, SCA No. 99, SCA No. 140-4, SCA No. 187, SCA No. 209, SCA No. 245, SCA No. 336, SCA No. 346, SCA No. 365, SCA No. 432, SCA No. 435 and SCA No. 407.

2. Per the March 2005 Monthly Report, case appears already decided on 29 March 2005 and Promulgated on the same date. Accused was "acquitted," to wit: Criminal Case No. 14768.

3. Cases appear decided already per the July 2004 Monthly Report and attachments thereto, to wit: SCA No. 477, SCA No. 478, SCA No. 479, SCA No. 495, SCA No. 496, SCA No. 497 and SCA No. 498.

4. Cases appear already decided per the September 2004 Monthly Report, to wit: Civil Case Nos. 3776 (3376) and 4876.

[3] Administrative Matter No. 01-11-606-RTC (Re: Cases Submitted before Judge Tibing A. Asaali, Regional Trial Court, Branch 17, Zamboanga City), by reason of the Court's Resolution dated 21 January 2002.

5. Case appears already decided per Letter, dated 28 July 2003 submitted by Judge Asaali, in partial compliance with the Resolution, dated 16 June 2003 of the Court in A.M. No. 01-11-606-RTC (Cases Submitted for Decision Before Judge Tibing A. Asaali, RTC, Br. 17, Zamboanga City), to wit: Criminal Case No. 14087.

6. Cases appear already decided per Letter, dated 19 July 2004 of Judge Asaali, which he submitted in partial compliance with the Resolution, dated 16 June 2003 of the court in A.M. No. 01-11-606-RTC (Cases Submitted for Decision Before Judge Tibing A. Asaali, RTC, Br. 17, Zamboanga City), to wit Criminal Cases Nos. 13739, 13923, 14357, 14360, 14357, 14360, 14682, 14700; and Civil Case Nos. 3494, 5156, SCA No. 469, SCA No. 470, SCA No. 471, SCA, No. 472, SCA No. 473, SCA No. 527, SCA No. 534, SCA No. 535, SCA No. 536, SCA No. 537 and SCA No. 538.

7. Cases appear already decided per Letter, dated 14 September 2004 of Judge Asaali, which he submitted in compliance with the Resolution, dated 21 January 2002 of the Supreme Court in A.M. No. 01-11-606-RTC (Cases Submitted for Decision Before Judge Tibing A. Asaali, RTC, Br. 17, Zamboanga City); not by reason of the directives issued in connection with the judicial audit of 18 to 28 August 2002 conducted of the court (RTC, Br. 17, Zamboanga City). Apparently, confirmed so, per Monthly Report of August 2004 and its attachments, where it appears cases were decided on 23 August 2004, to wit: Criminal Cases Nos. 13850 and 13851.

8. Cases appear already decided per Letter, dated 14 September 2004 of Judge Asaali, which he submitted in compliance with the Resolution, dated 21 January 2002 of the Supreme Court in A.M. No. 01-11-606-RTC (Cases Submitted for Decision Before Judge Tibing A. Asaali, RTC, Br. 17, Zamboanga City.), not by reason of the directives issued in connection with the judicial audit of 18 to 28 August 2002 conducted of the court (RTC, Br. 17, Zamboanga City), to wit SCA No. 428, SCA No. 452, SCA No. 465 and SCA No. 556.

9. SCA No. 474 appears to have been disposed of already, like Civil Cases Nos. 469 to 473, which were already decided, it appearing that Civil Cases Nos. 474 and 469 to 473 all entitled *Antonio Punzalan, rep. by Linda Lim vs. Esterlita Aquino*,

for unlawful detainer refers to one and same case jointly tried, filed (8 February 2000) and submitted for decision on the same date, to wit: 4 April 2000.

10. Case already decided per Compliance, dated 2 July 2004 of Atty. Nancy B. Cuaresma, Clerk of Court, RTC, Br. 17, Zamboanga City, which she submitted in compliance with the Memorandum, dated 28 May 2004 of DCA Lock, in connection with the Judicial audit of 18 to 28 August 2002 conducted of the court (RTC, Br. 17, Zamboanga City), to wit: Civil Case No. SCA No. 442.[4]

Based on the report submitted by the OCA, then DCA Lock recommended in a Memorandum dated 1 March 2006 that:

(1) In consonance with the Memorandum, dated February 2005, "the matter x x x be brought to the attention of the Court for appropriate action," considering that Judge Asaali still failed to comply anew with the Memorandum, dated 28 May 2004, despite the warning therein;

(2) Case be redocketed as a regular administrative matter; inclusive of the following recommendation that was made in the first Imbang case (*Imbang vs. Judge del Rosario*, MCTC, Br. 3, Patnongon, Antique, A.M. No. MTJ-03-1515, 3 February 2004, 421 SCRA 523, *En Banc*, per Callejo, J.), which is adopted here, to wit:

(a) For failing to file his compliances with the various directives of the Office of the OCA, respondent Judge Asaali be meted a FINE in the amount of Ten Thousand Pesos (₱10,000.00);

(b) The respondent Judge be further DIRECTED to SHOW CAUSE within ten (10) days from receipt hereof why he should not be dismissed from the service for his obstinate refusal to file his compliances with the directives of the OCA.[5]

On 8 March 2007, a judicial audit was again conducted by the OCA on the same trial court. The OCA reported that out of the 89 cases included in the Memorandum dated 28 May

[4] *Rollo*, pp. 95-97.

2004, 12 cases remained undecided, namely: Civil Case Nos. 2032, 2276, SCA Nos. 187, 209, 336, 2775, 3026, 3602, 4049, 4165, 4512 and 4660. Six of these cases, which as of 8 March 2007 had not yet been disposed of, were part of the 21 January 2002 Resolution of the Court in Administrative Matter No. 01-11-606-RTC (Re: Cases Submitted before Judge Tibing A. Asaali, Regional Trial Court, Branch 17, Zamboanga City).[6]

In a Resolution dated 14 November 2007, the Second Division of the Court resolved to require Judge Asaali to show cause, within a non-extendible period of ten (10) days from notice, why he should not be dismissed from the service for his obstinate refusal to comply with the Memorandum dated 28 May 2004 and other directives of the OCA.

Eventually, Judge Asaali sent a letter dated 12 January 2008 to this Court. Judge Asaali reasoned that he was not able to comply with the Court's directives because he suffered a stroke, covering the period from 1 August 1999 to 31 December 2000, from which he had not completely recovered.

On 18 February 2008, the Second Division of the Court resolved to refer the letter dated 12 January 2008 of Judge Asaali to the OCA for evaluation, report and recommendation within 30 days from receipt of the records.

Prior to this administrative case, in a Decision dated 29 January 1997 entitled *Pepino v. Judge Asaali*,[7] the Court found Judge Asaali guilty for failing to decide a case within the reglementary period and severely reprimanded him with a stern warning that the commission of a like, or of any other, offense in the future would be dealt with more severely.

The OCA's Report and Recommendation

In its Report dated 21 April 2008, the OCA submitted the following recommendations:

---

[6] The records show that this case is still pending.

[7] A.M. No. RTJ-96-1339, 29 January 1997, 267 SCRA 140.

(1) for gross inefficiency and gross and serious misconduct, respondent judge, the HON. TIBING A. ASAALI, Presiding Judge, RTC, Br. 17, Zamboanga City, be meted the penalty of six (6) months SUSPENSION without pay, effective IMMEDIATELY, upon notice hereof, with a STERN WARNING that a repetition of the same or similar acts, the maximum penalty of dismissal will be imposed; and

(2) with respect to the following twelve (12) cases, apparently still undecided by Judge Asaali until now, to wit: Civil Case Nos. 2032, 2276, SCA No. 187, SCA No. 209 and SCA No. 336 and Civil Case Nos. 2775, 3026, 3602, 4049, 4165, 4512 and 4660, the HON. JESUS C. CARBON, JR., Presiding Judge, RTC, Br. 16, Zamboanga City, being the Pairing Judge of RTC, Br. 17, Zamboanga City, be DIRECTED to decide them within ninety (90) days from receipt of notice hereof.[8]

The Court's Ruling

The Court finds the report of the OCA well-taken except as to the penalty.

Judges have the sworn duty to administer justice and decide cases promptly and expeditiously because justice delayed is justice denied. No less than our Constitution requires that a trial court judge shall resolve or decide cases within three (3) months after they have been submitted for decision.[9] In addition, the Code of Judicial Conduct mandates that judges shall dispose of the court's business promptly and decide cases within the required period.[10]

Here, Judge Asaali failed to decide 12 civil cases within the 90-day reglementary period. Six of these cases pertained to the unresolved cases included in the Memorandum dated 28 May 2004 and the remaining cases formed part of an earlier Resolution dated 21 January 2002 issued by this Court to Judge Asaali pertaining to another administrative case.

---

[8] *Rollo*, pp. 103-104.

[9] Section 15(1), Article VIII, 1987 Constitution.

[10] Canon 3, Rule 3.05.

Judges are constantly reminded to decide cases with dispatch. Whenever a judge cannot decide a case promptly, all he has to do is to ask this Court for a reasonable extension of time to resolve the case.[11] Here, there is no showing that Judge Asaali asked for any extension within which to decide the cases. In fact, Judge Asaali did not even offer an explanation for his non-compliance with the directives of the Court.

It cannot be said that Judge Asaali was not given ample time to comply with the directives of the OCA. As borne by the records, from the judicial audit made in August 2002, the OCA sent several directives to Judge Asaali, namely, the 1st Memorandum dated 28 May 2004 and the 2nd Memorandum dated February 2005, directing him to resolve the cases pending before his court within a reasonable time. However, Judge Asaali, in his failure to comply with the mandates of this Court, neither offered any reason nor raised any defense for his non-compliance with the directives of the OCA. Not until this Court issued a show cause order why he should not be dismissed from the service, through a Resolution dated 14 November 2007, did Judge Asaali comply explaining that he suffered a stroke which prevented him from resolving the cases pending before his court.

Further, Judge Asaali claimed he suffered a stroke during the period from 1 August 1999 to 31 December 2000. However, the Memorandum containing the directives of the OCA was issued on 28 May 2004 or four years after his stroke. Judge Asaali failed to show that his stroke totally incapacitated him from complying with the lawful orders of the OCA.

This Court commiserates with Judge Asaali for the stroke that he suffered. However, this illness does not exonerate Judge Asaali from the consequences of his omissions that took place four years after his stroke and after he had resumed reporting to work. In the absence of any showing that his illness prevented him from working even after December 2000

---

[11] *Report on the On the Spot Judicial Audit Conducted in the MCTC, Teresa-Baras, Rizal*, 437 Phil. 546 (2002).

and until after the issuance of the OCA directives, Judge Asaali has no valid excuse for not giving due attention to the directives of the OCA and the Court. Indeed, Judge Asaali had been reporting for work long before the issuance of the 28 May 2004 Memorandum. At the very least, the stroke that he sustained would only mitigate his liability.

Judge Asaali should know that judges must respect the orders and decisions of higher tribunals, especially the Supreme Court from which all other courts take their bearings.[12] A resolution of this Court is not to be construed as a mere request, and should be complied with promptly and completely.[13] Such failure to comply with the repeated directives of this Court constitutes gross disrespect to its lawful orders and directives. We agree with the OCA that Judge Asaali is guilty of gross inefficiency and gross misconduct.

Section 8, Rule 140 of the Rules of Court provides that gross misconduct constitutes a serious charge in the discipline of judges of regular courts:

Sec. 8. Serious charges. —

x x x x x x x x x

3. Gross misconduct constituting violations of the Code of Judicial Conduct;

x x x x x x x x x

Accordingly, Section 11, Rule 140 of the Rules of Court provides the sanctions to be imposed if one is found to be guilty of a serious charge:

Sec. 11. Sanctions. —A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

---

[12] *Soria v. Villegas*, 461 Phil. 665 (2003).

[13] *Re: Audit Report on Attendance of Court Personnel of Regional Trial Court, Branch 32, Manila*, A.M. No. P-04-1838, 31 August 2006, 500 SCRA 351.

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided*, however, that the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

Since Judge Asaali has already been reprimanded in a prior administrative case, we hold that the penalty of fine in the amount of ₱40,000 is commensurate to Judge Asaali's infractions. We sternly warn Judge Asaali that a repetition of the same or similar acts will be dealt with more severely.

WHEREFORE, we find Judge Tibing A. Asaali of the Regional Trial Court of Zamboanga City, Branch 17, *GUILTY* of gross inefficiency and gross misconduct. Accordingly, we *FINE* him ₱40,000, with a stern warning that commission of similar acts in the future will be dealt with more severely.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Corona, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, and *Bersamin, JJ.,* concur.

Carpio Morales and *Chico-Nazario, JJ.,* on official leave.

THIRD DIVISION

[G.R. No. 147097. June 5, 2009]

CARMELO F. LAZATIN, MARINO A. MORALES, TEODORO L. DAVID, and ANGELITO A. PELAYO, *petitioner, vs.* **HON. ANIANO A. DESIERTO as OMBUDSMAN and SANDIGANBAYAN, THIRD DIVISION,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF REPUBLIC ACT NO. 6770 (THE OMBUDSMAN ACT OF 1989); GRANTING OF ADDITIONAL POWERS TO THE OMBUDSMAN OR PLACING THE OFFICE OF THE SPECIAL PROSECUTORS UNDER THE OFFICE OF THE OMBUDSMAN, CONSTITUTIONAL. — It has long been settled that the provisions of R.A. No. 6770 granting the Office of the Ombudsman prosecutorial powers and placing the OSP under said office have no constitutional infirmity. The issue of whether said provisions of R.A. No. 6770 violated the Constitution had been fully dissected as far back as 1995 in *Acop v. Office of the Ombudsman*. Therein, the Court held that giving prosecutorial powers to the Ombudsman is in accordance with the Constitution as paragraph 8, Section 13, Article XI provides that the Ombudsman shall "exercise such other functions or duties as may be provided by law." x x x The constitutionality of Section 3 of R.A. No. 6770, which subsumed the OSP under the Office of the Ombudsman, was likewise upheld by the Court in *Acop*. x x x The foregoing ruling of the Court has been reiterated in *Camanag v. Guerrero.* More recently, in *Office of the Ombudsman v. Valera*, the Court, basing its *ratio decidendi* on its ruling in *Acop* and *Camanag*, declared that the OSP is "merely a component of the Office of the Ombudsman and may only act under the supervision and control, and upon authority of the Ombudsman" and ruled that under R.A. No. 6770, the power to preventively suspend is lodged only with the Ombudsman and Deputy Ombudsman. The Court's ruling in *Acop* that the authority of the Ombudsman to prosecute based on R.A. No. 6770 was authorized by the Constitution was also made the foundation for the decision in *Perez v.*

Sandiganbayan, where it was held that the power to prosecute carries with it the power to authorize the filing of informations, which power had not been delegated to the OSP. It is, therefore, beyond cavil that under the Constitution, Congress was not proscribed from legislating the grant of additional powers to the Ombudsman or placing the OSP under the Office of the Ombudsman.

2. REMEDIAL LAW; JUDGMENTS; DOCTRINE OF *STARE DECISIS*; EXPLAINED. — The doctrine of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established) is embodied in Article 8 of the Civil Code of the Philippines which provides, thus: ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines. It was further explained in *Fermin v. People* as follows: The doctrine of *stare decisis* enjoins adherence to judicial precedents. **It requires courts in a country to follow the rule established in a decision of the Supreme Court thereof.** That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.

3. ID.; ID.; ID.; A POLICY GROUNDED ON THE NECESSITY FOR SECURING CERTAINTY AND STABILITY OF JUDICIAL DECISIONS. — In *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*, the Court expounded on the importance of the x x x doctrine [of *stare decisis*], stating that: The doctrine of *stare decisis* is one of policy grounded on the necessity for securing certainty and stability of judicial decisions, thus: Time and again, the court has held that **it is a very desirable and necessary judicial practice** that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that **for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same,** even though the parties may be different. It proceeds from the first principle of justice that, **absent any powerful countervailing considerations, like cases ought to be decided**

alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, **the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.** The doctrine has assumed such value in our judicial system that the Court has ruled that **[a]bandonment thereof must be based only on strong and compelling reasons,** otherwise, the becoming virtue of predictability which is expected from this Court would be immeasurably affected and the public's confidence in the stability of the solemn pronouncements diminished." Verily, only upon showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*, can the courts be justified in setting aside the same.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A REMEDY MEANT TO CORRECT ONLY ERRORS OF JURISDICTION, NOT ERRORS OF JUDGMENT. — It must be stressed that *certiorari* is a remedy meant to correct only errors of jurisdiction, not errors of judgment. This has been emphasized in *First Corporation v. Former Sixth Division of the Court of Appeals*, to wit: It is a fundamental aphorism in law that a review of facts and evidence is not the province of the extraordinary remedy of *certiorari*, which is *extra ordinem* — beyond the ambit of appeal. **In *certiorari* proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. It does not include an inquiry as to the correctness of the evaluation of evidence. Any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by *certiorari*. An error of judgment** is one which the court may commit in the exercise of its jurisdiction. An *error of jurisdiction* is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion, which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of ***certiorari*. *Certiorari* will not be issued to cure errors of the trial court in its appreciation of the evidence of the parties, or its conclusions anchored on the said findings and its conclusions of law. It is not for this Court to re-examine conflicting evidence, re-evaluate the credibility of the witnesses or substitute the findings of fact of the court *a quo*.**

5. POLITICAL LAW; CONSTITUTIONAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; THE COURT SHALL NOT INTERFERE WITH THE OMBUDSMAN'S EXERCISE OF HIS INVESTIGATORY AND PROSECUTORY POWERS. — [N]oteworthy is the holding of the Court in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, imparting the value of the Ombudsman's independence, stating thus: Under Sections 12 and 13, Article XI of the 1987 Constitution and RA 6770 (The Ombudsman Act of 1989), the Ombudsman has the power to investigate and prosecute any act or omission of a public officer or employee when such act or omission appears to be illegal, unjust, improper or inefficient. **It has been the consistent ruling of the Court not to interfere with the Ombudsman's exercise of his investigatory and prosecutory powers as long as his rulings are supported by substantial evidence**. Envisioned as the champion of the people and preserver of the integrity of public service, **he has wide latitude in exercising his powers and is free from intervention from the three branches of government. This is to ensure that his Office is insulated from any outside pressure and improper influence.**

6. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; DEFINED. — In *Presidential Commission on Good Government v. Desierto*, the Court elaborated on what constitutes such abuse, to wit: Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. x x x

APPEARANCES OF COUNSEL

Rivera Perico & David Law Offices and *David Cui-David Law Offices* for petitioners.

D E C I S I O N

PERALTA, *J.:*

This resolves the petition for *certiorari* under Rule 65 of the Rules of Court, praying that the Ombudsman's disapproval of the Office of the Special Prosecutor's (OSP) Resolution[1] dated September 18, 2000, recommending dismissal of the criminal cases filed against herein petitioners, be reversed and set aside.

The antecedent facts are as follows.

On July 22, 1998, the Fact-Finding and Intelligence Bureau of the Office of the Ombudsman filed a Complaint-Affidavit docketed as OMB-0-98-1500, charging herein petitioners with Illegal Use of Public Funds as defined and penalized under Article 220 of the Revised Penal Code and violation of Section 3, paragraphs (a) and (e) of Republic Act (R.A.) No. 3019, as amended.

The complaint alleged that there were irregularities in the use by then Congressman Carmello F. Lazatin of his Countrywide Development Fund (CDF) for the calendar year 1996, *i.e.*, he was both proponent and implementer of the projects funded from his CDF; he signed vouchers and supporting papers pertinent to the disbursement as Disbursing Officer; and he received, as claimant, eighteen (18) checks amounting to ₱4,868,277.08. Thus, petitioner Lazatin, with the help of petitioners Marino A. Morales, Angelito A. Pelayo and Teodoro L. David, was allegedly able to convert his CDF into cash.

A preliminary investigation was conducted and, thereafter, the Evaluation and Preliminary Investigation Bureau (EPIB) issued a Resolution[2] dated May 29, 2000 recommending the filing against herein petitioners of fourteen (14) counts each of Malversation of Public Funds and violation of Section 3 (e) of R.A. No. 3019. Said Resolution was approved by the Ombudsman;

---

[1] *Rollo,* pp. 48-57.

[2] *Id.* at 58-70.

hence, twenty-eight (28) Informations docketed as Criminal Case Nos. 26087 to 26114 were filed against herein petitioners before the Sandiganbayan.

Petitioner Lazatin and his co-petitioners then filed their *respective* Motions for Reconsideration/Reinvestigation, which *motions* were granted by the Sandiganbayan (Third Division). The Sandiganbayan also ordered the prosecution to re-evaluate the cases against petitioners.

Subsequently, the OSP submitted to the Ombudsman its Resolution[3] dated September 18, 2000. It recommended the dismissal of the cases against petitioners for lack or insufficiency of evidence.

The Ombudsman, however, ordered the Office of the Legal Affairs (OLA) to review the OSP Resolution. In a Memorandum[4] dated October 24, 2000, the OLA recommended that the OSP Resolution be disapproved and the OSP be directed to proceed with the trial of the cases against petitioners. On October 27, 2000, the Ombudsman adopted the OLA Memorandum, thereby disapproving the OSP Resolution dated September 18, 2000 and ordering the aggressive prosecution of the subject cases. The cases were then returned to the Sandiganbayan for continuation of criminal proceedings.

Thus, petitioners filed the instant petition.

Petitioners allege that:

I.

THE OMBUDSMAN ACTED WITH GRAVE ABUSE OF DISCRETION OR ACTED WITHOUT OR IN EXCESS OF HIS JURISDICTION.

II.

THE QUESTIONED RESOLUTION WAS BASED ON MISAPPREHENSION OF FACTS, SPECULATIONS, SURMISES AND CONJECTURES.[5]

---

[3] *Supra* note 1.

[4] *Rollo,* pp. 114-117.

[5] *Id.* at 13.

Amplifying their arguments, petitioners asseverate that the Ombudsman had no authority to overturn the OSP's Resolution dismissing the cases against petitioners because, under Section 13, Article XI of the 1987 Constitution, the Ombudsman is clothed only with the power to watch, investigate and recommend the filing of proper cases against erring officials, but it was not granted the power to prosecute. They point out that under the Constitution, the power to prosecute belongs to the OSP (formerly the Tanodbayan), which was intended by the framers to be a separate and distinct entity from the Office of the Ombudsman. Petitioners conclude that, as provided by the Constitution, the OSP being a separate and distinct entity, the Ombudsman should have no power and authority over the OSP. Thus, petitioners maintain that R.A. No. 6770 (The Ombudsman Act of 1989), which made the OSP an organic component of the Office of the Ombudsman, should be struck down for being unconstitutional.

Next, petitioners insist that they should be absolved from any liability because the checks were issued to petitioner Lazatin allegedly as reimbursement for the advances he made from his personal funds for expenses incurred to ensure the immediate implementation of projects that are badly needed by the Pinatubo victims.

The Court finds the petition unmeritorious.

Petitioners' attack against the constitutionality of R.A. No. 6770 is stale. It has long been settled that the provisions of R.A. No. 6770 granting the Office of the Ombudsman prosecutorial powers and placing the OSP under said office have no constitutional infirmity. The issue of whether said provisions of R.A. No. 6770 violated the Constitution had been fully dissected as far back as 1995 in *Acop v. Office of the Ombudsman*.[6]

Therein, the Court held that giving prosecutorial powers to the Ombudsman is in accordance with the Constitution as paragraph 8, Section 13, Article XI provides that the Ombudsman shall "exercise such other functions or duties as may be provided by law." Elucidating on this matter, the Court stated:

---

[6] G.R. No. 120422, September 27, 1995, 248 SCRA 566.

x x x While the intention to withhold prosecutorial powers from the Ombudsman was indeed present, the Commission [referring to the Constitutional Commission of 1986] did not hesitate to recommend that the Legislature could, through statute, prescribe such other powers, functions, and duties to the Ombudsman. x x x As finally approved by the Commission after several amendments, this is now embodied in paragraph 8, Section 13, Article XI (Accountability of Public Officers) of the Constitution, which provides:

> Sec.13. The Office of the Ombudsman shall have the following powers, functions, and duties:
>
> x x x x x x x x x
>
> Promulgate its rules and procedure and exercise such other functions or duties as may be provided by law.

Expounding on this power of Congress to prescribe other powers, functions, and duties to the Ombudsman, we quote Commissioners Colayco and Monsod during interpellation by Commissioner Rodrigo:

> x x x x x x x x x
>
> MR. RODRIGO:
> Precisely, I am coming to that. The last of the enumerated functions of the Ombudsman is: "to exercise such powers or perform such functions or duties as may be provided by law." So, the legislature may vest him with powers taken away from the Tanodbayan, may it not?
>
> MR. COLAYCO:
> Yes.
>
> MR. MONSOD:
> Yes.
>
> x x x x x x x x x
>
> MR. RODRIGO:
> Madam President. Section 5 reads: "The Tanodbayan shall continue to function and exercise its powers as provided by law."
>
> MR. COLAYCO:
> That is correct, because it is under P.D. No. 1630.

MR. RODRIGO:
So, if it is provided by law, it can be taken away by law, I suppose.

MR. COLAYCO:
That is correct.

MR. RODRIGO:
And precisely, Section 12(6) says that among the functions that can be performed by the Ombudsman are "such functions or duties as may be provided by law." The sponsors admitted that the legislature later on might remove some powers from the Tanodbayan and transfer these to the Ombudsman.

MR. COLAYCO:
Madam President, that is correct.

x x x x x x x x x

MR. RODRIGO:

Madam President, what I am worried about is, if we create a constitutional body which has neither punitive nor prosecutory powers but only persuasive powers, we might be raising the hopes of our people too much and then disappoint them.

MR. MONSOD:
I agree with the Commissioner.

MR. RODRIGO:
Anyway, since we state that the powers of the Ombudsman can later on be implemented by the legislature, why not leave this to the legislature?

x x x x x x x x x

MR. MONSOD: (reacting to statements of Commissioner Blas Ople):

x x x x x x x x x

With respect to the argument that he is a toothless animal,

> we would like to say that we are promoting the concept in its form at the present, but we are also saying that he can exercise such powers and functions as may be provided by law in accordance with the direction of the thinking of Commissioner Rodrigo. We do not think that at this time we should prescribe this, but we leave it up to Congress at some future time if it feels that it may need to designate what powers the Ombudsman need in order that he be more effective. This is not foreclosed.
>
> So, this is a reversible disability, unlike that of a eunuch; it is not an irreversible disability.[7]

The constitutionality of Section 3 of R.A. No. 6770, which subsumed the OSP under the Office of the Ombudsman, was likewise upheld by the Court in *Acop*. It was explained, thus:

> x x x the petitioners conclude that the inclusion of the Office of the Special Prosecutor as among the offices under the Office of the Ombudsman in Section 3 of R.A. No. 6770 ("An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman and for Other Purposes") is unconstitutional and void.
>
> The contention is not impressed with merit. x x x
>
> xxx xxx xxx
>
> x x x Section 7 of Article XI expressly provides that the then existing Tanodbayan, to be henceforth known as the Office of the Special Prosecutor, "shall continue to function and exercise its powers as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution." The underscored phrase evidently refers to the Tanodbayan's powers under P.D. No. 1630 or subsequent amendatory legislation. It follows then that Congress may remove any of the Tanodbayan's/Special Prosecutor's powers under P.D. No. 1630 or grant it other powers, except those powers conferred by the Constitution on the Office of the Ombudsman.
>
> Pursuing the present line of reasoning, when one considers that by express mandate of paragraph 8, Section 13, Article XI of the Constitution, the Ombudsman may "exercise such other powers or perform functions or duties as may be provided by law," it is indubitable then that Congress has the power to place the Office of the Special Prosecutor

[7] *Id.* at 575-579.

under the Office of the Ombudsman. In the same vein, Congress may remove some of the powers granted to the Tanodbayan by P.D. No. 1630 and transfer them to the Ombudsman; or grant the Office of the Special Prosecutor such other powers and functions and duties as Congress may deem fit and wise. This Congress did through the passage of R.A. No. 6770.[8]

The foregoing ruling of the Court has been reiterated in *Camanag v. Guerrero*.[9] More recently, in *Office of the Ombudsman v. Valera*,[10] the Court, basing its *ratio decidendi* on its ruling in *Acop* and *Camanag*, declared that the OSP is "merely a component of the Office of the Ombudsman and may only act under the supervision and control, and upon authority of the Ombudsman" and ruled that under R.A. No. 6770, the power to preventively suspend is lodged only with the Ombudsman and Deputy Ombudsman.[11] The Court's ruling in *Acop* that the authority of the Ombudsman to prosecute based on R.A. No. 6770 was authorized by the Constitution was also made the foundation for the decision in *Perez v. Sandiganbayan*,[12] where it was held that the power to prosecute carries with it the power to authorize the filing of informations, which power had not been delegated to the OSP. It is, therefore, beyond cavil that under the Constitution, Congress was not proscribed from legislating the grant of additional powers to the Ombudsman or placing the OSP under the Office of the Ombudsman.

Petitioners now assert that the Court's ruling on the constitutionality of the provisions of R.A. No. 6770 should be revisited and the principle of *stare decisis* set aside. Again, this contention deserves scant consideration.

The doctrine of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established) is embodied in Article 8 of the Civil Code of the Philippines which provides, thus:

---

[8] *Id.* at 580-582.

[9] G.R. No. 164250, September 30, 2005, 268 SCRA 473.

[10] G.R. No. 121017, February 17, 1997, 471 SCRA 715.

[11] *Id.* at 743

[12] G.R. No. 166062, September 26, 2006, 503 SCRA 252.

ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

It was further explained in *Fermin v. People*[13] as follows:

The doctrine of *stare decisis* enjoins adherence to judicial precedents. **It requires courts in a country to follow the rule established in a decision of the Supreme Court thereof.** That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[14]

In *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*,[15] the Court expounded on the importance of the foregoing doctrine, stating that:

The doctrine of *stare decisis* is one of policy grounded on the necessity for securing certainty and stability of judicial decisions, thus:

> Time and again, the court has held that **it is a very desirable and necessary judicial practice** that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that **for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same**, even though the parties may be different. It proceeds from the first principle of justice that, **absent any powerful countervailing considerations, like cases ought to be decided alike**. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated

[13] G.R. No. 157643, March 28, 2008, 550 SCRA 132.

[14] *Id.* at 145, citing *Castillo v. Sandiganbayan*, 427 Phil. 785, 793 (2002). (Emphasis supplied).

[15] G.R. No. 159422, March 28, 2008, 550 SCRA 180.

> and decided by a competent court, **the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.**[16]

The doctrine has assumed such value in our judicial system that the Court has ruled that "**[a]bandonment thereof must be based only on strong and compelling reasons**, otherwise, the becoming virtue of predictability which is expected from this Court would be immeasurably affected and the public's confidence in the stability of the solemn pronouncements diminished."[17] Verily, only upon showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*, can the courts be justified in setting aside the same.

In this case, petitioners have not shown any strong, compelling reason to convince the Court that the doctrine of *stare decisis* should not be applied to this case. They have not successfully demonstrated how or why it would be grave abuse of discretion for the Ombudsman, who has been validly conferred by law with the power of control and supervision over the OSP, to disapprove or overturn any resolution issued by the latter.

The second issue advanced by petitioners is that the Ombudsman's disapproval of the OSP Resolution recommending dismissal of the cases is based on misapprehension of facts, speculations, surmises and conjectures. The question is really whether the Ombudsman correctly ruled that there was enough evidence to support a finding of probable cause. That issue, however, pertains to a mere error of judgment. It must be stressed that *certiorari* is a remedy meant to correct only errors of jurisdiction, not errors of judgment. This has been emphasized in *First Corporation v. Former Sixth Division of the Court of Appeals,*[18] to wit:

> It is a fundamental aphorism in law that a review of facts and evidence is not the province of the extraordinary remedy of *certiorari*, which is

---

[16] *Id*. at 197-198. (Emphasis supplied).

[17] *Pepsi-Cola Products, Phil., Inc. v. Pagdanganan*, G.R. No. 167866, October 12, 2006, 504 SCRA 549, 564.

[18] G.R. No. 171989, July 4, 2007, 526 SCRA 564.

extra ordinem — beyond the ambit of appeal. **In *certiorari* proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. It does not include an inquiry as to the correctness of the evaluation of evidence. Any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by *certiorari*.** An *error of judgment* is one which the court may commit in the exercise of its jurisdiction. *An error of jurisdiction* is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion, which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari*. ***Certiorari* will not be issued to cure errors of the trial court in its appreciation of the evidence of the parties, or its conclusions anchored on the said findings and its conclusions of law. It is not for this Court to re-examine conflicting evidence, re-evaluate the credibility of the witnesses or substitute the findings of fact of the court *a quo*.**[19]

Evidently, the issue of whether the evidence indeed supports a finding of probable cause would necessitate an examination and re-evaluation of the evidence upon which the Ombudsman based its disapproval of the OSP Resolution. Hence, the Petition for *Certiorari* should not be given due course.

Likewise noteworthy is the holding of the Court in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*,[20] imparting the value of the Ombudsman's independence, stating thus:

Under Sections 12 and 13, Article XI of the 1987 Constitution and RA 6770 (The Ombudsman Act of 1989), the Ombudsman has the power to investigate and prosecute any act or omission of a public officer or employee when such act or omission appears to be illegal, unjust, improper or inefficient. **It has been the consistent ruling of the Court not to interfere with the Ombudsman's exercise of his investigatory and prosecutory powers as long as his rulings are supported by substantial evidence.** Envisioned as the champion of the people and preserver of the integrity of public service, **he has wide latitude in exercising his powers and is free from intervention from the three branches of**

[19] *Id.* at 578. (Emphasis supplied).

[20] G.R. No. 138142, September 19, 2007, 533 SCRA 571.

government. This is to ensure that his Office is insulated from any outside pressure and improper influence.[21]

Indeed, for the Court to overturn the Ombudsman's finding of probable cause, it is imperative for petitioners to clearly prove that said public official acted with grave abuse of discretion. In *Presidential Commission on Good Government v. Desierto*,[22] the Court elaborated on what constitutes such abuse, to wit:

> Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. x x x[23]

In this case, petitioners failed to demonstrate that the Ombudsman acted in a manner described above. Clearly, the Ombudsman was acting in accordance with R.A. No. 6770 and properly exercised its power of control and supervision over the OSP when it disapproved the Resolution dated September 18, 2000.

It should also be noted that the petition does not question any order or action of the Sandiganbayan Third Division; hence, it should not have been included as a respondent in this petition.

IN VIEW OF THE FOREGOING, the petition is *DISMISSED* for lack of merit. No costs.

SO ORDERED.

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

---

[21] *Id.* at 581-582. (Emphasis supplied).

[22] G.R. No. 139296, November 23, 2007, 538 SCRA 207.

[23] *Id.* at 216.

[*] Designated to sit as an additional member, per Special Order No. 646 dated May 15, 2009.

[**] Designated to sit as an additional member, per Special Order No. 631 dated April 29, 2009

THIRD DIVISION

[G.R. No. 149273. June 5, 2009]

BIENVENIDO C. GILLES, *petitioner, vs.* **COURT OF APPEALS, SCHEMA KONSULT, and EDGARDO ABORES,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR ARBITERS AND THE NATIONAL LABOR RELATIONS COMMISSION; JURISDICTION. — Article 217 of the Labor Code vests in Labor Arbiters and the NLRC exclusive jurisdiction to hear and decide cases involving termination disputes and all other cases arising from employer-employee relations, as it provides: ART. 217. *JURISDICTION OF LABOR ARBITERS AND THE COMMISSION.* (a) Except as otherwise provided under this Code the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural: 1. Unfair labor practice cases; 2. Termination disputes; 3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment; 4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations; 5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; [and] 6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement. (b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters. (c) Cases arising from the interpretation [or implementation] of collective bargaining agreements and those arising from the interpretation

or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements. Based on this provision, the NLRC has jurisdiction over the illegal dismissal case filed by Gilles. Contrary to the stance of SKI, the case is not an intra-corporate dispute but a labor controversy. Gilles sought reinstatement; he wanted to recover his position as Principal Engineer of SKI. He also prayed for backwages, moral damages, and attorney's fees.

2. ID.; ID.; TERMINATION OF EMPLOYMENT; VALID TERMINATION OF EMPLOYMENT BY THE EMPLOYER; ELEMENTS. — Employment may be severed either by the employee or by the employer. An employer-initiated termination must be based on just or authorized causes enumerated in Articles 282, 283, 284, and 287 of the Labor Code. On the other hand, an employee may terminate his employment with or without just cause for any of the grounds enumerated under Article 285 of the Labor Code. A valid termination of employment by the employer must comply with two requisites, namely: (1) the dismissal must be for any of the causes provided under Article 282 of the Labor Code; and (2) the employee must be afforded an opportunity to be heard and to defend himself. Substantively, the employer can terminate the services of an employee for just and valid causes, which must be supported by clear and convincing evidence; and procedurally, the employee must be given notice and an adequate opportunity to be heard before his actual dismissal for cause.

3. ID.; ID.; ID.; JUST CAUSES; WILLFUL DISOBEDIENCE OF EMPLOYER'S LAWFUL ORDERS; ELEMENTS. — Willful disobedience of the employer's lawful orders, as a just cause for dismissal of an employee, requires the concurrence of two (2) elements: (1) the employee's assailed conduct must have been willful, *i.e.*, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.

4. ID.; ID.; ID.; CONSTRUCTIVE DISMISSAL; EXPLAINED. — Constructive dismissal exists when the employee involuntarily resigns due to the harsh, hostile, and unfavorable conditions set by the employer. It arises when there is clear discrimination,

insensibility, or disdain by an employer and this becomes unbearable to the employee. Invariably, the law recognizes and resolves such a situation in favor of the employees in order to protect their rights from the coercive acts of the employer. Resignation contemplates a voluntary act; thus, an employee who is forced to relinquish his position due to the employer's unfair or unreasonable treatment is deemed to have been illegally terminated or discharged. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances.

5. ID.; ID.; ID.; JUST CAUSES; NEGLECT OF DUTY; MUST NOT ONLY BE GROSS BUT ALSO HABITUAL. — As a just cause for an employee's dismissal, neglect of duty must not only be gross but also habitual. A single or isolated act of negligence does not constitute a just cause for the dismissal of the employee.

6. ID.; ID.; ID.; ILLEGAL DISMISSAL; REMEDIES; CASE AT BAR. — Article 279 of the Labor Code mandates that an employee who was unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, as well as to other benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of his actual reinstatement. Since the circumstances obtaining in this case do not warrant Gilles' reinstatement due to his strained relations with the company, an award of separation pay, in lieu of reinstatement, equivalent to one month pay for every year of service, in addition to full backwages, allowances, and other benefits or the monetary equivalent thereof, is in order.

7. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; STOCK CORPORATIONS; DIRECTORS, OFFICERS AND EMPLOYEES; SOLIDARILY LIABLE WITH THE CORPORATION FOR THE TERMINATION OF EMPLOYEES IF THEY ACTED WITH MALICE OR BAD FAITH. — As to the liability of Abores as President of SKI, it is basic that a corporation, being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, while acting as corporate agents, are not their personal liability but the direct accountability of the corporation they represent.

As a rule, they are only solidarily liable with the corporation for the termination of employees if they acted with malice or bad faith. In the case at bar, malice or bad faith on the part of Abores in the constructive dismissal of Gilles was not sufficiently proven to justify holding him solidarily liable with SKI.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo and Ongsiako for private respondents.

D E C I S I O N

NACHURA, *J.*:

Before the Court is a petition for *certiorari* under Rule 65 of the Rules of Court assailing the Decision[1] dated January 29, 2001 and the Resolution dated June 14, 2001 of the Court of Appeals (CA) in CA-G.R. SP No. 58467.

The Facts

The antecedents of the case are as follows:

Respondent Schema Konsult, Inc. (SKI) is a company engaged in all phases of project consulting, management, and supervision of services, including investment studies, feasibility studies, micro-processing analysis, and detailed scheme formulation, for all types of industrial plants, and installation, infrastructure, and development projects.[2] Respondent Edgardo C. Abores (Abores) was the President of SKI at the time material to the case.[3] On the other hand, petitioner Bienvenido C. Gilles (Gilles) was an incorporator, stockholder, and member of the Board of Directors from 1987 to March 1993, Vice-President for Finance and

---

[1] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Hilarion L. Aquino and Wenceslao I. Agnir, Jr., concurring; *rollo*, pp. 44-53.

[2] *Rollo*, pp. 100, 228.

[3] *Id.* at 100, 227.

Administration from 1992 to 1993 and Principal Engineer of SKI from 1987 to March 1993.[4]

In 1993, SKI entered into an Agreement Regarding Staff Provision[5] (Agreement) with Carl Bro International (CBI), a corporation organized under the laws of Denmark. CBI entered into a joint venture with Aquatic Farms, Ltd., a foreign corporation under contract with the government of India for the provision of consultancy assistance on the "Shrimp and Fish Culture Project" (Project).[6] The Project involved the development of shrimp farms in different parts of India, funded from a loan extended to the Government of India, particularly its Ministry of Agriculture, by the International Bank for Reconstruction and Development.[7] The Ministry of Agriculture signed a contract with Aquatic Farms, Ltd., in association with CBI, for provision of consultancy assistance to the Project. CBI contracted SKI to provide a qualified aquaculture engineer for the Project.[8]

Gilles applied for, and was accepted as, Water Systems/Irrigation Engineer of the Project for a period of two (2) years, commencing on January 24, 1993.[9] The Agreement provided that: (1) CBI would pay SKI a monthly fee of US$4,000.00; (2) Gilles' basic salary of US$2,500.00 would be taken from the said fee; and (3) during Gilles' first sixty (60) days in India, he would receive a subsistence allowance of US$87.00 per calendar day to defray his expenses for accommodation, board and lodging, and hotel room accommodation during project travels away from the duty station.[10] For the duration of Gilles' assignment in India, he would be considered as a regular employee of SKI, but all the conditions in the Agreement between SKI and CBI would apply.[11]

---

[4] *Id.* at 100.

[5] Records, pp. 49-55.

[6] Appears in other parts of the records as "Fish and Prawn Culture Project."

[7] *Rollo*, pp. 45, 89-90, 100, 231; records, pp. 49-55.

[8] *Id*.

[9] Records, p. 62.

[10] *Rollo*, pp. 45, 90, 100.

[11] Records, p. 62.

In January 1993, prior to Gilles' departure for India, he received US$5,000.00 from SKI as an advance of his subsistence allowance to sustain him during his initial months in India.[12] While in India, he twice received 43,000 Indian Rupees (INR), equivalent to Php43,000.00, to cover his expenses from April 1-30, 1993 and from May 1-15, 1993.[13]

On May 10, 1993, Gilles tendered his Resignation Letter[14] to Mr. Torben R. Schou (Schou) of CBI. The pertinent portions of the letter read:

> For the past several weeks, I have been burdened by serious personal and financial problems. I have tried to put these problems out of my mind but they still keep on bothering me that my physical condition and capacity to concentrate with my work are affected. Because of these, I have decided to go back to the Philippines and face these problems.
>
> It is, therefore, with deep regret that I should tender my irrevocable resignation effective 15 May 1993.
>
> Thank you for giving me the opportunity to work with a great team.

On May 11, 1993, Gilles left India.[15]

On May 14, 1993, Schou faxed a Letter[16] to Abores, informing him of the abrupt departure of Gilles from the Project and its attendant consequences. The letter reads:

> We have on 10 May 1993 received Mr. Gilles' resignation, dated 5 May 1993, which was incorrectly addressed to us, and we understand that he left India on 11 May 1993. We regret that his personal problems caused this to happen.
>
> His decision has resulted in a very serious and critical situation as regards our contractual obligations towards the Min. of Agric. in

---

12 *Rollo*, p. 46.

13 *Id.* at 101.

14 Records, p. 43.

15 *Rollo*, pp. 45, 90, 100.

16 Records, p. 44.

India, and Aquatic Farms Ltd. (AFL) has informed that Bien's work has been very unsatisfactory for several weeks before his departure. In order to ensure that we meet the deadlines for design, AFL has brought in a temporary substitute for Bien, but this substitute is not billable to the project.

You are kindly requested to inform what actions you propose to take regarding replacement of Bien.

An Inter-Office Memorandum,[17] dated May 18, 1993, was sent to Gilles requesting him to attend the Board of Directors meeting scheduled on May 19, 1993 at 2:00 p.m., at which the matter of his resignation would be discussed.

At the board meeting on May 19, 1993, Abores explained that the meeting was called precisely to discuss the resignation of Gilles from his assignment in India. Abores read before the Members of the Board the Letter[18] of Gilles dated May 15, 1993, pertinent portions of which state:

Resigning from my assignment in India as a Carl Bro employee was one of the most difficult and painful decisions I made in my life. I did not only give up the chance to be better off financially but most of all end my career as a consultant.

The following has created a very discouraging and depressing working environment for me in India which pushed me to make such decision.

1) In our contract with Carl Bro (page 3/6, Annex 1 which is the same Annex in the contract between Aquatic Farms and the Indian Government), it is stated that design works for the 13 proposed prawn farms are to be undertaken from the 5th month (May 1993) to the 27th month. The attached memorandum of Mr. Clyde Simon supported the aforementioned schedule by recommending that construction of only three farms be started this year. In this memorandum, Mr. Clyde emphasized that quality of work should never be compromised.

---

17 *Id.* at 45.

18 *Id.* at 182-184.

In our initial review of the design undertaken by CICEF on all 13 proposed farms (the design costs the Indian Government approximately 8.0 million Rupees), we found that major changes on the design criteria should be made (pages 12 to 18 of the Inception Report). Although these changes necessitate redesign for all proposed farms, the original work schedule can still be made applicable with only slight modifications.

However, on April 1 during a meeting in Delhi attended by our Project Advisor, he committed the completion of the design (including construction drawings, cost estimates, feasibility and design reports, technical specifications and other documents necessary for tendering) of three proposed farms by the end of May and the completion of the design for the other 10 sites by the end of 1993. This means that we have to finish the design for 1.5 sites per month (the farm area ranges from 52 to 1,671 ha.) This commitment was made by our Senior Project Advisor to the World Bank, India's Central Government and State Officials.

Since I was the water systems engineer in the group, much of the pressure of keeping up with our Senior Project Advisor's commitment was passed on to me. I had to work 18 hours on the average every day seven days a week.

xxx xxx xxx

4) I was made to expect when I left for this assignment that I will be better off financially. However, for the last three and a half months now, Carl Bro has not paid my salary (3.5 months) and my subsistence allowance for my first 60 days stay in Bangalore. How could I be expected to fulfill my financial obligations here in the Philippines? I have an 80-year old mother to support, loans to amortize, relatives to help with their medical expenses, *etc*. Although, SCHEMA was kind to have given me an advance of US$5,000. During my first sixty days in Bangalore, as consultants, we were made to stay in five star hotel. I spent on the average US$70 per day for a total of US$4,200 in 60 days.

Several times I have made personal long distance calls to SCHEMA to follow-up on my salary and to talk to management about the other items mentioned above. RMS, EEA and EAV were so kind to listen

to my problems as well as do something within the limits of their positions. However, the person who could have helped me most refused to talk to me. I felt that I was abandoned by SCHEMA management.

I was already in a very discouraged, depressed, exhausted and dejected state hence, I decided to leave Bangalore before my replacement was found.

I wrote this letter to explain the reasons why I left my post in India before my replacement was found. This is not intended to ask management for reconsideration on its decision of terminating my services with SCHEMA. My request to management is to be kind enough to grant me separation benefits of one month per year of service and other benefits normally given to leaving employees. I am also requesting management to facilitate the payment of my 3.5 months salary by Carl Bro. I can claim, with a clear conscience, that I have earned, up to the last cent, my wage in India.

As I have already mentioned in the earlier part of this letter that my resignation from my assignment in India has ended my career as a consultant. Hence, the granting of my aforementioned request would help me in venturing into new sources of livelihood.

Abores explained that the management was unaware of the difficulties encountered by Gilles in India, as no communication, official or otherwise, was received from Gilles. He said that Gilles never submitted any written progress report on the Project, contrary to the company's standard operating procedures.[19] The Board of Directors then decided to terminate the services of Gilles effective June 7, 1993,[20] and a notice of termination was sent to him.[21]

On September 6, 1993, Gilles filed a complaint for illegal dismissal against respondents, seeking reinstatement, moral damages, and other monetary claims.[22]

---

[19] *Id.* at 197.

[20] *Id.* at 198.

[21] *Id.* at 46.

[22] *Rollo*, p. 101; records, pp. 5-7.

Gilles alleged that there was a deliberate scheme to ease him out of the Project and ultimately out of SKI. He believed that Abores was behind it. He said that while he was in India, his salary from the Project was not given to him on time. He claimed that he tried to communicate with SKI representatives, particularly with Abores, relative to the difficulties he encountered in India, but his calls were ignored. Moreover, the March 20, 1993 election of officers of SKI was not relayed to him on time, which resulted in his failure to attend the meeting or to send a proxy and, thus, was not elected officer of the company, a position that he consistently held in the past.[23] He also challenged the May 19, 1993 Board of Directors meeting as a hoax. He alleged that the meeting did not take place. He claimed that he talked to two (2) or three (3) members of the Board of Directors and they confirmed to him that his termination from employment was not the subject of the said meeting. However, to his disbelief, Abores was able to produce minutes of the alleged meeting where his termination by the Board was the principal item in the agenda.[24]

On the other hand, SKI dismissed the allegations of Gilles as mere fabrication. SKI averred that Gilles was well provided in India; that his resignation from CBI and his departure from India were not known nor approved by SKI; that the May 19, 1993 board meeting was real and Gilles was informed of such meeting at which his side was heard, but he was asked to step out of the meeting for displaying a temper; that the proceedings were properly recorded in the minutes; that the Board of Directors decided to terminate Gilles' services effective June 7, 1993; and that SKI paid Gilles what was due him from the Project in India even if CBI had yet to pay the consultancy fees.[25]

On July 10, 1997, the Labor Arbiter rendered a Decision,[26] the dispositive portion of which reads:

---

[23] *Rollo*, pp. 90-91.

[24] *Id.* at 47.

[25] *Id.* at 92-93.

[26] Penned by Labor Arbiter Manuel P. Asuncion; *rollo*, pp. 89-97.

WHEREFORE, the respondents are hereby ordered, jointly and severally:

1.) To reinstate the complainant to his former position as Vice-President for Finance/Administration, with full backwages from the date his salary was withheld until he is actually reinstated which as of date has reached ₱1,274,000.00. If reinstatement should become improbable, then, the complainant should be paid separation pay equivalent to one-half month salary for every year of service rendered in addition to the grant of backwages; [and]

2.) To pay the complainant the sum of ₱500,000.00 as moral damages.

The respondents are, likewise, assessed the sum of ₱127,400.00 representing 10% of the benefits awarded as attorney's fees.

SO ORDERED.[27]

On appeal, the National Labor Relations Commission (NLRC) affirmed the decision of the Labor Arbiter with modification in a Resolution[28] dated November 29, 1999. The *fallo* of the resolution reads:

WHEREFORE, the decision appealed from is AFFIRMED, with modification deleting the award of attorney's fee and reducing the award of moral damages to ₱100,000.00.

SO ORDERED.[29]

SKI moved for reconsideration. The motion was denied in a Resolution dated January 31, 2000.[30] Unsatisfied, SKI filed a petition for *certiorari* and prohibition under Rule 65 of the Rules of Court before the CA, raising the following issues: (a) the controversy was an intra-corporate dispute exclusively cognizable by the Securities and Exchange Commission (SEC), and beyond the jurisdiction of the NLRC; and (b) the finding

---

[27] *Id.* at 96-97.

[28] Penned by Commissioner Ireneo B. Bernardo, with Presiding Commissioner Lourdes C. Javier, concurring; *rollo*, pp. 99-106.

[29] *Rollo*, pp. 105-106.

[30] *Id.* at 108-109.

of the Labor Arbiter that Gilles was illegally dismissed was bereft of merit.

On January 29, 2001, the CA rendered a Decision granting the petition of SKI,[31] disposing, as follows:

> WHEREFORE, foregoing premises considered, the petition having merit, in fact and in law, is **hereby GIVEN DUE COURSE. ACCORDINGLY, the decision/judgment of the Labor Arbiter and public respondent National Labor Relations Commission (3rd Division), are hereby SET ASIDE and ANNULLED for having been rendered without jurisdiction, and the complaint of private respondent ordered DISMISSED**. Public respondents or any of their agent/s are hereby **permanently enjoined/restrained** from executing their judgment. No costs.
>
> SO ORDERED.[32]

The CA ratiocinated that the removal of Gilles as Vice-President of SKI was an intra-corporate controversy that was within the jurisdiction of the SEC. Furthermore, Gilles was not illegally dismissed from service, considering that he resigned from his assignment in India even before a replacement was found.[33]

Gilles filed a motion for reconsideration. On June 14, 2001, the CA issued a Resolution dismissing the motion.

Hence, this petition.

The Issues

Gilles raises the following issues for our resolution:

I

WHETHER [OR] NOT THE RESPONDENT COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION IN HOLDING THAT

---

[31] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Hilarion L. Aquino and Wenceslao I. Agnir, Jr., concurring; *id.* at 44-53.

[32] *Id.* at 52.

[33] *Id.* at 44-53.

THE LABOR ARBITER HAS NO JURISDICTION OVER THE ILLEGAL DISMISSAL CASE OF HEREIN PETITIONER?

II

WHETHER OR NOT THE DISPOSITIVE PORTION OF THE LABOR ARBITER'S DECISION CONTAINING REINSTATEMENT FOR THE POSITION OF VICE-PRESIDENT INSTEAD OF HIS REGULAR EMPLOYMENT AS PRINCIPAL ENGINEER WOULD DIVEST THE JURISDICTION OF NLRC OVER THE ILLEGAL DISMISSAL CASE OF HEREIN PETITIONER?

III

WHETHER OR NOT THE RESPONDENT COURT OF APPEALS ACTED WITH GRAVE ABUSE IN DISTURBING THE FINDING OF THE LABOR ARBITER AND AFFIRMED BY THE NATIONAL LABOR RELATIONS COMMISSION (3rd DIVISION) THAT THE PETITIONER WAS ILLEGALLY DISMISSED FROM HIS REGULAR EMPLOYMENT?[34]

These issues may be reduced to the following: (1) whether the NLRC has jurisdiction over the illegal dismissal case; and (2) whether Gilles was illegally dismissed from employment.

The Ruling of the Court

I

Article 217 of the Labor Code vests in Labor Arbiters and the NLRC exclusive jurisdiction to hear and decide cases involving termination disputes and all other cases arising from employer-employee relations, as it provides:

ART. 217. *JURISDICTION OF LABOR ARBITERS AND THE COMMISSION.*

(a) Except as otherwise provided under this Code the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

---

[34] *Id.* at 201.

1. Unfair labor practice cases;

2. Termination disputes;

3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;

4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;

5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; [and]

6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement.

(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

(c) Cases arising from the interpretation [or implementation] of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements.

Based on this provision, the NLRC has jurisdiction over the illegal dismissal case filed by Gilles. Contrary to the stance of SKI, the case is not an intra-corporate dispute but a labor controversy. Gilles sought reinstatement; he wanted to recover his position as Principal Engineer of SKI. He also prayed for backwages, moral damages, and attorney's fees.

However, the Labor Arbiter committed an error when, in the dispositive portion of the July 10, 1997 Decision, he ordered the reinstatement of Gilles to his former position as Vice-President for Finance of SKI. That ruling finds no legal support in the *ratio decidendi* of the Decision itself, which reads:

Respondents, through counsel, moved for the dismissal of the case on the ground that this Office lacks the jurisdiction to arbitrate the same. It is argued that the complainant is not an ordinary employee, being the Vice-President for Finance/Administration and Treasurer, in addition to his job position as Principal Engineer. It is[,] likewise[,] claimed that the issue involved is an intra-corporate controversy which falls under the exclusive jurisdiction of the Securities and Exchange Commission.

The motion must be denied. The complainant lost his position as VP-Finance/Administration and Treasurer when he was not voted in the 20 March 1993 stockholders' meeting. His remaining relationship with the respondent firm after that date was his job position of Principal Engineer.

Moreover, the issue here is one of termination of employment, arising from circumstances on complainant's assignment in India. No incident of intra-corporate character has been linked to the employment issue. It appears, therefore, that the element of intra-corporate controversy is absent [in the case which gives this Office the jurisdiction] to arbitrate the termination issue.[35]

Based on the records of the case, Gilles never sought to regain his seat in the Board of Directors; he actually claimed reinstatement as Principal Engineer of SKI. The Labor Arbiter's decision was muddled with a lengthy discussion on the Board of Directors positions that Gilles held in the past, his failure to participate in the March 19, 1993 SKI Board of Directors elections due to the delayed receipt of the notice of the meeting, and the circumstances which led him to believe that there was an overt plan to oust him from the company.

Nonetheless, despite the tangled web of premises in the Labor Arbiter's disquisition, what emerges is a clear case of a labor dispute, properly cognizable by the NLRC.

II

Employment may be severed either by the employee or by the employer. An employer-initiated termination must be based

[35] *Id.* at 202-203.

on just or authorized causes enumerated in Articles 282, 283,[36] 284,[37] and 287[38] of the Labor Code. On the other hand, an employee may terminate his employment with or without just cause for any of the grounds enumerated under Article 285[39] of the Labor Code.

A valid termination of employment by the employer must comply with two requisites, namely: (1) the dismissal must be

---

[36] Art. 283. *CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL*

The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, x x x.

[37] Art. 284. *DISEASE AS GROUND FOR TERMINATION*

An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: x x x.

[38] Art. 287. *RETIREMENT*

Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

[39] Art. 285. *TERMINATION BY EMPLOYEE*

(a) An employee may terminate without just cause the employee-employer relationship by serving a written notice on the employer at least one (1) month in advance. The employer upon whom no such notice was served may hold the employee liable for damages.

(b) An employee may put an end to the relationship without serving any notice on the employer for any of the following just causes:

1. Serious insult by the employer or his representative on the honor and person of the employee;

2. Inhuman and unbearable treatment accorded the employee by the employer or his representative;

3. Commission of a crime or offense by the employer or his representative against the person of the employee or any of the immediate members of his family; and

4. Other causes analogous to any of the foregoing.

for any of the causes provided under Article 282 of the Labor Code; and (2) the employee must be afforded an opportunity to be heard and to defend himself. Substantively, the employer can terminate the services of an employee for just and valid causes, which must be supported by clear and convincing evidence; and procedurally, the employee must be given notice and an adequate opportunity to be heard before his actual dismissal for cause.[40]

In this case, Gilles questions the validity of his dismissal as the Principal Engineer of SKI. He contends that he only resigned as a consultant for the Project in India and not as a regular employee of SKI. Furthermore, he contests the genuineness of the May 19, 1993 board meeting and denies that he was given the opportunity to explain his side.

SKI maintains that Gilles was terminated for willful disobedience and gross neglect of his duties, just causes recognized in Article 282 of the Labor Code, *viz.*:

ART. 282. ***Termination by employer.***

An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

---

[40] *Solid Development Corporation Workers Association (SDCWA-UWP) v. Solid Development Corporation*, G.R. No. 165995, August 14, 2007, 530 SCRA 132.

Willful disobedience of the employer's lawful orders, as a just cause for dismissal of an employee, requires the concurrence of two (2) elements: (1) the employee's assailed conduct must have been willful, *i.e.*, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.[41]

Gilles' resignation from CBI and sudden departure from India was not approved by SKI. When he asked the company's permission to return to Manila, the management instructed him to stay in India until a suitable replacement was found.[42] He knew of the critical stage of the Project due to the accelerated period of its completion.[43] Thus, when he left the Project, despite the clear and lawful instructions of the management for him to stay, his act constituted willful disobedience and gross neglect of duty under Article 282 of the Labor Code.

But SKI was guilty of violating Article 103 of the Labor Code. SKI was remiss in paying the compensation of Gilles as Aquaculture Engineer of the Project on time. Based on the findings of fact of the Labor Arbiter, as confirmed by the NLRC, Gilles was not paid his salaries for the three and half (3½) months of his stay in India. Article 103 of the Labor Code mandates that wages shall be paid at least once every two (2) weeks or twice a month at intervals not exceeding sixteen (16) days and that no employer shall make payment with less frequency than once a month.

Gilles' departure from India, despite the instruction of SKI for him to stay, was impelled by the financial difficulties he

---

[41] *ePacific Global Contact Center, Inc. v. Cabansay*, G.R. No. 167345, November 23, 2007, 538 SCRA 498, 513; *EDI-Staffbuilders International, Inc. v. National Labor Relations Commission*, G.R. No. 145587, October 26, 2007, 537 SCRA 409, 433; *id.* at 139-140; *Sadagnot v. Reinier Pacific International Shipping, Inc.*, G.R. No. 152636, August 8, 2007, 529 SCRA 413, 423.

[42] *Rollo*, pp. 50, 93, 102.

[43] *Id.* at 95.

encountered thereat. The money given to him before he left for India was already spent. Rickie Sarque, the Chief Accountant of SKI, admitted on the witness stand that Gilles was paid his salaries for the 3 ½ months when he was already back in Manila.[44] Added to this were the problems he encountered due to the acceleration of the job completion period, the obligations he had to meet at home for his aged mother at that time, now deceased, and the relatives who needed his financial support. Clearly, Gilles had a valid reason to leave India.

It should be noted that all the time Gilles was employed as Aquaculture Engineer of the Project, he remained a regular employee of SKI.[45] This is borne out by the Agreement which pertinently reads:

> Based on these TOR [Terms of Reference], SK [Schema Konsult, Inc.] has selected Mr. Bienvenido C. Gilles as the qualified Aquaculture (Water Systems) Engineer, and [the] MOA [Ministry of Agriculture] has accepted his assignment as a member of the AFL/CBI [Aquatic Farms Ltd./Carl Bro International] team. **B.C. Gilles shall be employed by SK**.[46]

SKI, as the principal employer of Gilles, had the responsibility to pay Gilles his salaries and to defray his expenses while he was engaged in the Project in India. Again, the Agreement explicitly covers this obligation, *viz.*:

> 4. Remuneration and Expenses
>
> During the period of assignment, CBI shall pay to SK a total monthly rate of USD4,000.00, broken down as follows:
>
> | | USD |
> |---|---|
> | Basic Salary to B.C. Gilles | 2,500.00 |
> | SK Office overhead and profit | 1,500.00 |
> | Total monthly rate | 4,000.00 |

[44] *Id.* at 96, 104-105.

[45] Records, p. 62.

[46] *Id.* at 49. (Emphasis supplied.)

In case B.C. Gilles' assignment commences or terminates during a month, a daily rate of USD 140.00/per working day shall be used for calculating the payment to SK.

The total monthly or daily rate is the full remuneration to SK for the services of B.C. Gilles, and includes:

Salary to B.C. Gilles
Social charges
All personal insurances, including:
    Health insurance
    Travel insurance
    Personal belongings insurance
    Accident and life insurance
Employer's liability and workers compensation insurance
Leave pay and sick leave pay
Leave on official Indian Holidays and on non-Indian holidays
Taxes and duties
Relocation costs
All living expenses beyond the subsistence allowance
Third party motor vehicle liability insurance

xxx xxx xxx

The total monthly rate, the USD subsistence allowance, the international travel per diem and expenses to be reimbursed by CBI shall be invoiced monthly and paid by CBI to SK not later than 30 days after CBI's receipt from SK of invoice and documentation acceptable to CBI including copies of receipts and filled in timesheets approved by the AFL/CBI SPA. Payment shall be effected by a bank transfer to a bank account informed by SK. CBI shall pay only for the bank charges payable to CBI's bank.

Reimbursement of eligible expenses in INR shall be effected directly to B.C. Gilles in India by the AFL/CBI SPA on behalf of CBI against presentation of receipts.[47]

SKI's failure to pay Gilles' salary on time was intolerable. For neglecting its duties as an employer, SKI may, thus, be considered to have acted in bad faith. It may be deemed as

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

utter disregard by SKI of the welfare and well-being of its employee, especially at a time when he was far away from home.

We, therefore, find that Gilles was constructively dismissed from employment. Constructive dismissal exists when the employee involuntarily resigns due to the harsh, hostile, and unfavorable conditions set by the employer. It arises when there is clear discrimination, insensibility, or disdain by an employer and this becomes unbearable to the employee.[48]

Invariably, the law recognizes and resolves such a situation in favor of the employees in order to protect their rights from the coercive acts of the employer. Resignation contemplates a voluntary act; thus, an employee who is forced to relinquish his position due to the employer's unfair or unreasonable treatment is deemed to have been illegally terminated or discharged. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances.[49]

The disobedience committed by Gilles cannot be characterized as wrongful or perverse *per se*, given the conditions he was subjected to while in India. He left the Project primarily because of the financial difficulties he encountered, owing to his failure to receive his salary and because of the adverse working conditions in India.[50] The Senior Project Advisor accelerated the time schedule of the Project, and Gilles had to work on the job at an average of eighteen (18) hours daily.[51]

Further, SKI alleges neglect of duty as a ground for dismissing Gilles, saying Gilles' unceremonious return to the Philippines

---

[48] *Aguilar v. Burger Machine Holdings Corporation*, G.R. No. 172062, October 30, 2006, 506 SCRA 266, 273; *Suldao v. Cimech System Construction, Inc.*, G.R. No. 171392, October 30, 2006, 506 SCRA 256, 260-261.

[49] *Id.*

[50] Records, pp. 89-95.

[51] *Id.*

constituted abandonment. The contention is untenable. As a just cause for an employee's dismissal, neglect of duty must not only be gross but also habitual. A single or isolated act of negligence does not constitute a just cause for the dismissal of the employee. Prior to his abrupt departure from India, Gilles had no derogatory record in the company. Besides, if it was true that the performance of Gilles was unsatisfactory or if he habitually neglected his duties, SKI or CBI should have initiated his removal prior to his departure from India. The Agreement[52] contains an adequate provision for the removal or replacement of Gilles if the employers are dissatisfied with his performance. The said provision reads:

15. Removal and/or Replacement of Personnel

If CBI (i) finds that B.C. Gilles has conducted serious misconduct or has been charged with having committed a criminal action, or (ii) has reasonable cause to be dissatisfied with the performance of B.C. Gilles, then SK shall, at CBI's written request specifying the ground thereof, forthwith provide a replacement with qualifications and experience similar to B.C. Gilles or better and acceptable to CBI, AFL and MOA.[53]

Article 279 of the Labor Code mandates that an employee who was unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, as well as to other benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of his actual reinstatement. Since the circumstances obtaining in this case do not warrant Gilles' reinstatement due to his strained relations with the company, an award of separation pay, in lieu of reinstatement, equivalent to one month pay for every year of service, in addition to full backwages, allowances, and other benefits or the monetary equivalent thereof, is in order.

As to the liability of Abores as President of SKI, it is basic that a corporation, being a juridical entity, may act only through

[52] *Id.* at 49-55.

[53] *Id.* at 54-55.

its directors, officers and employees. Obligations incurred by them, while acting as corporate agents, are not their personal liability but the direct accountability of the corporation they represent. As a rule, they are only solidarily liable with the corporation for the termination of employees if they acted with malice or bad faith.[54] In the case at bar, malice or bad faith on the part of Abores in the constructive dismissal of Gilles was not sufficiently proven to justify holding him solidarily liable with SKI.

WHEREFORE, the assailed Decision dated January 29, 2001 and Resolution dated June 14, 2001 of the Court of Appeals in CA-G.R. SP No. 58467 are hereby *SET ASIDE*. Petitioner Bienvenido C. Gilles is awarded separation pay equivalent to one month pay for every year of service and full backwages, other privileges and benefits, or the monetary equivalent thereof, computed from the date of his illegal dismissal on June 7, 1993 until the finality of this decision. Respondent Edgardo C. Abores is *ABSOLVED* from any liability adjudged against co-respondent Schema Konsult, Inc. Respondent Schema Konsult, Inc. is likewise *ORDERED* to pay Gilles One Hundred Thousand Pesos (Php100,000.00) as moral damages.

SO ORDERED.

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

---

[54] *MAM Realty Devt. Corp. v. NLRC,* 314 Phil. 838, 844 (1995).

[*] Additional member in lieu of Associate Justice Conchita Carpio Morales per Special Order No. 646 dated May 15, 2009.

[**] Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 631 dated April 29, 2009.

SECOND DIVISION

[G.R. No. 150677. June 5, 2009]

RENATO REYES SO, *petitioner, vs.* **LORNA VALERA,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; VOID MARRIAGES; NULLITY OF MARRIAGE ON THE GROUND OF PSYCHOLOGICAL INCAPACITY; CHARACTERISTICS. — The petition for declaration of nullity of marriage is anchored on Article 36 of the Family Code which provides that "a marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization." In *Santos v. Court of Appeals*, the Court first declared that psychological incapacity must be characterized by (a) gravity; (b) juridical antecedence; and (c) incurability. It should refer to "no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage." It must be confined to "the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage."

2. ID.; ID.; ID.; ID.; GUIDELINES. — More definitive guidelines in the interpretation and application of Article 36 of the Family Code of the Philippines were handed down by this Court in *Republic v. Court of Appeals* (the *Molina* case) as follows: "(1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation." It decrees marriage as legally "inviolable," thereby protecting it from dissolution at the whim of the parties. Both

the family and marriage are to be "protected" by the state. The Family Code echoes this constitutional edict on marriage and the family and emphasizes their permanence, inviolability and solidarity. (2) The root cause of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists. (3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. The evidence must show that the illness was existing when the parties exchanged their "I do's." The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto. (4) Such incapacity must also be shown to be medically or clinically permanent or incurable. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. x x x (5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characteriological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision. (7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts… (8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095." A later case, *Marcos v. Marcos,* further clarified that there is no requirement that the defendant/respondent spouse should be personally examined by a physician or psychologist as a condition *sine qua non* for the declaration of nullity of marriage based on psychological incapacity. Accordingly, it is no longer necessary to introduce expert opinion in a petition under Article 36 of the Family Code if the totality of evidence shows that psychological incapacity exists and its **gravity, juridical antecedence**, and **incurability** can be duly established.

3. ID.; ID.; ID.; ID.; IRRECONCILABLE DIFFERENCES, SEXUAL INFIDELITY OR PERVERSION, EMOTIONAL IMMATURITY AND IRRESPONSIBILITY DO NOT BY THEMSELVES WARRANT A FINDING OF PSYCHOLOGICAL INCAPACITY. — Shorn of any reference to psychology, we conclude that we have a case here of parties who have very human faults and frailties; who have been together for some time; and who are now tired of each other. If in fact the respondent does not want to provide the support expected of a wife, the cause is not necessarily a grave and incurable psychological malady whose effects go as far as to affect her capacity to provide marital support promised and expected when the marital knot was tied. To be tired and to give up on one's situation and

on one's husband are not necessarily signs of psychological illness; neither can falling out of love be so labeled. When these happen, the remedy for some is to cut the marital knot to allow the parties to go their separate ways. This simple remedy, however, is not available to us under our laws. Ours is still a limited remedy that addresses only a very specific situation – a relationship where no marriage could have validly been concluded because the parties, or one of them, by reason of a grave and incurable psychological illness existing when the marriage was celebrated, did not appreciate the obligations of marital life and, thus, could not have validly entered into a marriage. Outside of this situation, this Court is powerless to provide any permanent remedy. To use the words of *Navales v. Navales*: Article 36 contemplates downright incapacity or inability to take cognizance of and to assume basic marital obligations. Mere "difficulty," "refusal" or "neglect" in the performance of marital obligations or "ill will" on the part of the spouse is different from "incapacity" rooted on some debilitating psychological condition or illness. Indeed, **irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility, and the like, do not by themselves warrant a finding of psychological incapacity under Article 36, as the same may only be due to a person's refusal or unwillingness to assume the essential obligations of marriage and not due to some psychological illness that is contemplated by said rule.**

APPEARANCES OF COUNSEL

Pangilinan Britanico Sarmiento and Franco for petitioner.
Abesamis Law Offices for respondent.

D E C I S I O N

BRION, *J.*:

For our review is the Petition for Review on *Certiorari*[1] filed by petitioner Renato Reyes So (*petitioner*) against the

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

Decision dated July 4, 2001[2] and the Resolution dated October 18, 2001[3] of the Court of Appeals (*CA*) in **CA-G.R. CV No. 65273**. The challenged decision reversed the decision[4] of the Regional Trial Court (*RTC*), Branch 143, Makati City declaring the marriage of the petitioner and respondent Lorna Valera (*respondent*) null and void on the ground of the latter's psychological incapacity under Article 36 of the Family Code. The assailed resolution denied the petitioner's motion for reconsideration.

ANTECEDENT FACTS

The petitioner and the respondent first met at a party in 1973 after being introduced to each other by a common friend. The petitioner at that time was a 17-year old high school student; the respondent was a 21-year old college student. Their meeting led to courtship and to a 19-year common-law relationship,[5] culminating in the exchange of marital vows at the Caloocan City Hall on December 10, 1991.[6] They had three (3) children (Jeffrey, Renelee, and Loni)[7] in their relationship and subsequent marriage.

On May 14, 1996, the petitioner filed with the RTC a petition for the declaration of the nullity of his marriage with the respondent.[8] The case was docketed as JDRC Case No. 96-674. He alleged that their marriage was null and void for want of the essential and formal requisites. He also claimed that the respondent was psychologically incapacitated to exercise the essential obligations of marriage, as shown by the following

---

[2] Penned by Associate Justice Martin S. Villarama, Jr., and concurred in by Associate Justice Conrado M. Vasquez, Jr. and Associate Justice Sergio L. Pestaño; *rollo*, pp. 30-37.

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

[4] Penned by Judge Salvador Abad Santos.

[5] TSN, August 14, 1997, pp. 4-6.

[6] Annex "B", *rollo*, p. 62.

[7] Annexes "A", "A-1", and "A-2", *id.*, pp. 56-61.

[8] *Id.*, pp. 40-44.

circumstances: the respondent failed and refused to cohabit and make love with him; did not love and respect him; did not remain faithful to him; did not give him emotional, spiritual, physical, and psychological help and support; failed and refused to have a family domicile; and failed and refused to enter into a permanent union and establish conjugal and family life with him.[9]

The petitioner presented testimonial and documentary evidence to substantiate his charges.

The petitioner testified that he and the respondent eloped two (2) months after meeting at a party.[10] Thereafter, they lived at the house of his mother's friend in Bulacan, and then transferred to his parents' house in Caloocan City. They stayed there for two (2) months before transferring to Muntinlupa City.[11]

The petitioner likewise related that respondent asked him to sign a blank marriage application form and marriage contract sometime in 1986. He signed these documents on the condition that these documents would only be used if they decide to get married. He admitted not knowing what happened to these documents, and maintained that no marriage ceremony took place in 1991.[12] As noted below, the petitioner, however, submitted a certified true copy of their marriage contract as part of his documentary evidence.

The petitioner further alleged that the respondent did not want to practice her profession after passing the dental board exam; and that she sold the dental equipment he bought for her.[13] He also claimed that when he started his own communication company, the respondent disagreed with many of his business decisions; her interference eventually led to many failed transactions with prospective clients.[14]

---

[9] *Id.*, p. 42.

[10] TSN, August 14, 1997, p. 8.

[11] TSN, April 2, 1998, pp. 2-4.

[12] *Id.*, pp. 5-7.

[13] *Id.*, pp. 7-8.

[14] *Id.*, pp. 9-10.

The petitioner narrated that he often slept in the car because the respondent locked him out of the house when he came home late. He felt embarrassed when his employees would wake him up inside the car. When he confronted the respondent the next morning, she simply ignored him. He also claimed that respondent did not care for their children, and was very strict with clients. Moreover, the respondent went out with his employees to gamble whenever there were no clients.

Lastly, he testified that sometime in 1990, he found all his things outside their house when he came home late after closing a deal with a client. He left their house and stayed at a friend's house for two (2) months. He tried to go back to their house, but the respondent prevented him from entering. The respondent also told him she did not love him anymore. He attempted to reconcile with her for the sake of their children, but she refused to accept him back.[15]

Summons was served on the respondent on July 17, 1996, but she failed to file an answer. The RTC ordered the public prosecutor to investigate if there had been collusion between the parties and to intervene for the State to see to it that evidence was not fabricated. Prosecutor Andres N. Marcos manifested that he was unable to make a ruling on the issue of collusion since the respondent failed to appear before him. [16]

Aside from his testimony, the petitioner also presented certified true copies of the birth certificate of their three children;[17] certified true copy of their marriage contract;[18] and the testimony, original *curriculum vitae*,[19] and psychological report[20] of clinical psychologist Dr. Cristina Rosello-Gates (*Dr. Gates*).

---

[15] *Id.*, pp. 10-13.

[16] Records, p. 33.

[17] *Id.*, pp. 6-8.

[18] *Rollo*, p. 62.

[19] Exhibit "F", *id.*, pp. 63-64.

[20] Exhibit "E", *id.*, pp. 65-69.

In her Psychological Report, Dr. Gates noted as follows:

xxx xxx xxx

PARTICULARS

- Parties met in a party when Petitioner was 17 years and Respondent was 21 years old; both were studying but Petitioner was also working in his father's business;

- During the first time they met, Respondent hugged Petitioner and stayed close to him; she also taught him how to smoke marijuana; after their first meeting, Respondent would fetch petitioner from school, and they would go out together;

- Within the next two months, Respondent dropped out of school without informing her parents; she applied for a job and was purportedly raped by her employer;

- When Respondent's parents found out that she quit school, she sought petitioner's help to look for a place to stay; Renato brought her to his friend's house in Bulacan but her hosts did not like her frequent outings and parties; Respondent then asked Petitioner to live with her in a rented apartment; she told him to execute an Affidavit of Loss so he can withdraw his savings with a new bankbook without the knowledge of his father;

- Parties were fetched by Petitioner's parents to live with them in Caloocan; petitioner sent Respondent to school to wean her away from her friends; when she passed the Dentistry Board Examinations, he put up a dental clinic for her; after 2 months, she quit her dental practice and joined Petitioner in his communications business;

- Respondent had problems dealing with Petitioner's clients; she interfered with his decisions, and resented his dealings with clients which would, at times, last till late at night; one incident in 1990, Respondent locked Petitioner out of house prompting the latter to sleep in the car; other similar incidents followed where employees would wake up Petitioner when

they report for work; one night, Petitioner found all his things thrown out of the house by Respondent;

- Respondent was not the one who took care of their children; the second child, for instance, cries whenever said child sees Respondent as the latter is not familiar with the former;

- While parties lived together since 1973, they applied for a marriage license only in 1986; Respondent asked Petitioner to sign both license and marriage contract without any public appearance at City Hall; their marriage was registered in 1991 after the couple separated.[21]

and concluded that:

An examination of the parties' respective family background and upbringing, as well as the events prior to their marriage point to psychological impairment on the part of Respondent Lorna Valera.

From a simple existence in the province, Lorna Valera was thrust in the big city for her college education. It was in Sampaloc, Manila where she lived and groped, and eventually found herself in bad company. Thus, her so-called "culture shock" was abated by pot sessions lasting several days at a time – making her temporarily forget the harsh reality in the metropolis. Her escapist and regressive tendencies stunted her psychological growth and prevented her from fully functioning as a responsible adult.

Based on the **Diagnostic and Statistical Manual (DSM IV)**, the international standards of psychological disorders, Respondent Lorna Valera is plagued with an **Adjustment Disorder** as manifested in her impulsiveness, lack of restraint, lack of civility and a sense of decency in the conduct of her life. ***Compulsive Behavior Patterns*** are also evident in her marijuana habit, gambling and habitual squandering of Petitioner's money. Lorna Valera's Adjustment Disorder and Compulsive Behavior Patterns were already existing prior to her marriage to Petitioner Renato So. Continuing up to the present, the same appears to be irreversible.[22]

---

[21] *Id.,* pp. 65-66.

[22] *Id.,* pp. 68-69 (Emphasis in the original).

The RTC Ruling

The RTC nullified the marriage of petitioner and respondent in its decision of November 8, 1999. The decision, a relatively short one at four (4) pages, single-spaced, including the heading and the signature pages, made a short summary of the "testimonies of the witness" with the statements that –

> Petitioner and respondent became common law husband and wife from 1973 to 1991. Out of this relationship were born three children, namely Jeffrey, Renelee and Lino all surnamed Varela.
>
> Sometime in 1987 petitioner was induced by respondent to sign a blank Marriage Contract and a blank application for marriage license. The petitioner freely signed the documents with the belief that the documents will be signed only when they get married.[23]

Thereafter, the RTC decision wholly dwelt on the question of the respondent's psychological incapacity based on the testimony of the petitioner and Dr. Gates, his expert witness. The decision's concluding paragraphs stated:

> Based on the foregoing, the Court is convinced that respondent Lorna Valera **is psychologically incapacitated to comply with the essential marital obligation of marriage**, which incapacity existed at the time of the celebration thereof (Art. 36 F.C.).
>
> It should be borne in mind that marriage is a special contract of permanent union and the foundation of the Family. The husband and the wife are obliged to live together, observe mutual help and support (Art. 68 F.C.). It includes the giving of love and affection, advice and counsel, companionship and understanding (Art. 230 F.C.). Respondent failed to observe all these things.[24]

The dispositive portion of the decision that immediately followed reads:

> Wherefore, judgment is hereby rendered in favor of petitioner and against respondent:

---

[23] RTC Decision, *id.*, p. 74.

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

1. **Declaring respondent psychologically incapacitated to comply with the essential marital obligations under Art. 36 of the Family Code;**

2. **Declaring the marriage contracted by Renato Reyes So and Lorna Valero on December 10, 1991, null and void *ab initio*;**

3. Dissolving the conjugal partnership between the spouses in accordance with the pertinent provisions of the Family Code;

4. Awarding the custody of the minor children to petitioner.

xxx xxx xxx

SO ORDERED.[25]

The CA Decision

The Republic of the Philippines (*Republic*), through the Office of the Solicitor General, appealed the RTC decision to the CA, docketed as CA-G.R. CV No. 65273. The CA, in its Decision dated July 4, 2001, reversed and set aside the RTC decision and dismissed the petition for lack of merit.[26]

The CA ruled that the petitioner failed to prove the respondent's psychological incapacity. According to the CA, the respondent's character, faults, and defects did not constitute psychological incapacity warranting the nullity of the parties' marriage. The CA reasoned out that "while respondent appears to be a less than ideal mother to her children, and loving wife to her husband," these flaws were not physical manifestations of psychological illness. The CA further added that although the respondent's condition was clinically identified by an expert witness to be an "Adjustment Disorder," it was not established that such disorder was the root cause of her incapacity to fulfill the essential marital obligations. The prosecution also failed to establish that respondent's disorder was incurable and permanent in such a way as to disable and/or incapacitate respondent from complying with obligations essential to marriage.

---

[25] *Id.*, pp. 75-76.

[26] CA Decision, *id.*, p. 36.

The CA likewise held that the respondent's hostile attitude towards the petitioner when the latter came home late was "a normal reaction of an ordinary housewife under a similar situation"; and her subsequent refusal to cohabit with him was not due to any psychological condition, but due to the fact that she no longer loved him.

Finally, the CA concluded that the declaration of nullity of a marriage was not proper when the psychological disorder does not meet the guidelines set forth in the case of *Molina.*

The petitioner moved to reconsider the decision, but the CA denied his motion in its resolution[27] dated October 18, 2001.

The Petition and Issues

The petitioner argues in the present petition that the CA seriously erred[28] –

1. in reversing the RTC decision without ruling on the trial court's factual and conclusive finding that the marriage between petitioner and respondent was null and void *ab initio*;
2. in departing from the accepted and usual course of judicial proceedings that factual findings of the trial courts are entitled to great weight and respect and are not disturbed on appeal; and
3. in totally disregarding the undisputed fact that respondent is psychologically incapacitated to perform the essential marital obligations.[29]

The Republic, as intervenor-appellee, alleged in its comment that: (a) the trial court never made a definitive ruling on the issue of the absence of the formal and essential requisites of the parties' marriage; and (b) petitioner was not able to discharge the burden of evidence required in *Molina*.[30]

---

[27] *Id.*, p. 39.
[28] *Id.*, pp. 3-28.
[29] *Id.*, pp. 8-9.
[30] *Id.*, pp. 130-150.

The petitioner filed a reply;[31] thereafter, both parties filed their respective memoranda reiterating their arguments. Other than the issue of the absence of the essential and formal requisites of marriage, the basic issue before us is whether there exists sufficient ground to declare the marriage of petitioner and respondent null and void.

THE COURT'S RULING

We ***deny*** the petition for lack of merit, and hold that no sufficient basis exists to annul the marriage pursuant to Article 36 of the Family Code. No case of lack of essential and formal requisites of marriage has been proven or validly ruled upon by the trial court.

1. The CA did not err in not ruling on the alleged lack of the essential and formal requisites of marriage

The petitioner cites as ground for this appeal the position that the CA reversed and set aside the RTC decision without touching on the trial court's ruling that there was absence of the essential and formal requisites of marriage.

We find this argument baseless and misplaced for three basic reasons.

First. The argument stems from the mistaken premise that the RTC *definitively* ruled that petitioner's marriage to respondent was null and void due to the absence of the essential and formal requisites of marriage.

A careful examination of the RTC decision shows that the trial court did not discuss, much less rule on, the absence of the formal and essential requisites of marriage; it simply recited the claim that *"[S]ometime in 1987 petitioner was induced by respondent to sign a blank Marriage Contract and a blank application for marriage license. The petitioner freely signed the documents with the belief that the documents will be signed only when they get married."* The trial court did not even mention the certified true copy of the Marriage

[31] *Id.,* pp. 177-184.

Contract signed by the officiating minister and registered in the Civil Registry of Kalookan City. The petitioner introduced and marked this copy as his Exhibit "D" to prove that there is a marriage contract registered in the Civil Registry of Kalookan City between petitioner and respondent.[32]

Out of this void came the dispositive portion "*[D]eclaring the marriage contracted by Renato Reyes So and Lorna Valera on December 10, 1991 null and void.*"[33] Faced with an RTC decision of this tenor, the CA could not have ruled on the validity of the marriage for essential and formal deficiencies, since there was no evidence and no RTC ruling on this point to evaluate and rule upon on appeal. Even if it had been a valid issue before the CA, the RTC's declaration of nullity should be void for violation of the constitutional rule 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.*"[34]

Second. The same examination of the RTC decision shows that it concerned itself wholly with the declaration of the nullity of the marriage based on Article 36 of the Family Code. After its recital of the "testimonies of witnesses," part of which are the facts relied upon to support the claimed psychological incapacity, the decision dwelt on the evidence of Dr. Gates, the expert witness, and, from there, proceeded to its conclusion that psychological incapacity existed. In this light, the dispositive portion declaring "*the marriage...on December 10, 1991, [is] null and void,*" must be based on psychological incapacity as found by the trial court, not on the absence of the essential and formal requisites of marriage.

Third. We note that the petitioner himself offered the Marriage Contract as evidence that it is registered with the Civil Registry

---

[32] See Annexes "B" and "G", *id.*, pp. 53 and 62.

[33] RTC decision, *id.*, p. 75.

[34] CONSTITUTION, Article VIII, Section 14; See *People v. Ferrer*, G.R. No. 148821, July 18, 2003, 406 SCRA 658, and *Yao v. Court of Appeals*, G.R. No. 132428, October 24, 2000, 344 SCRA 202.

of Kalookan City.[35] As a duly registered document, it is a public document, and is *prima facie* evidence of the facts it contains, namely, the marriage of the petitioner with the respondent. To contradict these facts and the presumption of regularity in the document's favor, the petitioner's contrary evidence must be clear, convincing, and more than merely preponderant.[36] To be sure, a married couple cannot simply nullify their marriage through the non-appearance of one spouse and the uncorroborated declaration by the other spouse that the marriage did not really take place. If the biased and interested testimony of a witness is deemed sufficient to overcome a public instrument, drawn up with all the formalities prescribed by the law, then there will have been established a very dangerous doctrine that would throw the door wide open to fraud.[37] At the very least, the declaration that the marriage did not take place must be supported by independent evidence showing a physical impossibility, a forgery, or the disavowal by the supposed participants, to name a few possible reasons.

2. Petitioner failed to establish respondent's psychological incapacity

As the CA did, we hold that the totality of evidence presented by petitioner failed to establish the respondent's psychological incapacity to perform the essential marital obligations.

The petition for declaration of nullity of marriage is anchored on Article 36 of the Family Code which provides that "a marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization." In *Santos v. Court of Appeals*,[38] the Court first declared that

[35] *Supra* note 30.

[36] See *Yturralde v. Azurin*, G.R. No. L-22158, May 30, 1969, 28 SCRA 407; *Calahat v. Intermediate Appellate Court*, G.R. Nos. 75257-58, February 15, 1995, 241 SCRA 356.

[37] *Yturralde v. Azurin*, *supra*.

[38] G.R. No. 112019, January 4, 1995, 240 SCRA 20.

psychological incapacity must be characterized by (a) gravity; (b) juridical antecedence; and (c) incurability. It should refer to "no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage." It must be confined to "the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage."[39]

More definitive guidelines in the interpretation and application of Article 36 of the Family Code of the Philippines were handed down by this Court in *Republic v. Court of Appeals*[40] (the *Molina* case) as follows:

(1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation." It decrees marriage as legally "inviolable," thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.

The Family Code echoes this constitutional edict on marriage and the family and emphasizes their permanence, inviolability and solidarity.

(2) The root cause of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically (sic) ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under

---

[39] See *Dimayuga-Laurena v. Court of Appeals*, G.R. No. 159220, September 22, 2008.

[40] G.R. No. 108763, February 13, 1997, 268 SCRA 198.

the principle of *ejusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

(3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. The evidence must show that the illness was existing when the parties exchanged their "I do's." The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

(4) Such incapacity must also be shown to be medically or clinically permanent or incurable. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. x x x

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characteriological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts…

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No

decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095.

A later case, *Marcos v. Marcos*,[41] further clarified that there is no requirement that the defendant/respondent spouse should be personally examined by a physician or psychologist as a condition *sine qua non* for the declaration of nullity of marriage based on psychological incapacity. Accordingly, it is no longer necessary to introduce expert opinion in a petition under Article 36 of the Family Code if the totality of evidence shows that psychological incapacity exists and its **gravity**, **juridical antecedence**, and **incurability** can be duly established.[42]

The factual background of this case covers at least 18 years. The petitioner and the respondent first met in 1973 and lived together as husband and wife, without the benefit of marriage, before they got married in 1991. In the course of their relationship, they had three (3) children; established a business, and even incurred indebtedness amounting to ₱4 million; had differences due to what the CA described as "character faults and defects"; and had a well-described quarrel which the CA observed to be the "common reaction of an ordinary housewife in a similar situation." Thus, unlike the usual Article 36 cases this Court encountered in the past, where marriage, cohabitation, and perception of psychological incapacity took place in that order, the present case poses a situation where there had been a lengthy period of cohabitation before the marriage took place. To be sure, this factual unique situation does not change the requirement that psychological incapacity must be present *at the time of the celebration of the marriage*. It does, however, raise novel

[41] G.R. No. 136490, October 19, 2000, 343 SCRA 755.

[42] See *Bier v. Bier*, G.R. No. 173294, February 27, 2008, 547 SCRA 123 (Emphasis ours).

and unavoidable questions because of the lapse of time the couple has been together and their intimate knowledge of each other at the time of the celebration of the marriage. Specifically, how do these factors affect the claim of psychological incapacity that should exist at the time of the marriage, considering that marriage came near or at the end of the parties' relationship?

Ideally, the best results in the determination of psychological incapacity are achieved if the respondent herself is actually examined. This opportunity, however, did not arise in the present case because the respondent simply failed to respond to the court summons and to cooperate in the proceedings. Thus, only an *indirect* psychological examination took place through the transcript of stenographic notes of the hearings and clinical interviews of the petitioner which lasted for about three (3) hours.[43] In light of the differences in the appreciation of the psychologist's testimony and conclusions between the trial court and the appellate court, we deem it necessary to examine the records ourselves, as the factual allegations and the expert opinion vitally affect the issues submitted for resolution.

Our own examination of the psychologist's testimony and conclusions leads us to conclude that they are not sufficiently in-depth and comprehensive to warrant the conclusion that a psychological incapacity existed that prevented the respondent from complying with the essential marital obligations of marriage. In the first place, the facts on which the psychologist based her conclusions were all derived from statements by the petitioner whose bias in favor of his cause cannot be doubted. It does not appear to us that the psychologist read and interpreted the facts related to her with the awareness that these facts could be slanted. In this sense, we say her reading may not at all be completely fair in its assessment. We say this while fully aware that the psychologist appeared at the petitioner's bidding and the arrangement between them was not *pro bono*.[44] While

[43] TSN, September 15, 1998, pp. 6-14.

[44] See *Republic v. Tanyag-San Jose*, G.R. No. 168328, February 28, 2007, 517 SCRA 123; *Choa v. Choa*, G.R. No. 143376, November 26, 2002, 392 SCRA 641.

this circumstance does not disqualify the psychologist for reasons of bias, her reading of the facts, her testimony, and her conclusions must be read carefully with this circumstance and the source of the facts in mind.

In examining the psychologist's Report, we find the "Particulars" and the "Psychological Conclusions" disproportionate with one another; the conclusions appear to be exaggerated extrapolations, derived as they are from isolated incidents, rather than from continuing patterns. The "particulars" are, as it were, *snapshots, rather than a running account of the respondent's life* from which her whole life is totally judged. Thus, we do not see her psychological assessment to be comprehensive enough to be reliable.

For example, the psychologist's statements about the parties' sexual relationship appear to us to be rash, given that no parallel examination of the petitioner's own pattern of sexual behavior has been made. Sex with a partner is a two-way affair and while one partner can be more aggressive than the other, aggressiveness is not *per se* an aberrant behavior and may depend on the dynamics of the partners' relationship. To infer prior sexual experience because the respondent allegedly initiated intimate behavior, and to cite *an unverified incident of a previous rape* to characterize the respondent's sexual behavior, are totally uncalled for. That the respondent did pass her Dental Board Exam was glossed over and unverified unsavory incidents related to her exam were highlighted. Her alleged failure to practice was stressed, without emphasizing, however, that "she quit her dental practice and joined petitioner in his communications business."

The respondent's business behavior is a matter that needed full inquiry, as there could be reasons for her interference. With respect to employees, while the petitioner charged the respondent with being strict, he, at the same time, alleged that she gambled with the employees when there were no clients. The psychologist did not pursue these lines and, significantly, the petitioner's testimonies on this point are uncorroborated. The respondent's reaction to her husband's nights out was singled out and slanted to indicate negative traits. It took the CA to observe that her hostile attitude when the petitioner stayed out

late at night "is merely a usual common reaction of an ordinary housewife in a similar situation." To further quote the CA citing the transcripts, "[I]n fact, petitioner-appellee admitted that the reason respondent got angry and threw his things outside is because he came home late *and drunk,* which petitioner-appellee had done several times already on the pretext of closing business deals, which sometimes included going out night-clubbing with clients."[45] Why and how the couple incurred indebtedness of about ₱4 million may be usual in the communications business, but is certainly a matter that the psychologist should have further inquired into in relation with her alleged strictness in business affairs.

As against the negatives in viewing the respondent, we note that she lived with the petitioner for 18 years and begot children with him born in 1975, 1978 and 1984 – developments that show a fair level of stability in the relationship and a healthy degree of intimacy between the parties for some eleven (11) years. She finished her Dentistry and joined her husband in the communications business – traits that do not at all indicate an irresponsible attitude, especially when read with the comment that she had been strict with employees and in business affairs. The petitioner's Memorandum[46] itself is very revealing when, in arguing that the Marriage Contract was a sham, the petitioner interestingly alleged that (referring to 1987) "[S]ince at that time, *the relationship between the petitioner and respondent was going well,* and future marriage between the two was not an impossibility, the petitioner signed these documents."

More than all these, the psychologist's testimony itself glaringly failed to show that the respondent's behavioral disorder was **medically or clinically permanent or incurable** as established jurisprudence requires. Neither did the psychologist testify that the disorder was **grave** enough to bring about the disability of the party to assume the essential obligations of marriage. To directly quote from the records:

---

[45] CA Decision, *rollo,* p. 36.

[46] *Id.,* pp. 200-227.

ATTY. RODOLFO BRITANICO

Q: All right, what was basically your conclusion in your qualitative research with regards to the psychological incapacity of the respondent to comply with the marital obligation?

DR. CRISTINA R. GATES

A: There is a strong indication that the respondent was not able to carry out her marital obligation – her marital duties and responsibilities. And going through the TSN, it is evident that in their conjugal relation, it was petitioner who was responsible, but he in fact gave her opportunity to develop and to become responsible herself. [*sic*]

For instance, he sent her back to school to take Dentistry, he supported her during that time and during the exam and after that he built her a clinic. In all these, the respondent proved to be irresponsible. [*sic*]

When she was taking pre-dental, most of the time she was out of the house, and in one instance petitioner discovered that respondent was having an extra-marital affair with her classmate. And in her board exam she failed the first time. And even if it is questionable, petitioner approached one of the commissioners and through his efforts the respondent was able to pass the second time around. [*sic*]

And in the matter of dental clinic, after merely two months respondent refused to practice, she not only refused and without the knowledge of the petitioner sold all the dental equipments at a loss. [*sic*]

Q: How about their relationship?

A: From the start respondent is older, she had, like, prior sexual experience, and she was the one who introduced to him the use of marijuana. x x x

Q: How about respondent. (sic) How would the respondent compliment the responsibility?

A: There is no mutuality, because if she run away and asked for petitioner to rent an apartment for them to live together, petitioner continued to work and study and went home to

her in the evening, but respondent on the other hand she quit schooling and she did push through with working, and worst she allowed her friend to live with them, allegedly in that apartment, and respondent and friend would engage in pot sessions. [*sic*]

Q: What did you find out with regards to the duty of respondent to live together with the petitioner? [*sic*]

A: She was frequently out, in [*sic*] her friends. . (sic)

Q: How about love and respect?

A: Love is rather complicated. Because she made love to him in her own will. [*sic*]

Q: But did they show respect?

A: No, because she had extra-marital affair, and demanding lot of money.

Q: How about to render emotional, spiritual and physical help? How would respondent comply?

A: She was not able to comply, except maybe for the sexual obligation, but in terms of physical and emotional support she was not there for him. When she quit, she hang out with him on their business, but instead of helping him, she would quarrel him, interfere in his decisions, she would embarrass petitioner in front of his clients and employees, and if petitioner would have a deal with his clients and sometimes would come home late, she would refuse to listen to his explanation and would lock him out and shout at him. [*sic*]

Q: And in your Psychological findings, when did this [incapacity] of the respondent start, her incapacity to comply with the marriage obligation?

A: In the testimony of the petitioner, I think he did mention that she came to Manila for her studies, and during the interview I found out that upon arrival in Manila she was alone, by herself, she had difficulty adjusting to city life, because all her life were spent in the province with her parents and siblings, and she lived in Sampaloc where she got herself in the company of bad friends like going into marijuana and

frequent parties and pot sessions, [which] would last for 3 to 4 days, and in effect disallowed her from going to school regularly.

Q: In clinical psychologist [*sic*], what is the effect?

A: It is traumatic for her, because there is a separation of her parents, and not only that she was thrown to a situation of her being alone, at that time she had no guidance, it would assume that she would just study…[*sic*]

Q: In your conclusion of your Psychological Report, you stated here and I quote: "Based on the Diagnostic and Statistical Manual (DSM IV), the international standards of psychological disorders, Respondent Lorna is plagued with an Adjustment Disorder as manifested in her impulsiveness, lack of restraint, lack of civility and a sense of decency in the conduct of her life." Can you please explain to us.

A: Lorna Valera is like a person who is not in control of herself, impulsive. x x x

Q: How about lack of restraint?

A: Impulses. Like for example, when the husband comes home late, instead of looking means and ways to rationalize, she would just shout and lock him out.

Q: And what about lack of civility, what is your basis?

A: She did not consider the welfare of her children, her frequent outings, like she would conduct her extra marital affairs through phone calls. When they separated, I understand that she was always out of the house, gambling at night. In fact, petitioner in one of his visits to respondent and children intercepted the letter of a younger child asking for an appointment to see the mother because the child's report is that he hardly sees the mother.

x x x x x x x x x

Q: You mentioned also in your psychological conclusion that Adjustment Disorder and Compulsive Behavior of Lorna Valera existed prior and continuous up to the present, can you please explain?

A: If Lorna Valera somewhere in her life changes all of a sudden, then the psychological incapacity is not obtaining but in mal-adopting behavior, like you remove the stimulus of the petitioner in her life. Then the same behavior pattern as I learned from the children, then the incapacity is irreversible because it is there.[47] [*sic*]

These statements, lopsided as they are as we observed above, merely testify to the respondent's impulsiveness, lack of restraint, and lack of civility and decency in the conduct of her life. The psychologist, however, failed to sufficiently prove that all these emanated from a behavioral disorder so grave and serious that the respondent would be incapable of carrying out the ordinary duties required in a marriage; that it was rooted in the respondent's medical or psychological history before her marriage; and that a cure was beyond the respondent's capacity to achieve.

Speaking of the root of the alleged disorder, the psychologist could only trace this to the time the respondent came to Manila; the psychologist concluded that the disorder was due to her separation from her parents and lack of guidance. Will common human experience, available through the thousands of students who over the years trooped from the provinces to Manila, accept the conclusion that this experience ***alone*** can lead to a disorder that can affect their capacity to marry?

In terms of incurability, the psychologist could only *cryptically* say —

A. If Lorna Valera somewhere in her life changes all of a sudden, then the psychological incapacity is not obtaining but in mal-adopting behavior, like you remove the stimulus of the petitioner in her life. Then the same behavior pattern as I learned from the children, then the incapacity is irreversible because it is there.[48]

Does this convoluted statement mean that Lorna Valera can still change, and that change can happen if the "stimulus of the

---

[47] TSN, September 15, 1998, pp. 6-14.

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

petitioner" is removed from her life? In other words, is the incapacity relative and reversible?

In *Molina*, we ruled that "mild characterological peculiarities, mood changes and occasional emotional outbursts cannot be accepted as indicative of psychological incapacity. The illness must be shown as **downright incapacity or inability, not a refusal, neglect or difficulty**, much less ill will. In other words, *the root cause should be a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage*." In the present case, the psychologist simply narrated adverse "snapshots" of the respondent's life showing her alleged failure to meet her marital duties, but did not convincingly prove her *permanent* incapacity to meet her marital duties and responsibilities; the root or psychological illness that gave rise to this incapacity; and that this psychological illness and consequent incapacity existed at the time the marriage was celebrated.

In light of the wide gaps in the facts the psychologist considered and of the patent deficiencies of her testimony tested under the standards of established jurisprudence, we cannot accord full credence and accept the psychologist's Report as basis for the declaration of annulment of the parties' marriage under Article 36. In the absence of any contradictory statements from the respondent, the fairer approach is to read between the lines of this Report and discern what indeed happened between the parties based on common human experience between married couples who have lived together in the way the parties did. From this perspective, we have no problem in accepting the CA decision as a fairer assessment of the respondent's alleged psychological incapacity, and for being a more realistic appreciation of the evidence adduced in light of the requirements of Article 36:

> Such character faults and defects, We believe, do not constitute psychological incapacity as a ground for the declaration of marriage between petitioner-appellee and respondent. While she appears to be less than ideal mother to her children and loving wife to her husband, herein petitioner-appellee, the same are not physical manifestations of

a psychological illness as described in *Molina.* Although the expert witness had *clinically* identified respondent's condition as "Adjustment Disorder," allegedly resulting from respondent's separation from her parents when she studied in Manila before she met petitioner-appellee, it was not established that such disorder or illness allegedly manifested in her carefree and outgoing behavior as a means of coping with her emotional and psychological stresses, was the *root cause* of her incapacity to fulfill the essential marital obligations. Moreover, such alleged disorder was not shown to be of a serious nature, "a supervening *disabling* factor in the person, an adverse integral element in the *personality structure* that effective incapacitates" the respondent from "really accepting and thereby complying with the obligations essential to marriage." The clinical findings on respondent's alleged Adjustment Disorder have not established such illness to be *grave* enough to bring about the disability of the party to assume the essential obligations of marriage. And, as pointed out by the Solicitor General, although the Psychological Report stated that respondent's condition "appears to be irreversible," the expert witness did not substantiate her conclusion that respondent's condition was indeed incurable or permanent. Nowhere in the testimony of petitioner-appellee was it shown that respondent's allegedly carefree ways (and smoking of marijuana) while she was younger and had no children yet, continued throughout their marriage until their separation in 1990. On the contrary, her strict attitude towards the clients and employees is a clear indication that she takes their business concerns seriously, such attitude being a reflection of a mature and responsible personality.[49]

Shorn of any reference to psychology, we conclude that we have a case here of parties who have very human faults and frailties; who have been together for some time; and who are now tired of each other. If in fact the respondent does not want to provide the support expected of a wife, the cause is not necessarily a grave and incurable psychological malady whose effects go as far as to affect her capacity to provide marital support promised and expected when the marital knot was tied. To be tired and to give up on one's situation and on one's husband are not necessarily signs of psychological illness; neither can falling out of love be so labeled. When these happen, the remedy for some is to cut the marital knot to allow the parties to go their

---

[49] CA Decision, *rollo*, pp. 35-36.

separate ways. This simple remedy, however, is not available to us under our laws. Ours is still a limited remedy that addresses only a very specific situation – a relationship where no marriage could have validly been concluded because the parties, or one of them, by reason of a grave and incurable psychological illness existing when the marriage was celebrated, did not appreciate the obligations of marital life and, thus, could not have validly entered into a marriage. Outside of this situation, this Court is powerless to provide any permanent remedy. To use the words of *Navales v. Navales*:[50]

> Article 36 contemplates downright incapacity or inability to take cognizance of and to assume basic marital obligations. Mere "difficulty," "refusal" or "neglect" in the performance of marital obligations or "ill will" on the part of the spouse is different from "incapacity" rooted on some debilitating psychological condition or illness. Indeed, **irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility, and the like, do not by themselves warrant a finding of psychological incapacity under Article 36, as the same may only be due to a person's refusal or unwillingness to assume the essential obligations of marriage and not due to some psychological illness that is contemplated by said rule.**[51] [*Emphasis ours*]

WHEREFORE, in view of these considerations, we *DENY* the petition and *AFFIRM* the Decision and Resolution of the Court of Appeals dated July 4, 2001 and October 18, 2001, respectively, in CA-G.R. CV No. 65273. Costs against the petitioner.

SO ORDERED.

Quisumbing (Chairperson), Ynares-Santiago,[*] *Velasco, Jr.,* and *Leonardo-de Castro,*[**] *JJ.,* concur.

---

[50] G.R. No. 167523, June 27, 2008.

[51] *Id.,* (citations omitted).

[*] Designated additional Member of the Second Division per Special Order No. 645 dated May 15, 2009.

[**] Designated additional Member of the Second Division effective May 11, 2009 per Special Order No. 635 dated May 7, 2009.

THIRD DIVISION

[G.R. No. 152889. June 5, 2009]

ENRIQUE V. VIUDEZ II, *petitioner, vs.* **THE COURT OF APPEALS and HON. BASILIO R. GABO, JR., in his capacity as Presiding Judge of Branch 11, Regional Trial Court, Malolos, Bulacan,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INQUIRY AND PRELIMINARY INVESTIGATION PROPER, DISTINGUISHED. — It is well to remember that there is a distinction between the preliminary inquiry, which determines probable cause for the issuance of a warrant of arrest; and the preliminary investigation proper, which ascertains whether the offender should be held for trial or be released. The determination of probable cause for purposes of issuing a warrant of arrest is made by the judge. The preliminary investigation proper — whether or not there is reasonable ground to believe that the accused is guilty of the offense charged — is the function of the investigating prosecutor.

2. ID.; ID.; ARREST; WARRANT OF ARREST; THE FUNCTION OF THE JUDGE TO ISSUE WARRANT OF ARREST UPON THE DETERMINATION OF PROBABLE CAUSE IS EXCLUSIVE; PROBABLE CAUSE, DEFINED. — As enunciated in *Baltazar v. People*, the task of the presiding judge when the Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused. Probable cause is such set of facts and circumstances as would lead a reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested. In determining probable cause, the average man weighs the facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been

committed and that it was committed by the accused. Probable cause demands more than suspicion; it requires less than evidence that would justify conviction. The purpose of the mandate of the judge to first determine probable cause for the arrest of the accused is to insulate from the very start those falsely charged with crimes from the tribulations, expenses and anxiety of a public trial. The function of the judge to issue a warrant of arrest upon the determination of probable cause is exclusive; thus, the consequent implementation of a warrant of arrest cannot be deferred pending the resolution of a petition for review by the Secretary of Justice as to the finding of probable cause, a function that is executive in nature. To defer the implementation of the warrant of arrest would be an encroachment on the exclusive prerogative of the judge.

3. ID.; ID.; PROSECUTION OF OFFENSES; COMPLAINT OR INFORMATION; ONCE A COMPLAINT OR INFORMATION IS FILED IN COURT, ANY DISPOSITION OF THE CASE RESTS ON THE SOUND DISCRETION OF THE SAID COURT. — It must be emphasized that petitioner filed with the trial court a motion to suspend proceedings and to suspend the implementation of the warrant in pursuance of a DOJ circular, and not a motion to quash the warrant of arrest questioning the issuance thereof. Thus, there is no contest as to the validity or regularity of the issuance of the warrant of arrest. Petitioner merely wanted the trial court to defer the implementation of the warrant of arrest pending the resolution by the Secretary of Justice of the petition for review that he filed citing the following directive contained in Section 9 of DOJ Department Circular: x x x The appellant and the trial prosecutor shall see to it that, pending resolution of the appeal, the proceedings in court are held in abeyance. The above provision of the Department Circular is directed specifically at the appellant and the trial prosecutor, giving them latitude in choosing a remedy to ensure that the proceedings in court are held in abeyance. However, nowhere in the said provision does it state that the court must hold the proceedings in abeyance. Therefore, the discretion of the court whether or not to suspend the proceedings or the implementation of the warrant of arrest, upon the motion of the appellant or the trial prosecutor, remains unhindered. This is in consonance with the earlier ruling of this Court that once a complaint or information is filed in court,

any disposition of the case as to its dismissal, or the conviction or acquittal of the accused, rests on the sound discretion of the said court, as it is the best and sole judge of what to do with the case before it. In the instant case, the judge of the trial court merely exercised his judicial discretion when he denied petitioner's motion to suspend the implementation of the warrant of arrest.

APPEARANCES OF COUNSEL

Pete Quirino-Quadro for petitioner.

D E C I S I O N

PERALTA, ***J.*:**

This is a petition for review on *certiorari* under Section 1, Rule 45 of the 1997 Rules of Civil Procedure, with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 67115 dismissing the petition for *certiorari* filed by herein petitioner against Judge Basilio R. Gabo, Jr., in his capacity as Presiding Judge of Branch 11, Regional Trial Court (RTC) of Malolos, Bulacan.

The factual and procedural antecedents are as follows:

Honorato Galvez and his driver were fatally shot on June 9, 2000 in *Barangay* San Juan, San Ildefonso, Bulacan. On June 26, 2000, a complaint for the alleged murder of the said victims was filed by the 303rd Philippine National Police Criminal Investigation Division (PNP CID) Team with the Office of the Provincial Prosecutor against the following: Cirilo de la Cruz, Guilberto Chico, Edmund Fernando, two persons named Ronald and Gerry, three (3) John Does, and Eulogio Villanueva. Likewise, on July 14, 2000, a complaint for murder against petitioner Enrique Viudez II was filed by Estrella Galvez, widow

[1] Penned by Associate Justice Hilarion L. Aquino, with Associate Justices Ma. Alicia Austria-Martinez (now retired Justice of the Supreme Court) and Justice Edgardo P. Cruz, concurring; *rollo*, pp. 29-41.

of Mayor Honorato Galvez, for the killing of the latter and his driver.[2]

On March 31, 2001, a Resolution was issued by the Investigating State Prosecutor finding probable cause to indict the petitioner and others for the crime of murder. On September 19, 2001, two (2) Informations[3] for murder were filed with the RTC of Malolos, Bulacan, which then issued warrants of arrest on the same day.[4]

On September 21, 2001, petitioner filed a Motion to Suspend Proceedings and to Suspend the Implementation of the Warrant of Arrest, Pursuant to Department Circular No. 70 of the Department of Justice (DOJ)[5] arguing that all the accused in the said criminal cases had filed a timely petition for review with the Secretary of Justice and, pursuant to Section 9[6] of Department Circular No. 70, the implementation of the warrant of arrest against petitioner should be suspended and/or recalled pending resolution of the said petition for review.

In an Order[7] dated September 28, 2001, the RTC denied petitioner's Motion stating that, insofar as the implementation of the warrant of arrest against petitioner was concerned, said warrant had already been issued for his apprehension. The court also added that there was no way for it to recall the same in the absence of any compelling reason, and that jurisdiction

---

[2] CA Decision dated December 19, 2001, *id.*

[3] Docketed as Criminal Case Nos. 2492-M-2001 and 2493-M-2001; *rollo*, pp. 59-62; 63-65.

[4] CA decision, *supra*.

[5] *Rollo,* pp. 67-92.

[6] Section 9. *Effect of the Appeal.* Unless the Secretary of Justice directs otherwise, the appeal shall not hold the filing of the corresponding information in court on the basis of the finding of probable cause in the appealed resolution.

The appellant and the trial prosecutor shall see to it that, pending resolution of the appeal, the proceedings in court are held in abeyance.

[7] *Rollo,* p. 72.

over his person had not yet been acquired by it; hence, petitioner had no personality to file any pleading in court relative to the case until he was arrested or voluntarily surrendered himself to the court. Thus, petitioner filed a motion for reconsideration of the said Order, but was denied in an Order dated October 10, 2001.

Thereafter, petitioner filed with the CA on October 11, 2001, a petition for *certiorari* with prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injuction[8] claiming the following:

> x x x The Order of September 28, 2001 and the Order of October 10, 2001 denying the Motion for Reconsideration were issued with grave abuse of discretion amounting to lack of jurisdiction. This is because of the following reasons:
>
> (a) The fact that the petitioner has not voluntarily surrendered nor arrested is not a legal impediment or obstacle to the suspension of the implementation of the warrant of arrest issued against the petitioner.
>
> (b) Precisely, the petitioner has prayed for the suspension of the implementation of the warrant of arrest because if he is arrested or voluntarily surrenders to the Court, the issues on the suspension of the implementation of the warrant of arrest would become moot and academic. It is for this reason that the petitioner has prayed for the suspension of the implementation of the warrant of arrest. The petitioner is merely availing of his rights under the law. There would be a waiver on the part of the petitioner if he surrenders to the lower court. Meantime, he would be deprived of his provisional liberty pending the resolution of his petition for review. The clear intention of Department Circular No. 70 is to suspend all proceedings including the implementation of the warrant of arrest pending resolution by the Secretary of Justice of the petition for review.
>
> (c) The authority of the Secretary of Justice to entertain the petition for review even after the filing of the informations is settled. In *Solar Team Entertainment, Inc. v. Hon. Rolando*

[8] *Id.* at 74-92.

How, the High Court ruled, "the authority of the Secretary of Justice to review resolutions of his subordinates even after an information has already been filed in court does not present an irreconcilable conflict with the 30-day period prescribed by Section 7 of the Speedy Trial Act."

(d) Moreover, the authority of the Secretary of Justice to review resolutions of the Chief State Prosecutor, Provincial or City Prosecutors is recognized by Sec. 4 of Rule 112 of the Revised Rules of Criminal Procedure.

(e) Sec. 4, Rule 112 of the Revised Rules of Criminal Procedure expressly recognizes the authority and power of the Department of Justice to prescribe the rules to be followed in cases of a petition for review of a resolution of the Chief State Prosecutor, Provincial or City Prosecutors. The rules provide "if upon petition by a proper party under such rules as the Department of Justice may prescribe," clearly recognizing the power of the Secretary of Justice to promulgate rules to be followed in petitions for review of appeals from resolutions of the Chief State Prosecutor, Provincial or City Prosecutor.

(f) Pursuant to the rule-making power of the Secretary of Justice, Department Circular No. 70 was promulgated by the Secretary of Justice providing that "the appellant and the trial prosecutor shall see to it that, pending resolution of the appeal, the proceedings in court are held in abeyance.

(g) The implementation of the warrant of arrest issued against the petitioner is part of the proceedings in court. Since the circular unequivocally provides that the "proceedings in court are held in abeyance" pending resolution of the petition for review or appeal, it follows that the lower court committed grave abuse of discretion amounting to lack of jurisdiction when it denied the motion to suspend the implementation of the warrant of arrest. There is even no opposition by the trial prosecutor to the motion to suspend the implementation of the warrant of arrest against the petitioner.[9]

In a Resolution[10] dated October 16, 2001, the CA found that the verified petition of petitioner sufficiently showed that unless

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

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

the implementation of the warrants of arrest dated September 19, 2001 in Criminal Case Nos. 2492-M-2001 and 2693-M-2001 were temporarily enjoined before the application for a writ of preliminary injunction could be heard on notice, great or irreparable injury would be visited upon the petitioner, as he could momentarily be arrested and detained upon non-bailable charges. Thus, the CA granted a TRO, commanding respondent RTC Judge Gabo to enjoin the implementation of the said warrants of arrest.

Respondents RTC Judge Basilio R. Gabo, Jr., in his capacity as Presiding Judge of the RTC, Branch II of Malolos, Bulacan, and the Office of the Solicitor General (OSG) argued in their Comment (with motion to lift temporary restraining order and opposition to the application for the issuance of a writ of preliminary injunction)[11] dated November 12, 2001, that the determination of whether to issue a warrant of arrest after the filing of an information was a function that was exclusively vested in respondent Judge. Respondent Judge, therefore, was in no way obligated to defer the implementation of the service of the warrant of arrest simply because a petition for review was filed by petitioner before the Secretary of Justice to question the filing of the information against the same petitioner. As to their Opposition to the application for issuance of preliminary injunction with motion to lift temporary restraining order, the public respondents contended that the issue proposed by petitioner was the mere suspension of the implementation of the warrant of arrest to await the resolution of the Department of Justice; hence, respondent Judge was under no obligation to suspend the proceedings, because the issuance of the warrant of arrest was his exclusive function.

On December 19, 2001, the CA promulgated its Decision[12] dismissing the petition for *certiorari* for lack of merit and found no whimsicality or oppressiveness in the exercise of the respondent Judge's discretion in issuing the challenged Orders. The court added that, since the premise of petitioner's conclusion

---

[11] *Id.* at 96-140.

[12] *Supra* note 1.

was erroneous – for said circular and the cases cited did not make it obligatory for respondent Judge to grant petitioner's motion – petitioner's cause was lost. It also stated that nowhere in the Revised Rules of Criminal Procedure, or in any circular of this Court, even in any of its decision was it ever pronounced that when a petition for review of the resolution of the investigating prosecutor — finding probable cause to indict a respondent — is filed with the Office of the Secretary of Justice, the court which earlier issued warrants of arrest, should suspend their enforcement.

In an Order[13] dated January 9, 2002, respondent Judge ordered the issuance of an *alias* warrant of arrest for the apprehension of petitioner by virtue of the expiration of the effectivity of the TRO issued by the CA.

Petitioner filed with the CA a Motion for Reconsideration[14] dated January 3, 2002 of the Decision dated December 19, 2001, which was eventually denied by the same court in its Resolution[15] dated April 11, 2002, stating, among others, that it found nothing to justify a modification, much less a reversal, of its judgment. The court further stated that the motion for reconsideration had not presented any fresh argument or raised any new matter that would need an extended discussion, and that the points stressed were the same as those already discussed in the petition and other papers of the petitioner which were fully considered in the decision.

Hence, the instant petition.

Petitioner claimed, among others, that the Decision of the CA was issued with grave abuse of discretion amounting to lack of jurisdiction when it ruled that Department Circular No. 70 of the Department of Justice promulgated on July 3, 2000 was plainly a directive of the Secretary of Justice to the accused and the trial prosecutor to ask the Court to suspend the

[13] *Rollo,* p. 95.

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

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

proceedings thereon during the pendency of the appeal. According to petitioner, the said department circular had the force and effect of law. He cited cases[16] wherein this Court ruled that administrative regulations adopted pursuant to law had the force and effect of law. Petitioner also pointed out that the same department circular stated that its promulgation was in line with recent jurisprudence. Anent the prayer for the issuance of a TRO, petitioner argued that unless a TRO was issued enjoining the implementation of the warrant of arrest dated September 19, 2001 and the *alias* warrant of arrest issued by virtue of the Order of January 9, 2002, he stood to suffer great and irreparable injury, as he would be deprived of his liberty without due process of law.

In a Resolution[17] dated May 6, 2002, this Court resolved to issue the TRO prayed for by petitioner and to direct respondent Judge to cease and desist from implementing the warrant of arrest dated September 19, 2001 against petitioner and the *alias* warrant of arrest issued pursuant to the Order of January 9, 2002 in Criminal Case Nos. 2492-M-2001 and 2493-M-2001, entitled "*People of the Philippines vs. Enrique V. Viudez II, et al*.," effective immediately until further orders from the same Court.

In its Comment[18] dated June 13, 2002, the OSG stated that the determination of whether to issue a warrant of arrest after the filing of an information was a function that was exclusively vested in respondent Judge. Respondent Judge, therefore, was in no way obliged to defer the implementation of the service of the warrant simply because a petition for review was filed by petitioner before the Secretary of Justice to question the filing of the information against him. The OSG further argued that the respondent Judge did not need to wait for the completion

---

[16] *Valerio v. Secretary of Agriculture and Natural Resources*, G.R. No. L-18587, April 23, 1963, SCRA 719; *Antique Sawmills, Inc. v. Zayco*, G.R. No. L-20051, May 30, 1966, 17 SCRA 316; *Macailing v. Andrada*, G.R. No. L-21607, January 30, 1970, 31 SCRA 126.

[17] *Rollo,* p. 141.

[18] *Id.* at 160-207.

of the preliminary investigation before issuing a warrant of arrest, for Section 4, Rule 113 of the Rules of Criminal Procedure provides that the head of the office to whom the warrant of arrest has been delivered for execution shall cause the warrant to be executed within ten (10) days from receipt thereof. As an opposition to the application for issuance of preliminary injunction and as a motion to lift the temporary restraining order, the OSG stated that the petitioner did not challenge the finding of probable cause of respondent Judge in the issuance of the warrant of arrest against him. Petitioner simply wanted a deferment of its implementation by virtue of Section 9 of Department Circular No. 70; hence, according to the OSG, the issuance of the TRO was tantamount to an abatement of the criminal proceedings.

Petitioner, in its Opposition[19] to the motion to lift temporary restraining order dated September 5, 2002 stated that the discussion of the evidence of the prosecution by the OSG was way off the mark, because the only issue to be resolved in the present petition was whether the implementation of the warrant of arrest issued by the RTC should be suspended pending resolution by the Secretary of Justice of the petition for review filed by petitioner. He also reiterated that the lifting of the TRO would cause grave and irreparable injury to his rights because no bail had been recommended for his provisional liberty.

On September 19, 2002, petitioner filed a Manifestation[20] informing this Court that the Secretary of Justice had already sustained his petition for review. A photocopy of the Resolution[21] of the Secretary of Justice, promulgated on September 13, 2002, was attached to the said manifestation, the dispositive portion of which reads, among others:

[t]he Chief State Prosecutor is directed to move, with leave of court, for the withdrawal of the information for murder (2 counts) against Mayor Enrique V. Viudez II and Eulogio Villanueva immediately. In

[19] *Id.* at 271-277.

[20] *Id.* at 281-282.

[21] *Id.* at 285-294.

view of the same resolution, according to petitioner, the motion of the OSG for the lifting of the TRO issued by this Court has no more legal basis and should be denied for lack of merit.

In his Reply [22] to the Comment of the OSG, dated November 6, 2002, petitioner reiterated that the Secretary of Justice had already issued a resolution on the petition for review that he filed with the said office, and that the State Prosecutor had already filed with the RTC a motion to withdraw the information against him and his co-accused; hence, the instant petition may already be moot and academic because of the said developments.

On December 2, 2002, this Court resolved to give due course to the present petition and required the parties to submit their respective memoranda.[23] Petitioner eventually filed his Memorandum[24] dated February 4, 2003, while the OSG filed its Memorandum on March 24, 2003.

Before this Court shall delve into its disquisition on the issue propounded by petitioner, it is worth noting that in his Memorandum[25] dated February 4, 2003, petitioner reiterated that the Secretary of Justice had already resolved the petition for review and ordered the withdrawal of the informations for murder filed against the same petitioner with the RTC of Malolos, Bulacan, ruling that there was no probable cause for the filing of the said informations. Accordingly, as contained in the same Memorandum, the Office of the State Prosecutor filed a Motion[26] to Withdraw the Informations, which the RTC granted on October 23, 2002.[27] Furthermore, in a Resolution dated May 6, 2002, this Court already resolved to issue a TRO as prayed for by petitioner. These developments would necessarily render the instant petition moot and academic; however, as implored by

---

[22] *Id.* at 303-309.

[23] *Id.* at 315-316.

[24] *Id.* at 320-327.

[25] *Id*.

[26] *Id.* at 310-312.

[27] *Id.* at 313.

petitioner, this Court will render its decision on the merits of the case in the interest of justice.

The basic issue propounded by petitioner is whether a pending resolution of a petition for review filed with the Secretary of Justice concerning a finding of probable cause will suspend the proceedings in the trial court, including the implementation of a warrant of arrest.

Petitioner cites DOJ Department Circular No. 70, specifically paragraph 2 of Section 9 thereof, which provides that the appellant and the trial prosecutor shall see to it that, pending resolution of the appeal, the proceedings in court are held in abeyance. Somehow, petitioner is of the opinion that the suspension of proceedings in court, as provided in the said circular, includes the suspension of the implementation of warrants of arrest issued by the court.

Petitioner's contention is wrong.

It is well to remember that there is a distinction between the preliminary inquiry, which determines probable cause for the issuance of a warrant of arrest; and the preliminary investigation proper, which ascertains whether the offender should be held for trial or be released. The determination of probable cause for purposes of issuing a warrant of arrest is made by the judge. The preliminary investigation proper – whether or not there is reasonable ground to believe that the accused is guilty of the offense charged – is the function of the investigating prosecutor.[28]

As enunciated in *Baltazar v. People*,[29] the task of the presiding judge when the Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused. Probable cause is such set of facts and circumstances as would lead a reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been

---

[28] *AAA v. Antonio Carbonell*, G.R. No. 171465, June 8, 2007, 524 SCRA 496, 509, citing *People v. Inting*, 187 SCRA 788, 792-793 (1990).

[29] G.R. No. 174016, July 28, 2008, 560 SCRA 278, 293-294.

committed by the person sought to be arrested. In determining probable cause, the average man weighs the facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than suspicion; it requires less than evidence that would justify conviction.[30]

The purpose of the mandate of the judge to first determine probable cause for the arrest of the accused is to insulate from the very start those falsely charged with crimes from the tribulations, expenses and anxiety of a public trial.[31]

The function of the judge to issue a warrant of arrest upon the determination of probable cause is exclusive; thus, the consequent implementation of a warrant of arrest cannot be deferred pending the resolution of a petition for review by the Secretary of Justice as to the finding of probable cause, a function that is executive in nature. To defer the implementation of the warrant of arrest would be an encroachment on the exclusive prerogative of the judge. It must be emphasized that petitioner filed with the trial court a motion to suspend proceedings and to suspend the implementation of the warrant of arrest in pursuance of a DOJ circular, and not a motion to quash the warrant of arrest questioning the issuance thereof. Thus, there is no contest as to the validity or regularity of the issuance of the warrant of arrest. Petitioner merely wanted the trial court to defer the implementation of the warrant of arrest pending the resolution by the Secretary of Justice of the petition for review that he filed citing the following directive contained in Section 9 of DOJ Department Circular:

xxx xxx xxx

---

[30] *People v. Aruta*, 351 Phil. 868, 880 (1998).

[31] *Id.* at 294, citing *Okabe v. Gutierrez*, G.R. No. 150185, May 27, 2004, 429 SCRA 685, 706.

The appellant and the trial prosecutor shall see to it that, pending resolution of the appeal, the proceedings in court are held in abeyance.[32]

The above provision of the Department Circular is directed specifically at the appellant and the trial prosecutor, giving them latitude in choosing a remedy to ensure that the proceedings in court are held in abeyance. However, nowhere in the said provision does it state that the court must hold the proceedings in abeyance. Therefore, the discretion of the court whether or not to suspend the proceedings or the implementation of the warrant of arrest, upon the motion of the appellant or the trial prosecutor, remains unhindered. This is in consonance with the earlier ruling[33] of this Court that once a complaint or information is filed in court, any disposition of the case as to its dismissal, or the conviction or acquittal of the accused, rests on the sound discretion of the said court, as it is the best and sole judge of what to do with the case before it. In the instant case, the judge of the trial court merely exercised his judicial discretion when he denied petitioner's motion to suspend the implementation of the warrant of arrest. Consequently, the CA was correct when it found no whimsicality or oppressiveness in the exercise of the trial judge's discretion in issuing the challenged orders.

Neither does this Court find any applicability of the cases cited by the petitioner to the instant case.

Petitioner has put emphasis on his argument that the suspension of the proceedings in court, including the suspension of the implementation of a warrant of arrest pending a resolution of an appeal by the Secretary of Justice, is in consonance with jurisprudence laid down by this Court in *Marcelo v. Court of Appeals*,[34] *Roberts, Jr. v. Court of Appeals*,[35] *Ledesma v.*

---

[32] *See* Note 6.

[33] *Marcelo v. Court of Appeals*, G.R. No. 106695, 1994, 235 SCRA 39, 48, citing *Crespo v. Mogul*, 151 SCRA 462 (1987).

[34] G.R. No. 106695, August 4, 1994, 235 SCRA 39.

[35] G.R. No. 113930, March 5, 1996, 254 SCRA 307.

Court of Appeals,[36] *Dimatulac v. Villon*,[37] and *Solar Team Entertainment, Inc. v. How*.[38]

A close reading of the factual antecedents in *Ledesma*, *Solar Team Entertainment, Inc.*, *Dimatulac* and *Marcelo* clearly show that a common issue among them is whether the **arraignment** of an accused may be deferred pending resolution by the Secretary of Justice of a petition for review on the finding of probable cause, to which this Court ruled in the affirmative. Nowhere in the said decisions did it state that the implementation or enforcement of the warrant of arrest was also deferred or suspended, as herein petitioner prays for. Thus, as ruled in *Ledesma*:[39]

> Where the secretary of justice exercises his power of review only after an information has been filed, trial courts should defer or suspend **arraignment** and further proceedings until the appeal is resolved. Such deferment or suspension, however, does not signify that the trial court is *ipso facto* bound by the resolution of the secretary of justice. Jurisdiction, once acquired by the trial court, is not lost despite a resolution by the secretary of justice to withdraw the information or to dismiss the case.

It was also decided in *Solar Team Entertainment, Inc.*[40] that:

> Procedurally speaking, after the filing of the information, the court is in complete control of the case and any disposition therein is subject to its sound discretion. The decision to suspend **arraignment** to await the resolution of an appeal with the Secretary of Justice is an exercise of such discretion.

The ruling in *Dimatulac*,[41]as well, reads:

> We do not then hesitate to rule that Judge Villon committed grave abuse of discretion in rushing the **arraignment** of the Yabuts on the

---

[36] G.R. No. 113216, September 5, 1997, 278 SCRA 656.

[37] G.R. No. 127107, October 12, 1998, 297 SCRA 679.

[38] G.R. No. 140863, August 22, 2000, 338 SCRA 511.

[39] *Supra* note 36, at 680.

[40] *Supra* note 38, at 517.

[41] *Supra* note 37, at 712.

assailed information for homicide. Again, the State and the offended parties were deprived of due process.

And in *Marcelo*,[42] this Court enunciated that:

Accordingly, we rule that the trial court in a criminal case which takes cognizance of an accused's motion for review of the resolution of the investigating prosecutor or for reinvestigation and defers the **arraignment** until resolution of the said motion must act on the resolution reversing the investigating prosecutor's finding or on a motion to dismiss based thereon only upon proof that such resolution is already final in that no appeal was taken therefrom to the Department of Justice.

Finally, in *Roberts*, petitioner claimed that this Court, in the dispositive portion of its decision, clearly directed the deferment of the issuance of the warrant of arrest pending resolution of the petition for review by the Secretary of Justice when it ruled that, in the meantime, respondent Judge Asuncion was directed to cease and desist from further proceeding with Criminal Case No. Q-93-43198 and to defer the issuance of warrants of arrest against the petitioner. According to petitioner, the said dispositive portion is borne out by the finding of this Court that:

x x x [I]t was premature for respondent Judge Asuncion to deny the motions to suspend proceedings and to defer arraignment on the following grounds:

> "This case is already in this Court for trial. To follow whatever the opinion the Secretary of Justice may have on the matter would undermine the independence and integrity of this Court. This Court is still capable of administering justice." The real and ultimate test of the independence and integrity of his court is not the filing of the aforementioned motions at that stage of the proceedings but the filing of a motion to dismiss or to withdraw the information on a basis of a resolution of the petition for review reversing the Joint Resolution of the investigating prosecutor. Once a motion to dismiss or withdraw the information is filed the trial judge may grant or deny it, not out of subservience to the Secretary of Justice, but in faithful exercise of judicial prerogative.[43]

---

[42] *Supra* note 34, at 50.

[43] *Supra* note 35, at 333.

However, the above observation of petitioner is inaccurate, if not erroneous.

What this Court adjudged as premature in *Roberts* was the respondent judge's denial of the motions to suspend proceedings and to defer arraignment on the ground that the case was already in his court for trial and to follow whatever opinion the Secretary of Justice may have on the matter would undermine the independence and integrity of his court, which was still capable of administering justice. In dispelling the ground relied upon by the respondent judge, this Court ruled that the filing of a motion to dismiss or to withdraw the information, on the basis of a resolution of the petition for review reversing the finding of the investigating prosecutor, was the real and ultimate test of the independence and integrity of his court. Therefore, what was disapproved by this Court was not the denial *per se* of the motions, but the reasoning behind it. It was from that premise that this Court ordered in the dispositive portion of its decision to defer the issuance of the warrants of arrest. Of more importance still was the fact that, whereas the questioned motions in *Roberts* were for the suspension of proceedings and deferment of arraignment, the issue in the instant case is the suspension of the implementation of a warrant of arrest, which this Court did not rule upon in the former case.

WHEREFORE, the petition for review on *certiorari* with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction dated April 25, 2002 is *DENIED* — the petition for review, for lack of merit; and the issuance of TRO and/or preliminary injunction, for being moot and academic.

SO ORDERED.

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

---

[*] Designated to sit as an additional member, per Special Order No. 638 dated May 8, 2009.

[**] Designated to sit as an additional member, per Special Order No. 631 dated April 29, 2009.

SECOND DIVISION

[G.R. No. 156009. June 5, 2009]

ROMMEL C. BRIONES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEW OF QUESTIONS OF LAW; EXCEPTION. — We initially observe that the petition raises factual issues that call for a re-weighing of the evidence on record. As a rule, this is not allowed under Rule 45, as only questions of law are covered in a petition for review on *certiorari*. In this case, the Court is not a trier of facts, and thus, it is not tasked to make its own assessment and give its independent evaluation of the probative value of the evidence adduced by the parties in the proceedings below. However, the above rule admits of exceptions; one of them is when there is a conflict in the factual findings of the lower courts. When this happens, no reason exists for the lower courts' factual findings to be conclusive and the Court carries the burden of reviewing the evidence on hand.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT THEREON BY TRIAL COURT, ACCORDED GREAT RESPECT. — [W]e give special significance to the RTC's unique position in assessing the credibility of witnesses, as the RTC has the unrestricted opportunity to observe firsthand the conduct and demeanor of witnesses at the trial. Unless the trial judge plainly overlooked certain facts whose substance and value may affect the result of the case, we respect his assessment of the credibility of the witnesses.

3. ID.; ID.; DENIAL AND ALIBI; MUST BE SUBSTANTIATED BY CLEAR AND CONVINCING PROOF TO DESERVE MERIT. — As against this credible and positive testimony of S/G Gual, Briones could only set up denial and alibi as his defenses. We have previously ruled that for these defenses to deserve merit, they must be substantiated by clear and convincing proof. Under the present facts, these defenses were without corroboration.

4. ID.; CRIMINAL PROCEDURE; APPEALS; WHEN A PARTY ADOPTS A PARTICULAR THEORY AND THE CASE IS TRIED AND DECIDED ON THE BASIS OF THE THEORY IN THE COURT BELOW, NEITHER PARTY CAN CHANGE HIS OR HER THEORY ON APPEAL. — A change of Briones' defense from denial and alibi to self-defense or defense of a relative is effectively a change of theory of the case *brought only during appeal*. We cannot allow this move. Law and fairness to the adverse party demand that when a party adopts a particular theory and the case is tried and decided on the basis of that theory in the court below, neither party can change his or her theory on appeal. While this rule is not absolute, no exceptional reasons in this case exist to justify a deviation.

5. ID.; ID.; NEW TRIAL; AN ERROR OR MISTAKE COMMITTED BY A COUNSEL IN THE COURSE OF JUDICIAL PROCEEDINGS IS NOT A GROUND FOR NEW TRIAL. — [A]n error or mistake committed by a counsel in the course of judicial proceedings is not a ground for new trial. In *People v. Mercado,* we declared: It has been repeatedly enunciated that "a client is bound by the action of his counsel in the conduct of a case and cannot be heard to complain that the result might have been different if he proceeded differently. A client is bound by the mistakes of his lawyer. If such grounds were to be admitted as reasons for reopening cases, there would never be an end to a suit so long as new counsel could be employed who would allege and show that prior counsel had not been sufficiently diligent or experienced or learned. x x x Mistakes of attorneys as to the competency of a witness, the sufficiency, relevancy or irrelevancy of certain evidence, **the proper defense,** or the burden of proof, x x x failure to introduce certain evidence, to summon witnesses, and to argue the case are not proper grounds for a new trial, unless the incompetency of counsel is so great that his client is prejudiced and prevented from properly presenting his case.

6. ID.; ID.; ID.; NEW TRIAL ON THE GROUND OF NEWLY DISCOVERED EVIDENCE, WHEN ALLOWED; NEWLY DISCOVERED EVIDENCE, DEFINED. — [F]or new trial to be granted on the ground of newly discovered evidence, the concurrence of the following conditions must obtain: (a) the evidence must have been discovered after trial; (b) the evidence could not have been discovered at the trial even with the exercise

of reasonable diligence; (c) the evidence is material, not merely cumulative, corroborative, or impeaching; and (d) the evidence must affect the merits of the case and produce a different result if admitted. x x x Evidence, to be considered newly discovered, must be one that could not, by the exercise of due diligence, have been discovered before the trial in the court below. The determinative test is the presence of due or reasonable diligence to locate the thing to be used as evidence in the trial.

7. ID.; ID.; ID.; PETITION FOR NEW TRIAL IN A CRIMINAL PROCEEDING, WHEN GRANTED. — [W]e also consider that in petitions for new trial in a criminal proceeding where a certain evidence was not presented, the defendant, in order to secure a new trial, must satisfy the court that he has a good defense, and that the acquittal would in all probability follow the introduction of the omitted evidence.

8. CRIMINAL LAW; ROBBERY; ELEMENTS; ROBBERY AND THEFT, DISTINGUISHED. — To show that robbery was committed, the government needs to prove the following elements: (1) the taking of personal property be committed with violence or intimidation against persons; (2) the property taken belongs to another; and (3) the taking be done with *animo lucrandi*. On the other hand, the elements constituting the crime of theft are: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things. Thus, the distinguishing element between the crimes of robbery and theft is the use of violence or intimidation as a means of taking the property belonging to another; the element is present in the crime of robbery and absent in the crime of theft.

APPEARANCES OF COUNSEL

Martinez Alcera Atienza and Benusa Law Offices for petitioner.

The Solicitor General for respondent.

D E C I S I O N

BRION, *J.*:

This is a Rule 45 petition for review on *certiorari* of the decision dated July 17, 2002[1] and the resolution dated November 13, 2002[2] of the Court of Appeals (*CA*)[3] in CA-G.R. CR No. 24127 finding petitioner Rommel C. Briones (*Briones*) guilty of the crime of robbery. The decretal portion of the assailed decision reads:

> WHEREFORE, in view of the foregoing, the decision dated August 31, 1999 in Criminal Case No. 98-23 rendered by the Regional Trial Court, Parañaque City, Branch 257, is hereby **AFFIRMED with MODIFICATION**. Appellant is found guilty beyond reasonable doubt of the crime of robbery, under Article 293 of the Revised Penal Code, in relation to number five (5) of Article 294 of the same Code and is sentenced to suffer the indeterminate penalty of 6 months and 1 day of *prision correccional*, as minimum, to 6 years and 1 day of *prision mayor*, as maximum.
>
> SO ORDERED.[4]

The Criminal Information and Plea

On January 8, 1998, a criminal information was filed against Briones before the Regional Trial Court (*RTC*), Branch 257, Parañaque City, for robbery. The case was docketed as Criminal Case No. 98-23. The accusatory portion of this criminal information states:

> That on or about the 6th day of January 1998, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to

---

[1] *Rollo*, pp. 37-43.

[2] *Id.*, pp. 65-66.

[3] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justice Eugenio S. Labitoria (retired) and Associate Justice Teodoro P. Regino, concurring.

[4] *Rollo*, p. 43.

gain and against the will of the complainant S/G Dabbin Molina, and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously divest from him a .38 cal. gun worth ₱8,000.00, more or less.

CONTRARY TO LAW.[5]

With the assistance of counsel *de parte*, Briones pleaded "not guilty" to the charge.[6]

The Facts

S/G Dabbin Molina (*S/G Molina*) is a security guard of Fuentes Security and Allied Services owned by Johnny Fuentes (*Fuentes*); in the course of his employment with the security agency, S/G Molina was issued a .38 caliber revolver (*firearm*).

On January 6, 1998, at around 11:00 p.m., S/G Molina and S/G George Gual (*S/G Gual*) were manning the northwest gate of BF Homes Northwest, Parañaque. Somewhere on Jakarta Street, they noticed Romulo Bersamina, a homeowner, being mauled by four (4) individuals, two (2) of whom were later identified as Briones and his brother, Vicente Briones (*Vicente*), who were both residents of BF Homes.

S/G Molina and S/G Gual approached the group to stop the mauling; it was at this point that S/G Molina lost his firearm to Briones. How he lost it – whether there was accompanying violence or intimidation – is the submitted issue in this case.

S/G Molina subsequently reported the incident to his supervisor, Arthur Alonzo, and to SPO1 Manuel Plete. The police arrested Briones after conducting an investigation.

Briones denied any participation in the mauling and the firearm grabbing, and claimed that he was in his house when the incident happened.

---

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

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

The RTC's Ruling

In the decision[7] dated August 31, 1999,[8] the RTC found Briones guilty of simple theft under paragraph 3, Article 309 of the Revised Penal Code, as amended (*Code*). The RTC gave greater weight to the prosecution's evidence consisting of the positive testimony of S/G Gual, and rejected Briones' defenses of denial and alibi.

The RTC ruled that Briones can only be held liable for simple theft, as the elements of violence and intimidation – the attendant circumstances that must be present in the crime of robbery – were not duly proven. The RTC found that the principal prosecution witness, S/G Gual, merely testified that *he (Briones) grabbed the firearm of S/G Molina*.[9]

The CA's Ruling

On appeal to the CA, Briones argued that: (1) his conviction was based solely on the testimony of S/G Gual who was not present at the scene and did not really see what happened; and (2) he cannot be convicted of simple theft under a criminal charge of robbery.

The CA turned down these arguments and ruled that S/G Gual's testimony is a credible eyewitness' account of the incident. S/G Gual was also categorical in his testimony; the defense did not even try to impugn his credibility as a witness since it opted not to cross-examine him.

The CA found Briones guilty of robbery under Article 293, in relation to paragraph 5 of Article 294, of the Code, and not of theft; the CA ruled that force and intimidation attended the taking of S/G Molina's firearm, as Briones approached S/G Molina with the intent of taking his firearm away.[10]

---

[7] Penned by Judge Rolando G. How.

[8] *Id.,* pp. 25-35.

[9] *Rollo,* p. 34.

[10] *Id.,* p. 42.

Briones thereafter filed an Omnibus Motion for Reconsideration, Motion for New Trial and Motion to Dismiss, and Supplemental Omnibus Motion for Reconsideration, Motion for New Trial and Motion to Dismiss[11] (collectively, *Omnibus Motion*) with the CA where he confessed his physical presence and participation on the alleged robbery of the firearm, but claimed that he was merely protecting his brother, Vicente, when he took the firearm.[12] The CA denied the Omnibus Motion; hence, this petition.

The Issues

The issues may be summarized as follows:

(1) Whether there are factual and legal bases to support his conviction of the crime of robbery; and

(2) Whether a new trial is justified under the circumstances.

The Court's Ruling

We partly grant the petition and sustain Briones' conviction for the crime of theft, not robbery.

We initially observe that the petition raises factual issues that call for a re-weighing of the evidence on record. As a rule, this is not allowed under Rule 45, as only questions of law are covered in a petition for review on *certiorari*. In this case, the Court is not a trier of facts, and thus, it is not tasked to make its own assessment and give its independent evaluation of the probative value of the evidence adduced by the parties in the proceedings below. However, the above rule admits of exceptions;[13] one of them is when there is a conflict in the

[11] *Id.*, pp. 44-52 and 57-61.

[12] *Id.*, p. 47.

[13] Other exceptional cases where the Court had made its own factual determination under Rule 45 are: (1) when the findings of a trial court are grounded entirely on speculation, surmises or conjecture; (2) when a lower court's inference from its factual findings is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion in the appreciation of facts; (4) when the findings of the appellate court go beyond the issues

factual findings of the lower courts.[14] When this happens, no reason exists for the lower courts' factual findings to be conclusive and the Court carries the burden of reviewing the evidence on hand.[15]

We note in this regard that the conflict in the factual findings of the RTC and CA does not relate to Briones' criminal culpability – both courts found his conviction under the criminal information to be supported by sufficient evidence. The conflict rather centers on the factual question of how the taking took place which must necessarily affect the characterization of the crime committed.

With these considerations in mind, we find no compelling reason to disturb the findings of the RTC and CA in their appreciation of the evidence *supporting Briones' culpability*. The records show that prosecution eyewitness S/G Gual positively identified Briones as the person who grabbed S/G Molina's firearm and, thereafter, ran away; S/G Gual also testified that this firearm was never recovered.[16] The RTC and CA found eyewitness S/G Gual's account credible; we find no reason to overturn these findings.

In this regard, we give special significance to the RTC's unique position in assessing the credibility of witnesses, as the RTC has the unrestricted opportunity to observe firsthand the

---

of the case, run contrary to the admission of the parties to the case, or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; (5) when there is a misappreciation of facts; or (6) when the findings of fact are conclusions without mention of the specific evidence on which they are based, are premised on the absence of evidence, or are contradicted by the evidence on record; *United Coconut Planters Bank v. Looyuko*, G.R. No. 156337, September 28, 2007, 534 SCRA 322, 328.

[14] *Microsoft Corp. v. Maxicorp, Inc.*, G.R. No. 140946, September 13, 2004, 438 SCRA 224, 230.

[15] *Remalante v. Tibe*, G.R. No. 59514, February 25, 1988, 158 SCRA 138, 144-145.

[16] *Rollo*, pp. 125, 127 and 130-131; Direct testimony of Gual, TSN, September 10, 1998, pp. 12, 14 and 17-18.

conduct and demeanor of witnesses at the trial.[17] Unless the trial judge plainly overlooked certain facts whose substance and value may affect the result of the case, we respect his assessment of the credibility of the witnesses. From our own reading of the records, we find that S/G Gual gave clear and precise answers; no inconsistencies existed materially affecting their veracity. Neither was it shown that S/G Gual was driven by any improper motive to falsely testify against Briones.

As S/G Gual is a credible eyewitness to the incident, we find no reason to doubt that he was with S/G Molina when the incident happened, and saw all the incidents of the crime.

As against this credible and positive testimony of S/G Gual, Briones could only set up denial and alibi as his defenses. We have previously ruled that for these defenses to deserve merit, they must be substantiated by clear and convincing proof.[18] Under the present facts, these defenses were without corroboration. On the contrary, Briones and his new counsel desperately now move to try the case again *at the expense of Briones' former counsel*; based on allegedly newly discovered evidence.[19] They blame the former counsel's allegedly erroneous legal strategy when he raised denial and alibi as Briones' defenses, instead of invoking self-defense or defense of a relative. They also now foist on this Court an Affidavit of Desistance dated July 29, 2002[20] executed by Fuentes, as well as an Affidavit dated July 22, 2002[21] executed by one Oskar Salud. These documents allegedly prove that Briones had no intent to gain and, in fact, threw away the firearm after grabbing it from S/G Molina.

---

[17] *People v. Matore*, G.R. No. 131874, August 22, 2002, 387 SCRA 603, 610-611.

[18] *People v. Hamton*, G.R. Nos. 134823-25, January 14, 2003, 395 SCRA 156, 185-186.

[19] Omnibus Motion for Reconsideration, Motion for New Trial and Motion to Dismiss dated July 29, 2002 filed before the Court of Appeals, and Supplemental Omnibus Motion for Reconsideration, Motion for New Trial and Motion to Dismiss; *rollo*, pp. 44-54 and 57-63.

[20] *Id.*, p. 55.

[21] *Id.*, p. 56.

A change of Briones' defense from denial and alibi to self-defense or defense of a relative is effectively a change of theory of the case *brought only during appeal*. We cannot allow this move. Law and fairness to the adverse party demand that when a party adopts a particular theory and the case is tried and decided on the basis of that theory in the court below, neither party can change his or her theory on appeal.[22] While this rule is not absolute, no exceptional reasons in this case exist to justify a deviation.[23]

Additionally, an error or mistake committed by a counsel in the course of judicial proceedings is not a ground for new trial. In *People v. Mercado*,[24] we declared:

> It has been repeatedly enunciated that "a client is bound by the action of his counsel in the conduct of a case and cannot be heard to complain that the result might have been different if he proceeded differently. A client is bound by the mistakes of his lawyer. If such grounds were to be admitted as reasons for reopening cases, there would never be an end to a suit so long as new counsel could be employed who would allege and show that prior counsel had not been sufficiently diligent or experienced or learned. x x x Mistakes of attorneys as to the competency of a witness, the sufficiency, relevancy or irrelevancy of certain evidence, **the proper defense**, or the burden of proof, x x x failure to introduce certain evidence, to summon witnesses, and to argue the case are not proper grounds for a new trial, unless the incompetency of counsel is so great that his client is prejudiced and prevented from properly presenting his case. [Emphasis supplied][25]

From the facts, it does not appear that Briones was denied competent legal representation in the proceedings before the RTC.

---

[22] *Toledo v. People*, G.R. No. 158057, September 24, 2004, 439 SCRA 94, 102-103.

[23] *People v. Yam-Id*, G.R. No. 126116, June 21, 1999, 308 SCRA 651, 656-657.

[24] G.R. No. 143676, February 19, 2003, 397 SCRA 746.

[25] *Id.*, p. 759, citing *Tesoro v. Court of Appeals*, 54 SCRA 296 (1973).

Lastly, for new trial to be granted on the ground of newly discovered evidence, the concurrence of the following conditions must obtain: (a) the evidence must have been discovered after trial; (b) the evidence could not have been discovered at the trial even with the exercise of reasonable diligence; (c) the evidence is material, not merely cumulative, corroborative, or impeaching; and (d) the evidence must affect the merits of the case and produce a different result if admitted.[26] In this case, although the firearm surfaced after the trial, the other conditions were not established.

Evidence, to be considered newly discovered, must be one that could not, by the exercise of due diligence, have been discovered before the trial in the court below.[27] The determinative test is the presence of due or reasonable diligence to locate the thing to be used as evidence in the trial.

Under the circumstances, Briones failed to show that he had exerted reasonable diligence to locate the firearm; his allegation in his Omnibus Motion that he told his brothers and sisters to search for the firearm, which yielded negative results, is purely self-serving. He also now admits having taken the firearm and having immediately disposed of it at a *nearby house, adjacent to the place of the incident*.[28] Hence, even before the case went to court, he already knew the location of the subject firearm, but did not do anything; he did not even declare this knowledge at the trial below.

In any case, we fail to see how the recovery of the firearm can be considered material evidence that will affect the outcome of the case; the recovery of the subject firearm does not negate the commission of the crime charged.

Neither are we convinced that the admission and consideration of the affidavits executed by Fuentes and Oskar Salud will

---

[26] *Lorenzo Jose v. Court of Appeals*, G.R. No. L-38581, March 31, 1976, 70 SCRA 257, 263-264 and *De Villa v. Director of New Bilibid Prisons*, G.R. No. 158802, November 17, 2004, 442 SCRA 706, 727-728.

[27] *U.S. v. Apolonio Palanca*, 5 Phil 269 (1905).

[28] *Rollo*, p. 49.

result in a different outcome for the case. Fuentes' affidavit shows that he is no longer interested in pursuing the case because he has already recovered his firearm, while Oskar Salud only stated that he found the subject firearm in his property. At face value, these statements do not remove nor erase the prosecution's evidence establishing that a crime has been committed, with Briones as the perpetrator. We additionally note that these affidavits were executed on the entreaties by Briones' widowed mother to Fuentes and Salud,[29] rendering the intrinsic worth of these documents highly suspect; they appear to have been executed solely out of human compassion and for no other reason.

From another perspective, we also consider that in petitions for new trial in a criminal proceeding where a certain evidence was not presented, the defendant, in order to secure a new trial, must satisfy the court that he has a good defense, and that the acquittal would in all probability follow the introduction of the omitted evidence.[30] We find that Briones' change of defense from denial and alibi to self-defense or in defense of a relative will not change the outcome for Briones considering that he failed to show unlawful aggression on the part of S/G Molina and/or S/G Gual – the essential element of these justifying circumstances under Article 11 of the Code. The records show that prior to the taking of the firearm, S/G Molina and S/G Gual approached Briones and his companions to stop the fight between Briones' group and another person. To be sure, there was nothing unlawful in preventing a fight from further escalating and in using reasonable and necessary means to stop it. This conclusion is strengthened by evidence showing that at the time of the incident, Briones was drunk and was with three companions; they all participated in the mauling.[31]

What significantly remains on record is the unopposed testimony of S/G Gual that Briones grabbed the firearm from S/G Molina; no evidence on record exists to show that this firearm was pointed at Briones or at his companions.

---

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

[30] Oscar M. Herrera IV, *Remedial Law* (2007 ed.), p. 929.

[31] TSN, September 10, 1998, p. 6.

For these reasons, we find that the CA did not commit any reversible error when it denied Briones' motion for new trial. Likewise, we find no error in the RTC and CA conclusion that he is criminally liable under the criminal information.

The crime committed was theft, not robbery

To show that robbery was committed, the government needs to prove the following elements: (1) the taking of personal property be committed with violence or intimidation against persons; (2) the property taken belongs to another; and (3) the taking be done with *animo lucrandi*.[32] On the other hand, the elements constituting the crime of theft are: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things.[33] Thus, the distinguishing element between the crimes of robbery and theft is the use of violence or intimidation as a means of taking the property belonging to another; the element is present in the crime of robbery and absent in the crime of theft.

We have no doubt that the elements of taking of personal property which belongs to another person without his consent have been established in the case, while the intent to gain is presumed from unlawful taking and can only be negated by special circumstances showing a different intent on the part of the perpetrator.[34] We previously held that intent to gain is a mental state whose existence is demonstrated by a person's overt acts.[35] Briones' overt acts in this case were in grabbing S/G Molina's firearm and running away with it. We stress that these pieces of evidence, showing

---

[32] *People v. Salazar*, G. R. No. 99355, August 11, 1997, 277 SCRA 67, 85.

[33] *Valenzuela v. People*, G.R. No. 160188, June 21, 2007, 525 SCRA 306, 324.

[34] *People v. Donato del Rosario*, G.R. No. 131036, June 20, 2001, 359 SCRA 166, 174, and *People v. Danilo Reyes*, G.R. No. 135682, March 26, 2003, 399 SCRA 528, 534.

[35] *Dunlao v. Court of Appeals*, G.R. No. 111343, August 22, 1996, 260 SCRA 788, 793, citing *Lim v. Court of Appeals*, 222 SCRA 286, 287 (1993).

his unlawful taking of the firearm and running away with it immediately after, were not refuted by the defense's evidence before the RTC. There is also evidence, as testified to by S/G Gual, that the firearm was not found nor retrieved after this unlawful taking. Further, these pieces of evidence defeat Briones' belated contention that he threw away the firearm immediately after he got hold of it.

Under the circumstance, we are left to consider the nature of the crime committed, as proven by the evidence on record. We agree with the RTC that only the crime of theft was committed in the case as S/G Gual's testimony does not show that violence or intimidation attended the taking of the firearm; S/G Gual only testified that Briones merely grabbed the firearm and ran away with it. Thus, we can only convict Briones for the crime of theft for taking S/G Molina's firearm without his consent. Theft is produced the moment there is deprivation of personal property due to its taking with intent to gain.[36]

In arriving at this conclusion, we are keenly aware that the accused was indicted under a charge for robbery, not theft. The failure to specify the correct crime committed, however, will not bar Briones' conviction for the crime of theft.[37] The character of the crime is not determined by the caption or preamble of the information, or by the specification of the provision of law alleged to have been violated. The crime committed is determined by the recital of the ultimate facts and circumstances in the complaint or information.[38] In this case, the allegations in the Information are sufficient to make out a charge of theft.

The Penalty

The imposable penalty for the crime of theft under Article 309 of the Code depends upon the value of the thing stolen. In this case, no evidence was introduced to prove the value of the

---

[36] *Valenzuela v. People,* G.R. No. 160188, June 21, 2007, 525 SCRA 306, 343.

[37] REVISED PENAL CODE, Article 308.

[38] *People v. Abello,* March 25, 2009, citing *Olivarez v. Court of Appeals,* 465 SCRA 465, 473.

firearm;[39] the records show that the RTC found that the stolen firearm was worth ₱6,000.00 solely on the basis of the allegation in the criminal information that the firearm was ₱8,000.00, more or less.[40] In the absence of clear evidence showing the amount of the stolen property, we have to resolve any doubt in favor of Briones; he can only be sentenced to the lightest penalty prescribed by law applicable to the facts of the case.[41] The lightest penalty that applies to theft, *where the value of the thing stolen does not exceed five pesos*, is found in paragraph 6 of Article 309 which imposes the penalty of *arresto mayor*, in its minimum and medium periods, or imprisonment of one (1) month and one (1) day to four (4) months. Accordingly, for the crime of theft, Briones' imprisonment sentence will be within one (1) month and one (1) day of *arresto mayor* to four (4) months of *arresto mayor*.

WHEREFORE, premises considered, the petition is *PARTLY GRANTED*. The Decision dated July 17, 2002 and Resolution dated November 13, 2002 of the Court of Appeals in CA-G.R. CR No. 24127 are hereby *MODIFIED*. Petitioner Rommel Briones is found *GUILTY* beyond reasonable doubt of the crime of *THEFT* under Article 308 of the Revised Penal Code, as amended. He is sentenced to suffer a straight penalty of imprisonment of four (4) months of *arresto mayor*.

SO ORDERED.

Quisumbing (Chairperson), Ynares-Santiago,[*] *Velasco, Jr.,* and *Leonardo-de Castro,*[**] *JJ.,* concur.

---

[39] *Rollo*, p. 34.

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

[41] *U.S. v. Galanco*, 11 Phil 279, 281 (1908), and *Lucas v. Court of Appeals*, G.R. No. 148859, September 24, 2002, 389 SCRA 749, 759.

[*] Designated additional Member of the Second Division per Special Order No. 645 dated May 15, 2009.

[**] Designated additional Member of the Second Division effective May 11, 2009 per Special Order No. 635 dated May 7, 2009.

SECOND DIVISION

[G.R. No. 157384. June 5, 2009]

ERLINDA I. BILDNER and MAXIMO K. ILUSORIO, *petitioners, vs.* **ERLINDA K. ILUSORIO, RAMON K. ILUSORIO, MARIETTA K. ILUSORIO, SHEREEN K. ILUSORIO, CECILIA A. BISUÑA, and ATTY. MANUEL R. SINGSON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; POWER TO PUNISH FOR CONTEMPT; EXPLAINED. — The Court's dignity and authority would always be prey to attack were it to treat with abject indifference and look with complacent eyes on serious breaches of ethics and denigrating utterances directed against it. To preserve their authority and efficiency, safeguard the public confidence in them, and keep inviolate their dignity, courts of justice should not yield to the assaults of disrespect and must, when necessary, wield their inherent power to punish for contempt, a power necessary for their own protection against improper interference with the due administration of justice. x x x The contempt power, however plenary it may seem, must be exercised judiciously and sparingly with utmost self-restraint with the end in view of utilizing it for correction and preservation of the dignity of the court, not for retaliation or vindication. To be sure, courts and judges, as institutions, are neither sacrosanct nor immune to public criticisms of their conduct. And well-recognized is the right of citizens to criticize in a fair and respectful manner and through legitimate channels the acts of courts or judges, who in turn ought to be patient and tolerate as much as possible everything which appears as hasty and unguarded expression of passion or momentary outbreak of disappointment at the outcome of a case. Even snide remarks, as *People v. Godoy* teaches, do not necessarily partake the nature of contumacious utterance actionable under Rule 71 of the Rules of Court. But as we have emphasized time and time again, "[i]t is the cardinal condition of all such criticism that it shall be *bona fide*, and shall not spill over the walls of decency and propriety. A wide chasm

exists between fair criticism, on one hand, and abuse and slander of courts and the judges thereof, on the other." Obstructing, by means of opprobrious words, spoken or written, the administration of justice by the courts will subject the abuser to punishment for contempt of court. And regardless of whether or not the case of reference has been terminated is of little moment. One may be cited for contempt of court even after the case has ended where such punitive action is necessary to protect the court and to vindicate it from acts or conduct calculated to degrade, ridicule, or bring it into disfavor and thereby erode public confidence in that court.

2. ID.; ID.; ID.; CIVIL CONTEMPT AND CRIMINAL CONTEMPT, DISTINGUISHED. — Contempt, whether direct or indirect, may be civil or criminal, depending on the nature and effect of the contemptuous act. Civil contempt is the failure to do something ordered by the court for the benefit of the opposing party. Criminal contempt, on the other hand, is conduct directed against the dignity and authority of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect. On the basis of the foregoing principles, it can be safely concluded that under Sec. 3(d) of Rule 71 on contempt, "any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice" constitutes criminal contempt.

3. LEGAL ETHICS; ATTORNEYS; UNETHICAL BEHAVIOR OF ATTEMPTING TO INFLUENCE A JUDGE, COMMITTED IN CASE AT BAR; PENALTY. — The highly immoral implication of a lawyer approaching a judge––or a judge evincing a willingness––to discuss, in private, a matter related to a case pending in that judge's sala cannot be over-emphasized. The fact that Atty. Singson did talk on different occasions to Judge Reyes, initially through a mutual friend, Atty. Sevilla, leads us to conclude that Atty. Singson was indeed trying to influence the judge to rule in his client's favor. This conduct is not acceptable in the legal profession. Canon 13 of the Code of Professional Responsibility enjoins it: Canon 13. A lawyer shall rely upon the merits of his cause and refrain from any impropriety which tends to influence or gives the appearance of influencing the court. x x x While the alleged attempted bribery may perhaps not be supported by evidence other than

Judge Reyes' statements, there is nevertheless enough proof to hold Atty. Singson liable for unethical behavior of attempting to influence a judge, itself a transgression of considerable gravity. However, heeding the injunction against decreeing disbarment where a lesser sanction would suffice to accomplish the desired end, a suspension for one year from the practice of law appears appropriate.

APPEARANCES OF COUNSEL

Rafael Arsenio S. Dizon for petitioners.
Singson Valdez & Associates for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

In this petition filed directly with the Court in accordance with Rule 71, Section 5 of the Rules of Court, Erlinda I. Bildner and Maximo K. Ilusorio pray that respondents, one of them their mother and their three siblings, be cited for indirect contempt for alleged contemptuous remarks and acts directed against the Court, particularly the then members of its First Division. By motion dated June 5, 2003, petitioners pray that the same petition be treated as a formal complaint for disbarment or disciplinary action against respondent Atty. Manuel R. Singson for alleged gross misconduct, among other offenses.

The Undisputed Facts

Indirect Contempt

The resulting alleged contemptuous statements and actions date back to proceedings before the Court, specifically in G.R. Nos. 139789 and 139808 that were appeals from the decision of the Court of Appeals (CA) in CA-G.R. SP No. 51689, denying the petition for *habeas corpus* filed by respondent Erlinda K. Ilusorio to have custody of her husband, Potenciano Ilusorio. The appealed decision found Potenciano to be of sound mind and not unlawfully restrained of his liberty. The CA, however,

granted Erlinda Ilusorio visitation rights, an accommodation which the Court nullified in its Decision of May 12, 2000 in G.R. Nos. 139789 and 139808.[1]

This May 12, 2000 ruling spawned several incidents. First, Erlinda Ilusorio moved for its reconsideration, reiterating her basic plea for a writ of *habeas corpus* and that daughters petitioner Bildner and Sylvia Ilusorio be directed to desist from preventing her "from seeing Potenciano." Erlinda Ilusorio followed this motion with a Motion to Set Case for Preliminary Conference, requesting that she and Potenciano "be [allowed to be] by themselves together in front of the Honorable Court."[2] She reiterated this request in an Urgent Manifestation and Motion dated August 25, 2000.

By Resolution of September 20, 2000, the Court set the case for preliminary conference on October 11, 2000 but without requiring the mandatory presence of the parties.[3] In another resolution dated January 31, 2001, the Court denied Erlinda Ilusorio's manifestation and motion in which she prayed that Potenciano be produced before, and be medically examined by a team of medical experts appointed by, the Court.[4] Erlinda Ilusorio sought reconsideration of the January 31, 2001 resolution.

On March 27, 2001, the Court denied with finality Erlinda Ilusorio's motion for reconsideration of the January 31, 2001 resolution.[5] Undaunted, she filed an Urgent Manifestation and Motion for Clarification of the Court's January 31, 2001 resolution. On May 30, 2001, the Court merely noted the urgent manifestation and motion for clarification.[6]

---

[1] 332 SCRA 169. Entitled *Erlinda K. Ilusorio v. Erlinda I. Bildner, Sylvia K. Ilusorio, John Does and Jane Does*; and *Potenciano Ilusorio, Ma. Erlinda I. Bildner, and Sylvia K. Ilusorio v. Hon. Court of Appeals and Erlinda K. Ilusorio*, respectively.

[2] *Rollo*, pp. 63-66.

[3] *Id.* at 71-72.

[4] *Id.* at 73.

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

[6] *Id.* at 83-84.

By Resolution of July 19, 2001,[7] the Court denied Erlinda Ilusorio's motion for reconsideration of the Decision dated May 12, 2000. Thereafter, in another resolution dated July 24, 2002, we resolved to expunge from the records her repetitive motions, with the caveat that no further pleadings shall be entertained.[8]

Barely over a month after, Erlinda Ilusorio, this time represented by Dela Cruz Albano & Associates, sought leave to file an urgent motion for reconsideration of the July 24, 2002 resolution.

In relation to the above *habeas corpus* case, Erlinda Ilusorio addressed two letters to then Chief Justice Hilario G. Davide, Jr. dated February 26, 2001 and April 16, 2001, respectively. In the first, she sought assistance *vis-à-vis* her wish to see Potenciano.[9] In the second, she chafed at what she considered the Court's bent to adhere to forms and procedure and, at the same time, urged the Court to personally see Potenciano.[10]

Another letter of September 5, 2001 to Chief Justice Davide drew attention to the Court's decision in G.R. No. 148985 entitled *Ramon K. Ilusorio v. Baguio Country Club*, in which Erlinda Ilusorio tagged the decision as "**appalling**," "**unilaterally brazen**," and "**unprecedented in the annals of the Supreme Court decision-making process**." In her words, the decision denied and dismissed the petition of her son, Ramon Ilusorio, through a "**four-page resolution by unilaterally arguing and citing the arguments made by the respondents**" in the case at the courts *a quo*, "**without even giving the same respondents the proper hearing or requiring a comment or a reply**." In the same letter, she made reference to the Court giving "**special treatment to particular litigants**."[11]

---

[7] *Ilusorio v. Ilusorio-Bildner*, G.R. Nos. 139789 & 139808, July 19, 2001, 361 SCRA 427.

[8] *Rollo*, p. 93.

[9] *Id.* at 74.

[10] *Id.* at 82.

[11] *Id.* at 104-105.

To petitioners, Erlinda Ilusorio's filing of redundant motions and pleadings, along with her act of writing the aforementioned letters, constitutes contemptuous disrespect and disobedience or defiance of lawful orders of the Court.

On top of the foregoing circumstances, petitioners would also have respondents cited for contempt in view of the publication of *On the Edge of Heaven*, a book carrying Erlinda Ilusorio's name as author and which contained her commentaries on the aforesaid *habeas corpus* case. In this book, published by PI-EKI Foundation[12] whose board of directors is composed of respondents Ramon, Marietta K. Ilusorio, Shereen K. Ilusorio, and Cecilia A. Bisuña, the following excerpts from the Postscript section captioned *Where is Justice?* appear:

I pursued my case in the Supreme Court at Division I. There I was heard by Justice Pardo, Davide, Puno, Kapunan, and Santiago.

Just the same – this highest court of the land did not heed to my desperate pleas. **Conveniently, they omitted the state of my husband's true desires; dismissed the importance of my husband's presence in the court; ignored the ultimate need to check for themselves the true state of Nanoy's health; and after PI's recent death in June 28, 2001, easily dismissed my case as "moot and academic." My husband was referred to as another "subject."** (On the Edge of Heaven, p. 180)[13]

In the same book, Erlinda Ilusorio denounced Justice Bernardo P. Pardo, now retired, the *ponente* of the *habeas corpus* case, the other members of the then First Division of the Court, and the Court as a whole:

Where is justice?

Sadly, the Court of Appeals and, moreso, the **Supreme Court broke-up my family**. Doesn't our Constitution, our Civil Code and our Family Code protect the sanctity of marriage and the family?

Was justice for sale? Was justice sold? *Nasaan ang katarungan*?

---

[12] Formerly House of St. Joseph Foundation, Inc.

[13] *Rollo*, p. 100.

x x x x x x x x x

August 29, 2001

To the Supreme Court of the Philippines, Division One, Justice Bernardo Pardo, *Ponente* on Case No. x x x

x x x x x x x x x

You simply quoted an *obiter dictum* of the Court of Appeals. There was no ruling on his mental condition as this was not at issue at the *habeas corpus*. **How could you have made a ruling based on an obiter?** *All the doctor's reports submitted* were totally disregarded. In reality it was his frailty, not his mental competence that I raised. During the last five years, he became increasingly frail, almost blind and could barely talk. **He was not able to read nor write for almost twenty years.** x x x Our separation, three years ago, cruel and inhuman that it was, was made more **painful by your ruling that I may not even visit him**.

x x x x x x x x x

On May 30, 2001, you ruled that your decision noted without action the questions of my lawyers, in effect brushing aside the Motion for Clarification without any answers whatsoever. Why?

x x x x x x x x x

If your decision becomes *res judicata* haven't you just provided a most convenient venue to separate spouses from each other—based on individual rights—particularly when one spouse is ailing and prone to manipulation and needs the other spouse the most? Why did you wait for more than one year and after my husband's death to deny my motion for reconsideration? Is it because it is easier to do so now that it is academic? Does your conscience bother you at all?

x x x x x x x x x

I close by asking you: **how can the highest court of our land be a party to the break up of my family and, disregarding the Family Code**, not let me take care of my husband, permit my husband to die without even heeding my desperate pleas, **if not for justice, at least your concern for a human being?**

x x x x x x x x x

Looking back, I cannot fail to see that—**if our courts can render this kind of justice to one like myself because I have lesser means, and lesser connections** than my well-married daughters, **what kind of justice is given to those less privileged**? To the poor, with no means—what have they? I cry for them…[14] (Emphasis ours.)

Disbarment Complaint

The disbarment case against respondent Atty. Singson stemmed from his alleged attempt, as counsel of Ramon in Civil Case No. 4537-R, to exert influence on presiding Regional Trial Court Judge Antonio Reyes to rule in Ramon's favor. To complainant-petitioners, the bid to influence, which allegedly came in the form of a bribe offer, may be deduced from the following exchanges during the May 31, 2000 hearing on Ramon's motion for Judge Reyes to inhibit himself from hearing Civil Case No. 4537-R:

COURT: Do you have something to add to your motion?

ATTY. JOSE: The purpose of this representation basically, your honor state the facts are already established as a basis for tendency or a perception correctly or incorrectly that there is already a possibility of partiality.

COURT: Who is your partner?

ATTY. JOSE: The counsel for the plaintiff is Law Office of Singson and Associates and I am the associate of said Law Office, your honor.

COURT: And you are aware that Atty. Manuel R. Singson is your boss?

xxx xxx xxx

ATTY. JOSE: Yes, your honor?

COURT: Has he been telling you the truth in this case?

---

[14] *Id.* at 101-103.

ATTY. JOSE: Well, your honor my appearance here for the purpose of having this motion duly heard.

COURT: That is why I'm asking you the question, has he been telling you the truth regarding this case?

ATTY. JOSE: Well, your honor in fact the actual counsel here is Atty. Gepty and I have been…

COURT: **Are you aware of the fact that Atty. Singson has been calling my residence in Baguio City for about 20 to 50 times already?**

ATTY. JOSE: I have no knowledge already.

COURT: **Are you aware that he has offered Atty. Oscar Sevilla his classmate at Ateneo Law School ₱500,000.00 to give it to me for the purpose of ruling in favor of your client[?]**

ATTY. JOSE: I have no knowledge your honor.

COURT: Ask him that tell him to face the mirror and ask him if he is telling the truth alright? I will summon the records of PLDT. **The audacity of telling me to inhibit myself here. It has been him who has been trying to influence me.**

x x x x x x x x x

COURT: **Tell him to look at his face in the mirror, tell me if he is honest or not.**[15]

And to support their disbarment charge against Atty. Singson on the grounds of attempted bribery and serious misconduct, complainant-petitioners submitted an affidavit executed on December 23, 2004 by Judge Reyes in which he pertinently alleged:

2) That one of the cases I tried, heard and decided was Civil Case No. 4537-R entitled *"Ramon K. Ilusorio v. Baguio Country Club"* for the *"Declaration of Nullity of Limitations and/or Injunction* x x x";

[15] *Id.* at 107-111.

3) That the very minute that the case was assigned by raffle to the undersigned, Atty. Manuel Singson counsel of plaintiff Ramon K. Ilusorio in the aforementioned case, started working on his channels to the undersigned to secure a favorable decision for his client;

4) That Atty. Singson's foremost link to the undersigned was Atty. Oscar Sevilla, my family friend and who incidentally was a classmate of Atty. Singson;

5) That Atty. Sevilla, being a close family friend, immediately intimated to undersigned that Atty. Singson wanted a favorable decision and that **there was a not so vague an offer of a bribe from him** (Atty. Singson);

6) That I rejected every bit of illegal insinuations and told Atty. Sevilla to assure Atty. Singson that I am duty bound to decide every case on the merits no matter who the litigants are;

7) That even before the start of the hearing of the case, Atty. Singson himself relentlessly worked on undersigned by **visiting him about three times in his office**. And not being satisfied with those visits, he (Atty. Singson) made **more than a dozen calls to undersigned's Manila and Baguio residences**, and worked on Atty. Sevilla x x x by calling the latter's cell phone even when we were playing golf in Manila. These phone calls were even admitted by Atty. Singson in a Manifestation he filed in court citing several ridiculous, unbelievable and untruthful reasons for his phone calls;

8) That when Ramon K. Ilusorio's plea for injunctive relief was submitted for resolution, Atty. Singson became more unrelenting in throwing his professional ethics out of the window and breached his lawyer's oath by **personally calling many more times, some of which were even made late evenings**, just trying to convince undersigned to grant the injunctive relief his client Ramon K. Ilusorio desperately needed in the case;

9) That because of his inability to influence undersigned x x x, Atty. Singson filed a motion to inhibit alleging that facts have been established of undersigned's partiality for his client's adversary, the defendant Baguio Country Club;

10) That at the hearing on the motion to inhibit x x x I declared in open court and in public the dishonest and unprofessional conduct of Atty. Singson in trying to influence a judge to favor his client, no matter how unmeritorious his prayer for injunction was. In open court, undersigned scored Atty. Singson's audacity of asking an inhibition when it has always been him and him alone who wanted and tried to influence the undersigned.

11) That on January 12, 2000, undersigned issued an Order in Civil Case No. 4537-R x x x denying Atty. Singson's client's prayer for the issuance of a writ of preliminary injunction x x x;

12) That the undersigned's ruling against Atty. Singson's client in the case was elevated to the [CA] in G.R. No. 59353 where x x x Atty. Singson never raised the issue of undersigned's denial to inhibit;

13) That still unsatisfied with the [CA's] adverse ruling against his client, Atty. Singson went on to the Supreme Court in G.R. No. 148985 questioning the [CA's] affirmation of undersigned's decision. The Supreme Court x x x dismissed the appeal of Ramon K. Ilusorio and sustained undersigned's decision.[16] (Emphasis ours.)

Complainant-petitioners also submitted Atty. Oscar Sevilla's affidavit to support the attempted bribery charge against Atty. Singson. In its pertinent part, Atty. Sevilla's affidavit reads:

That sometime in late October of 1999 x x x, I received a call from Atty. Singson x x x and in the course of our conversation, I learned that Ramon K. Ilusorio is his client who has a civil case raffled to Judge Reyes;

That during said conversation, I mentioned to Atty. Singson that Judge Reyes is a family friend and x x x is a man of integrity;

That in the months that followed, Atty. Singson made a call or two to my cellphone requesting if I could mention to Judge Reyes that he (Atty. Singson) is my classmate at the Ateneo and also a good friend;

That I remember having mentioned this to Judge Reyes who told me that he always decides on the merits of all cases x x x and to tell Atty. Singson that he need not worry if he had a meritorious case.[17]

---

[16] *Id.* at 319-320.

[17] *Id.* at 168.

In view of the foregoing considerations, petitioners prayed that respondents be adjudged guilty of criminal contempt of court and punished in accordance with Sec. 7, Rule 71 of the Rules of Court. The censure of respondents was also sought for using extrajudicial ways of influencing pending cases in court. Lastly, petitioners asked for the disbarment or discipline of Atty. Singson for attempted bribery and gross misconduct.

By separate resolutions, the Court directed respondents to submit their comment on the contempt aspect of the petition and Atty. Singson to submit his comment on petitioners' motion to consider the same petition as a formal complaint for disbarment or other disciplinary action.

Respondents' Comments

Respondents admitted the fact of filing by Erlinda Ilusorio of the various manifestations and motions mentioned in the basic petition for contempt, her authorship of *On the Edge of Heaven*, and her having written personal letters to then Chief Justice Davide. They contended, however, that the motions and manifestations, couched in a very respectful language,[18] can hardly be considered contemptuous, interposed as they were in the exercise of the litigant's right to avail herself of all legal remedies under the Rules of Court. Erlinda Ilusorio's acts, so respondents claimed, were "all made in good faith," motivated by the desire to secure "custody x x x of her husband, [and] to provide [him] adequate medical care x x x and to prevent him from being an unwitting pawn to illegally dissipate the properties of the conjugal properties of the spouses."

As to Erlinda Ilusorio's letters to Chief Justice Davide and the members of the Court, respondents stated that these letters, far from being contemptuous, "tend to improve the administration of justice and encourage the courts to decide cases purely on the merits."

And in traversal of the allegation that *On the Edge of Heaven* contains actionable matters, respondents claimed, *inter alia*,

[18] *Id.* at 333-360.

that the comments Erlinda Ilusorio made in the book were no more than reasonable reactions from a layperson aggrieved by what she considers an unjust Court decision and who "felt she had to write a book that would rectify the erroneous findings of the Court and put forth the truth about the so-called Ilusorio family feud."[19] What is more, respondents said, sisters Marietta and Shereen as well as Cecilia had no hand in the contents of the book and its publication, as Erlinda Ilusorio, as Chairperson and President of PI-EKI Foundation, is authorized to perform acts on behalf of the foundation.

With regard to the bribery allegations against Atty. Singson, respondents invited attention to the Manifestation in Civil Case No. 4537-R to dispute the accusation of Judge Reyes. The refutations, as reproduced in the respondents' Memorandum, run as follows:

(a) While it is true that Singson called Judge Reyes numerous times the nature and purpose of said calls were proper and above board. The reason why the phone calls were numerous is because oftentimes, Judge Reyes was not in the places where the calls were made.

(b) The phone calls were made either to request for a postponement of a hearing of the case or to inquire about the status of the incident on the issuance of the temporary restraining order applied for in the case.

(c) It was Judge Reyes himself who furnished the telephone numbers in his office and his residence in Baguio City. Apparently, Judge Reyes did not find the telephone calls improper as he answered most of them, and that he never reported or complained about the said calls to the appropriate judicial authorities or to the Integrated Bar of the Philippines if he had found the actuations of Singson in violation of the provisions of the Code of Professional Responsibility.

(d) As to the alleged bribery attempt, there is absolutely no truth to the same. If it is true that there was such an offer, there

[19] *Id.* at 344-345.

> is no reason why Singson could not have made the offer himself, since he personally knows Judge Reyes. The allegations of Judge Reyes [are] purely hearsay and imaginary. If the bribery attempt had indeed happened, why did Judge Reyes not report the matter to the Supreme Court or to the IBP or even better, cite Atty. Sevilla and/or Singson in contempt of court, or file a criminal case of attempted bribery against them, or discipline them by himself in accordance with the provisions of Rule 138 and 139 of the Revised Rules of Court? The fact that Judge Reyes did not do any of the foregoing clearly shows the falsity of his claims.[20]

Respondents added that the bribery charge was based on a hearsay account, since the alleged offer to Judge Reyes emanated from Atty. Sevilla.

The Issues

WHETHER OR NOT RESPONDENTS ARE GUILTY OF INDIRECT CONTEMPT OF COURT

WHETHER OR NOT ATTY. SINGSON SHOULD BE ADMINISTRATIVELY DISCIPLINED OR DISBARRED FROM THE PRACTICE OF LAW FOR ALLEGED GROSS MISCONDUCT IN ATTEMPTING TO BRIBE JUDGE ANTONIO REYES

The Court's Ruling

Indirect Contempt

The Court's dignity and authority would always be prey to attack were it to treat with abject indifference and look with complacent eyes on serious breaches of ethics and denigrating utterances directed against it. To preserve their authority and efficiency, safeguard the public confidence in them, and keep inviolate their dignity, courts of justice should not yield to the assaults of disrespect[21] and must, when necessary, wield their

---

[20] *Id.* at 353-354.

[21] *Mercado v. Security Bank Corporation*, G.R. No. 160445, February 16, 2006, 482 SCRA 501, 504; citing *Salcedo v. Hernandez*, 61 Phil. 724 (1935).

inherent power to punish for contempt, a power necessary for their own protection against improper interference with the due administration of justice.[22]

Contempt, whether direct or indirect, may be civil or criminal, depending on the nature and effect of the contemptuous act.[23] Civil contempt is the failure to do something ordered by the court for the benefit of the opposing party. Criminal contempt, on the other hand, is conduct directed against the dignity and authority of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect.[24] On the basis of the foregoing principles, it can be safely concluded that under Sec. 3(d) of Rule 71 on contempt, "any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice" constitutes criminal contempt. This is what petitioners obviously would have respondents cited for.

The contempt power, however plenary it may seem, must be exercised judiciously and sparingly with utmost self-restraint with the end in view of utilizing it for correction and preservation of the dignity of the court, not for retaliation or vindication.[25] To be sure, courts and judges, as institutions, are neither sacrosanct nor immune to public criticisms of their conduct.[26] And well-recognized is the right of citizens to criticize in a fair and respectful manner and through legitimate channels the acts

---

[22] *In the Matter of the Allegations Contained in the Columns of Mr. Amado P. Macasaet Published in Malaya Dated September 18, 19, 20 and 21, 2007*, A.M. No. 07-09-13-SC, August 8, 2008, 561 SCRA 395, 446; citing *Halili v. Court of Industrial Relations*, No. L-24864, April 30, 1985, 136 SCRA 112.

[23] *Montenegro v. Montenegro*, G.R. No. 156829, June 8, 2004, 431 SCRA 415, 424.

[24] *Id.* at 425.

[25] *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*, G.R. No. 150274, August 4, 2006, 497 SCRA 626, 631.

[26] *In re Almacen*, No. L-27654, February 18, 1970, 31 SCRA 562, 582; citing *State v. Calhoon*, 102 So. 2d 604, 608.

of courts or judges,[27] who in turn ought to be patient and tolerate as much as possible everything which appears as hasty and unguarded expression of passion or momentary outbreak of disappointment at the outcome of a case. Even snide remarks, as *People v. Godoy* teaches, do not necessarily partake the nature of contumacious utterance actionable under Rule 71 of the Rules of Court.[28]

But as we have emphasized time and time again, "[i]t is the cardinal condition of all such criticism that it shall be *bona fide*, and shall not spill over the walls of decency and propriety. A wide chasm exists between fair criticism, on one hand, and abuse and slander of courts and the judges thereof, on the other."[29] Obstructing, by means of opprobrious words, spoken or written, the administration of justice by the courts will subject the abuser to punishment for contempt of court. And regardless of whether or not the case of reference has been terminated is of little moment. One may be cited for contempt of court even after the case has ended where such punitive action is necessary to protect the court and to vindicate it from acts or conduct calculated to degrade, ridicule, or bring it into disfavor and thereby erode public confidence in that court.[30]

In the case at bar, the various motions and manifestations filed by Erlinda Ilusorio neither contained offensively disrespectful language nor tended to besmirch the dignity of the Court. In fact, the Court, mindful of the need to clear its docket of what really is an unfortunate family squabble, considered and ruled on each of her motions and manifestations. For the nonce, the Court accords Erlinda Ilusorio the benefit of the doubt and is inclined to think that her numerous pleadings that reiterate the same issues were *bona fide* attempts to resuscitate and salvage what she might have sanguinely believed to be a meritorious case involving her marital rights. This is not to say, however,

---

[27] *Id.* at 578-579.

[28] G.R. Nos. 115908-09, March 29, 1995, 243 SCRA 64, 75.

[29] *In re Almacen*, *supra* note 26, at 580.

[30] *Id.* at 596.

that the Court views with unqualified approval the obnoxious practice of filing pleadings after pleadings that only substantially reiterate the same issues that had already been passed upon and found to be unmeritorious. The Court, as a matter of sound practice, will not allow its precious time and resources to be eaten unnecessarily.[31] Accordingly, Erlinda Ilusorio and/or counsel is put on notice against trying the Court's patience and abusing its forbearance by continuing with their taxing ways.

Erlinda Ilusorio's personal letters to then Chief Justice Davide were not contumacious in character. Neither do we find them actionable, as a sleigh but *sub-rosa* attempt to influence the letter-addressee, under the contempt provisions of the Rules of Court. As we articulated in *In Re: Wenceslao Laureta*, letters addressed to individual members of the Court, in connection with the performance of their judicial functions, become part of the judicial record and are a matter of concern for the entire Court.[32] Although decisions of the Court are not based on personal letters and pleas to individual justices, we nonetheless discourage litigants from pursuing such unnecessary extra-legal methods to secure relief. There are adequate remedies for the purpose under the Rules of Court.

Unlike the contents of the pleadings and letters in question, EKI's statements in *On the Edge of Heaven*, however, pose a different threat to the Court's repute. For reference, the following are the defining portions of what she wrote:

(1) "The Supreme Court broke up my family."

(2) "Was justice for sale? Was justice sold? *Nasaan ang katarungan*?"

(3) "If your decision becomes *res judicata* haven't you just provided a most convenient venue to separate spouses from each other x x x?"

(4) "Why did you wait for more than one year and after my husband's death to deny my motion for reconsideration?

---

[31] *Dequina v. Ramirez*, A.M. No. MTJ-06-1657, September 27, 2006, 503 SCRA 367, 371.

[32] No. 68635, March 12, 1987, 148 SCRA 382, 402-403.

Is it because it is easier to do so now that it is academic? Does your conscience bother you at all?"

(5) "How can the highest court of our land be a party to the break up of my family and, disregarding the Family Code x x x?"

(6) "[I]f our courts can render this kind of justice to one like myself because I have lesser means, and lesser connections than my well-married daughters, what kind of justice is given to those less privileged?"

Taken together, the foregoing statements and their reasonably deducible implications went beyond the permissible bounds of fair criticism. Erlinda Ilusorio minced no words in directly attacking the Court for its alleged complicity in the break up of the Ilusorio family, sharply insinuating that the Court intentionally delayed the resolution of her motion for reconsideration, disregarded the Family Code, and unduly favored wealthy litigants. But the worst cut is her suggestion about the Court selling its decisions. She posed the query, "*Nasaan ang katarungan?* (Where is justice?)," implying that this Court failed to dispense justice in her case. While most of her statements were in the form of questions instead of categorical assertions, the effect is still the same: they constitute a stinging affront to the honor and dignity of the Court and tend to undermine the confidence of the public in the integrity of the highest tribunal of the land.

Erlinda Ilusorio explains that she is a layperson uninitiated in legal matters, an aggrieved widow who just wants to be relieved of pain caused by the injustice of the decision of this Court. She "felt she had to write a book that would rectify the erroneous findings of the Court x x x."[33] Obviously she had achieved her goal of self-expression but to the detriment of the orderly administration of justice. To be sure, she could have had adequately expressed her disagreement with the Court's disposition in the *habeas corpus* case without taking the low road, without being insulting, without casting a cloud of suspicion

[33] *Rollo*, pp. 344-345.

on the reputation of the Court. In some detail, the Court, in *People v. Godoy*, set forth what is permissible and when one is considered to have overstepped bounds:

> Generally, criticism of a court's rulings or decisions is not improper, and may not be restricted after a case has been finally disposed of and has ceased to be pending. So long as critics confine their criticisms to facts and base them on the decisions of the court, they commit no contempt no matter how severe the criticism may be; but when they pass beyond that line and charge that judicial conduct was influenced by improper, corrupt, or selfish motives, or that such conduct was affected by political prejudice or interest, the tendency is to create distrust and destroy the confidence of the people in their courts.
>
> But criticism should be distinguished from insult. A criticism after a case has been disposed of can no longer influence the court, and on that ground it does not constitute contempt. On the other hand, an insult hurled to the court, even after a case is decided, can under no circumstance be justified. Mere criticism or comment on the correctness or wrongness, soundness or unsoundness of the decision of the court in a pending case made in good faith may be tolerated; but to hurl the false charge that the Supreme Court has been committing deliberately so many blunders and injustices would tend necessarily to undermine the confidence of the people in the honesty and integrity of its members, and consequently to lower or degrade the administration of justice, and it constitutes contempt.[34]

A becoming respect for the courts should always be the norm. Litigants, no matter how aggrieved or dissatisfied they may be of court's decision, do not have the unbridled freedom in expressing their frustration or grievance in any manner they want. Crossing the permissible line of fair comment and legitimate criticism of the bench and its actuations shall constitute contempt which may be visited with sanctions from the Court as a measure of protecting and preserving its dignity and honor.

We explained in *Wicker v. Arcangel*:

> x x x [T]he power to punish for contempt is to be exercised on the preservative and not on the vindictive principle. Only occasionally should

---

[34] *Supra* note 28, at 94.

it be invoked to preserve that respect without which the administration of justice will fail. The contempt power ought not to be utilized for the purpose of merely satisfying an inclination to strike back at a party for showing less than full respect for the dignity of the court.[35]

As to the other members of the Board of Directors of the PI-EKI Foundation, the publisher of *On the Edge of Heaven*, we find no merit in the charge of indirect contempt against them. True, except for Atty. Singson, respondents Ramon, Marietta and Shereen Ilusorio, and Cecilia appear to be officers of PI-EKI Foundation. There is no compelling reason, however, to pierce, as petitioners urge, the veil of corporate fiction in order to hold these officers liable, especially in light of Erlinda Ilusorio's assertion of being authorized, as Chairperson and President of the said foundation, to perform acts on behalf of the foundation without prior board approval. Indirect contempt is a deliberate act to bring the court or judge into disrepute. In this case, proof of the participation of the board of directors and officers to willfully malign the Court is utterly wanting. In this regard, there is authority indicating that no one can be amenable to criminal contempt unless the evidence makes it abundantly clear that one intended to commit it.[36] It cannot plausibly be assumed that the said officers shared Erlinda Ilusorio's ill regard towards the judiciary from the mere fact that the PI-EKI Foundation published the book.

Disbarment

As to the complaint for disbarment, there is a well-grounded reason to believe that Atty. Singson indeed attempted to influence Judge Reyes decide a case in favor of Atty. Singson's client. The interplay of the following documentary evidence, earlier cited, provides the reason: (1) the transcript of the stenographic notes of the May 31, 2000 hearing in the sala of Judge Reyes in Civil Case 4537-R when the judge made it of record about the attempt to bribe; (2) the affidavit of Judge Reyes dated December 23, 2004 narrating in some detail how and thru whom

---

[35] G.R. No. 112869, January 29, 1996, 252 SCRA 444, 452.

[36] *Godoy*, *supra* note 28, at 77.

the attempt to bribe adverted to was made; and (3) the affidavit of Atty. Sevilla who admitted having been approached by Atty. Singson to intercede for his case pending with Judge Reyes. Significantly, Atty. Singson admitted having made phone calls to Judge Reyes, either in his residence or office in Baguio City during the period material. He offers the lame excuse, however, that he was merely following up the status of a temporary restraining order applied for and sometimes asking for the resetting of hearings.

The Court finds the explanation proffered as puerile as it is preposterous. Matters touching on case status could and should be done through the court staff, and resetting is usually accomplished thru proper written motion or in open court. And going by Judge Reyes' affidavit, the incriminating calls were sometimes made late in the evening and sometimes in the most unusual hours, such as while Judge Reyes was playing golf with Atty. Sevilla. Atty. Sevilla lent corroborative support to Judge Reyes' statements, particularly about the fact that Atty. Singson wanted Judge Reyes apprised that they, Singson and Sevilla, were law school classmates.

The highly immoral implication of a lawyer approaching a judge—or a judge evincing a willingness—to discuss, in private, a matter related to a case pending in that judge's sala cannot be over-emphasized. The fact that Atty. Singson did talk on different occasions to Judge Reyes, initially through a mutual friend, Atty. Sevilla, leads us to conclude that Atty. Singson was indeed trying to influence the judge to rule in his client's favor. This conduct is not acceptable in the legal profession. Canon 13 of the Code of Professional Responsibility enjoins it:

> Canon 13. A lawyer shall rely upon the merits of his cause and refrain from any impropriety which tends to influence or gives the appearance of influencing the court.

At this juncture, the Court takes particular stock of the ensuing statement Judge Reyes made in his affidavit: "x x x Atty. Sevilla, being a close family friend, immediately intimated to [me] that Atty. Singson wanted a favorable decision and that there was

a not so vague an offer of a bribe from him (Atty. Singson)." Judge Reyes reiterated the bribe attempt during the hearing on May 31, 2000, and made reference to the figure Php 500,000, the amount Atty. Singson offered through Atty. Sevilla. As may be expected, Atty. Singson dismissed Judge Reyes' account as hearsay and questioned the non-filing of any complaint for attempted bribery or disciplinary action by Judge Reyes at or near the time it was said to have been committed.

First, we must stress the difficulty of proving bribery. The transaction is always done in secret and often only between the two parties concerned. Indeed, there is no concrete evidence in the records regarding the commission by Atty. Singson of attempted bribery. Even Atty. Sevilla did not mention any related matter in his affidavit. Nevertheless, Judge Reyes' disclosures in his affidavit and in open court deserve some weight. The possibility of an attempted bribery is not far from reality considering Atty. Singson's persistent phone calls, one of which he made while Judge Reyes was with Atty. Sevilla. Judge Reyes' declaration may have been an "emotional outburst" as described by Atty. Singson, but the spontaneity of an outburst only gives it more weight.

While the alleged attempted bribery may perhaps not be supported by evidence other than Judge Reyes' statements, there is nevertheless enough proof to hold Atty. Singson liable for unethical behavior of attempting to influence a judge, itself a transgression of considerable gravity. However, heeding the injunction against decreeing disbarment where a lesser sanction would suffice to accomplish the desired end, a suspension for one year from the practice of law appears appropriate.

WHEREFORE, Erlinda K. Ilusorio is adjudged *GUILTY* of *INDIRECT CONTEMPT* and is ordered to pay a fine of ten thousand pesos (PhP 10,000). *Atty. Manuel R. Singson* is *SUSPENDED* for *ONE (1) YEAR* from the practice of law, effective upon his receipt of this Decision. Costs against respondents.

Let all the courts, through the Office of the Court Administrator, as well as the Integrated Bar of the Philippines

and the Office of the Bar Confidant be notified of this Decision and be it duly recorded in the personal file of respondent Manuel R. Singson.

SO ORDERED.

Quisumbing (Chairperson), Ynares-Santiago,[*] *Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 158093. June 5, 2009]

ALBERTO IMPERIAL, *petitioner, vs.* **HON. COURT OF APPEALS and the REPUBLIC OF THE PHILIPPINES,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; MOTION FOR EXTENSION OF TIME TO FILE A MOTION FOR RECONSIDERATION, GENERALLY NOT ALLOWED. — In a long line of cases starting with *Habaluyas Enterprises v. Japzon,* we have laid down the following guideline: "Beginning one month after the promulgation of this Resolution, the rule shall be strictly enforced that no motion for extension of time to file a motion for new trial or reconsideration may be filed with the Metropolitan or Municipal Trial Courts, the Regional Trial Courts, and the Intermediate Appellate Court. Such a motion may be filed only in cases pending with the Supreme Court as the court of last resort, which may in its sound discretion either grant or deny

---

[*] Additional member as per Special Order No. 645 dated May 15, 2009.

[**] Additional member as per Special Order No. 635 dated May 7, 2009.

the extension requested." Thus, the general rule is that no motion for extension of time to file a motion for reconsideration is allowed. This rule is consistent with the rule in the 2002 Internal Rules of the Court of Appeals that unless an appeal or a motion for reconsideration or new trial is filed within the 15-day reglementary period, the CA's decision becomes final. Thus, a *motion for extension of time to file a motion for reconsideration* does not stop the running of the 15-day period for the computation of a decision's finality. At the end of the period, a CA judgment becomes final, immutable and beyond our power to review. This rule, however, is not absolute and admits of exceptions based on a liberal reading of the rule. In *Barnes v. Padilla,* (a case very similar to the present case and where the CA found the petitioner guilty of forum shopping), the Court opted for the exception. The petitioner in *Barnes*, instead of filing a motion for reconsideration of the CA's decision, filed a motion for extension of time to file a motion for reconsideration. The CA denied the motion because of the rule disallowing an extension of time to file a motion for reconsideration. This Court, however, looked into the merits of the forum shopping charge and opted to suspend the prohibition against a motion for extension of time to file a motion for reconsideration, after it found the petitioner not liable for forum shopping. In opting for the liberal application of the rules in the interest of equity and justice, the Court held that we "*cannot look with favor on a course of action which would place the administration of justice in a straight jacket for then the result would be a poor kind of justice if there would be justice at all.*"

APPEARANCES OF COUNSEL

Wilfredo A. Matias for petitioner.
The Solicitor General for respondents.

D E C I S I O N

BRION, *J.*:

Alberto Imperial (*petitioner*) filed this petition for *certiorari*[1] to seek the reversal of the January 16, 2003 Decision[2] of the Court of Appeals (*CA*), which in turn reversed and set aside the Order[3] dated March 27, 1996 of the Regional Trial Court (*RTC*),[4] and its subsequent Resolution dated April 10, 2003[5] denying the petitioner's motion for extension of time to file a motion for reconsideration.

BACKGROUND FACTS

Together with Obdulia Cocatana Quintan and Sulpicio Cocatana, the petitioner filed with the RTC a petition for reconstitution of Original Certificate of Title (*OCT*) No. 35796, covering Lot No. 2395 of the Cadastral Survey of Ligao, Albay. The title covered a 3,675-square meter property registered under the names of Sabina Cocatana, Francisco Cocatana and Crispo Cocatana, all of Ligao, Albay.

Sabina died on January 4, 1952 and was survived by two daughters – Obdulia Cocatana Quintan and Dalmacia Cocatana. Francisco, who died on October 30, 1936, was survived by Sulpicio, Consorcia, Marcelina, Marcelino, Trinidad and Jaime. Crispo sold his undivided share to Trinidad Cocatana Gribialde, who subsequently sold this share to Alberto Imperial.

The original copy of OCT No. 35796 was lost or destroyed during the last world war; hence, the petition for its reconstitution.

---

[1] Under Rule 65 of the Rules of Court.

[2] Penned by Associate Justice Bernardo P. Abesamis, with Associate Justices Juan Q. Enriquez, Jr. and Associate Justice Edgardo F. Sundiam (deceased), concurring; *rollo,* pp. 21-25.

[3] *Id.,* pp. 27-28.

[4] 5th Judicial Region, Branch 14, Ligao, Albay; Judge Salvador Sileno, Presiding.

[5] *Rollo,* p. 20.

The source of the reconstitution was the owner's duplicate of the certificate of title.

The RTC scheduled the initial hearing on May 10, 1995 and the notice of initial hearing was published in the March 27, 1995 (Vol. 91, No. 13) and April 3, 1995 (Vol. 91, No. 14) issues of the Official Gazette. On March 27, 1996, the RTC issued an Order granting the petition for reconstitution.[6]

The Office of the Solicitor General (*OSG*) appealed the RTC decision with the CA after noting an irregularity in the Certificate of Publication.[7] The OSG argued that the trial court failed to acquire jurisdiction over the petition for reconstitution because the jurisdictional requirements set by Section 13 of Republic Act (*RA*) No. 26[8] were not sufficiently met, particularly the requirement that the notice of initial hearing be published twice in successive issues of the Official Gazette at least 30 days prior to the hearing. The Certificate of Publication indicated that the two notices of initial hearing were published in the March 27, 1995 and April 3, 1995 issues of the Official Gazette. The OSG found the Certificate of Publication to be irregular because it was dated April 3, 1995, yet it was officially released on March 28, 1995.

In its Decision promulgated on January 16, 2003,[9] the CA agreed with the OSG's contentions. It reasoned that "*the apparent irregularity of the issuance and publication of the notice insofar as the April 3, 1995-notice is concerned tends to strengthen the fact that the required notice to be published twice at least 30 days prior to the hearing was not duly followed.*" The CA concluded that there was no compliance with the publication requirement under RA No. 26, and reversed and set aside the decision of the trial court.

---

[6] *Supra* note 3.

[7] *Id.,* p. 44.

[8] An Act Providing a Special Procedure for the Reconstitution of Torrens Certificate of Title Lost or Destroyed.

[9] *Supra* note 2.

The petitioner received his copy of the CA's Decision on January 29, 2003. On February 11, 2003, he filed a *Motion for Extension of Time to File Motion for Reconsideration.*[10] The petitioner cited the following grounds for the motion for extension of time to file the motion for reconsideration: 1) the preparation of the motion for reconsideration requires the examination of the records of the case, particularly the certificate of publication cited by the CA, and it would take time to review the records of the case, which are still with the CA; and 2) the petitioner will present a certification from the National Printing Office (*NPO*) that will show that there has been compliance with the publication requirement of RA No. 26.

The petitioner filed his motion for reconsideration on March 11, 2003, before the expiration of the extended period he prayed for.[11] The CA denied the motion for extension in its Resolution of April 10, 2003.[12] In the same Resolution, the CA also ordered that the motion for reconsideration expunged from the records.

The petitioner raises the following issues in the petition for *certiorari* he seasonably filed with us:

ISSUES

I.

THE RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DENIED PETITIONER'S MOTION FOR EXTENSION OF TIME TO FILE A MOTION FOR RECONSIDERATION OF ITS DECISION.

II.

RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN

---

[10] *Rollo,* pp. 29-30.

[11] *Id.,* pp. 31-33.

[12] *Supra* note 3.

IT DID NOT RESOLVE THE MOTION FOR RECONSIDERATION THAT WAS, IN FACT, FILED BY PETITIONER ON THE MERITS THEREOF.

The petitioner argues that the Rules are silent on whether a motion for extension of time to file a motion for reconsideration is allowed or prohibited. This implies, according to him, that, while such a motion is generally not allowed, it is also not expressly prohibited. The petitioner also argues that the CA decision was patently erroneous because the NPO sometimes releases issues of the Official Gazette earlier than the official date of issue. The petitioner attached a certification issued by NPO's Director IV, Melanio S. Torio, stating that the NPO releases issues of the Official Gazette early if printing is also finished early.

OUR RULING

We find the petition meritorious.

In a long line of cases starting with *Habaluyas Enterprises v. Japzon*,[13] we have laid down the following guideline:

> Beginning one month after the promulgation of this Resolution, the rule shall be strictly enforced that no motion for extension of time to file a motion for new trial or reconsideration may be filed with the Metropolitan or Municipal Trial Courts, the Regional Trial Courts, and the Intermediate Appellate Court. Such a motion may be filed only in cases pending with the Supreme Court as the court of last resort, which may in its sound discretion either grant or deny the extension requested.

Thus, the general rule is that no motion for extension of time to file a motion for reconsideration is allowed. This rule is consistent with the rule in the 2002 Internal Rules of the Court of Appeals[14] that unless an appeal or a motion for reconsideration or new trial is filed within the 15-day reglementary period, the CA's decision becomes final.[15] Thus, a *motion for extension of time to file a*

---

[13] G.R. No. 70895, May 30, 1986, 142 SCRA 208.

[14] Effective August 22, 2002.

[15] Rule VII of the 2002 Internal Rules of the Court of Appeals states:

Entry of Judgment and Remand of Cases.

Section 1. *Entry of Judgment*. —0 **Unless a motion for reconsideration or new trial is filed or an appeal taken to the Supreme Court**, judgments

motion for reconsideration does not stop the running of the 15-day period for the computation of a decision's finality. At the end of the period, a CA judgment becomes final, immutable and beyond our power to review.

This rule, however, is not absolute and admits of exceptions based on a liberal reading of the rule. In *Barnes v. Padilla*,[16] (a case very similar to the present case and where the CA found the petitioner guilty of forum shopping), the Court opted for the exception. The petitioner in *Barnes*, instead of filing a motion for reconsideration of the CA's decision, filed a motion for extension of time to file a motion for reconsideration. The CA denied the motion because of the rule disallowing an extension of time to file a motion for reconsideration. This Court, however, looked into the merits of the forum shopping charge and opted to suspend the prohibition against a motion for extension of time to file a motion for reconsideration, after it found the petitioner not liable for forum shopping. In opting for the liberal application of the rules in the interest of equity and justice, the Court held that we "*cannot look with favor on a course of action which would place the administration of justice in a straight jacket for then the result would be a poor kind of justice if there would be justice at all.*"

In the present case, the CA apparently made a mountain out of a mole hill over a perceived irregularity in the certificate of publication issued by the NPO on March 28, 1995. This certificate stated that the notice of the petition for reconstitution filed by

---

and final resolutions of the Court shall be entered upon expiration of fifteen (15) days from notice to the parties.

x x x x x x x x x

Sec. 5. *Entry of Judgment and Final Resolution.* — If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgments. The date when the judgment or final resolution becomes executory shall be deemed as the date of its entry. The record shall contain the dispositive part of the judgment or final resolution and shall be signed by the clerk, with a certificate that such judgment or final resolution has become final and executory.

[16] G.R. No. 160753, June 28, 2005, 461 SCRA 539.

Obdulia Cocatana Quintan, Sulpicio Cocatana, and Alberto Imperial was published in the Official Gazette, Volume 91, No. 13, date of issue, March 27, 1995, and No. 14, date of issue, April 3, 1995. The certificate further declared that "the last issue [referring to the April 3, 1995 issue] has been officially released by this Office on March 28, 1995." Because of this, the CA concluded that the requirement of publication of the notice of the petition in two consecutive issues of the Official Gazette 30 days prior to the date of hearing under Section 13 of RA No. 26 was not met. However, the petitioner was able to adequately explain that the NPO regularly releases issues of the Official Gazette even prior to their official dates of issue. Upon the request of the petitioner, the NPO issued a Certification dated February 24, 2003 attesting that:

> This is to certify that, as per record of this office, Volume 91, No. 14, April 3, 1995 issue of the Official Gazette was released for circulation on March 28, 1995.
>
> This is to certify further as our records show, that it is regular/ normal procedure of this office to release issues of the Official Gazette ahead of the date of publication if printing was accomplished earlier than the date of publication.
>
> This certification is being issued upon the request of Atty. ALBERTO IMPERIAL.
>
> Given this 24th day of February 2003.
>
> MELANIO S. TORIO, CESO III
> Director IV

Even without considering the February 24, 2003 certification, as indeed, it was not presented as evidence before the court *a quo*, we find the original certificate of publication devoid of irregularity; additionally it carried no adverse effect on the objective for which publication is required. Even this Court has observed that it is not uncommon among publishing companies to release issues before the actual date of issue reflected in the cover of the publication, presumably to give time for mailing

and distribution.[17] We feel, too, that the petitioner can neither be faulted nor punished for the NPO's act of releasing the April 3, 1995 issue early; it was a matter wholly outside the petitioner's control given that this is a decision wholly for NPO to make. What is important, to the Court's mind, is that the petitioner fulfilled his obligation to cause the publication of the notice of the petition in two consecutive issues of the Official Gazette 30 days prior to the date of hearing. We keenly realize that the early publication of the Official Gazette more than met these requirements, as the publication transpired more than 30 days before the date of hearing. Thus, there is every reason to exercise liberality in the greater interest of justice.

WHEREFORE, premises considered, we hereby *REVERSE and SET ASIDE* the Decision of the CA in CA-G.R. CV No. 54257 dated January 16, 2003. The Decision of the RTC, Branch 14, Ligao, Albay is *REINSTATED*.

SO ORDERED.

Quisumbing (Chairperson), Ynares-Santiago,[*] *Velasco, Jr.,* and *Leonardo-de Castro,*[**] *JJ.,* concur.

---

[17] This has been particularly observed in mailed publications such as Time Magazine, Newsweek or National Geographic.

[*] Designated additional Member of the Second Division per Special Order No. 645 dated May 15, 2009.

[**] Designated additional Member of the Second Division effective May 11, 2009 per Special Order No. 635 dated May 7, 2009.

THIRD DIVISION

[G.R. Nos. 158820-21. June 5, 2009]

STRONGHOLD INSURANCE COMPANY, INCORPORATED, *petitioner, vs.* **TOKYU CONSTRUCTION COMPANY, LTD.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; CONSTRUCTION INDUSTRY ARBITRATION COMMISSION; JURISDICTION; CASE AT BAR. — E.O. 1008 expressly vests in the CIAC original and exclusive jurisdiction over disputes arising from or connected with construction contracts entered into by parties that have agreed to submit their dispute to voluntary arbitration. In this case, the CIAC validly acquired jurisdiction over the dispute. Petitioner submitted itself to the jurisdiction of the Arbitral Tribunal when it signed the TOR. The TOR states: II. STIPULATION/ADMISSION OF FACTS x x x 11. The Construction Industry Arbitration Commission has jurisdiction over the instant case by virtue of Section 12.10 (Arbitration Clause) of the Subcontract Agreement. After recognizing the CIAC's jurisdiction, petitioner cannot be permitted to now question that same authority it earlier accepted, only because it failed to obtain a favorable decision. This is especially true in the instant case since petitioner is challenging the tribunal's jurisdiction for the first time before this Court.

2. ID.; ID.; APPEALS; POINTS OF LAW, THEORIES, ISSUES AND ARGUMENTS NOT BROUGHT TO THE ATTENTION OF THE TRIAL COURT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL. — Settled is the rule that points of law, theories, issues, and arguments not adequately brought to the attention of the trial court need not be, and ordinarily will not be, considered by a reviewing court. They cannot be raised for the first time on appeal. To allow this would be offensive to the basic rules of fair play, justice, and due process.

3. ID.; COURTS; SUPREME COURT; NOT A TRIER OF FACTS. — We have repeatedly held that we are not a trier of facts. We generally rely upon, and are bound by, the conclusions

on factual matters made by the lower courts, which are better equipped and have better opportunity to assess the evidence first-hand, including the testimony of the witnesses.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; SURETYSHIP; DEFINED. — A contract of suretyship is an agreement whereby a party, called the surety, guarantees the performance by another party, called the principal or obligor, of an obligation or undertaking in favor of another party, called the obligee. By its very nature, under the laws regulating suretyship, the liability of the surety is joint and several but is limited to the amount of the bond, and its terms are determined strictly by the terms of the contract of suretyship in relation to the principal contract between the obligor and the obligee.

5. ID.; ID.; ID.; NATURE; EXPLAINED. — We wish to stress herein the nature of suretyship, which actually involves two types of relationship — the underlying principal relationship between the creditor (respondent) and the debtor (Gabriel), and the accessory surety relationship between the principal (Gabriel) and the surety (petitioner).The creditor accepts the surety's solidary undertaking to pay if the debtor does not pay. Such acceptance, however, does not change in any material way the creditor's relationship with the principal debtor nor does it make the surety an active party to the principal creditor-debtor relationship. In other words, the acceptance does not give the surety the right to intervene in the principal contract. The surety's role arises only upon the debtor's default, at which time, it can be directly held liable by the creditor for payment as a solidary obligor. The surety is considered in law as possessed of the identity of the debtor in relation to whatever is adjudged touching upon the obligation of the latter. Their liabilities are so interwoven as to be inseparable. Although the contract of a surety is, in essence, secondary only to a valid principal obligation, the surety's liability to the creditor is direct, primary, and absolute; he becomes liable for the debt and duty of another although he possesses no direct or personal interest over the obligations nor does he receive any benefit therefrom. Indeed, a surety is released from its obligation when there is a material alteration of the principal contract in connection with which the bond is given, such as a change which imposes a new obligation on the promising party, or which takes away some obligation already imposed, or one which

changes the legal effect of the original contract and not merely its form. However, a surety is not released by a change in the contract, which does not have the effect of making its obligation more onerous.

APPEARANCES OF COUNSEL

Kapunan Lotilla Flores Garcia & Castillo Law Offices for petitioner.

Sycip Salazar Hernandez & Gatmaitan for respondent.

D E C I S I O N

NACHURA, *J.*:

Assailed in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the Court of Appeals (CA) Decision[1] dated January 21, 2003 and its Resolution[2] dated June 25, 2003.

The factual and procedural antecedents follow:

Respondent Tokyu Construction Company, Ltd., a member of a consortium of four (4) companies, was awarded by the Manila International Airport Authority a contract for the construction of the Ninoy Aquino International Airport (NAIA) Terminal 2 (also referred to as "the project"). On July 2, 1996, respondent entered into a Subcontract Agreement[3] with G.A. Gabriel Enterprises, owned and managed by Remedios P. Gabriel (Gabriel), for the construction of the project's Storm Drainage System (SDS) for ₱33,007,752.00 and Sewage Treatment Plant (STP) for ₱23,500,000.00, or a total contract price of ₱56,507,752.00. The parties agreed that the construction of the SDS and STP would be completed on August 10, 1997 and May 31, 1997, respectively.[4]

---

[1] Penned by Associate Justice Salvador J. Valdez, Jr., with Associate Justices Edgardo P. Cruz and Mario L. Guariña III, concurring; *rollo*, pp. 75-112.

[2] *Id.* at 114-115.

[3] CA *rollo* (CA-G.R. SP No. 55167), pp. 116-138.

[4] *Id.* at 134.

In accordance with the terms of the agreement, respondent paid Gabriel 15% of the contract price, as advance payment, for which the latter obtained from petitioner Stronghold Insurance Company, Inc. Surety Bonds[5] dated February 26, 1996[6] and April 15, 1996,[7] to guarantee its repayment to respondent. Gabriel also obtained from petitioner Performance Bonds[8] to guarantee to respondent due and timely performance of the work.[9] Both bonds were valid for a period of one year from date of issue.

In utter defiance of the parties' agreements, Gabriel defaulted in the performance of her obligations. On February 10, 1997, in a letter[10] sent to Gabriel, respondent manifested its intention to terminate the subcontract agreement. Respondent also demanded that petitioner comply with its undertaking under its bonds.

On February 26, 1997, both parties (respondent and Gabriel) agreed to revise the scope of work, reducing the contract price for the SDS phase from ₱33,007,752.00 to ₱1,175,175.00[11] and the STP from ₱23,500,000.00 to ₱11,095,930.50,[12] fixing the completion time on May 31, 1997.

Gabriel thereafter obtained from Tico Insurance Company, Inc. (Tico) Surety[13] and Performance[14] Bonds to guarantee

---

[5] Surety Bond Nos. 065493 and 068189; *id.* at 140, 142.

[6] For ₱4,951,162.80.

[7] For ₱3,525,000.00.

[8] Performance Bond No. 43601 dated February 26, 1996 for ₱3,300,775.20; and Performance Bond No. 43608 dated April 15, 1996 for ₱2,350,000.00.

[9] CA *rollo* (CA-G.R. SP No. 55167), pp. 139, 141.

[10] Exh. "BB".

[11] CA *rollo* (CA-G.R. SP No. 55167), pp. 145-147.

[12] *Id.* at 148-154.

[13] For ₱4,951,162.80; *id.* at 144.

[14] For ₱3,300,775.20; CA *rollo* (CA-G.R. SP No. 55167), p. 143.

the repayment of the advance payment given by respondent to Gabriel and the completion of the work for the SDS, respectively.

Still, Gabriel failed to accomplish the works within the agreed completion period. Eventually, on April 26, 1997, Gabriel abandoned the project. On August 8, 1997, respondent served a letter[15] upon Gabriel terminating their agreement since the latter had only completed 63.48% of the SDS project, valued at ₱744,965.00; and 46.60% of the STP, valued at ₱5,171,032.48. Respondent thereafter demanded from Gabriel the return of the balance of the advance payment. Respondent, likewise, demanded the payment of the additional amount that it incurred in completing the project.[16] Finally, respondent made formal demands against petitioner and Tico to make good their obligations under their respective performance and surety bonds. However, all of them failed to heed respondent's demand. Hence, respondent filed a complaint[17] against petitioner, Tico, and Gabriel, before the Construction Industry Arbitration Commission (CIAC).

In the complaint, respondent prayed that Gabriel, Tico, and petitioner be held jointly and severally liable for the payment of the additional costs it incurred in completing the project covered by the subcontract agreement; for liquidated damages; for the excess downpayment paid to Gabriel; for exemplary damages; and for attorney's fees.[18]

Gabriel denied liability and argued that the delay in the completion of the project was caused by respondent. She also contended that the original subcontract agreement was novated by the revised scope of work and completion schedule. To counter respondent's monetary demands, she claimed that it was, in fact, respondent who had an unpaid balance.

---

[15] Annex "J" of the Complaint.

[16] CA *rollo* (CA-G.R. SP No. 54920), p. 19.

[17] CA *rollo* (CA-G.R. SP No. 55167), pp. 155-168.

[18] *Id.* at 166-167.

For its part, Tico averred that it actually treated respondent's demand as a claim on the performance and surety bonds it issued; but it could not make payment since the claim was still subject to determination, findings, and recommendation of its assigned independent adjuster.[19]

On the other hand, petitioner interposed the following special and affirmative defenses: 1) the surety and performance bonds had expired; 2) the premium on the bonds had not been paid by Gabriel; 3) the contract for which the bonds were issued was set aside/novated; 4) the requisite notices were not made which thus barred respondent's claims against it; and 5) the damages claimed were not arbitrable.[20]

On February 5, 1999, the parties signed the Terms of Reference[21] (TOR) wherein their admission of facts, their respective positions and claims, the issues to be determined, and the amount of arbitration fees were summarized and set forth.

On August 24, 1999, the CIAC rendered a decision,[22] the dispositive portion of which reads:

WHEREFORE, award is hereby made as follows:

1. On Tokyu's claims for cost overrun and cost of materials, equipment, manpower contributed prior to alleged takeover, Gabriel is found liable to pay Tokyu the amount of ₱1,588,527.00.

2. On Tokyu's claim of liquidated damages, Gabriel is found liable to pay Tokyu the amount of ₱662,666.44.

3. On Tokyu's claim against Tico, we find Tico to be jointly and severally liable with Gabriel on its Performance Bond for the payment of the amounts stated in numbers [1] and [2] above but its liability to Tokyu shall not exceed the amount of ₱238,401.39 on its performance bond. The claim against Tico on its Surety Bond is hereby dismissed.

---

[19] *Id.* at 174-175.

[20] *Id.* at 691.

[21] CA *rollo* (CA-G.R. No. 54920), pp. 106-111.

[22] *Id.* at 17-40.

4. With regard to the claim for the return of the unrecouped down payment, we find that Gabriel is liable to pay Tokyu the amount [of] ₱7,588,613.18.

5. With regard to Tokyu's claim against Stronghold on its Surety Bonds, we find Stronghold liable jointly and severally with Gabriel for the payment of the unrecouped down payment but only up to the amount of ₱6,701,063.60. The claim against Stronghold on its Performance Bonds is hereby dismissed.

6. The counterclaim of Gabriel against Tokyu is not contested. Tokyu is held liable to pay Gabriel on her counterclaim of ₱1,007,515.78.

7. The net amount due Gabriel for its unpaid progress billing is ₱1,190,108.41. Tokyu is held liable to pay this amount to Gabriel.

The amount adjudged in favor of Tokyu against Gabriel is ₱9,642,182.43. The amount adjudged in favor of Gabriel against Tokyu is ₱2,197,624.19. Offsetting these two amounts, there is a net award in favor of Tokyu of ₱7,642,182.43. Payment of this amount or any portion thereof shall inure to the benefit of and reduce *pro tanto* the liability of the respondents sureties. (Art. 1217, Civil Code)

All other claims or counterclaims not included in the foregoing disposition are hereby denied. The costs of arbitration shall be shared by the parties pro rata on the basis of their claims and counterclaims as reflected in the TOR.

SO ORDERED.[23]

The CIAC refused to resolve the issue of novation since respondent had already terminated the agreement by sending a letter to Gabriel. It further held that petitioner's liabilities under the surety and performance bonds were not affected by the revision of the scope of work, contract price, and completion time.

Petitioner and respondent separately appealed the CIAC decision to the CA via a petition for review under Rule 43 of the Rules of Court. The appeals were docketed as CA-G.R. SP Nos. 54920 (petitioner) and 55167 (respondent) which were later consolidated. On January 21, 2003, the CA rendered a

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

decision[24] modifying the awards made by the Arbitral Tribunal, thus:

WHEREFORE, the appealed decision/award of the Arbitral Tribunal is hereby MODIFIED in that:

1. On TOKYU's claim for liquidated damages, GABRIEL is found liable to pay TOKYU the amount of ₱1,699,843.95.

2. STRONGHOLD and TICO are ordered to pay TOKYU from their respective performance bonds, jointly and severally with GABRIEL the cost of overrun and liquidated damages in the amount of ₱1,588,570.00 and ₱1,699,843.95 or the total amount of ₱3,288,370.95 but TICO's liability for liquidated damages shall be limited only to those accruing from the SDS phase of the Project and only in the amount of ₱70,992.77.

3. STRONGHOLD is further ordered to pay TOKYU from its surety bonds, jointly and severally with GABRIEL, the total unrecouped downpayments in the amount of ₱7,588,613.18.

4. The aggregate amount adjudged in favor of TOKYU against GABRIEL is ₱10,876,984.13 while the total amount adjudged in favor of Gabriel is ₱2,197,624.19. Offsetting these two (2) amounts against each other, there is a net award in favor of TOKYU in the amount of ₱8,679,359.94. Payment of this net amount or any portion thereof by GABRIEL shall in (sic) inure to the benefit and reduce *pro tanto* the liability of the sureties STRONGHOLD and TICO.

In all other respects, the same appealed decision/award is AFFIRMED.

No pronouncement as to costs.

SO ORDERED.[25]

Hence, the instant petition, anchored on the following grounds:

5.1. THE COURT OF APPEALS ERRED IN HOLDING STRONGHOLD LIABLE ON ITS BONDS AFTER THE BONDS HAVE BEEN INVALIDATED, LAPSED AND EXPIRED.

5.2. THE COURT OF APPEALS ERRED IN HOLDING STRONGHOLD LIABLE ON ITS BONDS WHICH WERE ISSUED WITHOUT THE EXISTENCE OF ANY PRINCIPAL CONTRACT.

---

[24] *Supra* note 1.

[25] CA *rollo* (CA-G.R. SP No. 54920), pp. 195-196.

5.3. THE COURT OF APPEALS ERRED IN HOLDING STRONGHOLD LIABLE ON ITS BONDS AND CONFUSED THE LEGAL EFFECTS, IMPORT AND SIGNIFICANCE BETWEEN A GUARANTY (UNDER THE CIVIL CODE) AND SURETY UNDER THE INSURANCE CODE.

5.4. THE COURT OF APPEALS ERRED IN HOLDING STRONGHOLD LIABLE ON ITS BONDS WHERE THE PRINCIPAL CONTRACT UNDER WHICH THE BONDS WERE ISSUED HAD BEEN NOVATED.[26]

Apart from the errors specifically assigned in its petition and memorandum, petitioner asks this Court to address the issue of whether the CIAC had jurisdiction to take cognizance of insurance claims. Petitioner insists that respondent's claim against it is not related to the construction dispute, hence, it should have been lodged with the regular courts.

The argument is misplaced.

Section 4 of Executive Order (E.O.) No. 1008, or the *Construction Industry Arbitration Law*, provides:

SEC. 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 time and delays, maintenance and defects, payment, default of employer or contractor, and changes in contract cost.

Excluded from the coverage of the law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

---

[26] *Rollo,* pp. 61-62.

Clearly, E.O. 1008 expressly vests in the CIAC original and exclusive jurisdiction over disputes arising from or connected with construction contracts entered into by parties that have agreed to submit their dispute to voluntary arbitration.[27]

In this case, the CIAC validly acquired jurisdiction over the dispute. Petitioner submitted itself to the jurisdiction of the Arbitral Tribunal when it signed the TOR.[28] The TOR states:

> II. STIPULATION/ADMISSION OF FACTS
>
> xxx xxx xxx
>
> 11. The Construction Industry Arbitration Commission has jurisdiction over the instant case by virtue of Section 12.10 (Arbitration Clause) of the Subcontract Agreement.[29]

After recognizing the CIAC's jurisdiction, petitioner cannot be permitted to now question that same authority it earlier accepted, only because it failed to obtain a favorable decision. This is especially true in the instant case since petitioner is challenging the tribunal's jurisdiction for the first time before this Court.

With the issue of jurisdiction resolved, we proceed to the merits of the case.

It is well to note that Gabriel did not appeal the CIAC decision and Tico's petition before this Court has been denied with finality.[30] Hence, the CIAC and CA decisions have become final and executory as to Gabriel and Tico, and in that respect, they shall not be disturbed by this Court.

---

[27] *Prudential Guarantee and Assurance, Inc. v. Equinox Land Corporation*, G.R. Nos. 152505-06, September 13, 2007, 533 SCRA 257, 266; *Gammon Philippines, Inc. v. Metro Rail Transit Development Corporation*, G.R. No. 144792, January 31, 2006, 481 SCRA 209, 219-220.

[28] *Philrock, Inc. v. Construction Industry Arbitration Commission*, 412 Phil. 236, 246 (2001).

[29] CA *rollo* (CA-G.R. SP No. 54920), pp. 107-108.

[30] Denied with finality on May 16, 2003.

Thus, the sole issue that confronts us is whether or not petitioner is liable under its bonds. To resolve the same, we need to inquire into the following corollary issues:

1) whether the bonds (surety and performance) are null and void having been secured without a valid and existing principal contract;

2) whether the bonds were invalidated by the modification of the subcontract agreement without notice to the surety; and

3) whether the bonds for which petitioner was being made liable already expired.

Initially, petitioner argued that the surety and performance bonds (which were accessory contracts) were of no force and effect since they were issued ahead of the execution of the principal contract. To support this contention, it now adds that the bonds were actually secured through misrepresentation, as petitioner was made to believe that the principal contract was already in existence when the bonds were issued, but it was, in fact, yet to be executed.[31]

We are not persuaded.

In the first place, as correctly observed by respondent, the claim of misrepresentation was never raised by petitioner as a defense in its Answer. Settled is the rule that points of law, theories, issues, and arguments not adequately brought to the attention of the trial court need not be, and ordinarily will not be, considered by a reviewing court. They cannot be raised for the first time on appeal. To allow this would be offensive to the basic rules of fair play, justice, and due process.[32]

Besides, even if we look into the merit of such contention, the CA is correct in holding that there was no evidentiary support of petitioner's claim of misrepresentation.[33] This being a factual

---

[31] *Rollo*, pp. 297-298.

[32] *Eastern Assurance and Surety Corporation v. Con-Field Construction and Development Corporation*, G.R. No. 159731, April 22, 2008, 552 SCRA 271, 279-280.

[33] *Rollo*, p. 107.

issue, we respect the finding made in the assailed decision. We have repeatedly held that we are not a trier of facts. We generally rely upon, and are bound by, the conclusions on factual matters made by the lower courts, which are better equipped and have better opportunity to assess the evidence first-hand, including the testimony of the witnesses.[34]

Petitioner also contends that the principal contract (original subcontract agreement) was novated by the revised scope of work and contract schedule, without notice to the surety, thereby rendering the bonds invalid and ineffective. Finally, it avers that no liability could attach because the subject bonds expired and were replaced by the Tico bonds.

Again, we do not agree.

Petitioner's liability was not affected by the revision of the contract price, scope of work, and contract schedule. Neither was it extinguished because of the issuance of new bonds procured from Tico.

As early as February 10, 1997, respondent already sent a letter[35] to Gabriel informing the latter of the delay incurred in the performance of the work, and of the former's intention to terminate the subcontract agreement to prevent further losses. Apparently, Gabriel had already been in default even prior to the aforesaid letter; and demands had been previously made but to no avail. By reason of said default, Gabriel's liability had arisen; as a consequence, so also did the liability of petitioner as a surety arise.

A contract of suretyship is an agreement whereby a party, called the surety, guarantees the performance by another party, called the principal or obligor, of an obligation or undertaking in favor of another party, called the obligee.[36] By its very nature, under

---

[34] *Japan Airlines v. Simangan,* G.R. No. 170141, April 22, 2008, 552 SCRA 341,357.

[35] Exh. "BB".

[36] *Intra-Strata Assurance Corporation v. Republic*, G.R. No. 156571, July 9, 2008, 557 SCRA 363, 368-369; *Prudential Guarantee and Assurance, Inc. v. Equinox Land Corporation, supra* note 27, at 267.

the laws regulating suretyship, the liability of the surety is joint and several but is limited to the amount of the bond, and its terms are determined strictly by the terms of the contract of suretyship in relation to the principal contract between the obligor and the obligee.[37]

By the language of the bonds issued by petitioner, it guaranteed the full and faithful compliance by Gabriel of its obligations in the construction of the SDS and STP specifically set forth in the subcontract agreement, and the repayment of the 15% advance payment given by respondent. These guarantees made by petitioner gave respondent the right to proceed against the former following Gabriel's non-compliance with her obligation.

Confusion, however, transpired when Gabriel and respondent agreed, on February 26, 1997, to reduce the scope of work and, consequently, the contract price. Petitioner viewed such revision as novation of the original subcontract agreement; and since no notice was given to it as a surety, it resulted in the extinguishment of its obligation.

We wish to stress herein the nature of suretyship, which actually involves two types of relationship — the underlying principal relationship between the creditor (respondent) and the debtor (Gabriel), and the accessory surety relationship between the principal (Gabriel) and the surety (petitioner).The creditor accepts the surety's solidary undertaking to pay if the debtor does not pay. Such acceptance, however, does not change in any material way the creditor's relationship with the principal debtor nor does it make the surety an active party to the principal creditor-debtor relationship. In other words, the acceptance does not give the surety the right to intervene in the principal contract. The surety's role arises only upon the debtor's default, at which time, it can be directly held liable by the creditor for payment as a solidary obligor.[38]

---

[37] *Intra-Strata Assurance Corporation v. Republic*, *supra*, at 368-369.

[38] *Id.* at 375-376.

The surety is considered in law as possessed of the identity of the debtor in relation to whatever is adjudged touching upon the obligation of the latter. Their liabilities are so interwoven as to be inseparable. Although the contract of a surety is, in essence, secondary only to a valid principal obligation, the surety's liability to the creditor is direct, primary, and absolute; he becomes liable for the debt and duty of another although he possesses no direct or personal interest over the obligations nor does he receive any benefit therefrom.[39]

Indeed, a surety is released from its obligation when there is a material alteration of the principal contract in connection with which the bond is given, such as a change which imposes a new obligation on the promising party, or which takes away some obligation already imposed, or one which changes the legal effect of the original contract and not merely its form. However, a surety is not released by a change in the contract, which does not have the effect of making its obligation more onerous.[40]

In the instant case, the revision of the subcontract agreement did not in any way make the obligations of both the principal and the surety more onerous. To be sure, petitioner never assumed added obligations, nor were there any additional obligations imposed, due to the modification of the terms of the contract. Failure to receive any notice of such change did not, therefore, exonerate petitioner from its liabilities as surety.

Neither can petitioner be exonerated from liability simply because the bonds it issued were replaced by those issued by Tico.

The Court notes that petitioner issued four bonds, namely: 1) Performance Bond No. 43601 which guaranteed the full and faithful compliance of Gabriel's obligations for the construction of the SDS; 2) Performance Bond No. 13608 for the construction of the STP; 3) Surety Bond No. 065493 which

---

[39] *Trade and Investment Development Corporation of the Philippines v. Roblett Industrial Construction Corp.*, G.R. No. 139290, November 11, 2005, 474 SCRA 510, 531.

[40] *Intra-Strata Assurance Corporation v. Republic*, *supra* note 36, at 374.

guaranteed the repayment of the 15% advance payment for the SDS project; and 4) Surety Bond No. 068189 for the STP project. Under the surety agreements, the first and third bonds were to expire on February 25, 1997 or one year from date of issue of the bonds, while the second and fourth bonds were to expire one year from April 15, 1996.

The impending expiration of the first and third bonds prompted respondent to require Gabriel to arrange for their (the bonds) immediate revalidation. Thus, in a letter dated February 21, 1997, respondent asked that the performance bond for the SDS phase be extended until May 31, 1998; and for the surety bond, until June 30, 1997.[41] Contrary to petitioner's contention, this should not be construed as a recognition on the part of respondent that the bonds were no longer valid by reason of the modification of the subcontract agreement. There was indeed a need for the renewal of petitioner's bonds because they were about to expire, pursuant to the terms of the surety agreements. Since petitioner refused to revalidate the aforesaid bonds, Gabriel was constrained to secure the required bonds from Tico which issued, on February 25, 1997, the new performance and surety bonds (for the SDS phase) replacing those of petitioner's. The performance bond was coterminous with the final acceptance of the project, while the surety bond was to expire on February 26, 1998.

Notwithstanding the issuance of the new bonds, the fact remains that the event insured against, which is the default in the performance of Gabriel's obligations set forth in the subcontract agreement, already took place. By such default, petitioner's liability set in. Thus, petitioner remains solidarily liable with Gabriel, subject only to the limitations on the amount of its liability as provided for in the Bonds themselves.

Considering that the performance bonds issued by petitioner were valid only for a period of one year, its liabilities should further be limited to the period prior to the expiration date of said bonds. As to Performance Bond No. 43601 for the SDS project, the same was valid only for one year from February

[41] CA *rollo* (CA-G.R. SP No. 54920), p. 44.

26, 1996; while Performance Bond No. 13608 was valid only for one year from April 15, 1996. Logically, petitioner can be held solidarily liable with Gabriel only for the cost overrun and liquidated damages accruing during the above periods. The assailed CA decision is, therefore, modified in this respect.

WHEREFORE, premises considered, the petition is *DENIED*. The Decision of the Court of Appeals dated January 21, 2003 and its Resolution dated June 25, 2003 are *AFFIRMED* with the *MODIFICATION* that petitioner Stronghold Insurance, Company, Inc. is jointly and severally liable with Remedios P. Gabriel only for the cost overrun and liquidated damages accruing during the effectivity of its bonds.

All other aspects of the assailed decision *STAND*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 159186. June 5, 2009]

JESSE Y. YAP, *petitioner, vs.* **HON. MONICO G. CABALES, Presiding Judge, Regional Trial Court, Branch 35, General Santos City; MUNICIPAL TRIAL COURT, Branch 1, General Santos City; COURT OF APPEALS, PEOPLE OF THE PHILIPPINES, JOVITA DIMALANTA, and MERGYL MIRABUENO,** *respondents.*

---

[*] Additional member in lieu of Associate Justice Conchita Carpio Morales per Special Order No. 646 dated May 15, 2009.

[**] Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 631 dated April 29, 2009.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF CIVIL ACTION; PREJUDICIAL QUESTION; ELEMENTS; ELUCIDATED. — A prejudicial question generally exists in a situation where a civil action and a criminal action are both pending, and there exists in the former an issue that must be preemptively resolved before the latter may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. The rationale behind the principle of prejudicial question is to avoid two conflicting decisions. It has two essential elements: (i) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (ii) the resolution of such issue determines whether or not the criminal action may proceed. If both civil and criminal cases have similar issues, or the issue in one is intimately related to the issues raised in the other, then a prejudicial question would likely exist, provided the other element or characteristic is satisfied. It must appear not only that the civil case involves the same facts upon which the criminal prosecution would be based, but also that the resolution of the issues raised in the civil action would be necessarily determinative of the guilt or innocence of the accused. If the resolution of the issue in the civil action will not determine the criminal responsibility of the accused in the criminal action based on the same facts, or if there is no necessity that the civil case be determined first before taking up the criminal case, the civil case does not involve a prejudicial question. Neither is there a prejudicial question if the civil and the criminal action can, according to law, proceed independently of each other.

2. ID.; ID.; ID.; ID.; DOES NOT EXIST IN CASE AT BAR. — The issue in the criminal cases is whether the petitioner is guilty of violating B.P. Blg. 22, while in the civil case, it is whether the private respondents are entitled to collect from the petitioner the sum or the value of the checks that they have rediscounted from Evelyn. The resolution of the issue raised in the civil action is not determinative of the guilt or innocence of the accused in the criminal cases against him, and there is no necessity that the civil case be determined first before taking up the criminal cases. In the aforementioned civil actions, even if

petitioner is declared not liable for the payment of the value of the checks and damages, he cannot be adjudged free from criminal liability for violation of B.P. Blg. 22. The mere issuance of worthless checks with knowledge of the insufficiency of funds to support the checks is in itself an offense.

3. CRIMINAL LAW; BATAS PAMBANSA BILANG 22; PUNISHES THE ISSUANCE OF A BOUNCING CHECK AND NOT THE PURPOSE FOR WHICH IT WAS ISSUED OR THE TERMS RELATING TO ITS ISSUANCE. — To determine the reason for which checks are issued, or the terms and conditions for their issuance, will greatly erode the faith the public reposes in the stability and commercial value of checks as currency substitutes, and bring about havoc in trade and in banking communities. So what the law punishes is the issuance of a bouncing check and not the purpose for which it was issued or the terms and conditions relating to its issuance. The mere act of issuing a worthless check is *malum prohibitum.*

4. REMEDIAL LAW; CRIMINAL PROCEDURE; TRIAL; ALL THE DEFENSES AVAILABLE TO THE ACCUSED SHOULD BE INVOKED IN THE TRIAL; CASE AT BAR. — The validity and merits of a party's defense and accusation, as well as the admissibility and weight of testimonies and evidence brought before the court, are better ventilated during trial proper. Precisely, the reason why a state has courts of law is to ascertain the respective rights of the parties, to examine and to put to test all their respective allegations and evidence through a well designed machinery termed "*trial.*" Thus, all the defenses available to the accused should be invoked in the trial of the criminal cases. This court is not the proper *forum* that should ascertain the facts and decide the case for violation of B.P. Blg. 22 filed against the petitioner.

APPEARANCES OF OCUNSEL

Mark Anthony B. Ploteña for petitioner.
The Solicitor General for public respondents.
Llaguno and Ong Law Office for private respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court with prayer for the issuance of a writ of *preliminary injunction* and/or issuance of *status quo order* seeking to annul and set aside the Resolution[1] of the Court of Appeals (CA) dated July 17, 2003 denying petitioner's motion for reconsideration of the Decision[2] dated April 30, 2003 in CA-G.R. SP No. 68250.

The facts of the case are as follows:

Petitioner Jesse Y. Yap and his spouse Bessie Yap are engaged in the real estate business through their company Primetown Property Group.

Sometime in 1996, petitioner purchased several real properties from a certain Evelyn Te (Evelyn). In consideration of said purchases, petitioner issued several Bank of the Philippine Islands (BPI) postdated checks to Evelyn. Thereafter, spouses Orlando and Mergyl Mirabueno and spouses Charlie and Jovita Dimalanta, rediscounted the checks from Evelyn.

In the beginning, the first few checks were honored by the bank, but in the early part of 1997, when the remaining checks were deposited with the drawee bank, they were dishonored for the reason that the *"Account is Closed."* Demands were made by Spouses Mirabueno and Spouses Dimalanta to the petitioner to make good the checks. Despite this, however, the latter failed to pay the amounts represented by the said checks.

On December 8, 1997, Spouses Mirabueno filed a civil action for collection of sum of money, damages and attorney's fee with prayer for the issuance of a writ of preliminary attachment

---

[1] Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Salvador J. Valdez, Jr. and Danilo B. Pine, concurring, *rollo*, pp. 30-32.

[2] *Id.* at 33-41.

against petitioner before the Regional Trial Court (RTC) of General Santos City, docketed as Civil Case No. 6231.[3] On December 15, 1997, Spouses Dimalanta followed suit and instituted a similar action, which was docketed as Civil Case No. 6238.[4]

Subsequently, on various dates, the Office of the City Prosecutor of General Santos City filed several informations for violation of *Batas Pambansa Bilang (B.P. Blg.) 22* against the petitioner with the Municipal Trial Court in Cities (MTCC), General Santos City. The criminal complaints were docketed as Criminal Case Nos. 34873, 34874, 34862 to 34869, and Criminal Case No. 35522-I.[5]

In the criminal cases, petitioner filed separate motions to suspend proceedings on account of the existence of a prejudicial question and motion to exclude the private prosecutor from participating in the proceedings.[6] Petitioner prayed that the proceedings in the criminal cases be suspended until the civil cases pending before the RTC were finally resolved.

The MTCC, in its Orders[7] dated June 21, 2000 and July 4, 2000, denied the motions for lack of merit. Petitioner filed a Partial Motion for Reconsideration[8] relative to Criminal Case Nos. 34873, 34874, 34862 to 34869 and a Motion for Reconsideration of the Part of the Order Denying the Motion to Suspend Proceedings on Account of the Existence of a Prejudicial Question relative to Criminal Case No. 35522-I.[9] The subsequent motions were denied in the Order[10] dated October 18, 2000.

---

[3] *Id.* at 97-103.

[4] *Id.* at 90-96.

[5] *Id.* at 68-89.

[6] *Id.* at 219-223; 224-228.

[7] *Id.* at 165; 166.

[8] *Id.* at 229-235.

[9] *Id.* at 236-238.

[10] *Id.* at 167-168.

Aggrieved, petitioner filed a Petition for *Certiorari* with a Prayer for the Issuance of a Writ of Preliminary Injunction[11] before the RTC, docketed as SPL. Civil Case No. 539, imputing grave abuse of discretion on the part of the MTCC Judge. On July 2, 2001, the RTC issued an Order[12] denying the petition.

Petitioner then filed a Motion for Reconsideration,[13] which was denied in an Order dated October 18, 2001.[14]

Thereafter, petitioner filed with the CA a Petition for *Certiorari Prohibition* and *Mandamus* with Urgent Prayer for the Issuance of *Status Quo* Order and Writ of Preliminary Injunction,[15] docketed as CA-G.R. SP No. 68250.

On April 30, 2003, the CA rendered a Decision[16] dismissing the petition for lack of merit. The CA opined that Civil Case Nos. 6231 and 6238 did not pose a prejudicial question to the prosecution of the petitioner for violation of B.P. Blg. 22.

The CA ruled:

> In the instant case, a careful perusal of Civil Cases Nos. 6231 and 6238 reveals that the issue involved therein is not the validity of the sale as incorrectly pointed out by the petitioner, but it is, whether or not the complainants therein are entitled to collect from the petitioner the sum or the value of the checks which they have rediscounted from Evelyn Te. It behooves this Court to state that the sale and the rediscounting of the checks are two transactions, separate and distinct from each other. It so happened that in the subject civil cases it is not the sale that is in question, but rather the rediscounting of the checks. Therefore, petitioner's contention that the main issue involved in said civil cases is the validity of the sale stands on hollow ground. Furthermore, if it is indeed the validity

---

[11] *Id.* at 152-164.

[12] *Id.* at 66-67.

[13] *Id.* at 45.

[14] *Id*.

[15] *Id.* at 44-65.

[16] *Id.* at 33-41.

of the sale that is contested in the subject civil cases, then, We cannot fathom why the petitioner never contested such sale by filing an action for the annulment thereof or at least invoked or prayed in his answer that the sale be declared null and void. Accordingly, even if Civil Cases Nos. 6231 and 6238 are tried and the resolution of the issues therein is had, it cannot be deduced therefrom that the petitioner cannot be held liable anymore for violation of B.P. Blg. 22.[17]

Petitioner filed a Motion for Reconsideration,[18] which was denied in the Order[19] dated July 17, 2003.

Hence, the petition assigning the following errors:

1. THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THERE IS NO PREJUDICIAL QUESTION IN THE CIVIL CASES (FOR COLLECTION OF SUMS OF MONEY INSTITUTED BY PRIVATE RESPONDENTS OVER CHECKS ISSUED BY THE PETITIONER, CIVIL CASE NOS. 6238 AND 6231) THAT WOULD WARRANT SUSPENSION OF THE CRIMINAL CASES (CASE NO. 35522-1, FOR VIOLATION OF B.P. 22, SUBJECT OF WHICH ARE THE VERY SAME CHECKS).

2. THE HONORABLE COURT OF APPEALS ERRED IN NOT GRANTING THE PRAYER FOR THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION AND/OR STATUS QUO ORDER.[20]

The main contention of the petitioner is that a prejudicial question, as defined by law and jurisprudence, exists in the present case. It is the petitioner's assertion that Civil Case Nos. 6231 and 6238 for collection of sum of money and damages were filed ahead of the criminal cases for violation of B.P. Blg. 22. He further alleged that, in the pending civil cases, the issue as to whether private respondents are entitled to collect from the petitioner despite the lack of consideration, is an issue that is a logical antecedent to the criminal cases for violation of B.P. Blg. 22. For if the court rules that there is no valid

---

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

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

[19] *Id.* at 30-32.

[20] *Id.* at 22.

consideration for the check's issuance, as petitioner contends, then it necessarily follows that he could not also be held liable for violation of B.P. Blg. 22.

Petitioner further avers that B.P. Blg. 22 specifically requires, among other elements, that the check should have been issued for account or for value. There must be a valid consideration; otherwise, no violation of the said law could be rightfully pursued. Petitioner said that the reason for the dishonor of the checks was his order to the drawee bank to stop payment and to close his account in order to avoid necessary penalty from the bank. He made this order due to the failure of Evelyn to deliver to him the titles to the purchased properties to him.

On the other hand, the Office of the Solicitor General (OSG) contends that there is no prejudicial question in Civil Case Nos. 6231 and 6238 which would warrant the suspension of the proceedings in the criminal cases for violation of B.P. Blg. 22 against the petitioner. The issue in the civil cases is not the validity of the sale between the petitioner and Evelyn, but whether the complainants therein are entitled to damages arising from the checks. These checks were issued by the petitioner in favor of Evelyn, who, thereafter, negotiated the same checks to private complainants. The checks were subsequently dishonored due to insufficiency of funds. The OSG maintains that the resolution of such issue has absolutely no bearing on the issue of whether petitioner may be held liable for violation of B.P. Blg. 22.[21]

The present case hinges on the determination of whether there exists a prejudicial question that necessitates the suspension of the proceedings in the MTCC.

We find that there is none and, thus, we resolve to deny the petition.

A prejudicial question generally exists in a situation where a civil action and a criminal action are both pending, and there exists in the former an issue that must be preemptively resolved before the latter may proceed, because howsoever the issue

[21] *Id.* at 298-311.

raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. The rationale behind the principle of prejudicial question is to avoid two conflicting decisions. It has two essential elements: (i) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (ii) the resolution of such issue determines whether or not the criminal action may proceed.[22]

If both civil and criminal cases have similar issues, or the issue in one is intimately related to the issues raised in the other, then a prejudicial question would likely exist, provided the other element or characteristic is satisfied. It must appear not only that the civil case involves the same facts upon which the criminal prosecution would be based, but also that the resolution of the issues raised in the civil action would be necessarily determinative of the guilt or innocence of the accused. If the resolution of the issue in the civil action will not determine the criminal responsibility of the accused in the criminal action based on the same facts, or if there is no necessity that the civil case be determined first before taking up the criminal case, the civil case does not involve a prejudicial question.[23] Neither is there a prejudicial question if the civil and the criminal action can, according to law, proceed independently of each other.[24]

The issue in the criminal cases is whether the petitioner is guilty of violating B.P. Blg. 22, while in the civil case, it is whether the private respondents are entitled to collect from

---

[22] *Jose v. Suarez,* G.R. No. 176795, June 30, 2008, 556 SCRA 773, 781-782, citing *Carlos v. Court of Appeals*, 335 Phil. 490, 499 (1997) and *Tuanda v. Sandiganbayan*, 249 SCRA 342 (1995).

[23] *People v. Consing, Jr.,* G.R. No. 148193, January 16, 2003, 395 SCRA 366, 370, citing *Sabandal v. Tongco*, 366 SCRA 567 (2001), *Alano v. Court of Appeals*, 347 Phil. 549 (1997), *Benitez v. Concepcion, Jr.*, 112 Phil. 105 (1961), *Te v. Court of Appeals*, 346 SCRA 327 (2000), *Beltran v. People*, 334 SCRA 106 (2000), and *Isip v. Gonzales*, 148-A Phil. 212 (1971).

[24] *Sabandal v. Tongco, supra* note 23, citing *Rojas v. People*, 156 Phil. 224, 229 (1974).

the petitioner the sum or the value of the checks that they have rediscounted from Evelyn.

The resolution of the issue raised in the civil action is not determinative of the guilt or innocence of the accused in the criminal cases against him, and there is no necessity that the civil case be determined first before taking up the criminal cases.

In the aforementioned civil actions, even if petitioner is declared not liable for the payment of the value of the checks and damages, he cannot be adjudged free from criminal liability for violation of B.P. Blg. 22. The mere issuance of worthless checks with knowledge of the insufficiency of funds to support the checks is in itself an offense.[25]

In *Jose v. Suarez,*[26] the prejudicial question under determination was whether the daily interest rate of 5% was void, such that the checks issued by respondents to cover said interest were likewise void for being *contra bonos mores*, and thus the cases for B.P. Blg. 22 will no longer prosper. In resolving the issue, We ruled that "whether or not the interest rate imposed by petitioners is eventually declared void for being *contra bonos mores* will not affect the outcome of the B.P. Blg. 22 cases because what will ultimately be penalized is the mere issuance of bouncing checks. In fact, the primordial question posed before the court hearing the B.P. Blg. 22 cases is whether the law has been breached; that is, if a bouncing check has been issued."

Further, We held in *Ricaforte v. Jurado,*[27] that:

> The gravamen of the offense punished by *B.P. Blg.* 22 is the act of making and issuing a worthless check; that is, a check that is dishonored upon its presentation for payment. In *Lozano v. Martinez*, we have declared that it is not the non-payment of an obligation which the law punishes. The law is not intended or designed to coerce a debtor to

---

[25] *Lozano v. Martinez*, G.R. No. L-63419, December 18, 1986, 146 SCRA 323.

[26] *Supra* note 22.

[27] G.R. No. 154438, September 5, 2007, 532 SCRA 317, 330. (Emphasis supplied).

pay his debt. The thrust of the law is to prohibit, under pain of penal sanctions, the making and circulation of worthless checks. Because of its deleterious effects on the public interest, the practice is proscribed by the law. The law punishes the act not as an offense against property, but an offense against public order. In *People v. Nitafan*, we said that a check issued as an evidence of debt — though not intended to be presented for payment — has the same effect as an ordinary check and would fall within the ambit of *B.P. Blg. 22*.

xxx xxx xxx

x x x The mere act of issuing a worthless check - whether as a deposit, as a guarantee or even as evidence of pre-existing debt - **is *malum prohibitum***.

To determine the reason for which checks are issued, or the terms and conditions for their issuance, will greatly erode the faith the public reposes in the stability and commercial value of checks as currency substitutes, and bring about havoc in trade and in banking communities. So what the law punishes is the issuance of a bouncing check and not the purpose for which it was issued or the terms and conditions relating to its issuance. The mere act of issuing a worthless check is *malum prohibitum.*[28]

Moreover, petitioner's reliance on *Ras v. Rasul*[29] is misplaced. The case of *Ras* involves a complaint for nullification of a deed of sale on the ground of an alleged double sale. While the civil case was pending, an information for *estafa* was filed against Ras (the defendant in the civil case) arising from the same alleged double sale, subject matter of the civil complaint. The Court ruled that there was a prejudicial question considering that the defense in the civil case was based on the very same facts that would be determinative of the guilt or innocence of the accused in the *estafa* case.

The instant case is different from *Ras*, inasmuch as the determination of whether the petitioner is liable to pay the private

---

[28] *Wong v. Court of Appeals*, G.R. No. 117857, February 2, 2001, 351 SCRA 100, citing *Llamado v. Court of Appeals*, 270 SCRA 423, 431 (1997).

[29] G.R. Nos. 50441-42, September 18, 1980, 100 SCRA 125.

respondents the value of the checks and damages, will not affect the guilt or innocence of the petitioner because the material question in the criminal cases is whether petitioner had issued bad checks, regardless of the purpose or condition of its issuance.

Guided by the following legal precepts, it is clear that the determination of the issues involved in Civil Case Nos. 6231 and 6238 for collection of sum of money and damages is irrelevant to the guilt or innocence of the petitioner in the criminal cases for violation of B.P. Blg. 22.

In addition, petitioner's claim of lack of consideration may be raised as a defense during the trial of the criminal cases against him. The validity and merits of a party's defense and accusation, as well as the admissibility and weight of testimonies and evidence brought before the court, are better ventilated during trial proper.

Precisely, the reason why a state has courts of law is to ascertain the respective rights of the parties, to examine and to put to test all their respective allegations and evidence through a well designed machinery termed *"trial."* Thus, all the defenses available to the accused should be invoked in the trial of the criminal cases. This court is not the proper *forum* that should ascertain the facts and decide the case for violation of B.P. Blg. 22 filed against the petitioner.

In fine, the CA committed no reversible error in affirming the decision of the RTC.

WHEREFORE, the petition is *DENIED* and the Decision dated April 30, 2003 and the Resolution dated July 17, 2003 of the Court of Appeals in CA-G.R. SP No. 68250 are *AFFIRMED*.

SO ORDERED.

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

---

[*] Designated to sit as an additional member, per Special Order No. 646 dated May 15, 2009.

[**] Designated to sit as an additional member, per Special Order No. 631 dated April 29, 2009.

THIRD DIVISION

[G.R. No. 161407. June 5, 2009]

JOAQUIN VILLEGAS and EMMA M. VILLEGAS, *petitioners, vs.* **RURAL BANK OF TANJAY, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; SIMULATED CONTRACTS; KINDS. — Articles 1345 and 1346 of the Civil Code are the applicable laws, and they unmistakably provide: "Art. 1345. Simulation of a contract may be absolute or relative. The former takes place when the parties do not intend to be bound at all; the latter, when the parties conceal their true agreement. Art. 1346. An absolutely simulated or fictitious contract is void. A relative simulation, when it does not prejudice a third person and is not intended for any purpose contrary to law, morals, good customs, public order or public policy binds the parties to their real agreement." Given the factual antecedents of this case, it is obvious that the sugar crop loans were relatively simulated contracts and that both parties intended to be bound thereby.

2. ID.; ID.; ID.; RELATIVELY SIMULATED CONTRACTS; JURIDICAL ACTS INVOLVED IN RELATIVE SIMULATION, ELUCIDATED; CASE AT BAR. — There are two juridical acts involved in relative simulation— the *ostensible act* and the *hidden act*. The *ostensible act* is the contract that the parties pretend to have executed while the *hidden act* is the true agreement between the parties. To determine the enforceability of the actual agreement between the parties, we must discern whether the concealed or hidden act is lawful and the essential requisites of a valid contract are present. In this case, the juridical act which binds the parties are the loan and mortgage contracts, *i.e.*, petitioners' procurement of a loan from respondent. Although these loan and mortgage contracts were concealed and made to appear as sugar crop loans to make them fall within the purview of the Rural Banks Act, all the essential requisites of a contract were present. However, the purpose thereof is illicit, intended to circumvent the Rural Banks

Act requirement in the procurement of loans. Consequently, while the parties intended to be bound thereby, the agreement is void and inexistent under Article 1409 of the Civil Code.

3. ID.; ID.; PARTIES IN *PARI DELICTO*; WHERE THE PARTIES ARE IN *PARI DELICTO*, NEITHER WILL OBTAIN RELIEF FROM THE COURT; CASE AT BAR. — In arguing that the loan and mortgage contracts are null and void, petitioners would impute all fault therefor to respondent. Yet, petitioners' averments evince an obvious knowledge and voluntariness on their part to enter into the simulated contracts. We find that fault for the nullity of the contract does not lie at respondent's feet alone, but at petitioners' as well. Accordingly, neither party can maintain an action against the other, as provided in Article 1412 of the Civil Code: "Art. 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed: (1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking; (2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfillment of what has been promised him. The other, who is not at fault, may demand the return of what he has given without any obligation to comply with his promise." Petitioners did not come to court with clean hands. They admit that they never planted sugarcane on any property, much less on the mortgaged property. Yet, they eagerly accepted the proceeds of the simulated sugar crop loans. Petitioners readily participated in the ploy to circumvent the Rural Banks Act and offered no objection when their original loan of ₱350,000.00 was divided into small separate loans not exceeding ₱50,000.00 each. Clearly, both petitioners and respondent are in *pari delicto*, and neither should be accorded affirmative relief as against the other. In *Tala Realty Services Corp. v. Banco Filipino Savings and Mortgage Bank*, we held that when the parties are in *pari delicto*, neither will obtain relief from the court x x x.

4. ID.; ID.; ID.; ID.; EXCEPTION. — [W]e declared that even assuming both parties were guilty of the violation, it does not always follow that both parties, being in *pari delicto*, should be left where they are. We recognized as an exception a situation when courts must interfere and grant relief to one of the parties

because public policy requires their intervention, even if it will result in a benefit derived by a plaintiff who is in equal guilt with defendant.

5. ID.; ID.; THE PROMISE TO SELL IN CASE AT BAR IS AN INDEPENDENT CONTRACT AND DID NOT RATIFY THE VOID LOAN AND MORTGAGE CONTRACTS. — We are not unmindful of the fact that the Promise to Sell ultimately allows petitioners to recover the subject property which they were estopped from recovering under the void loan and mortgage contracts. However, the Promise to Sell, although it involves the same parties and subject matter, is a separate and independent contract from that of the void loan and mortgage contracts. To reiterate, under the void loan and mortgage contracts, the parties, being in *pari delicto*, cannot recover what they each has given by virtue of the contract. Neither can the parties demand performance of the contract. No remedy or affirmative relief can be afforded the parties because of their presumptive knowledge that the transaction was tainted with illegality. The courts will not aid either party to an illegal agreement and will instead leave the parties where they find them. Consequently, the parties having no cause of action against the other based on a void contract, and possession and ownership of the subject property being ultimately vested in respondent, the latter can enter into a separate and distinct contract for its alienation. Petitioners recognized respondent's ownership of the subject property by entering into a Promise to Sell, which expressly designates respondent as the vendor and petitioners as the vendees. At this point, petitioners, originally co-owners and mortgagors of the subject property, unequivocally acquiesced to their new status as buyers thereof. In fact, the Promise to Sell makes no reference whatsoever to petitioners' previous ownership of the subject property and to the void loan and mortgage contracts. On the whole, the Promise to Sell, an independent contract, did not purport to ratify the void loan and mortgage contracts.

6. ID.; ID.; INTERPRETATION OF CONTRACTS; PROMISE TO SELL IN CASE AT BAR, CONSTRUED. — By its very terms, the Promise to Sell simply intended to alienate to petitioners the subject property according to the terms and conditions contained therein. Article 1370 of the Civil Code reads: "Art. 1370. If the terms of a contract are clear and leave no doubt

upon the intention of the contracting parties, the literal meaning of its stipulations shall control. If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former." Thus, the terms and conditions of the Promise to Sell are controlling. Paragraph 5 of the Promise to Sell provides: "5) Provided further, that in case of a delay in any yearly installment for a period of ninety (90) days, this sale will become null and void [without] further effect or validity; and provided further, that payments made shall be reimbursed (returned to the VENDEE less interest on the account plus additional 15% liquidated damages and charges." As stipulated in the Promise to Sell, petitioners are entitled to reimbursement of the ₱250,000.00 down payment.

APPEARANCES OF COUNSEL

Lenin R. Victoriano for petitioners.
A. Florian O. Alcantara for respondent.

D E C I S I O N

NACHURA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court assails the Court of Appeals (CA) Decision[1] in CA-G.R. CV No. 40613 which affirmed with modification the Regional Trial Court (RTC) Decision in Civil Case No. 9570.[2]

The facts, as summarized by the CA, follow.

Sometime in June, 1982, [petitioners], spouses Joaquin and Emma Villegas, obtained an agricultural loan of ₱350,000.00 from [respondent] Rural Bank of Tanjay, Inc. The loan was secured by a real estate mortgage on [petitioners'] residential house and 5,229 – sq.m. lot situated in Barrio Bantayan, Dumaguete City and covered by TCT No. 12389.

---

[1] Penned by Associate Justice Ruben T. Reyes (now a retired member of this Court), with Associate Justices Mariano M. Umali and Rebecca de Guia-Salvador, concurring; *rollo*, pp. 19-29.

[2] Penned by Judge Teofisto L. Calumpang, CA *rollo*, pp. 58-68.

For failure of [petitioners] to pay the loan upon maturity, the mortgage was extrajudicially foreclosed. At the foreclosure sale, [respondent], being the highest bidder, purchased the foreclosed properties for ₱367,596.16. Thereafter, the Sheriff executed in favor of [respondent] a certificate of sale, which was subsequently registered with the Registry of Deeds of Dumaguete City.

[Petitioners] failed to redeem the properties within the one-year redemption period.

In May, 1987, [respondent] and [petitioner] Joaquin Villegas, through his attorney-in-fact[,] Marilen Victoriano, entered into an agreement denominated as "Promise to Sell," whereby [respondent] promised to sell to [petitioners] the foreclosed properties for a total price of ₱713,312.72, payable within a period of five (5) years. The agreement reads in part:

PROMISE TO SELL

x x x x x x x x x

WITNESSETH:

x x x x x x x x x

2) That for and in consideration of SEVEN HUNDRED THIRTEEN THOUSAND AND THREE HUNDRED TWELVE & 72/100 PESOS (₱713,312.72), the VENDOR do hereby promise to sell, transfer, and convey unto the VENDEE, their heirs, successors and assigns, all its rights, interests and participations over the above parcel of land with all the improvements thereon and a residential house.

3) That upon signing of this Promise To Sell, the VENDEE shall agree to make payment of ₱250,000.00 (Philippine Currency) and the balance of ₱463,312.72 payable in equal yearly installments plus interest based on the prevailing rate counting from the date of signing this Promise to Sell for a period of five (5) years.

x x x x x x x x x

5) Provided further, that in case of a delay in any yearly installment for a period of ninety (90) days, this sale will become null and void and no further effect or validity; and provided further, that payments made shall be reimbursed (returned) to

the VENDEE less interest on the account plus additional 15% liquidated damages and charges.

Upon the signing of the agreement, [petitioners] gave [respondent] the sum of ₱250,000.00 as down payment. [Petitioners], however, failed to pay the first yearly installment, prompting [respondent] to consolidate its ownership over the properties. Accordingly, TCT No. 12389 was cancelled and a new one, TCT No. 19042, (Exh. 14) was issued in [respondent's] name on November 8, 1989. Thereafter, [respondent] took possession of the properties. Hence, the action by [petitioners for declaration of nullity of loan and mortgage contracts, recovery of possession of real property, accounting and damages and, in the alternative, repurchase of real estate] commenced on January 15, 1990.

In resisting the complaint, [respondent] averred that [petitioners] have absolutely no cause of action against it, and that the complaint was filed only to force it to allow [petitioners] to reacquire the foreclosed properties under conditions unilaterally favorable to them.

xxx xxx xxx

After trial on the merits, the [RTC] rendered a Decision dismissing the complaint, disposing as follows:

"In the light of the foregoing, it is considered opinion of this Court, that [petitioners] failed to prove by preponderance of evidence their case and therefore the herein complaint is ordered dismissed. [Petitioners] are ordered to pay [respondent] the sum of ₱3,000.00 as attorney's fees and to pay costs without pronouncement as to counterclaim.

SO ORDERED."[3]

On appeal by both parties, the CA affirmed with modification the RTC's ruling, thus:

WHEREFORE, the appealed Decision is hereby **MODIFIED** by (a) **ORDERING** [respondent] to reimburse [petitioners] their down payment of ₱250,000.00 and (b) **DELETING** the award of attorney's fees to [respondent].

---

[3] *Rollo*, pp. 20-23.

SO ORDERED.[4]

Hence, this appeal by *certiorari* raising the following issues:

(1) The Court of Appeals erred in not holding that the loan and mortgage contracts are null and void *ab initio* for being against public policy;

(2) The Court of Appeals erred in not holding that, by reason of the fact that the loan and mortgage contracts are null and void *ab initio* for being against public policy, the doctrine of estoppel does not apply in this case;

(3) The Court of Appeals erred in not finding that the addendum on the promissory notes containing an escalation clause is null and void *ab initio* for not being signed by petitioner Emma M. Villegas, wife of petitioner Joaquin Villegas, there being a showing that the companion real estate mortgage involves conjugal property. x x x.

(4) The Court of Appeals erred in not finding that the addendum on the promissory notes containing an escalation clause is null and void *ab initio* for being so worded that the implementation thereof would deprive petitioners due process guaranteed by [the] constitution, the petitioners not having been notified beforehand of said implementation.[5]

Notwithstanding petitioners' formulation of the issues, the core issue for our resolution is whether petitioners may recover possession of the mortgaged properties.

The petition deserves scant consideration and ought to have been dismissed outright. Petitioners are precluded from seeking a declaration of nullity of the loan and mortgage contracts; they are likewise barred from recovering possession of the subject property.

Petitioners insist on the nullity of the loan and mortgage contracts. Unabashedly, petitioners admit that the loan (and mortgage) contracts were made to appear as several sugar crop loans not exceeding ₱50,000.00 each – even if they were

---

[4] *Id.* at 29.

[5] Petitioners' Memorandum, *id.* at 79.

not – just so the respondent rural bank could grant and approve the same pursuant to Republic Act (R.A.) No. 720, the Rural Banks Act. Petitioners boldly enumerate the following circumstances that show that these loans were obtained in clear contravention of R.A. No. 720:

(a) The petitioners never planted sugar cane on any parcel of agricultural land;

(b) The mortgaged real estate is residential, with a house, located in the heart of Dumaguete City, with an area of only one-half (1/2) hectare;

(c) Petitioners never planted any sugar cane on this one-half (1/2) hectare parcel of land;

(d) Petitioners were never required to execute any chattel mortgage on standing crops;

(e) To make it appear that the petitioners were entitled to avail themselves of loan benefits under Republic Act No. 720, Rural Banks Act, respondent made them sign promissory notes for ₱350,000.00 in split amounts not exceeding ₱50,000.00 each.[6]

In short, petitioners aver that the sugar crop loans were merely simulated contracts and, therefore, without any force and effect.

Articles 1345 and 1346 of the Civil Code are the applicable laws, and they unmistakably provide:

Art. 1345. Simulation of a contract may be absolute or relative. The former takes place when the parties do not intend to be bound at all; the latter, when the parties conceal their true agreement.

Art. 1346. An absolutely simulated or fictitious contract is void. A relative simulation, when it does not prejudice a third person and is not intended for any purpose contrary to law, morals, good customs, public order or public policy binds the parties to their real agreement.

---

[6] *Rollo*, pp. 76-77.

Given the factual antecedents of this case, it is obvious that the sugar crop loans were relatively simulated contracts and that both parties intended to be bound thereby. There are two juridical acts involved in relative simulation— the *ostensible act* and the *hidden act*.[7] The *ostensible act* is the contract that the parties pretend to have executed while the *hidden act* is the true agreement between the parties.[8] To determine the enforceability of the actual agreement between the parties, we must discern whether the concealed or hidden act is lawful and the essential requisites of a valid contract are present.

In this case, the juridical act which binds the parties are the loan and mortgage contracts, *i.e.*, petitioners' procurement of a loan from respondent. Although these loan and mortgage contracts were concealed and made to appear as sugar crop loans to make them fall within the purview of the Rural Banks Act, all the essential requisites of a contract[9] were present. However, the purpose thereof is illicit, intended to circumvent the Rural Banks Act requirement in the procurement of loans.[10]

---

[7] *See* Tolentino, *Civil Code of the Philippines* (1991), Vol. IV, p. 516.

[8] *Id*.

[9] *See* CIVIL CODE, Art. 1318: There is no contract unless the following requisites concur:

(1) Consent of the contracting parties;

(2) Object certain which is the subject matter of the contract;

(3) Cause of the obligation which is established.

[10] *See* Rural Banks Act, Secs. 5 and 6.

Sec. 5. Loans or advances extended by Rural Banks organized and operated under this Act, shall be primarily for the purpose of meeting the normal credit needs of farmers or farm families owning or cultivating land dedicated to agricultural production as well as the normal credit needs of cooperatives and merchants. In the granting of loans, the Rural Bank shall give credit preference to the application of farmers and merchants whose cash requirements are small.

Sec. 6. With the view to insuring balanced rural economic growth and expansion, Rural Banks, may within limits and conditions fixed by the Monetary Board, devote a portion of their loanable funds to meeting the normal credit needs of small business enterprise whose capital investment does not exceed fifty thousand pesos and of essential rural enterprises or industries other than those which are strictly agricultural in nature.

Consequently, while the parties intended to be bound thereby, the agreement is void and inexistent under Article 1409[11] of the Civil Code.

In arguing that the loan and mortgage contracts are null and void, petitioners would impute all fault therefor to respondent. Yet, petitioners' averments evince an obvious knowledge and voluntariness on their part to enter into the simulated contracts. We find that fault for the nullity of the contract does not lie at respondent's feet alone, but at petitioners' as well. Accordingly, neither party can maintain an action against the other, as provided in Article 1412 of the Civil Code:

> Art. 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:
>
> (1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;
>
> (2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfillment of what has been promised him. The other, who is not at

---

[11] Art. 1409. The following contracts are inexistent and void from the beginning:

(1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;

(2) Those which are absolutely simulated or fictitious;

(3) Those whose cause or object did not exist at the time of the transaction;

(4) Those whose object is outside the commerce of men;

(5) Those which contemplate an impossible service;

(6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;

(7) Those expressly prohibited or declared void by law.

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

fault, may demand the return of what he has given without any obligation to comply with his promise.

Petitioners did not come to court with clean hands. They admit that they never planted sugarcane on any property, much less on the mortgaged property. Yet, they eagerly accepted the proceeds of the simulated sugar crop loans. Petitioners readily participated in the ploy to circumvent the Rural Banks Act and offered no objection when their original loan of ₱350,000.00 was divided into small separate loans not exceeding ₱50,000.00 each. Clearly, both petitioners and respondent are in *pari delicto*, and neither should be accorded affirmative relief as against the other.

In *Tala Realty Services Corp. v. Banco Filipino Savings and Mortgage Bank,*[12] we held that when the parties are in *pari delicto*, neither will obtain relief from the court, thus:

> The Bank should not be allowed to dispute the sale of its lands to Tala nor should Tala be allowed to further collect rent from the Bank. The clean hands doctrine will not allow the creation or the use of a juridical relation such as a trust to subvert, directly or indirectly, the law. Neither the bank nor Tala came to court with clean hands; neither will obtain relief from the court as one who seeks equity and justice must come to court with clean hands. By not allowing Tala to collect from the Bank rent for the period during which the latter was arbitrarily closed, both Tala and the Bank will be left where they are, each paying the price for its deception.[13]

Petitioners stubbornly insist that respondent cannot invoke the *pari delicto* doctrine, ostensibly because of our *obiter* in *Enrique T. Yuchengco, Inc., et al. v. Velayo.*[14]

In *Yuchengco,* appellant sold 70% of the subscribed and outstanding capital stock of a Philippine corporation, duly licensed

---

[12] 441 Phil. 1 (2002). (Citations omitted.)

[13] *Tala Realty Services Corp. v. Banco Filipino Savings and Mortgage Bank, id.* at 45.

[14] 200 Phil. 703 (1982).

as a tourist operator, to appellees without the required prior notice and approval of the Department of Tourism (DOT). Consequently, the DOT cancelled the corporation's Local Tour Operator's License. In turn, appellees asked for a rescission of the sale and demanded the return of the purchase price.

We specifically ruled therein that the *pari delicto* doctrine is not applicable, because:

> The obligation to secure prior Department of Tourism approval devolved upon the defendant (herein appellant) for it was he as the owner vendor who had the duty to give clear title to the properties he was conveying. It was he alone who was charged with knowing about rules attendant to a sale of the assets or shares of his tourist-oriented organization. He should have known that under said rules and regulations, on pain of nullity, shares of stock in his company could not be transferred without prior approval from the Department of Tourism. The failure to secure this approval is attributable to him alone.[15]

Thus, we declared that even assuming both parties were guilty of the violation, it does not always follow that both parties, being in *pari delicto*, should be left where they are. We recognized as an exception a situation when courts must interfere and grant relief to one of the parties because public policy requires their intervention, even if it will result in a benefit derived by a plaintiff who is in equal guilt with defendant.[16]

In stark contrast to *Yuchengco*, the factual milieu of the present case does not compel us to grant relief to a party who is in *pari delicto*. The public policy requiring rural banks to give preference to *bona fide* small farmers in the grant of loans will not be served if a party, such as petitioners, who had equal participation and equal guilt in the circumvention of the Rural Banks Act, will be allowed to recover the subject property.

---

[15] *Yuchengco, Inc. v. Velayo, id.* at 710-711.

[16] *Id.* at 711.

The following circumstances reveal the utter poverty of petitioners' arguments and militate against their bid to recover the subject property:

1. As previously adverted to, petitioners readily and voluntarily accepted the proceeds of the loan, divided into small loans, without question.

2. After failing to redeem the mortgaged subject property, thereby allowing respondent to consolidate title thereto,[17] petitioners then entered into a Promise to Sell and made a down payment of ₱250,000.00.

3. Failing anew to comply with the terms of the Promise to Sell and pay the first yearly installment, only then did petitioners invoke the nullity of the loan and mortgage contracts.

In all, petitioners explicitly recognized respondent's ownership over the subject property and merely resorted to the void contract argument after they had failed to reacquire the property and a new title thereto in respondent's name was issued.

We are not unmindful of the fact that the Promise to Sell ultimately allows petitioners to recover the subject property which they were estopped from recovering under the void loan and mortgage contracts. However, the Promise to Sell, although it involves the same parties and subject matter, is a separate and independent contract from that of the void loan and mortgage contracts.

To reiterate, under the void loan and mortgage contracts, the parties, being in *pari delicto*, cannot recover what they each has given by virtue of the contract.[18] Neither can the parties demand performance of the contract. No remedy or affirmative relief can be afforded the parties because of their presumptive

---

[17] After the lapse of the redemption period, the mortgagor is now considered to have lost interest in the foreclosed property. See *Yulienco v. Court of Appeals*, 441 Phil. 397, 406 (2002).

[18] CIVIL CODE, Art. 1412, par. 1.

knowledge that the transaction was tainted with illegality.[19] The courts will not aid either party to an illegal agreement and will instead leave the parties where they find them.[20]

Consequently, the parties having no cause of action against the other based on a void contract, and possession and ownership of the subject property being ultimately vested in respondent, the latter can enter into a separate and distinct contract for its alienation. Petitioners recognized respondent's ownership of the subject property by entering into a Promise to Sell, which expressly designates respondent as the vendor and petitioners as the vendees. At this point, petitioners, originally co-owners and mortgagors of the subject property, unequivocally acquiesced to their new status as buyers thereof. In fact, the Promise to Sell makes no reference whatsoever to petitioners' previous ownership of the subject property and to the void loan and mortgage contracts.[21] On the whole, the Promise to Sell, an

---

[19] *Top-Weld Manufacturing, Inc. v. ECED, S.A.*, G.R. No. L-44944, August 9, 1985, 138 SCRA 118, 131-132.

[20] *Id.* at 131.

[21] Paragraph 1 of the Promise to Sell provides:

1) That the Vendor is the present owner of the following properties:

   a) A parcel of land (Lot No. 8-A-5 of the subdivision plan (LRC) Psd-49727, being a portion of Lot No. 8-A (LRC) Psd-31929, L.R.C. Cad. Rec. No. 152) with the improvements thereon, situated in the Barrio of Bantayan, City of Dumaguete, Island of Negros. Bounded on the S., points 1 to 2 by Lot No. 8-A-3 of the subdivision plan; on the W., and N., points 3 to 4 by Lot No. 1593 of the Cadastral Survey of Dumaguete; and on the E., points 4 to 1 by Lot No. 8-A-4 of the subdivision plan. Containing an area of FIVE THOUSAND TWO HUNDRED TWENTY NINE (5,229) SQUARE METERS, more or less.

   b) A semi-concrete residential house with a ground floor area of 680 sq.m. of two (2) storey in height constructed of concrete hallow blocks under galvanished iron roof constructed on Lot No. 8-A-5 as per Transfer Certificate of Title No. 12389 situated in Rovera Extension, Bantayan, Dumaguete City belonging to the mortgagor is covered by this mortgage. For which they

independent contract, did not purport to ratify the void loan and mortgage contracts.

By its very terms, the Promise to Sell simply intended to alienate to petitioners the subject property according to the terms and conditions contained therein. Article 1370 of the Civil Code reads:

> Art. 1370. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.
>
> If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.

Thus, the terms and conditions of the Promise to Sell are controlling.

Paragraph 5 of the Promise to Sell provides:

> 5) Provided further, that in case of a delay in any yearly installment for a period of ninety (90) days, this sale will become null and void [without] further effect or validity; and provided further, that payments made shall be reimbursed (returned to the VENDEE less interest on the account plus additional 15% liquidated damages and charges.[22]

As stipulated in the Promise to Sell, petitioners are entitled to reimbursement of the ₱250,000.00 down payment. We agree with the CA's holding on this score:

> We note, however, that there is no basis for the imposition of interest and additional 15% liquidated damages and charges on the amount to be thus reimbursed. The "Promise to Sell" is separate and distinct from the loan and mortgage contracts earlier executed by

---

> are responsible of the entire duration of this mortgage. Covered with fire insurance having a mortgage clause in favor of the bank.

all having been acquired under Sheriff's Certificate of Sale dated March 19, 1986. (Records, p. 6.)

[22] Records, pp. 6-7.

the parties. Obviously, after the foreclosure, there is no more loan or account to speak of to justify the said imposition.[23]

Finally, contrary to petitioners' contention, the CA, in denying petitioners' appeal, did not commit an error; it did not ratify a void contract because void contracts cannot be ratified. The CA simply refused to grant the specific relief of recovering the subject property prayed for by petitioners. Nonetheless, it ordered respondent to reimburse petitioners for their down payment of ₱250,000.00 and disallowed respondent's claim for actual, moral and exemplary damages and attorney's fees.

WHEREFORE, premises considered, the petition is hereby *DENIED*. The Decision of the Court of Appeals in CA-G.R. CV No. 40613 is hereby *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio,[*] *Corona,*[**] and *Leonardo-de Castro,*[***] *JJ.,* concur.

---

[23] *Rollo,* p. 26.

[*] Additional member in lieu of Associate Justice Conchita Carpio Morales per Special Order No. 646 dated May 15, 2009.

[**] Additional member per Raffle dated September 1, 2008.

[***] Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 651 dated May 29, 2009.

THIRD DIVISION

[G.R. No. 161533. June 5, 2009]

FILOMENA SONEJA, *petitioner, vs.* **HONORABLE COURT OF APPEALS (2nd Division) and RAMON SAURA, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; LIMITED TO RESOLVING ONLY CASES OF JURISDICTION. — Settled is the rule that a petition for *certiorari* is proper to correct only errors of jurisdiction committed by respondent court, tribunal or administrative agency. Public respondent acts without jurisdiction if it does not have the legal power to determine the case, or in excess of jurisdiction if it oversteps its authority as determined by law. Grave abuse of discretion is committed when respondent acts in a capricious, whimsical, arbitrary, or despotic manner in the exercise of its judgment as to be equivalent to lack of jurisdiction. In a petition for *certiorari*, the jurisdiction of the court is narrow in scope as it is limited to resolving only cases of jurisdiction.

2. ID.; CIVIL PROCEDURE; APPEALS; AN APPEAL IS THE PROPER RECOURSE IN ERRORS OF JUDGMENT; CASE AT BAR. — A determination of the merits of petitioner's contention would reveal that whatever mistake may have been committed in the appraisal of the case – although we do not see any – would, at best, constitute merely errors of judgment and not errors of jurisdiction. The proper recourse should have been an appeal, not a petition for *certiorari*. Petitioner should have zealously raised the matter during the appeals proceeding before the RTC. Sadly, she allowed the case to be dismissed following her failure to file the required memorandum. Still, she could have insisted on the resolution of the said issue in her petition for review had she not allowed the decision of the CA to lapse without filing a motion for reconsideration. Petitioner therefore has nobody to blame but herself.

APPEARANCES OF COUNSEL

Concepcion Velasco Caranzo & Associates Law Offices for petitioner.

Paras & Manlapaz Lawyers for private respondent.

D E C I S I O N

NACHURA, *J.*:

Before us is a petition for *certiorari* challenging the Resolution[1] promulgated by the Court of Appeals (CA) in CA-G.R. SP No. 75669 dated November 19, 2003 which denied petitioner's motion for reconsideration of the Resolution[2] promulgated on March 3, 2003 dismissing her petition for *certiorari*.

The facts are undisputed.[3]

On July 1, 1995, petitioner Filomena Soneja, as lessee, and respondent Ramon Saura, Jr., as lessor, entered into a lease contract over a property located at 966-F A.H. Lacson Street, Sampaloc, Manila. The rent was fixed at ₱5,500.00 per month for a period of three (3) years from July 1, 1995 to July 1, 1998. Later on, Filomena's daughter, Renee Soneja, occupied the premises.

In August 1998, the lease contract expired but petitioner remained in the premises without paying the rent. Because of this, respondent sent a letter to petitioner demanding payment of ₱185,280.00, corresponding to the rentals in arrears, and to vacate the said apartment not later than January 31, 2001. When

---

[1] Penned by Associate Justice Mariano C. del Castillo, with Associate Justices Buenaventura J. Guerrero and Jose L. Sabio, Jr., concurring; *rollo*, pp. 62-63.

[2] *Rollo,* pp. 42-43.

[3] *Filomena Soneja v. Ramon Saura, Jr.,* CA-G.R. SP No. 89123, September 18, 2006. Penned by Associate Justice Jose Catral Mendoza, with Associate Justices Elvi John S. Asuncion and Sesinando E. Villon, concurring.

petitioner failed to pay, respondent filed a complaint for ejectment against petitioner and her daughter. The case was referred to the *Lupong Tagapamayapa*, which issued the necessary certification after the parties failed to settle the controversy amicably.

On December 5, 2001, the Metropolitan Trial Court rendered a decision on the ejectment case against petitioner. The *fallo* reads:

> WHEREFORE, judgment is rendered in favor of plaintiff and against defendants ordering defendants and all other persons claiming rights under them to vacate the premises located at 966-F A.H. Lacson Street, Sampaloc, Manila, and to pay plaintiffs the following sums:
>
> 1. Php185,280.00 representing unpaid rentals from August, 1998 until 31 January 2001, and Php5,500.00 per month thereafter until defendants actually vacate the subject premises; [and]
>
> 2. Php10,000.00 representing attorney's fees.
>
> SO ORDERED.[4]

Aggrieved, petitioner appealed to the Regional Trial Court (RTC) on January 30, 2002. While the appeal was pending, respondent filed a motion for execution on May 23, 2002, which was granted through an Order[5] dated May 29, 2002. Pursuant thereto, a property owned by petitioner and her deceased spouse situated at Tominawog, San Andres, Catanduanes was levied upon. Petitioner immediately filed a motion[6] to lift or revoke the levy made upon her property alleging that the same is her family home and should, therefore, be exempt from levy or execution based on the provisions of the Family Code.

On August 6, 2002, however, the RTC resolved to deny petitioner's motion to lift or revoke levy.[7] A motion for reconsideration[8] was filed but was denied for lack of merit.[9]

---

[4] *Rollo*, p. 71.

[5] *Id.* at 73-74.

[6] *Id.* at 75-77.

[7] *Id.* at 26-27.

[8] *Id.* at 22-25.

[9] *Id.* at 28-29.

The order, denying petitioner's motion for reconsideration, was received by petitioner on December 9, 2002.[10]

Meanwhile, on January 20, 2003, the RTC issued an Order dismissing petitioner's appeal for her failure to file the required memorandum. Petitioner, thereafter, filed a petition for review under Rule 42 before the CA on March 12, 2003. The case was docketed as CA-G.R. SP No. 75669.[11]

On February 10, 2003, petitioner also filed a Rule 65 petition with the CA, challenging the RTC's denial of her motion for reconsideration with respect to the levy on her property in Catanduanes. The case was initially docketed as CA-G.R. UDK SP No. 4783 and was assigned to the Second Division. Later on, the case was docketed as CA-G.R. SP No. 75669, apparently the same docket number given to the Rule 42 petition earlier filed by petitioner.

On March 3, 2003, the CA resolved to dismiss the Rule 65 petition for being filed three (3) days beyond the reglementary period.[12] Petitioner immediately filed a Manifestation[13] dated March 11, 2003 explaining that the apparent delay was brought about by the confusion in the CA's docket section. The CA acceded and allowed petitioner to file a motion for reconsideration.[14]

Subsequently, a Decision[15] was reached by the CA on September 18, 2006 also denying the Rule 42 petition filed by Soneja. The decision, in effect, upheld the RTC's order, which dismissed petitioner's appeal following her failure to file the required memorandum. Judgment thereto was entered on October 29, 2006.

---

[10] *Id.* at 10.

[11] *Id.* at 57.

[12] *Id.* at 42.

[13] *Id.* at 56-60.

[14] *Id.* at 61.

[15] *Supra* note 3.

Meanwhile, earlier, on November 19, 2003, a Resolution[16] was promulgated by the CA denying the Rule 65 petition for two reasons; namely: no *prima facie* error had been committed by the RTC, and the petition was filed three (3) days late. Undaunted, petitioner elevated the matter before this Court *via* a Rule 65 petition.

The sole issue is whether the CA acted without or in excess of its jurisdiction or with grave abuse of discretion in upholding the RTC's decision denying petitioner's motion to lift or revoke the levy on her property argued to be a family home.

Petitioner maintains that the levied property is a family home acquired and constituted as their family's residence in 1950. She also claims that her temporary sojourn in respondent's apartment unit in Manila, following her husband's demise, should not be construed as having terminated the nature of the property as a family home, pursuant to the provisions of the Family Code. Moreover, petitioner's married son also stayed in the said family residence while she was temporarily staying in Manila.[17]

The petition has no merit.

Settled is the rule that a petition for *certiorari* is proper to correct only errors of jurisdiction committed by respondent court, tribunal or administrative agency.[18] Public respondent acts without jurisdiction if it does not have the legal power to determine the case, or in excess of jurisdiction if it oversteps its authority as determined by law. Grave abuse of discretion is committed when respondent acts in a capricious, whimsical, arbitrary, or despotic manner in the exercise of its judgment as to be equivalent to lack of jurisdiction.[19] In a petition for *certiorari*, the jurisdiction

---

[16] *Id.* at 62-64.

[17] *Id.* at 16.

[18] *Yu v. Court of Appeals*, G.R. No. 154115, November 29, 2005, 476 SCRA 443, 449.

[19] *Honrado v. Court of Appeals*, G.R. No. 166333, November 25, 2005, 476 SCRA 280, 289.

of the court is narrow in scope as it is limited to resolving only cases of jurisdiction.[20]

Here, petitioner argues that the CA gravely abused its discretion in affirming the denial of petitioner's motion to lift or revoke levy without even passing upon the substantive issue on the propriety of levying her family home. She insists that the levied property in Catanduanes should have been exempt from execution pursuant to Article 155 of the Family Code[21] in relation to Articles 152 to 154 thereof,[22] which she maintains

---

[20] *People v. Court of Appeals*, G.R. No. 144332, June 10, 2004, 431 SCRA 610, 617.

[21] Art. 155 of the Family Code provides in full:

Article 155. The family home shall be exempt from execution, forced sale or attachment except:

1) For non-payment of taxes;

2) For debts incurred prior to the constitution of the family home;

3) For debts secured by mortgages on the premises before or after such constitution; and

4) For debts due to laborers, mechanics, architects, builders, materialmen and others who have rendered service or furnished material for the construction of the building.

[22] Arts. 152 to 154 of the Family Code provide in full:

Article 152. The family home, constituted jointly by the husband and the wife or by an unmarried head of a family, is the dwelling house where they and their family reside, and the land on which it is situated.

Article 153. The family home is deemed constituted on a house and lot from the time it is occupied as a family residence. From the time of its constitution and so long as any of its beneficiaries actually resides therein, the family home continues to be such and is exempt from execution, forced sale or attachment except as hereinafter provided and to the extent of the value allowed by law.

Article 154. The beneficiaries of a family home are:

1) The husband and wife, or an unmarried person who is the head of a family; and

2) Their parents, ascendants, descendants, brothers and sisters, whether the relationship be legitimate or illegitimate, who are living in the family home and who depend upon the head of the family for legal support.

she could have proven had she been accorded the opportunity to present evidence to this effect.

The contention must fall. The appellate court, in its assailed resolution, amply explained the reason for the affirmance of the RTC's decision:

> [E]ven upon the allegations in the petition *vis-a-vis* the assailed Order dated August 6, 2002, We find no *prima facie* error committed by the court *a quo* in denying herein petitioner's Motion to Lift or Revoke Levy dated June 27, 2002.[23]

There is also no truth to petitioner's allegation that she was never afforded any opportunity to present evidence to substantiate her claim. A careful perusal of the records of the case shows that the issue of whether the levied property is a family home has been squarely passed upon by the RTC. When the motion to lift or revoke levy was filed on June 28, 2002, it was set for hearing on July 5, 2002, but neither Filomena nor her counsel appeared on said date.[24] Despite this, the RTC notified petitioner's counsel of the time to file a reply following respondent's request to file an opposition to Filomena's motion.[25] When petitioner still failed to file a reply, the RTC issued an Order dated August 6, 2002 denying the motion to lift or revoke levy.[26] The court ratiocinated thus:

> The Court agrees with the contention of the plaintiff. Defendant failed to substantiate her claim that the levied property is a family home. She cannot avoid liability under the contract of lease which she entered into by claiming that the lease was passed to defendant Renee Soneja in 1995.
>
> WHEREFORE, in view of the foregoing consideration, the motion to lift or revoke levy made upon the property of defendant Filomena Soneja is hereby denied.
>
> SO ORDERED.[27]

---

[23] *Rollo*, p. 62.

[24] *Id.* at 28.

[25] *Id*.

[26] *Id*.

[27] *Id.* at 26-27.

The RTC also found, through Filomena's own admission, that she had not been actually residing in the levied property but in the apartment unit she had leased from respondent, and that it was her married son who was occupying the said property in her stead.[28]

All these support our view that no abuse of discretion has been committed by public respondent in sustaining the RTC's decision. A determination of the merits of petitioner's contention would reveal that whatever mistake may have been committed in the appraisal of the case – although we do not see any – would, at best, constitute merely errors of judgment and not errors of jurisdiction. The proper recourse should have been an appeal, not a petition for *certiorari*.

Petitioner should have zealously raised the matter during the appeals proceeding before the RTC. Sadly, she allowed the case to be dismissed following her failure to file the required memorandum. Still, she could have insisted on the resolution of the said issue in her petition for review had she not allowed the decision of the CA to lapse without filing a motion for reconsideration. Petitioner therefore has nobody to blame but herself.

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

SO ORDERED.

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

---

[28] *Id.* at 29.

[*] Additional member in lieu of Associate Justice Conchita Carpio Morales per Special Order No. 646 dated May 15, 2009.

[**] Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 631 dated April 29, 2009.

THIRD DIVISION

[G.R. No. 162286. June 5, 2009]

GLEN PASCUAL *Y* MALUMAY *alias* "YEYE" and PAULITO PASCUAL *Y* JUDALENA *alias* "BOYET", *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; LAWYER-CLIENT RELATIONSHIP; THE CLIENT IS BOUND BY THE COUNSEL'S CONDUCT, NEGLIGENCE, AND MISTAKES; EXCEPTION. — It is a well-settled rule that the client is bound by the counsel's conduct, negligence, and mistakes in handling the case; and the client cannot be heard to complain that the result might have been different had his lawyer proceeded differently. In *People of the Philippines and Bricio Ygana v. Rafael Bitanga*, an exception to the foregoing rule is enunciated, and that is when the negligence of counsel had been so egregious that it prejudiced his client's interest and denied him his day in court. For this exception to apply, however, the gross negligence of counsel should not be accompanied by his client's own negligence or malice. Clients have the duty to be vigilant of their interests by keeping themselves up to date on the status of their case. Failing in this duty, they suffer whatever adverse judgment is rendered against them.

2. ID.; ID.; ID.; ID.; ID.; NOT ESTABLISHED IN CASE AT BAR. —The CA is correct in its finding that petitioners were aware of the notice to file brief, since what the petitioners disclaimed knowledge of was only their counsel's motion for extension to file the brief. The previous pleadings, as well as the petition itself, are without any claim by petitioners that they had no knowledge of the notice to file brief with the CA. No allegation was even made that after the discovery of the dismissal of their case by the CA, petitioners asked or confronted their lawyer for the latter's failure to file the brief. It is the duty of a party-litigant to be in contact with his counsel from time to time in order to be informed of the progress of his case. All of the

above would lead anyone to conclude that petitioners were not vigilant. Although there is no doubt that petitioners' counsel was negligent, such negligence was not so gross because it still afforded petitioners the necessary remedy, provided that they themselves were not negligent. Hence, the negligence of their counsel binds them. A contrary view would be inimical to the greater interest of dispensing justice. For all that a losing party would need to do is invoke the mistake or negligence of his counsel as a ground for reversing or setting aside a judgment adverse to him, thereby putting no end to litigation. To allow this obnoxious practice would be to put a premium on the willful and intentional commission of errors by accused persons and their counsel, with a view to securing favorable rulings in cases of conviction.

APPEARANCES OF COUNSEL

The Solicitor General for respondent.

D E C I S I O N

PERALTA, ***J.*:**

Before this Court is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, in connection with Section 2, Rule 125 of the Rules of Criminal Procedure, seeking to set aside the entry of judgment in CA-G.R. CR No. 26329 and to reinstate the appeal of herein petitioners before the Court of Appeals (CA).

The instant petition is brought about by the following factual and procedural antecedents:

On July 25, 1996, Criminal Case No. 96-151438 for homicide was filed against petitioners with the Regional Trial Court (RTC) of Manila, Branch 6, the Information on which reads:

That on or about June 30, 1996, in the City of Manila, Philippines, the said accused, conspiring and confederating together with two others whose true names, real identities and present whereabouts are still unknown and helping one another, did then and there wilfully, unlawfully and feloniously, with intent to kill, attack, assault and

use personal violence upon the person of TEOFILO CORNEL *Y* DACASIN, by then and there kicking, boxing the latter on the different parts of his body and, thereafter, striking him in the head with a stone, thereby inflicting upon him mortal and fatal wounds which were the direct and immediate cause of his death thereafter.

CONTRARY TO LAW.[1]

During their arraignment on January 31, 1997, petitioners, with the assistance of their counsel *de parte*, pleaded "not guilty."

At the trial, the RTC found the following facts based on the testimonies of prosecution witnesses Rodolfo C. Cortez (Cortez), an eyewitness to the mauling incident which led to the killing of the victim; Edgardo Ko (Ko), the police investigator of the case; Flora Cornel (Flora), who testified as to the civil liability of the case, she, being the mother of the victim; and the testimony of petitioner Paulito Pascual, for the defense:

On June 30, 1996, at about 12:30 in the morning, Rodolfo Cortez was on his way to buy *liempo* at Andok's Litson Manok (Andok's) located at the corner of Palawan and Rosalito Streets, along G. Tuazon, Sampaloc, Manila. Cortez was approaching Andok's when he saw a male person sporting long hair being kicked, mauled and ganged up on by six persons in front of the same store. Cortez recognized two of the six persons as petitioners Glen Pascual *alias* "Yeye" and Paulito Pascual *alias* "Boyet," as the former sometimes played basketball with Cortez and the latter lived in Masbate Street, the next street from Leo Street, where Cortez lived. Petitioner Glen Pascual hit the head of the victim with a knapsack, which caused the victim to fall with his face down. While the victim was lying prostrate on the ground, petitioners Glen Pascual and Paulito Pascual continuously kicked the said victim. Cortez next saw petitioner Glen Pascual with a shiny instrument, which the latter struck on the neck area (the lower earlobe) of the victim. After that, Cortez heard somebody shout the name "Yeye," which made

[1] Records, p. 1.

petitioner Glen Pascual turn around, prompting both of them to have an eye to eye contact.[2]

The following day, after the mauling incident, while Cortez was on his way home from work, he passed by the *barangay* hall and noticed that somebody was lying in state. Cortez entered the *barangay* hall and recognized the corpse inside the coffin as the same victim who was mauled the night before. Cortez informed somebody, who turned out to be the brother of the victim, about the mauling incident which led to the killing of the victim and told the latter that he was willing to testify as to the incident he witnessed.[3] Thus, on July 2, 1996, Cortez executed an Affidavit[4] stating what he witnessed during the mauling.

Edgardo Ko testified that on June 30, 1996, at 10:00 in the morning, while he was in his office at the Western Police District, Homicide Section, he received a telephone call from Senior Police Officer (SPO4) Domingo Almeda of the Balic-Balic Police Station informing him that a victim of a mauling incident was admitted dead on arrival at the *Ospital ng Sampaloc*. Hearing said information, he and PO3 Diomedes Labarda then proceeded to the said hospital and traced the victim's body inside the emergency room. Upon seeing the victim's body, Ko examined it. It showed lacerated wounds at the back of his head, busted lips and a puncture wound on the chin. He also came to know the name of the victim as Teofilo Cornel *y* Dacasin (Teofilo). Afterwards, Ko and his companion proceeded to the scene of the mauling incident. They conducted an ocular inspection and found splashes of blood along the gutter of the road. They also found the bloodstained, gray and aquamarine colored knapsack containing assorted technician's tools and clothing which allegedly belonged to the victim. They recovered said bag at the Pascual compound at 1024 Rosalito Street, Sampaloc, Manila.[5]

---

[2] *Rollo*, p. 21.

[3] *Id.* at 15-16.

[4] *Id.* at 21-22.

[5] *Id.* at 22-23.

The autopsy conducted by Dr. Antonio S. Vertido, Medico-Legal Officer of the National Bureau of Investigation (NBI), upon a letter-request of the victim's brother, indicated the following: (1) the victim suffered fractures, linear, on the right and left fronto-temporo-parietal bones; (2) as a result of the said injuries, the victim suffered hematoma on the scalp, generalized, and hemorrhages, subdural, on the right and left cerebral-hemisphere; (3) the injuries could have been caused by a blunt instrument like a lead pipe or a 2x2 piece of wood; (4) considering that the victim suffered fractures on both sides of his head, the blunt instrument could have been used twice in inflicting the wounds; (5) that the person who inflicted the blunt instrument could have been one arm's length from the victim, and that if the blunt instrument was placed inside a bag and that bag was used to hit the head of the victim, the same would still be a blunt instrument and could have produced the same injuries; (6) that the external injuries like lacerated wounds, hematoma, and contusions were also caused by a blunt instrument; (7) that these wounds could have been sustained also if the victim was boxed and kicked, because a closed fist is a blunt object; and (8) that in view of the location of the external injuries in the anterior position of the body of the victim, the assailant and the victim could have been facing each other about an arm's length from each other.[6]

On the other hand, petitioner Paulito Pascual, in his testimony, narrated that on June 30, 1996, he went to sleep at around 11:30 in the evening and woke up at about 12:30 to 1:00 in the morning because his housemaid arrived and informed him that there was a commotion outside his house. He went outside the house but did not see any commotion; instead, he saw a lone person lying prostrate along G. Tuazon Street. He returned to the house and asked the housemaid as to the identity of the person lying prostrate on the ground. While he was inside his house, three policemen entered and invited him for investigation while four other policemen remained outside the compound where

[6] *Id.* at 23.

the house was located and held his relatives, *i.e.,* Balam Pascual, Eddie Mamaril and Tiyo Van Pascual for questioning. They all boarded an owner-type jeepney and the policemen brought them to the police headquarters at Police Station 5. The policemen did not show him any warrant for his arrest or for the arrest of his other relatives. They were detained at the police station for one week. Thereafter, he was transferred to the Manila City Jail. He did not know the victim or the name and identity of the person he saw lying prostrate outside his house.[7]

After trial, the RTC found petitioners guilty beyond reasonable doubt of the crime charged. The dispositive portion of the Decision[8] dated September 7, 2001 reads as follows:

> WHEREFORE, in view of the afore-going, the Court finds accused GLEN PASCUAL *Y* MALUMAY *alias* "YEYE" and PAULITO PASCUAL *Y* JUDALENA *alias* "BOYET" GUILTY beyond reasonable doubt of the crime of HOMICIDE. The Court hereby sentences them to suffer an indeterminate sentence of SIX (6) YEARS AND ONE (1) DAY TO TWELVE (12) YEARS and to jointly and severally pay the mother of the victim, Mrs. Flora Cornel the following amounts:
>
> a. ₱50,000.00 for the death of Teofilo Cornel *y* Dacasin;
> b. ₱50,000.00 as reimbursement of burial expenses; and
> c. ₱50,000.00 as moral damages.
>
> SO ORDERED.[9]

Due to the conviction, petitioners filed an Urgent Motion for Reconsideration[10] dated September 25, 2001, which was denied by the trial court.[11]

Consequently, petitioners filed an Urgent Notice of Appeal[12] on October 17, 2001 and, on July 9, 2002, the CA issued a

---

[7] *Id.* at 25.

[8] Penned by Presiding Judge Lolita C. Dumlao; *id.* at 20-28.

[9] *Rollo*, p. 28.

[10] Records, pp. 270-274.

[11] Order dated October 4, 2001; *id.* at 277.

[12] *Id.* at 279.

notice[13] to petitioner's former counsel, Atty. Edilberto R. Balce, requiring petitioners to file their brief within thirty (30) days from receipt of the said notice. On August 13, 2002, petitioners filed through their new counsel, Atty. Humberto B. Basco, an Urgent *Ex-Parte* Motion for Extension of Time to Submit Appeal Brief,[14] which was granted by the CA in a Resolution[15] dated October 15, 2002. However, no brief was filed by petitioners.

For failure of petitioners to file the required brief, their appeal was deemed abandoned and dismissed, pursuant to Section 8, Rule 124 of the Revised Rules of Criminal Procedure, by the CA on February 13, 2003.[16] And, as a consequence thereof, an Entry of Judgment was made on March 8, 2003.

Subsequently, petitioners filed an Urgent Omnibus Motion[17] dated September 10, 2003 with the CA alleging that the dismissal of the appeal amounted to punishing them for something which they did not do or in which they had no participation whatsoever. They also argued that the dismissal of the appeal and the entry of judgment did not preclude the CA from reinstating the appeal, as there were instances when the same court had set aside entries of judgments and reinstated appeals due to the failure of counsels to file appellants' briefs.

The Office of the Solicitor General (OSG), in its Comment[18] dated January 28, 2004, argued that the claim of the petitioners that they were not informed by their counsel of the filing of the motion for extension of the period for the filing of their brief and the dismissal of the appeal on account of the non-filing of the said required pleading, was devoid of any merit. The OSG

---

[13] CA *rollo*, p. 31.

[14] *Id.* at 32.

[15] *Id.* at 36.

[16] Resolution of the Court of Appeals, Fourth Division, penned by Associate Justice Mario L. Guariña III, with Associate Justices Godardo A. Jacinto and Martin S. Villarama, Jr., concurring; *id.* at 38.

[17] CA *rollo*, pp. 42-52.

[18] *Id.* at 73-79.

pointed out that the petitioners were aware of the notice to file brief, since what they disclaimed knowledge of were merely the motion for extension filed by their counsel and the resolution dismissing the appeal. It was also observed by the OSG that the lack of coordination by the petitioners with their counsel respecting the appeal may be attributed to the possibility that petitioners were confused as to who their counsel was, as shown in their Omnibus Motion, wherein they referred to their counsel as Atty. Humberto Basco on page 1 and as Atty. Edilberto R. Balce on page 3, which indicate that the petitioners did not even bother to know who their counsel was. It was also claimed by the OSG that petitioners omitted to state in their Motion the date when they discovered the dismissal of their appeal and, thereby, hiding the unreasonable delay or *laches* on their part with regard to their Urgent Motion, which was filed more than 11 months since the Resolution dismissing the appeal was promulgated. In sum, the OSG, citing jurisprudence,[19] contended that a client is bound by the actions of his counsel, as well as by his mistake or negligence, and that a party cannot blame his counsel for negligence when he himself is guilty of neglect.

In their Reply (to Comment)[20] dated February 10, 2004, petitioners argued that they relied on the supposed professionalism of every member of the Bar. They also claimed that no amount of prodding would guarantee that the brief would be prepared and filed on time, as the lawyer concerned was negligent. According to them, if they made any mistake, it was their act of trusting their lawyer and not their failure to follow up the status of the case. It was also their contention that they should not be blamed for the fact that they had not secured the services of a counsel because they tried hard to

---

[19] *Barangay 24 of Legazpi City v. Imperial*, G.R. No. 140321, August 24, 2000, 338 SCRA 694; *Gacutana-Fraile v. Domingo*, G.R. No. 138518, December 15, 2000, 348 SCRA 414; *Sapad v. Court of Appeals*, G.R. No. 132153, December 15, 2000, 348 SCRA 304; *Macapagal v. Court of Appeals*, G.R. No. 110610, April 18, 2000, 271 SCRA 491; and *Villanueva v. People*, G.R. No. 135098, April 12, 2000, 330 SCRA 695.

[20] CA *rollo*, pp. 81-85.

convince lawyers to handle their case, but they seemed to believe that their case was hopeless. Finally, citing jurisprudence,[21] they state that procedural rules should be liberally construed in order to promote their object and assist the parties in obtaining just, speedy and inexpensive determination of every action or proceeding.

In its Resolution[22] dated February 18, 2004, the CA denied the Urgent Omnibus Motion dated September 10, 2003 of petitioners by agreeing with the OSG that petitioners were aware of the notice to file brief, and that they themselves were guilty of neglect for failing to monitor the status of their appeal. The CA also ruled that petitioners did not state when they discovered the dismissal of their appeal, the omission of which appears to hide their own delay in filing the motion, which was one for reconsideration of a final resolution and, hence, subject to a reglementary period.

On March 11, 2004, petitioners filed a Motion for Extension of Time to File Petition for Review on *Certiorari*,[23] which was denied by this Court in a Resolution[24] dated April 12, 2004 for petitioners' failure to show that they had not lost the fifteen (15)-day reglementary period within which to appeal pursuant to Section 2, Rule 45 of the 1997 Rules of Civil Procedure, as amended, in view of the lack of statement of the date of receipt of the assailed judgment of the CA.

The present petition was filed on April 6, 2004.

On May 18, 2004, petitioners filed a Motion for Reconsideration of this Court's Resolution dated April 12, 2004

---

[21] *Nepomuceno v. Court of Appeals*, G.R. No. 126405, February 25, 1999, 303 SCRA 679, 682; *Nerves v. Civil Service Commission*, G.R. No. 123561, July 31, 1997, 276 SCRA 610, 617; and *A-One Feeds, Inc. v. Court of Appeals*, G.R. No. L-35560, October 30, 1980, 100 SCRA 590, 594.

[22] CA *rollo*, p. 87.

[23] *Rollo*, pp. 3-4.

[24] *Id.* at 7.

on the ground of negligence of their counsel. They claimed that they could not comply with the requirement to indicate in their petition the date when they received the Resolution of the CA dismissing their appeal, because they never received a copy of the Resolution of the CA; and that their counsel was so grossly negligent that he did not even bother to inform petitioners of the developments in their appeal. In its Resolution dated May 24, 2004, this Court required the OSG to file a comment on the petition and on the motion for reconsideration.

In its Comment on the petition dated September 2, 2004, the OSG argued that the petitioners were likewise at fault for the dismissal of their appeal because they failed to diligently monitor the status of their appeal. The OSG reiterated the arguments it raised in its Comment dated January 28, 2004. Anent the petitioners' motion for reconsideration, the OSG countered that despite the provisions of Section 6, Rule 1 of the Rules of Court, which provides that the said procedural rules, as a general rule, are liberally construed, periods for filing an appeal or a motion for reconsideration are strictly enforced. Thus, according to the OSG, having had actual notice of the issuance of the Resolution of the CA dismissing their appeal, petitioners should have indicated the date of such notice in their petition with this Court, which inclusion is necessary to establish compliance with Section 2, Rule 45 of the Rules of Court.

On October 13, 2004, the Court granted petitioners' Motion for Reconsideration of its Resolution dated April 12, 2004 denying petitioners' Motion for Extension to File Petition dated March 11, 2004. In the same Resolution, this Court gave due course to the instant petition and required the parties to submit their respective memoranda within thirty (30) days from notice.

On November 30, 2004, petitioners submitted their Memorandum, and on February 4, 2005, the OSG filed a Manifestation and Motion praying that it be allowed to adopt its Comment dated September 2, 2004 as its Memorandum, which the Court granted on March 16, 2005.

The issues raised in this petition are:

A

THE DISMISSAL OF PETITIONERS' APPEAL AMOUNTED TO PENALIZING THEM FOR SOMETHING OVER WHICH THEY HAD NO CONTROL WHATSOEVER.

B

THE HONORABLE COURT OF APPEALS ERRED IN RIGIDLY APPLYING THE RULES RATHER THAN THE SPIRIT BEHIND THEM.

The petition has no merit.

Petitioners insist that they relied on the supposed professionalism of their counsel. According to them, having received the notice from the Court of Appeals to file a brief, their counsel was supposed to know his duty, not only as their counsel but also as an officer of the court; and they conclude that they should not be blamed and penalized if the conduct of their counsel fell way short of what was expected of him. This reasoning of petitioners merits no consideration.

It is a well-settled rule that the client is bound by the counsel's conduct, negligence, and mistakes in handling the case; and the client cannot be heard to complain that the result might have been different had his lawyer proceeded differently.[25]

In *People of the Philippines and Bricio Ygana v. Rafael Bitanga*,[26] an exception to the foregoing rule is enunciated, and that is when the negligence of counsel had been so egregious that it prejudiced his client's interest and denied him his day in court. For this exception to apply, however, the gross negligence of counsel should not be accompanied by his client's own negligence or malice.[27]

---

[25] *People v. Salido*, G.R. No. 116208, July 5, 1996, 256 SCRA 291, 295, citing *Tupas v. Court of Appeals*, 193 SCRA 597 (1991).

[26] G.R. No. 159222, June 26, 2007, 525 SCRA 623, 632-633, citing *Apex Mining, Inc. v. Court of Appeals*, 377 Phil. 482, 493 (1999); *Salonga v. Court of Appeals*, 336 Phil. 514, 527 (1997); *Legarda v. Court of Appeals*, G.R. No. 94457, March 18, 1991, 195 SCRA 418, 426.

[27] *Tan v. Court of Appeals*, G.R. No. 157194, June 20, 2006, 491 SCRA 452, 462.

Clients have the duty to be vigilant of their interests by keeping themselves up to date on the status of their case.[28] Failing in this duty, they suffer whatever adverse judgment is rendered against them.

The CA is correct in its finding that petitioners were aware of the notice to file brief, since what the petitioners disclaimed knowledge of was only their counsel's motion for extension to file the brief. The previous pleadings, as well as the petition itself, are without any claim by petitioners that they had no knowledge of the notice to file brief with the CA. No allegation was even made that after the discovery of the dismissal of their case by the CA, petitioners asked or confronted their lawyer for the latter's failure to file the brief. It is the duty of a party-litigant to be in contact with his counsel from time to time in order to be informed of the progress of his case.[29]

All of the above would lead anyone to conclude that petitioners were not vigilant. Although there is no doubt that petitioners' counsel was negligent, such negligence was not so gross because it still afforded petitioners the necessary remedy, provided that they themselves were not negligent. Hence, the negligence of their counsel binds them. A contrary view would be inimical to the greater interest of dispensing justice. For all that a losing party would need to do is invoke the mistake or negligence of his counsel as a ground for reversing or setting aside a judgment adverse to him, thereby putting no end to litigation. To allow this obnoxious practice would be to put a premium on the willful and intentional commission of errors by accused persons and their counsel, with a view to securing favorable rulings in cases of conviction.[30]

---

[28] *Mercado v. Security Bank Corporation*, G.R. No. 160445, February 16, 2006, 482 SCRA 501, 506.

[29] *Bernardo v. Court of Appeals*, G.R. No. 106153, July 14, 1997, 275 SCRA 413, 430.

[30] *Aurora Tamayo v. People*, G.R. No. 174698, July 28, 2008, 560 SCRA 312, 326-327, citing *Ceniza-Manantan v. People*, 531 SCRA 364, 379-380 (2007).

Petitioners likewise argue that the CA rigidly applied the rules rather than the spirit behind them. They proceeded to cite a case wherein the rules were relaxed and the relief sought, which was the cancellation of the entry of judgment by the CA, was ordered upon the finding of negligence on the part of the counsel. However, the cited case bears scant resemblance to the instant case. As discussed earlier, petitioners' counsel may have committed negligence, but such was not so gross as to deprive them of their right to due process. On the contrary, *Mario S. Mariveles v. Court of Appeals*,[31] which petitioners cited, the negligence committed by the counsel was so great that the rights of the accused were prejudiced. Thus:

It is true that the failure of counsel to file brief for the appellant which led to the dismissal of the appeal does not necessarily warrant the reinstatement thereof. However, where the negligence of the counsel is so great that the rights of the accused are prejudiced and he is prevented from presenting his defense, especially where appellant raises issues which place in serious doubt the correctness of the trial court's judgment of conviction, the aforesaid rule must not be rigidly applied to avoid a miscarriage of justice. These teachings of jurisprudence are present in the case at bar.

Hence, the above case is inapplicable to the instant case.

WHEREFORE, the petition is *DENIED*, and the Resolution dated February 18, 2004 of the Court of Appeals in CA-G.R. CR No. 26329 is *AFFIRMED*.

SO ORDERED.

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

---

[31] G.R. No. 85964, Minute Resolution dated March 13, 1989.

[*] Designated to sit as an additional member, per Special Order No. 646 dated May 15, 2009.

[**] Designated to sit as an additional member, per Special Order No. 631 dated April 29, 2009.

THIRD DIVISION

[G.R. No. 165407. June 5, 2009]

HERMINIGILDO INGUILLO and ZENAIDA BERGANTE, *petitioners, vs.* **FIRST PHILIPPINE SCALES, INC. and/or AMPARO POLICARPIO, Manager,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; UNION SECURITY; KINDS. — "Union security" is a generic term, which is applied to and comprehends "closed shop," "union shop," "maintenance of membership" or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment. There is union shop when all new regular employees are required to join the union within a certain period as a condition for their continued employment. There is maintenance of membership shop when employees, who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit or the agreement is terminated. A closed-shop, on the other hand, may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part.

2. ID.; ID.; TERMINATION OF EMPLOYMENT; TERMINATING THE EMPLOYMENT OF AN EMPLOYEE BY ENFORCING THE UNION SECURITY CLAUSE; REQUISITES. — In terminating the employment of an employee by enforcing the Union Security Clause, the employer needs only to determine and prove that: (1) the union security clause is applicable; (2) the union is

requesting for the enforcement of the union security provision in the CBA; and (3) there is sufficient evidence to support the union's decision to expel the employee from the union or company.

3. ID.; ID.; ID.; ID.; EXPLAINED. — In *Del Monte Philippines*, the stipulations in the CBA authorizing the dismissal of employees are of equal import as the statutory provisions on dismissal under the Labor Code, since a CBA is the law between the company and the Union, and compliance therewith is mandated by the express policy to give protection to labor. In *Caltex Refinery Employees Association (CREA) v. Brillantes*, the Court expounded on the effectiveness of union security clause when it held that it is one intended to strengthen the contracting union and to protect it from the fickleness or perfidy of its own members. For without such safeguards, group solidarity becomes uncertain; the union becomes gradually weakened and increasingly vulnerable to company machinations. In this security clause lies the strength of the union during the enforcement of the collective bargaining agreement. It is this clause that provides labor with substantial power in collective bargaining. x x x In enforcing the Union Security Clause in the CBA, We are upholding the sanctity and inviolability of contracts. But in doing so, We cannot override an employee's right to due process. In *Carino v. National Labor Relations Commission*, We took a firm stand in holding that: The power to dismiss is a normal prerogative of the employer. However, this is not without limitation. **The employer is bound to exercise caution in terminating the services of his employees especially so when it is made upon the request of a labor union pursuant to the Collective Bargaining Agreement** x x x. Dismissals must not be arbitrary and capricious. **Due process must be observed in dismissing an employee because it affects <u>not only his position but also his means of livelihood</u>**. Employers should respect and protect the rights of their employees, which include the right to labor." Thus, as held in that case, "the right of an employee to be informed of the charges against him and to reasonable opportunity to present his side in a controversy with either the company or his own Union is not wiped away by a Union Security Clause or a Union Shop Clause in a collective bargaining agreement. An employee is entitled to be protected

not only from a company which disregards his rights but also from his own Union, the leadership of which could yield to the temptation of swift and arbitrary expulsion from membership and mere dismissal from his job."

4. ID.; ID.; ID.; ID.; REQUIRES PRIOR NOTICE AND HEARING. — [W]hile We uphold dismissal pursuant to a union security clause, the same is not without a condition or restriction. For to allow its untrammeled enforcement would encourage arbitrary dismissal and abuse by the employer, to the detriment of the employees. Thus, to safeguard the rights of the employees, We have said time and again that dismissals pursuant to union security clauses are valid and legal, subject only to the requirement of due process, that is, notice and hearing prior to dismissal. In like manner, We emphasized that the enforcement of union security clauses is authorized by law, provided such enforcement is not characterized by arbitrariness, and always with due process.

5. ID.; ID.; DUE PROCESS UNDER THE LABOR CODE; SUBSTANTIVE AND PROCEDURAL DUE PROCESS; ELUCIDATED. — There are two (2) aspects which characterize the concept of due process under the Labor Code: one is substantive—whether the termination of employment was based on the provisions of the Labor Code or in accordance with the prevailing jurisprudence; the other is procedural — the manner in which the dismissal was effected. The second aspect of due process was clarified by the Court in *King of Kings Transport v. Mamac*, stating, thus: (1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. x x x (2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the

parties as an opportunity to come to an amicable settlement. (3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment. Corollarily, procedural due process in the dismissal of employees requires notice and hearing. The employer must furnish the employee two written notices before termination may be effected. The first notice apprises the employee of the particular acts or omissions for which his dismissal is sought, while the second notice informs the employee of the employer's decision to dismiss him. The requirement of a hearing, on the other hand, is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.

6. ID.; ID.; TERMINATION OF EMPLOYMENT; WHERE THE DISMISSAL IS FOR A CAUSE RECOGNIZED BY THE PREVAILING JURISPRUDENCE, THE ABSENCE OF THE STATUTORY DUE PROCESS SHOULD NOT NULLIFY THE DISMISSAL; CASE AT BAR. — We hold that while Bergante and Inguillo's dismissals were valid pursuant to the enforcement of Union Security Clause, respondents however did not comply with the requisite procedural due process. As in the case of *Agabon v. National Labor Relations Commission,* where the dismissal is for a cause recognized by the prevailing jurisprudence, the absence of the statutory due process should not nullify the dismissal or render it illegal, or ineffectual. Accordingly, for violating Bergante and Inguillo's statutory rights, respondents should indemnify them the amount of ₱30,000.00 each as nominal damages.

APPEARANCES OF COUNSEL

Engelberto A. Farol for petitioners.
Amelia T. Callueng for respondents.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review under Rule 45 of the Rules of Court are the Court of Appeals (1) Decision[1] dated March 11, 2004 in CA-G.R. SP No. 73992, which dismissed the Petition for *Certiorari* of petitioners Zenaida Bergante (Bergante) and Herminigildo Inguillo (Inguillo); and (2) Resolution[2] dated September 17, 2004 denying petitioners' Motion for Reconsideration. The appellate court sustained the ruling of the National Labor Relations Commission (NLRC) that petitioners were validly dismissed pursuant to a Union Security Clause in the collective bargaining agreement.

The facts of the case are as follows:

First Philippine Scales, Inc. (FPSI), a domestic corporation engaged in the manufacturing of weighing scales, employed Bergante and Inguillo as assemblers on August 15, 1977 and September 10, 1986, respectively.

In 1991, FPSI and First Philippine Scales Industries Labor Union (FPSILU)[3] entered into a Collective Bargaining Agreement (CBA),[4] the duration of which was for a period of five (5) years starting on September 12, 1991 until September 12, 1996. On September 19, 1991, the members of FPSILU ratified the CBA in a document entitled *RATIPIKASYON NG KASUNDUAN*.[5] Bergante and Inguillo, who were members of FPSILU, signed the said document.[6]

---

[1] Penned by Associate Justice Salvador J. Valdez, Jr., with Associate Justices Josefina Guevara-Salonga and Arturo D. Brion (now a member of the Court), concurring; *rollo*, pp. 37-51.

[2] *Id.* at 53-54.

[3] Sometimes referred to as "FPSI Independent Labor Union" in other pleadings. See note 13.

[4] CA *rollo*, pp. 189-197.

[5] *Id.* at 198-199.

[6] *Id.* at 198.

During the lifetime of the CBA, Bergante, Inguillo and several FPSI employees joined another union, the *Nagkakaisang Lakas ng Manggagawa* (NLM), which was affiliated with a federation called KATIPUNAN (NLM-KATIPUNAN, for brevity). Subsequently, NLM-KATIPUNAN filed with the Department of Labor and Employment (DOLE) an intra-union dispute[7] against FPSILU and FPSI. In said case, the Med-Arbiter decided[8] in favor of FPSILU. It also ordered the officers and members of NLM-KATIPUNAN to return to FPSILU the amount of ₱90,000.00 pertaining to the union dues erroneously collected from the employees. Upon finality of the Med-Arbiter's Decision, a Writ of Execution[9] was issued to collect the adjudged amount from NLM-KATIPUNAN. However, as no amount was recovered, notices of garnishment were issued to United Coconut Planters Bank (Kalookan City Branch)[10] and to FPSI[11] for the latter to hold for FPSILU the earnings of Domingo Grutas, Jr. (Grutas) and Inguillo, formerly FPSILU's President and Secretary for Finance, respectively, to the extent of ₱13,032.18. Resultantly, the amount of ₱5,140.55 was collected,[12] ₱1,695.72 of which came from the salary of Grutas, while the ₱3,444.83 came from that of Inguillo.

Meanwhile, on March 29, 1996, the executive board and members of the FPSILU addressed a document dated March 18, 1996 denominated as "Petisyon"[13] to FPSI's general manager,

---

[7] Entitled: "In re: Intra Union Dispute at First Philippine Scales Industries, Nagkakaisang Lakas ng Manggagawa (NLM)-Katipunan, Petitioner - versus – First Philippine Scales Industries (Independent) Labor Union, Respondent; First Philippine Scales Industries, Employer," docketed as Case No. OD-M-9503-046 (OS-A-7-140-95).

[8] Per Decision dated May 17, 1995.

[9] CA *rollo*, pp. 120-123.

[10] *Id.* at 124.

[11] *Id.* at 125.

[12] *Id.* at 126.

[13] *Id.* at 127-128. The grounds mentioned in the "Petisyon" are quoted as follows:

Amparo Policarpio (Policarpio), seeking the termination of the services of the following employees, namely: Grutas, Yolanda Tapang, Shirley Tapang, Gerry Trinidad, Gilbert Lucero, Inguillo, Bergante, and Vicente Go, on the following grounds:[14] (**1**) disloyalty to the Union by separating from it and affiliating with a rival Union, the NLM-KATIPUNAN; (**2**) dereliction of duty by failing to call periodic membership meetings and to give financial reports; (**3**) depositing Union funds in the names 500

---

1. A*ng mga opisyales na ito, ay ang mga* ***dating [miyembro] at opisyales ng F.P.S.I. Independent Labor Union****, na rehistrado sa DOLE bilang isang lehitimong Union, at* ***sila'y tumiwalag upang magtayo o magtatag ng panibagong Union****;*

2. *Hindi rin siya nagpatawag ng meeting kung ano na ang nangyari sa aming Union at ang aming Union fund. Hindi rin siya nag-submit ng financial statement sa DOLE;*

3. *Sila rin ang dahilan kung bakit naantala ang aming pakikipagnegosasyon sa inyo sa nalalabing dalawang taon;*

4. *Nilabag din ni Domingo Grutas ang aming karapatan bilang isang [miyembro] ng Union, dahil gumawa siya ng desisyon na lingid sa kaalaman ng kanyang kasamang opisyales at [miyembro];*

5. *Dahil sa kanilang panggugulo bumagsak ang ating produkto at yon ang dahilan kung bakit hindi namin nakamit ang mga [benepisyo] na dapat naming hilingin at matanggap sa inyo;*

6. *Dahil sa kaguluhang iyon nawala ang aming team work, at pagkakaisa sa paggawa upang tumaas ang ating produkto, at hindi kahiya-hiya kung hihiling kami ng karagdagang [benepisyo];*

7. *Hindi rin namin nakamit ang kanilang kooperasyon dahil hindi sila nakikipag-usap at nakikiisa sa amin, bagkus, nagmamalaki pa, at nagbabalak pang manggulo muli;*

8. *Nilalason din nila ang isipan ng ibang [miyembro] ng aming Union upang kumalas ito sa aming samahan;*

9. *Ang paglustay ng aming [pondo] na lingid sa aming kaalaman at pagdeposito ng pera sa pangalan ng Presidente na si Domingo Grutas at Vise Presidente Yolanda Tapang, at hindi sa pangalan ng aming Union sa pangangalaga ng aming Tresurero;*

K*aya mahigpit po naming hinihiling sa inyong butihing opisina na tanggalin sila para wala nang hadlang at balakid sa aming pagsusumikap na gumanda at mapabuti ang daloy ng ating produkto upang makamit din namin ang iba pang [benepisyo].* (Emphasis supplied).

[14] See CA Decision, *rollo*, p. 39.

Grutas and former Vice-President Yolanda Tapang, instead of in the name of FPSILU, care of the President; (4) causing damage to FPSI by deliberately slowing down production, preventing the Union to even attempt to ask for an increase in benefits from the former; and (**5**) poisoning the minds of the rest of the members of the Union so that they would be enticed to join the rival union.

On May 13, 1996, Inguillo filed with the NLRC a complaint against FPSI and/or Policarpio (respondents) for illegal withholding of salary and damages, docketed as NLRC-NCR-Case No. 00-05-03036-96.[15]

On May 16, 1996, respondents terminated the services of the employees mentioned in the "Petisyon."

The following day, two (2) separate complaints for illegal dismissal, reinstatement and damages were filed against respondents by: (1) NLM-KATIPUNAN, Grutas, Trinidad, Bergante, Yolanda Tapang, Go, Shirley Tapang and Lucero[16] (Grutas complaint, for brevity); and (2) Inguillo[17] (Inguillo complaint). Both complaints were consolidated with Inguillo's prior complaint for illegal withholding of salary, which was pending before Labor Arbiter Manuel Manansala. After the preliminary mandatory conference, some of the complainants agreed to amicably settle their cases. Consequently, the Labor Arbiter issued an Order[18] dated October 1, 1996, dismissing with prejudice the complaints of Go, Shirley Tapang, Yolanda Tapang, Grutas, and Trinidad.[19] Lucero also

---

[15] Records, p. 2

[16] Docketed as NLRC-NCR-Case No. 00-05-03144-96; *id.* at 13-14.

[17] Docketed as NLRC-NCR-Case No. 00-05-03138-96; *id.* at 28.

[18] Records, pp. 46-47.

[19] *Id.* at 40-44. The aforesaid complainants, agreeing to amicably settle their cases, executed a Quitclaim and Release upon receipt from FPSI of a financial consideration, as follows:

Vicente Go	----------	₱23,263.00
Shirley Tapang	----------	₱27,813.00
Yolanda Tapang	----------	₱39,740.00
Domingo Grutas	- ----------	₱23,589.00
Gerry Trinidad	----------	₱23,454.00

settled the case after receiving his settlement money and executing a Quitclaim and Release in favor of FPSI and Policarpio.[20]

Bergante and Inguillo, the remaining complainants, were directed to submit their respective position papers, after which their complaints were submitted for resolution on February 20, 1997.[21]

In their Position Paper,[22] Bergante and Inguillo claimed that they were not aware of a petition seeking for their termination, and neither were they informed of the grounds for their termination. They argued that had they been informed, they would have impleaded FPSILU in their complaints. Inguillo could not think of a valid reason for his dismissal except the fact that he was a very vocal and active member of the NLM-KATIPUNAN. Bergante, for her part, surmised that she was dismissed solely for being Inguillo's sister-in-law. She also reiterated the absence of a memorandum stating that she committed an infraction of a company rule or regulation or a violation of law that would justify her dismissal.

Inguillo also denounced respondents' act of withholding his salary, arguing that he was not a party to the intra-union dispute from which the notice of garnishment arose. Even assuming that he was, he argued that his salary was exempt from execution.

In their Position Paper,[23] respondents maintained that Bergante and Inguillo's dismissal was justified, as the same was done upon the demand of FPSILU, and that FPSI complied in order to avoid a serious labor dispute among its officers and members, which, in turn, would seriously affect production. They also justified that the dismissal was in accordance with the Union Security Clause in the CBA, the existence and validity of which was not disputed by Bergante and Inguillo. In fact, the two had affixed their signatures to the document which ratified the CBA.

---

[20] *Id.* at 85.
[21] *Id.* at 135.
[22] *Id.* at 59-67.
[23] *Id.* at 72-80.

In his Decision[24] dated November 27, 1997, the Labor Arbiter dismissed the remaining complaints of Bergante and Inguillo and held that they were not illegally dismissed. He explained that the two clearly violated the Union Security Clause of the CBA when they joined NLM-KATIPUNAN and committed acts detrimental to the interests of FPSILU and respondents. The dispositive portion of the said Decision states:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Declaring respondents First Philippines Scales, Inc. (First Philippine Scales Industries [FPSI] and Amparo Policarpio, in her capacity as President and General Manager of respondent FPSI, not guilty of illegal dismissal as above discussed. However, considering the length of services rendered by complainants Herminigildo Inguillo and Zenaida Bergante as employees of respondent FPSI, plus the fact that the other complainants in the above-entitled cases were previously granted financial assistance/separation pay through amicable settlement, the afore-named respondents are hereby directed to pay complainants Herminigildo Inguillo and Zenaida Bergante separation pay and accrued legal holiday pay, as earlier computed, to wit:

Herminigildo Inguillo	
Separation pay	₱22,490.00
Legal Holiday Pay.....	839.00
Total	23,329.00
Zenaida Bergante	
Separation pay.....	₱43,225.00
Legal Holiday Pay.....	839.00
Total	44,064.00

2. Directing the afore-named respondents to pay ten (10%) percent attorney's fees based on the total monetary award to complainants Inguillo and Bergante.

3. Dismissing the claim for illegal withholding of salary of complainant Inguillo for lack of merit as above discussed.

---

[24] CA *rollo*, pp. 45-66.

4. Dismissing the other money claims and/or other charges of complainants Inguillo and Bergante for lack of factual and legal basis.

5. Dismissing the complaint of complainant Gilberto Lucero with prejudice for having executed a Quitclaim and Release and voluntary resignation in favor of respondents FPSI and Amparo Policarpio as above-discussed where the former received the amount of ₱23,334.00 as financial assistance/separation pay and legal holiday pay from the latter.

SO ORDERED.[25]

Bergante and Inguillo appealed before the NLRC, which reversed the Labor Arbiter's Decision in a Resolution[26] dated June 8, 2001, the dispositive portion of which provides:

WHEREFORE, the assailed decision is set aside. Respondents are hereby ordered to reinstate complainants Inguillo and Bergante with full backwages from the time of their dismissal up [to] their actual reinstatement. Further, respondents are also directed to pay complainant Inguillo the amount representing his withheld salary for the period March 15, 1998 to April 16, 1998. The sum corresponding to ten percent (10%) of the total judgment award by way of attorney's fees is likewise ordered. All other claims are ordered dismissed for lack of merit.

SO ORDERED.[27]

In reversing the Labor Arbiter, the NLRC[28] ratiocinated that respondents failed to present evidence to show that Bergante and Inguillo committed acts inimical to FPSILU's interest. It also observed that, since the two (2) were not informed of their dismissal, the justification given by FPSI that it was merely constrained to dismiss the employees due to persistent demand from the Union clearly proved the claim of summary dismissal and violation of the employees' right to due process.

---

[25] *Id.* at 65-66.

[26] *Id.* at 67-73.

[27] *Id.* at 73.

[28] Penned by Commissioner Vicente S.E. Veloso, with Presiding Commissioner Roy V. Señeres and Commissioner Alberto R. Quimpo, concurring.

Respondents filed a Motion for Reconsideration, which was referred by the NLRC to Executive Labor Arbiter Vito C. Bose for report and recommendation. In its Resolution[29] dated August 26, 2002, the NLRC adopted *in toto* the report and recommendation of Arbiter Bose which set aside its previous Resolution reversing the Labor Arbiter's Decision. This time, the NLRC held that Bergante and Inguillo were not illegally dismissed as respondents merely put in force the CBA provision on the termination of the services of disaffiliating Union members upon the recommendation of the Union. The dispositive portion of the said Resolution provides:

> WHEREFORE, the resolution of the Commission dated June 8, 2001 is set aside. Declaring the dismissal of the complainants as valid, [t]his complaint for illegal dismissal is dismissed. However, respondents are hereby directed to pay complainant Inguillo the amount representing his withheld salary for the period March 15, 1998 to April 16, 1998, plus ten (10%) percent as attorney's fees.
>
> All other claims are ordered dismissed for lack of merit.
>
> SO ORDERED.[30]

Not satisfied with the disposition of their complaints, Bergante and Inguillo filed a petition for *certiorari* under Rule 65 of the Rules of Court with the Court of Appeals (CA). The CA dismissed the petition for lack of merit[31] and denied the subsequent motion for reconsideration.[32] In affirming the legality of the dismissal, the CA ratiocinated, thus:

> x x x on the merits, we sustain the view adopted by the NLRC that:
>
> > x x x it cannot be said that the stipulation providing that the employer may dismiss an employee whenever the union recommends his expulsion either for disloyalty or for any violation

---

[29] CA *rollo*, pp. 75-85.

[30] *Id.* at 84.

[31] *Rollo*, pp. 37-51.

[32] *Id.* at 53-54.

> of its by-laws and constitution is illegal or constitutive of unfair labor practice, for such is one of the matters on which management and labor can agree in order to bring about the harmonious relations between them and the union, and cohesion and integrity of their organization. And as an act of loyalty, a union may certainly require its members not to affiliate with any other labor union and to consider its infringement as a reasonable cause for separation.
>
> The employer FPSI did nothing but to put in force their agreement when it separated the disaffiliating union members, herein complainants, upon the recommendation of the union. Such a stipulation is not only necessary to maintain loyalty and preserve the integrity of the union, but is allowed by the Magna Carta of Labor when it provided that while it is recognized that an employee shall have the right of self-organization, it is at the same time postulated that such rights shall not injure the right of the labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein. Having ratified their CBA and being then members of FPSILU, the complainants owe fealty and are required under the Union Security clause to maintain their membership in good standing with it during the term thereof, a requirement which ceases to be binding only during the 60-day freedom period immediately preceding the expiration of the CBA, which was not present in this case.
>
> x x x the dismissal of the complainants pursuant to the demand of the majority union in accordance with their union security [clause] agreement following the loss of seniority rights is valid and privileged and does not constitute unfair labor practice or illegal dismissal.

Indeed, the Supreme Court has for so long a time already recognized a union security clause in the CBA, like the one at bar, as a specie of closed-shop arrangement and trenchantly upheld the validity of the action of the employer in enforcing its terms as a lawful exercise of its rights and obligations under the contract.

> The collective bargaining agreement in this case contains a union security clause-a closed-shop agreement.
>
> A closed-shop agreement is an agreement whereby an employer binds himself to hire only members of the contracting union who must continue to remain members in good standing to keep their jobs. It is "the most prized achievement of unionism." It adds

membership and compulsory dues. By holding out to loyal members a promise of employment in the closed-shop, it welds group solidarity. (*National Labor Union v. Aguinaldo's Echague Inc.*, 97 Phil. 184). It is a very effective form of union security agreement.

This Court has held that a closed-shop is a valid form of union security, and such a provision in a collective bargaining agreement is not a restriction of the right of freedom of association guaranteed by the Constitution. (*Lirag Textile Mills, Inc. v. Blanco*, 109 SCRA 87; *Manalang v. Artex Development Company, Inc.*, 21 SCRA 561.)[33]

Hence, the present petition.

Essentially, the Labor Code of the Philippines has several provisions under which an employee may be validly terminated, namely: (1) just causes under Article 282;[34] (2) authorized causes under Article 283;[35] (3) termination due to disease under Article

---

[33] *Id.* at 45-47.

[34] **ART. 282. Termination by employer**. — An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

[35] **ART. 283. Closure of establishment and reduction of personnel**. — The employer may also terminate the employment of any employee due to the installation of labor saving devises, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice to the workers and the Ministry of Labor and Employment [Department of Labor and Employment] at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or

284;[36] and (4) termination by the employee or resignation under Article 285.[37] While the said provisions did not mention as ground the enforcement of the Union Security Clause in the CBA, the dismissal from employment based on the same is recognized and accepted in our jurisdiction.[38]

"Union security" is a generic term, which is applied to and comprehends "closed shop," "union shop," "maintenance of

---

redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[36] **ART. 284. Disease as ground for termination**. — An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[37] **ART. 285. Termination by employee**. — (a) An employee may terminate without just cause the employer-employee relationship by serving a written notice on the employer at least one (1) month in advance. The employer upon whom no such notice was served may hold the employee liable for damages.

(b) An employee may put an end to the relationship without serving any notice to the employer for any of the following just causes:

1. Serious insult by the employer or his representative on the honor and person of the employee;

2. Inhuman and unbearable treatment accorded the employee by the employer or his representative;

3. Commission of a crime or offense by the employer or his representative against the person of the employee or any of the foregoing.

[38] *Alabang Country Club, Inc. v. NLRC,* G.R. No. 170287, February 14, 2008, 545 SCRA 351, 361, citing *Del Monte Philippines v. Saldivar,* 504 SCRA 192, 203-204 (2006).

membership" or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment.[39] There is union shop when all new regular employees are required to join the union within a certain period as a condition for their continued employment. There is maintenance of membership shop when employees, who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit or the agreement is terminated.[40] A closed-shop, on the other hand, may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part.[41]

---

[39] *National Union of Workers in Hotels, Restaurants and Allied Industries-Manila Pavilion Hotel Chapter v. NLRC,* G.R. No. 179402, September 30, 2008, citing Azucena, C.A., *The Labor Code with Comments and Cases*, Volume 2, Fifth Edition, 2004, p. 242. The other common types of union security clause are defined and distinguished in the LABSTAT Updates of the Department of Labor and Employment, Vol. 1 No. 12, August 1997, to wit: (a) **Open shop**, which is an arrangement on recruitment whereby an employer may hire any employee, union member or not, but the new employee must join the union within a specified time and remain a member in good standing; (b) **Agency shop**, which is an arrangement whereby non-members of the contracting union must pay the union a sum equal to union dues known as "agency fees" for the benefits they received as a consequence of the bargaining negotiations effected through the efforts of the union; and (c) **Check off**, which is an arrangement by a union with the employer for dues to be deducted regularly from the members' salaries wherein the sum collected is remitted to the union by check. (Emphasis supplied).

[40] *Alabang Country Club, Inc. v. NLRC, supra* note 38, p. 361, citing 48 Am Jur 2d, § 797, p. 509.

[41] *Del Monte Philippines, Inc. v. Saldivar,* G.R. No. 158620, October 11, 2006, 504 SCRA 192, 202-203, citing *ROTHENBERG ON LABOR RELATIONS*, p. 48; cited in *Confederated Sons of Labor v. Anakan Lumber Co., et al.,* 107 Phil. 915, 918 (1960).

In their Petition, Bergante and Inguillo assail the legality of their termination based on the Union Security Clause in the CBA between FPSI and FPSILU. Article II[42] of the CBA pertains to Union Security and Representatives, which provides:

The Company hereby agrees to a UNION SECURITY [CLAUSE] with the following terms:

1. **All bonafide union members** as of the effective date of this agreement and all those employees within the bargaining unit who shall subsequently become members of the UNION during the period of this agreement **shall, as a condition to their continued employment, maintain their membership with the UNION** under the FIRST PHIL. SCALES INDUSTRIES LABOR UNION Constitution and By-laws and this Agreement;

2. Within thirty (30) days from the signing of this Agreement, all workers eligible for membership who are not union members shall become and to remain members in good standing as bonafide union members therein as a condition of continued employment;

3. New workers hired shall likewise become members of the UNION from date they become regular and permanent workers and shall remain members in good standing as bonafide union members therein as a condition of continued employment;

4. In case a worker refused to join the Union, the Union will undertake to notify workers to join and become union members. If said worker or workers still refuses, he or they shall be notified by the Company of his/her dismissal as a consequence thereof and thereafter terminated after 30 days notice according to the Labor Code.

5. Any employee/union member who **fails to retain union membership in good standing may be recommended for suspension or dismissal by the Union Directorate and/or FPSILU Executive Council for any of the following causes**:

a) Acts of Disloyalty;
b) Voluntary Resignation or Abandonment from the UNION;

---

[42] Records, pp. 89-90. (Emphasis supplied).

> c) Organization of or joining another labor union or any labor group that would work against the UNION;
> d) Participation in any unfair labor practice or violation of the Agreement, or activity derogatory to the UNION decision;
> e) Disauthorization of, or Non-payment of, monthly membership dues, fees, fines and other financial assessments to the Union;
> f) Any criminal violation or violent conduct or activity against any UNION member without justification and affecting UNION rights or obligations under the said Agreement.

Verily, the aforesaid provision requires all members to maintain their membership with FPSILU during the lifetime of the CBA. Failing so, and for any of the causes enumerated therein, the Union Directorate and/or FPSILU Executive Council may recommend to FPSI an employee/union member's suspension or dismissal. Records show that Bergante and Inguillo were former members of FPSILU based on their signatures in the document which ratified the CBA. It can also be inferred that they disaffiliated from FPSILU when the CBA was still in force and subsisting, as can be gleaned from the documents relative to the intra-union dispute between FPSILU and NLM-KATIPUNAN. In view of their disaffiliation, as well as other acts allegedly detrimental to the interest of both FPSILU and FPSI, a "Petisyon" was submitted to Policarpio, asking for the termination of the services of employees who failed to maintain their Union membership.

The Court is now tasked to determine whether the enforcement of the aforesaid Union Security Clause justified herein petitioners' dismissal from the service.

In terminating the employment of an employee by enforcing the Union Security Clause, the employer needs only to determine and prove that: (1) the union security clause is applicable; (2) the union is requesting for the enforcement of the union security provision in the CBA; and (3) there is sufficient evidence to

support the union's decision to expel the employee from the union or company.[43]

We hold that all the requisites have been sufficiently met and FPSI was justified in enforcing the Union Security Clause, for the following reasons:

First. FPSI was justified in applying the Union Security Clause, as it was a valid provision in the CBA, the existence and validity of which was not questioned by either party. Moreover, petitioners were among the 93 employees who affixed their signatures to the document that ratified the CBA. They cannot now turn their back and deny knowledge of such provision.

Second. FPSILU acted on its prerogative to recommend to FPSI the dismissal of the members who failed to maintain their membership with the Union. Aside from joining another rival union, FPSILU cited other grounds committed by petitioners and the other employees which tend to prejudice FPSI's interests, *i.e.*, dereliction of duty — by failing to call periodic membership meetings and to give financial reports; depositing union funds in the names of Grutas and former Vice-President Yolanda Tapang, instead of in the name of FPSILU care of the President; causing damage to FPSI by deliberately slowing down production, preventing the Union from even attempting to ask for an increase in benefits from the former; and poisoning the minds of the rest of the members of the Union so that they would be enticed to join the rival union.

Third. FPSILU's decision to ask for the termination of the employees in the "Petisyon" was justified and supported by the evidence on record. Bergante and Inguillo were undisputably former members of FPSILU. In fact, Inguillo was the Secretary of Finance, the underlying reason why his salary was garnished to satisfy the judgment of the Med-Arbiter who ordered NLM-KATIPUNAN to return the Union dues it erroneously collected from the employees. Their then affiliation with FPSILU was

---

[43] *Alabang Country Club, Inc. v. NLRC, supra* note 38, at 362.

also clearly shown by their signatures in the document which ratified the CBA. Without a doubt, they committed acts of disloyalty to the Union when they failed not only to maintain their membership but also disaffiliated from it. They abandoned FPSILU and even joined another union which works against the former's interests. This is evident from the intra-union dispute filed by NLM-KATIPUNAN against FPSILU. Once affiliated with NLM-KATIPUNAN, Bergante and Inguillo proceeded to recruit other employees to disaffiliate from FPSILU and even collected Union dues from them.

In *Del Monte Philippines*,[44] the stipulations in the CBA authorizing the dismissal of employees are of equal import as the statutory provisions on dismissal under the Labor Code, since a CBA is the law between the company and the Union, and compliance therewith is mandated by the express policy to give protection to labor. In *Caltex Refinery Employees Association (CREA) v. Brillantes*,[45] the Court expounded on the effectiveness of union security clause when it held that it is one intended to strengthen the contracting union and to protect it from the fickleness or perfidy of its own members. For without such safeguards, group solidarity becomes uncertain; the union becomes gradually weakened and increasingly vulnerable to company machinations. In this security clause lies the strength of the union during the enforcement of the collective bargaining agreement. It is this clause that provides labor with substantial power in collective bargaining.

---

[44] *Supra* note 38, at 201.

[45] G.R. No. 123782, September 16, 1997 SCRA 218, 236. In said case, one of the issues presented by the parties was their disagreement on the enforcement of union security clause in the CBA. The Secretary of Labor however considered the issue as procedural and failed to give a valid reason for avoiding the same. The Court held that the Secretary of Labor committed grave abuse of discretion as he should have taken cognizance of the issue which is not merely incidental to but essentially involved in the labor dispute itself, or which is otherwise submitted to him for resolution. The Court went on to rule that it was precisely why the secretary assumed jurisdiction over the labor dispute over which he has jurisdiction at his level.

Nonetheless, while We uphold dismissal pursuant to a union security clause, the same is not without a condition or restriction. For to allow its untrammeled enforcement would encourage arbitrary dismissal and abuse by the employer, to the detriment of the employees. Thus, to safeguard the rights of the employees, We have said time and again that dismissals pursuant to union security clauses are valid and legal, subject only to the requirement of due process, that is, notice and hearing prior to dismissal.[46] In like manner, We emphasized that the enforcement of union security clauses is authorized by law, provided such enforcement is not characterized by arbitrariness, and always with due process.[47]

There are two (2) aspects which characterize the concept of due process under the Labor Code: one is substantive—whether the termination of employment was based on the provisions of the Labor Code or in accordance with the prevailing jurisprudence; the other is procedural — the manner in which the dismissal was effected.

The second aspect of due process was clarified by the Court in *King of Kings Transport v. Mamac*,[48] stating, thus:

(1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. x x x

(2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are

---

[46] *Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos,* G.R. No. 113907, February 28, 2000, 326 SCRA 428, 470-471.

[47] *Id.* at 463, citing *Sanyo Philippines Workers Union-PSSLU v. Canizares,* 211 SCRA 361 (1992).

[48] G.R. No. 166208, June 29, 2007, 526 SCRA 116, 125-126. (Underscoring ours).

given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.

Corollarily, procedural due process in the dismissal of employees requires notice and hearing. The employer must furnish the employee two written notices before termination may be effected. The first notice apprises the employee of the particular acts or omissions for which his dismissal is sought, while the second notice informs the employee of the employer's decision to dismiss him.[49] The requirement of a hearing, on the other hand, is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.[50]

In the present case, the required two notices that must be given to herein petitioners Bergante and Inguillo were lacking. The records are bereft of any notice that would have given a semblance of substantial compliance on the part of herein respondents. Respondents, however, aver that they had furnished the employees concerned, including petitioners, with a copy of FPSILU's "Petisyon." We cannot consider that as compliance with the requirement of either the first notice or the second notice. While the "Petisyon" enumerated the several grounds that would justify the termination of the employees mentioned therein, yet such document is only a recommendation by the Union upon which the employer may base its decision. It cannot be considered a notice of termination. For as agreed upon by FPSI and FPSILU in their CBA, the latter may only recommend

---

[49] *Landtex Industries and William Go v. Ayson,* G.R. No. 150278, August 9, 2007, 529 SCRA 631, 652.

[50] *Id.* at 652.

to the former a Union member's suspension or dismissal. Nowhere in the controverted Union Security Clause was there a mention that once the union gives a recommendation, the employer is bound outright to proceed with the termination.

Even assuming that the "Petisyon" amounts to a first notice, the employer cannot be deemed to have substantially complied with the procedural requirements. True, FPSILU enumerated the grounds in said "Petisyon." But a perusal of each of them leads Us to conclude that what was stated were general descriptions, which in no way would enable the employees to intelligently prepare their explanation and defenses. In addition, the "Petisyon" did not provide a directive that the employees are given opportunity to submit their written explanation within a reasonable period. Finally, even if We are to assume that the "Petisyon" is a second notice, still, the requirement of due process is wanting. For as We have said, the second notice, which is aimed to inform the employee that his service is already terminated, must state that the employer has considered all the circumstances which involve the charge and the grounds in the first notice have been established to justify the severance of employment. After the claimed dialogue between Policarpio and the employees mentioned in the "Petisyon," the latter were simply told not to report for work anymore.

These defects are bolstered by Bergante and Inguillo who remain steadfast in denying that they were notified of the specific charges against them nor were they given any memorandum to that effect. They averred that had they been informed that their dismissal was due to FPSILU's demand/petition, they could have impleaded the FPSILU together with the respondents. The Court has always underscored the significance of the two-notice rule in dismissing an employee and has ruled in a number of cases that non-compliance therewith is tantamount to deprivation of the employee's right to due process.[51]

---

[51] *Bughaw, Jr. v. Treasure Island Industrial Corporation,* G.R. No. 173151, March 28, 2008, 550 SCRA 307, 322.

As for the requirement of a hearing or conference, We hold that respondents also failed to substantially comply with the same. Policarpio alleged that she had a dialogue with the concerned employees; that she explained to them the demand of FPSILU for their termination as well as the consequences of the "Petisyon"; and that she had no choice but to act accordingly. She further averred that Grutas even asked her to pay all the involved employees one (1)-month salary for every year of service, plus their accrued legal holiday pay, but which she denied. She informed them that it has been FPSI's practice to give employees, on a case-to-case basis, only one-half (½) month salary for every year of service and after they have tendered their voluntary resignation. The employees refused her offer and told her that they will just file their claims with the DOLE.[52]

Policarpio's allegations are self-serving. Except for her claim as stated in the respondent's Position Paper, nowhere from the records can We find that Bergante and Inguillo were accorded the opportunity to present evidence in support of their defenses. Policarpio relied heavily on the "Petisyon" of FPSILU. She failed to convince Us that during the dialogue, she was able to ascertain the validity of the charges mentioned in the "Petisyon." In her futile attempt to prove compliance with the procedural requirement, she reiterated that the objective of the dialogue was to provide the employees "the opportunity to receive the act of grace of FPSI by giving them an amount equivalent to one-half (½) month of their salary for every year of service." We are not convinced. We cannot even consider the demand and counter-offer for the payment of the employees as an amicable settlement between the parties because what took place was merely a discussion only of the amount which the employees are willing to accept and the amount which the respondents are willing to give. Such non-compliance is also corroborated by Bergante and Inguillo in their pleadings denouncing their unjustified dismissal. In fine, We hold that the

---

[52] Respondents' Position Paper, records, pp. 72-81, 76.

dialogue is not tantamount to the hearing or conference prescribed by law.

We reiterate, FPSI was justified in enforcing the Union Security Clause in the CBA. However, We cannot countenance respondents' failure to accord herein petitioners the due process they deserve after the former dismissed them outright "in order to avoid a serious labor dispute among the officers and members of the bargaining agent."[53] In enforcing the Union Security Clause in the CBA, We are upholding the sanctity and inviolability of contracts. But in doing so, We cannot override an employee's right to due process.[54] In *Carino v. National Labor Relations Commission*,[55] We took a firm stand in holding that:

> The power to dismiss is a normal prerogative of the employer. However, this is not without limitation. **The employer is bound to exercise caution in terminating the services of his employees especially so when it is made upon the request of a labor union pursuant to the Collective Bargaining Agreement** x x x. Dismissals must not be arbitrary and capricious. **Due process must be observed in dismissing an employee because it affects not only his position but also his means of livelihood**. Employers should respect and protect the rights of their employees, which include the right to labor."

Thus, as held in that case, "the right of an employee to be informed of the charges against him and to reasonable opportunity to present his side in a controversy with either the company or his own Union is not wiped away by a Union Security Clause or a Union Shop Clause in a collective bargaining agreement. An employee is entitled to be protected not only from a company which disregards his rights but also from his own Union, the leadership of which could yield to the temptation of swift and

---

[53] Records, p. 79.

[54] *Supra* note, 44, at 462.

[55] G.R. No. 91086, May 8, 1990, 185 SCRA 177, cited in *Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos*, *supra* note 45, at 462. (Emphasis and underscoring supplied).

arbitrary expulsion from membership and mere dismissal from his job."[56]

In fine, We hold that while Bergante and Inguillo's dismissals were valid pursuant to the enforcement of Union Security Clause, respondents however did not comply with the requisite procedural due process. As in the case of *Agabon v. National Labor Relations Commission*,[57] where the dismissal is for a cause recognized by the prevailing jurisprudence, the absence of the statutory due process should not nullify the dismissal or render it illegal, or ineffectual. Accordingly, for violating Bergante and Inguillo's statutory rights, respondents should indemnify them the amount of ₱30,000.00 each as nominal damages.

In view of the foregoing, We see no reason to discuss the other matters raised by petitioners.

WHEREFORE, premises considered, the instant Petition is *DENIED*. The Court of Appeals Decision dated March 11, 2004 and Resolution dated September 17, 2004, in CA-G.R. SP No. 73992, are hereby *AFFIRMED WITH MODIFICATION* in that while there was a valid ground for dismissal, the procedural requirements for termination, as mandated by law and jurisprudence, were not observed. Respondents First Philippine Scales, Inc. and/or Amparo Policarpio are hereby *ORDERED* to *PAY* petitioners Zenaida Bergante and Herminigildo Inguillo the amount of ₱30,000.00 each as nominal damages. No pronouncement as to costs.

SO ORDERED.

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

---

[56] *Id.* at 188-189.

[57] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

[*] Designated to sit as an additional member, per Special Order No. 646 dated May 15, 2009.

[**] Designated to sit as an additional member, per Special Order No. 631 dated April 29, 2009.

THIRD DIVISION

[G.R. No. 165756. June 5, 2009]

HOTEL ENTERPRISES OF THE PHILIPPINES, INC. (HEPI), owner of Hyatt Regency Manila, *petitioner, vs.* **SAMAHAN NG MGA MANGGAGAWA SA HYATT-NATIONAL UNION OF WORKERS IN THE HOTEL AND RESTAURANT AND ALLIED INDUSTRIES (SAMASAH-NUWHRAIN),** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; TERMINATION BY EMPLOYER; RETRENCHMENT AND REDUNDANCY; ELUCIDATED. — ART. 283. x x x The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, x x x Retrenchment is the reduction of work personnel usually due to poor financial returns, aimed to cut down costs for operation particularly on salaries and wages. Redundancy, on the other hand, exists where the number of employees is in excess of what is reasonably demanded by the actual requirements of the enterprise. Both are forms of downsizing and are often resorted to by the employer during periods of business recession, industrial depression, or seasonal fluctuations, and during lulls in production occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program, or introduction of new methods or more efficient machinery or automation. Retrenchment and redundancy are valid management prerogatives, provided they are done in good faith and the employer faithfully complies with the substantive and procedural requirements laid down by law and jurisprudence. It is the employer who bears the *onus* of proving compliance with the requirements, retrenchment and redundancy being in the nature of affirmative defenses. Otherwise, the dismissal is not justified.

2. ID.; ID.; ID.; ID.; RETRENCHMENT; REQUISITES. — For a valid retrenchment, the following requisites must be complied with: (1) the retrenchment is necessary to prevent losses and such losses are proven; (2) written notice to the employees and to the DOLE at least one month prior to the intended date of retrenchment; and (3) payment of separation pay equivalent to one-month pay or at least one-half month pay for every year of service, whichever is higher.

3. ID.; ID.; ID.; ID.; REDUNDANCY; REQUISITES. — In case of redundancy, the employer must prove that: (1) a written notice was served on both the employees and the DOLE at least one month prior to the intended date of retrenchment; (2) separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher, has been paid; (3) good faith in abolishing the redundant positions; and (4) adoption of fair and reasonable criteria in ascertaining which positions are to be declared redundant and accordingly abolished.

4. ID.; ID.; ID.; ID.; LOSSES OR GAINS OF A BUSINESS; ASSESSMENT THEREOF. — Losses or gains of a business entity cannot be fully and satisfactorily assessed by isolating or highlighting only a particular part of its financial report. There are recognized accounting principles and methods by which a company's performance can be objectively and thoroughly evaluated at the end of every fiscal or calendar year. What is important is that the assessment is accurately reported, free from any manipulation of figures to suit the company's needs, so that the company's actual financial condition may be impartially and accurately gauged. The audit of financial reports by independent external auditors is strictly governed by national and international standards and regulations for the accounting profession. It bears emphasis that the financial statements submitted by petitioner were audited by a reputable auditing firm and are clear and substantial enough to prove that the company was in a precarious financial condition.

5. ID.; ID.; ID.; ID.; UPHELD IN CASE AT BAR. — In the competitive and highly uncertain world of business, cash flow is as important as – and oftentimes, even more critical than – profitability. So long as the hotel has enough funds to pay its workers and satisfy costs for operations, maintenance and other expenses,

it may survive and bridge better days for its recovery. But to ensure a viable cash flow amidst the growing business and economic uncertainty is the trick of the trade. Definitely, this cannot be achieved if the cost-saving measures continuously fail to cap the losses. More drastic, albeit painful, measures have to be taken. This Court will not hesitate to strike down a company's redundancy program structured to downsize its personnel, solely for the purpose of weakening the union leadership. Our labor laws only allow retrenchment or downsizing as a valid exercise of management prerogative if all other else fail. But in this case, petitioner did implement various cost-saving measures and even transferred some of its employees to other viable positions just to avoid the premature termination of employment of its affected workers. It was when the same proved insufficient and the amount of loss became certain that petitioner had to resort to drastic measures to stave off ₱9,981,267.00 in losses, and be able to survive. If we see reason in allowing an employer not to keep all its employees until after its losses shall have fully materialized, with more reason should we allow an employer to let go of some of its employees to prevent further financial slide.

6. ID.; ID.; ID.; ID.; REDUNDANCY; IMPLEMENTATION OF DOWNSIZING SCHEME DOES NOT PRECLUDE EMPLOYER FROM AVAILING THE SERVICES OF CONTRACTUAL AND AGENCY-HIRED EMPLOYEES. — Does the implementation of the downsizing scheme preclude petitioner from availing the services of contractual and agency-hired employees? In *Asian Alcohol Corporation v. National Labor Relations Commission*, we answered in the negative. We said: In any event, we have held that an employer's good faith in implementing a redundancy program is not necessarily destroyed by availment of the services of an independent contractor to replace the services of the terminated employees. We have previously ruled that the reduction of the number of workers in a company made necessary by the introduction of the services of an independent contractor is justified when the latter is undertaken in order to effectuate more economic and efficient methods of production. In the case at bar, private respondent failed to proffer any proof that the management acted in a malicious or arbitrary manner in engaging the services of an independent contractor to operate the Laura wells. Absent such proof, the Court has no basis to

interfere with the *bona fide* decision of management to effect more economic and efficient methods of production.

7. ID.; ID.; STRIKE; VALIDITY. — Procedurally, a strike to be valid must comply with Article 263 of the Labor Code, which pertinently reads: Article 263. x x x (c) In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the [Department] at least 30 days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be 15 days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately. (d) The notice must be in accordance with such implementing rules and regulations as the [Secretary] of Labor and Employment may promulgate. (e) During the cooling-off period, it shall be the duty of the [Department] to exert all efforts at mediation and conciliation to effect a voluntary settlement. Should the dispute remain unsettled until the lapse of the requisite number of days from the mandatory filing of the notice, the labor union may strike or the employer may declare a lockout. (f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. A decision to declare a lockout must be approved by a majority of the board of directors of the corporation or association or of the partners in a partnership, obtained by secret ballot in a meeting called for the purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The [Department] may at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the [Department] the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided. Accordingly, the requisites for a valid strike are: (a) a notice

of strike filed with the DOLE 30 days before the intended date thereof or 15 days in case of ULP; (b) a strike vote approved by a majority of the total union membership in the bargaining unit concerned obtained by secret ballot in a meeting called for that purpose; and (c) a notice to the DOLE of the results of the voting at least seven (7) days before the intended strike. The requirements are mandatory and failure of a union to comply therewith renders the strike illegal.

8. ID.; ID.; ID.; ID.; "STRIKEABLE GROUNDS;" EMPLOYEES BELIEVE IN GOOD FAITH THAT UNFAIR LABOR PRACTICE (ULP) ACTUALLY EXISTS; CASE AT BAR. — A valid and legal strike must be based on "strikeable" grounds, because if it is based on a "non-strikeable" ground, it is generally deemed an illegal strike. Corollarily, a strike grounded on ULP is illegal if no acts constituting ULP actually exist. As an exception, even if no such acts are committed by the employer, if the employees believe in good faith that ULP actually exists, then the strike held pursuant to such belief may be legal. As a general rule, therefore, where a union believes that an employer committed ULP and the surrounding circumstances warranted such belief in good faith, the resulting strike may be considered legal although, subsequently, such allegations of unfair labor practices were found to be groundless. Here, respondent Union went on strike in the honest belief that petitioner was committing ULP after the latter decided to downsize its workforce contrary to the staffing/manning standards adopted by both parties under a CBA forged only four (4) short months earlier. The belief was bolstered when the management hired 100 contractual workers to replace the 48 terminated regular rank-and-file employees who were all Union members. Indeed, those circumstances showed *prima facie* that the hotel committed ULP. Thus, even if technically there was no legal ground to stage a strike based on ULP, since the attendant circumstances support the belief in good faith that petitioner's retrenchment scheme was structured to weaken the bargaining power of the Union, the strike, by exception, may be considered legal.

9. ID.; ID.; ID.; QUITCLAIMS UPHELD IN CASE AT BAR. — With respect to the second batch of quitclaims signed by 85 of the remaining 160 employees who were terminated following Hyatt's permanent closure, we hold that these are valid and binding undertakings. The said documents indicate that the amount

received by each of the employees represents a reasonable settlement of their monetary claims against petitioner and were even signed in the presence of a DOLE representative. A quitclaim, with clear and unambiguous contents and executed for a valid consideration received in full by the employee who signed the same, cannot be later invalidated because its signatory claims that he was pressured into signing it on account of his dire financial need. When it is shown that the person executing the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
Jose Collado, Jr. for respondent.

D E C I S I O N

NACHURA, *J.*:

The Constitution affords full protection to labor, but the policy is not to be blindly followed at the expense of capital. Always, the interests of both sides must be balanced in light of the evidence adduced and the peculiar circumstances surrounding each case.

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) Decision[1] dated July 20, 2004 and the Resolution[2] dated October 20, 2004 in CA-G.R. SP No. 81153. The appellate court, in its decision and resolution, reversed the April 3, 2003 Resolution[3] of the National Labor Relations Commission (NLRC) and reinstated

---

[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Cancio C. Garcia (a retired member of this Court) and Hakim S. Abdulwahid, concurring; *rollo*, pp. 108-135.

[2] *Rollo*, pp. 136-139.

[3] *Id.* at 140-178.

the October 30, 2002 Decision[4] issued by Labor Arbiter Aliman Mangandog upholding the legality of the strike staged by the officers and members of respondent Samahan ng mga Manggagawa sa Hyatt-National Union of Workers in the Hotel Restaurant and Allied Industries (Union).

We trace the antecedent facts below.

Respondent Union is the certified collective bargaining agent of the rank-and-file employees of Hyatt Regency Manila, a hotel owned by petitioner Hotel Enterprises of the Philippines, Inc. (HEPI).

In 2001, HEPI's hotel business suffered a slump due to the local and international economic slowdown, aggravated by the events of September 11, 2001 in the United States. An audited financial report made by Sycip Gorres Velayo (SGV) & Co. on January 28, 2002 indicated that the hotel suffered a gross operating loss amounting to ₱16,137,217.00 in 2001,[5] a staggering decline compared to its ₱48,608,612.00 gross operating profit[6] in year 2000.[7]

	2000	2001
Income from Hotel Operations	₱ 78,434,103	₱ 12,230,248
Other Deductions		
Provision for hotel rehabilitation	20,000,000	20,000,000
Provision for replacements of and additions to furnishings and equipment	9,825,491	8,367,465
	29,825,491	28,367,465
Gross Operating Profit (Loss)	₱ 48,608,612	(₱16,137,217)

According to petitioner, the management initially decided to cost-cut by implementing energy-saving schemes: prioritizing

---

[4] CA *rollo*, pp. 102-110.

[5] *Rollo*, p. 1768.

[6] *Id.* at 1796.

[7] *Id.* at 151.

acquisitions/purchases; reducing work weeks in some of the hotel's departments; directing the employees to avail of their vacation leaves; and imposing a moratorium on hiring employees for the year 2001 whenever practicable.[8]

Meanwhile, on August 31, 2001, the Union filed a notice of strike due to a bargaining deadlock before the National Conciliation Mediation Board (NCMB), docketed as NCMB-NCR-NS 08-253-01.[9] In the course of the proceedings, HEPI submitted its economic proposals for the rank-and-file employees covering the years 2001, 2002, and 2003. The proposal included manning and staffing standards for the 248 regular rank-and-file employees. The Union accepted the economic proposals. Hence, a new collective bargaining agreement (CBA) was signed on November 21, 2001, adopting the manning standards for the 248 rank-and-file employees.[10]

Then, on December 21, 2001, HEPI issued a memorandum offering a "Special Limited Voluntary Resignation/Retirement Program" (SLVRRP) to its regular employees. Employees who were qualified to resign or retire were given separation packages based on the number of years of service.[11] The vacant positions, as well as the regular positions vacated, were later filled up with contractual personnel and agency employees.[12]

Subsequently, on January 21, 2002, petitioner decided to implement a downsizing scheme after studying the operating costs of its different divisions to determine the areas where it could obtain significant savings. It found that the hotel could save on costs if certain jobs, such as engineering services, messengerial/courier services, janitorial and laundry services, and operation of the employees' cafeteria, which by their nature were contractable pursuant to existing laws and jurisprudence,

---

[8] *Id.* at 114-115.

[9] *Id.* at 108.

[10] *Id.* at 108, 285.

[11] *Id.* at 115.

[12] *Id.* at 108.

were abolished and contracted out to independent job contractors. After evaluating the hotel's manning guide, the following positions were identified as redundant or in excess of what was required for the hotel's actual operation given the prevailing poor business condition, *viz.*: a) housekeeping attendant-linen; b) tailor; c) room attendant; d) messenger/mail clerk; and e) telephone technician.[13] The effect was to be a reduction of the hotel's rank-and file employees from the agreed number of 248 down to just 150[14] but it would generate estimated savings of around ₱9,981,267.00 per year.[15]

On January 24, 2002, petitioner met with respondent Union to formally discuss the downsizing program.[16] The Union opposed the downsizing plan because no substantial evidence was shown to prove that the hotel was incurring heavy financial losses, and for being violative of the CBA, more specifically the manning/ staffing standards agreed upon by both parties in November 2001.[17] In a financial analysis made by the Union based on Hyatt's financial statements submitted to the Securities and Exchange Commission (SEC), it noted that the hotel posted a positive profit margin with respect to its gross operating and net incomes for the years 1998, 1999, 2000, and even in 2001.[18] Moreover, figures comprising the hotel's unappropriated retained earnings showed a consistent increase from 1998 to 2001, an indication that the company was, in fact, earning, contrary to petitioner's assertion. The net income from hotel operations slightly dipped from ₱78,434,103.00 in 2000 to ₱12,230,248.00 for the year 2001, but nevertheless remained positive.[19] With this, the Union, through a letter, informed the management of its opposition to the scheme and proposed instead several cost-saving measures.[20]

---

[13] *Id.* at 115.

[14] *Id.* at 109.

[15] *Id.* at 1772.

[16] *Id.* at 116.

[17] *Id.* at 109.

[18] *Id.* at 156-157.

[19] *Id.* at 1503-1504.

[20] *Id.* at 115.

Despite its opposition, a list of the positions declared redundant and to be contracted out was given by the management to the Union on March 22, 2002.[21] Notices of termination were, likewise, sent to 48 employees whose positions were to be retrenched or declared as redundant. The notices were sent on April 5, 2002 and were to take effect on May 5, 2002.[22] A notice of termination was also submitted by the management to the Department of Labor and Employment (DOLE) indicating the names, positions, addresses, and salaries of the employees to be terminated.[23] Thereafter, the hotel management engaged the services of independent job contractors to perform the following services: (1) janitorial (previously, stewarding and public area attendants); (2) laundry; (3) sundry shop; (4) cafeteria;[24] and (5) engineering.[25] Some employees, including one Union officer, who were affected by the downsizing plan were transferred to other positions in order to save their employment.[26]

On April 12, 2002, the Union filed a notice of strike based on unfair labor practice (ULP) against HEPI. The case was docketed as NCMB-NCR-NS-04-139-02.[27] On April 25, 2002, a strike vote was conducted with majority in the bargaining unit voting in favor of the strike.[28] The result of the strike vote was sent to NCMB-NCR Director Leopoldo de Jesus also on April 25, 2002.[29]

On April 29, 2002, HEPI filed a motion to dismiss notice of strike which was opposed by the Union. On May 3, 2002, the Union filed a petition to suspend the effects of termination before the Office of the Secretary of Labor. On May 5, 2002, the hotel

---

[21] *Id*.

[22] *Id.* at 110, 116.

[23] *Id*. at 115.

[24] *Id*.

[25] *Id*. at 156.

[26] *Id*. at 162.

[27] *Id.* at 109-110.

[28] CA *rollo*, pp. 209-211.

[29] *Id*. at 209.

management began implementing its downsizing plan immediately terminating seven (7) employees due to redundancy and 41 more due to retrenchment or abolition of positions.[30] All were given separation pay equivalent to one (1) month's salary for every year of service.[31]

On May 8, 2002, conciliation proceedings were held between petitioner and respondent, but to no avail. On May 10, 2002, respondent Union went on strike. A petition to declare the strike illegal was filed by petitioner on May 22, 2002, docketed as NLRC-NCR Case No. 05-03350-2002.

On June 14, 2002, Acting Labor Secretary Manuel Imson issued an order in NCM-NCR-NS-04-139-02 (thence, NLRC Certified Case No. 000220-02), certifying the labor dispute to the NLRC for compulsory arbitration and directing the striking workers, except the 48 workers earlier terminated, to return to work within 24 hours. On June 16, 2002, after receiving a copy of the order, members of respondent Union returned to work.[32] On August 1, 2002, HEPI filed a manifestation informing the NLRC of the pending petition to declare the strike illegal. Because of this, the NLRC, on November 15, 2002, issued an order directing Labor Arbiter Aliman Mangandog to immediately suspend the proceedings in the pending petition to declare the strike illegal and to elevate the records of the said case for consolidation with the certified case.[33] However, the labor arbiter had already issued a Decision[34] dated October 30, 2002 declaring the strike legal.[35] Aggrieved, HEPI filed an appeal *ad*

---

[30] *Rollo*, p. 156.

[31] *Id.* at 163.

[32] *Id.* at 112.

[33] CA *rollo*, p. 1557-1561.

[34] *Supra* note 4.

[35] The dispositive portion of the October 30, 2002 Decision reads:

WHEREFORE, foregoing premises considered, the Petition is DISMISSED for lack of merit and the strike stagged (sic) on May 10, 2002 by the respondents is hereby declared legal.

The petitioner is liable for unfair labor practice. Accordingly, the petitioner is ordered to pay the striking employees strike duration pay and moral and exemplary damages in the amount of Php 100,000.00 to each of the Union

cautelam before the NLRC questioning the October 30, 2002 decision.[36] The Union, on the other hand, filed a motion for reconsideration of the November 15, 2002 Order on the ground that a decision was already issued in one of the cases ordered to be consolidated.[37]

On appeal, the NLRC reversed the labor arbiter's decision. In a Resolution[38] dated April 3, 2003, it gave credence to the financial report of SGV & Co. that the hotel had incurred huge financial losses necessitating the adoption of a downsizing scheme. Thus, NLRC declared the strike illegal, suspended all Union officers for a period of six (6) months without pay, and dismissed the ULP charge against HEPI.[39]

---

officers and members, and attorney's fees equivalent to ten percent (10%) of the total award due to them.

All other claims are dismissed for lack of merit.

SO ORDERED. (*Id.* at 110.)

[36] *Rollo*, pp. 1433-1519.

[37] *Id.* at 1562-1582.

[38] *Supra* note 3.

[39] The decretal portion of the NLRC Resolution dated April 3, 2003 reads:

WHEREFORE, considering the foregoing premises, judgment is hereby rendered as follows:

1. The downsizing program of Hyatt Regency Manila effective May 5, 2002 is hereby declared valid and lawful.

2. The charge of unfair labor practice consisting of Union busting and unlawful contracting out of services or functions is hereby dismissed for lack of merit.

3. The strike conducted by SAMASAH-NUWHRAIN, its officers and members from May 10, 2002 is hereby declared illegal. All the Union Officers are hereby suspended for six (6) months without pay, namely: EDWIN BUSTILLOS, FERNANDO TESSALONA, ANTONIO DE PEDRO, JOAQUIN BULAO, LAARNI APOSTOL, BENIGNO ROMANO, REYNALDO TAYAG, JOSE WYN AGNER, DANILO DALUZ, PILAR BERNAL, ALCANTAR VIZON, PAUL TEOTICO, ANTHONY ADVENTO, ROLANDO TENORIO and ALEX BAYKER.

SO ORDERED. (*Id.* at 177.)

Respondent Union moved for reconsideration, while petitioner HEPI filed its partial motion for reconsideration. Both were denied in a Resolution[40] dated September 24, 2003.

The Union filed a petition for *certiorari* with the CA on December 19, 2003[41] questioning in the main the validity of the NLRC's reversal of the labor arbiter's decision.[42] But while the petition was pending, the hotel management, on December 29, 2003, issued separate notices of suspension against each of the 12 Union officers involved in the strike in line with the April 3, 2003 resolution of the NLRC.[43]

On July 20, 2004, the CA promulgated the assailed Decision,[44] reversing the resolution of the NLRC and reinstating the October 30, 2002 decision of the Labor Arbiter which declared the strike valid. The CA also ordered the reinstatement of the 48 terminated employees on account of the hotel management's illegal redundancy and retrenchment scheme and the payment of their back wages from the time they were illegally dismissed until their actual reinstatement.[45] HEPI

---

[40] *Rollo*, pp. 179-181.

[41] Docketed as CA-G.R. SP No. 81153.

[42] *Rollo*, p. 120.

[43] *Id.* at 2083-2094.

[44] *Id.* at 108-135.

[45] The dispositive portion of the July 20, 2004 CA decision reads:

WHEREFORE, premises considered, the assailed Resolutions dated April 3, 2003 and September 24, 2003 of public respondent NLRC in NLRC-NCR NS 04-139-02/NLRC-NCR Certified Case No. 000220-02/NLRC 00-05-03350-02 CA No. 03380-02 are hereby REVERSED AND SET ASIDE.

The Labor Arbiter's Decision dated October 30, 2002 is hereby REINSTATED.

The forty-eight (48) dismissed employees as a result of the illegal redundancy and retrenchment programs are hereby REINSTATED to their former positions without loss of seniority rights with payment of backwages from the time they were illegally dismissed up to their actual reinstatement.

SO ORDERED. (*Id.* at 135.)

moved for reconsideration but the same was denied for lack of merit.[46]

Hence, this petition.

The issue boils down to whether the CA's decision, reversing the NLRC ruling, is in accordance with law and established facts.

We answer in the negative.

To resolve the correlative issues (*i.e.*, the validity of the strike; the charges of ULP against petitioner; the propriety of petitioner's act of hiring contractual employees from employment agencies; and the entitlement of Union officers and terminated employees to reinstatement, backwages and strike duration pay), we answer first the most basic question: Was petitioner's downsizing scheme valid?

The pertinent provision of the Labor Code states:

ART. 283. x x x

The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the [Department] of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

---

[46] *Rollo,* pp. 136-139.

Retrenchment is the reduction of work personnel usually due to poor financial returns, aimed to cut down costs for operation particularly on salaries and wages.[47] Redundancy, on the other hand, exists where the number of employees is in excess of what is reasonably demanded by the actual requirements of the enterprise.[48] Both are forms of downsizing and are often resorted to by the employer during periods of business recession, industrial depression, or seasonal fluctuations, and during lulls in production occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program, or introduction of new methods or more efficient machinery or automation.[49] Retrenchment and redundancy are valid management prerogatives, provided they are done in good faith and the employer faithfully complies with the substantive and procedural requirements laid down by law and jurisprudence.[50]

For a valid retrenchment, the following requisites must be complied with: (1) the retrenchment is necessary to prevent losses and such losses are proven; (2) written notice to the employees and to the DOLE at least one month prior to the intended date of retrenchment; and (3) payment of separation pay equivalent to one-month pay or at least one-half month pay for every year of service, whichever is higher.[51]

---

[47] *J.A.T. Gen. Services v. NLRC*, 465 Phil. 785, 794 (2004).

[48] *Wiltshire File Co., Inc. v. NLRC*, G.R. No. 82249, February 7, 1991, 193 SCRA 665, 672.

[49] *F.F. Marine Corporation v. National Labor Relations Commission, Second Division*, G.R. No. 152039, April 8, 2005, 455 SCRA 154, 164-165.

[50] *Id.* at 165.

[51] The following states the jurisprudential guidelines to justify retrenchment:

Firstly, the losses expected should be substantial and not merely *de minimis* in extent. If the loss purportedly sought to be forestalled by retrenchment is clearly shown to be insubstantial and inconsequential in character, the *bona fide* nature of the retrenchment would appear to be seriously in question. *Secondly*, the substantial loss apprehended must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer. There should, in other words, be a certain degree of urgency for the retrenchment, which is

In case of redundancy, the employer must prove that: (1) a written notice was served on both the employees and the DOLE at least one month prior to the intended date of retrenchment; (2) separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher, has been paid; (3) good faith in abolishing the redundant positions; and (4) adoption of fair and reasonable criteria in ascertaining which positions are to be declared redundant and accordingly abolished.[52]

It is the employer who bears the *onus* of proving compliance with these requirements, retrenchment and redundancy being in the nature of affirmative defenses.[53] Otherwise, the dismissal is not justified.[54]

---

after all a drastic recourse with serious consequences for the livelihood of the employees retired or otherwise laid-off. Because of the consequential nature of retrenchment, it must, *thirdly*, be reasonably necessary and likely to effectively prevent the expected losses. The employer should have taken other measures prior or parallel to retrenchment to forestall losses, *i.e.*, cut other costs than labor costs. An employer who, for instance, lays off substantial numbers of workers while continuing to dispense fat executive bonuses and perquisites or so-called "golden parachutes," can scarcely claim to be retrenching in good faith to avoid losses. To impart operational meaning to the constitutional policy of providing "full protection" to labor, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means - *e.g.*, reduction of both management and rank-and-file bonuses and salaries, going on reduced time, improving manufacturing efficiencies, trimming of marketing and advertising costs, *etc*.—have been tried and found wanting.

Lastly, but certainly not the least important, alleged losses if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence. The reason for requiring this quantum of proof is readily apparent: any less exacting standard of proof would render too easy the abuse of this ground for termination of services of employees. (*Id.* at 165-166.)

[52] *Lopez Sugar Corporation v. Franco*, G.R. No. 148195, May 16, 2005, 458 SCRA 515, 529.

[53] *Manatad v. Philippine Telegraph and Telephone Corporation*, G.R. No. 172363, March 7, 2008, 548 SCRA 64, 74.

[54] *F.F. Marine Corporation v. National Labor Relations Commission, Second Division*, *supra* note 49, at 167.

In the case at bar, petitioner justifies the downsizing scheme on the ground of serious business losses it suffered in 2001. Some positions had to be declared redundant to cut losses. In this context, what may technically be considered as redundancy may verily be considered as a retrenchment measure.[55] To substantiate its claim, petitioner presented a financial report covering the years 2000 and 2001 submitted by the SGV & Co., an independent external auditing firm.[56] From an impressive gross operating profit of ₱48,608,612.00 in 2000, it nose-dived to negative ₱16,137,217.00 the following year. This was the same financial report submitted to the SEC and later on examined by respondent Union's auditor. The only difference is that, in respondent's analysis, Hyatt Regency Manila was still earning because its net income from hotel operations in 2001 was ₱12,230,248.00. However, if provisions for hotel rehabilitation as well as replacement of and additions to the hotel's furnishings and equipments are included, which respondent Union failed to consider, the result is indeed a staggering deficit of more than ₱16 million. The hotel was already operating not only on a slump in income, but on a huge deficit as well. In short, while the hotel did earn, its earnings were not enough to cover its expenses and other liabilities; hence, the deficit. With the local and international economic conditions equally unstable, belt-tightening measures logically had to be implemented to forestall eventual cessation of business.

Losses or gains of a business entity cannot be fully and satisfactorily assessed by isolating or highlighting only a particular part of its financial report. There are recognized accounting principles and methods by which a company's performance can be objectively and thoroughly evaluated at the end of every fiscal or calendar year. What is important is that the assessment is accurately reported, free from any manipulation of figures to suit the company's needs, so that the company's actual financial condition may be impartially and accurately gauged.

---

[55] *Asian Alcohol Corporation v. NLRC*, G.R. No. 131108, March 25, 1999, 305 SCRA 416, 432.

[56] Annex "A" of HEPI's position paper; *rollo*, pp. 1794-1796.

The audit of financial reports by independent external auditors is strictly governed by national and international standards and regulations for the accounting profession.[57] It bears emphasis that the financial statements submitted by petitioner were audited by a reputable auditing firm and are clear and substantial enough to prove that the company was in a precarious financial condition.

In the competitive and highly uncertain world of business, cash flow is as important as – and oftentimes, even more critical than – profitability.[58] So long as the hotel has enough funds to pay its workers and satisfy costs for operations, maintenance and other expenses, it may survive and bridge better days for its recovery. But to ensure a viable cash flow amidst the growing business and economic uncertainty is the trick of the trade. Definitely, this cannot be achieved if the cost-saving measures continuously fail to cap the losses. More drastic, albeit painful, measures have to be taken.

This Court will not hesitate to strike down a company's redundancy program structured to downsize its personnel, solely for the purpose of weakening the union leadership.[59] Our labor laws only allow retrenchment or downsizing as a valid exercise of management prerogative if all other else fail. But in this case, petitioner did implement various cost-saving measures and even transferred some of its employees to other viable positions just to avoid the premature termination of employment of its affected workers. It was when the same proved insufficient and the amount of loss became certain that petitioner had to resort to drastic measures to stave off ₱9,981,267.00 in losses, and be able to survive.

If we see reason in allowing an employer not to keep all its employees until after its losses shall have fully materialized,[60]

---

[57] *Manatad v. Philippine Telegraph and Telephone Corporation, supra* note 53, at 79.

[58] *MGG Marine Services, Inc. v. NLRC*, 328 Phil. 1046, 1066.

[59] *Lopez Sugar Corporation v. Franco, supra* note 52, at 530.

[60] *Asian Alcohol Corporation v. NLRC, supra* note 55, at 432.

with more reason should we allow an employer to let go of some of its employees to prevent further financial slide.

This, in turn, gives rise to another question: Does the implementation of the downsizing scheme preclude petitioner from availing the services of contractual and agency-hired employees?

In *Asian Alcohol Corporation v. National Labor Relations Commission*,[61] we answered in the negative. We said:

> In any event, we have held that an employer's good faith in implementing a redundancy program is not necessarily destroyed by availment of the services of an independent contractor to replace the services of the terminated employees. We have previously ruled that the reduction of the number of workers in a company made necessary by the introduction of the services of an independent contractor is justified when the latter is undertaken in order to effectuate more economic and efficient methods of production. In the case at bar, private respondent failed to proffer any proof that the management acted in a malicious or arbitrary manner in engaging the services of an independent contractor to operate the Laura wells. Absent such proof, the Court has no basis to interfere with the *bona fide* decision of management to effect more economic and efficient methods of production.

With petitioner's downsizing scheme being valid, and the availment of contractual and agency-hired employees legal, the strike staged by officers and members of respondent Union is, perforce, illegal.

Given the foregoing finding, the only remaining question that begs resolution is whether the strike was staged in good faith. On this issue, we find for the respondent.

Procedurally, a strike to be valid must comply with Article 263 of the Labor Code, which pertinently reads:

> Article 263. x x x

---

[61] *Supra*, at 435-436, citing *De Ocampo v. NLRC*, 213 SCRA 652, 662 (1992).

x x x x x x x x x

(c) In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the [Department] at least 30 days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be 15 days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately.

(d) The notice must be in accordance with such implementing rules and regulations as the [Secretary] of Labor and Employment may promulgate.

(e) During the cooling-off period, it shall be the duty of the [Department] to exert all efforts at mediation and conciliation to effect a voluntary settlement. Should the dispute remain unsettled until the lapse of the requisite number of days from the mandatory filing of the notice, the labor union may strike or the employer may declare a lockout.

(f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. A decision to declare a lockout must be approved by a majority of the board of directors of the corporation or association or of the partners in a partnership, obtained by secret ballot in a meeting called for the purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The [Department] may at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the [Department] the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided.

Accordingly, the requisites for a valid strike are: (a) a notice of strike filed with the DOLE 30 days before the intended date

thereof or 15 days in case of ULP; (b) a strike vote approved by a majority of the total union membership in the bargaining unit concerned obtained by secret ballot in a meeting called for that purpose; and (c) a notice to the DOLE of the results of the voting at least seven (7) days before the intended strike.[62] The requirements are mandatory and failure of a union to comply therewith renders the strike illegal.[63]

In this case, respondent fully satisfied the procedural requirements prescribed by law: a strike notice filed on April 12, 2002; a strike vote reached on April 25, 2002; notification of the strike vote filed also on April 25, 2002; conciliation proceedings conducted on May 8, 2002; and the actual strike on May 10, 2002.

Substantively, however, there appears to be a problem. A valid and legal strike must be based on "strikeable" grounds, because if it is based on a "non-strikeable" ground, it is generally deemed an illegal strike. Corollarily, a strike grounded on ULP is illegal if no acts constituting ULP actually exist. As an exception, even if no such acts are committed by the employer, if the employees believe in good faith that ULP actually exists, then the strike held pursuant to such belief may be legal. As a general rule, therefore, where a union believes that an employer committed ULP and the surrounding circumstances warranted such belief in good faith, the resulting strike may be considered legal although, subsequently, such allegations of unfair labor practices were found to be groundless.[64]

---

[62] *First City Interlink Transportation Co., Inc. v. Roldan-Confesor,* G.R. No. 106316, May 5, 1997, 272 SCRA 124, 130-131.

[63] *CCBPI Postmix Workers Union v. NLRC,* G.R. Nos. 114521, 123491, November 27, 1998, 299 SCRA 410; *National Federation of Labor v. NLRC,* G.R. No. 113466, December 15, 1997, 283 SCRA 275; *First City Interlink Transportation Co., Inc. v. Roldan Confesor, supra*; *Lapanday Workers Union v. National Labor Relations Commission,* G.R. Nos. 95494-97, September 7, 1995, 248 SCRA 95; *Gold City Integrated Port Service, Inc. v. National Labor Relations Commission,* G.R. Nos. 103560, 103599, July 6, 1995, 245 SCRA 627.

[64] *NUWHRAIN – Peninsula Manila Chapter v. NLRC,* 350 Phil. 641, 649-650 (1998).

Here, respondent Union went on strike in the honest belief that petitioner was committing ULP after the latter decided to downsize its workforce contrary to the staffing/manning standards adopted by both parties under a CBA forged only four (4) short months earlier. The belief was bolstered when the management hired 100 contractual workers to replace the 48 terminated regular rank-and-file employees who were all Union members.[65] Indeed, those circumstances showed *prima facie* that the hotel committed ULP. Thus, even if technically there was no legal ground to stage a strike based on ULP, since the attendant circumstances support the belief in good faith that petitioner's retrenchment scheme was structured to weaken the bargaining power of the Union, the strike, by exception, may be considered legal.

Because of this, we view the NLRC's decision to suspend all the Union officers for six (6) months without pay to be too harsh a punishment. A suspension of two (2) months without pay should have been more reasonable and just. Be it noted that the striking workers are not entitled to receive strike-duration pay, the ULP allegation against the employer being unfounded. But since reinstatement is no longer feasible, the hotel having permanently ceased operations on July 2, 2007,[66] we hereby order the Labor Arbiter to instead make the necessary adjustments in the computation of the separation pay to be received by the Union officers concerned.

Significantly, the Manifestations[67] filed by petitioner with respect to the quitclaims executed by members of respondent Union state that 34 of the 48 employees terminated on account of the downsizing program have already executed quitclaims on various dates.[68] We, however, take judicial notice that 33 of these quitclaims failed to indicate the amounts received by

---

[65] *Rollo*, p. 2236.

[66] *Id.* at 2584-2603; notices of permanent closure.

[67] *Id.* at 2427-2470, 2488-2629.

[68] *Id.* at 2431-2470, 2492-2493, 2607, 2611.

the terminated employees.[69] Because of this, petitioner leaves us no choice but to invalidate and set aside these quitclaims. However, the actual amount received by the employees upon signing the said documents shall be deducted from whatever remaining amount is due them to avoid double recovery of separation pay and other monetary benefits. We hereby order the Labor Arbiter to effect the necessary computation on this matter.

For this reason, this Court strongly admonishes petitioner and its counsel for making its former employees sign quitclaim documents without indicating therein the consideration for the release and waiver of their employees' rights. Such conduct on the part of petitioner and its counsel is reprehensible and puts in serious doubt the candor and fairness required of them in their relations with their hapless employees. They are reminded to observe common decency and good faith in their dealings with their unsuspecting employees, particularly in undertakings that ultimately lead to waiver of workers' rights. This Court will not renege on its duty to protect the weak against the strong, and the gullible against the wicked, be it for labor or for capital.

However, with respect to the second batch of quitclaims signed by 85 of the remaining 160 employees who were terminated following Hyatt's permanent closure,[70] we hold that these are valid and binding undertakings. The said documents indicate that the amount received by each of the employees represents a reasonable settlement of their monetary claims against petitioner and were even signed in the presence of a DOLE representative. A quitclaim, with clear and unambiguous contents and executed for a valid consideration received in full by the employee who signed the same, cannot be later invalidated because its signatory claims that he was pressured into signing it on account of his dire financial need. When it is shown that the person executing the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for

---

[69] *Id*. at 2431-2470.

[70] *Id*. at 2496-2629.

the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking.[71]

WHEREFORE, the petition is *PARTLY GRANTED*. The downsizing scheme implemented by petitioner is hereby declared a valid exercise of management prerogative. The penalty of six (6) months suspension without pay imposed in the April 3, 2003 NLRC Resolution[72] is hereby reduced to two (2) months, to be considered in the Labor Arbiter's computation of the separation pay to be received by the Union officers concerned. The first batch of quitclaims signed by 33 of the 48 terminated employees is hereby declared invalid and illegal for failure to state the proper consideration therefor, but the amount received by the employees concerned, if any, shall be deducted from their separation pay and other monetary benefits, subject to the computation to be made by the Labor Arbiter. The second batch of quitclaims signed by 85 of the 160 terminated employees, following Hyatt Regency Manila's permanent closure, is declared valid and binding.

SO ORDERED.

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

---

[71] *Periquet v. National Labor Relations Commission*, G.R. No. 91298, June 22, 1990, 186 SCRA 724, 731.

[72] *Supra* note 3.

[*] Additional member in lieu of Associate Justice Conchita Carpio Morales per Special Order No. 646 dated May 15, 2009.

[**] Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 631 dated April 29, 2009.

FIRST DIVISION

[G.R. No. 165781. June 5, 2009]

RAUL S. TELLO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; MALVERSATION OF PUBLIC FUNDS; ELEMENTS. — The elements of malversation of public funds under Article 217 of the RPC are: 1. that the offender is a public officer; 2. that he had the custody or control of funds or property by reason of the duties of his office; 3. that those funds or property were public funds or property for which he was accountable; and 4. that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

2. ID.; ID.; *PRIMA FACIE* EVIDENCE THAT ACCUSED PUBLIC OFFICER HAS PUT THE MISSING PUBLIC FUNDS OR PROPERTY TO PERSONAL USES; CASE AT BAR. — The last paragraph of Article 217 of the RPC states: "The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses." In this case, petitioner failed to rebut the presumption of malversation. He did not present testimonial evidence to defend himself. He practically admitted the shortage except that he manifested, contrary to the evidence presented by the prosecution, that only the amount of ₱6,152.90 was missing. He did not report to his office when the audit examination started. We sustain the Sandiganbayan's finding that petitioner's guilt has been proven beyond reasonable doubt.

3. POLITICAL LAW; ADMINISTRATIVE LAW; ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES (PD 1445); PROVINCIAL AUDITOR'S OFFICE; AUTHORITY TO CONDUCT AUDIT EXAMINATION IN CASE AT BAR. — Petitioner alleges that Saligumba, who was an examiner of the Provincial Auditor's Office, has no authority

to conduct the audit examination. We do not agree. Petitioner is assigned as Telegraph Operator and Telegraphic Transfer-in-Charge of the Municipality of Prosperidad, Agusan del Sur which is within the jurisdiction of the Provincial Auditor's Office. Presidential Decree No. 1445 (PD 1445) created not only a central but also regional auditing offices. Section 7(2) of PD 1445 states: The Commission shall keep and maintain such regional offices as may be required by the exigencies of the service in accordance with the Integrated Reorganization Plan for the national government, or as may be provided by law, which shall serve as the immediate representatives of the Commission in the regions under the direct control and supervision of the Chairman. The authority of the Provincial Auditor's Office emanates from the central office as its representative.

4. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; CONSIDERED WAIVED IN CASE AT BAR. — Petitioner raised for the first time in his motion for reconsideration before the Sandiganbayan that his right to a speedy disposition of his case had been violated. Petitioner pointed out that his case was submitted for decision on 26 October 1994 but was only decided by the Sandiganbayan on 19 March 2004. We disagree. Section 16, Article III of the Constitution provides: "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi- judicial or administrative bodies." In ascertaining whether the right to speedy disposition of cases has been violated, the following factors must be considered: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay. The right to a speedy disposition of cases is considered violated only when the proceedings are attended by vexatious, capricious, and oppressive delays. A mere mathematical reckoning of the time involved is not sufficient. In the application of the constitutional guarantee of the right to a speedy disposition of cases, particular regard must also be taken of the facts and circumstances peculiar to each case. In this case, petitioner failed to assert his right to a speedy disposition of his case. He did not take any step to accelerate the disposition of his case. He only invoked his right to a speedy disposition of cases after the Sandiganbayan promulgated its decision convicting him for malversation of

public funds. Petitioner's silence may be considered as a waiver of his right.

APPEARANCES OF COUNSEL

Enrique Y. Tandan for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] promulgated on 19 March 2004 and the Resolution[3] promulgated on 1 September 2004 of the Sandiganbayan in Criminal Case No. 15006.

The Antecedent Facts

Raul S. Tello (petitioner) was a Telegraph Operator and Telegraphic Transfer-in-Charge of the Bureau of Telecommunications in Prosperidad, Agusan del Sur. On 5 December 1986, Lordino Tomampos Saligumba (Saligumba), Commission on Audit Auditor II assigned at the office of the Provincial Auditor of Agusan del Sur, received an order directing him and Dionisio Virtudazo (Virtudazo) to conduct an audit examination of petitioner's accounts. Saligumba and Virtudazo (the auditors) conducted an audit from 8 to 10 December 1986 where it was initially determined that petitioner had a shortage in the total amount of ₱6,152.90. When the auditors questioned petitioner on the official receipts of the bank to confirm the remittance advices, petitioner informed them that they were sent to the regional office of the Bureau of Telecommunications.

---

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

[2] *Rollo*, pp. 35-43. Penned by Associate Justice Diosdado M. Peralta with Associate Justices Teresita J. Leonardo-De Castro and Roland B. Jurado, concurring.

[3] *Id.* at 51-54.

Saligumba wrote the unit auditor of the Philippine National Bank (PNB), San Francisco, Agusan del Sur branch, requesting for confirmation of petitioner's remittances and a list of validated remittances from 1 January to 9 December 1986. In a letter dated 10 December 1986, PNB's branch auditor informed Saligumba that petitioner did not make any remittance to the bank from 31 July 1985 to 30 October 1986. Saligumba secured copies of the official receipts and compared them with the remittance advices submitted by petitioner and found that the bank's official receipts did not correspond with petitioner's remittance advices.

The auditors found that the total shortage incurred by petitioner amounted to ₱204,607.70.

Saligumba wrote petitioner a letter dated 11 December 1986 outlining the results of the examination and demanding the immediate production and restitution of the missing amounts. However, petitioner failed to submit his explanation and to produce or restitute the missing funds. Petitioner also failed to show in his office starting 8 December 1986.

Petitioner was charged before the Sandiganbayan with malversation of public funds under Article 217 of the Revised Penal Code (RPC), thus:

> That on or about and prior to December 11, 1986, in Prosperidad, Agusan del Sur and within the jurisdiction of this Honorable Court, accused, a public employee, being then a Telegraph Operator and Telegraphic Transfer-In-Charge of Prosperidad, Agusan del Sur, Bureau of Telecommunication[s,] and as such accountable for the public funds collected and/or received by him, with grave abuse of confidence, did then and there, wilfully and unlawfully misappropriate, embezzle and convert for his own personal use and benefit from said funds the amount of ₱219,904.05 to the damage and prejudice of the government in the afore-stated amount.
>
> CONTRARY TO LAW.[4]

Petitioner did not present any testimonial evidence for his defense. He only manifested that as far as he was concerned,

[4] *Id.* at 33.

the initial findings of the auditors showed only a shortage of ₱6,152.90. He disputed the initial and final findings of the auditors for being unreliable. Petitioner further alleged that as an acting telecom operator, he was not an accountable officer.

The Ruling of the Sandiganbayan

In its 19 March 2004 Decision, the Sandiganbayan found petitioner guilty beyond reasonable doubt of malversation of public funds. The Sandiganbayan ruled that the prosecution was able to establish the elements of the crime, thus:

1. that the offender is a public officer;
2. that he has the custody and control of funds or property by reason of the duties of his office;
3. that the funds or property are public funds or property for which he is accountable; and
4. that he appropriated, took, misappropriated or consented or through abandonment or negligence, permitted another person to take them.

The Sandiganbayan held that while petitioner disputed the amount of the shortage, he did not deny that he incurred the shortage. The Sandiganbayan further noted that when the auditors examined the cashbooks and found the shortage, petitioner did not show up for work anymore. Neither did petitioner question the cash examination report. The Sandiganbayan stated that it took petitioner almost three years before he submitted himself to the jurisdiction of the court, and it was only because he was arrested in another province.

However, the Sandiganbayan modified the amount of shortage to ₱204,607.70 instead of ₱219,904.05 in the information.

The dispositive portion of the Sandiganbayan's decision reads:

WHEREFORE, judgment is hereby rendered finding the accused, Raul S. Tello, guilty beyond reasonable doubt of the crime of Malversation defined in and penalized by Article 217 of the Revised Penal Code, as amended, and he is hereby sentenced to suffer the

penalty of twelve (12) years and one (1) day of *reclusion temporal* minimum, as the minimum penalty, to eighteen (18) years and one (1) day of *reclusion temporal*, maximum, as the maximum penalty, there being no mitigating or aggravating circumstance attendant to the commission of the crime. Accused is further sentenced to suffer the penalty of perpetual special disqualification and is likewise ordered to pay a fine equivalent to the amount malversed or the amount of ₱204,607.70, and to indemnify the Bureau of Telecommunications the amount of ₱204,607.70 with interest thereon.

Costs against the accused.

SO ORDERED.[5]

Petitioner filed a motion for reconsideration assailing his conviction and arguing that the Sandiganbayan's decision was void because it was rendered and promulgated after nine years and five months from the time it was submitted for decision.

In its 1 September 2004 Resolution, the Sandiganbayan denied petitioner's motion for lack of merit. The Sandiganbayan ruled that the right to speedy disposition of cases, which petitioner invoked for the first time in the motion for reconsideration, is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays. There was no violation when petitioner failed to seasonably establish his right.

Hence, the petition before this Court.

The Issues

The issues in this case are the following:

1. Whether petitioner is guilty beyond reasonable doubt of the crime of malversation of public funds under Article 217 of the RPC;
2. Whether Saligumba has authority to conduct the audit examination; and
3. Whether petitioner was denied his constitutional right to a speedy disposition of his case.

[5] *Id.* at 42.

The Ruling of this Court

The petition has no merit.

Malversation of Public Funds

Article 217 of the RPC states:

Art. 217. *Malversation of public funds or property. Presumption of malversation.* — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos.

2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than two hundred pesos but does not exceed six thousand pesos.

3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than six thousand pesos but is less than twelve thousand pesos.

4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses.

The elements of malversation of public funds under Article 217 of the RPC are:

1. that the offender is a public officer;
2. that he had the custody or control of funds or property by reason of the duties of his office;
3. that those funds or property were public funds or property for which he was accountable; and
4. that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.[6]

In this case, all the elements of the crime are present.

Petitioner is a public officer. He took his Oath of Office[7] as Acting Operator-in-Charge on 13 January 1982. Regional Office Order No. 35[8] dated 27 September 1984 designated petitioner as Telegraphic Transfer-in-Charge aside from his regular duties as Acting Operator-in-Charge of Prosperidad, Agusan del Sur. He was appointed Telegraph Operator effective 1 March 1986.[9]

As Telegraph Operator and Telegraphic Transfer-in-Charge, petitioner was in charge of the collections which he was supposed to remit to the PNB. The funds are public funds for which petitioner was accountable. It was also established that petitioner misappropriated the money. He failed to remit his cash collections and falsified the entries in the cashbooks to make it appear that he remitted the money to PNB. Petitioner failed to explain the discrepancies and shortage in his accounts and he failed to restitute the missing amount upon demand. It was also established that petitioner stopped reporting to work starting 8 December 1986.

---

[6] *Ocampo III v. People*, G.R. Nos. 156547-51, 4 February 2008, 543 SCRA 487.

[7] Folder of Exhibits, Exhibit "I".

[8] *Id.*, Exhibit "G".

[9] *Id.*, Exhibit "H".

Petitioner did not present any testimonial evidence for his defense. Instead, he merely manifested that he only incurred a shortage of ₱6,152.90, the initial shortage found by the auditors.

The last paragraph of Article 217 of the RPC states: "The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses."

In this case, petitioner failed to rebut the presumption of malversation. He did not present testimonial evidence to defend himself. He practically admitted the shortage except that he manifested, contrary to the evidence presented by the prosecution, that only the amount of ₱6,152.90 was missing. He did not report to his office when the audit examination started. We sustain the Sandiganbayan's finding that petitioner's guilt has been proven beyond reasonable doubt.

Authority of the Provincial Auditor's Office to Conduct Audit Examinations

Petitioner alleges that Saligumba, who was an examiner of the Provincial Auditor's Office, has no authority to conduct the audit examination.

We do not agree.

Petitioner is assigned as Telegraph Operator and Telegraphic Transfer-in-Charge of the Municipality of Prosperidad, Agusan del Sur which is within the jurisdiction of the Provincial Auditor's Office. Presidential Decree No. 1445[10] (PD 1445) created not only a central but also regional auditing offices. Section 7(2) of PD 1445 states:

> The Commission shall keep and maintain such regional offices as may be required by the exigencies of the service in accordance with the Integrated Reorganization Plan for the national government, or as may be provided by law, which shall serve as the immediate

[10] Ordaining and Instituting a Government Auditing Code of the Philippines, 11 June 1978.

representatives of the Commission in the regions under the direct control and supervision of the Chairman.

The authority of the Provincial Auditor's Office emanates from the central office as its representative.

Violation of Petitioner's Right to Speedy Disposition of Cases

Petitioner raised for the first time in his motion for reconsideration before the Sandiganbayan that his right to a speedy disposition of his case had been violated. Petitioner pointed out that his case was submitted for decision on 26 October 1994 but was only decided by the Sandiganbayan on 19 March 2004.

We disagree.

Section 16, Article III of the Constitution provides: "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi- judicial or administrative bodies."

In ascertaining whether the right to speedy disposition of cases has been violated, the following factors must be considered: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.[11] The right to a speedy disposition of cases is considered violated only when the proceedings are attended by vexatious, capricious, and oppressive delays.[12] A mere mathematical reckoning of the time involved is not sufficient.[13] In the application of the constitutional guarantee of the right to a speedy disposition of cases, particular regard must also be taken of the facts and circumstances peculiar to each case.[14]

---

[11] *Tilendo v. Ombudsman*, G.R. No. 165975, 13 September 2007, 533 SCRA 331.

[12] *Id*.

[13] *Rodriguez v. Sandiganbayan*, 468 Phil. 375 (2004).

[14] *Id*.

In *Bernat v. Sandiganbayan*,[15] the Court denied petitioner's claim of denial of his right to a speedy disposition of cases considering that the petitioner in that case chose to remain silent for eight years before complaining of the delay in the disposition of his case. The Court ruled that petitioner failed to seasonably assert his right and he merely sat and waited from the time his case was submitted for resolution. In this case, petitioner similarly failed to assert his right to a speedy disposition of his case. He did not take any step to accelerate the disposition of his case. He only invoked his right to a speedy disposition of cases after the Sandiganbayan promulgated its decision convicting him for malversation of public funds. Petitioner's silence may be considered as a waiver of his right.[16]

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 19 March 2004 Decision and the 1 September 2004 Resolution of the Sandiganbayan in Criminal Case No. 15006.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Nachura,[*] and *Bersamin, JJ.*, concur.

---

[15] G.R. No. 158018, 20 May 2004, 428 SCRA 787.

[16] *Dela Peña v. Sandiganbayan*, 412 Phil. 921 (2001).

[*] Designated additional member per Raffle dated 1 June 2009.

THIRD DIVISION

[G.R. No. 165895. June 5, 2009]

TERLYNGRACE RIVERA, *petitioner, vs.* **FLORENCIO L. VARGAS,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; REPLEVIN; ELUCIDATED. — Replevin is one of the most ancient actions known to law, taking its name from the object of its process. It originated in common law as a remedy against the wrongful exercise of the right of distress for rent and, according to some authorities, could only be maintained in such a case. But by the weight of authority, the remedy is not and never was restricted to cases of wrongful distress in the absence of any statutes relating to the subject, but is a proper remedy for any unlawful taking. "Replevied," used in its technical sense, means delivered to the owner, while the words "to replevy" means to recover possession by an action of replevin. Broadly understood in this jurisdiction, replevin is both a form of principal remedy and of provisional relief. It may refer either to the action itself, *i.e.*, to regain the possession of personal chattels being wrongfully detained from the plaintiff by another, or to the provisional remedy that would allow the plaintiff to retain the thing during the pendency of the action and to hold it *pendente lite*. The action is primarily possessory in nature and generally determines nothing more than the right of possession. The law presumes that every possessor is a possessor in good faith. He is entitled to be respected and protected in his possession as if he were the true owner thereof until a competent court rules otherwise. Before a final judgment, property cannot be seized unless by virtue of some provision of law. The Rules of Court, under Rule 60, authorizes such seizure in cases of replevin. However, a person seeking a remedy in an action for replevin must follow the course laid down in the statute, since the remedy is penal in nature. When no attempt is made to comply with the provisions of the law relating to seizure in this kind of action, the writ or order allowing the seizure is erroneous and may be set aside on motion by the

adverse party. Be it noted, however, that a motion to quash the writ of replevin goes to the technical regularity of procedure, and not to the merits of the case in the principal action.

2. ID.; ID.; ID.; EXECUTION OF THE WRIT OF REPLEVIN; SERVICE OF THE WRIT UPON THE ADVERSE PARTY; ELUCIDATED. — The process regarding the execution of the writ of replevin in Section 4 of Rule 60 is unambiguous: the sheriff, upon receipt of the writ of replevin and prior to the taking of the property, must serve a copy thereof to the adverse party (petitioner, in this case) together with the application, the affidavit of merit, and the replevin bond. The reasons are simple, *i.e.*, to provide proper notice to the adverse party that his property is being seized in accordance with the court's order upon application by the other party, and ultimately to allow the adverse party to take the proper remedy consequent thereto. Service of the writ upon the adverse party is mandatory in line with the constitutional guaranty on procedural due process and as safeguard against unreasonable searches and seizures. If the writ was not served upon the adverse party but was instead merely handed to a person who is neither an agent of the adverse party nor a person authorized to receive court processes on his behalf, the service thereof is erroneous and is, therefore, invalid, running afoul of the statutory and constitutional requirements. The service is likewise invalid if the writ of replevin was served without the required documents. Under these circumstances, no right to seize and to detain the property shall pass, the act of the sheriff being both unlawful and unconstitutional.

3. ID.; ID.; ID.; ID.; ID.; COMPLIANCE TO THE PROPER SERVICE OF REPLEVIN, EMPHASIZED. — The trial court is reminded that not only should the writ or order of replevin comply with all the requirements as to matters of form or contents prescribed by the Rules of Court. The writ must also satisfy proper service in order to be valid and effective: *i.e.*, it should be directed to the officer who is authorized to serve it; and it should be served upon the person who not only has the possession or custody of the property involved but who is also a party or agent of a party to the action. Consequently, a trial court is deemed to have acted without or in excess of its jurisdiction with respect to the ancillary action of replevin if it seizes and detains a

personalty on the basis of a writ that was improperly served, such as what happened in this case.

APPEARANCES OF COUNSEL

Abcede Flores Tan-Lim and *Zabella Law Office* for petitioner.

Joseph Andrew L. Calubaquib for respondent.

D E C I S I O N

NACHURA, *J.*:

What is the effect of a writ of replevin that has been improperly served?

This is the sole issue to be resolved in this petition for review on *certiorari* seeking to set aside the Decision[1] of the Court of Appeals (CA) dated November 18, 2003 in CA-G.R. SP No. 78529, as well as its October 20, 2004 Resolution,[2] denying the petition for *certiorari* filed by petitioner Terlyngrace Rivera (Rivera).

The facts follow.

On February 24, 2003, respondent Florencio Vargas (Vargas) filed a complaint[3] against petitioner and several John Does before Branch 02 of the Regional Trial Court (RTC) in Tuguegarao City, Cagayan, for the recovery of a 150 T/H rock crushing plant located in Sariaya, Quezon. In his complaint and affidavit,[4] Vargas claims ownership of the said equipment, having purchased and imported the same directly from Hyun Dae Trading

---

[1] Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Mercedes Gozo-Dadole and Rosmari D. Carandang, concurring; *rollo*, pp. 32-35.

[2] *Rollo*, pp. 45-46.

[3] *Id.* at 51-65.

[4] *Id.* at 56-57.

Co., in Seoul, South Korea, in December 1993.[5] The equipment was allegedly entrusted to petitioner's husband, Jan T. Rivera, who died sometime in late 2002, as caretaker of respondent's construction aggregates business in Batangas. According to Vargas, petitioner failed to return the said equipment after her husband's death despite his repeated demands, thus forcing him to resort to court action.[6] The complaint was accompanied by a prayer for the issuance of a writ of replevin and the necessary bond amounting to ₱2,400,000.00.

Summons[7] dated February 24, 2003 was served upon petitioner through her personal secretary on April 28, 2003 at her residence in Parañaque City. Interestingly, however, the writ of replevin[8] was served upon and signed by a certain Joseph Rejumo, the security guard on duty in petitioner's crushing plant in Sariaya, Quezon on April 29, 2003,[9] contrary to the sheriff's return[10] stating that the writ was served upon Rivera.

On May 8, 2003, Rivera filed her answer, manifestation, and motion for the acceptance of petitioner's redelivery bond.[11] In her answer, petitioner countered that the rock-crushing plant was ceded in favor of her husband as his share following the dissolution of the partnership formed between Jan Rivera and respondent's wife, Iluminada Vargas (Iluminada), on May 28, 1998, while the partnership's second rock-crushing plant in Cagayan was ceded in favor of Iluminada.[12] She further averred that from the time that the partnership was dissolved sometime in 2000 until Jan Rivera's death in late 2002, it was petitioner's

---

[5] *Id.* at 55-57.

[6] *Id.* at 51-53.

[7] *Id.* at 70.

[8] *Id.* at 68-69.

[9] *Id.* at 69.

[10] *Id.* at 72-73.

[11] *Id.* at 74-94.

[12] *Id.* at 76-79, 85-87.

husband who exercised ownership over the said equipment without any disturbance from respondent.[13]

On May 12, 2003, the RTC issued an Order[14] disapproving petitioner's redelivery bond application for failure to comply with the requirements under Sections 5 and 6 of Rule 60 of the Rules of Court.[15] Without directly saying so, the RTC faulted petitioner for her failure to file the application for redelivery bond within five (5) days from the date of seizure as provided in the Rules of Court. Petitioner moved for reconsideration,[16] but the same was also denied.[17]

Aggrieved, petitioner elevated the matter to the CA through a petition for *certiorari* under Rule 65. This, too, was denied

---

[13] *Id.* at 76-79.

[14] *Id.* at 101.

[15] Secs. 5 and 6, Rule 60 of the Rules of Court, read:

SEC. 5. *Return of property.* — If the adverse party objects to the sufficiency of the applicant's bond, or of the surety or sureties thereon, he cannot immediately require the return of the property, but if he does not so object, he may, at any time before the delivery of the property to the applicant, require the return thereof, by filing with the court where the action is pending a bond executed to the applicant, in double the value of the property as stated in the applicant's affidavit for the delivery thereof to the applicant, if such delivery be adjudged, and for the payment of such sum to him as may be recovered against the adverse party, and by serving a copy of such bond on the applicant.

SEC. 6. *Disposition of property by sheriff.* — If within five (5) days after the taking of the property by the sheriff, the adverse party does not object to the sufficiency of the bond, or of the surety or sureties thereon; or if the adverse party so objects and the court affirms its approval of the applicant's bond or approves a new bond, or if the adverse party requires the return of the property but his bond is objected to and found insufficient and he does not forthwith file an approved bond, the property shall be delivered to the applicant. If for any reason the property is not delivered to the applicant, the sheriff must return it to the adverse party.

[16] *Rollo*, pp. 103-107.

[17] *Id.* at 108.

for lack of merit.[18] Petitioner moved for reconsideration,[19] but it was also denied.[20]

Undaunted, petitioner now comes to us *via* this Rule 45 petition.

Petitioner argues that the RTC committed grave abuse of discretion in denying her counterbond on the ground that it was filed out of time. She contends that the mandatory five-day period did not even begin to run in this case due to the improper service of the writ of replevin, contrary to Section 4 of Rule 60.[21]

We find the petition meritorious.

Replevin is one of the most ancient actions known to law, taking its name from the object of its process.[22] It originated in common law as a remedy against the wrongful exercise of the right of distress for rent[23] and, according to some authorities, could only be maintained in such a case.[24] But by the weight

---

[18] *Id.* at 32-35.

[19] *Id.* at 36-44.

[20] *Supra* note 2.

[21] Sec. 4, Rule 60 of the Rules of Court, reads:

SEC. 4. *Duty of the sheriff.* — Upon receiving such order, the sheriff must serve a copy thereof on the adverse party, together with a copy of the application, affidavit and bond, and must forthwith take the property, if it be in the possession of the adverse party, or his agent, and retain it in his custody. If the property or any part thereof be concealed in a building or enclosure, the sheriff must demand its delivery, and if it be not delivered, he must cause the building or enclosure to be broken open and take the property into his possession. After the sheriff has taken possession of the property as herein provided, he must keep it in a secure place and shall be responsible for its delivery to the party entitled thereto upon receiving his fees and necessary expenses for taking and keeping the same.

[22] *Stone v. Church*, 16 N.Y.S.2d 512, 515, 172 Misc. 1007, 1008 (1939).

[23] *Sinnott v. Feiock*, 59 N.E. 265, 165 N.Y. 444, 80 Am.S.R. 736, 53 L.R.A. 565 (1901); and *Kurzweil v. Story & Clark Piano Co. and Blumgarten v. Mason & Hamlin Co.*, 159 N.Y.S. 231, 95 Misc. 484 (1916).

[24] *Palmer v. King*, 41 App. DC. 419, L.R.A.1916D 278, Ann. Cas.1915C 1139 (1914).

of authority, the remedy is not and never was restricted to cases of wrongful distress in the absence of any statutes relating to the subject, but is a proper remedy for any unlawful taking.[25] "Replevied," used in its technical sense, means delivered to the owner,[26] while the words "to replevy" means to recover possession by an action of replevin.[27]

Broadly understood in this jurisdiction, replevin is both a form of principal remedy and of provisional relief. It may refer either to the action itself, *i.e.*, to regain the possession of personal chattels being wrongfully detained from the plaintiff by another, or to the provisional remedy that would allow the plaintiff to retain the thing during the pendency of the action and to hold it *pendente lite*.[28] The action is primarily possessory in nature and generally determines nothing more than the right of possession.[29]

The law presumes that every possessor is a possessor in good faith.[30] He is entitled to be respected and protected in his possession[31] as if he were the true owner thereof until a competent court rules otherwise.[32] Before a final judgment, property cannot

---

[25] *Stone v. Church*, *supra* note 22.

[26] *Steuer v. Maguire*, 66 N. E. 706, 707; 182 Mass. 575, 576 (1903).

[27] *Tillson v. Court of Appeals*, G.R. No. 89870, May 28, 1991, 197 SCRA 587, 598.

[28] *BA Finance Corporation v. CA*, 327 Phil. 716, 724-725 (1996). See also *Tillson v. Court of Appeals*, *id.*; *Bouvier's Dictionary*, Third (Rawle's) Revision, Vol. 2; *Black's Law Dictionary*, Sixth Edition, p. 1299.

[29] *BA Finance Corporation v. CA*, *supra*, at 725.

[30] Art. 527 of the New Civil Code provides:

Art. 527. Good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof.

[31] Art. 539 of the New Civil Code provides:

Art. 539. Every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of the Court.

[32] *Yu v. Honrado*, No. 50025, August 21, 1980, 99 SCRA 273, 277, citing *Chua Hai v. Kapunan, Jr., etc. and Ong Shu*, 104 Phil. 110, 118 (1958).

be seized unless by virtue of some provision of law.[33] The Rules of Court, under Rule 60, authorizes such seizure in cases of replevin. However, a person seeking a remedy in an action for replevin must follow the course laid down in the statute, since the remedy is penal in nature.[34] When no attempt is made to comply with the provisions of the law relating to seizure in this kind of action, the writ or order allowing the seizure is erroneous and may be set aside on motion[35] by the adverse party. Be it noted, however, that a motion to quash the writ of replevin goes to the technical regularity of procedure, and not to the merits of the case[36] in the principal action.

The process regarding the execution of the writ of replevin in Section 4 of Rule 60 is unambiguous: the sheriff, upon receipt of the writ of replevin and prior to the taking of the property, must serve a copy thereof to the adverse party (petitioner, in this case) together with the application, the affidavit of merit, and the replevin bond.[37] The reasons are simple, *i.e.*, to provide proper notice to the adverse party that his property is being seized in accordance with the court's order upon application by the other party, and ultimately to allow the adverse party to take the proper remedy consequent thereto.

Service of the writ upon the adverse party is mandatory in line with the constitutional guaranty on procedural due process and as safeguard against unreasonable searches and seizures.[38] If the writ was not served upon the adverse party but was instead merely

---

[33] *Heath v. Steamer "San Nicolas,"* 7 Phil. 532, 538 (1907).

[34] *Weaver Piano Co., Inc. v. Curtis*, 158 S.C. 117; 155 SE 291, 300 (1930).

[35] *Heath v. Steamer "San Nicolas," supra* note 33, at 538.

[36] *Cummings v. Gordon*, 29 Pa. Dist. 740; 77 C.J.S. 120.

[37] *Supra* note 21.

[38] Secs. 1 and 2, Art. III of the Constitution provides in full:

Section 1. No person shall be deprived of life liberty or *property without due process of law*, nor shall any person be denied the equal protection of the laws.

handed to a person who is neither an agent of the adverse party nor a person authorized to receive court processes on his behalf, the service thereof is erroneous and is, therefore, invalid, running afoul of the statutory and constitutional requirements. The service is likewise invalid if the writ of replevin was served without the required documents. Under these circumstances, no right to seize and to detain the property shall pass, the act of the sheriff being both unlawful and unconstitutional.

In the case at bar, petitioner avers that the writ of replevin was served upon the security guard where the rock-crushing plant to be seized was located.[39] The signature of the receiving party indicates that the writ was received on April 29, 2003 by a certain Joseph Rejumo, the guard on duty in a plant in Sariaya, Quezon, where the property to be seized was located, and witnessed by Claudio Palatino, respondent's caretaker.[40] The sheriff's return,[41] however, peremptorily states that both the writ of replevin and the summons were served upon Rivera. On May 8, 2003, or nine (9) days after the writ was served on the security guard, petitioner filed an answer to the complaint accompanied by a prayer for the approval of her redelivery bond. The RTC, however, denied the redelivery bond for having been filed beyond the five-day mandatory period prescribed in Sections 5 and 6 of Rule 60.[42] But since the writ was invalidly served, petitioner is correct in contending that there is no reckoning point from which the mandatory five-day period shall commence to run.

The trial court is reminded that not only should the writ or order of replevin comply with all the requirements as to matters of form

---

Section 2. The right of the people to be secure in their persons, houses, papers and *effects against unreasonable* searches and *seizures of whatever nature and for any purpose* shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and witnesses he may produce, and particularly describing the place to be searched and the persons or things be seized. (Italics supplied.)

[39] *Rollo*, pp. 13, 69, 138.

[40] Annex "G-2", *id.* at 69.

[41] *Rollo*, pp. 72-73.

[42] *Id.* at 101.

or contents prescribed by the Rules of Court.[43] The writ must also satisfy proper service in order to be valid and effective: *i.e.*, it should be directed to the officer who is authorized to serve it; and it should be served upon the person who not only has the possession or custody of the property involved but who is also a party or agent of a party to the action. Consequently, a trial court is deemed to have acted without or in excess of its jurisdiction with respect to the ancillary action of replevin if it seizes and detains a personalty on the basis of a writ that was improperly served, such as what happened in this case.

At the outset, petitioner's proper remedy should have been to file a motion to quash the writ of replevin or a motion to vacate the order of seizure. Nevertheless, petitioner's filing of an application for a redelivery bond, while not necessary, did not thereby waive her right to question the improper service. It now becomes imperative for the trial court to restore the parties to their former positions by returning the seized property to petitioner and by discharging the replevin bond filed by respondent. The trial, with respect to the main action, shall continue. Respondent may, however, file a new application for replevin should he choose to do so.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals, as well as its Resolution, in CA-G.R. SP No. 78529 is hereby *SET ASIDE*. The Regional Trial Court is hereby ordered to restore the parties to their former positions, discharge respondent's replevin bond, and proceed with the trial of the main action with dispatch.

SO ORDERED.

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

---

[43] Vicente Francisco, *The Revised Rules of Court in the Philippines, Provisional Remedies*, Vol. IV-A, 1971, p. 394, citing 77 C.J.S. 81-82.

[*] Additional member in lieu of Associate Justice Conchita Carpio Morales per Special Order No. 646 dated May 15, 2009.

[**] Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 631 dated April 29, 2009.

THIRD DIVISION

[G.R. No. 167420. June 5, 2009]

ALLIED BANKING CORPORATION, *petitioner, vs.* **RUPERTO JOSE H. MATEO, represented by WARLITA MATEO, as Attorney-in-Fact,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES; VALID REDEMPTION. — Section 6 of Act No. 3135, as amended by Act No. 4118, provides for a valid redemption, to wit: SEC. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, insofar as these are not inconsistent with the provisions of this Act.

2. ID.; GENERAL BANKING ACT; DETERMINATION OF REDEMPTION PRICE FOR THE FORECLOSED PROPERTY. — Considering that petitioner is a banking institution, the determination of the redemption price for the foreclosed property should be governed by Section 78 of the General Banking Act. *Union Bank of the Philippines v. Court of Appeals*, is instructive: x x x Petitioner's contention that Section 78 of the General Banking Act governs the determination of the redemption price of the subject property is meritorious. In *Ponce de Leon v. Rehabilitation Finance Corporation*, this Court had occasion to rule that Section 78 of the General Banking Act had the effect of amending Section 6 of Act No. 3135 insofar as the redemption price is concerned when the mortgagee is a bank, as in this case, or a banking or credit institution. The apparent conflict between the provisions of Act No. 3135 and

the General Banking Act was, therefore, resolved in favor of the latter, being a special and subsequent legislation. This pronouncement was reiterated in the case of *Sy v. Court of Appeals* where we held that the amount at which the foreclosed property is redeemable is the amount due under the mortgage deed, or the outstanding obligation of the mortgagor plus interest and expenses in accordance with Section 78 of the General Banking Act. It was, therefore, manifest error on the part of the Court of Appeals to apply in the case at bar the provisions of Section 30, Rule 39 of the Rules of Court in fixing the redemption price of the subject foreclosed property. And Section 78 provides: Sec. 78. In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan granted before the passage of this Act or under the provisions of this Act, the mortgagor or debtor whose real property has been sold at public auction, judicially or extrajudicially, for the full or partial payment of an obligation to any bank, banking or credit institution, within the purview of this Act shall have the right, within one year after the sale of the real estate as a result of the foreclosure of the respective mortgage, to redeem the property by paying the amount fixed by the court in the order of execution, or the amount due under the mortgage deed, as the case may be, with interest thereon at the rate specified in the mortgage, and all the costs, and judicial and other expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property.

3. ID.; MORTGAGE LAW; FORECLOSED PROPERTY; REDEMPTION; REQUIREMENT THEREFOR. — In *BPI Family Savings Bank, Inc. v. Veloso,* the Court had occasion to state the requirements for the redemption of the foreclosed property. The Court held: The general rule in redemption is that it is not sufficient that a person offering to redeem manifests his desire to do so. The statement of intention must be accompanied by an actual and simultaneous tender of payment. This constitutes the exercise of the right to repurchase. In several cases decided by the Court where the right to repurchase was held to have been properly exercised, **there was an unequivocal tender of payment for the *full amount of the repurchase price.* Otherwise, the offer to redeem is ineffectual. *Bona fide***

redemption necessarily implies a reasonable and valid tender of the entire repurchase price, otherwise the rule on the redemption period fixed by law can easily be circumvented.

4. ID.; ID.; ID.; ID.; REDEMPTIONER'S OPTION WHEN REDEMPTION PERIOD ABOUT TO EXPIRE AND REDEMPTION CANNOT TAKE PLACE BECAUSE OF DISAGREEMENT OVER THE REDEMPTION PRICE; ACTION FILED IN GOOD FAITH MUST BE FOR THE SOLE PURPOSE OF DETERMINING REDEMPTION PRICE AND NOT TO STRETCH THE REDEMPTIVE PERIOD INDEFINITELY.— In *Hi Yield Realty, Inc. v. Court of Appeals*, the Court held: What is the redemptioner's option therefore when the redemption period is about to expire and the redemption cannot take place on account of disagreement over the redemption price? According to jurisprudence, the redemptioner faced with such a problem may preserve his right of redemption through judicial action which in every case must be filed within the one-year period of redemption. The filing of the court action to enforce redemption, being equivalent to a formal offer to redeem, would have the effect of preserving his redemptive rights and "freezing" the expiration of the one-year period. This is a fair interpretation provided the action is filed on time and in good faith, the redemption price is finally determined and paid within a reasonable time, and the rights of the parties are respected. Stated otherwise, the foregoing interpretation, as applied to the case at bar, has three critical dimensions: (1) timely redemption or redemption by expiration date (or, as what happened in this case, the redemptioner was forced to resort to judicial action to "freeze" the expiration of the redemption period); (2) good faith as always, meaning, the filing of the private respondent's action on August 13, 1993 must have been for the sole purpose of determining the redemption price and not to stretch the redemptive period indefinitely; and (3) once the redemption price is determined within a reasonable time, the redemptioner must make prompt payment in full. Conversely, if private respondent had to resort to judicial action to stall the expiration of the redemptive period on August 13, 1993 because he and the petitioner could not agree on the redemption price which still had to be determined, private respondent could not thereby be expected to tender payment simultaneously with the filing of the action on said date. As

stated in the case of *Hi Yield Realty, Inc. v. Court of Appeals*, for the action to be considered filed in good faith, the filing of the action must have been for the sole purpose of determining the redemption price and not to stretch the redemptive period indefinitely.

APPEARANCES OF COUNSEL

Francisco Gerardo C. Llamas for petitioner.
Jose Romeo S. De La Cruz for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* filed by Allied Banking Corporation (petitioner) seeking to reverse the Decision[1] dated October 21, 2004, as well as the Order[2] dated February 10, 2005 of the Regional Trial Court (RTC), Branch 35, Santiago City, docketed as SCA No. 35-0145 for legal redemption with prayer for a temporary restraining order and preliminary injunction.

On February 19, 1996, Ruperto Jose Mateo (respondent) obtained a loan from petitioner in the amount of ₱950,000.00. To secure the payment of the loan, respondent executed in favor of petitioner a deed of real estate mortgage over a parcel of land registered in respondent's name under Transfer Certificate of Title (TCT) No. 236351 of the Register of Deeds of Isabela. He likewise executed a promissory note in the amount of ₱950,000.00. Subsequently, respondent incurred default in the payment of his loan prompting petitioner to cause the extrajudicial foreclosure of the mortgage constituted on the subject property. The property was sold at public auction for ₱1,531,474.53 with petitioner as the sole and highest bidder. The Certificate of Sale was issued to petitioner, and was registered with the Register of Deeds on July 21, 1999.

---

[1] Penned by Judge Efren M. Cacatian, *rollo*, pp. 7-15.

[2] *Id.* at 16-22.

Respondent, through her attorney-in-fact, Warlita N. Mateo (Warlita), sent, on several dates, faxed letters to petitioner signifying his desire to redeem the foreclosed property for ₱1.1 million pesos.

On July 21, 2000, or on the last day of the period for redemption, respondent, represented by Warlita, filed a case for legal redemption with prayer for temporary restraining order and preliminary injunction with the RTC of Isabela.

On January 19, 2001, petitioner effected the consolidation of its ownership over the subject property and TCT No. 311043 was issued in its name on March 2, 2001.

During the pre-trial conference on September 18, 2002, respondent offered to redeem the property for the foreclosed amount of ₱1,531,474.53, but petitioner refused. Instead of continuing with the trial, the parties agreed to submit the case for summary judgment.

On October 21, 2004, the RTC rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered in favor of the plaintiff and against the defendant, ALLOWING the plaintiff to redeem from the defendant the property now covered by TCT No. T-311043 in the name of the defendant, upon payment of the amount of ₱1,531,474.53, plus one (1) percent as interest for one (1) month only, and ORDERING the defendant to accept the tender of redemption of the plaintiff and to deliver the proper certificate of redemption to the latter and finally, ordering the defendant to indemnify the plaintiff ₱30,000.00 as attorney's fees and cost of the suit.[3]

In so ruling, the RTC found that: (1) respondent had the right to redeem the foreclosed property from petitioner, as the one year period to redeem had not yet expired when respondent filed the instant case; (2) even prior to the filing of the case, respondent had sent petitioner several faxed letters to show his sincere desire to avail himself of the right to redeem the

[3] *Id*. at 14-15.

property from petitioner; (3) respondent already offered to pay the foreclosed price of ₱1,531,474.53 as in fact he had consigned ₱1.1 million in the Land Bank. The trial court also found that respondent began to exercise the right to redeem on August 10, 1999 when he, through Warlita, sent a letter to petitioner on his intention to redeem; thus, applying Section 28, Rule 39 of the Rules of Court, respondent should pay as redemption price the foreclosed amount of ₱1,531,474.53, plus one percent interest for the month that lapsed until August 10, 1999.

Petitioner filed a Motion for Reconsideration, which was denied in an Order[4] dated February 10, 2005.

In denying the Motion for Reconsideration, the RTC ruled that respondent's offer of ₱1,531,474.53 made during the pre-trial conference already covered petitioner's bid price at the foreclosure auction sale, which already incorporated the interest, penalties, attorney's fees and other expenses of sale; that such purchase price should be the basis of the redemption price, plus interest at one percent, in order to afford respondent a greater chance to redeem the foreclosed property.

Dissatisfied, petitioner filed a petition for review on *certiorari* with the Court, alleging that:

THE LOWER COURT DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW AND WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT IN THAT:

I. It is considered sufficient tender and consignation the amount which was less than the price for which the property was bought and in the manner not in conformity with the law and settled jurisprudence.

II. It applied the provisions of Sec. 28, Rule 39 of the Rules of Court and Act No. 3135 in the computation of the redemption price even when the said basis has been superseded by Sec. 78 of the General Banking Act (now Section 47 of RA 8791).[5]

---

[4] *Id*. at 16-22.

[5] *Id.* at 36.

Petitioner contends that: (1) the RTC erred in considering the various offers made by respondent to redeem the subject property for the amount of ₱1.1 million as sufficient tender of payment for purposes of redemption; (2) the tender to be legally sufficient must be for the amount of the purchase price, plus the agreed interest rate on the principal obligation; (3) the RTC erred in considering the deposit of ₱1.1 million with Land Bank as sufficient consignation, since the amount should have been deposited in court and not anywhere else; (4) the offer to redeem in the amount of ₱1,531,474.53 was made only during the pre-trial conference, which was already way past the redemption period; and (5) the redemption price should be based on Section 47 of the General Banking Act.

In his Comment, respondent claims that the petition should be denied outright, because it raises questions of fact and not purely of law; that the issue as to the sufficiency or insufficiency of the amount tendered by respondent is a question of fact, as the Court should consider the factual evidence in relation to the computation of the purchase price paid by petitioner during the foreclosure sale and the price offered by respondent; that he offered to pay petitioner's purchase amount of ₱1,531,474.53 during the pre-trial conference; that he can still exercise the right of redemption over the subject property; and that a previous tender of payment and consignation is only proper but is not essential when the redemptioner exercises his right to redeem the foreclosed property through the filing of a judicial action within the period of redemption.

In its Reply, petitioner argues that the case was decided on stipulation of facts by the parties; thus, any appeal from a judgment based on stipulation of facts can only be on questions of law; that, whether under Section 28, Rule 39 of the Rules of Court or Section 47 of the General Banking Act, the minimum redemption amount is ₱1,531,474.53, which was the amount paid by petitioner during the foreclosure sale.

Preliminarily, the Court would first address the procedural matter raised by respondent: that the petition should be denied outright because it raises questions of fact and not purely of

law. Respondent claims that the issue as to the sufficiency or insufficiency of the amount tendered by respondent is a question of fact, which could not be raised in an appeal by *certiorari* under Rule 45.

We are not persuaded.

Notably, it was already stipulated upon by the parties that respondent offered ₱1.1 million as redemption price before the filing of this action; thus, the issue is not the amount of redemption price, but the sufficiency of the amount offered by respondent that would warrant the redemption of the foreclosed property. This is a question of law as it calls for the correct application of law and jurisprudence on the matter, which is within the purview of Rule 45 of the Rules of Court.

The Court will now address the main issues presented, to wit:

(1) Whether or not respondent still has the right to redeem the subject property; and

(2) Whether or not Section 78 of the General Banking Act[6] should be applied to the computation of the redemption price.

Section 6 of Act No. 3135,[7] as amended by Act No. 4118, provides for a valid redemption, to wit:

> SEC. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred

[6] Republic Act No. 337.

[7] An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real-Estate Mortgages; commonly known as the *Extra-Judicial Foreclosure of Mortgage*.

and sixty-six, inclusive,[8] of the Code of Civil Procedure, insofar as these are not inconsistent with the provisions of this Act.

Considering that petitioner is a banking institution, the determination of the redemption price for the foreclosed property should be governed by Section 78 of the General Banking Act. *Union Bank of the Philippines v. Court of Appeals*,[9] is instructive:

x x x Petitioner's contention that Section 78 of the General Banking Act governs the determination of the redemption price of the subject property is meritorious. In *Ponce de Leon v. Rehabilitation Finance Corporation*, this Court had occasion to rule that Section 78 of the General Banking Act had the effect of amending Section 6 of Act No. 3135 insofar as the redemption price is concerned when the mortgagee is a bank, as in this case, or a banking or credit institution. The apparent conflict between the provisions of Act No. 3135 and the General Banking Act was, therefore, resolved in favor of the latter, being a special and subsequent legislation. This pronouncement was reiterated in the case of *Sy v. Court of Appeals* where we held that the amount at which the foreclosed property is redeemable is the amount due under the mortgage deed, or the outstanding obligation of the mortgagor plus interest and expenses in accordance with Section 78 of the General Banking Act. It was, therefore, manifest error on the part of the Court of Appeals to apply in the case at bar the provisions of Section 30, Rule 39 of the Rules of Court in fixing the redemption price of the subject foreclosed property.

---

[8] Now Section 28, Rule 39 of the Rules of Court provides:

SEC. 28. *Time and manner of, and amounts payable on, successive redemptions; notice to be given and filed.* — The judgment obligor, or redemptioner, may redeem the property from the purchaser, at any time within one (1) year from the date of the registration of the certificate of sale, by paying the purchaser the amount of his purchase, with one per centum per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last named amount of the same rate; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest.

[9] G.R. No. 134068, June 25, 2001, 359 SCRA 480, 490-491.

And Section 78 provides:

Sec. 78. In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan granted before the passage of this Act or under the provisions of this Act, the mortgagor or debtor whose real property has been sold at public auction, judicially or extrajudicially, for the full or partial payment of an obligation to any bank, banking or credit institution, within the purview of this Act shall have the right, within one year after the sale of the real estate as a result of the foreclosure of the respective mortgage, to redeem the property by paying the amount fixed by the court in the order of execution, or the amount due under the mortgage deed, as the case may be, with interest thereon at the rate specified in the mortgage, and all the costs, and judicial and other expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property.

In *BPI Family Savings Bank, Inc. v. Veloso*,[10] the Court had occasion to state the requirements for the redemption of the foreclosed property. The Court held:

The general rule in redemption is that it is not sufficient that a person offering to redeem manifests his desire to do so. The statement of intention must be accompanied by an actual and simultaneous tender of payment. This constitutes the exercise of the right to repurchase.

In several cases decided by the Court where the right to repurchase was held to have been properly exercised, **there was an unequivocal tender of payment for the *full amount of the repurchase price*. Otherwise, the offer to redeem is ineffectual. *Bona fide* redemption necessarily implies a reasonable and valid tender of the entire repurchase price, otherwise the rule on the redemption period fixed by law can easily be circumvented**.[11]

In this case, it was stipulated upon by the parties that the real estate mortgage over respondent's property was foreclosed in the amount of ₱1,531,474.53, and that respondent offered

[10] G.R. No. 141974, August 9, 2004, 436 SCRA 1.

[11] *Id.* at 6. (Emphasis supplied).

the amount of ₱1.1 million as redemption price before the filing of the complaint. It has been held that the tender of payment must be for the full amount of the purchase price, *i.e.*, the amount fixed by the court in the order of execution or the amount due under the mortgage deed, as the case may be, with interest thereon at the rate specified in the mortgage; and all the costs, and judicial and other expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property. Thus, the amount of ₱1.1 million offered by respondent was ineffective, since not only did the amount not include the interest but it was even below the purchase price. Such offer did not effect a valid redemption, and petitioner was justified in refusing to accept such offer.

The RTC found that the instant case for legal redemption must prosper, as the one-year period to redeem had not yet expired when respondents filed the case. Notably, respondents filed the instant case on July 21, 2000 which was within one year from the registration of the Certificate of Sale on July 21, 1999. The question now is whether such judicial redemption is proper under the circumstances.

In *Hi Yield Realty, Inc. v. Court of Appeals*,[12] the Court held:

> What is the redemptioner's option therefore when the redemption period is about to expire and the redemption cannot take place on account of disagreement over the redemption price?
>
> According to jurisprudence, the redemptioner faced with such a problem may preserve his right of redemption through judicial action which in every case must be filed within the one-year period of redemption. The filing of the court action to enforce redemption, being equivalent to a formal offer to redeem, would have the effect of preserving his redemptive rights and "freezing" the expiration of the one-year period. This is a fair interpretation provided the action is filed on time and in good faith, the redemption price is finally determined and paid within a reasonable time, and the rights of the parties are respected.

---

[12] G.R. No. 138978, September 12, 2002, 388 SCRA 655.

Stated otherwise, the foregoing interpretation, as applied to the case at bar, has three critical dimensions: (1) timely redemption or redemption by expiration date (or, as what happened in this case, the redemptioner was forced to resort to judicial action to "freeze" the expiration of the redemption period); (2) good faith as always, meaning, the filing of the private respondent's action on August 13, 1993 must have been for the sole purpose of determining the redemption price and not to stretch the redemptive period indefinitely; and (3) once the redemption price is determined within a reasonable time, the redemptioner must make prompt payment in full.

Conversely, if private respondent had to resort to judicial action to stall the expiration of the redemptive period on August 13, 1993 because he and the petitioner could not agree on the redemption price which still had to be determined, private respondent could not thereby be expected to tender payment simultaneously with the filing of the action on said date.[13]

As above-stated, for the action to be considered filed in good faith, the filing of the action must have been for the sole purpose of determining the redemption price and not to stretch the redemptive period indefinitely. In this case, it was sufficiently shown that respondent's offer of ₱1.1 million was even below the amount paid by petitioner in the foreclosure sale. Notably, in petitioner's Answer to respondent's complaint, it had alleged that, as of June 16, 2000, the redemption price of the foreclosed property consisting of the amount due under the mortgage deed, the interest specified in the mortgage and all the costs and expenses incurred by petitioner from the sale and custody of the property already amounted to ₱2,058,825.73.[14] Yet, during the pre-trial conference, respondent merely offered to pay the amount of the auction price alone which was ₱1,531,474.53, without any payment of interest. In fact, respondent never even consigned such amount in court to show good faith.

It is not difficult to understand why the redemption price should either be fully offered in legal tender or else validly consigned in court. Only by such means can the auction winner

[13] *Id.* at 663.

[14] *Rollo*, p. 59.

be assured that the offer to redeem is being made in good faith.[15] Thus, the Court finds that respondent's action for legal redemption was not filed in good faith. It was not filed for the purpose of determining the correct redemption price, but to stretch the redemption period indefinitely.[16]

WHEREFORE, the petition for review is *GRANTED*. The Decision dated October 21, 2004, as well as the Order dated February 10, 2005 of the Regional Trial Court, Branch 35, Santiago City, are hereby *REVERSED* and *SET ASIDE*. The action for legal redemption filed by respondent is hereby *DISMISSED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 167710. June 5, 2009]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **JOVEN DE GRANO, ARMANDO DE GRANO, DOMINGO LANDICHO and ESTANISLAO LACABA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; NON-FORUM SHOPPING; SIGNATORY OF VERIFICATION AND

---

[15] *BPI Family Savings Bank v. Velasco, supra* note 10 at 7.

[16] *Tolentino v. Court of Appeals,* G.R. No. 171354, March 7, 2007, 517 SCRA 732, 748.

[*] Designated to sit as an additional member, per Special Order No. 646 dated May 15, 2009.

[**] Designated to sit as an additional member, per Special Order No. 631 dated April 29, 2009.

CERTIFICATION THEREOF; LIBERAL APPLICATION ON THE RULE. — As regards the issue of the signatory of the verification and certification of non-forum shopping, a liberal application of the Rules should be applied to the present case. The purpose of requiring a verification is to secure an assurance that the allegations in the petition have been made in good faith; or are true and correct, not merely speculative. This requirement is simply a condition affecting the form of pleadings, and noncompliance therewith does not necessarily render it fatally defective. Truly, verification is only a formal, not a jurisdictional, requirement. Hence, it was sufficient that the private prosecutor signed the verification. With respect to the certification of non-forum shopping, it has been held that the certification requirement is rooted in the principle that a party-litigant shall not be allowed to pursue simultaneous remedies in different *fora*, as this practice is detrimental to an orderly judicial procedure. However, this Court has relaxed, under justifiable circumstances, the rule requiring the submission of such certification considering that although it is obligatory, it is not jurisdictional. Not being jurisdictional, it can be relaxed under the rule of substantial compliance. x x x Petitioners need only show that there was reasonable cause for the failure to sign the certification against forum shopping, and that the outright dismissal of the petition would defeat the administration of justice. As summarized in *Bank of the Philippine Islands v. Court of Appeals*, when a strict and literal application of the rules on non-forum shopping and verification would result in a patent denial of substantial justice, they may be liberally construed. An unforgiving application of the pertinent provisions of the Rules will not be given premium if it would impede rather than serve the best interests of justice in the light of the prevailing circumstances in the case under consideration.

2. ID.; ID.; ID.; ID.; SIGNATURE OF THE SOLICITOR GENERAL FOR CASE REPRESENTING THE GOVERNMENT IS SUBSTANTIAL COMPLIANCE TO THE RULE. — We reiterate our holding in *City Warden of the Manila City Jail v. Estrella*, that the signature of the Solicitor General on the verification and certification of non-forum shopping in a petition before the CA or with this Court is substantial compliance with the requirement under the Rules, considering that the OSG is the

legal representative of the Government of the Republic of the Philippines and its agencies and instrumentalities; more so, in a criminal case where the People or the State is the real party-in-interest and is the aggrieved party.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPRIETY THEREOF; ACT WITH GRAVE ABUSE OF DISCRETION; ELUCIDATED. — A writ of *certiorari* is warranted when (1) any tribunal, board or officer has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (2) there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law. An act of a court or tribunal may be considered as grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment amounting to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty, or to a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.

4. ID.; ID.; ID.; ID.; ID.; ON JUDGMENT OF ACQUITTAL IN A CRIMINAL CASE; RULE AGAINST DOUBLE JEOPARDY, NOT VIOLATED. — By way of exception, a judgment of acquittal in a criminal case may be assailed in a petition for *certiorari* under Rule 65 of the Rules of Court, but only upon a clear showing by the petitioner that the lower court, in acquitting the accused, committed not merely reversible errors of judgment but also grave abuse of discretion amounting to lack or excess of jurisdiction, or to a denial of due process, thus rendering the assailed judgment void. In which event, the accused cannot be considered at risk of double jeopardy — the revered constitutional safeguard against exposing the accused to the risk of answering twice for the same offense. Double jeopardy has the following essential elements: (1) the accused is charged under a complaint or an information sufficient in form and substance to sustain a conviction; (2) the court has jurisdiction; (3) the accused has been arraigned and he has pleaded; and (4) he is convicted or acquitted, or the case is dismissed without his express consent. Although this Court does not absolutely preclude the availment of the remedy of *certiorari* to correct an erroneous acquittal, the petitioner must clearly and convincingly demonstrate that the lower court

blatantly abused its authority to a point so grave and so severe as to deprive it of its very power to dispense justice. Under English common law, exceptions to the pleas of prior conviction or acquittal existed where the trial court lacked jurisdiction, the theory being that a defendant before such a court was not actually placed in jeopardy. Hence, any acquittal or conviction before a court having no jurisdiction would not violate the principle of double jeopardy since it failed to attach in the first place. Any ruling issued without jurisdiction is, in legal contemplation, necessarily null and void and does not exist. In criminal cases, it cannot be the source of an acquittal.

5. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; TRIAL *IN ABSENTIA* ALLOWED EXCEPT AT CERTAIN STAGES OF PROCEEDINGS. — Section 14(2), Article III of the Constitution, authorizing trials *in absentia*, allows the accused to be absent at the trial but not at certain stages of the proceedings, to wit: (a) at arraignment and plea, whether of innocence or of guilt; (b) during trial, whenever necessary for identification purposes; and (c) at the *promulgation of sentence*, unless it is for a light offense, in which case, the accused may appear by counsel or representative. At such stages of the proceedings, *his presence is required and cannot be waived*.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENT; PROMULGATION OF JUDGMENT; RULE WHERE TO BE CONVICTED ACCUSED FAILED TO APPEAR WITHOUT JUSTIFIABLE CAUSE. — Section 6, Rule 120 of the Revised Rules of Criminal Procedure, the Rules applicable at the time the Decision was promulgated, provides: Section 6. *Promulgation of judgment.* — x x x *If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these Rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice.* Thus, the accused who failed to appear without justifiable cause shall lose the remedies available in

the Rules against the judgment. However, within 15 days from promulgation of judgment, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state in his motion the reasons for his absence at the scheduled promulgation, and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within 15 days from notice. x x x Once an accused jumps bail or flees to a foreign country, or escapes from prison or confinement, he loses his standing in court; and unless he surrenders or submits to the jurisdiction of the court, he is deemed to have waived any right to seek relief from the court.

7. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; INQUIRY ON FACTUAL MATTERS, NOT INCLUDED. — Factual matters cannot be inquired into by this Court in a *certiorari* proceeding. We can no longer be tasked to go over the proofs presented by the parties and analyze, assess and weigh them again to ascertain if the trial court was correct in according superior credit to this or that piece of evidence of one party or the other. The sole office of a writ of *certiorari* is the correction of errors of jurisdiction, including the commission of grave abuse of discretion amounting to lack of jurisdiction, and does not include a review of the RTC's evaluation of the evidence and the factual findings based thereon.

8. LEGAL ETHICS; CODE OF JUDICIAL CONDUCT; DUTY TO BE FAITHFUL TO THE LAW AND MAINTAIN PROFESSIONAL COMPETENCE. — It is to be stressed that judges are dutybound to have more than a cursory acquaintance with laws and jurisprudence. Failure to follow basic legal commands constitutes gross ignorance of the law from which no one may be excused, not even a judge. The Code of Judicial Conduct mandates that "a judge shall be faithful to the law and maintain professional competence." It bears stressing that competence is one of the marks of a good judge. When a judge displays an utter lack of familiarity with the Rules, he erodes the public's confidence in the competence of our courts. Such is gross ignorance of the law. Having accepted the exalted position of a judge, he/she owes the public and the court the duty to be proficient in the law.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Eugenio E. Mendoza for respondents.
Natalio M. Panganiban for Estanislao Lacaba.
Ian Norman E. Dato for Domingo Landicho & Estanislao Lacaba.

D E C I S I O N

PERALTA, *J.:*

This is a petition for review on *certiorari*, under Rule 45 of the Rules of Court, seeking to annul and set aside the Resolutions[1] dated January 25, 2005 and April 5, 2005, issued by the Court of Appeals (CA) in CA-G.R. SP No. 88160.

The antecedents are as follows:

On November 28, 1991, an Information for murder committed against Emmanuel Mendoza was filed with the Regional Trial Court (RTC), Branch 6, Tanauan, Batangas, against Joven de Grano (Joven), Armando de Grano (Armando), and Estanislao Lacaba (Estanislao), together with their co-accused Leonides Landicho (Leonides), Domingo Landicho (Domingo), and Leonardo Genil (Leonardo), who were at-large.[2] It was docketed as Criminal Case No. 2730, the pertinent portion of which reads:

That on April 21, 1991, between 9:00 o'clock and 10:00 o'clock in the evening, in Barangay Balakilong, [M]unicipality of Laurel, [P]rovince of Batangas, and within the jurisdiction of the Honorable Court, all the above named accused, conspiring, confederating, and helping one another, motivated by common design and intent to kill, did then and there, willfully, unlawfully, and feloniously, and by means

---

[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Rosmari D. Carandang and Monina Arevalo-Zenarosa concurring, *rollo*, pp. 61-63; 65-71.

[2] *People of the Philippines v. Court of Appeals, Joven de Grano, Armando de Grano and Estanislao Lacaba*, G.R. No. 129604, Resolution dated September 4, 2001.

of treachery and with evident premeditation, shoot EMMANUEL MENDOZA with firearms, inflicting upon him eight gunshot wounds and causing his death thereby, thus committing the crime of MURDER to the damage and prejudice of his heirs in the amount as the Honorable Court shall determine.[3]

Duly arraigned, Joven, Armando, and Estanislao pleaded "not guilty" to the crime as charged; while their co-accused Leonides, Leonardo, and Domingo remained at-large. Thereafter, respondents filed a motion for bail contending that the prosecution's evidence was not strong.[4]

Meanwhile, considering that one of the accused was the incumbent Mayor of Laurel, Batangas at the time when the crime was committed, Senior State Prosecutor Hernani T. Barrios moved that the venue be transferred from the RTC, Branch 6, Tanauan, Batangas to any RTC in Manila. Consequently, the case was transferred to the RTC Manila for re-raffling amongst its Branches. The case was re-docketed as Criminal Case No. 93-129988 and was initially re-raffled to Branches 6, 9, and 11 before being finally raffled to Branch 27, RTC, Manila.[5]

Before transferring the case to the RTC, Branch 27, Manila, the trial court deferred the resolution of respondents' motion for bail and allowed the prosecution to present evidence. Thereafter, the hearing of the application for bail ensued, wherein the prosecution presented Teresita and Dr. Leonardo Salvador. After finding that the prosecution's evidence to prove treachery and evident premeditation was not strong, the RTC, Branch 11, Manila, granted respondents' motion for bail. A motion for reconsideration was filed, but it was denied.[6]

---

[3] CA *rollo*, pp. 160-161.

[4] *People of the Philippines v. Court of Appeals, Joven de Grano, Armando de Grano and Estanislao Lacaba*, G.R. No. 129604, Resolution dated July 12, 1999.

[5] CA *rollo*, p. 161.

[6] *Supra* note 4.

The prosecution then filed a petition for *certiorari* with the CA, docketed as CA-G.R. SP No. 41110, which was denied. Aggrieved, they sought recourse before this Court in G.R. No. 129604. In a Resolution dated July 12, 1999, this Court granted the petition and set aside the decision of the CA together with the Order of the RTC granting bail to the respondents. The RTC was also ordered to immediately issue a warrant of arrest against the accused. The resolution was also qualified to be immediately executory.[7] As a result, Estanislao was re-arrested, but Joven and Armando were not.[8]

However, upon respondents' motion for reconsideration, this Court, in a Resolution dated September 4, 2001, resolved to remand the case to the RTC. We noted that, in view of the transmittal of the records of the case to this Court in connection with the petition, the trial court deferred the rendition of its decision. Consequently, the case was remanded to the RTC for further proceedings, including the rendition of its decision on the merits.

After the presentation of the parties' respective sets of evidence, the RTC rendered a Decision[9] dated April 25, 2002, finding several accused guilty of the offense as charged, the dispositive portion of which reads:

> WHEREFORE, CONSIDERING ALL THE FOREGOING, this Court finds the accused JOVEN DE GRANO, ARMANDO DE GRANO, DOMINGO LANDICHO and ESTANISLAO LACABA, guilty beyond reasonable doubt of the crime of MURDER, qualified by treachery, and there being no modifying circumstance attendant, hereby sentences them to suffer the penalty of *Reclusion Perpetua*, and to indemnify the heirs of Emmanuel Mendoza the sum of ₱50,000.00 and to pay the costs.
>
> The case as against accused Leonides Landicho and Leonardo Genil is hereby sent to the files or archived cases to be revived as soon as said accused are apprehended.

---

[7] *Id.*

[8] *Supra* note 2.

[9] CA *rollo*, pp. 160- 214.

Let *alias* warrants of arrest be issued against accused Leonardo Genil and Leonides Landicho.

Only Estanislao was present at the promulgation despite due notice to the other respondents.

Respondents, thru counsel, then filed a Joint Motion for Reconsideration dated May 8, 2002, praying that the Decision dated April 25, 2002 be reconsidered and set aside and a new one be entered acquitting them based on the following grounds, to wit:

1. The Honorable Court erred in basing the decision of conviction of all accused solely on the biased, uncorroborated and baseless testimony of Teresita Duran, the common-law wife of the victim;

2. The Honorable Court erred in not giving exculpatory weight to the evidence adduced by the defense, which was amply corroborated on material points;

3. The Honorable Court erred in not finding that the failure of the prosecution to present rebuttal evidence renders the position of the defense unrebutted;

4. The Honorable Court erred in adopting conditional or preliminary finding of treachery of the Supreme Court in its Resolution dated July 12, 1999; and

5. The Honorable Court erred in rendering a verdict [sic] of conviction despite the fact that the guilt of all the accused were not proven beyond reasonable doubt.[10]

In its Opposition, the prosecution pointed out that while the accused jointly moved for the reconsideration of the decision, all of them, except Estanislao, were at-large. Having opted to become fugitives and be beyond the judicial ambit, they lost their right to file such motion for reconsideration and to ask for whatever relief from the court.[11]

---

[10] *Id.* at 152.

[11] *Id*.

Acting on respondents' motion for reconsideration, the RTC issued an Order[12] dated April 15, 2004 modifying its earlier decision by acquitting Joven and Armando, and downgrading the conviction of Domingo and Estanislao from murder to homicide. The decretal portion of the Order reads:

> WHEREFORE, IN VIEW OF ALL THE FOREGOING, the Court modifies its decision and finds accused **DOMINGO LANDICHO and ESTANISLAO LACABA, "GUILTY"** beyond reasonable doubt, as principal of the crime of **Homicide,** and in default of any modifying circumstance, sentences them to an indeterminate prison term of SIX (6) YEARS and ONE (1) DAY of *Prision Mayor*, as minimum, to TWELVE YEARS [and] ONE DAY of *Reclusion Temporal*, as maximum. Said accused shall be credited with the full period of their preventive imprisonment pursuant to B.P. Blg. 85.
>
> Accused **ARMANDO DE GRANO** and **JOVEN DE GRANO** are hereby **ACQUITTED** on the basis of reasonable doubt. They are likewise declared free of any civil liability.
>
> To the extent herein altered or modified, the Decision dated April 25, 2002 stands.
>
> SO ORDERED.[13]

Estanislao filed a Notice of Appeal, while the prosecution sought reconsideration of the Order arguing that:

1. There was absolutely no basis for this Court to have taken cognizance of the "Joint Motion for Reconsideration" dated May 8, 2002, citing Sec. 6, Rule 120 of the Rules of Court.
2. The testimony of Teresita Duran deserves credence. The delay in the taking of Ms. Duran's written statement of the events she witnessed is understandable considering that Joven de Grano was the mayor of the municipality where the crime was committed and that another accused, Estanislao Lacaba, was a policeman in the same municipality.
3. The crime committed is murder.

---

[12] *Id.* at 152-156.

[13] *Id.* at 156.

4. Accused Armando de Grano and Joven de Grano participated in the conspiracy.

On September 28, 2004, the RTC issued an Order[14] denying the motion and giving due course to Estanislao's notice of appeal.

Petitioner, thru Assistant City Prosecutor Cesar Glorioso of the Office of the Manila City Prosecutor, with the assistance of private prosecutor Atty. Michael E. David, filed a Petition[15] for *certiorari* under Rule 65 of the Rules of Court before the CA arguing that:

(a) the private respondents, having deliberately evaded arrest after being denied bail and deliberately failing to attend the promulgation of the Decision despite due notice, lost the right to move for reconsideration of their conviction; and

(b) the grounds relied upon by respondent RTC in modifying its Decision are utterly erroneous.[16]

Petitioner alleged that it had no other plain, adequate, and speedy remedy, considering that the State could not appeal a judgment of acquittal. However, by way of exception, a judgment of acquittal in a criminal case may be assailed in a petition for *certiorari* under Rule 65 of the Rules of Court upon a showing by the petitioner that the lower court, in acquitting the accused, committed not only reversible errors of judgment, but also grave abuse of discretion amounting to lack or excess of jurisdiction, or a denial of due process, thus rendering the assailed judgment void. Consequently, the accused cannot be considered at risk of double jeopardy.[17]

Respondent De Grano filed a Motion to Dismiss,[18] arguing that the verification and certification portion of the petition was flawed, since it was signed only by counsel and not by the

---

[14] *Id.* at 157-159.

[15] *Id.* at 2-32.

[16] *Id.* at 12-13.

[17] *Id.* at 13.

[18] *Id.* at 238-243.

aggrieved party. Also, the petition did not contain the conformity of the Solicitor General.[19]

On January 31, 2005, petitioner, through the private prosecutor, filed an Opposition to Motion to Dismiss.[20] Petitioner explained that, for lack of material time, it failed to secure the conformity of the Office of the Solicitor General (OSG) when it filed the petition, but it would nevertheless obtain it. A day after filing the petition, the private prosecutor sought the OSG's conformity in a letter[21] dated January 12, 2005. The OSG, in turn, informed the private prosecutor that rather than affixing its belated conformity, it would rather await the initial resolution of the CA.[22] Also, so as not to preempt the action of the Department of Justice (DOJ) on the case, the OSG instructed the private prosecutor to secure the necessary endorsement from the DOJ for it to pursue the case. Anent the verification and certification of the petition having been signed by the private prosecutor, petitioner explained that private complainant Teresita was in fear for her life as a result of the acquittal of former Mayor Joven de Grano, but she was willing to certify the petition should she be given ample time to travel to Manila.[23]

However, in a Resolution[24] dated January 25, 2005, which was received by the petitioner on the same day it filed its Opposition or on January 31, 2005, the petition was dismissed outright by the CA on the grounds that it was not filed by the OSG and that the assailed Orders were only photocopies and not certified true copies. The dispositive portion of the Resolution reads:

WHEREFORE, premises considered, this petition is hereby **OUTRIGHTLY DISMISSED**.

---

[19] *Id.* at 238.

[20] *Id.* at 245-249.

[21] *Id.* at 375.

[22] *Id.* at 376.

[23] *Id.* at 247.

[24] *Rollo*, pp. 61-63.

Petitioner timely filed a Motion for Reconsideration.[25] In addition to the justifications it raised in its earlier Opposition to the Motion to Dismiss, petitioner argued that the petition was not only signed by the private prosecutor, it was also signed by the prosecutor who represented the petitioner in the criminal proceedings before the trial court. Petitioner also maintains that the certified true copies of the assailed Orders were accidentally attached to its file copy instead of the one it submitted. To rectify the mistake, it attached the certified true copies of the assailed Orders.[26] This was opposed by the respondents in their Comment/ Opposition to Petitioner's Motion for Reconsideration.[27]

Meanwhile, in its 1st Indorsement[28] dated March 15, 2005, DOJ Secretary Raul M. Gonzalez, endorsed the petition filed by the Assistant City Prosecutor, with the assistance of the private prosecutor, to the Solicitor General for his conformity.

On April 5, 2005, the CA issued a Resolution[29] denying the motion, thus:

> WHEREFORE, petitioner's motion for reconsideration is hereby **DENIED**.

In denying the motion, the CA opined that the rule on double jeopardy prohibits the state from appealing or filing a petition for review of a judgment of acquittal that was based on the merits of the case. If there is an acquittal, an appeal therefrom, if it will not put the accused in double jeopardy, on the criminal aspect, may be undertaken only by the State through the Solicitor General. It added that a special civil action for *certiorari* under Rule 65 of the Rules of Court may be filed by the person aggrieved. In such case, the aggrieved parties are the State and the private offended party or complainant. Moreover, the

---

[25] CA *rollo*, pp. 366-371.

[26] *Id.* at 377-381; 382-384.

[27] *Id.* at 397-400.

[28] *Rollo*, p. 115.

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

records reveal that the petition was not filed in the name of the offended party; and worse, the verification and certification of non-forum shopping attached to the petition was signed not by the private offended party, but by her counsel. Notwithstanding the efforts exerted by the petitioner to secure the confirmation of the OSG and the endorsement of the DOJ, there is no showing of any subsequent participation of the OSG in the case.

Hence, the petition raising the following issues:

WHETHER THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR AND GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE PETITION FOR *CERTIORARI* ON THE GROUND OF DOUBLE JEOPARDY.

WHETHER THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR AND GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE PETITION FOR *CERTIORARI* FOR NOT HAVING BEEN FILED BY THE OFFICE OF THE SOLICITOR GENERAL NOR IN THE NAME OF THE OFFENDED PARTY.

WHETHER THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR AND GRAVE ABUSE OF DISCRETION WHEN IT DISMISSED THE PETITION FOR *CERTIORARI* ON THE GROUND THAT THE VERIFICATION AND CERTIFICATION ATTACHED TO THE PETITION WAS SIGNED BY THE PRIVATE COUNSEL AND NOT BY THE OFFENDED PARTY.[30]

Petitioner, through the Solicitor General, argues that, except for Estanislao, none of the respondents appeared at the promulgation of the Decision. Neither did they surrender after promulgation of the judgment of conviction, nor filed a motion for leave to avail themselves of the judicial remedies against the decision, stating the reasons for their absence. dThe trial court thus had no authority to take cognizance of the joint motion for reconsideration filed by the respondents as stated in Section 6, Rule 120 of the 2000 Revised Rules of Criminal Procedure. As such, the RTC committed grave abuse of discretion amounting

[30] *Id.* at 28-29.

to lack or excess of jurisdiction. Having been issued without jurisdiction, the Order dated April 15, 2004 is void. Consequently, no double jeopardy attached to such void Order. The CA, therefore, committed reversible error when it dismissed the petition for *certiorari* on the ground of double jeopardy.[31]

Petitioner also contends that, with the endorsement of the DOJ and the letter of the OSG manifesting its intention to pursue the petition, the OSG had in fact conformed to the filing of the petition and agreed to pursue the same. Had the CA given the OSG ample time to file the necessary pleading, the petition would not have been dismissed for the reason that it was filed by the said office.[32]

With respect to the verification and certification of non-forum shopping, petitioner invokes a liberal application of the Rules for private complainant's failure to personally sign it. Petitioner maintains that out of extreme fear arising from the unexpected acquittal of Joven, private complainant was reluctant to travel to Manila. After she was taken out of the witness protection program, she took refuge in the Visayas and she was there at the time her signature was required. Since the period for filing the petition for *certiorari* was about to lapse, and it could not be filed without the verification and certification of non-forum shopping, the private prosecutor was left with no option but so sign it, instead of allowing the deadline to pass without filing the petition.[33]

Moreover, petitioner maintains that the OSG has the authority to sign the verification and certification of the present petition, because the real party-in-interest is the OSG itself as the representative of the State.[34]

On their part, respondents contend that the petition for *certiorari* questioning the order of acquittal is not allowed and

---

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

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

[33] *Id.* at 53-54.

[34] *Id.* at 188-189.

is contrary to the principle of double jeopardy. Respondents argue that, contrary to the OSG's contention, respondents Joven and Domingo's absence during the promulgation of the Decision dated April 25, 2002 did not deprive the trial court of its authority to resolve their Joint Motion for Reconsideration, considering that one of the accused, Estanislao, was present during the promulgation.[35]

Joven, Armando, and Domingo maintain that while they were not present during the promulgation of the RTC Decision, Estanislao, who was under police custody, attended the promulgation of the said Decision. Thus, when they filed their Joint Motion for Reconsideration, which included that of Estanislao, the RTC was not deprived of its authority to resolve the joint motion.[36]

Respondents insist that the CA properly dismissed the petition for *certiorari*, as it was not instituted by the OSG on behalf of the People of the Philippines, and that the verification and certification portion thereof was not signed by private complainant Teresita.[37]

Respondents also argue that the petition for *certiorari* before this Court should be dismissed, since the verification and certification thereof were signed by a solicitor of the OSG, not private complainant.

The petition is meritorious.

Before considering the merits of the petition, we will first address the technical objections raised by respondents.

As regards the issue of the signatory of the verification and certification of non-forum shopping, a liberal application of the Rules should be applied to the present case.

The purpose of requiring a verification is to secure an assurance that the allegations in the petition have been made in good faith;

---

[35] *Id.* at 129-132.

[36] *Id*.

[37] *Id.* at 128-129.

or are true and correct, not merely speculative. This requirement is simply a condition affecting the form of pleadings, and noncompliance therewith does not necessarily render it fatally defective.[38] Truly, verification is only a formal, not a jurisdictional, requirement. Hence, it was sufficient that the private prosecutor signed the verification.

With respect to the certification of non-forum shopping, it has been held that the certification requirement is rooted in the principle that a party-litigant shall not be allowed to pursue simultaneous remedies in different *fora*, as this practice is detrimental to an orderly judicial procedure.[39] However, this Court has relaxed, under justifiable circumstances, the rule requiring the submission of such certification considering that although it is obligatory, it is not jurisdictional.[40] Not being jurisdictional, it can be relaxed under the rule of substantial compliance.

In *Donato v. Court of Appeals*[41] and *Wee v. Galvez*,[42] the Court noted that the petitioners were already in the United States; thus, the signing of the certification by their authorized representatives was deemed sufficient compliance with the Rules. In *Sy Chin v. Court of Appeals*,[43] the Court upheld substantial justice and ruled that the failure of the parties to sign the certification may be overlooked, as the parties' case was meritorious. In *Torres v. Specialized Packaging and Development Corporation*,[44] the Court also found, among other reasons, that the extreme difficulty to secure all the required

---

[38] *Torres v. Specialized Packaging Development Corporation*, G.R. No. 149634, July 6, 2004, 433 SCRA 455, 463.

[39] *Id.* at 465.

[40] *Ateneo de Naga University v. Manalo*, G.R. No. 160455, May 9, 2005, 458 SCRA 325, 336-337.

[41] G.R. No. 129638, December 8, 2003, 417 SCRA 216.

[42] G.R. No. 147394, August 11, 2004, 436 SCRA 96.

[43] G.R. No. 136233, November 23, 2000, 345 SCRA 673.

[44] *Supra* note 38.

signatures and the apparent merits of the substantive aspects of the case constitute compelling reasons for allowing the petition.

In *Ortiz v. Court of Appeals*[45] and similar rulings, the following has always been pointed out:

> The attestation contained in the certification on non-forum shopping requires personal knowledge by the party who executed the same. *To merit the Court's consideration, petitioners here must show reasonable cause for failure to personally sign the certification. The petitioners must convince the court that the outright dismissal of the petition would defeat the administration of justice.*

Thus, petitioners need only show that there was reasonable cause for the failure to sign the certification against forum shopping, and that the outright dismissal of the petition would defeat the administration of justice.[46]

We find that the particular circumstances of this case advance valid reasons for private complainant's failure to sign the certification. As pointed out in the petition, it was out of extreme fear that private complainant failed to personally sign the certification. It is to be noted that when Armando and Joven were acquitted, Teresita was already out of the witness protection program and was in hiding in the Visayas. As such, she could not travel to Manila to personally sign the petition. Moreover, as maintained by the petitioner, since the period for filing the petition for *certiorari* was about to lapse, the private prosecutor was left with no option but to sign the verification and certification, instead of allowing the period to file the petition to pass without it being filed. A relaxation of the procedural rules, considering the particular circumstances, is justified. The requirement was thus substantially complied with.

---

[45] G.R. No. 127393, December 4, 1998, 299 SCRA 708, 712; See also *Digital Microwave Corporation v. Court of Appeals*, G.R. No. 128550, March 16, 2000, 328 SCRA 286, 290. (Italics supplied)

[46] *Torres v. Specialized Packaging Development Corporation, supra* note 38, at 467.

As summarized in *Bank of the Philippine Islands v. Court of Appeals*,[47] when a strict and literal application of the rules on non-forum shopping and verification would result in a patent denial of substantial justice, they may be liberally construed. An unforgiving application of the pertinent provisions of the Rules will not be given premium if it would impede rather than serve the best interests of justice in the light of the prevailing circumstances in the case under consideration.

We reiterate our holding in *City Warden of the Manila City Jail v. Estrella*,[48] that the signature of the Solicitor General on the verification and certification of non-forum shopping in a petition before the CA or with this Court is substantial compliance with the requirement under the Rules, considering that the OSG is the legal representative of the Government of the Republic of the Philippines and its agencies and instrumentalities; more so, in a criminal case where the People or the State is the real party-in-interest and is the aggrieved party.[49]

Also, respondents' contention that there is no showing of any subsequent participation of the OSG in the petition before the CA does not hold water. In the letter dated January 18, 2004, the OSG instructed the private prosecutor to secure the necessary endorsement from the DOJ for it to pursue the case. In its 1st Indorsement dated March 15, 2005, DOJ Secretary Raul M. Gonzalez, endorsed the petition to the Solicitor General for his conformity. When the CA denied petitioner's Motion for Reconsideration for its outright dismissal of the petition, the OSG filed motions[50] for extension of time to file the present petition. Moreover, the OSG filed a Comment[51] on respondents'

---

[47] G.R. No. 146923, April 30, 2003, 402 SCRA 449, 454-455.

[48] G.R. No. 141211, August 31, 2000, 364 SCRA 257.

[49] *People v. Court of Appeals (12th Division)*, G.R. No. 154557, February 13, 2008, 545 SCRA 52, 60-61.

[50] CA *rollo*, pp. 437-439; 442-443; 447-448.

[51] *Id.* at 451-457.

Motion for Reconsideration.[52] Thus, any doubt regarding the endorsement, conformity, and participation of the OSG in the petitions is dispelled.

Now on the substantive aspect.

A peculiar situation exists in the instant case. Petitioner has sought recourse before the CA, *via* a petition for *certiorari* under Rule 65, from an Order of the trial court drastically modifying its earlier findings convicting the respondents of the crime of murder, by acquitting Joven and Armando, and downgrading the convictions of their co-accused from murder to homicide; this, notwithstanding that all the accused, except Estanislao Lacaba, failed to personally appear at the promulgation of the Decision despite due notice thereof.

Petitioner contends that its petition for *certiorari* under Rule 65 of the Rules of Court with the CA was the proper remedy, since the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it entertained the Joint Motion for Reconsideration with respect to Armando and Joven despite the fact that they had not regained their standing in court.

Petitioner's recourse to the CA was correct.

A writ of *certiorari* is warranted when (1) any tribunal, board or officer has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (2) there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law.[53] An act of a court or tribunal may be considered as grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment amounting to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty, or to a virtual refusal to perform a duty enjoined by

[52] *Id.* at 424-427.

[53] Rules of Court, Rule 65, Sec. 1.

law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.[54]

By way of exception, a judgment of acquittal in a criminal case may be assailed in a petition for *certiorari* under Rule 65 of the Rules of Court, but only upon a clear showing by the petitioner that the lower court, in acquitting the accused, committed not merely reversible errors of judgment but also grave abuse of discretion amounting to lack or excess of jurisdiction, or to a denial of due process, thus rendering the assailed judgment void.[55] In which event, the accused cannot be considered at risk of double jeopardy — the revered constitutional safeguard against exposing the accused to the risk of answering twice for the same offense.

Double jeopardy has the following essential elements: (1) the accused is charged under a complaint or an information sufficient in form and substance to sustain a conviction; (2) the court has jurisdiction; (3) the accused has been arraigned and he has pleaded; and (4) he is convicted or acquitted, or the case is dismissed without his express consent.[56]

Although this Court does not absolutely preclude the availment of the remedy of *certiorari* to correct an erroneous acquittal, the petitioner must clearly and convincingly demonstrate that the lower court blatantly abused its authority to a point so grave and so severe as to deprive it of its very power to dispense justice.[57]

Under English common law, exceptions to the pleas of prior conviction or acquittal existed where the trial court lacked

---

[54] *Angeles v. Secretary of Justice*, G.R. No. 142612, July 29, 2005, 465 SCRA 106, 113-114.

[55] *Yuchengco v. Court of Appeals*, G.R. No. 139768, February 7, 2002, 376 SCRA 531, 541.

[56] *People v. Tampal*, G.R. No. 102485, May 22, 1995, 244 SCRA 202, 208 ; *Paulin v. Gimenez*, G.R. No. 103323, January 21, 1993, 217 SCRA 386, 389; *Gorion v. Regional Trial Court of Cebu, Br. 17*, G.R. No. 102131, August 31, 1992, 213 SCRA 138, 148.

[57] *People v. Court of Appeals and Maquiling*, G.R. No. 128986, June 21, 1999, 308 SCRA 687, 704.

jurisdiction, the theory being that a defendant before such a court was not actually placed in jeopardy.[58] Hence, any acquittal or conviction before a court having no jurisdiction would not violate the principle of double jeopardy since it failed to attach in the first place.

Section 14(2),[59] Article III of the Constitution, authorizing trials *in absentia*, allows the accused to be absent at the trial but not at certain stages of the proceedings, to wit: (a) at arraignment and plea, whether of innocence or of guilt; (b) during trial, whenever necessary for identification purposes; and (c) at the *promulgation of sentence*, unless it is for a light offense, in which case, the accused may appear by counsel or representative. At such stages of the proceedings, *his presence is required and cannot be waived*.[60]

Section 6, Rule 120 of the Revised Rules of Criminal Procedure, the Rules applicable at the time the Decision was promulgated, provides:

> Section 6. *Promulgation of judgment.* — The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.
>
> If the accused is confined or detained in another province or city, the judgment may be promulgated by the executive judge of the Regional Trial Court having jurisdiction over the place of confinement or detention

[58] 6 Crim. Proc. § 25.1(d) (3d ed.).

[59] Section 14. (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: *Provided*, that he has been duly notified and his failure to appear is unjustifiable.

[60] *Lavides v. Court of Appeals*, G.R. No. 129670, February 1, 2000, 324 SCRA 321, 331.

upon request of the court which rendered the judgment. The court promulgating the judgment shall have authority to accept the notice of appeal and to approve the bail bond pending appeal; provided, that if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed and resolved by the appellate court.

The proper clerk of court shall give notice to the accused, personally or through his bondsman or warden and counsel, requiring him to be present at the promulgation of the decision. If the accused was tried *in absentia* because he jumped bail or escaped from prison, the notice to him shall be served at his last known address.

In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel.

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these Rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice.[61]

Thus, the accused who failed to appear without justifiable cause shall lose the remedies available in the Rules against the judgment. However, within 15 days from promulgation of judgment, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state in his motion the reasons for his absence at the scheduled promulgation, and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within 15 days from notice.[62]

---

[61] Italics supplied.

[62] *Pascua v. Court of Appeals*, G.R. No. 140243, December 14, 2000, 348 SCRA 197, 206.

When the Decision dated April 25, 2002 was promulgated, only Estanislao Lacaba was present. Subsequently thereafter, without surrendering and explaining the reasons for their absence, Joven, Armando, and Domingo joined Estanislao in their Joint Motion for Reconsideration. In blatant disregard of the Rules, the RTC not only failed to cause the arrest of the respondents who were at large, it also took cognizance of the joint motion.

The RTC clearly exceeded its jurisdiction when it entertained the joint Motion for Reconsideration with respect to the respondents who were at large. It should have considered the joint motion as a motion for reconsideration that was solely filed by Estanislao. Being at large, Joven and Domingo have not regained their standing in court. Once an accused jumps bail or flees to a foreign country, or escapes from prison or confinement, he loses his standing in court; and unless he surrenders or submits to the jurisdiction of the court, he is deemed to have waived any right to seek relief from the court.[63]

Thus, Joven, Armando, and Domingo, were not placed in double jeopardy because, from the very beginning, the lower tribunal had acted without jurisdiction. Verily, any ruling issued without jurisdiction is, in legal contemplation, necessarily null and void and does not exist. In criminal cases, it cannot be the source of an acquittal.[64]

However, with respect to Estanislao, the RTC committed no reversible error when it entertained the Motion for Reconsideration. He was in custody and was present at the promulgation of the judgment. Hence, the RTC never lost jurisdiction over his person. Consequently, the RTC's ruling downgrading his conviction from murder to homicide stands. For Estanislao, and for him alone, the proscription against double jeopardy applies.

Factual matters cannot be inquired into by this Court in a *certiorari* proceeding. We can no longer be tasked to go over the proofs presented by the parties and analyze, assess and weigh them again

---

[63] *People v. Mapalao*, G.R. No. 92415, May 14, 1991, 197 SCRA 79, 87-88.

[64] *Supra* note 57, at 690.

to ascertain if the trial court was correct in according superior credit to this or that piece of evidence of one party or the other.[65] The sole office of a writ of *certiorari* is the correction of errors of jurisdiction, including the commission of grave abuse of discretion amounting to lack of jurisdiction, and does not include a review of the RTC's evaluation of the evidence and the factual findings based thereon.[66]

True, were it not for the procedural lapses of the RTC and its blatant disregard of the Rules, the finality of respondents' acquittal and their co-accused's conviction of homicide instead of murder would have been barred by the rule on double jeopardy.

We may tolerate an erroneous acquittal borne from an attempt to protect the innocent or from an attempt to uphold the accused's treasured right to a fair trial, but when these concerns are not evident, an erroneous acquittal is a source of substantial dismay and warrants this Court's corrective action via a special *writ* of error.

Moreover, although the CA dismissed the appeal filed before it, the RTC Judge cannot hide behind such fact considering that the dismissal of the appeal was not based on the validity of the assailed Order of the RTC, but was based on technical rules and the rule against double jeopardy.

It is to be stressed that judges are dutybound to have more than a cursory acquaintance with laws and jurisprudence. Failure to follow basic legal commands constitutes gross ignorance of the law from which no one may be excused, not even a judge.[67] The Code of Judicial Conduct mandates that "a judge shall be faithful

---

[65] *Alicbusan v. Court of Appeals*, G.R. No. 113905, March 7, 1997, 269 SCRA 336, 341.

[66] *Building Care Corporation v. NLRC*, G.R. No. 94237, February 26, 1997, 268 SCRA 666, 675; *Chua v. Court of Appeals*, G.R. No. 112948, April 18, 1997, 271 SCRA 546, 553-554; *Lalican v. Vergara*, G.R. No. 108619, July 31, 1997, 276 SCRA 518, 528-529.

[67] *Tabao v. Lilagan*, A.M. No. 98-551-RTJ, September 4, 2001, 364 SCRA 322, 332.

to the law and maintain professional competence."[68] It bears stressing that competence is one of the marks of a good judge. When a judge displays an utter lack of familiarity with the Rules, he erodes the public's confidence in the competence of our courts. Such is gross ignorance of the law. Having accepted the exalted position of a judge, he/she owes the public and the court the duty to be proficient in the law.[69]

WHEREFORE, the petition is *GRANTED*. The Resolutions dated January 25, 2005 and April 5, 2005, issued by the Court of Appeals in CA-G.R. SP No. 88160, are *REVERSED and SET ASIDE*. The pertinent portions of the Order dated April 15, 2004 issued by the Regional Trial Court, convicting Domingo Landicho of the crime of Homicide and acquitting Armando de Grano and Joven de Grano, are *ANNULLED and DELETED*. In all other aspects, the Order stands.

To the extent herein altered or modified, the pertinent portions of the Decision dated April 25, 2002 of the Regional Trial Court are *REINSTATED*.

The Office of the Court Administrator is *DIRECTED* to *INVESTIGATE* Judge Teresa P. Soriaso for possible violation/s of the law and/or the Code of Judicial Conduct in issuing the Order dated April 15, 2004 in Criminal Case No. 93-129988.

SO ORDERED.

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

---

[68] Canon 3, Rule 3.01.

[69] *Oporto, Jr. v. Judge Monserate,* A.M. No. MTJ-96-1109, April 16, 2001, 356 SCRA 443, 450.

[*] Designated to sit as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per Raffle dated March 25, 2009.

[**] Designated to sit as an additional member, per Special Order No. 646 dated May 15, 2009.

[***] Designated to sit as an additional member, per Special Order No. 631 dated April 29, 2009.

THIRD DIVISION

[G.R. No. 168039. June 5, 2009]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **FERNANDO J. BELTRAN,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; RECOMMENDATION TO REMOVE ERRING PUBLIC OFFICIALS AND EMPLOYEES, MANDATORY AND NOT MERE ADVISORY, COURSED THROUGH THE PROPER OFFICER. — In declaring that the Ombudsman had no authority to directly dismiss Beltran from government service, but only had the power to recommend the removal of the public official or employee found to be at fault, the appellate court relied on the case of *Tapiador v. Office of the Ombudsman.* There was reversible error on the part of the appellate court in relying on the above-cited statement. As correctly pointed out by the petitioner, the statement is a mere *obiter dictum*. In *Ledesma v. Court of Appeals*, this Court emphatically pronounced that the statement in *Tapiador* on the Ombudsman's power "is, at best, merely an *obiter dictum*" and, thus, "cannot be cited as a doctrinal declaration of the Supreme Court". Also, in *Ledesma*, the Court discarded the contention that the power of the Office of the Ombudsman was only advisory or recommendatory in nature. The Court warned against the literal interpretation of Section 13(3), Article XI of the Constitution which directs the Office of the Ombudsman to "recommend" to the officer concerned the removal, suspension, demotion, fine, censure, or prosecution of any public official or employee at fault. According to the Court, despite the term "recommend," the said provision, construed together with the pertinent provisions in Republic Act (R.A.) No. 6770, is not only advisory in nature but is actually mandatory within the context of the law. The Court further elucidated in *Ledesma* that by stating that the Ombudsman "recommends" the action to be taken against the public official found to be at fault, the provisions of the Constitution and in R.A. No. 6770 intended that the implementation of the order be coursed through the proper

officer. This is due to the fact that the power of the Ombudsman to investigate and prosecute is not exclusive but concurrent in respect of the offense charged. As such, this could not be considered as usurpation of the authority of the head of office or any officer concerned.

2. ID.; ID.; ID.; POWERS, FUNCTIONS AND DUTIES. — The Office of the Ombudsman, in the exercise of its administrative disciplinary authority, is thus vested by the Constitution and R.A. No. 6770 with the power to impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault. The charge of the Office of the Ombudsman is expressed in Section 12, Article XI of the Constitution in this wise: Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof. Section 13 thereof grants the Office of the Ombudsman the following powers, functions, and duties: (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient; (2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned and controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent and correct any abuse or impropriety in the performance of duties; (3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; (4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action; (5) Request any government agency for assistance and information necessary

in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents; (6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence; (7) Determine the causes of inefficiency, red tape, mismanagement, fraud and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency; and (8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

3. ID.; ID.; ID.; ID.; OFFICIAL POWERS BROADENED AND REITERATED UNDER R.A. NO. 6770. — In *Office of the Ombudsman v. Court of Appeals*, the Court, citing *Acop v. Office of the Ombudsman*, recognized that the framers of the Constitution had given Congress the leeway to prescribe, by subsequent legislation, additional powers to the Ombudsman. Congress thus enacted R.A. No. 6770 providing the functional and structural organization of the Office of the Ombudsman. In passing R.A. No. 6770, Congress deliberately endowed the Ombudsman with the power to prosecute offenses committed by public officers and employees to make him a more active and effective agent of the people in ensuring accountability in public office. Moreover, the legislature has vested the Ombudsman with broad powers to enable him to implement his own actions. Section 13 thereof restates the mandate of the Office of the Ombudsman in this wise: Sec. 13. *Mandate*. — The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people. Section 15 thereof substantially reiterates Section 13, Article XI of the Constitution. In particular, subparagraph (3) of Section 15 of R.A. No. 6770 restates Section 13 (3), Article XI of the Constitution, quoted anew below: Sec. 15. *Powers, Functions and Duties*. — The Office of the Ombudsman shall have the following powers, functions and duties: x x x (3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who

neglects to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: *Provided*, That the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer. Moreover, the provisions in R.A. No. 6770 taken together reveal the manifest intent of the lawmakers to bestow on the Office of the Ombudsman *full* administrative disciplinary authority. These provisions cover the entire gamut of administrative adjudication which entails the authority to, *inter alia*, receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the said penalty. Hence, the full administrative disciplinary authority of the Office of the Ombudsman, including the power to impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault, is thus beyond contestation.

4. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE CASES; SUBSTANTIAL EVIDENCE REQUIRED, NOT PRESENT IN CASE AT BAR. — In administrative cases, substantial evidence is required to support any findings. Substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The requirement is satisfied where there is reasonable ground to believe that the respondent is guilty of misconduct, even if the evidence might not be overwhelming. In the present case, after evaluating the totality of the evidence on record, this Court reaches the inescapable conclusion that complainant Germedia failed to present substantial evidence to establish that Beltran was administratively liable for grave misconduct.

APPEARANCES OF COUNSEL

Office of Legal Affairs (Ombudsman) for petitioner.
Mendoza Arzaga-Mendoza Law Firm for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* assailing the Decision[1] dated November 17, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 70421, reinstating private respondent into government service, and the Resolution[2] dated May 10, 2005 denying petitioner's motion for reconsideration.

The factual and procedural antecedents are as follows:

On February 26, 2001, Nilo V. Germedia (Germedia), Clerk III of the Tricycle Regulatory Office (TRO), City of Parañaque, filed a letter-complaint[3] against Fernando J. Beltran (Beltran), Benjamin G. Barrameda (Barrameda), and Rolando Fererra (Fererra), all of the TRO, City of Parañaque, for alleged graft and corruption based on the following grounds:

1) Non-remittance of TRO Drivers ID collection to the Treasurer's Office of Parañaque City since October 1999 amounting to more or less Five Hundred Thousand Pesos (Php 500,000.00);

2) Non-remittance of Operator's Certification for LTO purposes to the Treasurer's Office of Parañaque City since December 1999 amounting to more or less Five Hundred Thousand Pesos (Php 500,000.00);

3) Non-remittance of penalty payments charged to apprehended tricycle drivers;

---

[1] Penned by Associate Justice Monina Arevalo-Zeñarosa, with Associate Justices Remedios A. Salazar-Fernando and Danilo B. Pine, concurring; *rollo*, pp. 93-101.

[2] *Id.* at 104-106.

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

4) Using the TRO as extension of an insurance company;

5) Violation of Parañaque City Ordinance No. 135 by issuing Certification for LTO purposes instead of Franchise/MTOP (Motorized Tricycle Operator's Permit); and

6) Grave abuse of discretion/authority by threatening employees with termination.[4]

Acting on the letter-complaint, the Office of the Ombudsman issued an Order[5] dated March 23, 2001, dismissing, without prejudice, the criminal aspect of the case for lack of sufficient cause of action and evidence. However, the administrative aspect of the complaint for grave misconduct proceeded for adjudication as Ombudsman Administrative Case No. OMB-ADM-0-01-0116.

On April 24, 2001, Beltran, Barrameda, and Fererra, submitted their Joint Counter-Affidavit wherein they vehemently denied Germedia's charges against them.

On August 9, 2001, a preliminary conference was held wherein the parties, with their respective counsels, appeared. In open proceedings, the parties agreed to the submission of the case for resolution after the filing of their respective memoranda.[6]

After submitting their respective memoranda, petitioner rendered a Decision[7] dated January 3, 2002, wherein it absolved Barrameda and Fererra of the charges against them, but found Beltran guilty of Grave Misconduct. The dispositive portion of the decision reads:

WHEREFORE, PREMISES CONSIDERED, this Office hereby renders judgment finding respondent **FERNANDO J. BELTRAN, Guilty** of **Grave Misconduct**, for which the penalty of **Dismissal from the Service with Cancellation of Eligibility, Forfeiture of Retirement Benefits and Perpetual Disqualification for Re-employment in the Government**

[4] *Rollo*, p. 94.

[5] CA *rollo*, pp. 120-123.

[6] *Id.* at 187.

[7] *Id.* at 183-194.

Service is hereby imposed pursuant to Section 10, Rule III of Administrative Order No. 07, in relation to Section 25 of Republic Act 6770.

Respondents **BENJAMIN BARRAMEDA** and **ROLANDO FEREIRA** (sic) are hereby **ABSOLVED** of the charge of Grave Misconduct. The complaint as against respondents **BENJAMIN BARRAMEDA** and **ROLANDO FEREIRA** (sic) is hereby **DISMISSED**.

The Honorable, The Mayor, City of Parañaque, is hereby furnished a copy of this Decision for its implementation in accordance with law, with the directive to inform this Office of the action taken thereon.

SO ORDERED.[8]

On February 21, 2002, Beltran filed a Motion for Reconsideration[9] wherein he alleged, among other things, that he discovered that Silverio Navarro (Navarro) never executed the affidavit on which the Ombudsman based its decision. Beltran also annexed an Affidavit of Denial[10] allegedly executed by Navarro, who practically denied that he ever executed the first affidavit. On February 26, 2002, the Ombudsman issued an Order[11] denying the motion.

Aggrieved, Beltran sought recourse before the CA arguing that:

(1) There is denial of due process for lack of legal as well as factual basis of the Decision and Order of the Office of the Ombudsman finding Petitioner liable for Grave Misconduct.

(2) The Office of the Ombudsman gravely erred in not considering Petitioner's newly discovered evidence.

(3) The penalty imposed on Petitioner is unreasonable and excessive.

(4) The Order of the Office of the Ombudsman dated February 26, 2002 is vague and misleading.[12]

---

[8] *Id.* at 192-193. (Emphasis theirs.)

[9] *Id.* at 195-203.

[10] *Id.* at 251.

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

[12] *Id.* at 12-13.

(5) The Office of the Ombudsman has no jurisdiction or authority to dismiss the petitioner from government service.[13]

On November 17, 2004, the CA rendered a Decision,[14] which reversed and set aside the decision of the Office of the Ombudsman. The decretal portion of the CA decision reads:

WHEREFORE, the instant petition is **GRANTED**. The assailed Order dated 26 February 2002 issued by the Office of the Ombudsman in Administrative Case OMB-ADM-0-01-0178, denying petitioner's Motion for Reconsideration of its Decision dated 03 January 2002 dismissing him from the government service, is **REVERSED** and **SET ASIDE**. The petitioner is hereby ordered **REINSTATED** immediately to his position in the government service more particularly in the Tricycle Regulatory Office of Parañaque City, without loss nor diminution in his salaries and benefits.

SO ORDERED.[15]

In granting the petition, the CA opined that the Ombudsman had no authority to directly dismiss Beltran from government service, as the Ombudsman could only "recommend" the removal of the public official or employee who was found to be at fault. It held that *Tapiador v. Office of the Ombudsman*[16] was on all fours with that of Beltran. It added that the evidence presented to prove Beltran's liability was insufficient to establish the allegations in the complaint. It found the Ombudsman's conclusions sweeping and bereft of satisfactory basis. The CA stressed that it did not conform to the Ombudsman's reliance on the affidavit of Navarro, considering that the same was uncorroborated and unauthenticated. Moreover, the CA stated that the Ombudsman should have given credence to the second affidavit of Navarro categorically denying that he executed the first affidavit. The Ombudsman's Graft Investigation Officer

---

[13] *Id.* at 317-330.

[14] *Rollo*, pp. 93-101.

[15] *Id.* at 100.

[16] G.R. No. 129124, March 15, 2002, 379 SCRA 322.

should have summoned the affiant and inquired about the circumstances surrounding the first and second affidavits.[17]

Petitioner filed a Motion for Reconsideration,[18] but it was denied in the Resolution[19] dated May 10, 2005.

Hence, this petition.

In support of the petition, petitioner alleges as follows:

I

THE 3 JANUARY 2002 DECISION OF THE OMBUDSMAN IS SUPPORTED BY SUBSTANTIAL EVIDENCE. THE REVERSAL OF THE SAME BY THE HONORABLE COURT OF APPEALS CONTRADICTS ESTABLISHED PRINCIPLES UNDERLYING PROCEEDINGS BEFORE ADMINISTRATIVE AND QUASI-JUDICIAL BODIES, PARTICULARLY THE OFFICE OF THE OMBUDSMAN.

II

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERROR OF LAW WHEN IT TREATED AN *OBITER DICTUM* AS A PRECEDENT AND, ON THE BASIS THEREOF, DECLARED THAT THE OMBUDSMAN HAS NO AUTHORITY TO DIRECTLY DISMISS RESPONDENT BELTRAN FROM THE GOVERNMENT SERVICE CONSIDERING THAT:

A. THE 1987 CONSTITUTION EXPRESSLY AUTHORIZED CONGRESS TO GRANT THE OMBUDSMAN ADDITIONAL POWERS;

B. CONGRESS, BOTH PURSUANT TO ITS EXPRESS CONSTITUTIONAL AUTHORITY IN THE CASE OF THE OMBUDSMAN, AND IN THE EXERCISE OF ITS PLENARY LEGISLATIVE POWERS, ENACTED REP. ACT NO. 6770 PROVIDING THEREIN THE OMBUDSMAN'S FULL AND COMPLETE ADMINISTRATIVE DISCIPLINARY POWER AND DUTY;

---

[17] *Rollo*, pp. 96-100.

[18] *Id.* at 108-131.

[19] *Id.* at 104-106.

C. THERE IS NOTHING IN SAID STATUTORY GRANT OF ADMINISTRATIVE DISCIPLINARY POWER WHICH CAN BE REMOTELY CONSIDERED INCONSISTENT WITH THE 1987 CONSTITUTION;

D. VESTING THE OMBUDSMAN WITH FULL DISCIPLINARY AUTHORITY IS ABSOLUTELY IN CONSONANCE WITH THE SOVEREIGN INTENT, AS EXPRESSED BY THE LETTER OF, AND IN THE DELIBERATIONS ON, THE 1987 CONSTITUTION, *I.E.*, THE INTENT TO CREATE AN EFFECTIVE, RATHER THAN EFFETE, PROTECTOR OF THE PEOPLE INSULATED FROM POLITICAL INFLUENCE;

E. THE DISCIPLINARY AUTHORITY GRANTED TO THE OMBUDSMAN INCLUDES THE AUTHORITY TO DETERMINE THE PENALTY AND TO CAUSE THE SAME TO BE IMPLEMENTED BY THE HEAD OF THE AGENCY CONCERNED, CONSIDERING THAT:

I. REPUBLIC ACT NO. 6770 CONTAINS EXPRESS PROVISIONS GRANTING THE OMBUDSMAN THE AUTHORITY TO DETERMINE AND CAUSE THE IMPLEMENTATION OF ADMINISTRATIVE PENALTIES;

II. A DISCIPLINARY POWER BEREFT OF THE NECESSARY COMPONENT OF DETERMINING THE PENALTY AND CAUSING THE IMPLEMENTATION THEREOF IS OTIOSE;

III. EVEN ASSUMING THAT THE IMPLEMENTATION OF PENALTIES ASSESSED BY THE OMBUDSMAN IS SUBJECT TO SECTION 13 (3), ART. XI OF THE CONSTITUTION, AND THE INDEPENDENT FIRST PART OF SECTION 15 (3) OF REP. ACT NO. 6770, THE LATTER PROVISIONS STILL EMPOWER THE OMBUDSMAN TO "ENSURE COMPLIANCE" WITH [ITS] "RECOMMENDATION";

IV. A CONTRARY RULE CAN ONLY RESULT IN FURTHER LEGAL AND PRACTICAL ABSURDITIES.

F. THE *OBITER DICTUM* IN *TAPIADOR VS. OFFICE OF THE OMBUDSMAN*, *SUPRA*, DISPOSSESSING THE OMBUDSMAN OF THE AUTHORITY, IS JUST A PASSING STATEMENT AND MUST BE INTERPRETED TO MEAN THAT THE

OMBUDSMAN CANNOT "DIRECTLY" IMPLEMENT ITS ADMINISTRATIVE DECISIONS. SUCH STATEMENT IS AND HAS REMAINED AN *OBITER DICTUM* WHICH DOES NOT HAVE THE STATUS OF A LEGAL DOCTRINE.[20]

Simply stated, the issues for resolution are whether Beltran was correctly exonerated from the administrative charges filed against him and whether the Ombudsman has the power to discipline government employees.

While We sustain the conclusion of the appellate court that no sufficient evidence was presented to warrant the dismissal of Beltran from the service, We find it proper to correct the court's discussion on the power of the Office of the Ombudsman.

In declaring that the Ombudsman had no authority to directly dismiss Beltran from government service, but only had the power to recommend the removal of the public official or employee found to be at fault, the appellate court relied on the following statement in *Tapiador*, to wit:

x x x Besides, assuming *arguendo*, that petitioner were administratively liable, the Ombudsman has no authority to directly dismiss the petitioner from the government service, more particularly from his position in the BID. Under Section 13, subparagraph (3), of Article XI of the 1987 Constitution, the Ombudsman can only "recommend" the removal of the public official or employee found to be at fault, to the public official concerned.[21]

There was reversible error on the part of the appellate court in relying on the above-cited statement. As correctly pointed out by the petitioner, the statement is a mere *obiter dictum*. In *Ledesma v. Court of Appeals*,[22] this Court emphatically pronounced that the statement in *Tapiador* on the Ombudsman's power "is, at best, merely an *obiter dictum*" and, thus, "cannot be cited as a doctrinal declaration of the Supreme Court":

x x x [A] cursory reading of *Tapiador* reveals that the main point of the case was the failure of the complainant therein to present

[20] *Id.* at 21-24.

[21] *Supra* note 16, at 333.

[22] G.R. No. 161629, July 29, 2005, 465 SCRA 437.

substantial evidence to prove the charges of the administrative case. The statement that made reference to the power of the Ombudsman is, at best, merely an *obiter dictum* and, as it is unsupported by sufficient explanation, is susceptible to varying interpretations, as what precisely is before us in this case. Hence, it cannot be cited as a doctrinal declaration of this Court or is it safe from judicial examination.[23]

Also, in *Ledesma*, the Court discarded the contention that the power of the Office of the Ombudsman was only advisory or recommendatory in nature. The Court warned against the literal interpretation of Section 13(3), Article XI of the Constitution which directs the Office of the Ombudsman to "recommend" to the officer concerned the removal, suspension, demotion, fine, censure, or prosecution of any public official or employee at fault. According to the Court, despite the term "recommend," the said provision, construed together with the pertinent provisions in Republic Act (R.A.) No. 6770, is not only advisory in nature but is actually mandatory within the context of the law.

The Court further elucidated in *Ledesma* that by stating that the Ombudsman "recommends" the action to be taken against the public official found to be at fault, the provisions of the Constitution and in R.A. No. 6770 intended that the implementation of the order be coursed through the proper officer. This is due to the fact that the power of the Ombudsman to investigate and prosecute is not exclusive but concurrent in respect of the offense charged. As such, this could not be considered as usurpation of the authority of the head of office or any officer concerned.

The Office of the Ombudsman, in the exercise of its administrative disciplinary authority, is thus vested by the Constitution and R.A. No. 6770 with the power to impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault.

The charge of the Office of the Ombudsman is expressed in Section 12, Article XI of the Constitution in this wise:

---

[23] *Id.* at 448-449.

Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

Section 13 thereof grants the Office of the Ombudsman the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient;

(2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned and controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent and correct any abuse or impropriety in the performance of duties;

(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith;

(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action;

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents;

(6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence;

(7) Determine the causes of inefficiency, red tape, mismanagement, fraud and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency; and

(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

In *Office of the Ombudsman v. Court of Appeals*,[24] the Court, citing *Acop v. Office of the Ombudsman*,[25] recognized the foregoing enumeration was not exclusive, and that the framers of the Constitution had given Congress the leeway to prescribe, by subsequent legislation, additional powers to the Ombudsman.

Congress thus enacted R.A. No. 6770 providing the functional and structural organization of the Office of the Ombudsman. In passing R.A. No. 6770, Congress deliberately endowed the Ombudsman with the power to prosecute offenses committed by public officers and employees to make him a more active and effective agent of the people in ensuring accountability in public office. Moreover, the legislature has vested the Ombudsman with broad powers to enable him to implement his own actions.[26] Section 13 thereof restates the mandate of the Office of the Ombudsman in this wise:

Sec. 13. *Mandate*. — The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

Section 15 thereof substantially reiterates Section 13, Article XI of the Constitution. In particular, subparagraph (3) of Section 15 of R.A. No. 6770 restates Section 13 (3), Article XI of the Constitution, quoted anew below:

Sec. 15. *Powers, Functions and Duties*. — The Office of the Ombudsman shall have the following powers, functions and duties:

xxx xxx xxx

---

[24] G.R. No. 160675, June 16, 2006, 491 SCRA 92, 110.

[25] G.R. Nos. 120422 and 120428, September 27, 1995, 248 SCRA 566.

[26] *Estarija v. Ranada*, G.R. No. 159314, June 26, 2006, 492 SCRA 652.

(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: *Provided*, That the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer.

Moreover, the provisions[27] in R.A. No. 6770 taken together reveal the manifest intent of the lawmakers to bestow on the Office of the Ombudsman *full* administrative disciplinary authority. These provisions cover the entire gamut of administrative adjudication which entails the authority to, *inter alia*, receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the said penalty.[28]

Hence, the full administrative disciplinary authority of the Office of the Ombudsman, including the power to impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault, is thus beyond contestation.

Corollarilly, as correctly pointed out by petitioner, it is the real party- in-interest. The assailed CA Decision ruled against the administrative disciplinary power of the Office of the Ombudsman, endowed by no less than the Constitution and R.A. No. 6770; logically, there is a need for the petitioner to uphold the existence and the exercise of the said power. It is

---

[27] Secs. 19, 21, 22, 23, 24, 25, and 27.

[28] *Supra* note 24, at 116.

the Office of the Ombudsman that stands to suffer if the decision would attain finality. As the "protector of the people" against erring officers or employees of the Government, to deprive the Office of the Ombudsman of its administrative disciplinary authority would certainly derail the effective implementation of its mandated function and duties.

In a number of cases,[29] this Court has recognized the personality of the Office of the Ombudsman to submit for determination the validity and Constitutionality of its mandate, including the power to enforce the penalties it has imposed against those found to be at fault, which, time and time again, have been upheld.

Anent the issue of whether or not there was substantial proof to establish the accusations against Beltran, this Court agrees with the conclusion of the CA that there was none.

In finding Beltran guilty of grave misconduct, the Office of the Ombudsman opined that the documents submitted clearly establish that Beltran caused the collection of fees from tricycle drivers and operators, but failed to remit them to the City of Parañaque. The pertinent portion of the decision reads:

> The records of the case will show that the Tricycle Regulatory Office of the City of Parañaque, under respondent BELTRAN's term, collected fees for Identification Cards issued to tricycle drivers of Parañaque City, as well as fees for Sticker Plate, Municipal Plates and penalties. This is evident from the Monthly Accomplishment Report dated October 30, 1999 (p. 0113, records) of the Tricycle Regulatory Office showing that the sum of Php25,550.00 and Php2,500.00 was the revenue of the said Office for Drivers I.D., sticker plates and municipal plates for motorized tricycles and non-motorized (pedicab) tricycles, respectively, for the period October 1 to 30, 1999; and from the Accomplishment Reports for the months of January, 2000 to December, 2000; January 1 to 31, 2001, and February 1 to 28, 2001 (pp. 0116 to 0118, records). It is, therefore, clear that respondent BELTRAN, as Officer-in-Charge of the Tricycle Regulatory Office, caused the collection of fees from tricycle drivers and operators. *However, the same documents*

[29] *Ledesma v. Court of Appeals, supra* note 22; *Estarija v. Ranada, supra* note 26; *Office of the Ombudsman v. Court of Appeals, supra* note 24.

(pp. 0113 and 0116 to 0118, records) will reveal that collections for Certifications (p. 0119, records) issued by the TRO were never remitted to the City of Parañaque. The fact that fees are being charged by respondent BELTRAN for Certifications issued by the TRO is evident from the sworn statement (p. 0142, records) of SILVERIO NAVARRO, President of the Samahang Barangay Don Bosco Tricycle Operators and Drivers, Inc., who averred that fees amounting to Php50.00 are being collected by the TRO for Certificates for LTO purposes issued by the said Office. This is contrary to the claim of the respondent in his counter-affidavit (p. 0105, records) that "TRO Operator's Certificate for Land Transportation Office purposes is issued by the TRO for free." Substantial evidence, therefore, has established that collections are being made by respondent BELTRAN, but the same are not remitted to the City Government of Parañaque, which evidently constitutes Grave Misconduct.[30]

From the foregoing, it is apparent that the Ombudsman's conclusion of guilt hinges on the Monthly Accomplishment Reports for October 1 to 30, 1999;[31] January 2000 to December 2000;[32] January 1 to 31, 2001;[33] and February 1 to 28, 2001.[34] However, a perusal of these documents would reveal that they merely outline the revenue of the TRO for the particular month, for which purpose they were accomplished. Although nothing in the said documents would prove that the revenue for the specified month was remitted by Beltran to the City Government of Parañaque, the documents cannot also be considered as proof that they were not. The documents were simply, as their heading would imply, monthly accomplishment reports.

Moreover, while this Court looks with disfavor on affidavits of desistance, nonetheless, their effect on the instant case cannot be ignored. The second affidavit[35] of Navarro categorically denies

---

[30] CA *rollo*, pp. 190-191. (Emphasis supplied.)

[31] *Id.* at 134-135.

[32] *Id.* at 137.

[33] *Id.* at 138.

[34] *Id.* at 139.

[35] *Id.* at 251.

the execution of the first affidavit,[36] on which the Office of the Ombudsman anchors its conclusion of guilt. In the second affidavit, Navarro denies having executed the first affidavit and claims that his signature was forged. Beltran clearly pointed out this fact in his motion for reconsideration. Considering the relative weight given by the Graft Investigation Officer on the first affidavit in concluding that Beltran was guilty of grave misconduct, he should have ascertained the truthfulness and the circumstances surrounding the two affidavits. In fact, the Deputy Special Prosecutor noted in the Order denying the motion for reconsideration that "considering the penalty, it becomes imperative that affiant Navarro be summoned and asked about his second affidavit in the interest of justice."[37] Summoning affiant Navarro would have been the prudent thing to do, given the relative weight accorded to his first affidavit in establishing the guilt of Beltran.

In administrative cases, substantial evidence is required to support any findings. Substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The requirement is satisfied where there is reasonable ground to believe that the respondent is guilty of misconduct, even if the evidence might not be overwhelming.[38] In the present case, after evaluating the totality of the evidence on record, this Court reaches the inescapable conclusion that complainant Germedia failed to present substantial evidence to establish that Beltran was administratively liable for grave misconduct.

WHEREFORE, the petition is *DENIED*. Subject to our disquisition on the power of the Office of the Ombudsman to discipline government employees, the Decision dated November 17, 2004 and Resolution dated May 10, 2005 of the Court of Appeals in CA-G.R. SP. No. 70421 are *AFFIRMED*.

---

[36] *Id.* at 250.

[37] *Id.* at 310.

[38] *Filipino v. Macabuhay*, G.R. No. 158960, November 24, 2006, 508 SCRA 50, 59-60.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 169173. June 5, 2009]

M+W ZANDER PHILIPPINES, INC. and ROLF WILTSCHEK, *petitioners, vs.* **TRINIDAD M. ENRIQUEZ,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; LOSS OF TRUST AND CONFIDENCE AS A GROUND; GUIDELINES. — Article 282 (c) of the Labor Code allows an employer to terminate the services of an employee for loss of trust and confidence. Certain guidelines must be observed for the employer to terminate an employee for loss of trust and confidence. We held in ***General Bank and Trust Company v. Court of Appeals,*** *viz*.: [L]oss of confidence should not be simulated. It should not be used as a subterfuge for causes which are improper, illegal, or unjustified. Loss of confidence may not be arbitrarily asserted in the face of overwhelming evidence to the contrary. It must be genuine, not a mere afterthought to justify earlier action taken in bad faith.

2. ID.; ID.; ID.; THE EMPLOYEE CONCERNED MUST BE ONE HOLDING A POSITION OF TRUST AND CONFIDENCE; CLASSES OF POSITIONS OF TRUST; MANAGERIAL AND

---

[*] Designated to sit as an additional member, per Special Order No. 646 dated May 15, 2009.

[**] Designated to sit as an additional member, per Special Order No. 631 dated April 29, 2009.

FIDUCIARY RANK-AND-FILE EMPLOYEES. —The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be one holding a position of trust and confidence. There are two classes of positions of trust: managerial employees and fiduciary rank-and-file employees. Managerial employees are defined as those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. They refer to those whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff. Officers and members of the managerial staff perform work directly related to management policies of their employer and customarily and regularly exercise discretion and independent judgment. The second class or fiduciary rank-and-file employees consist of cashiers, auditors, property custodians, *etc*., or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence.

3. ID.; ID.; ID.; ID.; ID.; ADMINISTRATIVE MANAGER IN CASE AT BAR IS A MANAGERIAL POSITION AS DETERMINED BY ACTUAL WORK. — Though respondent's position is designated as the Administration Manager of M+W Zander, it does not automatically mean that she occupies a position of trust and confidence. It is not the job title but the actual work that the employee performs that determines whether he or she occupies a position of trust and confidence. Respondent's duties as the Administration Manager include management of the administrative assistants who are assigned to the division heads, in so far as their administrative functions are concerned. She also takes charge of the implementation of company rules on housekeeping and cleanliness, oversees the security of the premises and the sensitive areas of the company, monitors the inventory of company property, and ensures the timely provision of supplies and equipment. The position of an Administration Manager may thus be properly considered as a managerial position, being a head of administrative assistants of other

divisions, and because of the performance of work directly related to management policies and company rules.

4. ID.; ID.; ID.; THERE MUST BE AN ACT THAT WOULD JUSTIFY THE LOSS OF TRUST AND CONFIDENCE; NOT APPRECIATED IN CASE AT BAR. — The second requisite of terminating an employee for loss of trust and confidence is that there must be an act that would justify the loss of trust and confidence. To be a valid cause for dismissal, the loss of confidence must be based on a willful breach of trust and founded on clearly established facts. Loss of trust and confidence stems from a breach of trust founded on a dishonest, deceitful or fraudulent act. In the case at bar, respondent did not commit any act which was dishonest or deceitful. She did not use her authority as the Administration Manager to misappropriate company property nor did she abuse the trust reposed in her by petitioners with respect to her responsibility to implement company rules. The most that can be attributed to respondent is that she influenced a single subordinate, without exerting any force or making any threats, not to report to work. This does not constitute dishonest or deceitful conduct which would justify the conclusion of loss of trust and confidence.

5. ID.; ID.; DISMISSAL, NOT PROPER IN CASE AT BAR. — We are convinced that respondent's dismissal cannot justifiably be sustained since the findings in this case and whatever investigations may have been made by petitioners miserably fail to establish culpability on respondent's part. While dishonesty or disloyalty of an employee is not to be condoned, neither should a condemnation on that ground be tolerated on the basis of suspicions spawned by speculative inferences. We note that while 29 other employees signed the Letter of Appeal, and several employees joined the alleged work stoppage, it was only respondent who was singled out and dismissed. These protest activities bear out the general sentiment of discontent within the company and petitioners cannot pin the blame on respondent alone. Petitioners may not terminate respondent's employment on mere speculation and base her dismissal on unclear and nebulous reasons, especially where a less punitive penalty would suffice. The penalty must be commensurate with the act, conduct or omission imputed to the employee and must

be imposed in connection with the disciplinary authority of the employer.

6. ID.; ID.; ILLEGAL DISMISSAL; PROPER REMUNERATION THEREOF. — We thus find the dismissal to be illegal. Consequently, respondent is entitled to reinstatement without loss of seniority rights and other privileges, and to full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time of the withholding of the employee's compensation up to the time of actual reinstatement. If reinstatement is not possible due to the strained relations between the employer and the employee, separation pay should instead be paid the employee equivalent to one month salary for every year of service, computed from the time of engagement up to the finality of this decision.

7. CIVIL LAW; DAMAGES; MORAL DAMAGES, WHEN RECOVERABLE IN CASE OF DISMISSAL OF EMPLOYEES; CASE AT BAR. — We find that based on the facts of the case, there is sufficient basis to award moral damages and attorney's fees to respondent. We have consistently ruled that in illegal dismissal cases, moral damages are recoverable only where the dismissal of the employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy. Such an award cannot be justified solely upon the premise that the employer fired his employee without just cause or due process. Additional facts must be pleaded and proven to warrant the grant of moral damages under the Civil Code, *i.e.*, that the act of dismissal was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy; and, of course, that social humiliation, wounded feelings, grave anxiety, and similar injury resulted therefrom. In the case at bar, we see it fit to award moral damages to respondent because the manner in which respondent was treated upon petitioners' suspicion of her involvement in drafting and in circulating the letter of appeal and the alleged staging of the "no work day" is contrary to good morals because it caused unnecessary humiliation to respondent.

8. ID.; ID.; ATTORNEY'S FEES; WHEN RECOVERABLE IN CASE OF DISMISSAL OF EMPLOYEES; CASE AT BAR. — On the

matter of attorney's fees, we have ruled that attorney's fees may be awarded only when the employee is illegally dismissed in bad faith and is compelled to litigate or incur expenses to protect his rights by reason of the unjustified acts of his employer. In the case at bar, respondent's unjustified and unwarranted dismissal prompted her to engage the professional services of a counsel and she is thus entitled to an award of attorney's fees.

9. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; GENERAL MANAGER OF CORPORATION, NOT PERSONALLY LIABLE TO ILLEGALLY DISMISSED EMPLOYEE; EXCEPTION; CASE AT BAR. — We come to the issue of whether Wiltschek, as the General Manager, should be personally liable together with M+W Zander. We agree with petitioners that he should not be made personally liable. The general manager of a corporation should not be made personally answerable for the payment of an illegally dismissed employee's monetary claims arising from the dismissal unless he had acted maliciously or in bad faith in terminating the services of the employee. The employer corporation has a separate and distinct personality from its officers who merely act as its agents. It is well settled that: [A] corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other entity to which it may be related. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality. The exception noted is where the official "had acted maliciously or in bad faith," in which event he may be made personally liable for his own act. That exception is not applicable in the case at bar, because it has not been proven that Wiltschek was impleaded in his capacity as General Manager of petitioner corporation and there appears to be no evidence on record that he acted maliciously or in bad faith in terminating the services of respondent. His act, therefore, was within the scope of his authority and was a corporate act for which he should not be held personally liable for.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo Law Offices for petitioners.

Robert O. Doller for respondent.

D E C I S I O N

PUNO, *C.J.*:

At bar is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking the reversal of the decision,[1] dated May 31, 2005, of the Court of Appeals in CA— G.R. SP No. 87597, entitled "*Trinidad M. Enriquez v. National Labor Relations Commission, M+W Zander Philippines, Inc. and Rolf Wiltschek*." The decision of the Court of Appeals set aside the decision of the National Labor Relations Commission (NLRC) and ruled the dismissal of respondent Trinidad M. Enriquez (Enriquez) as illegal. The Court of Appeals also ordered petitioners M+W Zander Philippines, Inc. and Rolf Wiltschek to reinstate respondent to her former position without loss of seniority rights and privileges and awarded her moral damages and attorney's fees.

The facts are as follows.

On June 4, 2001, respondent Enriquez was hired on probationary basis as the Administration Manager and Executive Assistant to the General Manager of petitioner M+W Zander Philippines, Inc. (M+W Zander), a multi-national corporation engaged in construction and facilities management. She was confirmed as a permanent employee on December 4, 2001. As Administration Manager, respondent's responsibilities include taking charge of the management of administrative personnel assigned to the head office, as well as the security of the company staff and premises and the implementation of company rules. As Executive Assistant to the General Manager, respondent

[1] *Rollo,* pp. 196-198.

was in charge of scheduling, monitoring and tracking all the General Manager's appointments and personal finances and serving as the liaison among the General Manager, the Division Heads, the Administrative Staff and external contacts.

In January 2002, M+W Zander relieved its General Manager, Mr. Eric Van Stiegeren, and in his place appointed Mr. Rolf Wiltschek (Wiltschek). The appointment of Wiltschek as the Acting General Manager was announced in a meeting held on January 31, 2002. On the same day, a Letter of Appeal[2] was signed by 29 employees of M+W Zander, opposing the appointment of Wiltschek.

The letter states:

TO: MR. KLAUS GAERTNER
Managing Director

CC: MR. HELMUT KURZBOECK

CC: MISS KITY LEE

DATE: January 31, 2002

LETTER OF APPEAL

We are writing you this Letter of Appeal in the hope of expressing our concern and sentiments on the appointment of Rolf Wiltschek as the new General Manager.

We are appealing for your kind attention and consideration on this matter as part of the M+W Zander family worldwide. We know that above anything else, the well-being of the company is the first priority of every employee from whom he derives his livelihood and that of his family. However, we believe that Rolf Wiltschek as the General Manager here in the Philippines will not in any way contribute to our goal of making M+W Zander better equipped to fight all the financial deficiencies that the company is facing today.

For how can we have a person represent the company when we cannot even respect him as a person. His human behavior and relationship, his manners and etiquette appear less than the accepted norms in a

[2] CA *rollo*, pp. 69-70.

civilized society. His sarcasm and arrogance and seeming feeling of superiority as expressed by his verbal abuses on his contemporaries and subordinates is unacceptable even in a poor country like the Philippines. Most of us in M+W Zander have worked with all sorts of people with different nationalities, people with even higher positions in life but we have never seen such an obnoxious and demeaning attitude towards the Filipino workers. It has perhaps escaped Rolf Wiltschek, that we Filipinos take pride in our professions and in our Country humble as it is.

We wish to relay to you our extreme disappointment on the replacement of Mr. Eric Van Stijgeren with the sudden appointment of Rolf Wiltschek as the new General Manager. We wish to convey to you our apprehension on the fate that awaits M+W Zander here in the Philippines with Rolf Wiltschek as the General Manager. Lastly, we assure you of our commitment to give our best performance in any task given us for the welfare of our Company.

Please help us save M+W Zander (Phils.) Inc.

Respectfully yours,

M+W Zander- Manila Head Office STAFF

All of the Undersigned:

1.	ABEC TAYAG (sgd.)
2.	CARLITO GARCIA (sgd.)
3.	MARK JOSEPH AMADOR (sgd.)
4.	CHRISTINE SAN AGUSTIN (sgd.)
5.	EMMANUEL PIELAGO, JR. (sgd.)
6.	STANLEY MOSENDE (sgd.)
7.	JOANNE A. MEDIARITO (sgd.)
8.	MICHAEL M. ILAGAN (sgd.)
9.	DIANE F. COMINTAN (sgd.)
10.	ERIC V. NAPOLITAN (sgd.)
11.	RAYMOND C. JOSE (sgd.)

12. CHE BONBON (sgd.)
13. POCHOLO G. RATON (sgd.)
14. JON-JON IBARRA (sgd.)
15. MICHELLE DE MESA (sgd.)
16. TRINIDAD M. ENRIQUEZ (sgd.)
17. VIRGILIO G. NATIVIDAD (sgd.)
18. CELSA L. BAG-AO (sgd.)
19. ALLAN RIVERA (sgd.)
20. RANDY TECSON (sgd.)
21. JOY P. ESGUERRA (sgd.)
22. LARRY N. MARASIGAN (sgd.)
23. ELMER M. ARANA (sgd.)
24. ALDRIN EVANGELISTA (sgd.)
25. EDWARD A. BORJA (sgd.)
26. ERNESTO M. ANTIQUIA (sgd.)
27. JESS DELA CRUZ (sgd.)
28. P.R. SIMPLICIANO (sgd.)
29. R.L. CRUZ (sgd.)

The same appeal from the employees at the site to follow.[3]

A day after the Letter of Appeal was released, a number of employees did not report to work.

Petitioners allege that after the announcement of Wiltschek as the new General Manager, respondent actively solicited signatures for a letter opposing the appointment of Wiltschek (Letter of Appeal). The petitioners claim that Enriquez used her influence and moral ascendancy to coerce several employees

[3] *Id.*

into signing the letter of appeal.[4] They referred to Affidavits of Mark Joseph M. Amador (Amador),[5] Randy R. Tecson (Tecson)[6] and Patrocinio R. Simpliciano,[7] M+W Zander's Accounting Assistant, Network Administrator and Contract Administrator, respectively, which state that respondent sought their signature for the Letter of Appeal. Amador stated in his affidavit[8] that on February 1, 2002 one Abelardo Tayag asked him not to go to work and Enriquez only called him to confirm that he did not report for work. In Tecson's affidavit,[9] it was stated that on February 1, 2002, he received a call from Enriquez in his mobile phone telling him not to report to work since other employees will not report to work and that he should just file for a sick leave since they were doing the same. Tecson said he was already on his way to the office and refused to follow Enriquez.

Upon discovering respondent Enriquez's participation in drafting and in circulating the Letter of Appeal, as well as in the alleged work stoppage that occurred a day after the release of the Letter, M+W Zander sent a Notice[10] to respondent Enriquez, requiring her to explain within 48 hours from receipt of the notice why no disciplinary action should be taken against her for willful breach of trust and using her authority and/or influence as Administration Manager of M+W Zander over her subordinates to stage a "no work day" on February 1, 2002. It was indicated that willful breach of trust has a corresponding penalty of dismissal. Meanwhile, respondent Enriquez was placed under preventive suspension for 15 working days.

---

[4] *Rollo,* p. 268.

[5] *Id.* at pp. 43-44.

[6] *Id.* at p. 45.

[7] *Id.* at p. 46.

[8] *Supra,* note 5.

[9] *Supra,* note 6.

[10] Dated and received on February 4, 2002; *rollo,* p. 48.

Respondent Enriquez signed a statement,[11] dated February 5, 2002, denying that she used her authority and/or influence as Administration Manager and Executive Assistant to the General Manager to compel her co-employees to stage the illegal work stoppage. She also denied that she performed any act to disrupt the vital operations of the company. She said that when she arrived at work on February 2, 2002, she was given a notice of suspension for 15 days and was instructed to leave the premises without being given an explanation. Her personal belongings were inspected and she was escorted out of the premises like a criminal. Respondent stated in her affidavit that her colleagues were given an order that if she is seen in the premises of the company, the administration should be informed immediately and that in no case should respondent be allowed to enter the premises of the company except if she is with an authorized escort of the petitioner company.[12]

On February 14, 2002, an administrative investigation and an administrative hearing were conducted by the petitioner. During the administrative hearing, the respondent submitted several signed statements from her subordinates, such as Cecilia Benito,[13] the receptionist; Michelle De Mesa,[14] the Engineering Administrative Assistant; Joy Esguerra,[15] an Administrative Assistant, and Christine Roma San Agustin;[16] all saying that they were never advised or prevailed upon by the respondent not to report to work.

Sales Engineer Allan Ordinario Rivera (Rivera) admitted before the investigating panel that he was the one who instigated the no work day on February 1, 2002, but he was not charged by the petitioners. We quote Rivera's statement:

---

[11] CA *rollo,* p. 80.

[12] *Id.*

[13] *Id.* at p. 73.

[14] *Id.* at p. 74.

[15] *Id.* at p. 75.

[16] *Id.* at p. 76.

14 FEBRUARY 2002

TO WHOM IT MAY CONCERN:

IN RELATION TO THE ALLEGATIONS MADE AGAINST MS. TRINIDAD ENRIQUEZ, I ALLAN O. RIVERA REQUEST TO BE ACKNOWLEDGED & RECOGNIZED THROUGH MY OWN INITIATIVE & NOT FORCED TO PRESENT THIS WRITTEN STATEMENT TO CLARIFY WHAT REALLY TRANSPIRED ON JANUARY 31, 2002.

IT WAS ME [sic] WHO GAVE INSTRUCTION TO THOSE PRESENT THAT EVENING OF JANUARY 31, 2002 NOT TO REPORT FOR WORK THE FOLLOWING DAY[,] FEBRUARY 01, 2002 (FRIDAY).

IT WAS ALSO I, WHO INVITED MS. TRINIDAD ENRIQUEZ TO JOIN US, WHO WAS THEN LATER ACCUSED OF INSTIGATING THE SAID "NO WORK DAY SHOW," WHEREAS, IT WAS I WHO INSTIGATED THE INCIDENT.

FURTHER MS. TRINIDAD ENRIQUEZ, ASIDE FROM COMING LATE EVENING, SHE ONLY STAYED FOR LESS THAN AN HOUR, THAT THE ACCUSATION BY SOME OF THE INDIVIDUALS IS NOT TRUE, SINCE SOME HAD ALREADY LEFT & MOST OF THE PARTICIPANTS DID NOT ARRIVED [sic] YET.

THIS IS TO ATTEST TO THE TRUTH OF THE ABOVE.

(Sgd.)
ALLAN ORDINARIO RIVERA
SALES ENGINEER[17]

Out of the eight subordinates who gave their statements during the administrative investigation, it was only Stanley Mosende (Mosende) who stated that he was influenced by respondent Enriquez not to report for work.[18] It appears, however, that Mosende was not absent from work based on the signed attendance sheet, which showed that he reported to the office at 5:00 p.m. and signed out at 7:00 p.m.[19] The accounts of Mosende are incongruous with the statement of Tecson, the

[17] *Id.* at p. 77.

[18] *Rollo,* p. 328.

[19] *Id.* at p. 58.

Network Administrator. Tecson submitted a written statement declaring that around 8:00 a.m. of February 1, 2002, he received a text message from Mosende and from Wally Borja asking him not to go to the office.[20] He did not mention the respondent. Later on, he contradicted his earlier statement when he submitted another affidavit that was attached to the Petition for Review of petitioner M+W Zander, this time stating that it was respondent Enriquez who called him up in his mobile phone to tell him not to report to work.

On March 1, 2002, a Notice of Termination[21] was received by respondent informing her that her services as Administration Manager and Executive Assistant to the General Manager of M+W Zander are terminated effective the same day. The respondent was found liable for "willful breach of trust and confidence in using [her] authority and/or influence as Administrative Manager of M+W Zander Philippines over [her] subordinate to stage a 'no work day' last February 1, 2002, which in turn disrupted vital operations in the Company."[22]

On the same day of her receipt of the Notice of Termination, respondent filed a Complaint for illegal dismissal with the Arbitration Office of the NLRC. Respondent Enriquez alleges that petitioners based her termination on mere speculation since there were a number of employees who reported to work despite signing the letter of appeal, and despite the absence of some of the employees, the company still continued its operations that day.

Labor Arbiter Edgar B. Bisana held that respondent Enriquez was illegally dismissed.[23] Both petitioners, M+W Zander and Wiltschek, were ordered to reinstate respondent without loss

---

[20] *Id.* at p. 329.

[21] *Id.* at p. 49.

[22] *Id.*

[23] The dispositive portion of the decision provides:

WHEREFORE, premises all considered, judgment is hereby rendered, as follows:

of seniority rights and privileges, and to pay respondent full backwages and benefits from the time compensation was withheld from her up to her actual reinstatement. The petitioners were further ordered to pay ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, as well as attorney's fees.

The NLRC reversed the decision of the Labor Arbiter and found that respondent was not illegally dismissed because she committed serious misconduct which destroyed the trust and confidence of the management in her.[24]

The Court of Appeals reversed and set aside the decision of the NLRC and reinstated the decision of the Labor Arbiter, declaring that the dismissal of respondent was illegal.[25]The petitioners were ordered to reinstate respondent to her former

---

1. Declaring the dismissal of complainant as illegal;
2. Ordering respondent to reinstate complainant to her former position without loss of seniority rights and privileges, either physically or in the payroll, at the option of respondents;
3. Ordering respondent to pay complainant her full backwages and other benefits from the time her compensation was withheld from her up to actual reinstatement, partially computed in the amount of ₱485,875.00; and
4. Ordering respondents to pay complainant ₱100,000.00 as moral damages and another ₱100,000.00 as exemplary damages, and attorney's fees in an amount equivalent to 10% of complainant's monetary award. [*Rollo*, p. 65]

[24] The dispositive portion of the NLRC decision provides:

> WHEREFORE, premises considered, the assailed decision is hereby reversed and set aside. Respondents are adjudged not guilty of illegal dismissal. The Order to reinstate complainant as well as the monetary awards are deleted from the decision. [*Rollo*, p. 97.]

[25] The dispositive portion of the Court of Appeals decision provides:

> WHEREFORE, premises considered the decision of public respondent NLRC is ***REVERSED*** and ***SET ASIDE***. The decision of the Labor Arbiter is hereby ***REINSTATED***, declaring the dismissal of complainant as illegal, and ordering respondents to REINSTATE petitioner to her former position without loss of

position without loss of seniority rights and privileges. The Court of Appeals deleted the award of exemplary damages and reduced the award of moral damages to ₱25,000.00. The award of attorney's fees was also affirmed.

At issue in this petition[26] is whether respondent was illegally dismissed by petitioners. Consequently, it must also be determined whether moral damages and attorney's fees should be awarded,

---

seniority rights and privileges, with the ***MODIFICATION*** that the exemplary damages are deleted, and the award of moral damages is reduced to TWENTY-FIVE THOUSAND PESOS (₱25,000.00). The award of attorney's fees is likewise affirmed. [*Rollo*, p. 197.]

[26] Petitioners raised the following errors in the questioned decision in their Petition for Review:

I. THE COURT OF APPEALS GAVE DUE COURSE TO THE PETITION FOR *CERTIORARI* DESPITE THE FACT THAT THERE WAS NO SHOWING THAT THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION.

II. THE COURT OF APPEALS ERRONEOUSLY FOUND THAT A MANAGER'S ACT OF INFLUENCING A SUBORDINATE NOT TO REPORT FOR WORK IS INSUFFICIENT TO WARRANT THE PENALTY OF DISMISSAL.

III. THE COURT OF APPEALS ERRONEOUSLY FOUND THAT RESPONDENT'S DISMISSAL WAS ANCHORED ON THE AFFIDAVIT OF ONE SUBORDINATE.

IV. THE COURT OF APPEALS ADOPTED RESPONDENT'S ARGUMENTS WITHOUT CONSIDERING OR DISCUSSING THE POINTS RAISED BY PETITIONERS IN RESPONSE THERETO.

V. THE COURT OF APPEALS ERRONEOUSLY DIRECTED RESPONDENT'S REINSTATEMENT DESPITE THE FACT THAT SHE HELD THE SUPREMELY SENSITIVE POSITION OF EXECUTIVE ASSISTANT TO THE GENERAL MANAGER EVEN WHILE SHE HAS PUBLICLY MANIFESTED HER CONTEMPT FOR THE INCUMBENT GENERAL MANAGER.

VI. THE COURT OF APPEALS ERRONEOUSLY AWARDED MORAL DAMAGES AND ATTORNEY'S FEES TO RESPONDENT DESPITE THE UTTER LACK OF BASIS FOR SUCH AWARD.

if respondent was illegally dismissed, and whether Wiltschek should be personally liable together with M+W Zander.

After a thorough review of the records, we affirm the decision of the Court of Appeals and find that respondent was illegally dismissed by petitioner M+W Zander.

The sole ground for respondent's termination by petitioners is "willful breach of trust and confidence in using [her] authority and/or influence as Administrative Manager of ZANDER over [her] subordinate to stage a 'no work day' last February 1, 2002."[27]

Article 282 (c) of the Labor Code allows an employer to terminate the services of an employee for loss of trust and confidence.[28] Certain guidelines must be observed for the employer to terminate an employee for loss of trust and confidence. We held in ***General Bank and Trust Company v. Court of Appeals***,[29] *viz.*:

> [L]oss of confidence should not be simulated. It should not be used as a subterfuge for causes which are improper, illegal, or unjustified. Loss of confidence may not be arbitrarily asserted in the face of overwhelming evidence to the contrary. It must be genuine, not a mere afterthought to justify earlier action taken in bad faith.[30]

VII. THE COURT OF APPEALS ERRONEOUSLY MADE INDIVIDUAL RESPONDENT ROLF WILTSCHEK SOLIDARILY LIABLE WITH THE COMPANY FOR RESPONDENT'S MONETARY AWARD. [*Rollo,* pp. 13-14.]

[27] *Id. Rollo,* p. 49.

[28] LABOR CODE, Art. 282.

Termination by employer. — An employer may terminate an employment for any of the following causes:

x x x x x x x x x

c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative[.]

[29] G.R. No. L-42724, April 9, 1985, 135 SCRA 569.

[30] *Id.* at p. 578.

The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be one holding a position of trust and confidence.

There are two classes of positions of trust: managerial employees and fiduciary rank-and-file employees.

Managerial employees are defined as those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions.[31] They refer to those whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff.[32] Officers and members of the managerial staff perform work directly related to management policies of their employer and customarily and regularly exercise discretion and independent judgment.[33]

The second class or fiduciary rank-and-file employees consist of cashiers, auditors, property custodians, *etc*., or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property.[34] These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence.

In the case at bar, respondent was employed as the Administration Manager and the Executive Assistant to the General Manager. The responsibilities of the Administration Manager include:

---

[31] *Bristol Myers Squibb (Phils.), Inc. v. Richard Nixon A. Baban*, G.R. No. 167449, December 17, 2008.

[32] LABOR CODE, Art. 82.

[33] Rules Implementing the Labor Code, Book III, Sec. 2 (c) (1) and (2).

[34] *Mabeza v. National Labor Relations Commission*, G.R. No. 118506, April 18, 1997, 271 SCRA 670; *Bristol Myers Squibb (Phils.), Inc. v. Richard Nixon A. Baban*, G.R. No. 167449, December 17, 2008.

- **To take charge of the management of Administrative personnel assigned to the head office in so far as administrative functions** are concerned (Administrative Assistants assigned to the Division heads and other managerial positions except HRD);
- **To take charge of the over-all security for the company staff, premises, and sensitive areas; to guard against unauthorized entry in sensitive areas (as determined by the management committee);**
- **To take charge of the implementation of company rules on housekeeping, cleanliness and security** for all occupants of the Head Office in coordination with the company Division Heads and HRD;
- To monitor attendance of all administrative personnel and enforce applicable company rules pertaining thereto;
- **To take charge of the maintenance, upkeep and inventory of all company property within the head office;**
- To take charge of the timely provision of supplies and equipment covered by the proper requisition documents within the head office;
- To take charge of traffic, tracking, and distribution of all incoming and outgoing correspondence, packages and facsimile messages;
- To take care of all official travel arrangements and documentation by company personnel;
- To ensure the proper allocation of company cars assigned to the Head Office; and
- To coordinate schedule and documentation of regular staff meetings and one-on-one meetings as required by EVS and the Division Heads.[35] (Emphasis supplied.)

The duties of the Executive Assistant to the General Manager are as follows:

- To take care of the scheduling, monitoring, and tracking of all the GM's appointments;

[35] CA *rollo*, pp. 99-100.

- To serve as liaison between the GM, the Division Heads, the Administrative Staff and external contacts;
- To take care of immigration concerns and corresponding documents for the GM and the company expatriates;
- To effectively handle, monitor, and document calls for the GM;
- To handle personal financials (Banking/Bills) for the GM and
- To perform any other tasks relative to the above functions which may be assigned from time to time by the GM.[36]

Though respondent's position is designated as the Administration Manager of M+W Zander, it does not automatically mean that she occupies a position of trust and confidence. It is not the job title but the actual work that the employee performs that determines whether he or she occupies a position of trust and confidence.[37] Respondent's duties as the Administration Manager include management of the administrative assistants who are assigned to the division heads, in so far as their administrative functions are concerned. She also takes charge of the implementation of company rules on housekeeping and cleanliness, oversees the security of the premises and the sensitive areas of the company, monitors the inventory of company property, and ensures the timely provision of supplies and equipment. The position of an Administration Manager may thus be properly considered as a managerial position, being a head of administrative assistants of other divisions, and because of the performance of work directly related to management policies and company rules.

The second requisite of terminating an employee for loss of trust and confidence is that there must be an act that would justify the loss of trust and confidence.[38] To be a valid cause

---

[36] *Id.* at p. 100.

[37] *Estiva v. National Labor Relations Commission*, G.R. No. 95145, August 5, 1993, 225 SCRA 169.

[38] *Equitable Banking Corporation v. National Labor Relations Commission*, 339 Phil 541 (1997); *Bristol Myers Squibb v. Richard Nixon A. Baban*, G.R. No. 167449, December 17, 2008.

for dismissal, the loss of confidence must be based on a willful breach of trust and founded on clearly established facts.[39]

We find that it was not established that respondent used her authority to influence her subordinates to stage a "no work day"; and assuming that she performed this act as alleged by petitioners, it does not satisfy the jurisprudential requirements for valid termination due to loss of trust and confidence.

Loss of trust and confidence stems from a breach of trust founded on a dishonest, deceitful or fraudulent act. In the case at bar, respondent did not commit any act which was dishonest or deceitful. She did not use her authority as the Administration Manager to misappropriate company property nor did she abuse the trust reposed in her by petitioners with respect to her responsibility to implement company rules. The most that can be attributed to respondent is that she influenced a single subordinate, without exerting any force or making any threats, not to report to work. This does not constitute dishonest or deceitful conduct which would justify the conclusion of loss of trust and confidence.

We are convinced that respondent's dismissal cannot justifiably be sustained since the findings in this case and whatever investigations may have been made by petitioners miserably fail to establish culpability on respondent's part. While dishonesty or disloyalty of an employee is not to be condoned, neither should a condemnation on that ground be tolerated on the basis of suspicions spawned by speculative inferences.[40]

Petitioners anchored the termination of respondent on the statement made by a single subordinate, Mosende, which was made during the administrative investigation conducted by petitioners. Mosende stated that respondent, as his superior, told him not to report to work on February 1, 2002.[41] It was

---

[39] *Garcia v. National Labor Relations Commission*, 351 Phil. 960 (1998).

[40] *San Miguel Corporation v. National Labor Relations Commission*, G.R. No. 72572, December 19, 1989, 180 SCRA 281.

[41] *Rollo*, p. 328.

only Mosende who said that respondent forced him not to report to work on February 1, 2002. During the administrative investigation, the rest of respondent's subordinates did not identify respondent as the one who influenced them not to go to work on February 1, 2002.

The act of influencing a single subordinate not to report to work is insufficient to merit the harsh and grave penalty of dismissal. The records are bereft of any evidence to prove that respondent in fact coerced a considerable number of employees to stage the "no work day." Petitioners may not arbitrarily assert loss of trust and confidence in respondent based on the lone affidavit of Mosende, in the face of overwhelming evidence to the contrary, including affidavits from several subordinates of respondent and the categorical statement of Rivera that he was the one who influenced other employees to stage the "no work day."

We note that while 29 other employees signed the Letter of Appeal, and several employees joined the alleged work stoppage, it was only respondent who was singled out and dismissed. These protest activities bear out the general sentiment of discontent within the company and petitioners cannot pin the blame on respondent alone. Petitioners may not terminate respondent's employment on mere speculation and base her dismissal on unclear and nebulous reasons, especially where a less punitive penalty would suffice. The penalty must be commensurate with the act, conduct or omission imputed to the employee and must be imposed in connection with the disciplinary authority of the employer.[42]

We thus find the dismissal to be illegal. Consequently, respondent is entitled to reinstatement without loss of seniority rights and other privileges, and to full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time of the withholding of the employee's compensation up to the time of actual reinstatement. If

---

[42] *Radio Communications of the Philippines, Inc. v. National Labor Relations Commission*, G.R. No. 102958, June 25, 1993, 223 SCRA 656.

reinstatement is not possible due to the strained relations between the employer and the employee, separation pay should instead be paid the employee equivalent to one month salary for every year of service, computed from the time of engagement up to the finality of this decision.

Petitioners also raised as an issue the propriety of the award of moral damages and attorney's fees, arguing that there is no factual or legal basis to award such. Petitioners also pointed out that there was also no discussion in the body of the decision of the Court of Appeals which states the reasons for the award of damages.

We find that based on the facts of the case, there is sufficient basis to award moral damages and attorney's fees to respondent. We have consistently ruled that in illegal dismissal cases, moral damages are recoverable only where the dismissal of the employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy.[43] Such an award cannot be justified solely upon the premise that the employer fired his employee without just cause or due process. Additional facts must be pleaded and proven to warrant the grant of moral damages under the Civil Code, *i.e.*, that the act of dismissal was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy; and, of course, that social humiliation, wounded feelings, grave anxiety, and similar injury resulted therefrom.[44]

In previous cases where moral damages and attorney's fees were awarded, the manner of termination was done in a humiliating and insulting manner, such as in the case of ***Balayan Colleges v. National Labor Relations Commission***[45] where the employer posted copies of its letters of termination to the

---

[43] *Ford Philippines, Inc. v. Court of Appeal*, 335 Phil. 1 (1997).

[44] *Primero v. Intermediate Appellate Court,* G.R. No. 72644, December 14, 1987, 156 SCRA 435, 444.

[45] 325 Phil. 245 (1996).

teachers inside the school campus and it also furnished copies to the town mayor and Parish Priest of their community for the purpose of maligning the teachers' reputation. So also in the case of ***Chiang Kai Shek School v. Court of Appeals***,[46] this Court awarded moral damages to a teacher who was flatly, and without warning or a formal notice, told that she was dismissed.

In the case at bar, we see it fit to award moral damages to respondent because the manner in which respondent was treated upon petitioners' suspicion of her involvement in drafting and in circulating the letter of appeal and the alleged staging of the "no work day" is contrary to good morals because it caused unnecessary humiliation to respondent.

When respondent reported to work a day after the alleged "no work day," she was given a notice of preventive suspension, her personal belongings were inspected, and she was escorted outside of the premises, without any explanation. Furthermore, an order was given by the administration to her subordinates that in no case shall she be allowed inside the company premises without an authorized escort. Such measures were unwarranted because the charges against respondent have no connection to the breach of trust involving loss of money or company property, which could have called for securing company property from respondent. The crux is precisely that the charges against respondent are divorced from the essence of loss of trust and confidence—which is the commission of an act that is dishonest, deceitful or fraudulent. And despite this, based merely on mere suspicion, respondent was treated unfairly when she was not given an explanation why her personal belongings were inspected, why she was asked to leave the company building, why she had to be escorted by guards, why she was banned from the premises, and, most importantly, why it was necessary at all to issue an order to her subordinates that she is not allowed in the company premises unless she is escorted by authorized personnel. These measures are uncalled for, unfair and oppressive.

---

[46] G.R. No. 58028, April 18, 1989, 172 SCRA 389.

On the matter of attorney's fees, we have ruled that attorney's fees may be awarded only when the employee is illegally dismissed in bad faith and is compelled to litigate or incur expenses to protect his rights by reason of the unjustified acts of his employer.[47] In the case at bar, respondent's unjustified and unwarranted dismissal prompted her to engage the professional services of a counsel and she is thus entitled to an award of attorney's fees.

Lastly, we come to the issue of whether Wiltschek, as the General Manager, should be personally liable together with M+W Zander. We agree with petitioners that he should not be made personally liable. The general manager of a corporation should not be made personally answerable for the payment of an illegally dismissed employee's monetary claims arising from the dismissal unless he had acted maliciously or in bad faith in terminating the services of the employee.[48] The employer corporation has a separate and distinct personality from its officers who merely act as its agents.

It is well settled that:

> [A] corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other entity to which it may be related. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality. [49]

The exception noted is where the official "had acted maliciously or in bad faith," in which event he may be made personally

---

[47] *Pascua v. NLRC (Third Division)*, G.R. No. 123518, March 13, 1998, 287 SCRA 554, 580; see *Lopez v. National Labor Relations Commission*, G.R. No. 124548, October 8, 1998, 297 SCRA 508, 519.

[48] *EPG Construction Company, Inc., et al. v. Court of Appeals, et al.*, G.R. No. 103372, June 22, 1992, 210 SCRA 235-236.

[49] *Lim v. National Labor Relations Commission*, G.R. No. 79907, March 16, 1989, 171 SCRA 328, 335, citing *Sunio v. NLRC*, 127 SCRA 390.

liable for his own act. That exception is not applicable in the case at bar, because it has not been proven that Wiltschek was impleaded in his capacity as General Manager of petitioner corporation and there appears to be no evidence on record that he acted maliciously or in bad faith in terminating the services of respondent. His act, therefore, was within the scope of his authority and was a corporate act for which he should not be held personally liable for.

IN VIEW WHEREOF, the petition is *PARTIALLY GRANTED*. The portion of the assailed decision ordering Rolf Wiltschek liable with M+W Zander is *DELETED*. All other aspects of the decision of the Court of Appeals are *AFFIRMED*.

SO ORDERED.

Carpio, Corona, Leonardo-de Castro, and *Bersamin, JJ.*, concur.

FIRST DIVISION

[G.R. No. 171137. June 5, 2009]

PHILIPPINE COMMERCIAL INTERNATIONAL BANK, *petitioner, vs.* **SPOUSES WILSON DY HONG PI and LOLITA DY and SPOUSES PRIMO CHUYACO, JR. and LILIA CHUYACO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PRIOR FILING OF MOTION FOR RECONSIDERATION, REQUIRED; EXCEPTIONS. — Petitioner is correct that a motion for reconsideration, as a general rule, must have first been filed before the tribunal, board, or officer against whom the writ of *certiorari* is sought. This is intended to afford the latter an opportunity to correct any actual or fancied error attributed to

it. However, there are several exceptions where the special civil action for *certiorari* will lie even without the filing of a motion for reconsideration, namely: a. where the order is a patent nullity, as where the court *a quo* has no jurisdiction; b. where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; c. where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the government or the petitioner, or the subject matter of the action is perishable; d. where, under the circumstances, a motion for reconsideration would be useless; e. where petitioner was deprived of due process and there is extreme urgency for relief; f. where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; g. where the proceedings in the lower court are a nullity for lack of due process; h. where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and i. where the issue raised is one purely of law or where public interest is involved. Otherwise stated, a motion for reconsideration may be dispensed with only if there are concrete, compelling, and valid reasons for doing so.

2. ID.; JURISDICTION; VOLUNTARY SUBMISSION TO THE COURT'S JURISDICTION AND EXCEPTION THERETO. — Jurisdiction over the defendant in a civil case is acquired either by the coercive power of legal processes exerted over his person, or his voluntary appearance in court. As a general proposition, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. It is by reason of this rule that we have had occasion to declare that the filing of motions to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration, is considered voluntary submission to the court's jurisdiction. This, however, is tempered by the concept of conditional appearance, such that a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority. Prescinding from the foregoing, it is thus clear that: (1) Special appearance operates as an exception to the general rule on voluntary appearance; (2) Accordingly, objections to the jurisdiction of the court over the person of the defendant

must be explicitly made, *i.e.*, set forth in an unequivocal manner; and (3) Failure to do so constitutes voluntary submission to the jurisdiction of the court, especially in instances where a pleading or motion seeking affirmative relief is filed and submitted to the court for resolution.

3. ID.; ID.; ID.; RESPONDENTS ACQUIESCED TO THE JURISDICTION OF THE TRIAL COURT WHEN THEY FILED A MOTION TO DISMISS FOR FAILURE TO PROSECUTE AND A MOTION FOR INHIBITION OF THE JUDGE FROM FURTHER HEARING THE CASE. — Respondents have acquiesced to the jurisdiction of the trial court when they filed their Motion to Dismiss for Failure to Prosecute. Significantly, the motion did not categorically and expressly raise the jurisdiction of the court over their persons as an issue. The Court's pronouncement in ***Busuego v. Court of Appeals*** finds cogent application: A voluntary appearance is a waiver of the necessity of a formal notice. *An appearance in whatever form, without explicitly objecting to the jurisdiction of the court over the person, is a submission to the jurisdiction of the court over the person*. While the formal method of entering an appearance in a cause pending in the courts is to deliver to the clerk a written direction ordering him to enter the appearance of the person who subscribes it, *an appearance may be made by simply filing a formal motion, or plea or answer*. This formal method of appearance is not necessary. He may appear without such formal appearance and thus submit himself to the jurisdiction of the court. *He may appear by presenting a motion, for example, and unless by such appearance he specifically objects to the jurisdiction of the court, he thereby gives his assent to the jurisdiction of the court over his person*. Besides, any lingering doubts on the issue of voluntary appearance dissipate when the respondents' motion for inhibition is considered. This motion seeks a sole relief: inhibition of Judge Napoleon Inoturan from further hearing the case. Evidently, by seeking affirmative relief other than dismissal of the case, respondents manifested their voluntary submission to the court's jurisdiction. It is well-settled that the active participation of a party in the proceedings is tantamount to an invocation of the court's jurisdiction and a willingness to abide by the resolution of the case, and will bar said party from later on impugning the court's jurisdiction. To be sure, the convenient

caveat in the title of the motion for inhibition (*i.e.*, "without submitting themselves to the jurisdiction of this Honorable Court") does not detract from this conclusion. It would suffice to say that the allegations in a pleading or motion are determinative of its nature; the designation or caption thereof is not controlling. Furthermore, no amount of caveat can change the fact that respondents tellingly signed the motion to inhibit in their own behalf and not through counsel, let alone through a counsel making a special appearance.

4. ID.; DISQUALIFICATION OF JUDICIAL OFFICERS; INSTANCES WHERE JUDGE IS MANDATORILY DISQUALIFIED TO SIT IN A CASE. — Under the first paragraph of Section 1, Rule 137 of the Rules of Court, a judge or judicial officer shall be **mandatorily disqualified** to sit in any case in which: (a) he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise; or (b) he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of civil law; or (c) he has been executor, administrator, guardian, trustee or counsel; or (d) he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

5. ID.; ID.; VOLUNTARY INHIBITION OF A JUDGE; ELUCIDATED. — Paragraph two of Section 1, Rule 137 of the Rules of Court provides for the rule on **voluntary inhibition** and states: "[a] judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above." That discretion is a matter of conscience and is addressed primarily to the judge's sense of fairness and justice. We have elucidated on this point in ***Pimentel v. Salanga,*** as follows: A judge may not be legally prohibited from sitting in a litigation. But when suggestion is made of record that he might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of circumstances reasonably capable of inciting such a state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired. A salutary norm is that he reflect on the probability that a losing party might nurture at the back of his mind the thought that the judge had

unmeritoriously tilted the scales of justice against him. That passion on the part of a judge may be generated because of serious charges of misconduct against him by a suitor or his counsel, is not altogether remote. He is a man, subject to the frailties of other men. He should, therefore, exercise great care and caution before making up his mind to act in or withdraw from a suit where that party or counsel is involved. He could in good grace inhibit himself where that case could be heard by another judge and where no appreciable prejudice would be occasioned to others involved therein. On the result of his decision to sit or not to sit may depend to a great extent the all-important confidence in the impartiality of the judiciary. If after reflection he should resolve to voluntarily desist from sitting in a case where his motives or fairness might be seriously impugned, his action is to be interpreted as giving meaning and substances to the second paragraph of Section 1, Rule 137. He serves the cause of the law who forestalls miscarriage of justice.

6. ID.; ID.; INHIBITION OF A JUDGE REQUIRES A VALID CAUSE. — At the outset, we underscore that while a party has the right to seek the inhibition or disqualification of a judge who does not appear to be wholly free, disinterested, impartial and independent in handling the case, this right must be weighed with the duty of a judge to decide cases without fear of repression. Respondents consequently have no vested right to the issuance of an Order granting the motion to inhibit, given its discretionary nature. However, the second paragraph of Rule 137, Section 1 does not give judges unfettered discretion to decide whether to desist from hearing a case. The inhibition must be for just and valid causes, and in this regard, we have noted that the mere imputation of bias or partiality is not enough ground for inhibition, especially when the charge is without basis. This Court has to be shown acts or conduct clearly indicative of arbitrariness or prejudice before it can brand them with the stigma of bias or partiality. Moreover, extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to palpable error which may be inferred from the decision or order itself. The only exception to the rule is when the error is so gross and patent as to produce an ineluctable inference of bad faith or malice.

7. ID.; ID.; ID.; MERE ALLEGATION OF MALICE OR BAD FAITH, NOT SUFFICIENT. — We do not find any abuse of discretion by the trial court in denying respondents' motion to inhibit. Our pronouncement in ***Webb, et al. v. People of the Philippines, et al.*** **is** ***apropos*****:** A perusal of the records will reveal that petitioners failed to adduce any extrinsic evidence to prove that respondent judge was motivated by malice or bad faith in issuing the assailed rulings. *Petitioners simply lean on the alleged series of adverse rulings of the respondent judge which they characterized as palpable errors. This is not enough*. We note that respondent judge's rulings resolving the various motions filed by petitioners were all made after considering the arguments raised by all the parties. x x x We hasten to stress that a party aggrieved by erroneous interlocutory rulings in the course of a trial is not without remedy. The range of remedy is provided in our Rules of Court and we need not make an elongated discourse on the subject. *But certainly, the remedy for erroneous rulings, absent any extrinsic evidence of malice or bad faith, is not the outright disqualification of the judge*. For there is yet to come a judge with the omniscience to issue rulings that are always infallible. The courts will close shop if we disqualify judges who err for we all err.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo and Ongsiako for petitioner.
Clarissa A. Castro for respondents.

D E C I S I O N

PUNO, *C.J.*:

Before the Court is a petition for review on *certiorari* assailing the Decision[1] dated July 18, 2005 of the Court of Appeals in CA–G.R. SP. No. 85282, and its Resolution[2] dated January 10, 2006, denying petitioner's motion for reconsideration.

---

[1] *Rollo*, pp. 52-63.

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

Spouses Damian and Tessie Amadeo are indebted to petitioner Philippine Commercial International Bank, a domestic uni-banking corporation, as sureties for Streamline Cotton Development Corporation. The promissory notes became due and demandable, but the Amadeo spouses failed to pay their outstanding obligations despite repeated demands. As of February 15, 1994, these obligations stood at Ten Million, Six Hundred Seventy-One Thousand, Seven Hundred Twenty-Six Pesos and Sixty-One Centavos (₱10,671,726.61).

Petitioner subsequently discovered that roughly a month before the due date of the promissory notes, the Amadeo spouses (i) sold three (3) or nearly all of their real properties to respondents, Spouses Wilson and Lolita Dy and Spouses Primo and Lilia Chuyaco, and (ii) immediately caused the transfer of the titles covering the parcels of land in favor of the latter. The consideration for these sales was further alleged to have been grossly insufficient or inadequate.

Believing that the transfers were done in fraud of creditors, petitioner instituted an action for rescission and damages on April 22, 1994. In its Complaint[3] in Civil Case No. 94-1585 against Spouses Amadeo, Dy and Chuyaco, petitioner asked the Regional Trial Court of Makati City for the following reliefs:

> 1. Annulling the Deeds of Absolute Sale both dated September 16, 1993 and thereafter, direct the Registries of Deeds of Sultan Kudarat and Davao City to cancel the Transfer Certificates of Title Nos. *(sic)* T-27628, T-202868, and T-202869 issued in the name of Wilson Dy Hong Pi and Lolita G. Dy AND Primo Chuyaco, Jr. and Lilia O. Chuyaco, respectively, and in lieu thereof, issue new ones under the name of Damian and Tessie Amadeo.
>
> 2. Ordering the defendants to pay the plaintiff moral damages in the sum of ₱200,000.00; exemplary damages in the sum of ₱200,000.00; and ₱100,000.00 as[,] and for[,] attorney's fees.[4]

---

[3] *Id.,* pp. 87-93.

[4] *Id.,* p. 91.

The case was then raffled to Branch 133, presided over by Judge Napoleon E. Inoturan.

Upon service of summons on the Amadeo spouses, the latter filed a Motion to Dismiss[5] on the ground that the Complaint violated the explicit terms of Supreme Court Circular No. 04-94, as the Verification was executed by petitioner's legal counsel.[6] Petitioner filed its Opposition to the Motion to Dismiss,[7] where it argued that (i) the rule cited by the Amadeo spouses should not be applied literally, and (ii) at any rate, petitioner's legal counsel was authorized by petitioner to institute the Complaint.[8] On February 4, 1995, the trial court issued an Order[9] denying the Motion to Dismiss.

The Amadeo spouses subsequently filed an Answer[10] where they alleged that petitioner failed to release the loans to Streamline Cotton Development Corporation on the agreed date, thereby constraining them to incur loans from third parties at high interest rates to keep the company afloat. These loans were covered by postdated checks which had to be funded once the obligations fell due, lest the Amadeo spouses face criminal prosecution. In order to pay the said loans, they thus had to sell the properties subject of this case. The Amadeo spouses further claimed that the purchase price for the three (3) parcels of land was the fair market value, and that they had other personal and real properties which may be availed of to answer for their obligations. In their Counterclaim, they prayed for moral damages of ₱200,000.00, attorney's fees and expenses of litigation.

Petitioner filed its Reply and Answer to Counterclaim[11] on March 8, 1995.

---

[5] *Id.,* pp. 111-112.

[6] The Motion to Dismiss the Complaint was filed on December 1, 1994.

[7] *Rollo,* pp. 113-118.

[8] The Opposition to the Motion to Dismiss was filed on January 30, 1995.

[9] *Rollo,* p. 120.

[10] *Id.,* pp. 121-127.

[11] *Id.,* pp. 128-130.

On September 13, 1995, petitioner filed an *Ex Parte* Motion for Leave to Serve Summons by Publication[12] on Spouses Dy and Chuyaco. However, this was denied in an Order[13] dated September 14, 1995 on the ground that summons by publication cannot be availed of in an action *in personam*.

Accordingly, on March 4, 1996, petitioner filed an Amended Complaint[14] to include allegations in support of, and a prayer for, a writ of preliminary attachment. Petitioner then presented evidence in relation thereto, and on February 25, 1997, the trial court issued an Order[15] for the issuance of the writ. Upon petitioner's *ex-parte* motion, the trial court likewise directed the Clerk of Court of the Regional Trial Court of Davao City to designate a Special Sheriff to implement the writ of preliminary attachment.[16]

In Orders[17] dated January 12, 1998 and February 20, 1998, respectively, petitioner was directed to inform the court whether it still intended to pursue the case. This appears to have been motivated by the fact that no property of the defendants had been attached as of yet. Petitioner did not comply with the said Orders; consequently, the case was dismissed without prejudice on June 26, 1998 for failure to prosecute.[18] By this time, petitioner had already caused the annotation of a notice of *lis pendens* at the back of the titles of the properties subject of this case (*i.e.*, TCT Nos. T-27628, T-202868, and T-202869).

On August 3, 1998, petitioner filed a Motion for Reconsideration of the June 26, 1998 Order, alleging that its failure to notify the trial court of its intention to pursue the case was prompted

---

[12] *Id.*, pp. 362-364.

[13] *Id.*, p. 365.

[14] *Id.*, pp. 131-139.

[15] *Id.*, p. 366.

[16] Order dated May 8, 1997; *id.*, p. 367.

[17] *Id.*, pp. 368-369.

[18] *Id.*, p. 370.

solely by the difficulty of locating properties against which the writ of attachment could be enforced. In the interest of justice, the trial court granted the motion.[19]

Defendant Spouses Amadeo, Dy and Chuyaco then filed an "Omnibus Motion to Dismiss and to Annul All the Proceedings Taken Against the Defendants"[20] on December 11, 1998, in which motion they questioned the jurisdiction of the trial court over their persons. Petitioner filed its Opposition[21] thereto on February 15, 1999. Defendants filed their Reply[22] on March 10, 1999, while petitioner filed its Rejoinder[23] on June 9, 1999. Said motion, however, was merely noted without action in an August 2, 2001 Order[24] since its notice of hearing was addressed only to the Clerk of Court, *viz*.:

> It appears from the Motion that its Notice of Hearing is not addressed to any of the parties concerned as otherwise required by Rule 15[,] Section 5 of the 1997 Rules of Civil Procedure. Such being the case, the Motion is deemed a mere scrap of paper as held in *Provident International Resources Corporation vs. Court of Appeals,* 259 SCRA 510.
>
> In any event, the record shows that defendants Sps. Amadeo have been duly served with summons as early as November 11, 1994 per Sheriff's Return of Service dated November 14, 1994, and they are therefore within the jurisdiction of the Court. However, defendants Spouses Dy and Chuyaco have not been served with summons as evidenced by Officer's Return dated May 24, 1994 and Return of Service dated June 10, 1994, respectively, and so the Court has not yet acquired jurisdiction over them. Since aforesaid Motion is deemed a scrap of paper, it cannot be construed to manifest a *(sic)* voluntary appearance on their part.

---

[19] Order dated September 14, 1998; *id.,* p. 374.

[20] *Id.,* pp. 157-160.

[21] *Id.,* pp. 161-164.

[22] *Id.,* pp. 165-166.

[23] *Id.,* pp. 167-171.

[24] *Id.,* p. 172.

Wherefore, the Omnibus Motion is noted without action. Let *alias* summons be issued to defendants-spouses Dy and Chuyaco. For plaintiff's guidance, it may avail itself of Rule 14[,] Section 14 on summons by publication if it so desires, upon proper motion.

SO ORDERED. (underscoring in the original)

Spouses Dy and Chuyaco subsequently filed a "Motion to Dismiss (for Lack of Jurisdiction)"[25] on February 18, 2002, in which motion they essentially accused petitioner of not causing summons to be served upon them and losing interest in the case. Petitioner filed its Opposition[26] thereto, and in an April 23, 2002 Order,[27] the trial court denied the Motion to Dismiss on account of (i) petitioner's Compliance and Manifestation[28] that it had not lost interest in pursuing the case, and (ii) the Motion for Leave of Court to Serve Summons by Publication that petitioner filed simultaneously with its Opposition. On April 24, 2002, the Motion for Leave of Court to Serve Summons by Publication was submitted for resolution.[29]

Respondent Spouses Dy and Chuyaco next filed a "Motion to Dismiss for Failure to Prosecute"[30] on June 17, 2003. The significant portions of the motion state:

2. That based on the order of this Honorable Court dated April 23, 2003 *(sic)*, the Motion for Leave of Court to Serve Summons by Publication was submitted for resolution, but the movants-defendants would like to remind the Honorable Court that a Motion of the same nature was already filed on September 13, 1995 and was DENIED on September 14, 1995. xxx;

---

[25] *Id.*, pp. 173-174.

[26] *Id.*, pp. 175-179.

[27] *Id.*, p. 180.

[28] The Compliance and Manifestation was in fact filed by registered mail on December 28, 2001, or almost two months before the "Motion to Dismiss (for Lack of Jurisdiction)" was filed. It appears that respondents' counsel did not receive her copy thereof because she moved to a new office without notifying petitioner's counsel.

[29] *Rollo*, p. 224.

[30] *Id.*, pp. 181-182.

3. That therefore, the order dated August 21, 2001 of this Honorable Court which advised the complainant to avail of Rule 14 Section 14 of the Rules is contrary to its order dated September 14, 1995;

4. That up to this date, the complainant has not lifted a finger to pursue this case against movants-defendants, hence, this Motion to Dismiss.

WHEREFORE, premises considered, it is most respectfully prayed that this case be dismissed against the movants-defendants and to order the deletion of the Notice of *Lis Pendens* at the back of the subject title *(sic)*.

This was opposed by petitioner, arguing that it had already filed a motion for the service of summons by publication, but the trial court had yet to act on it.[31] On July 25, 2003, this Motion was submitted for resolution.[32]

On November 4, 2003, Spouses Dy and Chuyaco personally, and not through their counsel, filed a "Motion for Inhibition without submitting themselves to the jurisdiction of this Honorable Court,"[33] the relevant portions of which state:

1. That since 1998, the defendants-movants have been moving for the dismissal of this case as far as the movants are concerned and to nullify the proceedings taken against them since the Honorable Court has not yet acquired jurisdiction over their persons when the plaintiff presented its evidence against defendants *(sic)* Sps. Damian and Tessie Amadeo and even thereafter;

2. That, however only on *(sic)* August 2, 2001 or after more than three (3) years, that this Honorable Court denied the said Motion to Dismiss due to technicality *(sic)* and merely require *(sic)* the plaintiff to serve the summons either personally or thru publication;

3. That, however in the order of this Honorable Court dated September 14, 1995, it already denied the *Ex-Parte* Motion for Leave to Serve Summons by Publication "considering that the action herein is in personam", hence, this order is contrary to its latest order dated August 2, 2001;

---

[31] *Id.,* pp. 183-187.

[32] *Id.,* p. 188.

[33] *Id.,* pp. 189-190.

4. That another Motion to Dismiss was filed last June 11, 2003[34] on the ground of lack of interest to pursue the case but up to this date, the Honorable Court has done nothing that delays *(sic)* the proceedings to the prejudice of the defendants-movants;

5. That this continuous delay in the proceedings shows that the Honorable Court may not be competent enough to further hear this case.

WHEREFORE, premises considered, it is most respectfully prayed for the inhibition of this Honorable Court *(sic)* from further hearing this case.

This was submitted for resolution on November 13, 2003.

The motion for inhibition was adopted by their counsel on record, Clarissa Castro, through a "Motion to Adopt Motion for Inhibition and Manifestation," which was filed on February 11, 2004[35] and noted by the trial court in a February 20, 2004 Order.[36] On June 23, 2004, however, the trial court (i) denied the motion for inhibition for lack of merit, (ii) ruled that Spouses Dy and Chuyaco have voluntarily submitted themselves to the jurisdiction of the trial court, and (iii) gave them fifteen (15) days from receipt of the Order within which to file their respective answers, as follows:

Acting on the Motion for Inhibition, the Court hereby denies the same for lack of legal basis.

In any event, the fact that defendants Wilson Dy and Primo Chuyaco, Jr. signed said Motion themselves and in behalf of their respective spouses undoubtedly indicates their voluntary appearance in this case and their submission to the jurisdiction of this Court. The phrase "without submitting themselves to the jurisdiction of this Honorable Court" in the heading of said Motion can not qualify the clear import of Rule 14 Section 20 which states:

> Voluntary appearance. — The defendant's voluntary appearance in the action shall be equivalent to service of

---

[34] This should be June 17, 2003.

[35] *Rollo*, pp. 191-192.

[36] *Id.*, p. 299.

summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance. (23a)

It may be noted that subject Motion for Inhibition is not a Motion to Dismiss.

Wherefore, defendants-spouses Dy and Chuyaco are given fifteen (15) days from receipt hereof within which to file their respective answers.

All pending incidents are deemed resolved.[37]

Unsatisfied with the Order, respondent Spouses Dy and Chuyaco filed a Petition for *Certiorari* under Rule 65[38] before the CA, alleging that "the public respondent committed grave abuse of discretion when he considered the Motion to Inhibit (without submitting to the jurisdiction of the Honorable Court) which they had filed to question his impartiality and competence due to the delay in resolving the Motion to Dismiss based on lack of jurisdiction, as voluntary appearance, and wherein he required the respondents to file their Answer within the required period." The CA granted the petition in this wise:

The old provision under Section 23, Rule 14 of the Revised Rules of Court provided that:

Section 23. *What is equivalent to service*. The defendant's voluntary appearance in the action shall be equivalent to service.

Under Section 20, Rule 14 of the 1997 Rules of Civil Procedure, the provision now reads as follows:

Sec. 20. *Voluntary Appearance*. — The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance.

What remains the same, carry *(sic)* over from the old doctrine, is that the issue of jurisdiction must be raised seasonably.

---

[37] *Id.,* pp. 193-194.

[38] *Id.,* pp. 195-224.

But everything else changed.

What changed is that: if a motion is filed, whatever kind it is, it need no longer be for the sole and separate purpose of objecting to the jurisdiction of the court because the motion may raise myriad issues in that one motion of special appearance as long as the objection to the jurisdiction of the court is included. xxx

What necessarily changed also is that the medium of "special appearance" is no longer restricted to a motion to dismiss because one could now file any type of motion provided you included the issue of lack of jurisdiction due to defective service of summons.

Thus, in this case at bar, the "two motions to dismiss" and the "motion to inhibit" may be treated as "special appearance" since they all included the issue of lack of jurisdiction due to non-service of summons. They did not constitute as submitting the movant to the jurisdiction of the court.

xxx xxx xxx

There being no proper service of summons on petitioners and there being no voluntary appearance by petitioners, the trial court did not acquire jurisdiction over the persons of the defendants, the herein petitioners. Any proceeding undertaken by the trial court against them would consequently be null and void.

WHEREFORE, premises considered, the assailed June 23, 2004 Order of the Regional Trial Court of Makati City, Branch 133, is hereby DECLARED NULL AND VOID as against herein petitioners. The April 22, 1994 complaint filed by Philippine Commercial International Bank is hereby DISMISSED as against herein petitioners DY and CHUYACO only, no jurisdiction over their persons having been acquired.

SO ORDERED.[39]

Petitioner's motion for reconsideration was denied by the appellate court.[40]

Hence this appeal, where petitioner argues that:

---

[39] *Id.,* pp. 17-19.

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

I.

THE COURT OF APPEALS ERRED IN DECLARING THE JUNE 23, 2004 ORDER OF THE TRIAL COURT NULL AND VOID AND IN DISMISSING THE COMPLAINT AS AGAINST RESPONDENTS DY AND CHUYACO AND RENDERING THE QUESTIONED DECISION AND RESOLUTION IN A WAY THAT IS NOT IN ACCORD WITH THE FACTS AND APPLICABLE LAWS AND JURISPRUDENCE, WHICH HOLD THAT BY THEIR SUCCESSIVE FILING OF MOTIONS WITH THE CONVENIENT CAVEAT THAT THEY ARE NOT SUBMITTING TO THE JURISDICTION OF THE COURT *A QUO*, THEY HAVE VOLUNTARILY SUBMITTED TO THE TRIAL COURT'S JURISDICTION.

A. THE HONORABLE COURT OF APPEALS ERRED WHEN IT DISMISSED THE CASE AS AGAINST DY AND CHUYACO.

B. THE SPOUSES DY AND CHUYACO HAVE LOST THEIR RIGHT TO QUESTION THE TRIAL COURT'S JURISDICTION OVER THEM WHEN THEY DID NOT RAISE THE DENIAL OF THEIR APRIL 22, 2002 MOTION TO DISMISS TO THE COURT OF APPEALS.

C. THE SPOUSES DY AND CHUYACO HAVE MISERABLY FAILED TO SHOW BASIS IN SEEKING THE TRIAL COURT'S JURISDICTION.

D. THE SPOUSES DY AND CHUYACO HAVE VOLUNTARILY SUBMITTED THEMSELVES TO THE TRIAL COURT'S JURISDICTION.

II.

THE COURT OF APPEALS ERRED IN A WAY THAT IS NOT IN ACCORD WITH APPLICABLE LAWS AND JURISPRUDENCE IN NOT DISMISSING THE PETITION FOR *CERTIORARI* NOTWITHSTANDING THAT THE DY AND CHUYACO SPOUSES FAILED TO SHOW THAT THERE IS NO APPEAL, OR ANY PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW AVAILABLE TO THEM.[41]

Simply stated, the issues are: (1) Was the petition for *certiorari* prematurely filed? (2) Has there been voluntary appearance

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

on the part of respondent Spouses Dy and Chuyaco as to confer the trial court with jurisdiction over their persons? and (3) Did the trial court correctly deny the motion for inhibition?

We shall discuss these issues in *seriatim*.

First Issue: Propriety of *Certiorari*

Petitioner contends that respondents subverted the settled rule that a Petition for *Certiorari* under Rule 65 is available only when there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.[42] It asserts that respondents' failure to move for reconsideration of the June 23, 2004 Order of the trial court, denying the latter's motion for inhibition, provides sufficient cause for the outright dismissal of the instant petition.

We disagree.

Petitioner is correct that a motion for reconsideration, as a general rule, must have first been filed before the tribunal, board, or officer against whom the writ of *certiorari* is sought.[43] This is intended to afford the latter an opportunity to correct any actual or fancied error attributed to it.[44] However, there are several exceptions where the special civil action for *certiorari* will lie even without the filing of a motion for reconsideration, namely:

a. where the order is a patent nullity, as where the court *a quo* has no jurisdiction;

---

[42] Section 1, Rule 65, 1997 Rules of Court.

[43] *Pure Foods Corporation v. National Labor Relations Commission,* G.R. No. 78591, March 21, 1989, 171 SCRA 415, 424; *Tan v. Sandiganbayan,* G.R. No. 128764, July 10, 1998, 292 SCRA 452, 457; *Bernardo, et al. v. Abalos, et al.,* G.R. No. 137266, December 5, 2001, 371 SCRA 459, 464; *Flores v. Sangguniang Panlalawigan of Pampanga, et al.,* G.R. No. 159022, February 23, 2005, 452 SCRA 278, 282; *Audi AG v. Mejia, et al.,* G.R. No. 167533, July 27, 2007, 528 SCRA 378, 383.

[44] *Pure Foods Corporation v. National Labor Relations Commission, et al., id.*; *Interorient Maritime Enterprises, Inc., et al. v. National Labor Relations Commission, et al.,* G.R. No. 115497, September 15, 1996, 261

b. where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;

c. where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the government or the petitioner, or the subject matter of the action is perishable;

d. where, under the circumstances, a motion for reconsideration would be useless;

e. where petitioner was deprived of due process and there is extreme urgency for relief;

f. where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

g. where the proceedings in the lower court are a nullity for lack of due process;

h. where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and

i. where the issue raised is one purely of law or where public interest is involved.[45]

SCRA 757, 765; *Tan v. Court of Appeals, et al.*, G.R. No. 108634, July 17, 1997, 275 SCRA 568, 574; *Progressive Development Corporation, Inc. v. Court of Appeals, et al.*, G.R. No. 123555, January 22, 1999, 301 SCRA 637, 647; *Yau v. The Manila Banking Corporation*, G.R. No. 126731, July 11, 2002, 384 SCRA 340, 348; *New Frontier Sugar Corporation v. Regional Trial Court, Branch 39, Iloilo City, et al.*, G.R. No. 165001, January 31, 2007, 513 SCRA 601, 610.

[45] *Marawi Marantao General Hospital, Inc., et al. v. Court of Appeals, et al.*, G.R. No. 141008, January 16, 2001, 349 SCRA 321, 333, citing *Tan v. Sandiganbayan, supra* note 43; *Abraham v. National Labor Relations Commission, et al.*, G.R. No. 143823, March 6, 2001, 353 SCRA 739, 744-745; *Metro Transit Organization, Inc. v. Court of Appeals, et al.*, G.R. No. 142133, November 19, 2002, 392 SCRA 229, 236; *Diamond Builders Conglomeration, et al. v. Country Bankers Insurance Corporation*, G.R. No. 171820, December 13, 2007, 540 SCRA 194, 210.

Otherwise stated, a motion for reconsideration may be dispensed with only if there are concrete, compelling, and valid reasons for doing so.[46]

We find that respondents' non-filing of a motion for reconsideration is justifiable under the circumstances of this case. It is not disputed that the trial court, rightly or wrongly, considered them to have voluntarily submitted to its jurisdiction by virtue of their motion for inhibition. Thus, respondents' apprehension that the motion for reconsideration might be construed as further manifesting their voluntary appearance is certainly well-grounded. They may not, therefore, be faulted for having resorted immediately to a special civil action for *certiorari*.

Second Issue: Voluntary Appearance

Preliminarily, jurisdiction over the defendant in a civil case is acquired either by the coercive power of legal processes exerted over his person, or his voluntary appearance in court.[47] As a general proposition, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court.[48] It is by reason of this rule that we have had occasion to declare that the filing of motions to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration, is considered voluntary submission to the court's jurisdiction.[49]

---

[46] *Flores v. Sangguniang Panlalawigan of Pampanga, et al., supra* note 43, citing *Metro Transit Organization, Inc. v. Court of Appeals, et al., id.*

[47] *Platinum Tours and Travel, Incorporated v. Panlilio*, G.R. No. 133365, September 16, 2003, 411 SCRA 142, 146.

[48] *Sapugay v. Court of Appeals*, G.R. No. 86792, 21 March 1990, 183 SCRA 464, 471.

[49] *Galicia, et al. v. Manliquez, et al.*, G.R. No. 155785, April 13, 2007, 521 SCRA 85, 94; *Hongkong and Shanghai Banking Corporation Limited v. Catalan*, G.R. No. 159590, October 18, 2004, 440 SCRA 498, 515; *Herrera-Felix v. Court of Appeals*, G.R. No. 143736, August 11, 2004, 436 SCRA 87, 93.

This, however, is tempered by the concept of conditional appearance, such that a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority.[50]

Prescinding from the foregoing, it is thus clear that:

(1) Special appearance operates as an exception to the general rule on voluntary appearance;

(2) Accordingly, objections to the jurisdiction of the court over the person of the defendant must be explicitly made, *i.e.*, set forth in an unequivocal manner; and

(3) Failure to do so constitutes voluntary submission to the jurisdiction of the court, especially in instances where a pleading or motion seeking affirmative relief is filed and submitted to the court for resolution.

Measured against these standards, it is readily apparent that respondents have acquiesced to the jurisdiction of the trial court as early as June 17, 2003, when they filed their Motion to Dismiss for Failure to Prosecute. Significantly, the motion did not categorically and expressly raise the jurisdiction of the court over their persons as an issue. It merely (i) "reminded" the court of its purportedly conflicting Orders in respect of summons by publication, (ii) alleged that because petitioner "has not lifted a finger to pursue this case against movants-defendants," the case may be dismissed for failure to prosecute, and (iii) prayed additionally for the deletion of the Notice of *Lis Pendens* indicated at the back of the transfer certificates of title covering the subject properties. We note, furthermore, that the motion failed to qualify the capacity in which respondents were appearing and seeking recourse.[51] It is in

---

[50] *Hongkong and Shanghai Banking Corporation Limited v. Catalan, id.*, 516; *Casimina v. Legaspi, et al.*, G.R. No. 147530, June 29, 2005, 462 SCRA 171, 180.

[51] The opening paragraph of the Motion to Dismiss for Failure to Prosecute stated: "COME NOW, defendants *(sic)* Sps. DY and Sps. CHUYACO, through counsel, unto this Honorable Court, most respectfully state: xxx."

this light that the Court's pronouncement in ***Busuego v. Court of Appeals***[52] finds cogent application:

> A voluntary appearance is a waiver of the necessity of a formal notice. *An appearance in whatever form, without explicitly objecting to the jurisdiction of the court over the person, is a submission to the jurisdiction of the court over the person.* While the formal method of entering an appearance in a cause pending in the courts is to deliver to the clerk a written direction ordering him to enter the appearance of the person who subscribes it, *an appearance may be made by simply filing a formal motion, or plea or answer*. This formal method of appearance is not necessary. He may appear without such formal appearance and thus submit himself to the jurisdiction of the court. *He may appear by presenting a motion, for example, and unless by such appearance he specifically objects to the jurisdiction of the court, he thereby gives his assent to the jurisdiction of the court over his person*.[53] (emphasis supplied)

Besides, any lingering doubts on the issue of voluntary appearance dissipate when the respondents' motion for inhibition is considered. This motion seeks a sole relief: inhibition of Judge Napoleon Inoturan from further hearing the case. Evidently, by seeking affirmative relief other than dismissal of the case, respondents manifested their voluntary submission to the court's jurisdiction. It is well-settled that the active participation of a party in the proceedings is tantamount to an invocation of the court's jurisdiction and a willingness to abide by the resolution of the case, and will bar said party from later on impugning the court's jurisdiction.[54]

To be sure, the convenient caveat in the title of the motion for inhibition (*i.e.*, "without submitting themselves to the jurisdiction of this Honorable Court") does not detract from this conclusion. It would suffice to say that the allegations in a pleading or motion are determinative of its nature; the

---

[52] G.R. No. L-48955, June 30, 1987, 151 SCRA 376, 385.

[53] Citing *Flores v. Zurbito*, 37 Phil. 746, 750.

[54] *Meat Packing Corporation of the Philippines v. Sandiganbayan, et al.*, G.R. No. 103068, June 22, 2001, 359 SCRA 409, 425.

designation or caption thereof is not controlling.[55] Furthermore, no amount of caveat can change the fact that respondents tellingly signed the motion to inhibit in their own behalf and not through counsel, let alone through a counsel making a special appearance.

Third Issue: Inhibition

Respondents argue that the trial court's so-called "continuous delay in the proceedings" is indicative of the fact that it is incompetent to continue hearing the case. Respondents therefore assert that the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it denied their motion to inhibit and required them to file their Answer.

We are not convinced.

Under the first paragraph of Section 1, Rule 137 of the Rules of Court, a judge or judicial officer shall be **mandatorily disqualified** to sit in any case in which:

(a) he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise; or

(b) he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of civil law; or

(c) he has been executor, administrator, guardian, trustee or counsel; or

(d) he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.[56]

---

[55] See *Tan, et al. v. Commission on Elections*, G.R. Nos. 148575-76, December 10, 2003, 417 SCRA 532, 546-547; *Sumulong v. Court of Appeals, et al.*, G.R. No. 108817, May 10, 1994, 232 SCRA 372, 385-386.

[56] Section 1, Rule 137 provides as follows:

Section 1.Disqualification of Judges — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel

Paragraph two of the same provision meanwhile provides for the rule on **voluntary inhibition** and states: "[a] judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above." That discretion is a matter of conscience and is addressed primarily to the judge's sense of fairness and justice.[57] We have elucidated on this point in ***Pimentel v. Salanga***,[58] as follows:

A judge may not be legally prohibited from sitting in a litigation. But when suggestion is made of record that he might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of circumstances reasonably capable of inciting such a state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired. A salutary norm is that he reflect on the probability that a losing party might nurture at the back of his mind the thought that the judge had unmeritoriously tilted the scales of justice against him. That passion on the part of a judge may be generated because of serious charges of misconduct against him by a suitor or his counsel, is not altogether remote. He is a man, subject to the frailties of other men. He should, therefore, exercise great care and caution before making up his mind to act in or withdraw from a suit where that party or counsel is involved. He could in good grace inhibit himself where that case could be heard by another judge and where no appreciable prejudice would be occasioned to others involved therein. On the result of his decision to sit or not to sit may depend to a great extent the all-important confidence in the

---

within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case for just or valid reasons other than those mentioned above.

[57] *Gochan, et al. v. Gochan, et al.*, G.R. No. 143089, February 27, 2003, 398 SCRA 323, 332.

[58] G.R. No. L-27934, September 18, 1967, 21 SCRA 160, 167-168.

impartiality of the judiciary. If after reflection he should resolve to voluntarily desist from sitting in a case where his motives or fairness might be seriously impugned, his action is to be interpreted as giving meaning and substances to the second paragraph of Section 1, Rule 137. He serves the cause of the law who forestalls miscarriage of justice.

The present case not being covered by the rule on mandatory inhibition, the issue thus turns on whether Judge Napoleon Inoturan should have voluntarily inhibited himself.

At the outset, we underscore that while a party has the right to seek the inhibition or disqualification of a judge who does not appear to be wholly free, disinterested, impartial and independent in handling the case, this right must be weighed with the duty of a judge to decide cases without fear of repression.[59] Respondents consequently have no vested right to the issuance of an Order granting the motion to inhibit, given its discretionary nature.[60]

However, the second paragraph of Rule 137, Section 1 does not give judges unfettered discretion to decide whether to desist from hearing a case.[61] The inhibition must be for just and valid causes, and in this regard, we have noted that the mere imputation of bias or partiality is not enough ground for inhibition, especially when the charge is without basis.[62] This Court has to be shown acts or conduct clearly indicative of arbitrariness or prejudice before it can brand them with the stigma of bias or partiality.[63] Moreover, extrinsic evidence is required to establish bias, bad

---

[59] *Webb, et al. v. People of the Philippines, et al.*, G.R. No. 127262, July 24, 1997, 276 SCRA 243, 253.

[60] *Gutang, et al. v. Court of Appeals, et al.*, G.R. No. 124760, July 8, 1998, 292 SCRA 76, 85.

[61] *Gochan, et al. v. Gochan, et al.*, *supra* note 57, 333.

[62] *Id*.

[63] *Id*.

faith, malice or corrupt purpose, in addition to palpable error which may be inferred from the decision or order itself.[64] The only exception to the rule is when the error is so gross and patent as to produce an ineluctable inference of bad faith or malice.[65]

We do not find any abuse of discretion by the trial court in denying respondents' motion to inhibit. Our pronouncement in ***Webb, et al. v. People of the Philippines, et al.***[66] is *apropos*:

> A perusal of the records will reveal that petitioners failed to adduce any extrinsic evidence to prove that respondent judge was motivated by malice or bad faith in issuing the assailed rulings. *Petitioners simply lean on the alleged series of adverse rulings of the respondent judge which they characterized as palpable errors. This is not enough.* We note that respondent judge's rulings resolving the various motions filed by petitioners were all made after considering the arguments raised by all the parties. xxx
>
> xxx xxx xxx
>
> We hasten to stress that a party aggrieved by erroneous interlocutory rulings in the course of a trial is not without remedy. The range of remedy is provided in our Rules of Court and we need not make an elongated discourse on the subject. *But certainly, the remedy for erroneous rulings, absent any extrinsic evidence of malice or bad faith, is not the outright disqualification of the judge*. For there is yet to come a judge with the omniscience to issue rulings that are always infallible. The courts will close shop if we disqualify judges who err for we all err. (emphasis supplied)

Truth be told, respondents are not entirely blameless for any perceived delay in the resolution of the various incidents of the case. For instance, they make much of the fact that close to three years passed before their "Omnibus Motion to Dismiss and to Annul All the Proceedings Taken Against the

---

[64] *Aleria, Jr. v. Velez, et al.*, G.R. No. 127400, November 16, 1998, 298 SCRA 611, 620; *Webb, et al. v. People of the Philippines, et al.*, *supra* note 59, 254.

[65] *Webb, et al. v. People of the Philippines, et al., id.*

[66] *Id*.

Defendants," filed on December 11, 1998, was noted by the trial court. But the fact remains that the said "motion," not having a notice of hearing addressed to the adverse party, is legally a mere scrap of paper.[67] It presents no question which merits the attention and consideration of the court, and is not entitled to judicial cognizance.[68]

Considering the foregoing, we rule that respondents' accusations of delay, incompetence, and bias on the part of the trial court are unfounded. Hence, they are not entitled to the inhibition of Judge Inoturan as a relief.

IN VIEW WHEREOF, the Petition is hereby *GRANTED*. The Decision dated July 18, 2005 of the Court of Appeals and its Resolution dated January 10, 2006 are hereby *REVERSED* and *SET ASIDE*, and another in their stead is hereby rendered *ORDERING* respondent Spouses Dy and Chuyaco to answer the Complaint in Civil Case No. 94-1585 within fifteen (15) days from receipt of this Decision.

The trial court is directed to proceed hearing the case, and to resolve the same with dispatch.

No costs.

SO ORDERED.

Carpio, Corona, Leonardo-de Castro, and *Bersamin, JJ.*, concur.

---

[67] *Neri v. de la Peña*, A.M. No. RTJ-05-1896, April 29, 2005, 457 SCRA 539, 545-546.

[68] *Spouses Cui, et al. v. Judge Madayag*, Adm. Matter No. RTJ-94-1150, June 5, 1995, 245 SCRA 1, 10.

FIRST DIVISION

[G.R. No. 171535. June 5, 2009]

MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY, *petitioner, vs.* **SPOUSES EDITO and MERIAN TIROL and SPOUSES ALEJANDRO and MIRANDA NGO,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; OBLIGATIONS OF VENDOR; DELIVERY OF THE THING SOLD; RULE IN CASE OF DOUBLE SALE; NOT APPLICABLE TO SALES INITIATED BY SEVERAL SUCCESSIVE VENDORS. — Reliance on Article 1544 of the New Civil Code is misplaced. In ***Cheng v. Genato, et al.,*** we enumerated the requisites that must concur for Article 1544 to apply, *viz*.: (a) The two (or more) sales transactions must constitute valid sales; (b) The two (or more) sales transactions must pertain to exactly the same subject matter; (c) The two (or more) buyers at odds over the rightful ownership of the subject matter must each represent conflicting interests; and (d) The two (or more) buyers at odds over the rightful ownership of the subject matter **must each have bought from the very same seller.** Obviously, said provision has no application in cases where the sales involved were initiated not by just one vendor but by several successive vendors.

2. ID.; LAND TITLES; LAND REGISTRATION ACT (RA NO. 496) FOR REGISTERED LAND AND ACT NO. 3344 FOR UNREGISTERED LAND; PROPER REGISTRATION OF LAND TITLE REQUIRED TO BE EFFECTIVE CONSTRUCTIVE NOTICE TO THE WHOLE WORLD; CASE AT BAR. — Well-settled is the rule that registration of instruments must be done in the proper registry in order to effect and bind the land. Prior to the Property Registration Decree of 1978, Act No. 496 (or the Land Registration Act) governed the recording of transactions involving **registered** land, *i.e.,* land with a Torrens title. On the other hand, Act No. 3344, as amended, provided for the system of recording of transactions over **unregistered**

real estate without prejudice to a third party with a better right. Accordingly, if a parcel of land covered by a Torrens title is sold, but the sale is registered under Act No. 3344 and not under the Land Registration Act, the sale is not considered registered and the registration of the deed does not operate as constructive notice to the whole world. Consequently, the fact that petitioner MCIAA was able to register its Deed of Absolute Sale under Act No. 3344 is of no moment, as the property subject of the sale is indisputably registered land. Section 50 of Act No. 496 in fact categorically states that it is the act of registration that shall operate to convey and affect the land; absent any such registration, the instrument executed by the parties remains only as a contract between them and as evidence of authority to the clerk or register of deeds to make registration, *viz*.: SECTION 50. An owner of registered land may convey, mortgage, lease, charge, or otherwise deal with the same as fully as if it had not been registered. He may use forms of deeds, mortgages, leases, or other voluntary instruments like those now in use and sufficient in law for the purpose intended. *But no deed, mortgage, lease, or other voluntary instrument, except a will, purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the land,* and in all cases under this Act the registration shall be made in the office of register of deeds for the province or provinces or city where the land lies. Hence, respondents may not be characterized as buyers in bad faith for having bought the property notwithstanding the registration of the first Deed of Absolute Sale under Act No. 3344. An improper registration is no registration at all. Likewise, a sale that is not correctly registered is binding only between the seller and the buyer, but it does not affect innocent third persons.

3. ID.; ID.; ID.; REGISTRATION OF LOST/DESTROYED LAND TITLE UNDER ACT NO. 3344, NOT PERMISSIBLE. — Petitioner is of the impression that registration under Act No. 3344 is permissible because the duplicate copy of the certificate of title covering Lot No. 4763-D had been lost or destroyed. This argument does not persuade. Our pronouncement in

Amodia Vda. de Melencion, et al. v. Court of Appeals, et al. is *apropos*: x x x *The fact that the certificate of title over the registered land is lost does not convert it into unregistered land. After all, a certificate of title is merely an evidence of ownership or title over the particular property described therein. This Court agrees with the petitioners that AZNAR should have availed itself of the legal remedy of reconstitution of the lost certificate of title, instead of registration under Act 3344.* x x x In the instant case, petitioner MCIAA did not bother to have the lost title covering Lot No. 4763-D reconstituted at any time, notwithstanding the fact that the Deed of Absolute Sale was executed in 1958, or more than fifty years ago. *Vigilantibus, non dormientibus, jura subveniunt.* Laws must come to the assistance of the vigilant, not of the sleepy.

4. ID.; ID.; PRINCIPLES OF LAND REGISTRATION; RELIANCE ON THE CERTIFICATE OF TITLE. — Under the established principles of land registration, a person dealing with registered land may generally rely on the correctness of a certificate of title and the law will in no way oblige him to go beyond it to determine the legal status of the property, except when the party concerned has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
RGR Law Office for respondents.

D E C I S I O N

PUNO, *C.J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure seeking to reverse, annul and set aside (i) the May 27, 2005 Decision[1] of the Court of Appeals in CA–G.R. CV No. 72867 entitled "***Spouses Edito and Merian Tirol, et al. v. Mactan-Cebu***

[1] *Rollo*, pp. 7-16.

International Airport Authority," and (ii) its February 17, 2006 Resolution[2] denying petitioner's motion for reconsideration.

The instant case finds its genesis in a complaint for quieting of title filed on August 8, 1996 by respondents, Spouses Edito and Merian Tirol and Spouses Alejandro and Miranda Ngo, against petitioner Mactan-Cebu International Airport Authority (MCIAA). The facts were aptly summarized by the Court of Appeals as follows:

> The instant appeal revolves around a certain parcel of land, Lot No. 4763-D, over which the parties to the above-entitled case assert ownership and possession.
>
> xxx xxx xxx
>
> Plaintiffs-appellees and business partners, Edito P. Tirol and Alejandro Y. Ngo, along with their respective spouses, claim to have purchased a 2,000 square meter parcel of land, Lot No. 4763-D, from a certain Mrs. Elma S. Jenkins, a Filipino citizen married to a certain Mr. Scott Edward Jenkins, an American citizen, per Deed of Absolute Sale dated September 15, 1993. Plaintiffs-appellees bought the said property on the strength of the apparent clean title of vendor Jenkins as evidenced by the Tax Declaration and Transfer Certificate of Title No. 18216, all under Mrs. Elma Jenkins' name, which bear no annotation of liens, encumbrances, *lis pendens* or any adverse claim whatsoever. After the sale wherein plaintiffs-appellees were purportedly purchasers for value and in good faith, they succeeded in titling the said lot under their names per Transfer Certificate of Title No. 27044 on September 20, 1993, and further proceeded to pay realty taxes thereon. It was only in January 1996 that plaintiffs-appellees discovered a cloud on their title when their request for a Height Clearance with the Department of Transportation and Communications was referred to the defendant-appellant Mactan[-]Cebu International Airport Authority (MCIAA, for brevity), on account of the latter's ownership of the said lot by way of purchase thereof dating far back to 1958.
>
> At this point, it becomes imperative to trace the chain of ownership over Lot No. 4763-D. It is undisputed that the original owners of said property were the spouses Julian Cuison and Marcosa Cosef, who owned the entire Lot No. 4763, of which Lot No. 4763-D is a

[2] *Id.* at 18.

portion of *(sic)*. Unfortunately for herein parties, this is where the similarity of facts end *(sic)*, and the instant controversy begins.

According to plaintiffs-appellees: Originally, the entire Lot No. 4763 was decreed in the names of spouses Julian Cuison and Marcosa Cosef under the provisions of the Land Registration Act on June 1, 1934. [In] January 1974, spouses Julian Cuison and Marcosa Cosef sold Lot No. 4763 to Spouses Moises Cuizon and Beatriz Patalinghug. The latter spouses thereafter succeeded to secure the reconstitution of Original Certificate of Title of Lot No. 4763, Opon Cadastre as evidenced by Court Order dated July 3, 1986. Said Court Order subsequently became final and executory, thus a reconstituted title, OCT No. RO-2754, was issued in the name of the original owners-spouses Julian Cuison and Marcosa Cosef. On September 12, 1986, the Deed of Absolute Sale between spouses Julian Cuison/Marcosa Cosef and spouses Moises Cuizon/Beatriz Patalinghug was registered and annotated on OCT No. RO-2754, which was cancelled to give way to the issuance of TCT No. 16735 in the name of spouses Moises Cuizon and Beatriz Patalinghug. Thereafter, the latter sold a portion, denominated as Lot No. 4763-D, to Mrs. Elma Jenkins on December 15, 1987, who[,] as earlier discussed, sold the same lot to herein plaintiffs-appellees on September 15, 1993. Plaintiffs-appellees contend that all throughout the chain of ownership, the titles – albeit from a reconstituted one – of the previous owners were absolutely devoid of any annotations of liens, encumbrances, *lis pendens*, adverse claim, or anything that may cause a reasonable man of ordinary prudence and diligence to suspect the contrary. Furthermore, plaintiffs-appellees have been in actual, uninterrupted and peaceful possession of the property since 1993, and if the possession of their predecessors-in-interest be tacked, plaintiffs-appellees would be in constructive, uninterrupted and peaceful possession for sixty-two (62) long years as of the date of filing their Complaint for Quieting of Title in the court *a quo*.

According to the defendant-appellant: On March 23, 1986[3], the original owners, spouses Julian Cuison and Marcosa Cosef sold Lot No. 4763 to the government, through the [then] Civil Aeronautics Administration (CAA, for brevity). In a Certificate dated March 19, 1959, vendor Julian Cuison confirmed that he was the possessor and actual owner of Lot No. 4763 which was located within the "Mactan

[3] This should be March 23, 1958.

Alternate International Airport" and that the duplicate copy of the certificate of title was lost or destroyed during the last war without him or his predecessor(s)-in-interest having received a copy thereof. Since then, the government, through defendant-appellant MCIAA, has been in open, continuous, exclusive and adverse possession of the property in the concept of owner. Said lot allegedly became part of the Clear Zone of Runway 22 for purposes of required clearance for take-off and landing. Moreover, defendant-appellant asserts that plaintiffs-appellees are nothing more than trustees of Lot No. 4763-D in favor of defendant-appellant MCIAA, being merely successors-in-interest of the original owners, spouses Julian Cuison and Marcosa Cosef, who undertook in paragraph 4 of the Deed of Absolute Sale, to assist in the reconstitution of title so that the land may be registered in the name of vendee government, through defendant-appellant MCIAA. In paragraph 5 of the same Deed of Absolute Sale, the parties also agreed that the property be registered under Act 3344 pending the reconstitution and issuance of title. Purportedly, in gross and evident bad faith and in open violation of their Deed of Absolute Sale, the spouses Julian Cuison and Marcosa Cosef again sold the same property to spouses Moises Cuizon and Beatriz Patalinghug, who in turn sold the lot to Mrs. Elma Jenkins, who eventually sold the same to herein plaintiffs-appellees. Defendant-appellant MCIAA further imputes bad faith to plaintiffs-appellees under the rationale that because their title came from a reconstituted one and that Lot No. 4763 was within the Clear Zone of Runway 22 of the airport, plaintiffs-appellees should have exerted effort in researching the history of ownership and cannot possibly claim to be innocent of MCIAA's ownership and possession thereof.[4]

In its December 4, 2000 Decision,[5] the trial court ruled in favor of petitioner MCIAA in this wise:

WHEREFORE, premises considered, the Court rules in favor of defendant and thus DISMISSES the complaint of plaintiffs for want of merit.

The Republic of the Philippines, represented by the defendant MCIAA, is adjudged as *(sic)* the lawful owner of the entire Lot 4763, Opon Cadastre.

---

[4] *Rollo,* pp. 7-10.

[5] Records, pp. 222-230.

The Deed of Absolute Sale involving Lot 4763-D in favor of plaintiffs is hereby declared null and void.

Transfer Certificate of Title No. 27044 for Lot 4763-D under the names of plaintiffs is likewise deemed null and void.

The Register of Deeds is directed to issue to the defendant MCIAA a transfer certificate of title covering the whole Lot 4763.

The counterclaim of defendant, however, is denied for lack of merit.

No pronouncement as to costs.

SO ORDERED.

The trial court held that there was a valid transfer of title from Spouses Julian Cuison and Marcosa Cosef to the Civil Aeronautics Administration (CAA), and accordingly, the respondents did not buy Lot No. 4763-D from a person who could validly dispose of it. It likewise ruled that the government (through the CAA, and now respondent MCIAA) has been in possession of the disputed land since it bought the same in 1958, when a public deed of absolute sale was executed in its favor. Lastly, respondents were considered as having bought Lot No. 4763-D in bad faith since they ignored circumstances that should have made them curious enough to investigate beyond the four corners of the Transfer Certificate of Title. In the trial court's view, the facts that Lot No. 4763-D (i) is only about 320 meters from the center of the runway and therefore part of the clear zone and (ii) has been vacant for several decades should have alerted the respondents to the possibility that the lot could be part of the airport complex and therefore owned by petitioner.

Respondents filed their Motion for Reconsideration[6] on January 23, 2001, and a Supplemental *(sic)* to Motion for Reconsideration[7] on May 17, 2001. Petitioner duly filed its Opposition[8] to the said Motions on April 10, 2001 and June 13, 2001, respectively.

---

[6] *Id.* at 232-234.

[7] *Id.* at 245-252.

[8] *Id.* at 238-241, 258-274.

In an Order[9] dated August 9, 2001, the trial court did a complete *volte face* and reversed its Decision. Holding that Article 1544[10] of the New Civil Code – which set forth the rule on double sales – finds application to the instant case, the trial court ratiocinated:

> In the words of the Supreme Court in *Cruz vs. Cabana*, this Court finds that in the case of [a] double sale of real property[,] Article 1544 of the New Civil Code applies. Defendant was certainly the first buyer and the plaintiffs [were] the subsequent buyers, to be exact fourth *(sic)*.
>
> But who among the parties herein has a better right to Lot No. 4763-D? To answer this question, it is necessary to determine first the issue [of] whether or not the plaintiffs were buyers in good faith.
>
> xxx xxx xxx
>
> The Court is not convinced that indeed the plaintiffs were buyers in bad faith. xxx The registration of the deed of absolute sale by the defendant at the Registry of Deeds under Act No. 3344 sometime in 1959 is not the registration being contemplated under the law. *"Registration under Act No. 3344 differs materially from registration under the Spanish Mortgage Law and under the Land Registration Act. In the Spanish Mortgage Law[,] there is [an] express provision (Article 17) to the effect that titles recorded thereunder cannot be annulled or invalidated by prior unrecorded rights, while the Land Registration Act (No. 496) contains a special disposition that only transactions noted on the certificate of title and entered in the registry books can bind the land. On the other hand, transactions registered under Act No. 3344 cannot defeat a third person with a better right.*

---

[9] *Id.* at 282-287.

[10] This provision provides:

> If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken 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 the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

Of course[,] the law does not define exactly what may be considered a better right, leaving the matter of its construction to the courts. The main reason for the difference in the operation of Act No. 3344 compared with the other systems of registration lies obviously in the fact that recordings under said Act No. 3344 are not preceded by any investigation, judicial or administrative, as to the validity or efficacy of the title sought to be recorded." It is undisputed that Lot No. 4763 was a registered land, only that at the time of registering defendant's document of sale there was no copy of the certificate of title because the same was not available due to the after effect of the last global war.

Hence, the Court agrees with the plaintiffs when they contended that *"even at the time when OCT No. RO-2754 was issued[,] there was no document allegedly proving its (defendant) ownership being annotated on the certificate of title."* At the time when Transfer Certificates of Title Nos. 16735, 18216 and 27044 were issued to the plaintiffs and their predecessors-in-interest, there were no annotations of the alleged claim of the defendant. Thus, the plaintiffs have all the good reasons to rely on the validity of the titles. xxx

xxx xxx xxx

xxx The fact that Lot No. 4763-D was within 320 meters from the center of the runway and within airport premises, was part of the clear zone, and had long been vacant are not enough warning to third persons dealing [with] such land. It was undisputed that the lot in controversy is outside the perimeter fence of the defendant. The fact that the said lot was part of the clear zone is not sufficient justification to warn the plaintiffs in *(sic)* buying it. Such fact was merely for the purpose of construction of buildings, not for realty ownership.[11] (italics in the original)

Aggrieved, petitioner then appealed to the Court of Appeals which rendered a Decision[12] on May 27, 2005, the dispositive portion of which states:

WHEREFORE, premises considered, the appeal is hereby DENIED. Accordingly, the assailed Order dated August 9, 2001 is AFFIRMED.

SO ORDERED.

---

[11] Records, pp. 284-286.

[12] *Supra* note 1 at 16.

On June 21, 2005, petitioner seasonably moved for its reconsideration but the Court of Appeals denied the same in its February 17, 2006 Resolution.[13]

Hence this appeal under Rule 45 of the 1997 Rules of Civil Procedure, where petitioner argues that:

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW WHEN IT AFFIRMED THE AUGUST 9, 2001 ORDER OF THE TRIAL COURT EVEN IF THE SAME IS NOT SUPPORTED BY THE EVIDENCE ON RECORD.[14]

Simply stated, the issue may be synthesized as follows: Between respondents Spouses Tirol and Spouses Ngo, on the one hand, and petitioner MCIAA, on the other, who has the superior right to the subject property?

We rule in favor of the respondents, but on grounds different than those relied upon by the Court of Appeals and the trial court.

Preliminarily, reliance on Article 1544 of the New Civil Code is misplaced. In ***Cheng v. Genato, et al.***,[15] we enumerated the requisites that must concur for Article 1544 to apply, *viz*.:

(a) The two (or more) sales transactions must constitute valid sales;

(b) The two (or more) sales transactions must pertain to exactly the same subject matter;

(c) The two (or more) buyers at odds over the rightful ownership of the subject matter must each represent conflicting interests; and

(d) The two (or more) buyers at odds over the rightful ownership of the subject matter **must each have bought from the very same seller.**

---

[13] *Rollo,* p. 18.

[14] *Id.* at 10.

[15] 360 Phil. 891, 909 (1998).

Obviously, said provision has no application in cases where the sales involved were initiated not by just one vendor but by several successive vendors.[16] In the instant case, respondents and petitioner had acquired the subject property from different transferors. Petitioner, through its predecessor-in-interest (CAA), acquired the entire Lot No. 4763 from its original owners, spouses Julian Cuison and Marcosa Cosef, on March 23, 1958. On the other hand, respondents acquired the subject parcel of land, a portion of Lot No. 4763, from Mrs. Elma Jenkins, another transferee, some thirty-five years later. The immediate transferors of Elma Jenkins were the spouses Moises Cuizon and Beatriz Patalinghug who, in turn, obtained the subject property from spouses Julian Cuison and Marcosa Cosef. Therefore, the instant controversy cannot be governed by Article 1544 since petitioner and respondents do not have the same immediate seller.

This notwithstanding, we find that respondents have a better right to Lot No. 4763-D.

Petitioner does not contest that Lot No. 4763, of which the property subject of this case is a part, was registered under Act No. 496 (the Land Registration Act) even before the Second World War. Paragraph 4 of the Deed of Absolute Sale[17] between petitioner and Spouses Julian Cuison and Marcosa Cosef stipulates, in relevant part:

That since the Original/Transfer Certificate of Title of the aforementioned property has been lost and/or destroyed, or since the said lot is covered by Cadastral Case No. 20 and a decree issued on July 29, 1930, xxx *the VENDEE hereby binds itself to reconstitute said title at its own expense* and that the VENDOR, his heirs, successors and assigns bind themselves to help in the reconstitution of title so that the said lot may be registered in the name of the VENDEE in accordance with law. (italics supplied)

---

[16] See also *Spouses Ong, et al. v. Spouses Olasiman*, G.R. No. 162045, March 28, 2006, 485 SCRA 464.

[17] Records, pp. 162-165.

Additionally, in his Certification[18] dated March 19, 1959, Julian Cuison stated that "the duplicate copy of the certificate of title for [Lot No. 4763] was lost or destroyed during the last war without having been received by [him] or [his] predecessor-in-interest."

In this regard, well-settled is the rule that registration of instruments must be done in the proper registry in order to effect and bind the land.[19] Prior to the Property Registration Decree of 1978, Act No. 496 (or the Land Registration Act) governed the recording of transactions involving **registered land,** *i.e.*, land with a Torrens title. On the other hand, Act No. 3344, as amended, provided for the system of recording of transactions over **unregistered** real estate without prejudice to a third party with a better right.[20] Accordingly, if a parcel of land covered by a Torrens title is sold, but the sale is registered under Act No. 3344 and not under the Land Registration Act, the sale is not considered registered[21] and the registration of the deed does not operate as constructive notice to the whole world.[22]

Consequently, the fact that petitioner MCIAA was able to register its Deed of Absolute Sale under Act No. 3344 is of no moment, as the property subject of the sale is indisputably registered land. Section 50 of Act No. 496 in fact categorically states that it is the act of registration that shall operate to convey and affect the land; absent any such registration, the instrument executed

---

[18] *Id.* at 166.

[19] *Soriano, et al. v. The Heirs of Domingo Magali*, G.R. No. L-15133, July 31, 1953, 8 SCRA 489, 494-495; *Spouses Abrigo v. De Vera*, G.R. No. 154409, June 21, 2004, 432 SCRA 544, 552; *Aznar Brothers Realty Company v. Aying, et al.*, G.R. No. 144773, May 16, 2005, 458 SCRA 496, 511.

[20] *Radiowealth Finance Co. v. Palileo*, G.R. No. 83432, May 20, 1991, 197 SCRA 245, 249.

[21] *Amodia Vda. de Melencion, et al. v. Court of Appeals, et al.*, G.R. No. 148846, September 25, 2007, 534 SCRA 62, 79 citing *Spouses Abrigo v. De Vera, supra* note 19.

[22] *Republic of the Philippines v. Heirs of Francisca Dignos-Sorono*, G.R. No. 171571, March 24, 2008, 549 SCRA 58, 63, 67.

by the parties remains only as a contract between them and as evidence of authority to the clerk or register of deeds to make registration, *viz.*:

> SECTION 50. An owner of registered land may convey, mortgage, lease, charge, or otherwise deal with the same as fully as if it had not been registered. He may use forms of deeds, mortgages, leases, or other voluntary instruments like those now in use and sufficient in law for the purpose intended. *But no deed, mortgage, lease, or other voluntary instrument, except a will, purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the land,* and in all cases under this Act the registration shall be made in the office of register of deeds for the province or provinces or city where the land lies. (italics supplied)

Hence, respondents may not be characterized as buyers in bad faith for having bought the property notwithstanding the registration of the first Deed of Absolute Sale under Act No. 3344. An improper registration is no registration at all. Likewise, a sale that is not correctly registered is binding only between the seller and the buyer, but it does not affect innocent third persons.[23]

Petitioner, however, is of the impression that registration under Act No. 3344 is permissible because the duplicate copy of the certificate of title covering Lot No. 4763-D had been lost or destroyed. This argument does not persuade. Our pronouncement in ***Amodia Vda. de Melencion, et al. v. Court of Appeals, et al***.[24] is *apropos*:

> In the case at bench, it is uncontroverted that the subject property was under the operation of the Torrens System even before the respective conveyances to AZNAR and Go Kim Chuan were made. AZNAR knew of this, and admits this as fact. Yet, despite this knowledge, AZNAR registered the sale in its favor under Act 3344 on the contention that at the time of sale, there was no title on file. We are not persuaded by such a lame excuse.

---

[23] *Revilla, et al. v. Galindez*, 107 Phil. 480, 484 (1960).

[24] *Supra* note 21.

xxx xxx xxx

In this case, since the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale in favor of AZNAR was registered under Act No. 3344 and not under Act No. 496, the said document is deemed not registered. Rather, it was the sale in favor of Go Kim Chuan which was registered under Act No. 496.

AZNAR insists that since there was no Torrens title on file in 1964, insofar as the vendors, AZNAR, and the Register of Deeds are concerned, the subject property was unregistered at the time. The contention is untenable. *The fact that the certificate of title over the registered land is lost does not convert it into unregistered land. After all, a certificate of title is merely an evidence of ownership or title over the particular property described therein. This Court agrees with the petitioners that AZNAR should have availed itself of the legal remedy of reconstitution of the lost certificate of title, instead of registration under Act 3344.* We note that in *Aznar Brothers Realty Company v. Aying, AZNAR,* beset with the similar problem of a lost certificate of title over a registered land, sought the reconstitution thereof. It is unfortunate that, in the instant case, despite the sale of the subject property way back in 1964 and the existence of the remedy of reconstitution at that time, AZNAR opted to register the same under the improper registry (Act 3344) and allowed such status to lie undisturbed.[25] (italics supplied)

In the instant case, petitioner MCIAA did not bother to have the lost title covering Lot No. 4763-D reconstituted at any time, notwithstanding the fact that the Deed of Absolute Sale was executed in 1958, or more than fifty years ago. *Vigilantibus, non dormientibus, jura subveniunt.* Laws must come to the assistance of the vigilant, not of the sleepy.[26] As a matter of fact, this entire controversy may very well have been avoided had it not been for petitioner's negligence.

Furthermore, under the established principles of land registration, a person dealing with registered land may generally rely on the correctness of a certificate of title and the law will

---

[25] *Id.* at 79-80.

[26] *Claverias v. Quingco*, G.R. No. 77744, March 6, 1992, 207 SCRA 66, 84.

in no way oblige him to go beyond it to determine the legal status of the property,[27] except when the party concerned has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry.[28] Applying this standard to the facts of this case, we rule that respondents exercised the required diligence in ascertaining the legal condition of the title to the subject property as to be considered innocent purchasers for value and in good faith. We quote with favor the factual findings of the Court of Appeals in this respect:

> Defendant-appellant MCIAA also asseverates that the close proximity of the property to the runway of the airport (320 meters from the center line of the runway) and the fact that it has been vacant for a considerable period should have caused [plaintiffs-appellees] to be dubious of the title of the previous owners thereof. This was, in Our opinion, satisfactorily explained by plaintiffs-appellees when witness Mr. Edito Tirol testified in open court that he never thought it strange that the land had always been vacant, and that besides, there were private houses beside the vacant lot, suggesting that the property must be of private ownership and not that of the airport. Furthermore, he testified that he undertook great care in verifying the clean title of the said land, [*e.g.*,] deputizing an employee to do the necessary research, personally copying pertinent documents registered in the Registry of Property and even consulting legal advice on the matter. These, for Us, are badges of good faith. Besides, being allegedly part of the Clear Zone, ATO aviation rules proscribe merely the installation of buildings and other physical structures, except landing facilities. Aviation rules (which, although repeatedly invoked, interestingly were not presented before the court by defendant-appellant MCIAA) do not prohibit realty ownership.[29]

IN VIEW WHEREOF, the Petition is hereby *DENIED*. The May 27, 2005 Decision and the February 17, 2006 Resolution of the Court of Appeals are *AFFIRMED*.

---

[27] *Naawan Community Rural Bank, Inc. v. Court of Appeals, et al.*, 443 Phil. 56, 59 (2003).

[28] *Id.* at 65-66.

[29] *Rollo*, p. 14.

SO ORDERED.

Carpio, Corona, Leonardo-de Castro, and *Bersamin, JJ.*, concur.

FIRST DIVISION

[G.R. No. 171762. June 5, 2009]

LYNN MAAGAD and The DIRECTOR OF LANDS, *petitioners, vs.* **JUANITO MAAGAD,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; RULES OF ADMISSIBILITY; EVIDENCE OF WRITTEN AGREEMENTS; GENERAL RULE; "MISTAKE" AS AN EXCEPTION TO THE RULE. — The parol evidence rule, as relied on by the RTC to decide in favor of Lynn Maagad, proscribes any addition to or contradiction of the terms of a written agreement by testimony purporting to show that, at or before the signing of the document, other or different terms were orally agreed upon by the parties. However, the rule is not absolute and admits of exceptions. Thus, among other grounds, a party may present evidence to modify, explain, or add to the terms of the written agreement if he puts in issue in his pleading a **mistake** in the written agreement. For the mistake to validly constitute an exception to the parol evidence rule, the following elements must concur: (1) the mistake should be of fact; (2) the mistake should be mutual or common to both parties to the instrument; and (3) the mistake should be alleged and proved by clear and convincing evidence.

2. ID.; ID.; WHAT NEED NOT BE PROVED; JUDICIAL ADMISSIONS. — It is well-settled that a judicial admission conclusively binds the party making it. He cannot thereafter take a position contradictory to, or inconsistent with his pleadings. Acts or facts admitted do not require proof and cannot be contradicted unless it is shown that the admission

was made through palpable mistake or that no such admission was made.

3. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC LAND ACT; FREE PATENT APPLICATION; REQUIREMENTS. — The pertinent provision of the Public Land Act, as amended by Republic Act No. 6940, explicitly states the requirements for a free patent to be issued, *viz*.: Sec. 44. Any natural-born citizen of the Philippines who is not the owner of more than twelve (12) hectares and who, for at least thirty (30) years prior to the effectivity of this 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, who shall have paid the real estate tax thereon while the same has not been occupied by any person shall be entitled, under the provisions of this Chapter, to have a free patent issued to him for such tract or tracts of such land not to exceed twelve (12) hectares. The Order approving the free patent application of petitioner Lynn, representing the Heirs of Adelo Maagad, stated that "the applicant ha[d] already complied with all the requirements of the law for the issuance of patent to the land." As clearly provided by Sec. 44 of the Public Land Act, the requirements include, among others, that: (1) the applicant has continuously occupied *and* cultivated, either by himself or through his predecessors-in-interest, the tract or tracts of agricultural public lands; (2) he shall have paid the real estate tax thereon; and (3) the land has not been occupied by any person.

4. ID.; ID.; ID.; ID.; FRAUD AND GROSS MISREPRESENTATION, COMMITTED IN THE FREE PATENT APPLICATION. — Petitioner Lynn Maagad committed fraud and gross misrepresentation in his free patent application. Actual or positive fraud proceeds from an intentional deception practiced by means of misrepresentation of material facts, which in this case was the conscious misrepresentation by petitioner that he was a fully qualified applicant possessing all the requirements provided by law. Moreover, failure and intentional omission of the petitioner-applicant to disclose the fact of actual physical possession by the respondent constitutes an allegation of actual fraud. It is likewise fraud to knowingly omit or conceal a fact, upon which benefit is obtained to the prejudice of a third person.

APPEARANCES OF COUNSEL

Elizer C. Flores for petitioner.
Salcedo-Babarin and Babarin Law Office for respondent.

D E C I S I O N

PUNO, *C.J.*:

This petition for review on *certiorari*[1] assails the Decision of the Court of Appeals (CA)[2] in CA-G.R. CV No. 56663. The CA reversed and set aside the Decision of the Regional Trial Court (RTC)[3] of Misamis Oriental, which dismissed for lack of evidence the Complaint for Annulment and/or Reconveyance of Title with Damages filed by herein respondent.

The parcel of land in dispute is Lot No. 6297, Cad-237, C-5 (Lot 6297) with an area of five thousand, one hundred thirty-four square meters (5,134 sq. m.) located in Bulua, Cagayan de Oro City. Lot 6297 formed part of the estate of Proceso Maagad. Upon his death sometime in 1963[4] or 1965,[5] he was survived by his children Amadeo, Adelo (father of petitioner Lynn), Loreto and Juanito (respondent), all surnamed Maagad.

On 20 June 1972, the heirs of Proceso executed an Extrajudicial Partition of Real Estate (Partition)[6] dividing among themselves

---

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

[2] Promulgated on 7 February 2006; penned by Associate Justice Rodrigo F. Lim, Jr., with the concurrence of Associate Justices Teresita Dy-Liacco Flores and Ramon R. Garcia, Twenty-First Division; *rollo*, pp. 18-40.

[3] Promulgated on 6 March 1997; CA *rollo*, pp. 46-53.

[4] Records, p. 32.

[5] *Id.* at 113; TSN, 15 November 1995, p.9.

[6] Exhibit "N", index of exhibits, pp. 22-27.

their father's properties. In the Partition, Lot 6297 was conveyed to Adelo while Lot No. 6270[7] was allotted to respondent Juanito.

Respondent Juanito claimed that the Partition mistakenly adjudicated Lot 6297 to Adelo, and Lot No. 6270 to himself, when it should have been the reverse. He asserted that: (1) he had been in continuous possession of Lot 6297 even before the death of their father, Proceso; (2) the lot was given to him by their father when Juanito married in 1952; (3) he had been religiously paying the realty taxes due the land; and (4) Adelo, up to his death in 1989, recognized and respected Juanito's possession and ownership over Lot 6297 and, in turn, possessed and paid realty taxes for Lot No. 6270.

To rectify the alleged mistake, respondent Juanito and the children of Adelo, namely: Dina, Ely and petitioner Lynn, executed on 29 January 1990 a Memorandum of Exchange which stated in part:

xxx xxx xxx

2. That the ownership of the parties over the said properties [is] not absolute considering the fact that there was a mistake in designating the owner of the respective properties. Lot No. 6270 should have been given to the Party of the Second Part and Lot No. 6297 should have been allotted to the Party of the First Part. This wrong designation was committed in the settlement and partition of the estate of the late Proceso Maagad.

3. That the parties herein in order to correct the foregoing error, do hereby covenanted and/or agreed to EXCHANGE THE SAID PROPERTIES in such a way that LOT NO. 6270 shall now belong or [be] exclusively owned by the Party of the Second Par[t], while LOT NO. 6297 shall be owned and belong to the Party of the First Part. That proper transfer of tax declarations shall be made in accordance with this agreement of exchange.[8]

---

[7] Also forms part of Proceso Maagad's estate, with an area of one thousand, nine hundred ten square meters (1,910 sq. m.).

[8] Exhibit "L", index of exhibits, p. 19.

However, an erroneous assignment of the "Party of the First Part" and the "Party of the Second Part" resulted in a repeat of the mistake attendant in the Partition which the parties had intended to correct. Thus, once again, Lot 6297 was allotted to the heirs of the now deceased Adelo while Lot No. 6270 was partitioned to respondent Juanito. The latter only discovered the error later on in the year when petitioner Lynn caused the publication of the Partition in a local newspaper.

Unbeknownst to respondent Juanito, on 15 October 1992, petitioner Lynn, representing his siblings, applied for a free patent over Lot 6297 with the Bureau of Lands, Cagayan de Oro City. On 6 January 1993, he wrote respondent demanding the surrender of the possession of Lot 6297 which the latter ignored, believing in good faith that the demand had no basis.

Subsequently, petitioner Lynn's free patent application was approved and Free Patent No. 104305-93-932 was issued on 4 August 1993. Pursuant thereto, OCT No. P-3614,[9] in the name of the Heirs of Adelo Maagad represented by Lynn V. Maagad, was issued and recorded in the Register of Deeds of Cagayan de Oro City on 10 August 1993.

Thus, on 21 February 1994, respondent Juanito filed a Complaint for Annulment of Title with Damages before the RTC, which was later amended to include a prayer for the alternative relief of reconveyance of title.

Trial ensued. After presentation of the plaintiff's evidence, then defendant and herein petitioner, Lynn Maagad, filed a demurrer to evidence alleging that based on the facts established and the laws applicable to the case, then plaintiff and herein respondent, Juanito Maagad, had not shown any right to the reliefs prayed for.

On 6 March 1997, the RTC granted the demurrer and dismissed the case for lack of evidence. It ratiocinated, *viz*.:

---

[9] Exhibit "F", *id.* at 9-10.

When the heirs of Proceso Maagad executed the Extra-judicial Partition, all the four (4) heirs signed the document on the agreement that what was adjudicated to them should now belong to each of them. The allegation of the witnesses for plaintiff [now respondent] that Lot No. 6297 was only mistakenly adjudicated to Adelo Maagad as plaintiff's children were in possession of the property is belied by the fact that plaintiff signed the Extra-judicial Partition. Whatever right plaintiff may have had over the property had been waived by his signing the document.

It is worthy to note that a Deed of Exchange was executed at the instance of plaintiff 18 years after the partition. But still, it is clear under the terms of the document that Lot No. 6297 belongs to Adelo Maagad and Lot No. 6270 belongs to Juanito. [The] [p]ertinent provision of law applicable to the aforestated issue is Section 9 of Rule 130 which states:

> "SECTION 9. Evidence of written agreements. — When the terms of an agreement have been reduced to writing, i[t] i[s] considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other tha[n] the contents of the written agreement."

Plaintiff is not allowed to alter the contents of the extra-judicial partition by parol evidence. Parol evidence rule forbids any addition to or contradiction of the terms of a written instrument. x x x

Even granting arguendo that there was a mistake in the extra-judicial partition, plaintiff's evidence still fall[s] short of justifying the reformation of the instrument. The testimonies of its witnesses have not proved by clear and convincing evidence that the alleged mistake did not express the true intention of the parties.

xxx xxx xxx

WHEREFORE, premises considered, judgment is hereby rendered dismissing the above-entitled case for lack of evidence.[10]

On appeal, the CA reversed and set aside the ruling of the RTC, *viz.*:

---

[10] CA *rollo*, pp. 51-53.

WHEREFORE, all the foregoing considered, the appeal is hereby **GRANTED** and the assailed decision is **REVERSED AND SET ASIDE**. OCT No. P-3614 issued to the Heirs of Adelo Maagad is hereby declared **NULL AND VOID** and plaintiff-appellant declared the rightful owner and possessor of Lot No. 6297, Cad 237, C-5.[11]

Hence, this petition for review on *certiorari* which calls upon the Court to resolve the following issues: (1) whether Juanito Maagad has a superior right over Lot 6297; (2) whether OCT No. P-3614, issued pursuant to the free patent application, should be declared null and void; and corollarily, (3) whether the title can be reconveyed to respondent.

On the question of whether respondent Juanito Maagad has a superior right over Lot 6297, the CA ruled in the affirmative, *viz.*:

The records of the case indubitably show that the Deed of Extrajudicial Partition executed in 1972 between and among the heirs of Proce[s]o Maagad, namely Adelo, Juanito, Loreto and Amadeo, contained a patent mistake by the erroneous adjudication of Lot No. 6297 to Adelo, herein defendant-appellee's [now petitioner's] father, considering that the said lot had long been in the actual possession of plaintiff-appellant [now respondent], through his father, and of the adjudication of Lot No. 6270 to plaintiff-appellant when the same had already been declared in Adelo's name.

Consequently, the necessity to rectify the error arose. Hence, on January 29, 1990, plaintiff-appellant together with Adelo's heirs, including herein defendant-appellee Lynn, executed a Memorandum of Exchange to conform to the real intention of the extra-judicial partition. The instrument intended to exchange [Lot Nos.] 6297 and 6270; specifically, to transfer Lot No. 6297 from the heirs of Adelo Maagad to plaintiff-appellant, and in turn, to effect the transfer of Lot No. 6270 from the latter to the former. But for reasons beyond the intervention of the parties, the Memorandum of Exchange reflected the same mistake, thus, no exchange of property was in reality effected.

We find, however, that notwithstanding the failure to effect the exchange of the properties, defendant-appellee's voluntary and active participation in the execution of the Memorandum of Exchange clearly

[11] *Rollo*, p. 40.

demonstrated his recognition of the mistake in the instrument of partition. The intent to effect the exchange in order to correct the defect in the partition was strongly manifested when defendant-appellee voluntarily subscribed to the instrument. By his act, the latter is estopped from negating the existence of the mistake in the adjudication of the properties and of plaintiff-appellant's pre-existing rights over Lot No. 6297.

Hence, We find defendant-appellee's contention tenuous that Lot No. 6297 belonged to him and his siblings by way of inheritance from their father Adelo, who in turn obtained the same through the Extrajudicial Partition. It would be highly illogical and absurd for the parties to execute a Memorandum of Exchange in the first place if there was nothing to exchange at all, unless the purpose of said exchange was precisely to rectify and effect the correct adjudication of the two lots in question.[12] (emphasis added)

The parol evidence rule,[13] as relied on by the RTC to decide in favor of Lynn Maagad, proscribes any addition to or contradiction of the terms of a written agreement by testimony purporting to show that, at or before the signing of the document, other or different terms were orally agreed upon by the parties.[14]

---

[12] *Id.* at 30-32.

[13] REVISED RULES ON EVIDENCE, Rule 130, Section 9.

SEC. 9. *Evidence of written agreements*. — When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors-in-interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:

(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;

(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;

(c) The validity of the written agreement; or

(d) The existence of other terms agreed to by the parties or their successors-in-interest after the execution of the written agreement.

The terms "agreement" includes wills. (7a)

[14] *Amoncio v. Benedicto*, G.R. No. 171707, 28 July 2008, 560 SCRA 219.

However, the rule is not absolute and admits of exceptions. Thus, among other grounds, a party may present evidence to modify, explain, or add to the terms of the written agreement if he puts in issue in his pleading a **mistake** in the written agreement. For the mistake to validly constitute an exception to the parol evidence rule, the following elements must concur: (1) the mistake should be of fact; (2) the mistake should be mutual or common to both parties to the instrument; and (3) the mistake should be alleged and proved by clear and convincing evidence.[15]

We find that all the elements are present in the case at bar and there was indeed a mistake in the terms of the Partition, thus exempting respondent Juanito from the general application of the parol evidence rule.

We agree with the CA that "[i]t would be highly illogical and absurd for the parties to execute a Memorandum of Exchange in the first place if there was nothing to exchange at all, unless the purpose of said exchange was precisely to rectify and effect the correct adjudication of the two lots in question."[16] **The mere fact of execution of a Memorandum of Exchange itself indicates the existence of a mistake in the Partition which the parties sought to correct.** The existence of such mistake is further cemented with statements in the Memorandum of Exchange, *viz.*:

xxx xxx xxx

2. That the ownership of the parties over the said properties [is] not absolute considering the fact that **there was a mistake in designating the owner of the respective properties**. x x x

3. That the parties herein **in order to correct the foregoing error**, do hereby covenanted and/or agreed to EXCHANGE THE SAID PROPERTIES x x x.[17] (emphases added)

---

[15] *Bank of the Philippine Islands v. Fidelity & Surety Co.*, 51 Phil. 57 (1927).

[16] *Rollo*, p. 32.

[17] Exhibit "L", index of exhibits, p. 19;

The strongest evidence of mistake, however, is the admission by the petitioner himself. In his Petition for Review on *Certiorari*, petitioner admits that, because of mutual mistake, the Memorandum of Exchange failed to express the agreement of the parties to exchange the properties. Moreover, he quotes, and agrees with, the decision of the CA and even refers to the reformation of the original contract. Petitioner states:

The Memorandum of Exchange failed to rectify the mistake in the Partition because of another mistake. In this instance, there was an error in the identification of the "Party of the First Part" and the "Party of the Second Part" such that the erroneous distribution of Lot Nos. 6297 and 6270 in the Partition was reflected in the Memorandum.

This comedy of errors where a mistake exists in two written agreements, with the latter agreement executed to correct the former, deserves further discussion. While it is true that the natural presumption is that one always acts with due care and signs with full knowledge of all the contents of a document for which he cannot repudiate the transaction (*Tan Tua Sia v. Yu Biao Sontua*, 56 Phil. 707 [1932]), the presumption does not apply when the contract is in a language not understood by one of the parties. The pertinent provision of the Civil Code reads:

Art. 1332. When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former. (n)

Teodora Maagad, wife of respondent and witness to the execution of the Memorandum of Exchange, testified that the Memorandum was in English and was not translated to Visayan dialect (TSN, 15 November 1995, p. 54) which is the language used and fully understood by the respondent. She also stated that the content of the Memorandum was read aloud to the parties by the son of the lawyer who prepared the document. Her husband, hard of hearing, just signed it (TSN, 15 November 1995, p. 46). Courts are given a wide latitude in weighing the facts or circumstances in a given case and in deciding in favor of what they believe actually occurred, considering the age, physical infirmity, intelligence, relationship and the conduct of the parties at the time of making the contract and subsequent thereto (*Leonardo v. Court of Appeals*, G.R. No. 125485, 13 September 2004, 438 SCRA 201). We consider the advanced age of the respondent, his hearing defect, his unfamiliarity with the English language used in the Memorandum, and the fact that he was executing it among his relatives as sufficient reasons to grant him some leniency for failing to detect yet another mistake in a written agreement he has signed.

In the case at bar, it became apparent that there was failure of the Memorandum of Exchange to disclose the real agreement of the parties brought about by the mutual mistakes of the parties as reflected in the said instrument (Article 1361, Civil Code of the Philipp[in]es).[18]

Thus[,] **by reason of the mutual mistake which did not express the true intent and agreement of the parties from a prior oral agreement to exchange the property** before they have attempted to reduce it in writing, which attempt fails by reason of such mistake, hence reformation enforces the original contract, if necessary.

As aptly quoted from the basic decision, p. 15, thus:

> "Hence, WE find defendant-appellee's contention tenuous that Lot No. 6297 belonged to him and his siblings by way of inheritance from their father, Adelo, who in turn obtained the same through Extra-judicial Partition. It would be highly illogical and absurd for the parties to execute a Memorandum of Exchange in the first place if there was nothing to exchange at all, unless the purpose of said exchange was precisely to rectify and effect the correct adjudication of the two lots in question.

Indeed there was an attempt to rectify and effect the correct adjudication of the two lots in question.[19] (emphases added)

It is well-settled that a judicial admission conclusively binds the party making it. He cannot thereafter take a position contradictory to, or inconsistent with his pleadings. Acts or facts admitted do not require proof and cannot be contradicted unless it is shown that the admission was made through palpable mistake or that no such admission was made.[20] In the case at bar, there is no proof of such exceptional circumstances, nor were they even alleged or availed of by the petitioner.

Therefore, with the mistake in both the Partition and the Memorandum of Exchange duly shown and admitted, we agree with the CA that respondent Juanito Maagad has a superior right

---

[18] Art. 1361. When a mutual mistake of the parties causes the failure of the instrument to disclose their real agreement, said instrument may be reformed.

[19] *Rollo*, pp. 14-15.

[20] *St. Mary's Farm, Inc. v. Prima Real Properties, Inc.*, G.R. No. 158144, 31 July 2008, 560 SCRA 704.

over Lot 6297 pursuant to the intended distribution of properties in the Partition.

We now proceed to the second and third issues of whether OCT No. P-3614 should be declared null and void; and corollarily, whether it can be reconveyed to respondent. The CA held that the certificate of title, having been issued pursuant to an invalid free patent, is null and void. Being null and void, it cannot be reconveyed as it produced no legal effect.

Again, we agree with the CA.

The pertinent provision of the Public Land Act,[21] as amended by Republic Act No. 6940,[22] explicitly states the requirements for a free patent to be issued, *viz.*:

> Sec. 44. Any natural-born citizen of the Philippines who is not the owner of more than twelve (12) hectares and who, for at least thirty (30) years prior to the effectivity of this 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, who shall have paid the real estate tax thereon while the same has not been occupied by any person shall be entitled, under the provisions of this Chapter, to have a free patent issued to him for such tract or tracts of such land not to exceed twelve (12) hectares.

The Order approving the free patent application of petitioner Lynn, representing the Heirs of Adelo Maagad, stated that "the applicant ha[d] already complied with all the requirements of the law for the issuance of patent to the land."[23] As clearly provided by Sec. 44 of the Public Land Act, the requirements include, among others, that: (1) the applicant has continuously occupied *and* cultivated, either by himself or through his predecessors-in-interest, the tract or tracts of agricultural public lands; (2) he shall have

---

[21] Commonwealth Act No. 141.

[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).

[23] Exhibit "E", index of exhibits, p. 8.

paid the real estate tax thereon; and (3) the land has not been occupied by any person.

A perusal of the records clearly shows, however, that petitioner is not entitled to apply for, much less be granted, a free patent over Lot 6297. When petitioner filed his free patent application on 15 October 1992, he claimed prior, actual, and continuous possession and cultivation of the lot. Yet such claim is belied by the letter, dated 6 January 1993, he subsequently sent to respondent demanding surrender of the possession of the property. The letter reads:

January 6, 1993

Mr. Juanito Maagad
Zone 8, Bulua,
Cagayan de Oro City

Dear Mr. Maagad,

Please be informed that the parcel of land, Lot No. 6297 **which has been occupied by your children** situated at Bulua, Cagayan de Oro City had been the same property adjudicated in favor of ADELO MAAGAD as per Extra-Judicial Partition of Real Estate executed by and between the Heirs of Proceso Maagad before Notary Public, Ricardo A. Tapia per Doc. No. 433, Page No. 88, Book No. IV, series of 1972.

In this connection, my client, **Lynn V. Maagad, one of the Heirs of Adelo Maagad, desires to recover possession over the said Lot No. 6297**. And, being close relatives it is hoped that you could peacefully turn-over possession over the said property to Lynn V. Maagad, without resorting to the costly avenue of litigation.

Anticipating your kind cooperation on the matter.

Very truly yours,

(SGD.) ELIZER C. FLORES

At my instance:

(SGD.) LYNN V. MAAGAD[24] (emphases added)

[24] Exhibit "H", *id.* at 13.

The letter proves that (1) petitioner Lynn was not in possession, much less occupation, of Lot 6297; and (2) he had knowledge that the same was occupied by another person, contrary to the claims he made when he applied for the free patent. Moreover, the records show that it was, in fact, respondent who had possessed, occupied and cultivated Lot 6297 by planting coconut trees thereon since around 1950.

Petitioner also claims that he had been religiously paying the realty taxes due Lot 6297 presenting, as evidence, Tax Declaration No. 9365-140001 in the name of the Heirs of Adelo Maagad[25] and an Official Receipt.[26] The claim is again belied by a perusal of the evidence. The tax declaration and official receipt were issued only on 15 September 1993 and 8 October 1993, respectively, both **after the land title to the subject property had already been issued** on 10 August 1993. In fact, the tax declaration notes that it was transferred by virtue of such land title. The records again show that it was respondent Juanito who had been paying the realty taxes.

In view of the foregoing, we hold that petitioner Lynn Maagad committed fraud and gross misrepresentation in his free patent application. Actual or positive fraud proceeds from an intentional deception practiced by means of misrepresentation of material facts,[27] which in this case was the conscious misrepresentation by petitioner that he was a fully qualified applicant possessing all the requirements provided by law. Moreover, failure and intentional omission of the petitioner-applicant to disclose the fact of actual physical possession by the respondent constitutes an allegation of actual fraud. It is likewise fraud to knowingly omit or conceal a fact, upon which benefit is obtained to the prejudice of a third person.[28]

---

[25] Exhibit "B", *id.* at 4.

[26] *Id.* at 5.

[27] *Gasataya v. Mabasa*, G.R. No. 148147, 16 February 2007, 516 SCRA 105.

[28] *Heirs of Manuel A. Roxas v. Court of Appeals*, G.R. No. 118436, 21 March 1997, 270 SCRA 309.

Petitioner Lynn Maagad was never qualified to apply for a free patent. Hence, the free patent granted on the bases of fraud and misrepresentation is null and void. Consequently, OCT No. P-3614 issued pursuant thereto is likewise null and void. Being such, it cannot be reconveyed. *Quod nullum est, nullum producit effectum*. That which is a nullity produces no effect.

IN VIEW WHEREOF, the instant petition for review on *certiorari* is *DENIED*. The assailed 7 February 2006 Decision of the Court of Appeals in CA-G.R. CV No. 56663 is *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

Carpio, Corona, Leonardo-de Castro, and *Bersamin, JJ.,* concur.

SECOND DIVISION

[G.R. No. 171763. June 5, 2009]

MARIA LUISA PARK ASSOCIATION, INC. (MLPAI), *petitioner, vs.* **SAMANTHA MARIE T. ALMENDRAS and PIA ANGELA T. ALMENDRAS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; HOME INSURANCE GUARANTY CORPORATION (HIGC), NOW HOUSING AND LAND USE REGULATORY BOARD (HLURB); JURISDICTION; REGULATORY AND ADJUDICATIVE FUNCTIONS OVER HOMEOWNERS' ASSOCIATIONS. — The instant controversy falls squarely within the exclusive and original jurisdiction of the Home Insurance and Guaranty Corporation (HIGC), now HLURB. Originally, administrative

supervision over homeowners' associations was vested by law with the Securities and Exchange Commission (SEC). However, pursuant to Executive Order No. 535, the HIGC assumed the regulatory and adjudicative functions of the SEC over homeowners' associations. Section 2 of E.O. No. 535 provides: 2. In addition to the powers and functions vested under the Home Financing Act, the Corporation, shall have among others, the following additional powers: (a) . . . and exercise all the powers, authorities and responsibilities that are vested on the Securities and Exchange Commission with respect to homeowners associations, the provision of Act 1459, as amended by P.D. 902-A, to the contrary notwithstanding; (b) To regulate and supervise the activities and operations of all houseowners associations registered in accordance therewith; x x x Moreover, by virtue of this amendatory law, the HIGC also assumed the SEC's original and exclusive jurisdiction under Section 5 of Presidential Decree No. 902-A to hear and decide cases involving: b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; **between any and/or all of them and the corporation, partnership or association of which they are stockholders, members or associates,** respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity; x x x

2. ID.; ID.; ID.; ID.; ID.; CONTROVERSY BETWEEN THE HOMEOWNERS' ASSOCIATION AND SOME OF ITS MEMBERS. — In *Sta. Clara Homeowners' Association v. Gaston* and *Metro Properties, Inc. v. Magallanes Village Association, Inc.*, the Court recognized HIGC's "Revised Rules of Procedure in the Hearing of Home Owner's Disputes," pertinent portions of which are reproduced below: RULE II Disputes Triable by HIGC/Nature of Proceedings Section 1. *Types of Disputes* — The HIGC or any person, officer, body, board or committee duly designated or created by it shall have jurisdiction to hear and decide cases involving the following: x x x (b) Controversies arising out of intra-corporate relations between and among members of the association, **between any or all of them and the association of which they are members,** and between such association and the state/general public or other entity in so far as it concerns its right to exist as a corporate

entity. x x x Later on, the above-mentioned powers and responsibilities, which had been vested in the HIGC with respect to homeowners' associations, were transferred to the HLURB pursuant to Republic Act No. 8763, entitled "Home Guaranty Corporation Act of 2000." In the present case, there is no question that respondents are members of petitioner MLPAI as they have even admitted it. Therefore, as correctly ruled by the trial court, the case involves a controversy between the homeowners' association and some of its members. Thus, the exclusive and original jurisdiction lies with the HLURB. Indeed, in *Sta. Clara Homeowners' Association v. Gaston*, we held: . . . the **HIGC exercises limited jurisdiction over homeowners' disputes. The law confines its authority to controversies that arise from any of the following intra-corporate relations:** (1) between and among members of the association; (2) **between any and/or all of them and the association of which they are members;** and (3) between the association and the *state* insofar as the controversy concerns its right to exist as a corporate entity.

3. ID.; ID.; ID.; ID.; THE SUBDIVISION AND CONDOMINIUM BUYERS' PROTECTIVE DECREE (P.D. No. 957); INCLUDES ISSUES REGARDING SUBDIVISIONS AND CONDOMINIUMS. — The extent to which the HLURB has been vested with quasi-judicial authority must also be determined by referring to Section 3 of P.D. No. 957, which provides: SEC. 3. *National Housing Authority*. — The National Housing Authority shall have exclusive jurisdiction **to regulate the real estate trade and business** in accordance with the provisions of this Decree. The provisions of P.D. No. 957 were intended to encompass all questions regarding subdivisions and condominiums. The intention was aimed at providing for an appropriate government agency, the HLURB, to which all parties aggrieved in the implementation of provisions and the enforcement of contractual rights with respect to said category of real estate may take recourse. The business of developing subdivisions and corporations being imbued with public interest and welfare, any question arising from the exercise of that prerogative should be brought to the HLURB which has the technical know-how on the matter. In the exercise of its powers, the HLURB must commonly interpret and apply contracts and determine the rights of private parties under such contracts. This ancillary power

is no longer a uniquely judicial function, exercisable only by the regular courts.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; COMPLAINT FOR DECLARATORY RELIEF; NOT APPRECIATED WHERE THE DISPUTED FACT WOULD BE THE DETERMINATIVE OF ISSUES RATHER THAN A CONSTRUCTION OF DEFINITE STATED RIGHTS, STATUS AND OTHER RELATIONS, COMMONLY EXPRESSED IN A WRITTEN INSTRUMENT; CASE AT BAR. — It is apparent that although the complaint was denominated as one for declaratory relief/annulment of contracts, the allegations therein reveal otherwise. It should be stressed that respondents neither asked for the interpretation of the questioned by-laws nor did they allege that the same is doubtful or ambiguous and require judicial construction. In fact, what respondents really seek to accomplish is to have a particular provision of the MLPAI's by-laws nullified and thereafter absolve them from any violations of the same. In *Kawasaki Port Service Corporation v. Amores*, the rule was stated: . . . where a declaratory judgment as to a disputed fact would be determinative of issues rather than a construction of definite stated rights, status and other relations, commonly expressed in written instrument, the case is not one for declaratory judgment. Contrary to the observation of the Court of Appeals, jurisdiction cannot be made to depend on the exclusive characterization of the case by one of the parties. While respondents are questioning the validity or legality of the MLPAI's articles of incorporation and its by-laws, they did not, however, raise any legal ground to support its nullification. The legality of the by-laws in its entirety was never an issue in the instant controversy but merely the provision prohibiting multi-dwelling which respondents assert they did not violate. So to speak, there is no justiciable controversy here that would warrant declaratory relief, or even an annulment of contracts.

5. ID.; JURISDICTION; DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT AND THE NATURE OF THE RELIEF SOUGHT. — In jurisdictional issues, what determines the nature of an action for the purpose of ascertaining whether a court has jurisdiction over a case are the allegations in the complaint and the nature of the relief sought.

6. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF PRIMARY ADMINISTRATIVE JURISDICTION; HLURB IN CASE AT BAR. — Under the doctrine of primary administrative jurisdiction, courts cannot or will not determine a controversy where the issues for resolution demand the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact. In the instant case, the HLURB has the expertise to resolve the basic technical issue of whether the house built by the respondents violated the Deed of Restriction, specifically the prohibition against multi-dwelling. As observed in *C.T. Torres Enterprises, Inc. v. Hibionada*: The argument that only courts of justice can adjudicate claims resoluble under the provisions of the Civil Code is out of step with the fast-changing times. There are hundreds of administrative bodies now performing this function by virtue of a valid authorization from the legislature. This quasi-judicial function, as it is called, is exercised by them as an incident of the principal power entrusted to them of regulating certain activities falling under their particular expertise. In the Solid Homes case for example the Court affirmed the **competence of the Housing and Land Use Regulatory Board to award damages although this is an essentially judicial power exercisable ordinarily only by the courts of justice**. This departure from the traditional allocation of governmental powers is justified by expediency, or the need of the government to respond swiftly and competently to the pressing problems of the modern world.

7. ID.; ID.; ID.; ID.; ID.; PRESENT AN ARBITRATION AGREEMENT, THE SAME MUST FIRST BE ENFORCED. — The terms of Article XII of the MLPAI by-laws clearly express the intention of the parties to bring first to the arbitration process all disputes between them before a party can file the appropriate action. The agreement to submit all disputes to arbitration is a contract. As such, the arbitration agreement binds the parties thereto, as well as their assigns and heirs. Respondents, being members of MLPAI, are bound by its by-laws, and are expected to abide by it in good faith. In the instant case, we observed that while both parties exchanged correspondence pertaining to the alleged violation of the Deed of Restriction, they, however, made no earnest effort to resolve their differences in accordance with

> the arbitration clause provided for in their by-laws. Mere exchange of correspondence will not suffice much less satisfy the requirement of arbitration. Arbitration being the mode of settlement between the parties expressly provided for in their by-laws, the same should be respected. Unless an arbitration agreement is such as absolutely to close the doors of the courts against the parties, the courts should look with favor upon such amicable arrangements. Arbitration is one of the alternative methods of dispute resolution that is now rightfully vaunted as "the wave of the future" in international relations, and is recognized worldwide. To brush aside a contractual agreement calling for arbitration in case of disagreement between the parties would therefore be a step backward.

APPEARANCES OF COUNSEL

Florido & Largo Law Office for petitioner.
Diores Law Offices for respondents.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review on *certiorari* assails the Decision[1] dated August 31, 2005 and the Resolution[2] dated February 13, 2006 of the Court of Appeals in CA-G.R. SP No. 81069.

The facts, culled from the records, are as follows:

On February 6, 2002, respondents Samantha Marie T. Almendras and Pia Angela T. Almendras purchased from MRO Development Corporation a residential lot located in Maria Luisa Estate Park, Banilad, Cebu City. After some time, respondents filed with petitioner Maria Luisa Park Association, Incorporated

---

[1] *Rollo*, pp. 70-77. Penned by Associate Justice Sesinando E. Villon, with Associate Justices Enrico A. Lanzanas and Ramon M. Bato, Jr., concurring.

[2] *Id.* at 83-84. Penned by Associate Justice Enrico A. Lanzanas, with Associate Justices Isaias P. Dicdican and Ramon M. Bato, Jr., concurring.

(MLPAI) an application to construct a residential house, which was approved in February 10, 2002. Thus, respondents commenced the construction of their house.

Upon ocular inspection of the house, MLPAI found out that respondents violated the prohibition against multi-dwelling[3] stated in MLPAI's Deed of Restriction. Consequently, on April 28, 2003, MLPAI sent a letter to the respondents, demanding that they rectify the structure; otherwise, it will be constrained to forfeit respondents' construction bond and impose stiffer penalties.

In a Letter[4] dated April 29, 2003, respondents, as represented by their father Ruben D. Almendras denied having violated MLPAI's Deed of Restriction.

On May 5, 2003, MLPAI, in its reply, pointed out respondents' specific violations of the subdivision rules, to wit: (a) installation of a second water meter and tapping the subdivision's main water pipeline, and (b) construction of "two separate entrances that are mutually exclusive of each other." It likewise reiterated its warning that failure to comply with its demand will result in its exercise of more stringent measures.

In view of these, respondents filed with the Regional Trial Court of Cebu City, Branch 7, a Complaint[5] on June 2, 2003 for Injunction, Declaratory Relief, Annulment of Provisions of Articles and By-Laws with Prayer for Issuance of a Temporary Restraining Order (TRO)/Preliminary Injunction.

MLPAI moved for the dismissal of the complaint on the ground of lack of jurisdiction and failure to comply with the arbitration clause[6] provided for in MLPAI's by-laws.

In an Order[7] dated July 31, 2003, the trial court dismissed the complaint for lack of jurisdiction, holding that it was the

---

[3] *Id.* at 35-52.

[4] Records, p. 46.

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

[6] *Rollo*, p. 34 (Article XII-Mode of Dispute Resolution).

[7] *Id.* at 53-56. Penned by Judge Simeon P. Dumdum, Jr.

Housing and Land Use Regulatory Board (HLURB) that has original and exclusive jurisdiction over the case. Respondents moved for reconsideration but their motion was denied.

Aggrieved, the respondents questioned the dismissal of their complaint in a petition for *certiorari* and prohibition before the Court of Appeals.

The Court of Appeals granted the petition in its Decision dated August 31, 2005, the dispositive portion of which reads:

> WHEREFORE**,** in view of all the foregoing, the petition is **GRANTED** and the assailed orders of the respondent trial court are declared **NULL AND VOID**, and **SET ASIDE**. Respondent RTC is hereby ordered to take jurisdiction of Civil Case No. CEB-29002.
>
> SO ORDERED.[8]

MLPAI filed a motion for reconsideration but it was denied by the Court of Appeals in its Resolution dated February 13, 2006.

Hence, this petition raising the following issues:

> I.
>
> WHETHER THE HONORABLE COURT OF APPEALS HAS DISREGARDED LAWS AND WELL-SETTLED JURISPRUDENCE IN HOLDING THAT JURISDICTION OVER [THE] DISPUTE BETWEEN HOMEOWNERS AND HOMEOWNERS' ASSOCIATION LIES WITH THE REGULAR COURTS AND NOT WITH HLURB.
>
> II.
>
> WHETHER THERE IS NO OTHER RELIEF AND REMEDY AVAILABLE TO PETITIONER TO AVERT THE CONDUCT OF A VOID [PROCEEDING] THAN THE PRESENT RECOURSE.[9]

Simply stated, the issue is whether the appellate court erred in ruling that it was the trial court and not the HLURB that has jurisdiction over the case.

---

[8] *Id.* at 76.

[9] *Id.* at 126.

Petitioner MLPAI contends that the HLURB[10] has exclusive jurisdiction over the present controversy, it being a dispute between a subdivision lot owner and a subdivision association, where the latter aimed to compel respondents to comply with the MLPAI's Deed of Restriction, specifically the provision prohibiting multi-dwelling.

Respondents, on the other hand, counter that the case they filed against MLPAI is one for declaratory relief and annulment of the provisions of the by-laws; hence, it is outside the competence of the HLURB to resolve. They likewise stated that MLPAI's rules and regulations are discriminatory and violative of their basic rights as members of the association. They also argued that MLPAI's acts are illegal, immoral and against public policy and that they did not commit any violation of the MLPAI's Deed of Restriction.

We agree with the trial court that the instant controversy falls squarely within the exclusive and original jurisdiction of the Home Insurance and Guaranty Corporation (HIGC),[11] now HLURB.

---

[10] Executive Order No. 90 dated December 17, 1986.

IDENTIFYING THE GOVERNMENT AGENCIES ESSENTIAL FOR THE NATIONAL SHELTER PROGRAM AND DEFINING THEIR MANDATES, CREATING THE HOUSING AND URBAN DEVELOPMENT COORDINATING COUNCIL, RATIONALIZING FUNDING SOURCES AND LENDING MECHANISMS FOR HOME MORTGAGES AND FOR OTHER PURPOSES.

x x x x x x x x x

c) *Human Settlements Regulatory Commission* —The Human Settlements Regulatory Commission; renamed as the Housing and Land Use Regulatory Board, shall be the sole regulatory body for housing and land development. It is charged with encouraging greater private sector participation in low-cost housing through liberalization of development standards, simplification of regulations and decentralization of approvals for permits and licenses.

x x x x x x x x x

[11] RULES AND REGULATIONS IMPLEMENTING THE HOME GUARANTY CORPORATION ACT OF 2000, approved on October 13, 2000.

Originally, administrative supervision over homeowners' associations was vested by law with the Securities and Exchange Commission (SEC). However, pursuant to Executive Order No. 535,[12] the HIGC assumed the regulatory and adjudicative functions of the SEC over homeowners' associations. Section 2 of E.O. No. 535 provides:

2. In addition to the powers and functions vested under the Home Financing Act, the Corporation, shall have among others, the following additional powers:

(a) . . . and exercise all the powers, authorities and responsibilities that are vested on the Securities and Exchange Commission with respect to homeowners associations, the provision of Act 1459, as amended by P.D. 902-A, to the contrary notwithstanding;

(b) To regulate and supervise the activities and operations of all houseowners associations registered in accordance therewith;

xxx xxx xxx

Moreover, by virtue of this amendatory law, the HIGC also assumed the SEC's original and exclusive jurisdiction under Section 5 of Presidential Decree No. 902-A to hear and decide cases involving:

b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; **between any and/or all of them and the corporation, partnership or association of which they are stockholders, members or associates**, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;[13] (Emphasis supplied.)

xxx xxx xxx

ART. 6. ***Re-Naming of the Corporation.*** The Home Insurance and Guaranty Corporation is renamed as the Home Guaranty Corporation. It shall have its principal office in Metropolitan Manila.

[12] AMENDING THE CHARTER OF THE HOME FINANCING COMMISSION, RENAMING IT AS HOME FINANCING CORPORATION, ENLARGING ITS POWERS, AND FOR OTHER PURPOSES, done on May 3, 1979.

[13] PRESIDENTIAL DECREE NO. 902-A, done on March 11, 1976.

Consequently, in *Sta. Clara Homeowners' Association v. Gaston*[14] and *Metro Properties, Inc. v. Magallanes Village Association, Inc.*,[15] the Court recognized HIGC's "Revised Rules of Procedure in the Hearing of Home Owner's Disputes," pertinent portions of which are reproduced below:

RULE II

Disputes Triable by HIGC/Nature of Proceedings

Section 1. *Types of Disputes* — The HIGC or any person, officer, body, board or committee duly designated or created by it shall have jurisdiction to hear and decide cases involving the following:

xxx xxx xxx

(b) Controversies arising out of intra-corporate relations between and among members of the association, **between any or all of them and the association of which they are members**, and between such association and the state/general public or other entity in so far as it concerns its right to exist as a corporate entity.[16] (Emphasis supplied.)

xxx xxx xxx

Later on, the above-mentioned powers and responsibilities, which had been vested in the HIGC with respect to homeowners' associations, were transferred to the HLURB pursuant to Republic Act No. 8763,[17] entitled "Home Guaranty Corporation Act of 2000."

In the present case, there is no question that respondents are members of MLPAI as they have even admitted it.[18]

---

[14] G.R. No. 141961, January 23, 2002, 374 SCRA 396.

[15] G.R. No. 146987, October 19, 2005, 473 SCRA 312.

[16] *Id.* at 320.

[17] AN ACT CONSOLIDATING AND AMENDING REPUBLIC ACT NOS. 580, 1557, 5488, AND 7835 AND EXECUTIVE ORDER NOS. 535 AND 90, AS THEY APPLY TO THE HOME INSURANCE AND GUARANTY CORPORATION WHICH SHALL BE RENAMED AS HOME GUARANTY CORPORATION, AND FOR OTHER PURPOSES, approved on March 7, 2000.

[18] *Rollo,* p. 19.

Therefore, as correctly ruled by the trial court, the case involves a controversy between the homeowners' association and some of its members. Thus, the exclusive and original jurisdiction lies with the HLURB.

Indeed, in *Sta. Clara Homeowners' Association v. Gaston*, we held:

> . . . the **HIGC exercises limited jurisdiction over homeowners' disputes**. **The law confines its authority to controversies that arise from any of the following intra-corporate relations**: (1) between and among members of the association; (2) **between any and/or all of them and the association of which they are members**; and (3) between the association and the *state* insofar as the controversy concerns its right to exist as a corporate entity.[19] (Emphasis supplied.)

The extent to which the HLURB has been vested with quasi-judicial authority must also be determined by referring to Section 3 of P.D. No. 957,[20] which provides:

> SEC. 3. *National Housing Authority.* — The National Housing Authority shall have exclusive jurisdiction **to regulate the real estate trade and business** in accordance with the provisions of this Decree. (Emphasis supplied.)

The provisions of P.D. No. 957 were intended to encompass all questions regarding subdivisions and condominiums. The intention was aimed at providing for an appropriate government agency, the HLURB, to which all parties aggrieved in the implementation of provisions and the enforcement of contractual rights with respect to said category of real estate may take recourse. The business of developing subdivisions and corporations being imbued with public interest and welfare, any question arising from the exercise of that prerogative should be brought to the HLURB which has the technical know-how on the matter.[21] In the exercise of its

---

[19] *Sta. Clara Homeowners' Association v. Gaston, supra* at 410.

[20] THE SUBDIVISION AND CONDOMINIUM BUYERS' PROTECTIVE DECREE, done on July 12, 1976.

[21] *Arranza v. B.F. Homes, Inc.*, 389 Phil. 318, 336 (2000).

powers, the HLURB must commonly interpret and apply contracts and determine the rights of private parties under such contracts. This ancillary power is no longer a uniquely judicial function, exercisable only by the regular courts.[22]

It is apparent that although the complaint was denominated as one for declaratory relief/annulment of contracts, the allegations therein reveal otherwise. It should be stressed that respondents neither asked for the interpretation of the questioned by-laws nor did they allege that the same is doubtful or ambiguous and require judicial construction. In fact, what respondents really seek to accomplish is to have a particular provision of the MLPAI's by-laws nullified and thereafter absolve them from any violations of the same.[23] In *Kawasaki Port Service Corporation v. Amores*,[24] the rule was stated:

> . . . where a declaratory judgment as to a disputed fact would be determinative of issues rather than a construction of definite stated rights, status and other relations, commonly expressed in written instrument, the case is not one for declaratory judgment.[25]

Contrary to the observation of the Court of Appeals, jurisdiction cannot be made to depend on the exclusive characterization of the case by one of the parties.[26] While respondents are questioning the validity or legality of the MLPAI's articles of incorporation and its by-laws, they did not, however, raise any legal ground to support its nullification. The legality of the by-laws in its entirety was never an issue in the instant controversy but merely the provision prohibiting multi-dwelling which respondents assert they did not violate.[27] So to speak, there is

---

[22] See *Antipolo Realty Corp. v. National Housing Authority*, No. 50444, August 31, 1987, 153 SCRA 399, 407.

[23] *Rollo*, p. 21.

[24] G.R. No. 58340, July 16, 1991, 199 SCRA 230.

[25] *Id.* at 236.

[26] *Pilipinas Bank v. Court of Appeals*, G.R. No. 117079, February 22, 2000, 326 SCRA 147, 154.

[27] *Rollo*, p. 19.

no justiciable controversy here that would warrant declaratory relief, or even an annulment of contracts.

We reiterate that in jurisdictional issues, what determines the nature of an action for the purpose of ascertaining whether a court has jurisdiction over a case are the allegations in the complaint and the nature of the relief sought.[28]

Moreover, under the doctrine of primary administrative jurisdiction, courts cannot or will not determine a controversy where the issues for resolution demand the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact.[29]

In the instant case, the HLURB has the expertise to resolve the basic technical issue of whether the house built by the respondents violated the Deed of Restriction, specifically the prohibition against multi-dwelling.

As observed in *C.T. Torres Enterprises, Inc. v. Hibionada*:[30]

> The argument that only courts of justice can adjudicate claims resoluble under the provisions of the Civil Code is out of step with the fast-changing times. There are hundreds of administrative bodies now performing this function by virtue of a valid authorization from the legislature. This quasi-judicial function, as it is called, is exercised by them as an incident of the principal power entrusted to them of regulating certain activities falling under their particular expertise.
>
> In the Solid Homes case for example the Court affirmed the **competence of the Housing and Land Use Regulatory Board to award damages although this is an essentially judicial power exercisable ordinarily only by the courts of justice.** This departure from the traditional allocation of governmental powers is justified by

---

[28] *Capiral v. Valenzuela*, G.R. No. 152886, November 15, 2002, 391 SCRA 759, 765.

[29] *Pambujan Sur United Mine Workers v. Samar Mining Co., Inc.*, 94 Phil. 932, 941 (1954).

[30] G.R. No. 80916, November 9, 1990, 191 SCRA 268.

expediency, or the need of the government to respond swiftly and competently to the pressing problems of the modern world.[31]

We also note that the parties failed to abide by the arbitration agreement in the MLPAI by-laws. Article XII of the MLPAI by-laws entered into by the parties provide:

Mode of Dispute Resolution

Mode of Dispute Resolution. Should any member of the Association have any grievance, dispute or claim against the Association or any of the officers and governors thereof in connection with their function and/or position in the Association, the parties shall endeavor to settle the same amicably. In the event that efforts at amicable settlement fail, such dispute, difference or disagreement shall be brought by the member to an arbitration panel composed of three (3) arbitrators for final settlement, to the exclusion of all other fora. Such arbitration may be initiated by giving notice to the other party, such notice designating one (1) independent arbitrator. Within thirty (30) from the receipt of said notice, the other party shall designate a second independent arbitrator by written notice to the first party. Both arbitrators shall within fifteen (15) days thereafter select a third independent arbitrator, who shall be the chairman of the Arbitration Tribunal. In the event that the two (2) arbitrators respectively nominated by the parties fail to select the third independent arbitrator within the fifteen-day period, the third arbitrator shall be jointly selected by the parties. In the event that the other party does not nominate an arbitrator, the Arbitration Tribunal shall be composed of one (1) arbitrator nominated by the party initiating the proceedings. The Arbitration Tribunal shall render its decision within forty-five (45) days from the selection of the third arbitrator, which decision shall be valid and binding between the parties unless repudiated within five (5) days from receipt thereof on grounds that the same was procured through fraud or violence, or that there are patent or gross errors in facts made basis of the decision. The award of the Tribunal shall be enforced by a court of competent jurisdiction. Venue of action covered by this Article shall be in the courts of justice of Cebu City only.

---

[31] *Id.* at 272-273.

Under the said provision of the by-laws, any dispute or claim against the Association or any of its officers and governors shall first be settled amicably. If amicable settlement fails, such dispute shall be brought by the member to an arbitration panel for final settlement. The arbitral award shall be valid and binding between the parties unless repudiated on grounds that the same was procured through fraud or violence, or that there are patent or gross errors in the tribunal's findings of facts upon which the decision was based.

The terms of Article XII of the MLPAI by-laws clearly express the intention of the parties to bring first to the arbitration process all disputes between them before a party can file the appropriate action. The agreement to submit all disputes to arbitration is a contract. As such, the arbitration agreement binds the parties thereto, as well as their assigns and heirs.[32] Respondents, being members of MLPAI, are bound by its by-laws, and are expected to abide by it in good faith.[33]

In the instant case, we observed that while both parties exchanged correspondence pertaining to the alleged violation of the Deed of Restriction, they, however, made no earnest effort to resolve their differences in accordance with the arbitration clause provided for in their by-laws. Mere exchange of correspondence will not suffice much less satisfy the requirement of arbitration. Arbitration being the mode of settlement between the parties expressly provided for in their by-laws, the same should be respected. Unless an arbitration agreement is such as absolutely to close the doors of the courts against

---

[32] *Heirs of Augusto L. Salas, Jr. v. Laperal Realty Corporation*, G.R. No. 135362, December 13, 1999, 320 SCRA 610, 614.

[33] *Fiesta World Mall Corporation v. Linberg Philippines, Inc.*, G.R. No. 152471, August 18, 2006, 499 SCRA 332, 338, citing *LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc.*, G.R. No. 141833, March 26, 2003, 399 SCRA 562, 571-572.

the parties, the courts should look with favor upon such amicable arrangements.[34]

Arbitration is one of the alternative methods of dispute resolution that is now rightfully vaunted as "the wave of the future" in international relations, and is recognized worldwide. To brush aside a contractual agreement calling for arbitration in case of disagreement between the parties would therefore be a step backward.[35]

WHEREFORE, the instant petition is *GRANTED*. The Decision dated August 31, 2005 and Resolution dated February 13, 2006 of the Court of Appeals in CA-G.R. SP No. 81069 are *SET ASIDE*. The Order dated July 31, 2003 of the Regional Trial Court of Cebu City, Branch 7, is hereby *REINSTATED*.

SO ORDERED.

Ynares-Santiago,[*] *Velasco, Jr., Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

---

[34] *Manila Electric Co. v. Pasay Transportation Co.*, 57 Phil. 600, 603 (1932).

[35] *Sea-Land Service, Inc. v. Court of Appeals*, G.R. No. 126212, March 2, 2000, 327 SCRA 135, 143-144, citing *BF Corporation v. Court of Appeals*, G.R. No. 120105, March 27, 1998, 288 SCRA 267, 286.

[*] Designated member of the Second Division per Special Order No. 645 in place of Associate Justice Conchita Carpio Morales who is on official leave.

[**] Designated member of the Second Division per Speecial Order No. 635 in view of the retirement of Associate Dante O. Tinga.

FIRST DIVISION

[G.R. No. 172367. June 5, 2009]

FELICIDAD DADIZON, ILUMINADA B. MURGIA, PERLA B. MATIGA, DOMINADOR M. BERNADAS, CIRILO B. DELIS, and HEIRS OF MARCELINO BERNADAS, Namely: FE BERNADAS-PICARDAL and CARMELITO BERNADAS, *petitioners, vs.* **SOCORRO BERNADAS, substituted by JEANETTE B. ALFAJARDO, FELY BERNADAS, JULIET BERNADAS, GODOFREDO BERNADAS, JR., and SOFIA C. BERNADAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; IMPLEADING ALL INDISPENSABLE PARTIES, NOT REQUIRED IN APPEAL. — While it is true that not all the parties in the original case below appear as petitioners or respondents in the case before us, suffice it to say that the mandatory requirement of impleading all indispensable parties applies only to the filing of an original action, but not to an appeal, since it is the party's choice whether to appeal or not, and he or she cannot be compelled to do so.

2. ID.; ID.; ID.; EFFECT OF REVERSAL OF THE ASSAILED DECISION ON PARTIES WHO DID NOT APPEAL; CASE AT BAR IS AN EXCEPTION THEREIN. — As to the effect of a reversal of the assailed decision on the parties who did not appeal, the rule is: We have always recognized the general rule that in appellate proceedings, the reversal of the judgment on appeal is binding only on the parties in the appealed case and does not affect or inure to the benefit of those who did not join or were not made parties to the appeal. **An exception to the rule exists, however, where a judgment cannot be reversed as to the party appealing without affecting the rights of his co-debtor, or where the rights and liabilities of the parties appealing are so interwoven and dependent on each other as**

to be inseparable, in which case a reversal as to one operates as a reversal as to all. This exception which is based on a communality of interest of said parties is recognized in this jurisdiction. The instant case is such an exception, since the rights and liabilities of all the parties concerned as the heirs of the late Diosdado Bernadas, Sr. are inseparable. Hence, any reversal of the assailed decision will inure to the benefit of those who did not join or were not made parties to the instant case. Consequently, there is no basis for the fear expressed by respondent Sofia C. Bernadas that the respective rights to their inheritance of the persons who were not made parties to the case before us might be forfeited by technicality.

3. ID.; SPECIAL CIVIL ACTIONS; PARTITION; STAGES. —There are two stages in every action for partition under Rule 69 of the Rules of Court. The first stage is the determination of whether or not a co-ownership in fact exists and a partition is proper (*i.e.*, not otherwise legally proscribed) and may be made by voluntary agreement of all the parties interested in the property. The second stage commences when it appears that "the parties are unable to agree upon the partition" directed by the court. In that event, partition shall be done for the parties by the court with the assistance of not more than three (3) commissioners. There are, thus, two ways in which a partition can take place under Rule 69: by agreement under Section 2, and through commissioners when such agreement cannot be reached under Sections 3 to 6.

4. ID.; ID.; ID.; ID.; ORDER FOR PARTITION, AND PARTITION BY AGREEMENT THEREUNDER; COMMISSIONERS TO MAKE PARTITION WHEN PARTIES FAIL TO AGREE. — Sections 2 and 3 of Rule 69 provide: SECTION 2. Order for partition, and partition by agreement thereunder. — If after the trial the court finds that the plaintiff has the right thereto, it shall order the partition of the real estate among all the parties in interest. Thereupon the parties may, if they are able to agree, make the partition among themselves by proper instruments of conveyance, and the court shall confirm the partition so agreed upon by all the parties, and such partition, together with the order of the court confirming the same, shall be recorded in the registry of deeds of the place in which the property is situated. (2a) x x x SECTION 3. Commissioners to

make partition when parties fail to agree. — If the parties are unable to agree upon the partition, the court **shall** appoint not more than three (3) competent and disinterested persons as commissioners to make the partition, commanding them to set off to the plaintiff and to each party in interest such part and proportion of the property as the court shall direct. (3a)

5. ID.; ID.; ID.; ID.; PARTITION PROCEEDINGS; REFERENCE TO COMMISSIONERS REQUIRED AND NOT DISCRETIONARY TO THE COURT. — In partition proceedings, reference to commissioners is required as a procedural step in the action and is not discretionary on the part of the court. We have held in a number of cases that if the parties are unable to agree on a partition, the trial court should order the appointment of commissioners. In ***De Mesa v. Court of Appeals***, we held that the trial court cannot compel petitioner to sign the extrajudicial deed of partition prepared solely by private respondents for the reason that if the parties are unable to agree on a partition, the trial court must order the appointment of commissioners.

APPEARANCES OF COUNSEL

Santo Law Office for petitioners.

Sumayod and Associates Law and Notarial Offices for Sofia C. Bernadas.

Domingo A. Salino, Jr. for Jeanette B. Alfajardo, *et al.*

D E C I S I O N

PUNO, *C.J.*:

Before us is a Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court seeking to set aside the Decision[2] dated December 7, 2005 and the Resolution[3] dated March 15,

[1] *Rollo*, pp. 4-23.

[2] *Id.* at 25-33; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr.

[3] *Id.* at 35-36.

2006 of the Court of Appeals (CA), which affirmed the Order[4] dated September 5, 2001 of the Regional Trial Court (RTC), Branch 16 of the 8th Judicial Region in Naval, Biliran in Civil Case No. B-1066.

Petitioners and respondents are the children and representatives of the deceased children of the late Diosdado Bernadas, Sr. who died intestate on February 1, 1977, leaving in co-ownership with his then surviving spouse, Eustaquia Bernadas (who died on May 26, 2000), several parcels of agricultural and residential land situated in Naval, Biliran.

On May 14, 1999, respondents filed a Complaint[5] against petitioners to compel the partition of the one-half (1/2) conjugal share of the properties left by their late father (subject properties) based on the Deed of Extrajudicial Partition[6] dated February 24, 1996. Respondents alleged that petitioner Felicidad Dadizon was in possession of the subject properties and refused to heed their demands to cause the partition of the same.

In their Answer,[7] petitioners averred that the Deed of Extrajudicial Partition dated February 24, 1996, which respondents sought to enforce, was revoked by the Deed of Extrajudicial Partition[8] dated February 10, 1999. They argued that certain parcels of land included in respondents' complaint had long been disposed of or extrajudicially partitioned by them. They further claimed that certain parcels of land listed in the Deed of Extrajudicial Partition dated February 24, 1996 as sold to respondent Socorro Bernadas could not go to the latter, since the alleged sales were under annulment in Civil Case No. B-1091 pending before the RTC, Branch 16, Naval, Biliran, a case filed by their mother, Eustaquia Bernadas, to revoke the

---

[4] Records, pp. 221-225.

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

[6] *Id.* at 14-16.

[7] *Id.* at 26-28.

[8] *Id.* at 30-32.

sales of her one-half (1/2) conjugal share on the grounds of lack of consideration, fraud and lack of consent.[9]

In their Reply,[10] respondents contended that the Deed of Extrajudicial Partition dated February 10, 1999 was a product of malice directed against respondent Socorro Bernadas, for not all of the heirs of their late father participated in the execution of the alleged subsequent deed of partition. The sales executed between their mother, Eustaquia Bernadas, and respondent Soccorro Bernadas have not been annulled by the court; hence, they remain valid and subsisting.

During trial, on June 13, 2000,[11] both parties manifested that in view of the death of their mother, Eustaquia Bernadas, they have an ongoing negotiation for the extrajudicial partition of the subject properties to end their differences once and for all.

In the next scheduled hearing, on November 15, 2000,[12] the counsel of respondents asked for postponement on the ground that he was in the process of soliciting the signatures of other heirs to complete a compromise agreement.

On January 30, 2001, the counsel of respondents filed a Project of Partition[13] dated October 23, 2000. However, the same was not signed by all of the heirs.

On the hearing of February 6, 2001,[14] the Project of Partition dated October 23, 2000 was discussed by both parties, and the RTC ordered petitioners to submit their comment thereon within 15 days. Petitioners did not file any comment.

In its Order[15] dated March 22, 2001, the RTC noted that at the last pre-trial conference, both parties informed the court

---

[9] *Id.* at 27; *rollo*, pp. 133-134.

[10] Records, pp. 43-36.

[11] *Id.* at 134.

[12] *Id.* at 149.

[13] *Id.* at 152-158.

[14] *Id.* at 177.

[15] *Id.* at 179.

that they already have an extrajudicial partition of the subject properties and ordered both parties to submit the extrajudicial partition for its approval.

On May 31, 2001, the RTC issued another Order[16] reiterating its Order dated March 22, 2001, directing both parties to submit the signed extrajudicial partition.

On July 16, 2001, respondents filed a Compliance[17] submitting the following documents: (1) Project of Partition dated October 23, 2000; (2) Deed of Extrajudicial Partition dated February 24, 1996; and (3) Deed of Extrajudicial Partition[18] dated August 1, 1997 (involving one parcel of land covered by Tax Declaration No. 00181). Respondents prayed that the submitted documents be considered by the RTC relative to the subdivision of the estate left by their late father.

On July 23, 2001, the RTC issued an Order[19] approving the Project of Partition dated October 23, 2000.

Petitioners filed a Motion for Reconsideration[20] of the said Order, but the same was denied by the RTC in its assailed Order[21] dated September 5, 2001. The RTC noted that petitioners had failed to file any comment on or objection to the Project of Partition dated October 23, 2000 despite previously being ordered to do so. Moreover, the parties had already agreed to ask the court for its approval during pre-trial.

Hence, petitioners filed an appeal before the CA alleging, among others, that the RTC erred in finding that their counsel agreed to the approved Project of Partition dated October 23,

---

[16] *Id.* at 180.

[17] *Id.* at 196.

[18] *Id.* at 173-175.

[19] *Id.* at 198-306.

[20] *Id.* at 212-214.

[21] *Id.* at 221-225.

2000, and that it should be noted that the said document does not bear the signature of their counsel.[22]

On December 7, 2005, the CA rendered its assailed decision finding the appeal to be without merit. The dispositive portion of the CA decision reads:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **DISMISSING** the appeal filed in this case and **AFFIRMING** the order dated September 5, 2001 issued by the RTC, Branch 16, of the 8th Judicial Region in Naval, Biliran in Civil Case No. B-1066.[23]

Petitioners filed a Motion for Reconsideration[24] of the assailed decision, but the same was denied by the CA in its Resolution dated March 15, 2006.

Hence, this Petition.

Respondent Soccorro Bernadas, as substituted by Jeanette B. Alfajardo, *et al.*, and respondent Sofia C. Bernadas filed separate comments on the petition.

Before proceeding to the merits of the case, we shall first address a procedural issue raised by respondent Sofia C. Bernadas.

Respondent Sofia C. Bernadas argues that there is a necessity to implead all indispensable parties who were parties to the original case who do not appear either as petitioners or as respondents in the case before us.

Respondent Sofia C. Bernadas' interpretation of the requirement to implead all indispensable parties under Rule 7, Section 3 of the Rules of Court is misplaced. There is no necessity for impleading all the parties in Civil Case No. B-1066 in this petition.

---

[22] CA *rollo*, pp. 47-48.

[23] *Supra* note 2 at 32.

[24] CA *rollo*, pp. 328-338.

While it is true that not all the parties in the original case below appear as petitioners or respondents in the case before us, suffice it to say that the mandatory requirement of impleading all indispensable parties applies only to the filing of an original action, but not to an appeal, since it is the party's choice whether to appeal or not, and he or she cannot be compelled to do so.

As to the effect of a reversal of the assailed decision on the parties who did not appeal, the rule is:

> We have always recognized the general rule that in appellate proceedings, the reversal of the judgment on appeal is binding only on the parties in the appealed case and does not affect or inure to the benefit of those who did not join or were not made parties to the appeal. **An exception to the rule exists, however, where a judgment cannot be reversed as to the party appealing without affecting the rights of his co-debtor, or where the rights and liabilities of the parties appealing are so interwoven and dependent on each other as to be inseparable, in which case a reversal as to one operates as a reversal as to all. This exception which is based on a communality of interest of said parties is recognized in this jurisdiction.**[25] (emphasis supplied)

The instant case is such an exception, since the rights and liabilities of all the parties concerned as the heirs of the late Diosdado Bernadas, Sr. are inseparable. Hence, any reversal of the assailed decision will inure to the benefit of those who did not join or were not made parties to the instant case. Consequently, there is no basis for the fear expressed by respondent Sofia C. Bernadas that the respective rights to their inheritance of the persons who were not made parties to the case before us might be forfeited by technicality.

Nonetheless, we note that a review of the records below reveals that the requirement of joining all indispensable parties to the proceedings below has been satisfied.

Now, on the merits.

---

[25] *Tropical Homes, Inc. v. Fortun*, G.R. No. 51554, January 13, 1989, 169 SCRA 81.

The issue for our consideration is whether or not the CA erred when it affirmed the Order dated September 5, 2001 of the RTC.

We answer in the affirmative.

There are two stages in every action for partition under Rule 69 of the Rules of Court.

The first stage is the determination of whether or not a co-ownership in fact exists and a partition is proper (*i.e.*, not otherwise legally proscribed) and may be made by voluntary agreement of all the parties interested in the property.[26]

The second stage commences when it appears that "the parties are unable to agree upon the partition" directed by the court. In that event, partition shall be done for the parties by the court with the assistance of not more than three (3) commissioners.[27]

There are, thus, two ways in which a partition can take place under Rule 69: by agreement under Section 2, and through commissioners when such agreement cannot be reached under Sections 3 to 6.

Sections 2 and 3 of Rule 69 provide:

SECTION 2. Order for partition, and partition by agreement thereunder. — If after the trial the court finds that the plaintiff has the right thereto, it shall order the partition of the real estate among all the parties in interest. Thereupon the parties may, if they are able to agree, make the partition among themselves by proper instruments of conveyance, and the court shall confirm the partition so agreed upon by all the parties, and such partition, together with the order of the court confirming the same, shall be recorded in the registry of deeds of the place in which the property is situated. (2a)

xxx xxx xxx

---

[26] *De Mesa v. Court of Appeals*, G.R. No. 109387, April 25, 1994, 231 SCRA 773.

[27] *Id.*

SECTION 3. Commissioners to make partition when parties fail to agree. — If the parties are unable to agree upon the partition, the court **shall** appoint not more than three (3) competent and disinterested persons as commissioners to make the partition, commanding them to set off to the plaintiff and to each party in interest such part and proportion of the property as the court shall direct. (3a) (emphasis supplied)

A careful study of the records of this case reveals that the RTC departed from the foregoing procedure mandated by Rule 69.

In its Order dated July 23, 2001, the RTC noted that both parties filed the Project of Partition dated October 23, 2000 that it approved.[28] In its Order dated September 5, 2001 denying petitioners' motion for reconsideration, the RTC reiterated that both parties filed the same.[29] **However, the records show that the Project of Partition dated October 23, 2000 was filed only by respondents' counsel,**[30] **and that the same was not signed by the respondents or all of the parties.**[31]

In its Order dated March 22, 2001, the RTC noted that both parties have already agreed on the manner of partition of the subject properties, and that they are seeking for the court's approval.[32] On the issue of whether the RTC erred in finding that petitioners acceded to the Project of Partition dated October 23, 2000, the CA sustained the RTC's finding and noted that both parties manifested to the RTC that they already have an extrajudicial partition, and that petitioners did not file any comment or suggestion on the manner of distribution of the subject properties despite being required by the RTC.[33]

---

[28] *Supra* note 19.

[29] Records, pp. 224-225.

[30] *Supra* note 17.

[31] *Supra* note 13.

[32] *Supra* note 15.

[33] *Rollo*, p. 31.

Even if petitioners did manifest in open court to the RTC that they have already agreed with the respondents on the manner of partition of the subject properties, what is material is that only the respondents filed the Project of Partition dated October 23, 2000 and that the same did not bear the signatures of petitioners because only a document signed by all of the parties can signify that they agree on a partition. Hence, the RTC had no authority to approve the Project of Partition dated October 23, 2000, which did not bear all of the signatures of the parties, on the premise that they had all agreed to the same. Likewise, the failure to file any comment or suggestion as to manner of distribution of the subject properties does not justify the RTC's non-observance of the procedure mandated by Rule 69. When the parties were unable to submit the signed Project of Partition despite being ordered to do so, the RTC should have ordered the appointment of commissioners to make the partition as mandated by Section 3, Rule 69.

In partition proceedings, reference to commissioners is required as a procedural step in the action and is not discretionary on the part of the court.[34] We have held in a number of cases that if the parties are unable to agree on a partition, the trial court should order the appointment of commissioners.

In ***De Mesa v. Court of Appeals,***[35] we held that the trial court cannot compel petitioner to sign the extrajudicial deed of partition prepared solely by private respondents for the reason that if the parties are unable to agree on a partition, the trial court must order the appointment of commissioners.

In ***Patricio v. Dario III,***[36] we invalidated the order of the trial court ordering the sale by public auction of the property subject of partition on the ground that since the parties were unable to

---

[34] REGALADO, *REMEDIAL LAW COMPENDIUM,* VOL. I, 849 (2005).

[35] *Supra* note 26 at 782.

[36] G.R. No. 170829, November 20, 2006, 507 SCRA 438, 449.

agree on a partition, the trial court should have ordered a partition by commissioners pursuant to Section 3, Rule 69 of the Rules of Court. It is only after it is made to appear to the latter that the real estate, or a portion thereof, cannot be divided without great prejudice to the interest of the parties, and one of the parties interested asks that the property be sold instead of being assigned to one of the parties, may the court order the commissioners to sell the real estate at public sale.

In ***Heirs of Zoilo Llido v. Marquez***,[37] we sustained the trial court's order appointing commissioners to effect the partition in view of the failure of the parties to submit a project of partition as follows:

> It will be recalled that respondent judge, in his decision of January 31, 1973 ordered the partition of the enumerated properties and gave the parties thirty (30) days from notice thereof within which to submit a project of partition.
>
> Having failed to submit said project, the parties were given another twenty (20) days to submit the same, otherwise, commissioners would be appointed to effect the partition.
>
> Again the parties failed to submit a project of partition. Consequently, respondent judge issued his questioned order of April 27, 1973, appointing the commissioners.
>
> Likewise, the records show that the parties were unable to submit a project of partition because the petitioners were unwilling to submit themselves to a partition (Telegrams, *Rollo,* pp. 105 and 106).
>
> In view of the foregoing, it is evident that the instant petition should be dismissed. Petitioners should not be rewarded for disregarding the orders of respondent judge.

In ***Honorio v. Dunuan***,[38] we struck down the order of the trial court approving a project of partition filed by respondent upon the mere failure of petitioner and his counsel to appear at the hearing and over his subsequent objection and directed

---

[37] G.R. No. L-37079, September 29, 1998, 166 SCRA 61, 68.

[38] G.R. No. L-38999, March 9, 1988, 158 SCRA 515.

the trial court to immediately constitute and appoint commissioners.

In this case, that petitioners insist on a manner of partition contrary to the approved Project of Partition dated October 23, 2000 that was filed and prepared solely by respondents all the way to this Court makes it more manifest that the parties to this case are unable to agree on a partition.

IN VIEW WHEREOF, the petition is *PARTIALLY GRANTED*. The Decision dated December 7, 2005 and the Resolution dated March 15, 2006 of the Court of Appeals in CA-G.R. CV No. 73326 and the Orders dated July 23, 2001 and September 5, 2001 of the Regional Trial Court in Civil Case No. B-1066 are hereby *REVERSED and SET ASIDE*. The case is *REMANDED* to the Regional Trial Court, Branch 16 of the 8th Judicial Region in Naval, Biliran, which is hereby directed to immediately constitute and appoint the commissioners as provided by Section 3, Rule 69 of the Rules of Court, to effect the partition in accordance with the other provisions of the same rule. No pronouncement as to costs.

SO ORDERED.

Carpio, Corona, Leonardo-de Castro, and *Bersamin, JJ.,* concur.

SECOND DIVISION

[G.R. No. 174286. June 5, 2009]

TRADERS ROYAL BANK, *petitioner, vs.* **CUISON LUMBER CO., INC., and JOSEFA JERODIAS *VDA. DE* CUISON,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; PERFECTION OF CONTRACTS; CONCURRENCE OF OFFER AND ACCEPTANCE; PRESENT IN CASE AT BAR. — The concurrence of the offer and acceptance is vital to the birth and the perfection of a contract. The clear and neat principle is that the offer must be certain and definite with respect to the cause or consideration and object of the proposed contract, while the acceptance of this offer – express or implied – must be unmistakable, unqualified, and identical in all respects to the offer. The required concurrence, however, may not always be immediately clear and may have to be read from the attendant circumstances; in fact, a binding contract may exist between the parties whose minds have met, although they did not affix their signatures to any written document. **The facts of the present case, although ambivalent in some respects, point *on the whole* to the conclusion that both parties agreed to the repurchase of the subject property. A**dmittedly, some evidence on record may be argued to point to the absence of a meeting of the minds (more particularly, the previous offers made by CLCI to change the payment scheme of the repurchase of the subject property which was not accepted; the bank's expressed intent to offer the subject property for sale to third persons at a higher price; and the unaccepted counter-offer by the respondents after the bank increased the purchase price). These incidents, however, were the results of CLCI's failure to comply with its obligations to pay the amounts due on the stipulated time and were made after the parties' minds had met on the terms of the contract. The seemingly contrary indications, therefore, do not go into and affect the perfection of the contract; they came after the contract had been perfected and,

as discussed below, were indicative of the bank's cancellation of the repurchase agreement.

2. ID.; ID.; CONTRACT TO SELL; ELUCIDATED. — The TRB Repurchase Agreement is in the nature of a ***contract to sell*** where the title to the subject property remains in the bank's name, as the vendor, and shall only pass to the respondents, as vendees, upon the full payment of the repurchase price. The settled rule for contracts to sell is that the full payment of the purchase price is a positive suspensive condition; the failure to pay in full is not to be considered a breach, casual or serious, but simply an event that prevents the obligation of the vendor to convey title from acquiring any obligatory force.

3. REMEDIAL LAW; CIVIL PROCEDURE; CLAIM; ON ALLOWANCE THEREOF EVEN AFTER THE FILING OF ANSWER AND PARTY DID NOT OBJECT THERETO. — As we explained in *Banco de Oro Universal Bank v. CA*, a party is not barred from setting up a claim even after the filing of the answer if the claim did not exist or had not matured at the time said party filed its answer. Moreover, we note that the respondents did not object to the presentation of this evidence, hence, the issue of rentals from August 8, 1993 and onwards was tried with the implied consent of the parties; applying Section 5, Rule 10 of the 1997 Rules of Civil Procedure, the issue should be treated in all respects as if it had been raised in the pleadings. Given the implied consent, judgment may be validly rendered on this issue even if no motion had been filed and no amendment had been ordered. In *National Power Corporation v. CA*, we held that where there is a variance in the defendant's pleadings and the evidence adduced by it at the trial, the Court may treat the pleading as amended to conform to the evidence.

4. CIVIL LAW; DAMAGES; LEGAL INTEREST; GUIDELINES WITH RESPECT TO THE AWARD AND COMPUTATION THEREOF. — The respondents are also liable to pay interest by way of damages for their failure to pay the rentals due for the use of the subject property. In *Eastern Shipping Lines v. CA*, we laid down the following guidelines with respect to the award and the computation of legal interest, as follows: II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as

well as the accrual thereof, is imposed, as follows: 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code. 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% *per annum.* **No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169 Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged**. 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

5. ID.; ID.; ID.; LEGAL INTEREST FOR RENTALS; PERIOD AND COMPUTATION. — Applying *Eastern Shipping Lines*, the payment of interest for the rentals shall be reckoned from the date the judicial demand was made by the bank or on April 20, 1989 when the bank set up its counterclaim for rentals in the subject property. Under the circumstances, we can impose a 6% interest on the rentals from April 20, 1989 up to the finality of this decision. Thereafter, the interest shall be computed at 12% per annum from such finality up to full satisfaction.

6. ID.; ID.; EXEMPLARY DAMAGES, ATTORNEY'S FEES AND LITIGATION EXPENSES; NOT PROPER IN CASE AT BAR.

— We find no basis for the award of exemplary damages. Article 2213 of the Civil Code declares: Article 2232. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. Considering the factual circumstances of the case, we can hardly characterize respondents' act of insisting on the enforcement of the repurchase agreement as wanton, fraudulent, reckless, oppressive, or malevolent. As there is no basis for an award of exemplary damages, the awards of attorney's fees and litigation expenses to the bank are not justified under Article 2208 of the Civil Code.

APPEARANCES OF COUNSEL

Alabastro Olaguer & Alabastro Law Offices for petitioner.
Cuison Law Office for respondents.

D E C I S I O N

BRION, *J.*:

We review in this petition for review on *certiorari*[1] the decision[2] and resolution[3] of the Court of Appeals (*CA*) in **CA-G.R. CV No. 49900**. The CA affirmed with modifications the decision[4] of the Regional Trial Court (*RTC*), Davao City, Branch 13. The RTC ruled in favor of respondents Cuison Lumber Co., Inc. (*CLCI*) and Josefa *Vda. De* Cuison (*Mrs. Cuison*), collectively referred to as *respondents*, in the action they commenced for breach of contract, specific performance, damages, and attorney's fees, with prayer for the issuance of a writ of preliminary injunction against petitioner Traders Royal Bank (*bank*).

---

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

[2] Dated March 31, 2006; penned by Associate Justice Edgardo A. Camello, with Associate Justice Normandie B. Pizarro and Associate Justice Ricardo R. Rosario, concurring; *rollo*, pp. 45-66.

[3] Dated August 11, 2006; *id.*, pp. 85-86.

[4] Dated November 4, 1994; records, pp. 254-275.

THE BACKGROUND FACTS

On July 14, 1978 and December 9, 1979, respectively, CLCI, through its then president, Roman Cuison Sr., obtained two loans from the bank. The loans were secured by a real estate mortgage over a parcel of land covered by Transfer Certificate of Title No. 10282 (*subject property*). CLCI failed to pay the loan, prompting the bank to extrajudicially foreclose the mortgage on the subject property. The bank was declared the highest bidder at the public auction that followed, conducted on August 1, 1985. A Certificate of Sale and a Sheriff's Final Certificate of Sale were subsequently issued in the bank's favor.

In a series of written communications between CLCI and the bank, CLCI manifested its intention to restructure its loan obligations and to repurchase the subject property. On July 31, 1986, Mrs. Cuison, the widow and administratrix of the estate of Roman Cuison Sr., wrote the bank's Officer-in-Charge, Remedios Calaguas, a letter indicating her offered terms of repurchase. She stated:

1. That I will pay the interest of ₱115,538.66, plus the additional expenses of ₱17,293.69, the total amount of which is ₱132,832.35 on August 8, 1986;
2. That I will pay 20% of the bid price of ₱949,632.84, plus whatever interest accruing within sixty (60) days from August 8, 1986;
3. That whatever remaining balance after the above two (2) payments shall be amortized for five (5) years on equal monthly installments including whatever interest accruing lease on diminishing balance.[5]

CLCI paid the bank ₱50,000.00 (on August 8, 1986) and ₱85,000.00 (on September 3, 1986). The bank received and regarded these amounts as "earnest money" for the repurchase of the subject property. On October 20, 1986, the bank sent Atty. Roman Cuison, Jr. (*Atty. Cuison*), as the president and general manager of CLCI, a letter informing CLCI of the bank's

[5] *Id.*, p. 47.

board of directors' resolution of October 10, 1986 *(TRB Repurchase Agreement),* laying down the conditions for the repurchase of the subject property:

This is to formally inform you that our Board of Directors, in its regular meeting held on October 10, 1986, passed a resolution for the repurchase of your property acquired by the bank, subject to the following terms and conditions, *viz:*

1. That the repurchase price shall be at total bank's claim as of the date of implementation;

2. That client shall initially pay ₱132,000.00 within fifteen (15) days from the expiration of the redemption period (August 8, 1986) and further payment of ₱200,632.84, representing 20% of the bid price, to be remitted on or before October 31, 1986;

3. That the balance of ₱749,000.00 to be paid in three (3) years in twelve (12) quarterly amortizations, with interest rate at 26% computed on diminishing balance;

4. That all the interest and other charges starting from August 8, 1986 to date of approval shall be paid first before implementation of the request; interest as of October 31, 1986 is ₱65,669.53;

5. Possession of the property shall be deemed transferred after signing of the Contract to Sell. However, title to the property shall be delivered only upon full payment of the repurchase price *via* Deed of Absolute Sale;

6. Registration fees, documentary stamps, transfer taxes at the date of sale and other similar government impost shall be for the exclusive account of the buyer;

7. The improvement of the property shall at all times be covered by insurance against loss with a policy to be obtained from a reputable company which designates the bank as beneficiary but premiums shall be paid by the client;

8. That the sale is good for thirty (30) days from the buyer's receipt of notice of approval of the offer; otherwise, sale is automatically cancelled;

9. Effective upon signing of the Contract to Sell, all realty taxes which will become due on the property shall be for the account of the buyer;

10. That the first quarterly installment shall be due within ninety (90) days of approval hereof, and the succeeding installment shall be due every three (3) months thereafter;

11. Upon default of the buyer to pay two (2) successive quarterly installments, contract is automatically cancelled at the Bank's option and all payments already made shall be treated as rentals or as liquidated damages; and

12. Other terms and conditions that the bank may further impose to protect its interest.

Should you agree with the above terms and conditions please sign under "Conforme" on the space provided below.

We attach herewith your Statement of Account[6] as of October 31, 1986, for your reference.

Thank you.

Very truly yours,
(*Signed*)

Conforme: (*Not signed*)[7]

CLCI failed to comply with the above terms notwithstanding the extensions of time given by the bank. Nevertheless, CLCI tendered, on February 3, 1987, a check for ₱135,091.57 to cover fifty percent (50%) of the twenty percent (20%) bid price. The check, however, was returned for "insufficiency of funds." On May 13, 1987, CLCI tendered an additional ₱50,000.00.[8]

---

[6] The total amount due was ₱1,082,465.10; see note 17 of CA Decision, *id.*, p. 48.

[7] *Italics theirs*; *rollo*, pp. 48-49.

[8] Records, p. 16.

On May 29, 1987, the bank sent Atty. Cuison a letter informing him that the ₱185,000.00 CLCI paid was not a deposit, but formed part of the earnest money under the TRB Repurchase Agreement. On August 28, 1987, Atty. Cuison, by letter, requested that CLCI's outstanding obligation of ₱1,221,075.61 (as of July 31, 1987) be reduced to ₱1 million, and the amount of ₱221,075.61 be condoned by the bank. To show its commitment to the request, CLCI paid the bank ₱100,000.00 and ₱200,000.00 on August 28, 1987. The bank credited both payments as earnest money.

A year later, CLCI inquired about the status of its request. The bank responded that the request was still under consideration by the bank's Manila office. On September 30, 1988, the bank informed CLCI that it would resell the subject property at an offered price of ₱3 million, and gave CLCI 15 days to make a formal offer; otherwise, the bank would sell the subject property to third parties. On October 26, 1988, CLCI offered to repurchase the subject property for ₱1.5 million, given that it had already tendered the amount of ₱400,000.00 as earnest money.

CLCI subsequently claimed that the bank breached the terms of repurchase, as it had wrongly considered its payments (in the amounts of ₱140,485.18, ₱200,000.00 and ₱100,000.00) as earnest money, instead of applying them to the purchase price. Through its counsel, CLCI demanded that the bank rectify the repurchase agreement to reflect the true consideration agreed upon for which the earnest money had been given. The bank did not act on the demand. Instead, it informed CLCI that the amounts it received were not earnest money, and that the bank was willing to return these sums, less the amounts forfeited to answer for the unremitted rentals on the subject property.

In view of these developments, CLCI and Mrs. Cuison, on February 10, 1989, filed with the RTC a complaint for breach of contract, specific performance, damages, and attorney's fees against the bank. On April 20, 1989, the bank filed its Answer alleging that the TRB repurchase agreement was already cancelled given CLCI's failure to comply with its provisions; *by way of counterclaim*, the bank also demanded the payment of the accrued rentals in the subject property as of January 31,

1989, and the award of moral damages and exemplary damages as well as attorney's fees and litigation expenses for the unfounded suit instituted against the bank by CLCI.[9] After trial on the merits, the RTC ruled in respondents' favor. The dispositive portion of its November 4, 1994 Decision states:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against the defendant bank, ordering said defendant bank to:
>
> 1. Execute and consummate a Contract to Sell which is reflective of the true consideration indicated in the Resolution of the Board of Directors of Traders Royal Bank held on October 10, 1986 (Exhibit "F" and Exhibit "13"), duly accrediting the amount of ₱435,000 as earnest money to be part of the price, the mode of payment being on quarterly installment, but the period within which the first quarterly payment being on quarterly payment shall be made to commence upon the execution of said Contract to Sell;
>
> 2. Pay to plaintiffs the amounts of ₱50,000.00 in concept of moral damages, ₱20,000.00 as exemplary damages;
>
> 3. Pay attorney's fees of ₱20,000.00; and
>
> 4. Pay litigation expenses in the amount of ₱2,000.00.
>
> The counterclaim of defendant bank is hereby dismissed.
>
> SO ORDERED.

On appeal to the CA, the bank pointed out the misappreciation of facts the RTC committed and argued that: *first*, the repurchase agreement did not ripen into a perfected contract; and *second*, even assuming that there was a perfected repurchase agreement, the bank had the right to revoke it and apply the payments already made to the rentals due for the use of the subject property, or as liquidated damages under paragraph 11 of the TRB Repurchase Agreement, since CLCI violated its terms and conditions. Further, the bank contended that CLCI had abandoned the TRB Repurchase Agreement in its letters dated August 28, 1987 and October 26, 1988 when it proposed to repurchase

---

[9] *Id.*, pp. 14-22.

the subject property for ₱1 million and ₱1.5 million, respectively. Lastly, the bank objected to the award of damages in the plaintiffs' favor.

THE CA DECISION

On March 31, 2006, the CA issued the challenged Decision and affirmed the RTC's factual findings and legal conclusions. Although it deleted the awards of attorney's fees, moral and exemplary damages, the CA ruled that there was a perfected contract to repurchase the subject property given the bank's acceptance (as stated in the letter dated October 20, 1986) of CLCI's proposal contained in Mrs. Cuison's letter of July 31, 1986. The CA distinguished between a condition imposed on the perfection of the contract and a condition imposed on the performance of an obligation, and declared that the conditions laid down in the letter dated October 20, 1986 merely relate to the manner the obligation is to be performed and implemented; failure to comply with the latter obligation does not result in the failure of the contract and only gives the other party the options and/or remedies to protect its interest. The CA held that the same conclusion obtains even if the letter of October 20, 1986 is considered a counter-offer by the bank; CLCI's payment of ₱135,000.00 operated as an implied acceptance of the bank's counter-offer, notwithstanding CLCI's failure to expressly manifest its *conforme*. In light of these findings, the CA went on to acknowledge the validity of the terms of paragraph 11 of the TRB Repurchase Agreement, but nonetheless held that CLCI has not yet violated its terms given the bank's previous acts (*i.e.*, the grant of extensions to pay), which showed that it had waived the agreement's original terms of payment.

The CA rejected the theory that CLCI had abandoned the terms of the TRB Repurchase Agreement and found no incompatibility between the agreement and the contents of the August 28, 1987 and October 26, 1988 letters which did not show an implied abandonment by CLCI, nor the latter's expressed intent to cancel or abandon the perfected repurchase agreement. In the same manner, the CA struck down the bank's position that CLCI's payments were "deposits" rather than earnest

money. The appellate court reasoned that while the amounts tendered cannot be strictly considered as earnest money under Article 1482 of the New Civil Code,[10] they were nevertheless within the concept of earnest money under this Court's ruling in *Spouses Doromal, Sr. v. CA*,[11] since they were paid as a guarantee so that the buyer would not back out of the contract.

The CA however ruled that the award of moral and exemplary damages, attorney's fees and litigation expenses lacked factual and legal support. The CA found that the bank acted in good faith and based its actions on the erroneous belief that CLCI had already abandoned the repurchase agreement. Likewise, the award of moral damages was not in order as there was no showing that CLCI's reputation was debased or besmirched by the bank's action of applying the previous payments made to the interest and rentals due on the subject property; neither is Mrs. Cuison entitled to moral damages without any evidence to justify this award. The CA also ruled that there was nothing in the records to warrant the awards of exemplary damages and attorney's fees.

The bank subsequently moved but failed to secure a reconsideration of the CA decision. The bank thus came to us with the following —

ISSUES

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN APPREHENDING THE SIGNIFICATION (*SIC*) OF THE TERM "OFFER" ON THE ONE HAND AND "ACCEPTANCE" ON THE OTHER HAND IN SALES CONTRACT WHICH ERROR LED IT TO ARRIVE AT A WRONG CONCLUSION OF LAW.

---

[10] Article 1492 states: Whenever earnest money is given in a contract of sale, it shall be considered as part of the price and as proof of the perfection of the contract.

[11] G.R. No. L-36083, September 5, 1975, 66 SCRA 75.

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN ITS INTERPRETATION OF THE STIPULATIONS AND TERMS AND CONDITIONS EMBODIED IN THE PROPOSED REPURCHASE AGREEMENT xxx WHICH LED IT TO ERRONEOUSLY CONCLUDE THAT THERE WAS A "PERFECTED" REPURCHASE AGREEMENT BETWEEN RESPONDENTS AND PETITIONER AND WHICH INTERPRETATION IS NOT IN ACCORDANCE WITH THE APPLICABLE LAW AND ESTABLISHED JURISPRUDENCE.

Reduced to the most basic, the main issue posed is whether or not a perfected contract of repurchase existed and can be enforced between the parties.

THE COURT'S RULING

We **GRANT** the petition.

The case presents to us as threshold issue the presence or absence of consent as a requisite for a perfected contract to repurchase the subject property. The RTC ruled that a perfected contract existed based mainly on the following facts: *first*, the existence of the TRB Repurchase Agreement which "clearly depicts the repurchase agreement of the subject property under the terms therein embodied"; and *second*, the payment of earnest money in the total amount of ₱435,000.00 which forms part of the price and, as initial payment, is proof of the perfection of the contract.[12] In concurring with the foregoing findings on appeal, the CA, in turn, declared that there was a meeting of the minds between the parties on the offer and acceptance for the repurchase of the subject property under the following quoted facts:

It may be recalled that it was Mrs. Cuison, through her letter of July 31, 1986, who proposed to repurchase the foreclosed property. She in fact had tendered right away an amount of ₱50,000.00 as partial payment of the ₱132,000.00 she had promised to pay as initial payment. In response, TRB sent a letter dated October 20, 1986 to Atty. Cuison

---

[12] RTC Decision dated November 4, 1994, pp. 8 and 13; *records*, pp. 261 and 266.

informing him of the resolution passed by the Board of Directors of TRB acknowledging the proposal of Ms. Cuison to repurchase the property. Under the circumstance, the proposal made by Ms. Cuison constituted the "offer" contemplated by law, and the reply of TRB was the corresponding "acceptance" of the proposal-offer.

xxx xxx xxx

Conceding *arguendo* that TRB's letter-response October 20, 1986 constituted a counter-offer or *politacion*, CLCI's ensuing remittance of ₱135,000.00 as initial payment of the price, operates effectively as an implied acceptance of TRB's counter-offer. The absence of a signature to signify plaintiff's *conforme* to the repurchase agreement is of no moment. While the *conforme* portion of the subject repurchase agreement indeed bears no signature at all, this fact, however, does not detract from the accomplished fact that plaintiffs had acquiesced or assented to the standing "conditional counter-offer" of TRB. Plaintiffs' *"conforme"* would at best be a mere formality considering that the repurchase agreement had already been perfected, if impliedly.[13]

Based on these findings, the crucial points that the lower courts apparently considered were Mrs. Cuison's letter of July 31, 1986 to the bank; the bank's letter of October 20, 1986 to CLCI; and the parties' subsequent conduct showing their acknowledgement of the existence of their agreement, specifically, the respondents' payments (designated as earnest money) and the bank's acceptance of these payments. However, unlike the RTC's conclusion that relied on CLCI's payment and the bank's acceptance of the payment as "earnest money," the CA concluded that there was a perfected contract, either because of the bank's acceptance of CLCI's offer (made through Mrs. Cuison's letter of July 31, 1986), or by CLCI's implied acceptance indicated by its initial payments in compliance with the terms of the TRB Repurchase Agreement.

The petitioner bank, of course, argues differently and concludes that the undisputed facts of the case show that there was no meeting of the minds between the parties given CLCI's failure to give its consent and conformity to the bank's letter of October 20, 1986, confirmed by the testimony of Atty. Cuison, no less,

[13] *Rollo,* pp. 55-56.

when he denied that CLCI consented to the agreement's terms of implementation.

Our task in this petition for review on *certiorari* is not to review the factual findings of the CA and the RTC, but to determine whether or not, on the basis of the said findings, the conclusions of law reached by the said courts are correct.

Under the law, a contract is perfected by mere consent, that is, from the moment that there is a meeting of the offer and the acceptance upon the thing and the cause that constitute the contract.[14] The law requires that the offer must be certain and the acceptance absolute and unqualified.[15] An acceptance of an offer may be express and implied; a qualified offer constitutes a counter-offer.[16] Case law holds that an offer, to be considered certain, must be definite,[17] while an acceptance is considered absolute and unqualified when it is identical in all respects with that of the offer so as to produce consent or a meeting of the minds.[18] We have also previously held that the ascertainment of whether there is a meeting of minds on the offer and acceptance depends on the circumstances surrounding the case.[19]

---

[14] CIVIL CODE, Articles 1315 and 1319.

[15] *Id.*, Articles 1319 and 1320.

[16] *Ibid*.

[17] *Rosenstock v. Burke*, 46 Phil. 217 (1924).

[18] *Limketkai Milling, Inc. v. Court of Appeals*, G.R. No. 118509, March 29, 1996, 255 SCRA 626, 639.

[19] See *Insular Life Assurance Co. Ltd. v. Assets Builders Corp.*, G.R. No. 147410, February 5, 2004, 422 SCRA 148; *Firme v. Bukal Enterprises and Development Corp.*, G.R. No. 146608, October 23, 2003, 414 SCRA 190; *Philippine National Bank v. Court of Appeals*, G.R. No. 119580, September 26, 1996, 262 SCRA 464; *Schuback & Sons Philippine Trading Corp. v. Court of Appeals*, G.R. No. 105387, November 11, 1993, 227 SCRA 717; *Yuviengco v. Dacuycuy*, G.R. No. 55048, May 27, 1981, 104 SCRA 668; *Villonco Realty Co. v. Bormacheco, Inc.*, G.R. No. L-26872, July 25, 1975, 65 SCRA 352, where the Supreme Court considered the circumstances of the case to determine whether there was a meeting of the offer and acceptance.

In *Villonco Realty Co. v. Bormacheco*,[20] the Court found a perfected contract of sale between the parties after considering the parties' written communications showing the offer (counter-offer) and acceptance by the seller who formally manifested his conformity with the offer in the buyer's letter. We took note of the acts of the parties – the payment of the buyer of an amount representing the partial payment under the contract; the acceptance of the partial payment by the seller; the allowance of the buyer for the seller to encash the check containing the partial payment; the subsequent return of the amount representing the partial payment by the buyer with the corresponding interest stated in the buyer's letter (offer) – and considered them evidence of the perfection of the sale. Under these circumstances, we also declared that a change in a phrase in the offer to purchase, that does not essentially change the terms of the offer, does not amount to a rejection of the offer and the tender of a counter-offer.

In *Schuback & Sons Philippine Trading Corp. v. CA*,[21] we declared a meeting of minds between the vendor and the vendee even though the quantity of goods purchased had not been fully determined. We noted that the vendee, after expressing his intention to purchase the merchandise, simultaneously enclosed a purchase order whose receipt prompted the vendor to immediately order the merchandise. We also took into account the act of the vendee in requesting for a discount as proof of his acceptance of the quoted price.

Yuviengco v. Dacuycuy[22] yielded a different result, as we considered that the letter and telegrams sent by the parties to each other showed that there was no meeting of minds in the absence of an unconditional acceptance to the terms of the contract of sale; otherwise, the buyers would not have included the phrase "to negotiate details" when they agreed to the property that was subject of the proposed contract.

---

[20] *Id.,* pp. 363-366.

[21] *Id.,* pp. 721-722.

[22] *Id.,* pp. 676-677.

Similarly, in *Philippine National Bank v. CA*,[23] we ruled that there was no perfected contract of sale because the specified terms and conditions imposed under the facts of the case constituted counter-offers against each other that were not accepted by either of the parties. This case involved a first contract, involving the same property, which the parties mutually cancelled; we said that the terms of this earlier contract cannot be considered in determining the acceptance and compliance with the terms of a proposed second contract – a distinct and separate contract from the one earlier aborted.

The incomplete details of the agreement led us to conclude in *Insular Life Assurance Co. Ltd. v. Assets Builders Corp*.[24] that no perfected contract existed; there were "other matters or details – in addition to the subject matter and the consideration – [that] would be stipulated and agreed." We likewise considered the subsequent acts between the parties and the existence of a second proposal which belied the perfection of any initial contract.

The recent *Navarra v. Planters Development Bank*[25] is another case where we saw no perfected contract, as the offer was incomplete for lack of agreed details on the manner of paying the purchase price; there was also no acceptance as the letter of Planters Development Bank indicated the need to discuss other details of the transaction.

All these cases illustrate the rule that the concurrence of the offer and acceptance is vital to the birth and the perfection of a contract. The clear and neat principle is that the offer must be certain and definite with respect to the cause or consideration and object of the proposed contract, while the acceptance of this offer – express or implied – must be unmistakable, unqualified, and identical in all respects to the offer. The required concurrence, however, may not always be immediately clear and may have to be read from the attendant

---

[23] *Id.*, pp. 476-477.

[24] G.R. No. 147410, February 5, 2004, 422 SCRA 148, 162 and 164.

[25] G.R. No. 172674, July 12, 2007, 527 SCRA 562, 573-575.

circumstances; in fact, a binding contract may exist between the parties whose minds have met, although they did not affix their signatures to any written document.[26]

The facts of the present case, although ambivalent in some respects, point *on the whole* to the conclusion that both parties agreed to the repurchase of the subject property.

A reading of the petitioner's letter of October 20, 1986 informing CLCI that the bank's board of directors "passed a resolution for the repurchase of [your] property" shows that the tenor of acceptance, except for the repurchase price, was subject to conditions not identical in all respects with the CLCI's letter-offer of July 31, 1986. In this sense, the bank's October 20, 1986 letter was effectively a counter-offer that CLCI must be shown to have accepted absolutely and unqualifiedly in order to give birth to a perfected contract. Evidence exists showing that CLCI did not sign any document to show its conformity with the bank's counter-offer. Testimony also exists explaining why CLCI did not sign; Atty. Cuison testified that CLCI did not agree with the implementation of the repurchase transaction since the bank made a wrong computation.[27]

These indicators notwithstanding, we find that CLCI accepted the terms of the TRC Repurchase Agreement and thus unqualifiedly accepted the bank's counter-offer under the TRB Repurchase Agreement and, in fact, partially executed the agreement, as shown from the following undisputed evidence:

(a) The letter-reply dated November 29, 1986 of Atty. Cuison, as president and general manager of CLCI, to the bank (in response to the bank's demand letter dated November 27, 1986 to pay 20% of the bid price); CLCI requested an extension of time, until the end of December 1986, to pay its due obligation;[28]

---

[26] *People's Industrial and Commercial Corp. v. Court of Appeals*, G.R. No. 112733, October 24, 1997, 281 SCRA 206, 220.

[27] TSN, February 20, 1991, p. 3.

[28] Exhibits "15" and "16".

(b) Mrs. Cuison's letter-reply of February 3, 1987 (to the bank's letter of January 13, 1987) showed that she acknowledged CLCI's failure to comply with its requested extension and proposed a new payment scheme that would be reasonable given CLCI's critical economic difficulties; Mrs. Cuizon tendered a check for ₱135,091.57, which represented 50% of the 20% bid price;[29]

(c) The CLCI's continuous payments of the repurchase price after their receipt of the bank's letter of October 20, 1986;

(d) CLCI's possession of the subject property pursuant to paragraph 5 of the TRB Repurchase Agreement, notwithstanding the absence of a signed contract to sell between the parties;

x x x x x x x x x

We counted the following facts, too, as indicators leading to the conclusion that a perfected contract existed: CLCI did not raise any objection to the terms and conditions of the TRB Repurchase Agreement, and instead, unconditionally paid without protests or objections[30]; CLCI's acknowledgment of their

---

[29] Exhibit "19".

[30] Shown, among others, by the following testimony of Atty. Cuison (TSN, February 19, 1991, p. 8 and TSN, February 20, 1991, p. 2) where he stated:

Atty. Abarquez:

x x x x x x x x x

Q Let us make this clear, you said you did not accept, did you write the bank a letter that you did not accept the proposal of the bank?

A We did not write.

Q You never told the bank that you did not accept?

A We did not.

x x x x x x x x x

Q Did you not tell the bank?

A What we did, we deposited.

obligations under the TRB Repurchase Agreement (as shown by Atty. Cuison's letter of November 29, 1986); and Atty. Cuison's admission that the TRB Repurchase Agreement was already a negotiated agreement between CLCI and the bank, as shown by the following testimony:

> Q When you received this document, this Exh. "F" from the defendant bank, did you already consider this as an agreement?
> A We consider that as a negotiated agreement pending the documentation of the formal contract to sell which is stated under the repurchase agreement.
>
> Q In other words, at the time you received this document Exh. "F", which was on October 23, 1986 date of receipt, was there already a meeting of the minds between the parties?
> A That is precisely we put [sic] the earnest money because we were of the opinion that the bank is already agreeable to the implementation of the repurchase agreement.
>
> x x x x x x x x x
>
> COURT
>
> Q Insofar as Exh. "F" is concerned?
> A There was initially, that is precisely we [sic] deposited in consideration of the repurchase agreement.[31]

The bank, for its part, showed its recognition of the existence of a repurchase agreement between itself and CLCI by the following acts:

(a) The letter dated November 27, 1986 of the bank, reminding CLCI that it was remiss in its commitments to pay 20% of the bid price under the terms of the TRB Repurchase Agreement;

(b) In the same letter, the bank gave CLCI an extension of time (until November 30, 1986) to comply with its past due obligations under the agreement;

---

[31] TSN, February 20, 1999, p. 2.

(c) The bank's acceptance of CLCI's payments as *earnest money* for the repurchase of the property;

(d) CLCI's continued possession of the subject property with the bank's consent;

(e) The bank's grant of extensions to CLCI for the payment of its obligations under the contract;

(f) The Statement of Account dated July 31, 1987 showing that the bank applied CLCI's payments according to the terms of the TRB Repurchase Agreement;

(g) The letter of January 26, 1989 of the bank's counsel, Atty. Abarquez, addressed to CLCI's counsel, showing the bank's recognition that there was an agreement between the bank and CLCI, which the latter failed to honor; and

(h) The testimonies of the bank's witnesses – Mr. Eulogio Giramis[32] and Ms. Arlene Aportadera,[33] the bank's employees who handled the CLCI transactions – who admitted the existence of the repurchase agreement with CLCI and the latter's failure to comply with the agreement's terms.

Admittedly, some evidence on record may be argued to point to the absence of a meeting of the minds (more particularly, the previous offers made by CLCI to change the payment scheme of the repurchase of the subject property which was not accepted; the bank's expressed intent to offer the subject property for sale to third persons at a higher price; and the unaccepted counter-offer by the respondents after the bank increased the

---

[32] TSN, May 20, 1993, p. 17.

[33] TSN, November 22, 1993, p. 7; also referred to as Arleen Arpotadera in the records.

purchase price).[34] These incidents, however, were the results of CLCI's failure to comply with its obligations to pay the amounts due on the stipulated time and were made after the parties' minds had met on the terms of the contract. The seemingly contrary indications, therefore, do not go into and affect the perfection of the contract; they came after the contract had been perfected and, as discussed below, were indicative of the bank's cancellation of the repurchase agreement.

In light of this conclusion, we now determine the consequential rights, obligations and liabilities of the parties. It is at this point that we diverge from the conclusions of the CA and the RTC, as we conclude that while there was a perfected contract between the parties, the bank effectively cancelled the contract when it communicated with CLCI that it would sell the subject property at a higher price to third parties, giving CLCI 15 days to make a formal offer, and disregarding CLCI's counter-offer to buy the subject property for ₱1.5 million. We arrive at this conclusion after considering the following reasons:

First, the bank communicated its intent not to proceed with the repurchase as above outlined and formally cancelled the TRB Repurchase Agreement in its letters dated January 11 and 30, 1989 to CLCI.[35] Thus, CLCI's rights acquired under the TRB Repurchase Agreement to repurchase the subject property have been defeated by its own failure to comply with its obligations under the agreement. The right to cancel for breach is provided under paragraph 11 of the TRB Repurchase Agreement, as follows:

> 11. Upon default of the buyer to pay two (2) successive quarterly installments, contract is automatically cancelled at the Bank's option and all payments already made shall be treated as rentals or as liquidated damages;

---

[34] Letter dated January 13, 1987 (Exhibit "18"); Letter dated March 27, 1987 (Exhibit "20"); Letter dated April 6, 1987 (Exhibit "22"); and Letter dated April 27, 1987 (Exhibit "26").

[35] Exhibits "37" and "39", respectively.

We note, additionally, that the TRB Repurchase Agreement is in the nature of a ***contract to sell*** where the title to the subject property remains in the bank's name, as the vendor, and shall only pass to the respondents, as vendees, upon the full payment of the repurchase price.[36] The settled rule for contracts to sell is that the full payment of the purchase price is a positive suspensive condition; the failure to pay in full is not to be considered a breach, casual or serious, but simply an event that prevents the obligation of the vendor to convey title from acquiring any obligatory force.[37] Viewed in this light, the bank cannot be compelled to perform its obligations under the TRB Repurchase Agreement that has been rendered ineffective by the respondents' non-performance of their own obligations.

Second, the respondents violated the terms and conditions of the TRB Repurchase Agreement when they failed to pay their obligations under the agreement as these obligations fell due. Paragraphs 2 and 10 of the TRB Repurchase Agreement are clear on the respondents' obligation to pay the bid price and the quarterly installments. Paragraphs 2 and 10 state:

> 2. That client shall initially pay ₱132,000.00 within fifteen (15) days from the expiration of the redemption period (August 8, 1986) and further payment of ₱200,632.84 representing 20% of the bid price to be remitted on or before October 31, 1986;
>
> x x x x x x x x x
>
> 10. That the first quarterly installment shall be due within ninety (90) days of approval hereof, and the succeeding installment shall be due every three (3) months thereafter;

The approval referred to under paragraph 10 is the approval by the bank of the repurchase of the subject property, as indicated in the bank's letter of October 20, 1986 which states, "*This is to formally inform you that our Board of Directors in its regular meeting held on October 10, 1986, passed a*

---

[36] See Paragraph 5 of the TRB Repurchase Agreement, Exhibit "F".

[37] *Rillo v. Court of Appeals*, G.R. No. 125347, June 19, 1997, 274 SCRA 461, 467.

resolution for the repurchase of your property acquired by the bank…." It was on the basis of this approval and the quoted terms of the agreement that the bank issued its Statement of Account dated July 31, 1987 indicating that the respondents were already in default, not only with respect to the 20% of the bid price, but also with the three quarterly installments.

Third, the respondents themselves claim that the bank violated the agreement when it applied the respondents' payments to the interest and penalties due without the respondents' consent, instead of applying these to the repurchase price for the subject property.[38] An examination of the provisions of the TRB Repurchase Agreement reveals that the bank is allowed to apply the respondents' payments first to the amounts due as interests and other charges, before applying any payment to the repurchase price. Paragraph 4 of the agreement provides:

> 4. That all the interest and other charges starting from August 8, 1986 to date of approval shall be paid first before implementation of the request; interest as of October 31, 1986 is ₱65,669.53;

Under these terms, the bank cannot be faulted for the application of payments it made. Likewise, the bank cannot be faulted for the application of other amounts paid as rentals as this is allowed under paragraph 11, quoted above, of the agreement.

Fourth, the petitioner bank cannot be said, as the CA ruled, to have already waived the terms of the TRB Repurchase Agreement by extending the time to pay and subsequently accepting late payments. The CA's conclusion lacks factual and legal basis taking into account that the Statement of Account of July 31, 1987, heretofore cited, which shows that the bank considered the respondents already in default. At this point, Atty. Cuison, by letter, requested that part of its outstanding obligation be condoned by the bank, paying ₱300,000.00 as of August 31, 1987, which amount the bank accepted as earnest money. For one whole year thereafter, neither party moved. Significantly, the respondents, who had continuing payments

---

[38] Records, p. 2.

to make and who had the burden of complying with the terms of the agreement, failed to act except to ask the bank for the status of its requested condonation. Under these facts, a continuing breach of the agreement took place, even granting that a waiver had intervened as of August 31, 1987. Thus, the bank was well within its right to consider the agreement cancelled when, in September 1988, it changed the repurchase terms to ₱3.0 million. We find it significant that the respondents, instead of asserting its rights under the TRB Repurchase Agreement, counter-offered ₱1.5 million with the ₱400,000.00 already paid as part of the purchase price. At that point, it was clear that even the respondents themselves considered the TRB Repurchase Agreement cancelled.

Lastly, the perfected repurchase agreement itself provides for the respondents' possession of the subject property; in fact, the respondents have been in continuous possession of the subject property since October 1986, despite the absence of a contract to sell apparently with the bank's consent. The agreement also provides under its paragraph 11 that upon the respondents' default and the cancellation of the agreement, all payments already made shall be treated as rentals or as liquidated damages.

The undisputed facts show that the bank has been deprived of the use and benefit of its property that has been in the possession of the respondents for the latter's use and benefit without paying any rentals thereon. The records reveal that until now, the respondents are still in possession of the subject property.[39]

We note that subsequent to the bank's counterclaim for the payment of rentals due as of January 31, 1989, the bank also seeks to recover the rentals that accrued after January 31, 1989, which as of August 8, 1993 amounted to ₱1,123,500.00 as shown by the evidence presented by the bank before the RTC and in the pleadings it had filed before the RTC, CA, and the Court.[40] Although this claim was not alleged in the bank's Answer being an after-acquired claim which was only raised

[39] *Rollo*, p. 39.

[40] *Id.*, p. 39; CA *rollo*, p. 52; records, p. 251, and Exhibit "43".

during the trial proper through the testimony dated August 17, 1993 of Ms. Arlene Aportadera,[41] the bank is not barred from recovering these rentals. As we explained in *Banco de Oro Universal Bank v. CA*,[42] a party is not barred from setting up a claim even after the filing of the answer if the claim did not exist or had not matured at the time said party filed its answer. Moreover, we note that the respondents did not object to the presentation of this evidence, hence, the issue of rentals from August 8, 1993 and onwards was tried with the implied consent of the parties; applying Section 5, Rule 10 of the 1997 Rules of Civil Procedure,[43] the issue should be treated in all respects as if it had been raised in the pleadings.[44] Given the implied consent, judgment may be validly rendered on this issue even if no motion had been filed and no amendment had been ordered.[45]

In *National Power Corporation v. CA*,[46] we held that where there is a variance in the defendant's pleadings and the evidence adduced by it at the trial, the Court may treat the pleading as amended to conform to the evidence.

---

[41] TSN, August 17, 1993, p. 7. See Exhibit "43".

[42] G.R. No. 160354, August 25, 2005, 468 SCRA 166, 185.

[43] Section 5. *Amendment to conform to or authorize presentation of evidence*. — When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

[44] *Sy v. Court of Appeals*, G.R. No. 124581, December 27, 2007, 541 SCRA 371, 386-387.

[45] *Id.*, p. 387.

[46] G.R. No. 43814, April 16, 1982, 113 SCRA 556 cited in *Sy v. Court of Appeals, supra* note 45.

Additionally, the respondents are also liable to pay interest by way of damages for their failure to pay the rentals due for the use of the subject property. In *Eastern Shipping Lines v. CA*,[47] we laid down the following guidelines with respect to the award and the computation of legal interest, as follows:

> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
>
> 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
>
> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% *per annum.* **No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169 Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.**
>
> 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit. [Emphasis supplied]

---

[47] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95-97.

The records are unclear on when the bank made a demand outside of the judicial proceedings for the rentals on the subject property.[48] However, the records show that the bank made a counterclaim for the payments of the rentals due as of January 31, 1989 in its Answer and subsequently, a claim for the after-acquired rentals was made by the bank through the testimony of Ms. Arlene Aportadera. Applying *Eastern Shipping Lines*, the payment of interest for the rentals shall be reckoned from the date the judicial demand was made by the bank or on April 20, 1989 when the bank set up its counterclaim for rentals in the subject property.

Under the circumstances, we can impose a 6% interest on the rentals from April 20, 1989 up to the finality of this decision. Thereafter, the interest shall be computed at 12% per annum from such finality up to full satisfaction.

We find no basis for the award of exemplary damages. Article 2232 of the Civil Code declares:

> Article 2232. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.

Considering the factual circumstances we have discussed above, we can hardly characterize respondents' act of insisting on the enforcement of the repurchase agreement as wanton, fraudulent, reckless, oppressive, or malevolent.

As there is no basis for an award of exemplary damages, the awards of attorney's fees and litigation expenses to the bank are not justified under Article 2208 of the Civil Code.

---

[48] Article 2209 read in relation with Article 1169, which provisions state:

Art. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent per annum. (1108)

Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation. xxx.

WHEREFORE, premises considered, we hereby *GRANT* the petition. The Decision dated March 31, 2006 and Resolution dated August 11, 2006 of the Court of Appeals in CA-G.R. CV No. 49900 are hereby *REVERSED* and *SET ASIDE*.

The complaint in Civil Case No. 19416-89 for breach of contract, specific performance, damages, and attorney's fees, with preliminary injunction filed by Cuison Lumber Co., Inc. and Mrs. Cuison against Traders Royal Bank is hereby *DISMISSED*. The respondents are ordered to vacate the subject property and to restore its possession to the petitioner bank.

The respondents are further ordered to pay reasonable compensation, for the use and occupation of the subject property in the amount of ₱1,123,500.00, representing the accrued rentals as of August 8, 1993, less the amount of ₱485,000.00 representing deposits paid by the respondents. In addition, respondents are also ordered to pay the amount of ₱13,700.00 a month by way of rentals starting from August 8, 1993 until they vacate the subject property. The rentals shall earn a corresponding legal interest of six percent (6%) per annum to be computed from April 20, 1989 until the finality of this decision. After this decision becomes final and executory, the rate of legal interest shall be computed at twelve percent (12%) *per annum* from such finality until its satisfaction.

Costs against the respondents.

SO ORDERED.

Quisumbing (Chairperson), Ynares-Santiago,[*] *Velasco, Jr.,* and *Leonardo-de Castro,*[**] *JJ.,* concur.

---

[*] Designated additional Member of the Second Division per Special Order No. 645 dated May 15, 2009.

[**] Designated additional Member of the Second Division effective May 11, 2009 per Special Order No. 635 dated May 7, 2009.

SECOND DIVISION

[G.R. No. 176744. June 5, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ADELADO ANGUAC *y* RAGADAO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY ALLEGED ILL-MOTIVE. — Accused Anguac alleged that rape victim AAA resented being asked to work to pay off her mother's obligation as a result of which she harbored a grudge against him and her mother. The resentment angle, even if true, does not prove any ill motive on AAA's part to falsely accuse Anguac of rape or necessarily detract from her credibility as witness. Motives, such as those arising from family feuds, resentment, or revenge, have not prevented the Court from giving, if proper, full credence to the testimony of minor complainants who remained steadfast throughout their direct and cross-examination.

2. ID.; ID.; ID.; FINDINGS OF TRIAL COURT AFFIRMED BY APPELLATE COURT, RESPECTED. —The categorical conclusion of the CA, confirmatory of that of the trial court, was that Anguac raped AAA on March 28, 1998 and five (5) more times thereafter. Both the trial and appellate courts found AAA to be categorical and unfaltering in her testimony on those unforgettable occasions. Both courts' assessments of AAA's credibility, particularly those of the trial court which had the advantage of observing her demeanor while in the witness box, carry great weight. Unless it is shown that the trial court overlooked, misapplied, or misunderstood some fact or circumstance of substance that would otherwise affect the result of the case, its findings will remain undisturbed on appeal. After carefully reading the records of the case, we find no compelling reason now to depart from the rule.

3. CRIMINAL LAW; RAPE; CAN BE COMMITTED ANYTIME ANYWHERE IN THE PRESENCE OF OTHER PEOPLE. — Anguac's claim that it is impossible for AAA's young siblings

sleeping beside or near her not to be awakened while she was allegedly being rape is untenable. Lust, being a very powerful human urge, is, to borrow from *People v. Bernabe*, "no respecter of time and place." Rape can be committed in even the unlikeliest places and circumstances, and, as recent jurisprudence shows, by the most unlikely persons. The fact that AAA's siblings were not awakened at the time she was ravished is not improbable. We have observed in more than one occasion that rape could take place in the same room where other members of the family were sleeping; that it is not impossible to commit rape in a small room even if there are several persons in it. We have taken judicial notice of the fact that among poor couples with big families cramped in small quarters, copulation does not seem to be a problem despite the presence of other persons.

4. REMEDIAL LAW; EVIDENCE; DENIAL; CANNOT PREVAIL OVER POSITIVE TESTIMONY. —Anguac has failed to disprove the allegations of AAA with his mere denial of the charges against him. The rule is that denials are self-serving negative evidence which cannot prevail over the positive, straightforward, and unequivocal testimony of the victim. We have ruled time and again that the sole testimony of a rape victim, if credible, suffices to convict.

5. CRIMINAL LAW; SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT (RA 7610); CHILD PROSTITUTION AND OTHER SEXUAL ABUSE; CRIME COMMITTED IN CASE AT BAR AS ALLEGED IN THE FACTS OF INFORMATION ALTHOUGH ERRONEOUSLY DESIGNATED. — The Court affirms the CA's modification of the crime charged in Criminal Case No. RTC 2757-I. The RTC erroneously convicted accused-appellant based on the crime designated in the information for that criminal case. While the Information pertaining to that criminal case charged accused-appellant with violation of Sec. 5(a) of RA 7610, the facts alleged in it constitute elements of a violation of Sec. 5(b) of the same law: Section 5. *Child Prostitution and Other Sexual Abuse*.—Children, whether male or female, who, for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse. The penalty of *reclusion temporal* in its medium period

to *reclusion perpetua* shall be imposed upon the following: x x x (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; x x x As the Court has previously held, the character of the crime is determined neither by the caption or preamble of the information nor by the specification of the provision of law alleged to have been violated, they being conclusions of law, but by the recital of the ultimate facts and circumstances in the information. Consequently, even if the designation of the crime in the information of Criminal Case No. RTC 2757-I was defective, what is controlling is the allegation of the facts in the information that comprises a crime and adequately describes the nature and cause of the accusation against the accused. Sec. 5(a) of RA 7610 refers to engaging in or promoting, facilitating, or inducing child prostitution. Sec. 5(b), on the other hand, relates to offenders who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution **or subject to other sexual abuse**. The informations charged accused-appellant with having sexual congress with AAA through force, threats, and intimidation. These allegations more properly fall under a charge under Sec. 5(b). The appellate court was, thus, correct in modifying the RTC's disposition of the case with regard to the violation under RA 7610.

6. ID.; ID.; ID.; ID.; PROPER EXEMPLARY AND MORAL DAMAGES. — Anent the award of exemplary damages to AAA in Criminal Case No. RTC-2756-I, it is increased from PhP 25,000 to PhP 30,000 in accordance with our ruling in *People v. Layco, Sr*. On the matter of civil liability, we increase the award of moral damages in Criminal Case No. RTC-2757-I (violation of Sec. 5[b] of RA 7610) to PhP 50,000 pursuant to prevailing jurisprudence. We affirm the rest of the monetary awards.

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 August 29, 2006 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02012 entitled *People of the Philippines v. Adelado Anguac* which affirmed with modification the Decision dated January 23, 2002 of the Regional Trial Court (RTC), Branch 69 in Iba, Zambales in Criminal Case Nos. RTC 2756-I and RTC 2757-I. The RTC convicted accused-appellant Adelado Anguac of rape and violation of Section 5(a), Republic Act No. (RA) 7610 or the *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*.

The records disclose the following facts:

Accused-appellant Anguac is the common-law spouse of BBB, the mother of AAA.[1] They reside in a hut in Palauig, Zambales. At around 9:00 p.m. of March 28, 1998, AAA, then 17 years old, while asleep with her siblings in a room at their residence, found herself suddenly awakened by Anguac who poked a knife at her with the threat, "*Huwag kang maingay kundi papatayin ko kayong lahat* (Do not make any noise or else, I will kill you all)." Thereafter, Anguac succeeded in removing the underwear of the struggling AAA and then sexually forced himself on AAA while pointing the knife just below her ear. After satisfying his lust, Anguac again threatened AAA with bodily harm should she disclose what had just occurred. The sexual assault on AAA was to be repeated five (5) more

[1] The name and personal circumstances of the victim and her immediate family are withheld per RA 7610 and RA 9262 or the *Anti-Violence Against Women and Their Children Act* (2004).

times: in April 1998, May 1998, twice in January 1999, and once in February 1999. Sometime in July 1999, AAA, when queried by her aunts, admitted to her being pregnant as a result of the dastardly acts of Anguac. Thereafter, the concerned aunts accompanied their pregnant niece to the police to file a complaint against Anguac. On October 4, 1999, AAA gave birth to a baby boy.[2]

On November 26, 1999, two (2) separate informations were filed charging Anguac with rape and violation of RA 7610, respectively, as follows:

Crim. Case No. RTC-2756-I

That on or about the 28th day of March 1998, in Brgy. [XXX], municipality of Palauig, province of Zambales, Philippines, and within the jurisdiction of [the RTC], the said accused, with lewd design and by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with and carnal knowledge of [AAA], a minor 17 years old, said accused then the common-law spouse of the mother of the minor [AAA], without the latter's consent and against her will, to her damage and prejudice.

Crim. Case No. RTC-2757-I

That in or about the period from April 1998 to February 1999, in Brgy. [XXX], municipality of Palauig, province of Zambales, Philippines, and within the jurisdiction of [the RTC], the said accused, actuated by lust, and due to said accused's coercion and/or influence and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with and carnal knowledge of [AAA], a minor 17 years old, with said accused being then the common-law spouse of [AAA's] mother, without the latter's consent and against her will, to her damage and prejudice.[3]

When arraigned, Anguac pleaded not guilty to both charges. In the ensuing trial, he denied committing the crimes imputed to him, claiming that AAA was away staying and working with her aunt during the months the alleged molestation took place.

---

[2] Exhibit "D".

[3] CA *rollo*, pp. 10, 12.

He described AAA to be a problem child, often cutting classes, and was always in the company of boys. BBB, AAA's mother, corroborated his testimony about AAA being away with her aunt from March 22, 1998 to March 1999. She also testified that Anguac treated AAA like his very own daughter.

The RTC, finding AAA to be a credible witness without improper motive to falsely accuse and testify against Anguac, rendered on January 23, 2002 a Decision finding Anguac guilty as charged and sentencing him accordingly. The dispositive portion of the RTC decision reads:

WHEREFORE, in consideration of the foregoing premises, JUDGMENT is hereby rendered as follows:

1. In Criminal Case No. RTC 2756-I for the crime of rape, the accused is found guilty beyond reasonable doubt of the crime provided under the Revised Penal Code and is sentenced to suffer the single indivisible penalty of *reclusion perpetua* and to pay moral damages in the sum of SEVENTY FIVE THOUSAND PESOS (₱75,000.00);

2. In Criminal Case No. RTC 2757-I, the accused is pronounced guilty beyond reasonable doubt of the crime committed [which] is punishable under Republic Act No. 7610, Section 5(a) and is sentenced to suffer the penalty of *reclusion temporal* in its medium period of 14 years as imprisonment. Applying the Indeterminate Sentence Law, by reason of Section 1, Act No. 4103, as amended by Act No. 4225, that x x x "if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same" and which minimum penalty hereof imposed on the accused is, therefore, 12 years imprisonment and for the accused to pay further the sum of THIRTY THOUSAND PESOS (₱30,000.00) as moral damages; and

3. The accused is credited for the period covered by his preventive imprisonment, for purposes of the service of his sentences.

The Provincial Warden of Iba, Zambales is ordered to commit the living body of the accused to [the] National Penitentiary to serve his sentences within a period of ten days upon receipt of this Decision.

IT IS SO ORDERED.[4]

Therefrom, Anguac appealed to this Court, claiming that the RTC erred in: (1) giving undue credence to the testimonies of the prosecution's witness; (2) finding the charges sufficiently established by evidence; and (3) finding him guilty beyond reasonable doubt of the crimes charged.

Per Resolution[5] dated August 31, 2005, the Court, in line with its ruling in *People v. Mateo*,[6] transferred the case to the CA for its disposition, whereat it was docketed as CA-G.R. CR-H.C. No. 02012.

In a Decision dated August 29, 2006, the CA affirmed the Decision of the RTC. It, however, treated the crime of rape charged in Criminal Case No. RTC 2757-I as a violation of Sec. 5(b) of RA 7610 instead of Sec. 5(a) as found by the trial court, pursuant to the dictum "the real nature of the crime charged is determined by the facts alleged in the Information and not by the title or designation of the offense contained in the caption of the Information."[7] Monetary awards were likewise modified. The case was disposed of as follows:

WHEREFORE, the assailed January 23, 2002 Decision of the Regional Trial Court of Iba, Zambales, Branch 69, in Criminal Case Nos. RTC 2756-I and RTC 2757-I is hereby MODIFIED to read as follows:

"WHEREFORE, in consideration of the foregoing premises, JUDGMENT is hereby rendered as follows:

---

[4] *Id.* at 35-36. Penned by Judge Jules A. Mejia.

[5] *Rollo*, p. 2.

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

[7] *Garcia v. People*, G.R. No. 144785, September 11, 2003, 410 SCRA 582, 587.

1. In Criminal Case No. RTC-2756-I, the accused is found guilty beyond reasonable doubt of the crime of Rape and is sentenced to suffer the single indivisible penalty of *Reclusion Perpetua* and to pay civil indemnity in the sum of SEVENTY FIVE THOUSAND PESOS (₱75,000.00); moral damages in the sum of SEVENTY FIVE THOUSAND PESOS; and exemplary damages in the sum of TWENTY FIVE THOUSAND PESOS (₱25,000.00);

2. In Criminal Case No. RTC-2757-I, the accused is pronounced guilty beyond reasonable doubt of the crime committed [which] is punishable under Republic Act No. 7610, Section 5(b) and is sentenced to suffer the penalty of *reclusion temporal* in its medium period of 14 years as imprisonment. Applying the Indeterminate Sentence Law, by reason of Section 1, Act No. 4103, as amended by Act No. 4225, that x x x "if the offense is punished by any other law, the court shall sentence the accused of an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same" and which minimum penalty hereof imposed on the accused is, therefore, 12 years imprisonment and for the accused to pay further the sum of THIRTY THOUSAND PESOS (₱30,000.00) as moral damages; and,

3. The accused is credited for the period covered by his preventive imprisonment, for purposes of the service of his sentence.

The Provincial Warden of Iba, Zambales is ordered to commit the living body of the accused to the National Penitentiary to serve his sentences within the period of ten days upon receipt of this Decision.

IT IS SO ORDERED."

SO ORDERED.[8]

The case is now again with this Court for review of the CA's affirmatory decision. On September 3, 2007, this Court

[8] *Rollo*, pp. 12-13. Penned by Associate Justice Elvi John S. Asuncion and concurred in by Associate Justices Jose Catral Mendoza and Sesinando E. Villon.

required the parties to submit supplemental briefs if they so desired. The parties manifested their willingness to submit the case for resolution on the basis of the records already submitted.

On the basis of the assignment of errors earlier made by Anguac, we find the issues to be: (1) the credibility of the witnesses for the prosecution; and (2) the sufficiency of the prosecution's evidence.

As it was in the CA, Anguac assails the credibility of the witnesses for the prosecution, particularly that of AAA. In a bid to discredit AAA's testimony, Anguac alleges that AAA has an axe to grind against him and BBB, AAA's mother, for sending her away to work at her aunt's house to pay off a big loan they incurred. He also urges us to note that on the night of March 28, 1998, when the first alleged rape incident occurred, AAA was in a room sleeping with her younger half-sisters and brothers lying beside or very close to her. To Anguac, it was well-nigh impossible for the alleged rape to have transpired without rousing AAA's siblings from their sleep.

The appeal of Anguac has no merit.

Anguac's allegation that AAA resented being made to work off her mother's debts has nothing to support itself. The appellate court found no sufficient basis to back Anguac's contention about AAA being asked to work to pay off her mother's obligation as a result of which she harbored a grudge against him and her mother. Moreover, the resentment angle, even if true, does not prove any ill motive on AAA's part to falsely accuse Anguac of rape or necessarily detract from her credibility as witness. Motives, such as those arising from family feuds, resentment, or revenge, have not prevented the Court from giving, if proper, full credence to the testimony of minor complainants[9] who remained steadfast throughout their direct and cross-examination.[10]

---

[9] *People v. Alejo*, G.R. No. 149370, September 23, 2002, 411 SCRA 563, 573.

[10] *People v. Rata*, G.R. Nos. 145523-24, December 11, 2003, 418 SCRA 237, 248-249.

The categorical conclusion of the CA, confirmatory of that of the trial court, was that Anguac raped AAA on March 28, 1998 and five (5) more times thereafter. Both the trial and appellate courts found AAA to be categorical and unfaltering in her testimony on those unforgettable occasions. Both courts' assessments of AAA's credibility, particularly those of the trial court which had the advantage of observing her demeanor while in the witness box, carry great weight. Unless it is shown that the trial court overlooked, misapplied, or misunderstood some fact or circumstance of substance that would otherwise affect the result of the case, its findings will remain undisturbed on appeal.[11] After carefully reading the records of the case, we find no compelling reason now to depart from the rule.

Anguac's claim that it is impossible for AAA's young siblings sleeping beside or near her not to be awakened while she was allegedly being rape is untenable. Lust, being a very powerful human urge, is, to borrow from *People v. Bernabe*, "no respecter of time and place."[12] Rape can be committed in even the unlikeliest places and circumstances, and, as recent jurisprudence shows, by the most unlikely persons. The fact that AAA's siblings were not awakened at the time she was ravished is not improbable. We have observed in more than one occasion that rape could take place in the same room where other members of the family were sleeping;[13] that it is not impossible to commit rape in a small room even if there are several persons in it.[14] We have taken judicial notice of the fact that among poor couples with big families cramped in small quarters, copulation does not seem to be a problem despite the presence of other persons.[15]

---

[11] *People v. Dela Cruz*, G.R. Nos. 135554-56, June 21, 2002, 383 SCRA 410, 428.

[12] G.R. No.141881, November 21, 2001, 370 SCRA 142, 147.

[13] *People v. Besmonte*, G.R. Nos. 137278-79, February 17, 2003, 397 SCRA 513, 523.

[14] *People v. Balmoria*, G.R. No. 134539, November 15, 2000, 344 SCRA 723, 728.

[15] *People v. Flores*, G.R. Nos. 145309-10, April 4, 2003, 400 SCRA 677, 687.

Anguac has failed to disprove the allegations of AAA with his mere denial of the charges against him. The rule is that denials are self-serving negative evidence which cannot prevail over the positive, straightforward, and unequivocal testimony of the victim.[16] We have ruled time and again that the sole testimony of a rape victim, if credible, suffices to convict.[17]

The Court affirms the CA's modification of the crime charged in Criminal Case No. RTC 2757-I. The RTC erroneously convicted accused-appellant based on the crime designated in the information for that criminal case. While the Information pertaining to that criminal case charged accused-appellant with violation of Sec. 5(a) of RA 7610, the facts alleged in it constitute elements of a violation of Sec. 5(b) of the same law:

> Section 5. *Child Prostitution and Other Sexual Abuse*.—Children, whether male or female, who, for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
>
> The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:
>
> x x x x x x x x x
>
> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; x x x

---

[16] *People v. Bascugin*, G.R. No. 144195, May 25, 2004, 429 SCRA 140, 151.

[17] *People v. Capili*, G.R. No. 142747, March 12, 2002, 379 SCRA 203, 209.

As the Court has previously held, the character of the crime is determined neither by the caption or preamble of the information nor by the specification of the provision of law alleged to have been violated, they being conclusions of law, but by the recital of the ultimate facts and circumstances in the information.[18] Consequently, even if the designation of the crime in the information of Criminal Case No. RTC 2757-I was defective, what is controlling is the allegation of the facts in the information that comprises a crime and adequately describes the nature and cause of the accusation against the accused.

Sec. 5(a) of RA 7610 refers to engaging in or promoting, facilitating, or inducing child prostitution. Sec. 5(b), on the other hand, relates to offenders who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution **or subject to other sexual abuse**. The informations charged accused-appellant with having sexual congress with AAA through force, threats, and intimidation. These allegations more properly fall under a charge under Sec. 5(b). The appellate court was, thus, correct in modifying the RTC's disposition of the case with regard to the violation under RA 7610.

Anent the award of exemplary damages to AAA in Criminal Case No. RTC-2756-I, it is increased from PhP 25,000 to PhP 30,000 in accordance with our ruling in *People v. Layco, Sr.*[19]

On the matter of civil liability, we increase the award of moral damages in Criminal Case No. RTC-2757-I (violation of Sec. 5[b] of RA 7610) to PhP 50,000 pursuant to prevailing jurisprudence.[20] We affirm the rest of the monetary awards.

WHEREFORE, the appeal is *DENIED*. The August 29, 2006 Decision of the CA in CA-G.R. CR-H.C. No. 02012, finding accused-appellant Adelado Anguac guilty beyond

---

[18] *Licyayo v. People*, G.R. No. 169425, March 4, 2008, 547 SCRA 598, 609.

[19] G.R. No. 182191, May 8, 2009.

[20] *People v. Abellera*, G.R. No. 166617, July 3, 2007, 526 SCRA 329.

reasonable doubt of the crimes of rape and violation of Sec. 5(b) of RA 7610, is *AFFIRMED* with the modifications that in Criminal Case No. RTC-2756-I for rape, accused-appellant is ordered to pay PhP 30,000 as exemplary damages, while in Criminal Case No. RTC-2757-I for violation of Sec. 5(b) of RA 7610, accused-appellant is ordered to pay moral damages in the sum of PhP 50,000.

SO ORDERED.

Quisumbing (Chairperson), Ynares-Santiago,[*] *Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

EN BANC

[G.R. No. 177011. June 5, 2009]

JOSEPH PETER SISON, ROSEMARIE SIOTING, FE P. VALENZUELA, ROBERTO L. BAUTISTA, MARIO P. ESCOBER, ARLENE PUZON, DANILO G. GERONA, NECITAS B. CLEMENTE, RAMON MACATANGAY, and NEOFITO HERNANDEZ, *petitioners, vs.* **ROGELIO TABLANG, Director IV, Commission on Audit; ELIZABETH S. ZOSA, Assistant Commissioner — Legal Adjudication and Settlement Board Chairperson; EMMA M. ESPINA, JAIME P. NARANJO, AMORSONIA B. ESCARDA, and CARMELA S. PEREZ, Members of the Commission on Audit Legal Adjudication and Settlement Board,** *respondents.*

---

[*] Additional member as per Special Order No. 645 dated May 15, 2009.

[**] Additional member as per Special Order No. 635 dated May 7, 2009.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PRINCIPLE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; VIOLATED IN CASE AT BAR. — It must first be stressed that petitioners failed to appeal the decision of the Adjudication and Settlement Board (ASB) to the Commission on Audit Proper before filing the instant petition with this Court, in derogation of the principle of exhaustion of administrative remedies. The general rule is that before a party may seek the intervention of the court, he should first avail himself of all the means afforded him by administrative processes. The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to the court without first giving such administrative agency the opportunity to dispose of the same after due deliberation.

2. ID.; ID.; ID.; COMMISSION ON AUDIT (COA) CASES; COMMISSION PROPER MUST BE FIRST GIVEN OPPORTUNITY TO REVIEW THE DECISION OF THE ADJUDICATION AND SETTLEMENT BOARD (ASB) BEFORE PETITION FOR *CERTIORARI* BE BROUGHT TO THE COURT. — On January 30, 2003, the COA issued Resolution No. 2003-001 delegating the authority to adjudicate and settle appeals from the decisions of the Directors involving suspensions and disallowances in amounts not exceeding five hundred thousand pesos (₱500,000.00) to the ASB of the Commission. It also clearly provides that "appeals from the decision of the Board shall be brought before the Commission Proper in the same manner as other cases under the Commission's existing rules and regulations." Correlatively, the 1997 Revised Rules of Procedure of the COA states that: RULE VI APPEAL FROM DIRECTOR TO COMMISSION PROPER Section 1. ***Who May Appeal and Where to Appea***l. – The party aggrieved by a final order or decision of the Director may appeal to the Commission Proper. x x x x RULE XI JUDICIAL REVIEW Section 1. ***Petition for Certiorari***. – Any decision, order or resolution of the Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty (30) days from receipt of a copy thereof in the manner provided by law, the Rules of Court and these Rules. It is, therefore, imperative that the Commission Proper be first given the

opportunity to review the decision of the ASB. Only after the Commission shall have acted thereon may a petition for *certiorari* be brought to the Court by the aggrieved party. While the principle of exhaustion of administrative remedies admits of exceptions, the Court does not find any cogent reason to apply the cited exceptions to the instant case. The non-observance of the doctrine results in the petition having no cause of action, thus, justifying its dismissal. In this case, the necessary consequence of the failure to exhaust administrative remedies is obvious: the disallowance as ruled by the Legal and Adjudication Office — Corporate (LAO-C) has now become final and executory.

3. ID.; ID.; GOVERNMENT PROCUREMENT ACT (R.A. No. 9184); HONORARIA OF MEMBERS OF THE BIDS AND AWARD COMMITTEE (BAC) AND THE TECHNICAL WORKING GROUP (TWG); PAYMENT THEREOF MUST BE CIRCUMSCRIBED BY APPLICABLE RULES AND GUIDELINES. — An honorarium is defined as something given not as a matter of obligation but in appreciation for services rendered, a voluntary donation in consideration of services which admit of no compensation in money. Section 15 of R.A. No. 9184 uses the word "may" which signifies that the honorarium cannot be demanded as a matter of right. The government is not unmindful of the tasks that may be required of government employees outside of their regular functions. It agrees that they ought to be compensated; thus, honoraria are given as a recompense for their efforts and performance of substantially similar duties, with substantially similar degrees of responsibility and accountability. However, the payment of honoraria to the members of the BAC and the TWG must be circumscribed by applicable rules and guidelines prescribed by the Department of Budget and Management (DBM), as provided by law. Section 15 of R.A. No. 9185 is explicit as it states: "For this purpose, the DBM *shall* promulgate the necessary guidelines." The word "shall" has always been deemed mandatory, and not merely directory. Thus, in this case, petitioners should have first waited for the rules and guidelines of the DBM before payment of the honoraria. As the rules and guidelines were still forthcoming, petitioners could not just award themselves the straight amount of 25% of their monthly basic salaries as honoraria. This is not the intendment of the

law. Furthermore, albeit in hindsight, the DBM Budget Circular provides that the payment of honoraria should be made only for "successfully completed procurement projects."

APPEARANCES OF COUNSEL

The Solicitor General for respondents.

D E C I S I O N

NACHURA, *J.*:

This is a petition for *certiorari* assailing the decision[1] of the Adjudication and Settlement Board (ASB) of the Commission on Audit (COA) dated March 5, 2007, which affirmed the Notices of Disallowance (ND) issued by the Legal and Adjudication Office-Corporate (LAO-C), disallowing the payment of honoraria in the amount of ₱364,299.31 made by the National Housing Authority (NHA) to petitioners, as members of the Bids and Awards Committee (BAC) and the Technical Working Group (TWG).

Audit Observation Memoranda[2] were issued by the Supervising Auditor of the NHA, informing that there were excess/ unauthorized payments of honoraria to members of the BAC and the TWG. Thus, three (3) separate NDs were issued by the LAO-C, to wit:

(1) Notice of Disallowance No. 2004-001 (04) dated November 22, 2004 disallowing in audit the amount of ₱73,768.00 as overpayment of honoraria covering the periods January and March 2004 for want of legal basis;

(2) Notice of Disallowance No. 2004-002 (03) dated December 2, 2004 disallowing in audit the amount of ₱290,531.31 for honoraria

---

[1] *Rollo,* pp. 15-22.

[2] Audit Observation Memorandum (AOM) No. 2004-08-119 dated August 31, 2004; AOM No. 2004-10-127 dated October 4, 2004; and AOM No. 2004-11-138 dated November 18, 2004.

paid covering the periods from March to September 2003 for want of legal basis; and for the period covering October to December 2003, on the ground that they were paid in excess of the allowed rates, contrary to Section 4.1 of Budget Circular No. 2004-5 dated March 23, 2004 of the Department of Budget and Management (DBM); and

(3) Notice of Disallowance No. 2005-001 (04) dated May 24, 2005 disallowing in audit the amount of ₱68,096.00 for the period covering April to June 2004, together with the honoraria received by the regular and provisionary members of the BAC for the months of January to June 2004, the same having been paid contrary to the allowed rates provided in DBM Circular No. 2004-5 dated March 23, 2004.

On January 3, 2005, petitioner Joseph Peter Sison, Assistant General Manager and Chairperson-BAC of the NHA, and the other petitioners, as members of the BAC and the TWG, sought reconsideration of the NDs on the following grounds:

1. That the payment of honoraria was based on the number of projects completed by the BAC and TWG's under their respective level of responsibility and on the rate provided for under the IRR of R.A. 9184, which should be in an amount not to exceed 25% of their respective basic monthly salary subject to availability of funds.

2. Since DBM has yet to issue the necessary Implementing Rules and Regulations for the grant of honoraria, the BAC and TWG members were given straight 25% of their basic monthly salary as honoraria for every month from March 2003-March 2004.

3. That the work of BAC and its TWG is up to the Recommendation of Award to the NHA General Manager. It is Management's responsibility to present such recommendation to the Board for notation/confirmation/ approval. The payment of honoraria should not be based on the Notice of Award but should be reckoned on the date of Recommendation of Award, as it sometimes takes several months before an award is approved by the Board.

4. That they should not be made to refund immediately whatever remaining disallowance after a computation of the same is made using the recommendation of Award as the reckoning date, but instead they request that the same be deducted from the remaining unpaid COLA which they are collecting from NHA or from succeeding honoraria they are to receive as members of the BAC and TWG.[3]

On September 13, 2005, the LAO-C denied the motions for reconsideration filed by petitioners in LAO-C Decision No. 2005-064.[4] It also rejected petitioners' request for a set-off of the disallowed amount against future collectibles from the NHA, as this was not in accordance with law and jurisprudence.[5]

A petition for review[6] was then filed by petitioners before the ASB of the COA which was denied on March 5, 2007 for lack of merit. The LAO-C decision, covering the three (3) NDs, was affirmed.[7]

Aggrieved, petitioners filed the instant petition maintaining that the grant of honoraria, not exceeding 25% of the basic monthly salaries of the BAC members, was justified. They aver that the payments were in accordance with Republic Act (R.A.) No. 9184, which was the applicable law at that time, and stressed that they did not exceed the 25% limit provided under Section 15 thereof.

The petition is bereft of merit.

It must first be stressed that petitioners failed to appeal the decision of the ASB to the Commission on Audit Proper before filing the instant petition with this Court, in derogation of the

---

[3] *Rollo,* p. 27.

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

[5] *Id.* at 28.

[6] *Id.* at 30-42.

[7] Adjudication and Settlement Board Decision No. 2007-017, *id.* at 15-22.

principle of exhaustion of administrative remedies. The general rule is that before a party may seek the intervention of the court, he should first avail himself of all the means afforded him by administrative processes. The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to the court without first giving such administrative agency the opportunity to dispose of the same after due deliberation.[8]

On January 30, 2003, the COA issued Resolution No. 2003-001 delegating the authority to adjudicate and settle appeals from the decisions of the Directors involving suspensions and disallowances in amounts not exceeding five hundred thousand pesos (₱500,000.00) to the ASB of the Commission. It also clearly provides that "appeals from the decision of the Board shall be brought before the Commission Proper in the same manner as other cases under the Commission's existing rules and regulations."[9]

Correlatively, the 1997 Revised Rules of Procedure of the COA states that:

RULE VI

APPEAL FROM DIRECTOR TO COMMISSION PROPER

Section 1. ***Who May Appeal and Where to Appeal.* –** The party aggrieved by a final order or decision of the Director may appeal to the Commission Proper.

xxx xxx xxx

RULE XI

JUDICIAL REVIEW

Section 1. ***Petition for Certiorari.* –** Any decision, order or resolution of the Commission may be brought to the Supreme Court

---

[8] *Republic v. Lacap,* G.R. No. 158253, March 2, 2007, 517 SCRA 255, 265.

[9] Resolution No. 2003-001, dated January 30, 2003; SUBJECT: Delegating the Authority and Settle Appeals from Disallowances Involving Amounts not Exceeding ₱500,000.00.

on *certiorari* by the aggrieved party within thirty (30) days from receipt of a copy thereof in the manner provided by law, the Rules of Court and these Rules.

It is, therefore, imperative that the Commission Proper be first given the opportunity to review the decision of the ASB. Only after the Commission shall have acted thereon may a petition for *certiorari* be brought to the Court by the aggrieved party. While the principle of exhaustion of administrative remedies admits of exceptions, the Court does not find any cogent reason to apply the cited exceptions to the instant case.[10] The non-observance of the doctrine results in the petition having no cause of action, thus, justifying its dismissal. In this case, the necessary consequence of the failure to exhaust administrative remedies is obvious: the disallowance as ruled by the LAO-C has now become final and executory.[11]

But even if we were to disregard this patent infirmity, we still find sufficient bases to uphold the three (3) NDs issued by the LAO-C.

---

[10] Exceptions: **(1) when there is a violation of due process; (2) when the issue involved is a purely 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 bear 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, adequate remedy; (11) when there are circumstances indicating the urgency of judicial intervention; (12) when no administrative review is provided by law; (13) where the rule of qualified political agency applies; and (14) when the issue of non-exhaustion of administrative remedies has been rendered moot. (Emphasis supplied; *rollo*, pp. 99-100.)

[11] *Bureau of Fisheries and Aquatic Resources Employees Union, Regional Office No. VII, Cebu City v. Commission on Audit*, G.R. No. 169815, August 13, 2008.

Section 15 of R.A. No. 9184, otherwise known as the Government Procurement Act,[12] provides that:

Section 15. *Honoraria of BAC Members.* – The Procuring Entity may grant payment of honoraria to the BAC members in an amount not to exceed twenty five percent (25%) of their respective basic monthly salary subject to availability of funds. For this purpose, the Department of Budget and Management (DBM) shall promulgate the necessary guidelines.

Section 15 of the Implementing Rules and Regulations (IRR) of R.A. No. 9184, issued on October 8, 2003, reads as follows:

Section 15. *Honoraria of BAC and TWG Members*

The procuring entity may grant payment of honoraria to the BAC members in an amount not to exceed twenty five percent (25%) of their respective basic monthly salary subject to availability of funds. For this purpose, the [Department of Budget and Management] DBM shall promulgate the necessary guidelines. The procuring entity may also grant payment of honoraria to the TWG members, subject to the relevant rules of the DBM.

There is no dispute that petitioners can be paid honoraria for the services they rendered as BAC and TWG members. However, the payment of honoraria is subject to the availability of funds and shall follow the guidelines and relevant rules which are promulgated by the DBM.

For this purpose, DBM Budget Circular No. 2004-5 was issued on March 23, 2004, prescribing the guidelines for the grant of honoraria to government personnel involved in government procurement, in accordance with the R.A. No. 9184. Paragraphs 4.1 and 4.2 of the budget circular provide that:

4.1 The chairs and members of the Bids and Awards Committee (BAC) and the Technical Working Group (TWG) may be paid honoraria only for successfully completed procurement projects. The honoraria shall not exceed the rates indicated below per procurement project:

---

[12] Approved on July 22, 2002.

	Honorarium Rate Per Procurement Project
BAC Chair	3,000.00
BAC Members	2,500.00
TWG Chair and Members	2,000.00

4.2 The total amount of honoraria received in a month may not exceed twenty-five percent (25%) of the monthly basic salary.[13]

Given the foregoing provisions, it was, therefore, error for petitioners to remunerate themselves the amount equivalent to 25% of their basic monthly salaries as honoraria for their services rendered as BAC members even before the DBM guidelines were promulgated. We quote with favor the ASB's rationale for the disallowance:

A reading of the above-quoted provision would reveal that the first sentence sets the limit as to the amount of honoraria that may be granted to BAC members, that is 25% of their respective basic monthly salary subject to availability of funds. Further reading of the same would reveal that an enabling rule, a DBM guideline, is needed for its implementation as contained in the second sentence thereof. Thus, the "provision of Sec. 15 of the GPRA authorizing procuring entities or agencies to grant honoraria to BAC members is not self-executing, as it still needs an implementing guideline to be promulgated by the DBM" (Government Procurement Tool Kit, Sofronio B. Ursal, 2004 ed., p. 90).[14]

Petitioners contend that it would be unjust if the BAC and the TWG members were not paid their honoraria for work already performed just because the DBM had not yet promulgated the necessary guidelines.[15]

---

[13] *Rollo,* p. 19. (Underlining supplied.)

[14] *Id.* at 18.

[15] *Id.* at 103.

This contention is untenable.

An honorarium is defined as something given not as a matter of obligation but in appreciation for services rendered, a voluntary donation in consideration of services which admit of no compensation in money.[16] Section 15 of R.A. No. 9184 uses the word "may" which signifies that the honorarium cannot be demanded as a matter of right.[17]

The government is not unmindful of the tasks that may be required of government employees outside of their regular functions. It agrees that they ought to be compensated; thus, honoraria are given as a recompense for their efforts and performance of substantially similar duties, with substantially similar degrees of responsibility and accountability.[18] However, the payment of honoraria to the members of the BAC and the TWG must be circumscribed by applicable rules and guidelines prescribed by the DBM, as provided by law. Section 15 of R.A. No. 9185 is explicit as it states: "For this purpose, the DBM *shall* promulgate the necessary guidelines." The word "shall" has always been deemed mandatory, and not merely directory. Thus, in this case, petitioners should have first waited for the rules and guidelines of the DBM before payment of the honoraria. As the rules and guidelines were still forthcoming, petitioners could not just award themselves the straight amount of 25% of their monthly basic salaries as honoraria. This is not the intendment of the law.

Furthermore, albeit in hindsight, the DBM Budget Circular provides that the payment of honoraria should be made only for "successfully completed procurement projects." This phrase was clarified in DBM Budget Circular No. 2004-5A dated October 7, 2005, to wit:

---

[16] *Santiago v. Commission on Audit*, G.R. No. 92284, July 12, 1991, 199 SCRA 125, 130.

[17] See *Allarde v. Commission on Audit*, G.R. No. 103578, January 29, 1993, 218 SCRA 227, 232.

[18] Rationale (for the grant of honoraria), see DBM Circular No. 2004-5, March 23, 2004.

> 5.1 The chairs and members of the Bids and Awards Committee (BAC) and the Technical Working Group (TWG) may be paid honoraria only for successfully completed procurement projects. In accordance with Section 7 of the Implementing Rules and Regulations Part A (IRR-A) of RA No. 9184, a procurement project refers to the entire project identified, described, detailed, scheduled and budgeted for in the Project Procurement Management Plan prepared by the agency.
>
> A procurement project shall be considered successfully completed once the contract has been awarded to the winning bidder.

No interpretation is needed for a law that is clear, plain and free from ambiguity. Now, the DBM has already set the guidelines for the payment of honoraria as required by law. Since the payment of honoraria to petitioners did not comply with the law and the applicable rules and guidelines of the DBM, the notices of disallowance are hereby upheld.

IN VIEW OF THE FOREGOING, the petition is *DISMISSED* for lack of merit.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona,Velasco, Jr., Leonardo-de Castro, Brion, Peralta, and *Bersamin, JJ.,* concur.

Carpio Morales and *Chico-Nazario, JJ.,* on official leave.

.

EN BANC

[G.R. No. 177179. June 5, 2009]

V.C. CADANGEN and ALLIANCE OF CIVIL SERVANTS, INC., *petitioners, vs.* **THE COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS; GRAVE ABUSE OF DISCRETION FOR DENIAL OF PETITION FOR REGISTRATION; NOT ESTABLISHED IN CASE AT BAR.— Incumbent on petitioner is the duty to show that the COMELEC, in denying the petition for registration, gravely abused its discretion. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave, as when it is exercised arbitrarily or despotically by reason of passion or personal hostility. The abuse must be so patent and so gross as to amount to an evasion of a positive duty, to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law. Here, petitioner failed to demonstrate, and neither do we find, that the COMELEC, through the questioned issuances, gravely abused its discretion.

2. ID.; ID.; ID.; ID.; REGISTRATION OF PARTY, ORGANIZATION OR COALITION UNDER R.A. No. 7941; MAY BE REFUSED AS IN CASE AT BAR. — We note that in the registration of a party, organization, or coalition under R.A. No. 7941, the COMELEC may require the submission of any relevant information; and it may refuse, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition based on any of the grounds enumerated in Section 6 thereof, among which is that the organization has declared untruthful statements in its petition. The COMELEC, after evaluating the documents submitted by petitioner, denied the latter's plea for registration as a sectoral party, not on the basis of its failure to prove its nationwide presence, but for its failure to show that it represents and seeks to uplift marginalized and underrepresented sectors. Further,

the COMELEC found that petitioner made an untruthful statement in the pleadings and documents it submitted.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION ALLEGEDLY COMMITTED BY THE COMELEC; NOT APPRECIATED IN CASE AT BAR. — The Court emphasizes that the sole function of a writ of *certiorari* is to address issues of want of jurisdiction or grave abuse of discretion and it does not include a review of the tribunal's evaluation of the evidence. The findings of fact made by the COMELEC, or by any other administrative agency exercising expertise in its particular field of competence, are binding on the Court. The Court is not a trier of facts; it is not equipped to receive evidence and determine the truth of factual allegations. The Court's function, as mandated by Section 1, Article VIII of the Constitution, is merely to check whether or not the governmental branch or agency has gone beyond the constitutional limits of its jurisdiction, not that it erred or has a different view. In the absence of a showing of grave abuse of discretion amounting to lack of jurisdiction, this Court will have no occasion to exercise its corrective power. It has no authority to inquire into what it thinks is apparent error.

APPEARANCES OF COUNSEL

The Solicitor General for respondent.

D E C I S I O N

NACHURA, *J.*:

For resolution is a petition for *certiorari* and *mandamus* filed under Rules 64 and 65 of the Rules of Court assailing the March 26, 2007 Resolution[1] of the Commission on Elections (COMELEC) *en banc* in SPP Case No. 06-040 (PL). In the questioned resolution, the COMELEC *en banc* denied petitioners'

[1] Penned by Commissioner Resurreccion Z. Borra (retired), with Chairman Benjamin S. Abalos, Sr. (resigned), Commissioners Florentino A. Tuason, Jr. (retired), Romeo A. Brawner (deceased), Rene V. Sarmiento and Nicodemo T. Ferrer, concurring; *rollo*, pp. 35-39.

motion for the reconsideration of the February 13, 2007 Resolution[2] of the COMELEC Second Division.

The relevant antecedent facts and proceedings follow.

On September 13, 2006, petitioner Alliance of Civil Servants, Inc. (Civil Servants), represented by its then president, Atty. Sherwin R. Lopez, filed a petition for registration as a sectoral organization under Republic Act (R.A.) No. 7941[3] or the Party-List System Act. It claimed, among others, that it had been in existence since December 2004 and it sought to represent past and present government employees in the party-list system.[4]

The COMELEC Second Division, on December 11, 2006, issued an Order[5] requiring Civil Servants to file a memorandum that would prove its presence or existence nationwide, track record, financial capability to wage a nationwide campaign, platform of government, officers and membership, and compliance with the provisions of the Party-List System Act and the eight-point guideline laid down by this Court in *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*.[6]

Civil Servants consequently filed the required memorandum attaching thereto the following documents: (1) copies of its letters to the respective election directors/officers/registrars of the Cordillera Administrative Region, Second District of Quezon City, and the cities of Iloilo, Cotabato, Urdaneta and Dagupan, informing them of the names and addresses of its members in

---

[2] Penned by Commissioner Rene V. Sarmiento, with Commissioners Florentino A. Tuason, Jr. (retired) and Nicodemo T. Ferrer, concurring; *rollo*, pp. 97-109.

[3] Entitled "AN ACT PROVIDING FOR THE ELECTION OF PARTY-LIST REPRESENTATIVES THROUGH THE PARTY-LIST SYSTEM, AND APPROPRIATING FUNDS THEREFOR", approved on March 3, 1995.

[4] *Rollo*, pp. 40-41.

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

[6] 412 Phil. 308 (2001).

the said localities; (2) revised list of its members as of November 30, 2006; (3) list of its incorporators with brief descriptions of their credentials, including their designations/appointments in government offices; (4) printed screen shot of the Internet homepage of its on-line forum; (5) summary of its major activities and accomplishments since its inception; (6) financial statement showing its net asset of ₱399,927.00; (7) platform of government; and (8) list of its current officers with a summary of their credentials.[7]

With its petition for registration pending, Civil Servants also filed on February 8, 2007 a Manifestation[8] of intent to participate in the May 14, 2007 National and Local Elections.

On February 13, 2007, however, the COMELEC Second Division issued a Resolution[9] denying Civil Servants' petition for registration. We quote the relevant portions of the resolution, thus—

> Owing its mandate to the Constitution and Republic Act No. 7941, the party list system of elections is an important component of the Filipino people's participation in the legislative process. Members of the marginalized and underrepresented sectors now have a chance to be veritable law makers themselves through their representatives. Given the importance of the role they play in legislation, not all sectors who claim to be representative of the marginalized and underrepresented can be granted the opportunity to participate in the party list elections. Thus, the pronouncement of the Supreme Court in *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections* enunciating the eight (8) point (sic) guideline must be complied with by those who seek to participate, x x x.
>
> xxx xxx xxx
>
> Likewise, *R.A. 7941* laid down the definitive sectors covered by the system which include the following: labor, peasant, fisher folk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers and professionals.

---

[7] *Rollo*, pp. 62-94.

[8] *Id.* at 95-96.

[9] *Supra* note 2.

Thus, in determining whether or not a party can participate in the party list elections, the Commission (Second Division) is not only bound to verify the veracity of every petition, but also to see to it that members of these organizations belong to the marginalized and the underrepresented. Also put to test here is every petitioner's capacity to represent and voice out the sentiments and needs of the sector it represents. The eight-point guideline also requires that the party or organization seeking registration should lack a well-defined political constituency but could, nonetheless, contribute to the formulation of appropriate legislation to benefit the nation as a whole. Thus, guided by the provisions of R.A. 7941 and the eight point (sic) guideline enunciated in the *Ang Bagong Bayani* case, the Commission (Second Division) hereby resolves the following petitions for registration.

xxx xxx xxx

CIVIL SERVANTS is an alliance of government employees aimed at advancing the economic and social welfare of government employees, upholding the fundamental rights of civil servants and safeguarding the professional interest of government workers, among others. In its platform of government, CIVIL SERVANTS espouses the principles of efficient civil service, economic and social welfare, upholding the fundamental rights and the professional development of civil servants.

CIVIL SERVANTS likewise claims national constituency and that it has membership throughout the different regions in the country. In support thereof, petitioner presented a picture of their website where they discuss different issues confronting government employees. In relation thereto, petitioner asserts that it had divided itself to (sic) different working committees to address several issues the report of which is to be submitted in an annual meeting to be held on March 2007.

On the issue of petitioner's constituency which it claims to be nationwide, this cannot be established by mere letters to the Commission's Election Officers and providing them with a copy of the list of officers and members. To establish the extent of the constituencies of the different parties and organizations as claimed by them, the Commission directed its Election Officers to verify the existence of petitioner's chapters allegedly present in the NCR and the different regions. The verification report shows that CIVIL SERVANTS exists only in Parañaque City's (1st and 2nd Districts) and

in Quezon City's (4th District), contrary to petitioner's claim of national constituency in its memorandum. For having failed to prove its existence nationwide and for having declared an untruthful statement in its memorandum, We resolve to DENY the instant petition.[10]

Aggrieved, Civil Servants moved for reconsideration,[11] arguing in the main that the law does not require a sectoral organization to have a nationwide presence or existence for it to be registered under the party-list system. It posited that the COMELEC Second Division, in imposing such an additional requirement, went beyond the bounds of the law.

Not persuaded by Civil Servants' arguments, the COMELEC *en banc*, in the assailed March 26, 2007 Resolution,[12] denied the motion. It ruled that Civil Servants' failure to assail the COMELEC Second Division's order requiring proof of existence or presence nationwide, and the subsequent submission of its compliance therewith, which was later found to be insufficient, effectively barred the organization from subsequently questioning the legality of the aforementioned order.[13] The COMELEC *en banc* further ratiocinated that—

> Incidentally, the requirement of presence or existence in majority of the regions, provinces, municipalities or cities, as the case may be, is not based on mere whims or caprices of the Commission. It was made a necessity to serve as a gauge in assessing the capacity of the applicant to conduct a campaign and as a proof that it is not just a fly-by-night organization but one which truly represents a particular marginalized and underrepresented sector. It must be remembered that Republic Act 7941 empowers the Commission to ask the applicant to provide other information, which it may deem relevant, in deciding an application for registration of a party, organization or coalitions. It is under this provision that the

---

[10] *Rollo*, pp. 98-107.

[11] *Id.* at 110-124.

[12] *Supra* note 1.

[13] *Rollo*, p. 37.

Commission has required the petitioner to show its existence in the areas it claimed to have members.

At any rate, the Second Division was correct in rejecting the application for registration of the herein petitioner. And with no additional evidence to back the petitioner's claim of existence all over the country, the Commission *En Banc* cannot do otherwise but to likewise reject this motion for reconsideration.[14]

Left with no other recourse, petitioner filed the instant case praying for the issuance of a writ of *certiorari* to nullify the resolutions of respondent, and a writ of *mandamus* to command the latter to register the former as a sectoral organization.[15]

We dismiss the petition.

Incumbent on petitioner is the duty to show that the COMELEC, in denying the petition for registration, gravely abused its discretion. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave, as when it is exercised arbitrarily or despotically by reason of passion or personal hostility. The abuse must be so patent and so gross as to amount to an evasion of a positive duty, to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law.[16] Here, petitioner failed to demonstrate, and neither do we find, that the COMELEC, through the questioned issuances, gravely abused its discretion.

We note that in the registration of a party, organization, or coalition under R.A. No. 7941, the COMELEC may require the submission of any relevant information; and it may refuse, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition based on any of the grounds enumerated in Section 6 thereof, among which is that the organization has declared untruthful statements

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

[15] *Id.* at 32.

[16] *Cantoria v. Commission on Elections*, G.R. No. 162035, November 26, 2004, 444 SCRA 538, 543.

in its petition.[17] The COMELEC, after evaluating the documents submitted by petitioner, denied the latter's plea for registration

---

[17] R.A. No. 7941, Secs. 5 and 6 read in full:

Section 5. *Registration.* Any organized group of persons may register as a party, organization or coalition for purposes of the party-list system by filing with the COMELEC not later than ninety (90) days before the election a petition verified by its president or secretary stating its desire to participate in the party-list system as a national, regional or sectoral party or organization or a coalition of such parties or organizations, attaching thereto its constitution, by-laws, platform or program of government, list of officers, coalition agreement and other relevant information as the COMELEC may require: Provided, That the sectors shall include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals.

The COMELEC shall publish the petition in at least two (2) national newspapers of general circulation.

The COMELEC shall, after due notice and hearing, resolve the petition within fifteen (15) days from the date it was submitted for decision but in no case not later than sixty (60) days before election.

Section 6. *Refusal and/or Cancellation of Registration.* The COMELEC may, *motu propio* or upon verified complaint of any interested party, refuse or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:

(1) It is a religious sect or denomination, organization or association, organized for religious purposes;

(2) It advocates violence or unlawful means to seek its goal;

(3) It is a foreign party or organization;

(4) It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes;

(5) It violates or fails to comply with laws, rules or regulations relating to elections;

(6) It declares untruthful statements in its petition;

(7) It has ceased to exist for at least one (1) year; or

(8) It fails to participate in the last two (2) preceding elections or fails to obtain at least two per centum (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered.

as a sectoral party, not on the basis of its failure to prove its nationwide presence, but for its failure to show that it represents and seeks to uplift marginalized and underrepresented sectors. Further, the COMELEC found that petitioner made an untruthful statement in the pleadings and documents it submitted.

The Court emphasizes that the sole function of a writ of *certiorari* is to address issues of want of jurisdiction or grave abuse of discretion and it does not include a review of the tribunal's evaluation of the evidence.[18] The findings of fact made by the COMELEC, or by any other administrative agency exercising expertise in its particular field of competence, are binding on the Court.[19] The Court is not a trier of facts;[20] it is not equipped to receive evidence and determine the truth of factual allegations.[21] The Court's function, as mandated by Section 1,[22] Article VIII of the Constitution, is merely to check whether or not the governmental branch or agency has gone beyond the constitutional limits of its jurisdiction, not that it erred or has a different view. In the absence of a showing of

---

[18] *Bantay Republic Act or BA-RA 7941 v. Commission on Elections*, G.R. No. 177271, May 4, 2007, 523 SCRA 1, 11.

[19] *Aklat-Asosasyon Para sa Kaunlaran ng Lipunan at Adhikain Para sa Tao, Inc. v. Commission on Elections*, G.R. No. 162203, April 14, 2004, 427 SCRA 712, 720; *Idulza v. Commission on Elections*, G.R. No. 160130, April 14, 2004, 427 SCRA 701, 707-708.

[20] *Juan v. Commission on Elections*, G.R. No. 166639, April 24, 2007, 522 SCRA 119, 128.

[21] *Ang Bagong Bayani-OFW Labor Party v. COMELEC*, *supra* note 6, at 341.

[22] Article VIII, Section 1 of the Constitution reads in full:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

grave abuse of discretion amounting to lack of jurisdiction, this Court will have no occasion to exercise its corrective power. It has no authority to inquire into what it thinks is apparent error.[23]

Thus, in this case, the Court cannot grant the prayer of petitioner for registration as a sectoral party, because to do so will entail an evaluation of the evidence to determine whether indeed petitioner qualifies as a party-list organization and whether it has made untruthful statements in its application for registration.

The dismissal of this petition, however, shall not be taken to mean a preclusion on the part of the petitioner from re-filing an application for registration compliant with the requirements of the law.

WHEREFORE, premises considered, the petition for *certiorari* and *mandamus* is *DISMISSED*.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, and *Bersamin, JJ.,* concur.

Carpio Morales and *Chico-Nazario, JJ.,* on official leave.

---

[23] *Akbayan-Youth v. COMELEC*, 407 Phil. 618, 647 (2001); *BAYAN (Bagong Alyansang Makabayan) v. Exec. Sec. Zamora*, 396 Phil. 623, 664-665 (2000); *Co v. Electoral Tribunal of the House of Representatives*, G.R. Nos. 92191-92, July 30, 1991, 199 SCRA 692, 701.

THIRD DIVISION

[G.R. No. 179090. June 5, 2009]

LEONILO SANCHEZ *alias* NILO, *appellant, vs.* **PEOPLE OF THE PHILIPPINES and COURT OF APPEALS,** *appellees.*

SYLLABUS

1. CIVIL LAW; OTHER ACTS OF CHILD ABUSE (R.A. No. 7610); CHILD ABUSE; INCLUSIONS. — Under Subsection (b), Section 3 of R.A. No. 7610, child abuse refers to the maltreatment of a child, whether habitual or not, which includes **any of the following:** (1) Psychological and **physical abuse,** neglect, cruelty, sexual abuse and emotional maltreatment; (2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being; (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; **or** (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

2. ID.; ID.; SEC. 10(A), ART. VI THEREOF ON ACTS OF NEGLECT, ABUSE, CRUELTY OR EXPLOITATION AND OTHER CONDITIONS PREJUDICIAL TO THE CHILD'S DEVELOPMENT IN RELATION TO ART. 59 OF P.D. NO. 603; PROSECUTION AND CONVICTION OF ACCUSED. — In this case, the applicable laws are Article 59 of P.D. No. 603 and Section 10(a) of R.A. No. 7610. Section 10(a) of R.A. No. 7610 provides: SECTION 10. *Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development*. — (a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period. In this connection, our ruling in *Araneta v. People* is instructive: As gleaned from the foregoing, the provision punishes not only those enumerated under Article

59 of Presidential Decree No. 603, but also four distinct acts, *i.e.*, (a) child abuse, (b) child cruelty, (c) child exploitation and (d) being responsible for conditions prejudicial to the child's development. The Rules and Regulations of the questioned statute distinctly and separately defined child abuse, cruelty and exploitation just to show that these three acts are different from one another and from the act prejudicial to the child's development. Contrary to petitioner's assertion, **an accused can be prosecuted and be convicted under Section 10(a), Article VI of Republic Act No. 7610 if he commits any of the four acts therein.** The prosecution need not prove that the acts of child abuse, child cruelty and child exploitation have resulted in the prejudice of the child because an act prejudicial to the development of the child is different from the former acts. Moreover, it is a rule in statutory construction that the word "or" is a disjunctive term signifying dissociation and independence of one thing from other things enumerated. It should, as a rule, be construed in the sense which it ordinarily implies. Hence, the use of "or" in Section 10(a) of Republic Act No. 7610 before the phrase "**be responsible for other conditions prejudicial to the child's development" s**upposes that there are four punishable acts therein. *First***, the act of child abuse;** *second***, child cruelty;** *third*, **child exploitation; and fourth, being responsible for conditions prejudicial to the child's development.** The fourth penalized act cannot be interpreted, as petitioner suggests, as a qualifying condition for the three other acts, because an analysis of the entire context of the questioned provision does not warrant such construal.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; WHAT CONTROLS IS NOT THE TITLE OF THE INFORMATION OR THE DESIGNATION OF THE OFFENSE BUT THE ACTUAL FACTS RECITED THEREIN; CASE AT BAR. — We reject appellant's claim that the Information filed against him was defective. In *Resty Jumaquio v. Hon. Joselito C. Villarosa*, we held that what controls is not the title of the information or the designation of the offense but the actual facts recited therein. Without doubt, the averments in the Information clearly make out the offense of child abuse under Section 10(a) of R.A. No. 7610. The following were alleged: (1) the minority of VVV; (2) the acts constituting physical abuse, committed by appellant against

VVV; and (3) said acts are clearly punishable under R.A. No. 7610 in relation to P.D. No. 603. Indeed, as argued by the OSG, the commission of the offense is clearly recited in the Information, and appellant cannot now feign ignorance of this.

4. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT AFFIRMED BY APPELLATE COURT, RESPECTED. — Appellant could only proffer the defense of denial. Notably, the RTC found VVV and MMM to be credible witnesses, whose testimonies deserve full credence. It bears stressing that full weight and respect are usually accorded by the appellate court to the findings of the trial court on the credibility of witnesses, since the trial judge had the opportunity to observe the demeanor of the witnesses. Equally noteworthy is the fact that the CA did not disturb the RTC's appreciation of the witnesses' credibility. Thus, we apply the cardinal rule that factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions anchored on such findings, are accorded respect, if not conclusive effect, especially when affirmed by the CA. The exception is when it is established that the trial court ignored, overlooked, misconstrued, or misinterpreted cogent facts and circumstances which, if considered, will change the outcome of the case. We have reviewed the records of the RTC and the CA and we find no reason to deviate from the findings of both courts and their uniform conclusion that appellant is indeed guilty beyond reasonable doubt of the offense of Other Acts of Child Abuse.

5. CRIMINAL LAW; OTHER ACTS OF CHILD ABUSE (R.A. NO. 7610); IMPOSABLE PENALTY; INDETERMINATE SENTENCE LAW IS APPLICABLE. — Section 1 of the Indeterminate Sentence Law, as amended, provides: SECTION 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. The penalty for Other Acts of Child Abuse is *prision mayor* in

its minimum period. This penalty is derived from, and defined in, the Revised Penal Code. Although R.A. No. 7610 is a special law, the rules in the Revised Penal Code for graduating penalties by degrees or determining the proper period should be applied. Thus, where the special law adopted penalties from the Revised Penal Code, the Indeterminate Sentence Law will apply just as it would in felonies. In the absence of any modifying circumstances, and because it is favorable to appellant, we find the penalty of four (4) years, nine (9) months and eleven (11) days of *prision correccional*, as minimum, to six (6) years, eight (8) months and one (1) day of *prision mayor*, as maximum, proper.

APPEARANCES OF COUNSEL

Gonzalo D. Malig-on, Jr. for petitioner.
The Solicitor General for respondents.

R E S O L U T I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Civil Procedure seeking the reversal of the Court of Appeals (CA) Decision[2] dated February 20, 2007 which affirmed the Decision[3] dated July 30, 2003 of the Regional Trial Court (RTC) of Tagbilaran City, Bohol, convicting appellant Leonilo Sanchez *alias* Nilo (appellant) of the crime of Other Acts of Child Abuse punishable under Republic Act (R.A.) No. 7610[4] in relation to Presidential Decree (P.D.) No. 603,[5] with a modification of the penalty imposed.

---

[1] Dated August 28, 2007; *rollo*, pp. 10-30.

[2] Particularly docketed as CA-G.R. CR No. 27817, penned by Associate Justice Priscilla Baltazar-Padilla, with Associate Justices Arsenio J. Magpale and Romeo F. Barza, concurring; *rollo*, pp. 39-55.

[3] Particularly docketed as Crim. Case No. 11110 and penned by Judge Teofilo D. Baluma; *rollo*, pp. 61-82.

[4] The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.

[5] The Child and Youth Welfare Code.

The Facts

Appellant was charged with the crime of Other Acts of Child Abuse in an Information[6] dated August 29, 2001 which reads:

> The undersigned, Second Assistant Provincial Prosecutor, hereby accuses Leonilo Sanchez *alias* Nilo of Lajog, Clarin, Bohol of the crime of Other Acts of Child Abuse, committed as follows:
>
> That on or about the 2nd day of September, 2000 in the municipality of Clarin, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, acting as a Family Court, the above-named accused, with intent to abuse, exploit and/or to inflict other conditions prejudicial to the child's development, did then and there willfully, unlawfully and feloniously abuse physically one [VVV],[7] a sixteen (16) year old minor, by hitting her thrice in the upper part of her legs, and which acts are prejudicial to the child-victim's development which acts are not covered by the Revised Penal Code, as amended, but the same are covered by Art. 59, par. 8 of P.D. No. 603 as amended; to the damage and prejudice of the offended party in the amount to be proved during the trial.
>
> Acts committed contrary to the provisions of Section 10(a) in relation to Sections 3(a) and 3(b) No. 1 of Rep. Act No. 7610 and Sec. 59(8) of PD 603, amended.

Upon arraignment, appellant pleaded not guilty. Trial on the merits ensued. In the course of the trial, two varying versions emerged.

Version of the Prosecution

Private complainant VVV was born on March 24, 1984 in Mentalongon, Dalaguete, Cebu to FFF and MMM.[8]

---

[6] *Rollo*, pp. 59-60.

[7] Per this Court's Resolution dated September 19, 2006 in A.M. No. 04-11-09-SC, as well as our ruling in *People v. Cabalquinto* (G.R. No. 167693, September 19, 2006, 502 SCRA 419), pursuant to Republic Act No. 9262, also known as the "*Anti-Violence Against Women and Their Children Act of 2004*," and its implementing rules, the real name of the victim and those of her immediate family members other than the accused are to be withheld and fictitious initials are instead used to protect the victim's privacy.

[8] Records, p. 10.

On September 24, 1997, VVV's father, FFF, started leasing a portion of the fishpond owned by Escolastico Ronquillo (Escolastico), located at Lajog, Clarin, Bohol. FFF and his family occupied the house beside the fishpond which was left by the former tenant.[9]

On September 2, 2000 at around 7:00 in the morning, while VVV was cutting grass in their yard, appellant arrived looking for FFF who was then at another fishpond owned by Nilda Parilla located in Boacao, Clarin, Bohol. VVV knew appellant because he is the husband of Bienvenida Ronquillo (Bienvenida), one of the heirs of Escolastico.[10] She noticed that appellant had a *sanggot* (sickle) tucked in his waist.

Appellant then went to VVV's house and inquired from VVV's younger brother, BBB, the whereabouts of the latter's father. BBB did not answer but his mother, MMM, told appellant that FFF was not around. Right then and there, appellant told them to leave the place and started destroying the house with the use of his sickle. As a result, appellant destroyed the roof, the wall and the windows of the house.[11] MMM got angry and told appellant that he could not just drive them away since the contract for the use of the fishpond was not yet terminated. VVV was then sent by MMM to fetch a *barangay tanod*. She did as ordered but *barangay tanod* Nicolas Patayon refused to oblige because he did not want to interfere in the problem concerning the fishpond. On her way back to their house, VVV saw appellant coming from his shop with a gallon of gasoline, headed to their house. Appellant warned VVV to better pack up her family's things because he would burn their house.[12]

Upon reaching their house, VVV saw her brother, BBB, get a piece of wood from the back of their house to defend themselves and their house from appellant. However, appellant approached

---

[9] TSN, January 25, 2002, p. 4.

[10] *Id.* at 3-5.

[11] *Id.* at 6.

[12] *Id.* at 6-10.

BBB, grabbed the piece of wood from the latter and started beating him with it.[13] At the sight, VVV approached appellant and pushed him. Irked by what she did, appellant turned to her and struck her with the piece of wood three (3) times, twice on the left thigh and once below her right buttocks. As a result, the wood broke into several pieces. VVV picked up some of the broken pieces and threw them back at appellant. MMM restrained BBB, telling him not to fight back. After which, appellant left, bringing with him the gallon of gasoline.[14]

FFF arrived at about 10:00 in the morning of that day. When he learned about what had happened, FFF brought his daughter to the Clarin Health Center for medical attention and treatment.[15] Dr. Vicente Manalo (Dr. Manalo) attended to VVV and issued her a medical certificate[16] dated September 2, 2000, stating that VVV sustained the following:

CONTUSION WITH HEMATOMA PROXIMAL
LATERAL PORTION OF THIGH, RIGHT
TIME TO HEAL: 3-4 DAYS, BARRING COMPLICATIONS

From the health center, FFF and VVV went to the Clarin Police Station where they had the incident blottered.[17] Thereafter, FFF requested Eliezer Inferido to take pictures of the injuries sustained by VVV.[18]

Version of the Defense

Appellant and his wife, Bienvenida, developed and operated the fishpond from 1982 to 1987. Sometime in 1997, FFF occupied the fishpond and the *nipa* hut beside the same, by virtue of a Memorandum of Agreement[19] (MOA) entered into by FFF with the Heirs of Escolastico, as represented by Segundino Ronquillo.

---

[13] Records, pp. 3-4.

[14] TSN, February 5, 2002, pp. 2-7.

[15] *Id.* at 7-8.

[16] Records, p. 11.

[17] *Supra* note 12, at 11-13; records, p. 82.

[18] TSN, May 13, 2002; records, p. 85.

[19] Records, pp. 106-107.

After the MOA expired in 1998, appellant and his wife, Bienvenida, decided to discontinue the lease because they did not understand the management and accounting of FFF. They made several demands on him to return possession of the fishpond but FFF refused, asking for a written termination of the contract from all the heirs of Escolastico. To solve the problem, appellant and Bienvenida engaged the services of FFF as caretaker of the fishpond, providing him with fingerlings, fertilizers and all necessary expenses.

This notwithstanding, FFF still failed to make an accounting. Thus, on September 2, 2000, at around 7:00 in the morning, after pasturing his cattle, appellant dropped by the house of FFF to ask him to make a detailed accounting because he and his wife were not satisfied with the harvest in August of 2000. MMM, however, retorted, saying that they would no longer make any accounting, as Benny Ronquillo, brother of appellant's wife, would finance the next cropping. Displeased with MMM's statement, appellant got angry and demanded that they leave the fishpond. FFF's family resented this demand and a commotion ensued. BBB got a piece of wood and struck appellant but the latter was able to parry the blow. Appellant got hold of the piece of wood which actually broke. Intending not to hurt anybody, appellant threw the same behind him. Suddenly from behind, VVV appeared, got hold of the said piece of wood and hit appellant once at the back of his shoulder. Appellant testified that the blow was not strong enough to injure him.[20]

Appellant claimed that he was surprised that a criminal case was filed by VVV against him for allegedly beating her. Appellant denied that he beat VVV, saying that the instant case was fabricated and was being used as a means to extort money from him.[21] Moreover, appellant asseverated that Ronald Lauren[22] (Ronald) witnessed the incident.

---

[20] TSN, July 24, 2002.

[21] TSN, August 28, 2002.

[22] Initially referred to by appellant as Tagoro Laurel; *id.* at 11.

Ronald testified that he saw BBB strike appellant with a piece of wood but appellant was able to parry the blow; that appellant threw away the piece of wood; that when appellant threw the piece of wood, there was no one there at the time; and that appellant left the place immediately.[23]

The RTC's Ruling

On July 30, 2003, the RTC found that at the arraignment, appellant, through former counsel Atty. Theodore Cabahug (Atty. Cabahug), admitted that he hit VVV, although unintentionally. Thus, appellant had the burden of proving that, at the time VVV was hit, appellant was performing a lawful act. The RTC ruled that the evidence did not favor appellant because his demand for FFF's family to vacate the fishpond, coupled with threats and punctuated with actual use of force, exceeded the limits allowed by law. The RTC also held that the injuries sustained by VVV were distinguishable, indicating that the blow was forceful, and that the force used was strong. Thus, the RTC disposed in this wise:

> WHEREFORE, premises considered, this Court finds LEONILO SANCHEZ *y* Aranas guilty beyond reasonable doubt of violating paragraph (a), Section 10 of Republic Act No. 7610, and applying in his favor the Indeterminate Sentence Law, this Court imposes on him the indeterminate sentence of an imprisonment of Six (6) years of *prision* [*correccional*] as minimum to seven (7) years and four (4) months of *prision mayor* as maximum, with costs against him. The Court orders him to pay [VVV] the sum of TEN THOUSAND PESOS (₱10,000.00) for civil indemnity and the sum of TEN THOUSAND PESOS (₱10,000.00) for damages; the awards for civil indemnity and damages are without subsidiary penalties in case of insolvency.
>
> IN ACCORDANCE with letter (f) of Section 31 of Republic Act No. 7610, the Court exercising its discretion also imposes on Leonilo Sanchez *y* Aranas the penalty of a fine of Two Thousand Pesos (₱2,000.00) without subsidiary penalty in case of insolvency.
>
> SO ORDERED.[24]

---

[23] TSN, October 14, 2002, pp. 5-6.

[24] *Rollo*, p. 82.

Appellant filed a Motion for Reconsideration[25] contending that appellant never admitted that he hit VVV. The RTC, however, denied the motion in its Order[26] dated August 8, 2003 for being pro forma. Aggrieved, appellant appealed to the CA.[27]

The CA's Ruling

On February 20, 2007, the CA held that the record of the proceedings taken during appellant's arraignment before the RTC belied appellant's contention that his defense was one of absolute denial. The CA pointed to a manifestation of appellant's counsel, Atty. Cabahug, in open court that appellant was putting up an affirmative defense because the act of hitting VVV was unintentional. Furthermore, the defense of absolute denial interposed by appellant cannot prevail over the positive and categorical statements of VVV and her witnesses, giving full credence to the factual findings of the RTC. The CA also ruled that the Information filed against appellant was not defective inasmuch as the allegations therein were explicit. In sum, the CA held that the prosecution had fully established the elements of the offense charged, *i.e.*, Other Acts of Child Abuse under R.A. No. 7610 and P.D. No. 603. However, the CA opined that the RTC erred in applying the Indeterminate Sentence Law because R.A. No. 7610 is a special law. Lastly, the CA deleted the award of civil indemnity and damages for utter lack of basis. The *fallo* of the CA decision reads:

> WHEREFORE, all the foregoing considered, the appealed Judgment dated July 30, 2003 of the Regional Trial Court of Bohol, Branch 1, Tagbilaran City in Criminal Case No. 11110 finding accused-appellant guilty beyond reasonable doubt of Other Acts of Child Abuse under Republic Act No. 7610 and Presidential Decree No. 603 is hereby **UPHELD** with **MODIFICATION** as to the penalty imposed. Accused-appellant is sentenced to suffer an indeterminate penalty of six (6) years and one (1) day as minimum to eight (8) years as maximum of *prision mayor*. The fine imposed is retained.

---

[25] *Id.* at 83-88.

[26] *Id.* at 89-92.

[27] Records, p. 183.

The Order dated August 8, 2003 denying appellant's motion for reconsideration is hereby AFFIRMED.

The award of civil indemnity and damages in the assailed Decision is deleted.

With costs.

SO ORDERED.[28]

Appellant filed a Motion for Reconsideration[29] which the CA denied in its Resolution[30] dated July 11, 2007.

Hence, this Petition claiming that the CA erred:

1. IN SUSTAINING THE CONVICTION OF THE ACCUSED DESPITE THE FAILURE OF THE STATE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT[;]
2. IN SUSTAINING THE RULING OF THE TRIAL COURT THAT IT HAD JURISDICTION [OVER] THE CASE DESPITE A DEFECTIVE INFORMATION WHICH ALLEGED THAT THE ACTS COMPLAINED OF IS (sic) NOT COVERED BY THE REVISED PENAL CODE, AS AMENDED[; AND]
3. IN SUSTAINING THE CONVICTION OF THE ACCUSED OF THE CRIME CHARGED (VIOLATION OF SECTION 10(a) OF R.A. NO. 7610) NOTWITHSTANDING THAT THE ACT COMPLAINED OF IS OBVIOUSLY COVERED BY THE REVISED PENAL CODE (Act No. 3815) AS SLIGHT PHYSICAL INJURY.[31]

Appellant posits that his conviction is not supported by proof beyond reasonable doubt; that the RTC erred when it shifted the burden of proof to appellant; that the RTC and CA erred in ruling that appellant interposed an affirmative defense when, all throughout his testimony before the RTC, he denied having inflicted any injury on VVV; and that appellant and his counsel

---

[28] *Rollo*, pp. 54-55.

[29] *Id.* at 56-58.

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

[31] *Supra* note 1, at 18.

did not sign any written stipulation for appellant to be bound thereby, hence, the burden of proof still rests in the prosecution. Moreover, appellant claims that VVV and her family had ill motive to implicate him because of the pressure he exerted against them to give up the fishpond. Appellant pointed out that VVV, in her testimony, made material inconsistencies as to who got the piece of wood at the back of their house. Appellant also claims that he had no motive or intention of harming anyone, otherwise, he would have done so earlier that day; that if BBB was also beaten, he should have submitted himself for medical treatment and examination; and that the Information charging appellant was substantially and jurisdictionally defective as the acts complained of were covered by the provisions of the Revised Penal Code. Appellant submits that, if duly proven, the acts complained of are clearly constitutive of Slight Physical Injuries punishable under Article 266[32] of the Revised Penal Code.

Appellant, likewise, posits that the instant case is not one for child abuse, since VVV was neither punished in a cruel and unusual manner nor deliberately subjected to excessive indignities or humiliation. The act was not cruel since the injury was merely slight per medical findings; the location of the injury was on the thigh which is not unusual; and VVV was not beaten in front of many people as to humiliate her. Lastly, no evidence was submitted by the prosecution, such as a testimony of a child psychologist, or even of VVV's teacher who could have observed changes in the victim's behavior, as to prove that the

---

[32] **Art. 266**. *Slight physical injuries and maltreatment.* — The crime of slight physical injuries shall be punished:

1. By *arresto menor* when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from one to nine days, or shall require medical attendance during the same period;

2. By *arresto menor* or a fine not exceeding 200 pesos and censure when the offender has caused physical injuries which do not prevent the offended party from engaging in his habitual work nor require medical attendance;

3. By *arresto menor* in its minimum period or a fine not exceeding 50 pesos when the offender shall ill-treat another by deed without causing any injury.

injury was prejudicial to the victim's development. Appellant alleges that the charge was obviously made as one for child abuse, instead of slight physical injuries, in order to subject him to a much heavier penalty. Appellant prays for acquittal based on reasonable doubt and, in the alternative, if found guilty, he should be convicted only of the crime of slight physical injuries under the Revised Penal Code.[33]

On the other hand, the Office of the Solicitor General (OSG) asseverates that the instant Petition is fatally defective because it raises purely factual issues contrary to the mandatory provisions of Rule 45 of the Rules of Court; that the Transcript of Stenographic Notes (TSN) taken during appellant's arraignment on November 6, 2001 clearly shows that appellant, through Atty. Cabahug, raised an affirmative defense, hence, appellant cannot now change his theory; that the prosecution established the fact that appellant committed the acts complained of by virtue of the direct, positive and categorical testimonies of VVV, corroborated by MMM and duly supported by the medical examination conducted by Dr. Manalo and the entry in the police blotter; that VVV's and MMM's statements are consistent with their allegations in their respective complaint-affidavits; and that appellant failed to present any reason or ground to set aside the decisions of the RTC and the CA. Furthermore, the OSG argues that there is no ambiguity in the Information as the allegations are clear and explicit to constitute the essential elements of the offense of child abuse, to wit: (a) minority of the victim; (b) acts complained of are prejudicial to the development of the child-victim; and (c) the said acts are covered by the pertinent provisions of R.A. No. 7610 and P.D. No. 603. The OSG submits that appellant cannot now feign ignorance of the offense under which he was specifically charged, and to which he voluntarily entered a plea of not guilty when arraigned.[34]

---

[33] *Supra* note 1 and Appellant's Reply dated October 15, 2008; *rollo*, pp. 183-192.

[34] OSG's Comment dated June 6, 2008; *rollo*, pp. 151-179.

However, the OSG opines that the CA erred in modifying the indeterminate sentence imposed by the RTC. The offense of Other Acts of Child Abuse as defined and punished under Section 10(a) of R.A. No. 7610, a special law, carries the penalty of *prision mayor* in its minimum period which is a penalty defined in the Revised Penal Code. The OSG states that the RTC correctly applied the first part of Section 1 of the Indeterminate Sentence Law, sentencing appellant to an indeterminate sentence of six (6) years of *prision correccional*, as minimum, to seven (7) years and four (4) months of *prision mayor*, as maximum, the minimum term thereof being within the range of the penalty next lower in degree to the prescribed penalty, as there were no attendant mitigating and/or aggravating circumstances. Thus, the OSG prays that the instant petition be denied and the assailed CA Decision be modified as aforementioned but affirmed in all other respects.[35]

Our Ruling

The instant Petition is bereft of merit.

Under Subsection (b), Section 3 of R.A. No. 7610, child abuse refers to the maltreatment of a child, whether habitual or not, which includes **any of the following**:

(1) Psychological and **physical abuse**, neglect, cruelty, sexual abuse and emotional maltreatment;

(2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;

(3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; **or**

(4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.[36]

---

[35] *Id*.

[36] Emphasis supplied.

In this case, the applicable laws are Article 59[37] of P.D. No. 603 and Section 10(a) of R.A. No. 7610. Section 10(a) of R.A. No. 7610 provides:

SECTION 10. *Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development.* —

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions

---

[37] ART. 59. *Crimes*.— Criminal liability shall attach to any parent who:

(1) Conceals or abandons the child with intent to make such child lose his civil status.

(2) Abandons the child under such circumstances as to deprive him of the love, care and protection he needs.

(3) Sells or abandons the child to another person for valuable consideration.

(4) Neglects the child by not giving him the education which the family's station in life and financial conditions permit.

(5) Fails or refuses, without justifiable grounds, to enroll the child as required by Article 72.

(6) Causes, abates, or permits the truancy of the child from the school where he is enrolled. "Truancy" as here used means absence without cause for more than twenty schooldays, not necessarily consecutive.

It shall be the duty of the teacher in charge to report to the parents the absences of the child the moment these exceed five schooldays.

(7) Improperly exploits the child by using him, directly or indirectly, such as for purposes of begging and other acts which are inimical to his interest and welfare.

(8) Inflicts cruel and unusual punishment upon the child or deliberately subjects him to indignitions and other excessive chastisement that embarrass or humiliate him.

(9) Causes or encourages the child to lead an immoral or dissolute life.

(10) Permits the child to possess, handle or carry a deadly weapon, regardless of its ownership.

(11) Allows or requires the child to drive without a license or with a license which the parent knows to have been illegally procured. If the motor vehicle driven by the child belongs to the parent, it shall [be] presumed that he permitted or ordered the child to drive.

"Parents" as here used shall include the guardian and the head of the institution or foster home which has custody of the child.

> prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period.

In this connection, our ruling in *Araneta v. People*[38] is instructive:

> As gleaned from the foregoing, the provision punishes not only those enumerated under Article 59 of Presidential Decree No. 603, but also four distinct acts, *i.e.*, (a) child abuse, (b) child cruelty, (c) child exploitation and (d) being responsible for conditions prejudicial to the child's development. The Rules and Regulations of the questioned statute distinctly and separately defined child abuse, cruelty and exploitation just to show that these three acts are different from one another and from the act prejudicial to the child's development. Contrary to petitioner's assertion, **an accused can be prosecuted and be convicted under Section 10(a), Article VI of Republic Act No. 7610 if he commits any of the four acts therein**. The prosecution need not prove that the acts of child abuse, child cruelty and child exploitation have resulted in the prejudice of the child because an act prejudicial to the development of the child is different from the former acts.
>
> Moreover, it is a rule in statutory construction that the word "or" is a disjunctive term signifying dissociation and independence of one thing from other things enumerated. It should, as a rule, be construed in the sense which it ordinarily implies. Hence, the use of "or" in Section 10(a) of Republic Act No. 7610 before the phrase "**be responsible for other conditions prejudicial to the child's development**" supposes that there are four punishable acts therein. *First*, the **act of child abuse**; *second*, **child cruelty**; *third*, **child exploitation**; and *fourth*, **being responsible for conditions prejudicial to the child's development**. The fourth penalized act cannot be interpreted, as petitioner suggests, as a qualifying condition for the three other acts, because an analysis of the entire context of the questioned provision does not warrant such construal.[39]

---

[38] G.R. No. 174205, June 27, 2008, 556 SCRA 323.

[39] *Id.* at 333-335. (Emphasis supplied, citations omitted.)

Appellant contends that, after proof, the act should not be considered as child abuse but merely as slight physical injuries defined and punishable under Article 266 of the Revised Penal Code. Appellant conveniently forgets that when the incident happened, VVV was a child entitled to the protection extended by R.A. No. 7610, as mandated by the Constitution.[40] As defined in the law, child abuse includes physical abuse of the child, whether the same is habitual or not. The act of appellant falls squarely within this definition. We, therefore, cannot accept appellant's contention.

In the same manner, we reject appellant's claim that the Information filed against him was defective. In *Resty Jumaquio v. Hon. Joselito C. Villarosa*,[41] we held that what controls is not the title of the information or the designation of the offense but the actual facts recited therein. Without doubt, the averments in the Information clearly make out the offense of child abuse under Section 10(a) of R.A. No. 7610. The following were alleged: (1) the minority of VVV; (2) the acts constituting physical abuse, committed by appellant against VVV; and (3) said acts are clearly punishable under R.A. No. 7610 in relation to P.D. No. 603. Indeed, as argued by the OSG, the commission of the offense is clearly recited in the Information, and appellant cannot now feign ignorance of this.

Appellant could only proffer the defense of denial. Notably, the RTC found VVV and MMM to be credible witnesses, whose testimonies deserve full credence. It bears stressing that full weight and respect are usually accorded by the appellate court to the findings of the trial court on the credibility of witnesses, since the trial judge had the opportunity to observe the demeanor

---

[40] Article XV, Section 3, paragraph 2, of the 1987 Constitution provides that "The State shall defend the right of the children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development."

[41] G.R. No. 165924, January 19, 2009.

of the witnesses.[42] Equally noteworthy is the fact that the CA did not disturb the RTC's appreciation of the witnesses' credibility. Thus, we apply the cardinal rule that factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions anchored on such findings, are accorded respect, if not conclusive effect, especially when affirmed by the CA. The exception is when it is established that the trial court ignored, overlooked, misconstrued, or misinterpreted cogent facts and circumstances which, if considered, will change the outcome of the case. We have reviewed the records of the RTC and the CA and we find no reason to deviate from the findings of both courts and their uniform conclusion that appellant is indeed guilty beyond reasonable doubt of the offense of Other Acts of Child Abuse.[43]

However, the penalty imposed upon appellant by the CA deserves review. The imposable penalty under Section 10(a), Article VI of Republic Act No. 7610 is *prision mayor* in its minimum period. Applying the Indeterminate Sentence Law, the RTC imposed upon appellant the penalty of six (6) years of *prision correccional*, as minimum, to seven (7) years and four (4) months of *prision mayor*, as maximum. The CA modified this by imposing upon appellant the indeterminate penalty of six (6) years and one (1) day, as minimum, to eight (8) years, as maximum, of *prision mayor*, postulating that since R.A. No. 7610 is a special law, the RTC should have imposed on appellant an indeterminate sentence, "the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same."[44] On the other hand, the OSG contends that the RTC appropriately applied the Indeterminate Sentence Law, citing our ruling in *People v. Simon*.[45]

---

[42] *People v. Roma*, G.R. No. 147996, September 30, 2005, 471 SCRA 413, 426-427.

[43] *Casitas v. People*, G.R. No. 152358, February 5, 2004, 422 SCRA 242, 248.

[44] Sec. 1, Act No. 4103.

[45] G.R. No. 93028, July 29, 1994, 234 SCRA 555.

We agree with the OSG.

Section 1 of the Indeterminate Sentence Law, as amended, provides:

> SECTION 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

To repeat, the penalty for Other Acts of Child Abuse is *prision mayor* in its minimum period. This penalty is derived from, and defined in, the Revised Penal Code. Although R.A. No. 7610 is a special law, the rules in the Revised Penal Code for graduating penalties by degrees or determining the proper period should be applied. Thus, where the special law adopted penalties from the Revised Penal Code, the Indeterminate Sentence Law will apply just as it would in felonies.[46] In *People v. Simon*,[47] the Court applied the first clause of Section 1 of the Indeterminate Sentence Law to cases of illegal drugs. In *Cadua v. Court of Appeals*,[48] the Court applied the same principle to cases involving illegal possession of firearms. In those instances, the offenses were also penalized under special laws. Finally, in *Dulla v. Court of Appeals*,[49] a case involving sexual abuse of a child as penalized under Section 5(b), Article III of R.A. No. 7610, the Court likewise applied the same first clause of the Indeterminate Sentence Law. This case should be no exception.

---

[46] REGALADO, *Criminal Law Conspectus*, First Edition, p. 205, citing *People v. Martin Simon*; *id.*

[47] *Supra* note 45.

[48] 371 Phil. 627 (1999).

[49] 382 Phil. 791 (2000).

In the absence of any modifying circumstances, and because it is favorable to appellant, we find the penalty of four (4) years, nine (9) months and eleven (11) days of *prision correccional*, as minimum, to six (6) years, eight (8) months and one (1) day of *prision mayor*, as maximum, proper.

As a final word, we reiterate our view in *Araneta*,[50] to wit:

> Republic Act No. 7610 is a measure geared towards the implementation of a national comprehensive program for the survival of the most vulnerable members of the population, the Filipino children, in keeping with the Constitutional mandate under Article XV, Section 3, paragraph 2, that "**The State shall defend the right of the children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development**." This piece of legislation supplies the inadequacies of existing laws treating crimes committed against children, namely, the Revised Penal Code and Presidential Decree No. 603 or the Child and Youth Welfare Code. As a statute that provides for a mechanism for strong deterrence against the commission of child abuse and exploitation, the law has stiffer penalties for their commission, and a means by which child traffickers could easily be prosecuted and penalized.[51]

WHEREFORE, the Petition is *DENIED*. The Court of Appeals Decision dated February 20, 2007 in CA-G.R. CR No. 27817 is *AFFIRMED* with *MODIFICATION* that appellant Leonilo Sanchez is hereby sentenced to four (4) years, nine (9) months and eleven (11) days of *prision correccional*, as minimum, to six (6) years, eight (8) months and one (1) day of *prision mayor*, as maximum. Costs against appellant.

SO ORDERED.

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

---

[50] *Supra* note 38.

[51] *Id.* at 332. (Citations omitted.)

[*] Additional member in lieu of Associate Justice Conchita Carpio Morales per Special Order No. 646 dated May 15, 2001.

[**] Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 631 dated April 29, 2009.

THIRD DIVISION

[G.R. No. 181132. June 5, 2009]

HEIRS OF LORETO C. MARAMAG, represented by surviving spouse VICENTA PANGILINAN MARAMAG, *petitioners, vs.* **EVA VERNA DE GUZMAN MARAMAG, ODESSA DE GUZMAN MARAMAG, KARL BRIAN DE GUZMAN MARAMAG, TRISHA ANGELIE MARAMAG, THE INSULAR LIFE ASSURANCE COMPANY, LTD., and GREAT PACIFIC LIFE ASSURANCE CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; GROUNDS; FAILURE TO STATE A CAUSE OF ACTION. — The grant of the motion to dismiss was based on the trial court's finding that the petition failed to state a cause of action, as provided in Rule 16, Section 1(g), of the Rules of Court, which reads— SECTION 1. *Grounds*. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds: x x x (g) That the pleading asserting the claim states no cause of action. A cause of action is the act or omission by which a party violates a right of another. A complaint states a cause of action when it contains the three (3) elements of a cause of action—(1) the legal right of the plaintiff; (2) the correlative obligation of the defendant; and (3) the act or omission of the defendant in violation of the legal right. If any of these elements is absent, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action.

2. ID.; ID.; ID.; ID.; ID.; RULING SHOULD BE BASED ONLY ON THE FACTS ALLEGED IN THE COMPLAINT; EXCEPTIONS. — When a motion to dismiss is premised on this ground, the ruling thereon should be based only on the facts alleged in the complaint. The court must resolve the issue on the strength of such allegations, assuming them to be true. The test of

sufficiency of a cause of action rests on whether, hypothetically admitting the facts alleged in the complaint to be true, the court can render a valid judgment upon the same, in accordance with the prayer in the complaint. This is the general rule. However, this rule is subject to well-recognized exceptions, such that there is no hypothetical admission of the veracity of the allegations if: 1. the falsity of the allegations is subject to judicial notice; 2. such allegations are legally impossible; 3. the allegations refer to facts which are inadmissible in evidence; 4. by the record or document in the pleading, the allegations appear unfounded; or 5. there is evidence which has been presented to the court by stipulation of the parties or in the course of the hearings related to the case.

3. COMMERCIAL LAW; INSURANCE LAW; PERSONS ENTITLED TO CLAIM THE INSURANCE PROCEEDS OF INSURED. — Section 53 of the Insurance Code states— SECTION 53. The insurance proceeds shall be applied exclusively to the proper interest of the person in whose name or for whose benefit it is made unless otherwise specified in the policy. Pursuant thereto, it is obvious that the only persons entitled to claim the insurance proceeds are either the insured, if still alive; or the beneficiary, if the insured is already deceased, upon the maturation of the policy. The exception to this rule is a situation where the insurance contract was intended to benefit third persons who are not parties to the same in the form of favorable stipulations or indemnity. In such a case, third parties may directly sue and claim from the insurer.

4. ID.; ID.; ID.; NO LEGAL PROSCRIPTION AGAINST ILLEGITIMATE CHILDREN; SHARES OF BENEFICIARY CONCUBINE FORFEITED IN FAVOR OF BENEFICIARIES' ILLEGITIMATE CHILDREN TO THE EXCLUSION OF LEGITIMATE FAMILY NOT NAMED AS BENEFICIARY. — Because no legal proscription exists in naming as beneficiaries the children of illicit relationships by the insured, the shares of concubine Eva in the insurance proceeds, whether forfeited by the court in view of the prohibition on donations under Article 739 of the Civil Code or by the insurers themselves for reasons based on the insurance contracts, must be awarded to the said illegitimate children, the designated beneficiaries, to the exclusion of petitioners (legitimate family of deceased). It is only in cases where the insured has not designated any beneficiary, or when

the designated beneficiary is disqualified by law to receive the proceeds, that the insurance policy proceeds shall redound to the benefit of the estate of the insured.

APPEARANCES OF COUNSEL

Mario R. Benitez for petitioners.

Gan Panganiban Manlapaz and Associates for Great Pacific Life Assurance Corporation.

Cayetano Sebastian Ata Dado and Cruz for Insular Life Assurance Company.

D E C I S I O N

NACHURA, *J.*:

This is a petition[1] for review on *certiorari* under Rule 45 of the Rules, seeking to reverse and set aside the Resolution[2] dated January 8, 2008 of the Court of Appeals (CA), in CA-G.R. CV No. 85948, dismissing petitioners' appeal for lack of jurisdiction.

The case stems from a petition[3] filed against respondents with the Regional Trial Court, Branch 29, for revocation and/or reduction of insurance proceeds for being void and/or inofficious, with prayer for a temporary restraining order (TRO) and a writ of preliminary injunction.

The petition alleged that: (1) petitioners were the legitimate wife and children of Loreto Maramag (Loreto), while respondents were Loreto's illegitimate family; (2) Eva de Guzman Maramag (Eva) was a concubine of Loreto and a suspect in the killing of the latter, thus, she is disqualified to receive any proceeds

---

[1] *Rollo*, pp. 11-36.

[2] Penned by Associate Justice Marina L. Buzon, with Associate Justices Rosmari D. Carandang and Mariflor P. Punzalan Castillo, concurring; *id.* at 37-52.

[3] *Rollo*, pp. 59-64.

from his insurance policies from Insular Life Assurance Company, Ltd. (Insular)[4] and Great Pacific Life Assurance Corporation (Grepalife);[5] (3) the illegitimate children of Loreto—Odessa, Karl Brian, and Trisha Angelie—were entitled only to one-half of the legitime of the legitimate children, thus, the proceeds released to Odessa and those to be released to Karl Brian and Trisha Angelie were inofficious and should be reduced; and (4) petitioners could not be deprived of their legitimes, which should be satisfied first.

In support of the prayer for TRO and writ of preliminary injunction, petitioners alleged, among others, that part of the insurance proceeds had already been released in favor of Odessa, while the rest of the proceeds are to be released in favor of Karl Brian and Trisha Angelie, both minors, upon the appointment of their legal guardian. Petitioners also prayed for the total amount of ₱320,000.00 as actual litigation expenses and attorney's fees.

In answer,[6] Insular admitted that Loreto misrepresented Eva as his legitimate wife and Odessa, Karl Brian, and Trisha Angelie as his legitimate children, and that they filed their claims for the insurance proceeds of the insurance policies; that when it ascertained that Eva was not the legal wife of Loreto, it disqualified her as a beneficiary and divided the proceeds among Odessa, Karl Brian, and Trisha Angelie, as the remaining designated beneficiaries; and that it released Odessa's share as she was of age, but withheld the release of the shares of minors Karl Brian and Trisha Angelie pending submission of letters of guardianship. Insular alleged that the complaint or petition failed to state a cause of action insofar as it sought to

[4] Two Life Insurance plans with Policy Nos. A001544070, for the sum of ₱1,500,000.00; and 1643029, for the sum of ₱500,000.00.

[5] Two Pension Plans with Policy Nos. PTLIG 1000326-0000, with a maturity value of ₱1,000,000.00; and PTLIG 1000344-0000, with a maturity value of ₱500,000.00; and a Memorial Plan with Policy No. M0109-159064-0000 with plan value of ₱50,000.00.

[6] Cited in the January 8, 2008 Resolution of the Court of Appeals in CA-G.R. CV No. 85948; *rollo,* pp. 40-41.

declare as void the designation of Eva as beneficiary, because Loreto revoked her designation as such in Policy No. A001544070 and it disqualified her in Policy No. A001693029; and insofar as it sought to declare as inofficious the shares of Odessa, Karl Brian, and Trisha Angelie, considering that no settlement of Loreto's estate had been filed nor had the respective shares of the heirs been determined. Insular further claimed that it was bound to honor the insurance policies designating the children of Loreto with Eva as beneficiaries pursuant to Section 53 of the Insurance Code.

In its own answer[7] with compulsory counterclaim, Grepalife alleged that Eva was not designated as an insurance policy beneficiary; that the claims filed by Odessa, Karl Brian, and Trisha Angelie were denied because Loreto was ineligible for insurance due to a misrepresentation in his application form that he was born on December 10, 1936 and, thus, not more than 65 years old when he signed it in September 2001; that the case was premature, there being no claim filed by the legitimate family of Loreto; and that the law on succession does not apply where the designation of insurance beneficiaries is clear.

As the whereabouts of Eva, Odessa, Karl Brian, and Trisha Angelie were not known to petitioners, summons by publication was resorted to. Still, the illegitimate family of Loreto failed to file their answer. Hence, the trial court, upon motion of petitioners, declared them in default in its Order dated May 7, 2004.

During the pre-trial on July 28, 2004, both Insular and Grepalife moved that the issues raised in their respective answers be resolved first. The trial court ordered petitioners to comment within 15 days.

In their comment, petitioners alleged that the issue raised by Insular and Grepalife was purely legal – whether the complaint itself was proper or not – and that the designation of a beneficiary

[7] *Id.* at 40.

is an act of liberality or a donation and, therefore, subject to the provisions of Articles 752[8] and 772[9] of the Civil Code.

In reply, both Insular and Grepalife countered that the insurance proceeds belong exclusively to the designated beneficiaries in the policies, not to the estate or to the heirs of the insured. Grepalife also reiterated that it had disqualified Eva as a beneficiary when it ascertained that Loreto was legally married to Vicenta Pangilinan Maramag.

On September 21, 2004, the trial court issued a Resolution, the dispositive portion of which reads —

> WHEREFORE, the motion to dismiss incorporated in the answer of defendants Insular Life and Grepalife is granted with respect to defendants Odessa, Karl Brian and Trisha Maramag. The action shall proceed with respect to the other defendants Eva Verna de Guzman, Insular Life and Grepalife.
>
> SO ORDERED.[10]

In so ruling, the trial court ratiocinated thus —

---

[8] ART. 752. The provisions of Article 750 notwithstanding, no person may give or receive, by way of donation, more than he may give or receive by will.

ART. 750. The donation may comprehend all the present property of the donor, or part thereof, provided he reserves, in full ownership or in usufruct, sufficient means for the support of himself, and of all relatives who, at the time of the acceptance of the donation, are by law entitled to be supported by the donor. Without such reservation, the donation shall be reduced on petition of any person affected.

[9] ART. 772. Only those who at the time of the donor's death have a right to the legitime and their heirs and successors in interest may ask for the reduction of inofficious donations.

Those referred to in the preceding paragraph cannot renounce their right during the lifetime of the donor, either by express declaration, or by consenting to the donation.

The donees, devisees and legatees, who are not entitled to the legitime and the creditors of the deceased can neither ask for the reduction nor avail themselves thereof.

[10] *Rollo*, pp. 42-43.

Art. 2011 of the Civil Code provides that the contract of insurance is governed by the (sic) special laws. Matters not expressly provided for in such special laws shall be regulated by this Code. The principal law on insurance is the Insurance Code, as amended. Only in case of deficiency in the Insurance Code that the Civil Code may be resorted to. (*Enriquez v. Sun Life Assurance Co.*, 41 Phil. 269.)

The Insurance Code, as amended, contains a provision regarding to whom the insurance proceeds shall be paid. It is very clear under Sec. 53 thereof that the insurance proceeds shall be applied exclusively to the proper interest of the person in whose name or for whose benefit it is made, unless otherwise specified in the policy. Since the defendants are the ones named as the primary beneficiary (sic) in the insurances (sic) taken by the deceased Loreto C. Maramag and there is no showing that herein plaintiffs were also included as beneficiary (sic) therein the insurance proceeds shall exclusively be paid to them. This is because the beneficiary has a vested right to the indemnity, unless the insured reserves the right to change the beneficiary. (*Grecio v. Sunlife Assurance Co. of Canada*, 48 Phil. [*sic*] 63).

Neither could the plaintiffs invoked (*sic*) the law on donations or the rules on testamentary succession in order to defeat the right of herein defendants to collect the insurance indemnity. The beneficiary in a contract of insurance is not the donee spoken in the law of donation. The rules on testamentary succession cannot apply here, for the insurance indemnity does not partake of a donation. As such, the insurance indemnity cannot be considered as an advance of the inheritance which can be subject to collation (*Del Val v. Del Val*, 29 Phil. 534). In the case of *Southern Luzon Employees' Association v. Juanita Golpeo, et al.*, the Honorable Supreme Court made the following pronouncements[:]

> "With the finding of the trial court that the proceeds to the Life Insurance Policy belongs exclusively to the defendant as his individual and separate property, we agree that the proceeds of an insurance policy belong exclusively to the beneficiary and not to the estate of the person whose life was insured, and that such proceeds are the separate and individual property of the beneficiary and not of the heirs of the person whose life was insured, is the doctrine in America. We believe that the same doctrine obtains in these Islands by virtue of Section 428 of the Code of Commerce x x x."

In [the] light of the above pronouncements, it is very clear that the plaintiffs has (sic) no sufficient cause of action against defendants Odessa, Karl Brian and Trisha Angelie Maramag for the reduction and/or declaration of inofficiousness of donation as primary beneficiary (sic) in the insurances (sic) of the late Loreto C. Maramag.

However, herein plaintiffs are not totally bereft of any cause of action. One of the named beneficiary (sic) in the insurances (sic) taken by the late Loreto C. Maramag is his concubine Eva Verna De Guzman. Any person who is forbidden from receiving any donation under Article 739 cannot be named beneficiary of a life insurance policy of the person who cannot make any donation to him, according to said article (Art. 2012, Civil Code). If a concubine is made the beneficiary, it is believed that the insurance contract will still remain valid, but the indemnity must go to the legal heirs and not to the concubine, for evidently, what is prohibited under Art. 2012 is the naming of the improper beneficiary. In such case, the action for the declaration of nullity may be brought by the spouse of the donor or donee, and the guilt of the donor and donee may be proved by preponderance of evidence in the same action (Comment of Edgardo L. *Paras, Civil Code of the Philippines*, page 897). Since the designation of defendant Eva Verna de Guzman as one of the primary beneficiary (sic) in the insurances (sic) taken by the late Loreto C. Maramag is void under Art. 739 of the Civil Code, the insurance indemnity that should be paid to her must go to the legal heirs of the deceased which this court may properly take cognizance as the action for the declaration for the nullity of a void donation falls within the general jurisdiction of this Court.[11]

Insular[12] and Grepalife[13] filed their respective motions for reconsideration, arguing, in the main, that the petition failed to state a cause of action. Insular further averred that the proceeds were divided among the three children as the remaining named beneficiaries. Grepalife, for its part, also alleged that the premiums paid had already been refunded.

Petitioners, in their comment, reiterated their earlier arguments and posited that whether the complaint may be dismissed for

---

[11] *Id.* at 43-45.

[12] *Id.* at 65-72.

[13] *Id.* at 73-80.

failure to state a cause of action must be determined solely on the basis of the allegations in the complaint, such that the defenses of Insular and Grepalife would be better threshed out during trial.

On June 16, 2005, the trial court issued a Resolution, disposing, as follows:

> WHEREFORE, in view of the foregoing disquisitions, the Motions for Reconsideration filed by defendants Grepalife and Insular Life are hereby GRANTED. Accordingly, the portion of the Resolution of this Court dated 21 September 2004 which ordered the prosecution of the case against defendant Eva Verna De Guzman, Grepalife and Insular Life is hereby SET ASIDE, and the case against them is hereby ordered DISMISSED.
>
> SO ORDERED.[14]

In granting the motions for reconsideration of Insular and Grepalife, the trial court considered the allegations of Insular that Loreto revoked the designation of Eva in one policy and that Insular disqualified her as a beneficiary in the other policy such that the entire proceeds would be paid to the illegitimate children of Loreto with Eva pursuant to Section 53 of the Insurance Code. It ruled that it is only in cases where there are no beneficiaries designated, or when the only designated beneficiary is disqualified, that the proceeds should be paid to the estate of the insured. As to the claim that the proceeds to be paid to Loreto's illegitimate children should be reduced based on the rules on legitime, the trial court held that the distribution of the insurance proceeds is governed primarily by the Insurance Code, and the provisions of the Civil Code are irrelevant and inapplicable. With respect to the Grepalife policy, the trial court noted that Eva was never designated as a beneficiary, but only Odessa, Karl Brian, and Trisha Angelie; thus, it upheld the dismissal of the case as to the illegitimate children. It further held that the matter of Loreto's misrepresentation was premature; the appropriate action may be filed only upon denial of the

---

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

claim of the named beneficiaries for the insurance proceeds by Grepalife.

Petitioners appealed the June 16, 2005 Resolution to the CA, but it dismissed the appeal for lack of jurisdiction, holding that the decision of the trial court dismissing the complaint for failure to state a cause of action involved a pure question of law. The appellate court also noted that petitioners did not file within the reglementary period a motion for reconsideration of the trial court's Resolution, dated September 21, 2004, dismissing the complaint as against Odessa, Karl Brian, and Trisha Angelie; thus, the said Resolution had already attained finality.

Hence, this petition raising the following issues:

a. In determining the merits of a motion to dismiss for failure to state a cause of action, may the Court consider matters which were not alleged in the Complaint, particularly the defenses put up by the defendants in their Answer?

b. In granting a motion for reconsideration of a motion to dismiss for failure to state a cause of action, did not the Regional Trial Court engage in the examination and determination of what were the facts and their probative value, or the truth thereof, when it premised the dismissal on allegations of the defendants in their answer – which had not been proven?

c. x x x (A)re the members of the legitimate family entitled to the proceeds of the insurance for the concubine?[15]

In essence, petitioners posit that their petition before the trial court should not have been dismissed for failure to state a cause of action because the finding that Eva was either disqualified as a beneficiary by the insurance companies or that her designation was revoked by Loreto, hypothetically admitted as true, was raised only in the answers and motions for reconsideration of both Insular and Grepalife. They argue that for a motion to dismiss to prosper on that ground, only the allegations in the complaint should be considered. They further contend that, even assuming Insular disqualified Eva as a

[15] *Id.* at 20-21.

beneficiary, her share should not have been distributed to her children with Loreto but, instead, awarded to them, being the legitimate heirs of the insured deceased, in accordance with law and jurisprudence.

The petition should be denied.

The grant of the motion to dismiss was based on the trial court's finding that the petition failed to state a cause of action, as provided in Rule 16, Section 1(g), of the Rules of Court, which reads —

> SECTION 1. *Grounds*. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
>
> xxx xxx xxx
>
> (g) That the pleading asserting the claim states no cause of action.

A cause of action is the act or omission by which a party violates a right of another.[16] A complaint states a cause of action when it contains the three (3) elements of a cause of action—(1) the legal right of the plaintiff; (2) the correlative obligation of the defendant; and (3) the act or omission of the defendant in violation of the legal right. If any of these elements is absent, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action.[17]

When a motion to dismiss is premised on this ground, the ruling thereon should be based only on the facts alleged in the complaint. The court must resolve the issue on the strength of such allegations, assuming them to be true. The test of sufficiency of a cause of action rests on whether, hypothetically admitting the facts alleged in the complaint to be true, the court can render a valid judgment upon the same, in accordance with the prayer in the complaint. This is the general rule.

---

[16] RULES ON CIVIL PROCEDURE, Rule 2, Sec. 2.

[17] *Bank of America NT&SA v. Court of Appeals*, G.R. No. 120135, March 31, 2003, 400 SCRA 156, 167.

However, this rule is subject to well-recognized exceptions, such that there is no hypothetical admission of the veracity of the allegations if:

1. the falsity of the allegations is subject to judicial notice;
2. such allegations are legally impossible;
3. the allegations refer to facts which are inadmissible in evidence;
4. by the record or document in the pleading, the allegations appear unfounded; or
5. there is evidence which has been presented to the court by stipulation of the parties or in the course of the hearings related to the case.[18]

In this case, it is clear from the petition filed before the trial court that, although petitioners are the legitimate heirs of Loreto, they were not named as beneficiaries in the insurance policies issued by Insular and Grepalife. The basis of petitioners' claim is that Eva, being a concubine of Loreto and a suspect in his murder, is disqualified from being designated as beneficiary of the insurance policies, and that Eva's children with Loreto, being illegitimate children, are entitled to a lesser share of the proceeds of the policies. They also argued that pursuant to Section 12 of the Insurance Code,[19] Eva's share in the proceeds should be forfeited in their favor, the former having brought

---

[18] *Perkin Elmer Singapore Pte Ltd. v. Dakila Trading Corporation*, G.R. No. 172242, August 14, 2007, 530 SCRA 170; *China Road and Bridge Corporation v. Court of Appeals*, G.R. No. 137898, December 15, 2000, 348 SCRA 401, 409, 412; *Dabuco v. Court of Appeals*, 379 Phil. 939 (2000); *Peltan Dev., Inc. v. CA*, 336 Phil. 824 (1997); *City of Cebu v. Court of Appeals*, G.R. No. 109173, July 5, 1996, 258 SCRA 175, 182-184; *United States of America v. Reyes*, G.R. No. 79253, March 1, 1993, 219 SCRA 192; *Santiago v. Pioneer Savings & Loan Bank*, No. 77502, January 15, 1988, 157 SCRA 100; *Marcopper Mining Corporation v. Garcia*, No. 55935, July 30, 1986, 143 SCRA 178, 187-189; *Tan v. Director of Forestry*, No. 24548, October 27, 1983, 125 SCRA 302, 315.

[19] SECTION 12. The interest of a beneficiary in a life insurance policy shall be forfeited when the beneficiary is the principal, accomplice, or

about the death of Loreto. Thus, they prayed that the share of Eva and portions of the shares of Loreto's illegitimate children should be awarded to them, being the legitimate heirs of Loreto entitled to their respective legitimes.

It is evident from the face of the complaint that petitioners are not entitled to a favorable judgment in light of Article 2011 of the Civil Code which expressly provides that insurance contracts shall be governed by special laws, *i.e.*, the Insurance Code. Section 53 of the Insurance Code states—

> SECTION 53. The insurance proceeds shall be applied exclusively to the proper interest of the person in whose name or for whose benefit it is made unless otherwise specified in the policy.

Pursuant thereto, it is obvious that the only persons entitled to claim the insurance proceeds are either the insured, if still alive; or the beneficiary, if the insured is already deceased, upon the maturation of the policy.[20] The exception to this rule is a situation where the insurance contract was intended to benefit third persons who are not parties to the same in the form of favorable stipulations or indemnity. In such a case, third parties may directly sue and claim from the insurer.[21]

Petitioners are third parties to the insurance contracts with Insular and Grepalife and, thus, are not entitled to the proceeds thereof. Accordingly, respondents Insular and Grepalife have no legal obligation to turn over the insurance proceeds to petitioners. The revocation of Eva as a beneficiary in one policy and her disqualification as such in another are of no moment considering that the designation of the illegitimate children as beneficiaries in Loreto's insurance policies remains valid. Because

---

accessory in willfully bringing about the death of the insured; in which event, the nearest relative of the insured shall receive the proceeds of said insurance if not otherwise disqualified.

[20] *Southern Luzon Employees' Ass'n v. Golpeo, et al.*, 96 Phil. 83, 86 (1954), citing *Del Val v. Del Val*, 29 Phil. 534, 540-541 (1915).

[21] *Coquila v. Fieldmen's Insurance Co., Inc.*, No. L-23276, November 29, 1968, 26 SCRA 178, 181; *Guingon v. Del Monte*, No. L-22042, August 17, 1967, 20 SCRA 1043.

no legal proscription exists in naming as beneficiaries the children of illicit relationships by the insured,[22] the shares of Eva in the insurance proceeds, whether forfeited by the court in view of the prohibition on donations under Article 739 of the Civil Code or by the insurers themselves for reasons based on the insurance contracts, must be awarded to the said illegitimate children, the designated beneficiaries, to the exclusion of petitioners. It is only in cases where the insured has not designated any beneficiary,[23] or when the designated beneficiary is disqualified by law to receive the proceeds,[24] that the insurance policy proceeds shall redound to the benefit of the estate of the insured.

In this regard, the assailed June 16, 2005 Resolution of the trial court should be upheld. In the same light, the Decision of the CA dated January 8, 2008 should be sustained. Indeed, the appellate court had no jurisdiction to take cognizance of the appeal; the issue of failure to state a cause of action is a question of law and not of fact, there being no findings of fact in the first place.[25]

WHEREFORE, the petition is *DENIED* for lack of merit. Costs against petitioners.

SO ORDERED.

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

---

[22] *Southern Luzon Employees' Ass'n. v. Golpeo, et al., supra* note 20, at 87-88.

[23] *Vda. de Consuegra v. Government Service Insurance System*, No. L-28093, January 30, 1971, 37 SCRA 315.

[24] *The Insular Life Assurance Company, Ltd. v. Ebrado*, No. L-44059, October 28, 1977, 80 SCRA 181.

[25] *China Road and Bridge Corporation v. Court of Appeals, supra* note 18, at 409-410.

[*] Additional member in lieu of Associate Justice Conchita Carpio Morales per Special Order No. 646 dated May 15, 2009.

[**] Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 631 dated April 29, 2009.

SECOND DIVISION

[G.R. No. 181688. June 5, 2009]

DAIKOKU ELECTRONICS PHILS., INC., *petitioner, vs.* **ALBERTO J. RAZA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; NLRC 2005 RULES OF PROCEDURE; MOTIONS FOR RECONSIDERATION; PERIOD; VIOLATED IN CASE AT BAR. — As the records show, Daikoku admitted receiving a copy of the May 31, 2006 NLRC resolution on June 16, 2006. It only filed its motion for reconsideration on July 3, 2006, or 17 days after the receipt of the May 31, 2006 resolution. Section 15, Rule VII of the NLRC 2005 Rules of Procedure pertinently provides: SECTION 15. MOTIONS FOR RECONSIDERATION.—Motions for reconsideration of any decision, resolution or order of the Commission shall not be entertained except when based on palpable or patent errors; provided that the motion is x x x **filed within ten (10) calendar days from receipt of decision, resolution or order,** with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party; and provided further, that only one such motion from the same party shall be entertained. Applying the above provision to the case at bench, Daikoku had 10 days from June 16, 2006 when it received the May 31, 2006 NLRC resolution, or until June 26, 2006, to be precise, within which to file a motion for reconsideration. As it were, Daikoku filed its motion for reconsideration of the May 31, 2006 NLRC resolution on the 17th day from its receipt of the said resolution. The motion for reconsideration was doubtless filed out of time, as the CA determined.

2. ID.; ID.; ID.; ID.; LIBERAL APPLICATION OF THE RULE REQUIRES VALID REASONS. — The relaxation of procedural rules cannot be made without any valid reasons proffered for or underpinning it. To merit liberality, petitioner must show reasonable cause justifying its non-compliance with the rules and must convince the Court that the outright dismissal of the petition would defeat the administration of substantive justice. Daikoku urges a less rigid application of procedural rules to

> give way for the resolution of the case on its merits. The desired leniency cannot be accorded absent valid and compelling reasons for such a procedural lapse. The appellate court saw no compelling need meriting the relaxation of the rules. Neither does the Court. We must stress that the bare invocation of "the interest of substantial justice" line is not some magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled, let alone dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Utter disregard of the rules cannot be justly rationalized by harping on the policy of liberal construction.

APPEARANCES OF COUNSEL

De Guzman Dionido Caga Jucaban & Associates Law Office for petitioner.

Virgilio B. Gesmundo for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

In this petition for review under Rule 45, Daikoku Electronics Phils., Inc. (Daikoku) assails and seeks to set aside the Decision[1] dated September 26, 2007 and Resolution[2] dated February 7, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 96282, effectively dismissing Daikoku's appeal from the resolutions dated May 31, 2006[3] and July 31, 2006,[4] respectively, of the

---

[1] *Rollo*, pp. 27-36. Penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Magdangal M. De Leon and Ricardo R. Rosario.

[2] *Id.* at 38.

[3] *Id.* at 54-65. Penned by Commissioner Gregorio O. Bilog III and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo.

[4] *Id.* at 66-67.

National Labor Relations Commission (NLRC) in NLRC CA No. 044001-05.

The Facts

In January 1999, Daikoku hired respondent Alberto J. Raza as company driver, eventually assigning him to serve as personal driver to its president, Mamuro Ono (Ono, hereafter). By arrangement, Alberto, at the end of each working day which usually starts early morning and ends late at night, parks the car at an assigned slot outside of Ono's place of residence at Pacific Plaza Condominium in Makati City.

On July 21, 2003, at around 8:00 p.m., Alberto, after being let off by Ono, took the company vehicle to his own place also in Makati City. This incident did not go unnoticed, as Ono asked Alberto the following morning where he parked the car the night before. In response, Alberto said that he parked the car in the usual condominium parking area but at the wrong slot.

On July 24, 2003, Alberto received a show-cause notice why he should not be disciplined for dishonesty. A day after, Alberto submitted his written explanation of the incident, owning up to the lie he told Ono and apologizing and expressing his regret for his mistake.

Following an investigation, the investigation committee recommended that Alberto be suspended for 12 days without pay for the infraction of parking the company vehicle at his residence and for deliberately lying about it. The committee considered Alberto's voluntary admission of guilt and apology as mitigating circumstances. Daikoku's general affairs manager, however, was unmoved and ordered Alberto dismissed from the service effective August 14, 2003. "Dishonesty" and "other work related performance offenses" appeared in the corresponding notice of termination as grounds for the dismissal action.

Alberto sought reconsideration but to no avail, prompting him to file a case for illegal dismissal.

The Ruling of the Labor Arbiter

On January 15, 2005, the labor arbiter, on the finding that Alberto's dismissal was predicated, among others, on offenses he was neither apprised of nor charged with, rendered judgment for Alberto, disposing as follows:

> WHEREFORE, finding the complainant's dismissal unlawful, respondents are hereby directed to reinstate complainant to his former position without loss of seniority rights and other benefits and further ordered solidarily to pay complainant backwages from the time of his dismissal up to actual reinstatement minus the salary corresponding to the suspension period of twelve days, plus 10% of the total award for attorney's fees, computed as follows:
>
> FULL BACKWAGES
>
> | | | |
> |---|---|---|
> | A. Basic Pay | | |
> | From 8/14/03 to 1/14/05 | | |
> | ₱12,000 x 17.03 | = | ₱ 204,360.00 |
> | B. 13th month pay | | |
> | ₱ 204,360/12 | = | 17,030.00 |
> | C. Service Incentive Leave Pay | | |
> | ₱12,000/30 x 5 days x 17.03/12 | = | 2,838.33 |
> | | | ₱ 224,228.33 |
> | Less: ₱12,000/30 x 12 days | = | 4,800.00 |
> | TOTAL | | ₱ 219,428.33 |
> | Attorney's fee of ₱219,428.33 | | ₱ 21,942.83 |
> | x 10% | | |
>
> SO ORDERED.

The labor arbiter also determined that while some form of sanction against Alberto was indicated, the ultimate penalty of dismissal was not commensurate to the offense actually committed and charged.

From the labor arbiter's ruling, Daikoku appealed to the NLRC, its recourse docketed as NLRC CA No. 044001-05.

For his part, Alberto, thru counsel, wrote Daikoku demanding reinstatement, either actual or payroll, as decreed in the labor arbiter's appealed decision. Daikoku then asked Alberto to report back to work on May 10, 2005 which the company later moved to June 6, 2005.

On July 11, 2005, pending resolution of Daikoku's appeal, Alberto filed before the NLRC a *Motion to Cite Respondents in Contempt and to Compel Them to Pay Complainant* for the company's alleged refusal to reinstate him. In his accompanying affidavit, Alberto alleged, among other things, that he reported back to work on June 24, 2005. But instead of being given back his old job or an equivalent position, he was asked to attend an orientation seminar and undergo medical examination, at his expense. To compound matters, the company deferred payment of his backwages and some other benefits. These impositions, according to Alberto, impelled him to stop reporting for work.

The Ruling of the NLRC

Initially, the NLRC, by resolution of August 31, 2005, dismissed Daikoku's appeal for failure to perfect it in the manner and formalities prescribed by law. Acting on Daikoku's motion for reconsideration, however, the NLRC issued a Resolution dated **May 31, 2006**, reinstating Daikoku's appeal, setting aside the arbiter's January 15, 2005 appealed decision, and denying Alberto's motion to cite the company for contempt. But for Daikoku's failure to reinstate Alberto pending appeal, the NLRC ordered the payment of Alberto's backwages, at the basic rate of Ph₱ 8,790 a month, corresponding the period indicated in the resolution of May 31, 2006 which dispositively reads:

WHEREFORE, premises considered, [Daikoku's] Motion for Reconsideration is GRANTED. [Alberto's] Motion to Cite Respondents in Contempt is DENIED for lack of merit.

The assailed Decision dated January 15, 2005 of the Labor Arbiter is REVERSED and SET ASIDE and a new one is hereby entered declaring that **complainant was validly dismissed from his employment**. Nevertheless, for failure to reinstate complainant Alberto J. Raza

pursuant to the Labor Arbiter's Decision, respondent DAIKOKU ELECTRONICS PHILS., INC. is hereby ordered to pay him his wages from 11 March 2005 up to the promulgation of this Resolution, provisionally computed as follows:

[Basic] pay: (3/11/05 – 5/11/06)	
(₱8,790.00 x 14 months)	= ₱ 123,060.00
13th month pay:	
(₱123,060.00 / 12 mos.)	= 10,255.55
Service Incentive Leave Pay:	
(₱8,790 / 30 x 5 days x 14 mos./12)	= 1,709.17
TOTAL	**₱ 135,024.72**

SO ORDERED. (Emphasis added.)

Alberto sought reconsideration of the above ruling. Daikoku also moved for reconsideration on the backwages aspect of the NLRC resolution. On **July 31, 2006**, the NLRC issued a resolution explicitly denying only Alberto's motion.

Obviously on the belief that the NLRC's July 31, 2006 resolution also constituted a denial of its own motion for reconsideration, Daikoku went to the CA via a petition for *certiorari*, docketed as CA-G.R. SP No. 96282, to assail the NLRC Resolutions dated May 31, 2006 and July 31, 2006. The same NLRC resolutions were also assailed in Alberto's similar petition to the appellate court, docketed as CA-G.R. SP No. 100714. Both petitions, while involving the same parties and practically the same subject and issues, were not consolidated in the CA.

Meanwhile, on October 30, 2006, Alberto filed before the CA a Motion for Summary Dismissal and to Cite Petitioner in Direct Contempt, alleging that the assailed NLRC resolutions of May 31 and July 31, 2006 have become final as against Daikoku which filed out of time a prohibited second motion for reconsideration.

The Ruling of the CA

On September 26, 2007, the appellate court rendered the assailed decision dismissing Daikoku's appeal as well as denying Alberto's contempt motion. The *fallo* reads:

> WHEREFORE, premises considered, the petition is DENIED and is, accordingly, DISMISSED. The motion to cite petitioner in contempt is, likewise, DENIED for lack of merit.
>
> SO ORDERED.

The CA anchored its denial of Daikoku's petition on the interplay of the following stated grounds or premises: (1) prematurity of the petition for *certiorari*, the NLRC not having yet resolved Daikoku's motion for reconsideration of the NLRC's May 31, 2006 resolution; (2) even if the matter of prematurity is to be disregarded, the NLRC May 31, 2006 resolution has become final and executory as to Daikoku as its motion for reconsideration was filed out of time; and (3) there is no compelling reason for the relaxation of procedural rules.

Following the CA's denial on February 7, 2008 of its motion for reconsideration, Daikoku interposed this petition.

The Issues

I. THE [CA] GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT STATED THAT THE DECISION OF THE NLRC AGAINST THE RESPONDENTS ALREADY ATTAINED ITS FINALITY.

II. UPHOLDING THE GRANT OF BACKWAGES TO THE RESPONDENT IS UNJUST, BASELESS AND INEQUITABLE.[5]

The Court's Ruling

The key issue, as the appellate court aptly put it, boils down to the question of timeliness of Daikoku's motion for reconsideration of the May 31, 2006 NLRC Resolution.

---

[5] *Id.* at 14 & 18.

Motion for Reconsideration Belatedly Filed

As the records show, Daikoku admitted receiving a copy of the May 31, 2006 NLRC resolution on June 16, 2006. It only filed its motion for reconsideration on July 3, 2006, or 17 days after the receipt of the May 31, 2006 resolution. Section 15, Rule VII of the NLRC 2005 Rules of Procedure pertinently provides:

> SECTION 15. MOTIONS FOR RECONSIDERATION.—Motions for reconsideration of any decision, resolution or order of the Commission shall not be entertained except when based on palpable or patent errors; provided that the motion is x x x **filed within ten (10) calendar days from receipt of decision, resolution or order**, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party; and provided further, that only one such motion from the same party shall be entertained. (Emphasis ours.)

Applying the above provision to the case at bench, Daikoku had 10 days from June 16, 2006 when it received the May 31, 2006 NLRC resolution, or until June 26, 2006, to be precise, within which to file a motion for reconsideration. As it were, Daikoku filed its motion for reconsideration of the May 31, 2006 NLRC resolution on the 17th day from its receipt of the said resolution. The motion for reconsideration was doubtless filed out of time, as the CA determined.

To be sure, the relaxation of procedural rules cannot be made without any valid reasons proffered for or underpinning it. To merit liberality, petitioner must show reasonable cause justifying its non-compliance with the rules and must convince the Court that the outright dismissal of the petition would defeat the administration of substantive justice.[6] Daikoku urges a less rigid application of procedural rules to give way for the resolution of the case on its merits. The desired leniency cannot be

---

[6] *United Paragon Mining Corporation v. Court of Appeals*, G.R. No. 150959, August 4, 2006, 497 SCRA 638, 648; citing *Philippine Valve Mfg. Company v. National Labor Relations Commission*, G.R. No. 152304, November 12, 2004, 442 SCRA 383.

accorded absent valid and compelling reasons for such a procedural lapse. The appellate court saw no compelling need meriting the relaxation of the rules. Neither does the Court.

We must stress that the bare invocation of "the interest of substantial justice" line is not some magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled, let alone dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights.[7] Utter disregard of the rules cannot be justly rationalized by harping on the policy of liberal construction.[8]

Daikoku's substantial rights, if any, may still be amply addressed in the appellate proceedings Alberto instituted and pending before the CA, docketed as CA-G.R. SP No. 100714.[9] As to Alberto, his appeal opens *de novo* his action for illegal dismissal *vis-à-vis* the decision of the NLRC. At the very least, Daikoku still had the opportunity to be heard in opposition to Alberto's appeal. Be that as it may, it behooves the Court to refrain from taking any dispositive action that will likely preempt the CA in its disposition of Alberto's appeal.[10] Indeed, the issue as to whether or not there was a valid ground for the dismissal of workers is factual in nature,[11] best threshed out before the appellate court which has jurisdiction to rule over controversies traversing both issues or questions of fact and law.

---

[7] *Land Bank of the Philippines v. Ascot Holdings and Equities, Inc.*, G.R. No. 175163, October 19, 2007, 537 SCRA 396, 406.

[8] *Torres v. Abundo*, G.R. No. 174263, January 24, 2007, 512 SCRA 556, 565; citing *Castillo v. Court of Appeals*, G.R. No. 159971, March 25, 2004, 426 SCRA 369, 375.

[9] CA Ninth Division.

[10] Per verification, on December 22, 2008, CA-G.R. SP No. 100714 was dismissed by the Ninth Division, with Associate Justice Arcangelita R. Lontok III as *ponente*. The case is pending resolution of the motion for reconsideration filed by Alberto.

[11] *Espina v. Court of Appeals*, G.R. No. 164582, March 28, 2007, 519 SCRA 327, 355; citing *Anvil Ensembles Garment v. Court of Appeals*, G.R. No. 155037, April 29, 2005, 457 SCRA 675, 681.

While not determinative of the final outcome of this case, we are inclined to agree with Daikoku's treatment of the July 31, 2006 NLRC Resolution as an action denying its motion for reconsideration of the May 31, 2006 NLRC Resolution. Two factors point to such conclusion: (1) Daikoku filed its motion for reconsideration on July 3, 2006, way before the issuance of the July 31, 2006 NLRC Resolution; and (2) while the NLRC only mentioned Alberto's motion in the July 31, 2006 Resolution, the tenor of this issuance conveys the impression that it was the final ruling of the entire controversy, one that puts to a final rest the clashing interests of the parties. Consider the following NLRC lines:

> For want of grave abuse of discretion and serious error, **this Commission now write finis to this labor controversy**.
>
> WHEREFORE, the assailed Resolution of 31 May 2006 STAND undisturbed.
>
> SO ORDERED. (Emphasis supplied.)

Given the foregoing consideration, it may validly be concluded that Daikoku's motion for reconsideration of the May 31, 2006 NLRC Resolution had, in effect, been denied, on the ground of belated filing. In a very real sense, therefore, the CA was correct in its holding that the May 31, 2006 NLRC Resolution is final and executory as to Daikoku.

To obviate any misunderstanding, however, we wish to stress that this disposition does not purport to pass upon the correctness of, much more sustain, the NLRC's May 31, 2006 Resolution. Neither should this Decision be taken as affirming or negating the propriety of Alberto's dismissal from the service and the consequent money award granted by the NLRC. That kind of adjudication could very well come later should Alberto opt to pursue his cause further with the CA in CA-G.R. SP No. 100714. For the moment, we are mainly concerned, as we should be, with what Daikoku has raised before us: the propriety of the assailed September 26, 2007 CA Decision, as reiterated in its resolution of February 7, 2008.

WHEREFORE, the instant petition is hereby *DENIED* for lack of merit. Accordingly, the CA Decision dated September 26, 2007 and Resolution dated February 7, 2008 in CA-G.R. SP No. 96282 are hereby *AFFIRMED*.Costs against petitioner.

SO ORDERED.

Quisumbing (Chairperson), Ynares-Santiago,[*] *Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

THIRD DIVISION

[G.R. No. 183211. June 5, 2009]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **GOTESCO TYAN MING DEVELOPMENT, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; CONSOLIDATION OF CASES; REQUISITES. — The legal basis of an order of consolidation of two (2) cases is Section 1, Rule 31 of the Rules of Civil Procedure, which states: When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. In *Teston v. Development Bank of the Philippines*, we laid down the requisites for the consolidation of cases, *viz.*: A court may order several actions pending before it to be tried together where they arise from the same act, event or transaction, involve the same or like issues, and depend largely or substantially on the same evidence, provided that the court has jurisdiction over the cases to be consolidated and that a joint trial will not give one party

---

[*] Additional member as per Special Order No. 645 dated May 15, 2009.

[**] Additional member as per Special Order No. 635 dated May 7, 2009.

an undue advantage or prejudice the substantial rights of any of the parties.

2. ID.; ID.; ID.; ID.; PURPOSE THEREOF; SUSTAINED. — The rule allowing consolidation is designed to avoid multiplicity of suits, to guard against oppression or abuse, to prevent delays, to clear congested dockets, and to simplify the work of the trial court; in short, the attainment of justice with the least expense and vexation to the parties- litigants.

3. ID.; ID.; ID.; FORECLOSURE OF PROPERTY; *EX PARTE* ISSUANCE OF THE WRIT OF POSSESSION TO THE PURCHASER OF THE FORECLOSED PROPERTY, WHEN VALID. — Jurisprudence teems with pronouncements that, upon the expiration of the redemption period, the right of the purchaser to the possession of the foreclosed property becomes absolute. Thus, the mere filing of an *ex parte* motion for the issuance of a writ of possession would suffice, and there is no bond required since possession is a necessary consequence of the right of the confirmed owner. It is a settled principle that a pending action for annulment of mortgage or foreclosure sale does not stay the issuance of the writ of possession.

APPEARANCES OF COUNSEL

Chief Legal Counsel (PNB) for petitioner.
Pacheco Law Office for respondent.

D E C I S I O N

NACHURA, *J.*:

This petition for review filed by Philippine National Bank (PNB) seeks to nullify and set aside the March 12, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 99194, which affirmed the Orders dated August 24, 2006[2] and March 2, 2007[3]

---

[1] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Lucenito N. Tagle and Agustin S. Dizon, concurring; *rollo*, pp. 49-56.

[2] *Rollo*, p. 113.

[3] *Id.* at 114-116.

of the Regional Trial Court (RTC) of Pasig City, and the June 6, 2008 Resolution,[4] denying PNB's motion for reconsideration.

The antecedents.

On April 7, 1995, PNB, along with Metropolitan Bank and Trust Company (MBTC), United Coconut Planters Bank (UCPB), and Citytrust Banking Corporation (CBC), extended credit facilities worth ₱800,000,000.00 to respondent Gotesco Tyan Ming Development, Inc. (GOTESCO). To secure the credit facility, GOTESCO executed a Mortgage Trust Indenture over a parcel of land in Pasig City, covered by Transfer Certificate of Title (TCT) No. PT-97306.[5] GOTESCO availed itself of ₱800,000,000.00 from its credit line, but failed to pay it in full. Accordingly, PNB, MBTC, UCPB, and CBC instituted foreclosure proceedings on the GOTESCO property.

On July 30, 1999, the property was auctioned and was awarded to PNB as the highest bidder for ₱1,240,000,496.82. A Certificate of Sale[6] was issued on August 4, 1999 and was registered with the Register of Deeds on November 9, 1999.

The one-year redemption period expired without GOTESCO exercising its right of redemption. Accordingly, PNB consolidated the title in its name and, on July 18, 2005, TCT No. PT-127557[7] in the name of PNB was issued. Consequently, PNB filed an *Ex-Parte* Petition for Issuance of Writ of Possession with the RTC of Pasig City. The case was docketed as LRC Case No. R-6695-PSG and was raffled to Branch 155.

GOTESCO then filed a motion to consolidate LRC Case No. R-6695-PSG with its case for annulment of foreclosure proceedings, specific performance and damages against PNB, docketed as Civil Case No. 68139, and pending with RTC Branch 161.

---

[4] *Id.* at 19-20.

[5] *Id.* at 83-85.

[6] *Id.* at 80-82.

[7] *Id.* at 87-89.

On August 24, 2006, Hon. Judge Luis R. Tongco of Branch 155 issued an Order granting the motion for consolidation:

> Finding merit in the Motion For Consolidation filed by [respondent] Gotesco Tyan Ming Development, Inc., through counsel, on August 7, 2006, and as prayed for and over the opposition of x x x petitioner Philippine National Bank (PNB), the same is hereby **GRANTED**.
>
> Let, therefore, the entire records of the instant case be forwarded to the Office of the Clerk of Court, RTC, Pasig City for **CONSOLIDATION** with Civil Case No. 68139, entitled "*Gotesco Tyan Ming Development, Inc. v. Philippine National Bank, et al.*" filed on October 30, 2000 pending before Branch 161, Regional Trial Court, Pasig City.
>
> SO ORDERED.[8]

PNB filed a motion for reconsideration, but RTC Branch 161 denied the same, *viz.*:

> After a careful and judicious consideration of the arguments raised by the parties in their respective pleadings, this Court resolves to DENY the Urgent Motion for Reconsideration.
>
> A perusal of the arguments/issues raised by the petitioner in its pleadings would clearly show that they were mere reiteration of its previous arguments/issues which have been duly considered and passed upon by Honorable Judge Luis R. Tongco who ordered the consolidation of this case, in his discretion, to the civil case pending before this Court and no new matter was raised to warrant the reconsideration of the assailed Order dated August 24, 2006.
>
> As a rule, the consolidation of several cases involving the same parties and subject matter is discretionary with the trial court. However, consolidation of these cases becomes a matter of duty if two or more cases are tried before the same judge, or, if filed with different branches of the same Court of First Instance, one of such cases has not been partially tried. (*Raymundo, et al. v. Felipe,* L-30887, Dec. 24, 1971). Noteworthy is the fact that the civil case pending before this Court is in the stage of presentation of [GOTESCO's] initial evidence.
>
> As stressed by the Honorable Supreme Court in the case of *Philippine Savings Bank v. Spouses Rodolfo C. Mañalac, Jr.,* G.R. No. 145441, April 26, 2005, to wit:

---

[8] *Id.* at 113.

> *"In Active Wood Products Co., Inc. v. Court of Appeals, x x x The Court held that while a petition for a writ of possession is an ex-parte proceeding, being made on a presumed right of ownership, when such presumed right of ownership is contested and is made the basis of another action, then the proceedings for writ of possession would also become groundless. The entire case must be litigated and if need be must be consolidated with a related case so as to thresh out thoroughly all related issues.*
>
> *In the same case, the Court likewise rejected the contention that under the Rules of Court only actions can be consolidated. The Court held that the technical difference between an action and a proceeding, which involve the same parties and subject matter, becomes insignificant and consolidation becomes a logical conclusion in order to avoid confusion and unnecessary expenses with the multiplicity of suits."*

WHEREFORE, in view of the foregoing, finding no cogent reason to reverse and set aside the assailed Order dated August 24, 2006, the Urgent Motion for Reconsideration is hereby DENIED and the two (2) cases being consolidated, this Court deems it proper to treat Civil Case No. 68139 for Annulment of Foreclosure Sale, *etc.* as an opposition to this case (LR Case No. R-6695-PSG). Thus, petitioner should first present evidence.

Accordingly, the March 30, 2007 setting in Civil Case No. 68139 is cancelled and reset to April 13, 2007 at 1:30 o'clock (sic) in the afternoon for the presentation of x x x PNB's evidence.

SO ORDERED.[9]

PNB then filed a petition for *certiorari* with the CA. On March 12, 2008, the CA rendered the assailed Decision dismissing the petition. Citing *Philippine Savings Bank v. Mañalac, Jr.*,[10] the CA rejected PNB's argument that a petition for issuance of a writ of possession cannot be consolidated with an ordinary civil action. The CA further held that the RTC merely complied with the express mandate of Section 1, Rule 31 of the 1997 Rules of Civil Procedure in granting the motion for consolidation. Thus, it cannot be charged with grave abuse of discretion.

---

[9] *Id.* at 114-115.

[10] G.R. No. 145441, April 26, 2005, 457 SCRA 203.

PNB moved for reconsideration of the decision, but the CA denied it on June 6, 2008.

PNB is now before us faulting the CA for dismissing its petition.

On March 27, 2009, PNB moved for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction to enjoin the proceedings in LRC Case No. R-6695-PSG and in Civil Case No. 68139. PNB claimed that its petition for issuance of a writ of possession, which is supposed to be summary in nature, is in grave and imminent danger of being wrongfully subjected to litigation. It alleged that its witness is set to be cross-examined on April 23, 2009 at 1:30 p.m. despite PNB's continuing objection as to the flow of trial. It argued that, in the event that the RTC further proceeds with the hearing of the consolidated cases, the present petition will become moot and academic. Thus, unless the RTC is restrained or enjoined from further hearing the two improperly consolidated cases, PNB's right to due process, particularly to an expeditious and summary hearing of its *ex-parte* petition, will be utterly violated. PNB added that it would also suffer grave and irreparable injury as its right to take immediate possession of the mortgaged property, with the title thereto now consolidated in its name, would be rendered nugatory. In its April 20, 2009 Resolution, this Court granted PNB's prayer and issued a TRO enjoining the proceedings *a quo*.

In the main, PNB contends that the consolidation of its petition for issuance of a writ of possession with GOTESCO's case for annulment of foreclosure proceedings has seriously prejudiced its right to a writ of possession. It points that after the consolidation of title in its name, when GOTESCO failed to redeem the property, entitlement to a writ of possession becomes a matter of right. Moreover, a petition for issuance of a writ of possession is a non-litigious proceeding; hence, it must not be consolidated with a civil action for the annulment of foreclosure proceedings, specific performance, and damages, which is litigious in nature. It faults the CA for affirming the RTC's action.

GOTESCO, on the other hand, submits that the RTC and the CA did not err, much less abuse their discretion, in granting the motion for consolidation. It cites judicial economy and convenience

of both parties as justification for granting the motion for consolidation.

The petition is meritorious.

The legal basis of an order of consolidation of two (2) cases is Section 1, Rule 31 of the Rules of Civil Procedure, which states:

> SECTION 1. Consolidation. — When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

In *Teston v. Development Bank of the Philippines*,[11] we laid down the requisites for the consolidation of cases, *viz.*:

> A court may order several actions pending before it to be tried together where they arise from the same act, event or transaction, involve the same or like issues, and depend largely or substantially on the same evidence, provided that the court has jurisdiction over the cases to be consolidated and that a joint trial will not give one party an undue advantage or prejudice the substantial rights of any of the parties.[12]

The rule allowing consolidation is designed to avoid multiplicity of suits, to guard against oppression or abuse, to prevent delays, to clear congested dockets, and to simplify the work of the trial court; in short, the attainment of justice with the least expense and vexation to the parties-litigants.[13]

Thus, in *Philippine Savings Bank v. Mañalac, Jr.*,[14] we disregarded the technical difference between an action and a proceeding, and upheld the consolidation of a petition for the issuance of a writ of possession with an ordinary civil action

---

[11] G.R. No. 144374, November 11, 2005, 474 SCRA 597.

[12] *Teston v. Development Bank of the Philippines*, *id.* at 605.

[13] *Id*.

[14] G.R. No. 145441, April 26, 2005, 457 SCRA 203.

in order to achieve a more expeditious resolution of the cases, thus:

> In the instant case, the consolidation of Civil Case No. 53967 with LRC Case No. R-3951 is more in consonance with the rationale behind the consolidation of cases which is to promote a more expeditious and less expensive resolution of the controversy than if they were heard independently by separate branches of the trial court. Hence, the technical difference between Civil Case No. 53967 and LRC Case No. R-3951 must be disregarded in order to promote the ends of justice.[15]

But in the instant case, the consolidation of PNB's petition for a writ of possession with GOTESCO's complaint for annulment of foreclosure proceeding serves none of the purposes cited above. On the contrary, it defeated the very rationale of consolidation.

The record shows that PNB's petition was filed on May 26, 2006, and remains pending after three (3) years, despite the summary nature of the petition. Obviously, the consolidation only delayed the issuance of the desired writ of possession. Further, it prejudiced PNB's right to take immediate possession of the property and gave GOTESCO undue advantage, for GOTESCO continues to possess the property during the pendency of the consolidated cases, despite the fact that title to the property is no longer in its name.

It should be stressed that GOTESCO was well aware of the expiration of the period to redeem the property. Yet, it did not exercise its right of redemption. There was not even an attempt to redeem the property. Instead, it filed a case for annulment of foreclosure, specific performance, and damages and prayed for a writ of injunction to prevent PNB from consolidating its title. GOTESCO's maneuvering, however, failed, as the CA and this Court refused to issue the desired writ of injunction.

Cognizant that the next logical step would be for PNB to seek the delivery of possession of the property, GOTESCO now tries to delay the issuance of writ of possession. It is clear that the motion for consolidation was filed merely to frustrate PNB's right to immediate possession of the property. It is a transparent ploy

---

[15] *Philippine Savings Bank v. Mañalac, Jr., id.* at 214.

to delay, if not to prevent, PNB from taking possession of the property it acquired at a public auction ten (10) years ago. This we cannot tolerate.

Jurisprudence teems with pronouncements that, upon the expiration of the redemption period, the right of the purchaser to the possession of the foreclosed property becomes absolute. Thus, the mere filing of an *ex parte* motion for the issuance of a writ of possession would suffice, and there is no bond required since possession is a necessary consequence of the right of the confirmed owner. It is a settled principle that a pending action for annulment of mortgage or foreclosure sale does not stay the issuance of the writ of possession.[16] Indisputably, the consolidation of PNB's petition with GOTESCO's complaint runs counter to this well established doctrine.

In *De Vera v. Agloro*[17] this Court upheld the denial by the RTC of a motion for consolidation of a petition for issuance of a writ of possession with a civil action, as it would prejudice the right of one of the parties, *viz.*:

> It bears stressing that consolidation is aimed to obtain justice with the least expense and vexation to the litigants. The object of consolidation is to avoid multiplicity of suits, guard against oppression or abuse, prevent delays and save the litigants unnecessary acts and expense. Consolidation should be denied when prejudice would result to any of the parties or would cause complications, delay, prejudice, cut off, or restrict the rights of a party.
>
> In the present case, the trial court acted in the exercise of its sound judicial discretion in denying the motion of the petitioners for the consolidation of LRC Case No. P-97-2000 with Civil Case No. 109-M-2000.
>
> First. The proceedings in LRC Case No. P-97-2000 is not, strictly speaking, a judicial process and is a non-litigious proceeding; it is summary in nature. In contrast, the action in Civil Case No. 109-M-2000 is an ordinary civil action and adversarial in character. The rights of the respondent in LRC Case No. P-97-2000 would be prejudiced if the

---

[16] See *Fernandez v. Espinoza*, G.R. No. 156421, April 14, 2008, 551 SCRA 136, 150.

[17] G.R. No. 155673, January 14, 2005, 448 SCRA 203.

said case were to be consolidated with Civil Case No. 109-M-2000, especially since it had already adduced its evidence.[18]

Likewise, in *Teston v. Development Bank of the Philippines*,[19] this Court explicitly declared that:

> Consolidation should be denied when prejudice would result to any of the parties or would cause complications, delay, cut off, or restrict the rights of a party.[20]

It is true that the trial court is vested with discretion whether or not to consolidate two or more cases. But in the present case, we are of the considered view that the exercise of such discretion by the RTC was less than judicious. We are constrained to agree with PNB that, given the circumstances herein cited, the RTC's discretion has been gravely abused. Accordingly, the CA committed reversible error in upholding the RTC.

WHEREFORE, the petition is *GRANTED*. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP. No. 99194 and the Orders dated August 24, 2006 and March 2, 2007 of the Regional Trial Court of Pasig City, Branch 155, are *SET ASIDE*. Let the *Ex-Parte* Petition for Issuance of a Writ of Possession (LRC Case No. R-6695-PSG) and the Complaint for Annulment of Foreclosure, Specific Performance and Damages (Civil Case No. 68139) proceed and be heard independently in accordance with the Rules, and be resolved with dispatch.

SO ORDERED.

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

---

[18] *De Vera v. Agloro, id.* at 218. (Citations omitted.)

[19] *Teston v. Development Bank of the Philippines*, *supra* note 11.

[20] *Id.* at 606.

[*] Additional member in lieu of Associate Justice Conchita Carpio Morales per Special Order No. 646 dated May 15, 2009.

[**] Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 631 dated April 29, 2009.

THIRD DIVISION

[G.R. No. 184756. June 5, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JOVEN JUMAWID,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; WHEN COMMITTED. — Under the first paragraph of Article 266-A of the Revised Penal Code, it is provided: ART. 266-A. *Rape, When and How Committed.* — Rape is committed — 1. By a man who shall have carnal knowledge of a woman under any of the following circumstances: a. Through force, threat or intimidation; b. When the offended party is deprived of reason or is otherwise unconscious; c. By means of fraudulent machination or grave abuse of authority; d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above [are] present. The factual findings of the RTC, as affirmed by the CA, indubitably prove that appellant consummated his dastardly objective even if there was no full penetration of the female genital organ. In *People v. Boromeo*, we explained that proof of hymenal laceration is not an element of rape so long as there is enough proof of entry of the male organ into the labia of the *pudendum* of the female organ. Penetration of the penis by entry into the lips of the vagina, even without laceration or rupture of the hymen, and even with the briefest contact, consummates the crime of rape.

2. ID.; ID.; WHEN QUALIFIED; PENALTY. —There is no need for the allegation to be preceded by the words "qualifying/ aggravating, qualifying, or qualified by" in order that such circumstance may be appreciated as such, more so when it is the law itself which provides for the qualification of the crime. Article 266-B of the Revised Penal Code is explicit: ART. 266–B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*. Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death. x x x The use of a deadly weapon, having been specifically averred in the Information and duly proven during

the trial qualifies the rape committed by the appellant. Under 266-B of the Revised Penal Code, the penalty for qualified rape should be *reclusion perpetua* to death. However, since the prosecution failed to prove that appellant took advantage of the night or that such circumstance facilitated the commission of the crime, the lesser penalty of *reclusion perpetua* is hereby imposed.

3. ID.; ID.; CIVIL INDEMNITY; WHEN PROPER. — As to the variation between the monetary awards imposed by the RTC and CA, we rule that the appropriate civil indemnity should be ₱50,000.00 in light of prevailing jurisprudence regarding civil indemnity for qualified rape. Such award partakes the nature of actual or compensatory damages and is mandatory upon a conviction for qualified rape. The presence of a qualifying circumstance in the commission of rape not only increases the penalty but justifies the award for exemplary or corrective damages as well, the purpose being to impose a harsher penalty on account the offender's greater perversity. Hence, we sustain the award of ₱30,000.00 as exemplary damages in favor of the victim. We, likewise, affirm the award of ₱50,000.00 as moral damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

NACHURA, *J.*:

We review the March 12, 2008 Decision[1] of the Court of Appeals (CA), Mindanao Station, which affirmed the guilty verdict rendered by the Regional Trial Court (RTC), Branch 18, Cagayan de Oro City,[2] promulgated on September 12, 2002

[1] Docketed as CA G.R. CR-HC No. 00201, penned by Associate Justice Michael P. Elbinias, with Associate Justices Teresita Dy-Liacco Flores and Rodrigo F. Lim, Jr., concurring; *rollo*, pp. 4-14.

[2] CA *rollo*, pp. 17-29.

against appellant Joven Barbillas Jumawid (Jumawid), with modification on the amount of civil indemnity and exemplary damages to be paid to his victim, AAA. This review is made pursuant to the pertinent provisions of Sections 3 and 10 of Rule 122 and Section 13 of Rule 124 of the Revised Rules on Criminal Procedure, as amended by A.M. 00-5-03-SC.

The factual findings of both courts show that on August 26, 2001, at about 9 o'clock in the evening, 18-year-old AAA was with her 2-year-old brother inside their parents' house at 123 St., XYZ in Cagayan de Oro City. She was cooking dinner when appellant Joven Jumawid, a neighbor for 10 years, entered their house reeking with liquor and carrying a knife. When appellant inquired where her father was, she replied that he had not arrived yet. Appellant then went behind her, choked her neck with his left hand, and pointed the knife at her neck using his right hand. She shouted for help, but because of the loud sound coming from the karaoke in appellant's house, nobody came to her aid.[3]

Appellant dragged her to the bedroom and told her to undress or he would kill her. When she refused, appellant proceeded to remove her short-pants and underwear with the knife pointed at her waist. He instructed her to lie on the floor. Again she refused, so he pushed her, mounted her and removed her clothes. Appellant kissed and bit her lips and left breast and, while on top of her, inserted his penis into her vagina. AAA moved her buttocks to prevent appellant's organ from penetrating her vagina, but she still felt a portion of his penis enter her.[4] Appellant shouted that she should let his penis fully enter her vagina; otherwise, he would kill her.[5] Because appellant was not able to fully insert his penis, he bit her lips and vagina, and continued to insert his penis.[6]

---

[3] *Id.* at 25.

[4] *Supra* note 1, at 6, 11.

[5] *Id.* at 6.

[6] *Supra* note 2, at 19.

At this point, AAA's father, BBB, arrived and called for her. Appellant hurriedly put on his clothes, warned AAA not to tell anybody else or he would kill her, and went out. When AAA's 8-year-old brother, CCC, went inside the house, she told him to immediately tell their mother that she was raped by appellant.[7]

Meanwhile, BBB decided to run to the police station in XYZ to ask for help because he knew appellant to have been previously imprisoned for stabbing a person.[8] When he passed by his wife's mango stall, she told him that AAA told CCC that she was raped.[9] Meanwhile, Jumawid went back to AAA's house, still with a knife, and called for her.

At the police station, Senior Police Officer (SPO)3 Josefino Mercado Balili (Balili) was on duty at around 9:30 p.m. on August 26, 2001. He testified that BBB arrived at the station and asked for police assistance in arresting the person he saw in his house and claimed that his daughter was raped. He, BBB, and a certain SPO1 Caburatan, immediately proceeded to the house where they saw AAA, frightened and moaning. They found Jumawid crouching at the back door. When Balili was about to handcuff Jumawid, the latter dropped the knife he was holding. They then brought Jumawid, together with AAA, to the police station. Subsequently, they accompanied AAA for medical examination at the Northern Mindanao Medical Center.[10]

The following day, an Information[11] charging appellant Jumawid with the crime of rape was filed by the Assistant

---

[7] *Id*.

[8] *Id.* at 21.

[9] *Supra* note 1, at 7.

[10] *Supra* note 2, at 19.

[11] The Information reads:

The undersigned Asst. City Prosecutor accuses JOVEN JUMAWID *y* BARBILLAS, of the crime of RAPE, committed as follows:

City Prosecutor. At his arraignment on October 2, 2001, Jumawid entered a plea of "not guilty."[12]

During the trial, Dr. Soraya Munti of the Department of OB-GYNE at the Northern Mindanao Medical Center testified that, while on duty on August 26, 2001, she examined AAA. She found bite marks on the left upper areola of AAA. She also found that AAA's genitalia bore lacerations consisting of 1 centimeter (cm.), at the left *labia majus* mid 1/3rd; laceration 0.7 cm., right *labia majora*, mid 1/3rd; abrasion, 0.5 cm. at posterior fourchette; and multiple abrasion 1 cm. around the vulva.[13] She, however, found AAA's hymen to be apparently intact.[14]

Dr. Rolando Galeon of the Department of EENT of the said hospital also testified that when he examined the victim on August 26, 2001, he noted a contusion on her lower lip, a superficial puncture on the inner lip, an abrasion on the infralabial area, and a superficial punctured wound also on the infralabial area.[15]

Appellant interposed an entirely different version of the incident. He maintained that he and AAA were sweethearts. They had been neighbors since their childhood days, but their romantic

---

That on August 26, 2001, at about 9:00 o'clock in the evening, more or less, at [123] Street, [XYZ], Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation upon person, with lewd design, did then and there willfully, unlawfully, and feloniously have sexual intercourse with [AAA], 18 years old, virgin, without her consent and against the latter's will.

That the commission of the above offense is attended with the aggravating circumstance of night time purposely sought by the accused to insure and facilitate his commission thereof. Furthermore, the rape was committed with the use of a deadly weapon.

Contrary to and in Violation of Article 266 of the Revised Penal Code. (Pursuant to R.A. 8353.) (*Rollo*, p. 5.)

[12] *Rollo*, p. 5.

[13] *Id.* at 7.

[14] *Id*.

[15] *Supra* note 2, at 20.

relationship began in 1997 and even continued while AAA stayed with her aunt in Manila at the time when he was also working in Manila as a security guard. He said that on the night of August 26, 2002, he and AAA's relatives were drinking liquor at AAA's house. AAA's cousin, DDD, instructed him to go upstairs and get some food. When he went inside, he saw AAA cooking dinner. They talked about their relationship, appellant kissed AAA and she kissed him back. When he placed his hand on AAA's private parts, she resisted and reminded him that she was still going to school. Then, he heard AAA's father, BBB, call for AAA. He went downstairs and gave his respects. He and BBB drank some liquor, and thereafter left the house together and walked towards the mango stall of BBB's wife.[16]

Later that night, another of AAA's cousins, EEE, instructed appellant to return to AAA's house to discuss something. Upon reaching the house, AAA's grandmother asked appellant if it was true that BBB saw him and AAA kissing at the stairway; he denied the allegation. BBB subsequently arrived, accompanied by policemen, who arrested appellant at the stairway of the house.[17]

On September 12, 2002, the RTC found Jumawid guilty of the crime of rape. Pertinent portion of the *fallo* reads:

> WHEREFORE, in view of the foregoing, the Court finds accused JOVEN JUMAWID *y* BARBILLAS GUILTY beyond reasonable doubt of the crime of rape, punishable under Article 266-A and B of the Revised Penal Code, as amended by R.A. 8353, attended by a qualifying aggravating circumstance with the use of a deadly weapon, plus a generic aggravating [circumstance] of nocturnity, and there being no mitigating circumstance, accused JOVEN JUMAWID *y* BARBILLAS is hereby sentenced and SO ORDERED to suffer the supreme penalty of death by lethal injection, including its accessory penalties. He is also directed to indemnify the victim the sum of ₱75,000.00, as compensatory damages, plus moral damages in the amount of ₱50,000.00.

---

[16] *Supra* note 1, at 8.

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

xxx xxx xxx

SO ORDERED. Cagayan de Oro City, September 12, 2002.[18]

Upon review, the CA agreed with the RTC in rejecting Jumawid's sweetheart theory and found sufficient basis to conclude that sexual intercourse did take place.[19] The CA also sustained the RTC's finding that the rape was qualified by the use of a deadly weapon, but favored appellant's contention that the prosecution failed to establish that he took advantage of the darkness of the night or that such circumstance facilitated his commission of the crime. The dispositive portion of the CA decision states:

WHEREFORE, the Decision *a quo* is AFFIRMED with MODIFICATIONS. Appellant is found GUILTY of the crime of Rape, and is hereby sentenced to suffer the penalty of *reclusion perpetua*. The appellant is also DIRECTED to pay the victim, [AAA], the amounts of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Twenty Five Thousand Pesos (₱25,000.00) as exemplary damages, and Fifty Thousand Pesos (₱50,000.00) as moral damages.

SO ORDERED.[20]

On review, we rule in favor of the People.

The law is clear. Under the first paragraph of Article 266-A of the Revised Penal Code, it is provided:

ART. 266-A. *Rape, When and How Committed*. — Rape is committed —

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;

b. When the offended party is deprived of reason or is otherwise unconscious;

---

[18] *Supra* note 2, at 28.

[19] *Supra* note 1, at 11-12.

[20] *Id.* at 14.

c. By means of fraudulent machination or grave abuse of authority;

d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above [are] present.

The factual findings of the RTC, as affirmed by the CA, indubitably prove that appellant consummated his dastardly objective even if there was no full penetration of the female genital organ. In *People v. Boromeo*,[21] we explained that proof of hymenal laceration is not an element of rape so long as there is enough proof of entry of the male organ into the labia of the *pudendum* of the female organ. Penetration of the penis by entry into the lips of the vagina, even without laceration or rupture of the hymen, and even with the briefest contact, consummates the crime of rape.[22]

In this case, AAA was consistent in her testimony that appellant was able to penetrate her despite her efforts of moving her buttocks to prevent the latter from fully inserting his penis inside her vagina. The medical examination conducted by Dr. Munti confirms that there was indeed partial penetration of the victim's vagina.

As to the appreciation of the qualifying circumstance of use of a deadly weapon, we sustain the CA's conclusion that the Information explicitly contained such allegation. There is no need for the allegation to be preceded by the words "qualifying/ aggravating, qualifying, or qualified by" in order that such circumstance may be appreciated as such,[23] more so when it is the law itself which provides for the qualification of the crime.

Article 266-B of the Revised Penal Code is explicit:

---

[21] G.R. No. 150501, June 3, 2004, 430 SCRA 533.

[22] *Id.* at 542.

[23] *People v. Garin*, G.R. No. 139069, June 17, 2004, 432 SCRA 394, 411, citing *People v. Aquino*, G.R. Nos. 144340-42, August 6, 2002, 386 SCRA 391.

ART. 266-B. *Penalties.* – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

xxx xxx xxx

The use of a deadly weapon, having been specifically averred in the Information and duly proven during the trial qualifies the rape committed by the appellant.[24] Under 266-B of the Revised Penal Code, the penalty for qualified rape should be *reclusion perpetua* to death. However, since the prosecution failed to prove that appellant took advantage of the night or that such circumstance facilitated the commission of the crime, the lesser penalty of *reclusion perpetua* is hereby imposed.[25]

As to the variation between the monetary awards imposed by the RTC and CA, we rule that the appropriate civil indemnity should be ₱50,000.00 in light of prevailing jurisprudence regarding civil indemnity for qualified rape.[26] Such award partakes the nature of actual or compensatory damages and is mandatory upon a conviction for qualified rape.[27]

The presence of a qualifying circumstance in the commission of rape not only increases the penalty but justifies the award for exemplary or corrective damages as well, the purpose being

---

[24] See Regalado, *Criminal Law Conspectus*, 2007, pp. 588-9.

[25] *People v. Manambay*, G.R. 130684, February 5, 2004, 422 SCRA 73, 89, citing *People v. Ayuda*, G.R. No. 128882, October 2, 2003, 412 SCRA 539. See also *People v. Arevalo*, G.R. Nos. 150542-87, February 3, 2004, 421 SCRA 604, citing *People v. Sabredo*, G.R. No. 126114, May 11, 2000, 331 SCRA 663, 671-672.

[26] *People v. Gabelino*, G.R. Nos. 132127-29, March 31, 2004, 426 SCRA 608; *People v. Canoy*, 459 Phil. 933 (2003); *People v. Sambrano*, 446 Phil. 145 (2003) and *People v. Soriano*, 436 Phil. 719 (2002).

[27] *People v. Dimaano*, G.R. No. 168168, September 14, 2005, 469 SCRA 647, 669 and *People v. Glodo*, G.R. No. 136085, July 7, 2004, 433 SCRA 544, 549.

to impose a harsher penalty on account the offender's greater perversity. Hence, we sustain the award of ₱30,000.00 as exemplary damages in favor of the victim. We, likewise, affirm the award of ₱50,000.00 as moral damages.

WHEREFORE, premises considered, the Decision[28] of the Court of Appeals in CA G.R. CR-HC No. 00201 dated March 12, 2009 is hereby *AFFIRMED* with the modification that exemplary damages is increased to ₱30,000.00.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 185724. June 5, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JESSIE MALATE *y* CAÑETE,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; GUIDING RULES IN DETERMINING GUILT OR INNOCENCE OF AN ACCUSED. — In determining the guilt or innocence of the accused in rape cases, the Court is guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, though innocent, to disprove the charge; (2) considering that,

---

[28] *Supra* note 1.

[*] Additional member in lieu of Associate Justice Conchita Carpio Morales per Special Order No. 646 dated May 15, 2009.

[**] Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 631 dated April 29, 2009.

in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence of the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT BY THE TRIAL COURT, ACCORDED RESPECT AND SELDOM DISTURBED ON APPEAL; EXCEPTION. — In cases involving the prosecution for forcible rape, the courts have consistently held that, as a general rule, corroboration of the victim's testimony is not a necessary condition to a conviction for rape where the victim's testimony is credible, or clear and convincing or sufficient to prove the elements of the offense beyond a reasonable doubt. The weight and sufficiency of evidence are determined by the credibility, nature, and quality of the testimony. The Court finds no reason to deviate from the time-honored doctrine that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and note their demeanor, conduct, and attitude under grilling examination. Moreover, the issue on which witness to believe is one that is best addressed by the trial court, for the findings of fact of a trial judge are accorded great respect and are seldom disturbed on appeal for having the opportunity to directly observe the witnesses, and to determine by their demeanor on the stand the probative value of their testimonies. This rule admits of exceptions, however, such as when the trial court's findings of facts and conclusions are not supported by the evidence on record, or when certain facts of substance and value that would likely change the outcome of the case have been overlooked by the trial court, or when the assailed decision is based on a misapprehension of facts. None of these exceptions exists in this case.

3. ID.; ID.; ID.; NOT AFFECTED BY MINOR INCONSISTENCIES. — Accused-appellant cannot plausibly bank on the minor inconsistencies in the testimony of the complainant to discredit her account of the incident. Even if they do exist, minor and insignificant inconsistencies tend to bolster, rather than weaken, the credibility of the witness for they show that his testimony

was not contrived or rehearsed. Trivial inconsistencies do not rock the pedestal upon which the credibility of the witness rests, but enhances credibility as they manifest spontaneity and lack of scheming. As aptly held in the American case of *State v. Erikson*, the rule that a victim's testimony in sexual assault cases must be corroborated "does not apply where the inconsistency or contradiction bears upon proof not essential to the case." Well to point, even the most truthful witnesses can sometimes make mistakes, but such minor lapses do not necessarily affect their credibility. Undoubtedly, the complainant's testimony has been found to be credible by the trial court and this Court finds no reason to disturb such determination. Further, it is worth noting that no married woman in her right mind would subject herself to public scrutiny and humiliation in order to perpetuate a falsehood.

4. ID.; ID.; DENIAL AND ALIBI; WEAKEST DEFENSES WHICH CANNOT PREVAIL OVER POSITIVE IDENTIFICATION OF THE ACCUSED BY THE COMPLAINANT. — This Court has been consistent in declaring that for alibi to prosper, the defense must establish the physical impossibility for the accused to be present at the scene of the crime at the time of its commission. The facts in this case illustrate that there was no physical impossibility for Malate to be at the scene of the crime, considering that *Barangay*s CCC and DDD are both within the municipality of Meycauayan, Bulacan and are walking distance from each other. What is more, both denial and alibi are considered as the weakest defenses not only due to their inherent weakness and unreliability, but also because they are easy to fabricate. Nothing is more settled in criminal law jurisprudence that alibi and denial cannot prevail over the positive and categorical testimony and identification of the accused by the complainant. Such is the situation in the instant case. Malate was positively and categorically identified by the complainant. As has been consistently ruled by this Court, an affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness. And both alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.

5. ID.; ID.; DEGREE OF PROOF REQUIRED TO SHOW THE GUILT OF THE ACCUSED; ONLY MORAL CERTAINTY IS DEMANDED. — In criminal cases such as the one on hand, the prosecution is not required to show the guilt of the accused with absolute certainty. Only moral certainty is demanded, or that degree of proof which, to an unprejudiced mind, produces conviction. We find that the prosecution has discharged its burden of proving the guilt of the accused with moral certainty.

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.*:

The Case

This is an appeal from the July 8, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02588 which affirmed the October 27, 2006 Decision[2] in Criminal Case No. 1869-M-2004 of the Regional Trial Court (RTC), Branch 12 in Malolos City, Bulacan.

Accused-appellant Jessie Malate *y* Cañete stands convicted of one (1) count of rape or violation of paragraph 1(a), Article 266-A of the Revised Penal Code, as amended. He was sentenced to suffer the penalty of *reclusion perpetua*.

The Facts

The charge against Malate stemmed from the following Information:

---

[1] *Rollo*, pp. 2-11. Penned by Associate Justice Isaias Dicdican and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison.

[2] CA *rollo*, pp. 18-23. Penned by Judge Crisanto C. Concepcion.

That on or about the 18th day of June, 2004, at around 7:45 in the evening, more or less, in the municipality of Meycauayan, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, by means of force and intimidation, with the use of a kitchen knife and with lewd designs, have carnal knowledge with one BBB[3] against her will and without her consent.

Contrary to law.[4]

On July 22, 2004, Malate, with the assistance of his counsel *de oficio*, was arraigned and entered a plea of "not guilty" to the charge against him. After the pre-trial, trial on the merits ensued.

During the trial, the prosecution offered the testimonies of BBB, the private complainant, and Milo Vanguardia. On the other hand, the defense presented Malate and Michael Luna as its witnesses.

Version of the Prosecution

On June 18, 2004, at around 7:00 o'clock in the evening in Meycauayan, Bulacan, BBB was on her way home when she heard someone say, "Pssst! Pssst!" Ignoring the sounds, BBB continued to walk. Suddenly, a man, who was later identified as Malate, appeared holding a knife and blocked BBB's way. Malate grabbed her shirt from behind and poked his knife on her neck. She tried to struggle free and this caused Malate to cut his finger. She then tried to run away, but Malate ran after her and again grabbed her by her shirt. She also tried to shout for help but no help came.

Malate then dragged BBB to a ricefield, all the while pointing the knife at her. There, he made her remove her clothes and

---

[3] The real name of the victim is withheld per Republic Act No. 9262. In accordance with *People v. Cabalquinto*, G.R. No. 167693, September 16, 2006, 502 SCRA 419, the name of the victim, her personal circumstances, and other information which tend to establish or compromise her identity shall not be disclosed to protect her privacy. Fictitious initials are used.

[4] CA *rollo*, p. 10.

his pants. Afterwards, he made her lie on the ground and kissed her all over her body. Malate then placed himself on top of her and made her hold his penis and guide it into her vagina. BBB, frightened, followed every word he said. After penetration of BBB's sex organ, Malate succeeded in having sexual intercourse with her.

When it was all over, BBB sat up and noticed blood on her hair. She thought it came from a cut in her head but Malate told her that the blood came from the cut of his left hand's middle finger. She then asked him to let her go home to her daughter, but he refused saying that he wanted her to go with him to his province in Samar because he loved her. She replied she could not love him back because she did not know him. He said that he had been watching her for a long time and had come to love her, without her knowing it.

Pretending to accede to his request, BBB asked Malate to let her look for her bag and shoes first at the place where she was blocked. He agreed and they proceeded to the place. While she was getting her bag and shoes, Malate was also looking for his slippers. Two *barangay tanod*s then arrived with their flashlights beaming on both of them. BBB told them that Malate raped her and this caused him to run away. The three of them ran after him in pursuit until they lost him in the dark.

They all looked for him around *Barangay* CCC where they stumbled upon a group of men playing native chess (*dama*), one of whom was Milo Vanguardia, a friend of BBB's estranged husband. BBB told Milo that they were looking for a man with curly hair and a wound on his hand, who raped her. When they still could not find Malate, BBB went to the *barangay* hall of DDD with her mother to report the incident. Later, her husband's friend, Milo, and some *barangay tanod*s brought Malate to the *barangay* hall and later proceeded to the police station where she pointed to Malate as her rapist.

Version of the Defense

Malate's defense, on the other hand, was confined to his denial of the accusation and an alibi, to wit:

Sometime around 9:00 o'clock in the evening of June 18, 2004 in CCC, Meycauayan, Bulacan, Malate arrived in a jeepney coming from Marikina and had some refreshments at a store nearby. Next, he rode a pedicab to the residence of Edmond Glab, his former Officer-in-Charge (OIC), to inquire about a job vacancy in the security agency where he was previously employed.

While on his way to his former boss' place, Malate chanced upon a certain person named Nilo playing *tong-its* with several other people. Thinking that Edmond was with them, he asked the pedicab to stop but he did not see Edmond there. Instead, Nilo saw him and started cursing because of a previous quarrel they had. To avoid a confrontation, he ordered the pedicab to proceed to their destination.

Upon reaching a narrow alley leading toward the house of his former OIC, Malate ordered the pedicab to stop and he got off from the vehicle. Upon alighting, he immediately noticed three armed men behind him. Suddenly, one of the men hit him with the butt of his firearm. He tried to turn around to face them but the three ganged up on him and repeatedly hit him with their rifles. As a result of the incessant beatings, he lost consciousness.

When Malate regained consciousness, he noticed that he was inside a bodega-like building with his attackers. There and then, he was again beaten and forced to admit that he was Jim Boy despite his protestation about not knowing who Jim Boy was. At around 12:00 o'clock midnight, they brought him to the Meycauayan police station.

It was only the following day, in the early morning of June 19, 2004, that Malate came to know about the rape accusation. He denied having any knowledge of the imputed charge. He also maintained that it was his first time to meet BBB at the police station.

The Ruling of the RTC

After trial, the RTC convicted Malate. The dispositive portion of the Decision reads:

WHEREFORE, finding herein accused Jessie Malate *y* Cañete guilty as principal beyond reasonable doubt of the crime of rape as charged, he committed with the use of a knife, a deadly weapon, in forcing, threatening and intimidating his victim into having sexual intercourse with him against her will, there being, however, no circumstance, aggravating or mitigating, found attendant in its commission, he is hereby sentenced to suffer the penalty of *reclusion perpetua*, to indemnify the victim, BBB, in the amount of ₱75,000.00, to pay her the further amount of ₱50,000.00 as moral damages subject to the corresponding filing fees as a first lien, and to pay the costs of the proceedings.

In the service of his sentence, the said accused, being a detention prisoner, shall be credited with the full time during which he had undergone preventive imprisonment, pursuant to Art. 29 of the Revised Penal Code.

SO ORDERED.[5]

The Ruling of the CA

On July 8, 2008, the CA affirmed the judgment of the RTC. The dispositive portion of the CA Decision reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DISMISSING the appeal filed in this case and AFFIRMING *in toto* the assailed Decision dated October 27, 2006 of the court *a quo* in Criminal Case No. 1869-M-2004.

SO ORDERED.[6]

The Issues

Malate contends in his Brief that:

1. The trial court gravely erred in giving full weight and credence to the prosecution witness' materially inconsistent and unreliable testimony;
2. The trial court gravely erred in convicting the accused-appellant of the crime of rape despite the prosecution's failure to prove his guilt beyond reasonable doubt.[7]

[5] *Id.* at 22-23.

[6] *Rollo*, p. 11.

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

The Court's Ruling

We sustain appellant's conviction.

After a careful examination of the records of this case, we are satisfied that the prosecution's evidence, including BBB's testimony, established Malate's guilt with moral certainty.

Testimony of Victim is Credible

In his Brief, Malate argues that the trial court erred in giving full credence and reliance on the narration of the private complainant who gave implausible statements and whose testimony was full of inconsistencies, thus rendering the entire charge incredible. He asserts that BBB's varied versions of the incident demonstrate her lack of credibility.

In support of his position, Malate draws attention to the fact that during direct examination, BBB testified that her path was allegedly blocked by him and, then and there, she was forcibly assaulted. But during her cross-examination, she stated that Malate passed by her and then suddenly grabbed her from behind. Likewise, he points out that BBB was positive of the rapist's identity because of a light emanating from the houses nearby; but again, during her cross-examination, she stated that the light came from the brightness of the moon and a lamp post. To him, the foregoing inconsistencies and discrepancies in the testimony should suffice to support a judgment of acquittal.

Contrary to Malate's contentions, this Court finds no cogent reason to doubt the veracity of BBB's testimony.

In determining the guilt or innocence of the accused in rape cases, the Court is guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, though innocent, to disprove the charge; (2) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence of the prosecution must stand or fall on its own

merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[8]

Moreover, in cases involving the prosecution for forcible rape, the courts have consistently held that, as a general rule, corroboration of the victim's testimony is not a necessary condition to a conviction for rape where the victim's testimony is credible, or clear and convincing or sufficient to prove the elements of the offense beyond a reasonable doubt. The weight and sufficiency of evidence are determined by the credibility, nature, and quality of the testimony.[9]

The Court finds no reason to deviate from the time-honored doctrine that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and note their demeanor, conduct, and attitude under grilling examination.[10] Moreover, the issue on which witness to believe is one that is best addressed by the trial court, for the findings of fact of a trial judge are accorded great respect and are seldom disturbed on appeal for having the opportunity to directly observe the witnesses, and to determine by their demeanor on the stand the probative value of their testimonies.[11]

This rule admits of exceptions, however, such as when the trial court's findings of facts and conclusions are not supported by the evidence on record, or when certain facts of substance and value that would likely change the outcome of the case have been overlooked by the trial court, or when the assailed

---

[8] *People v. Ramos*, G.R. No. 179030, June 12, 2008, 554 SCRA 423, 430.

[9] *People v. Abo*, G.R. No. 107235, March 2, 1994, 230 SCRA 612, 619. See 31 A.L.R.4th 120 § 3[a], citing *Smith v. State* (1992, Ala App) 604 So 2d 434; *Sartin v. State* (1992, Ala App) 615 So 2d 135.

[10] *People v. Bantiling*, G.R. No. 136017, November 15, 2001, 369 SCRA 47, 60.

[11] *People v. Villanueva*, G.R. No. 116610, December 2, 1996, 265 SCRA 216, 224-225; citing *People v. Yadao*, G.R. Nos. 72991-92, November 26, 1992, 216 SCRA 1.

decision is based on a misapprehension of facts.[12] None of these exceptions exists in this case.

In fact, the trial court found BBB's testimony clear, convincing, and credible. The trial court reasoned:

> x x x And there is also no reason not to believe her that out of fear threatened with a knife, she had to submit herself to the carnal desire of her ravisher against her will. She was helpless alone with the knife-wielding man. Her passive submission may have saved her from any physical injuries, both external and internal, but still the medical examination she allowed herself to go through says that 'genital findings do not exclude sexual abuse.' (Exh. 'B-1'). **After all 'when a victim says she has been raped, she says in effect all that is necessary to show that rape has been committed and if her testimony meets the test of credibility, the accused may be convicted on the basis thereof.'** (*People v. Balacano,* G.R. No. 127156, July 31, 2000.)
>
> x x x **Her positive identification of the accused as the very same man who had sexual intercourse with her and with whom she was alone for about three (3) hours in that place which was not pitch-dark as not to see totally his face, cannot taint her word with unavoidable inaccuracy on the identity of accused as her real tormentor in those agonizing hours.** She was so certain of him as that man from the time she pointed him to the police to the time she was asked to identify him at his trial. Strangers to each other, BBB would not announce to all that herein accused Jessie was her rapist, if she was not sure. His wound on his left middle finger, the scar it left he even showed while he was on the witness stand, is a tell-tale sign that it was really he who BBB said was the man with the knife who cut himself when she struggled to get away from his clutches as he threatened her with that knife. In face, it was because of that knife that she fearfully surrendered her body to him and did in submission what he wanted her to do during all that time she was helplessly alone with him.[13] (Emphasis supplied.)

Evidently, the trial court had ascertained the truthfulness and credibility of BBB's testimony and ruled that it was sufficient to convict Malate.

---

[12] *People v. Burgos*, G.R. No. 117451, September 29, 1997, 279 SCRA 697, 705.

[13] CA *rollo*, pp. 21-22.

Additionally, Malate was unable to prove any ill motive on the part of BBB. The fact that he testified not knowing the complainant and that he first met her when he was brought to the police station the day after the incident argues against the idea of BBB harboring ill will against him.[14] Thus, where there is no evidence to show any questionable reason or improper motive why a prosecution witness should testify falsely against, or falsely implicate, the accused in a heinous crime, the witness' testimony is worthy of full faith and credit.[15]

Furthermore, accused-appellant cannot plausibly bank on the minor inconsistencies in the testimony of the complainant to discredit her account of the incident. Even if they do exist, minor and insignificant inconsistencies tend to bolster, rather than weaken, the credibility of the witness for they show that his testimony was not contrived or rehearsed.[16] Trivial inconsistencies do not rock the pedestal upon which the credibility of the witness rests, but enhances credibility as they manifest spontaneity and lack of scheming.[17] As aptly held in the American case of *State v. Erikson*, the rule that a victim's testimony in sexual assault cases must be corroborated "does not apply where the inconsistency or contradiction bears upon proof not essential to the case."[18] Well to point, even the most truthful witnesses can sometimes make mistakes, but such minor lapses do not necessarily affect their credibility.[19]

---

[14] TSN, June 13, 2006, p. 8.

[15] *People v. Cristobal*, G.R. No. 116279, January 29, 1996, 252 SCRA 507, 516; citing *People v. Pama*, G.R. Nos. 90297-98, December 11, 1992, 516 SCRA 385; and *People v. Alvero*, G.R. No. 72319, June 30, 1993, 224 SCRA 16.

[16] *People v. Sagun*, G.R. No. 110554, February 19, 1999, 303 SCRA 382, 397.

[17] *Cristobal*, *supra* note 15, at 517.

[18] *State v. Erikson*, 793 S.W.2d 377, May 8, 1990; citing *State v. Ellis*, 710 S.W.2d 378, April 7, 1986. See also *State v. Salkil*, 659 S.W.2d 330 (Mo. App. 1983); *State v. Johnson*, 595 S.W.2d. 774 (Mo. App. 1980).

[19] *Bantiling*, *supra* note 10, at 59-60; citing *People v. Reduca*, G.R. Nos. 126094-95, January 21, 1999, 301 SCRA 516.

Undoubtedly, the complainant's testimony has been found to be credible by the trial court and this Court finds no reason to disturb such determination. Further, it is worth noting that no married woman in her right mind would subject herself to public scrutiny and humiliation in order to perpetuate a falsehood.[20]

Defenses of Denial and Alibi Are Weak

Malate submits that although as a general rule denial and alibi are weak defenses, they are, taken in light of the aforementioned inconsistencies in the complainant's testimony, sufficient to acquit him.[21] The Court is not persuaded. Since, as previously discussed, such inconsistencies do not pierce the complainant's credibility, this argument therefore has no leg to stand on.

This Court has been consistent in declaring that for alibi to prosper, the defense must establish the physical impossibility for the accused to be present at the scene of the crime at the time of its commission.[22] The facts in this case illustrate that there was no physical impossibility for Malate to be at the scene of the crime, considering that *Barangay*s CCC and DDD are both within the municipality of Meycauayan, Bulacan and are walking distance from each other.

What is more, both denial and alibi are considered as the weakest defenses not only due to their inherent weakness and unreliability, but also because they are easy to fabricate.[23] Nothing is more settled in criminal law jurisprudence that alibi and denial cannot prevail over the positive and categorical testimony and identification of the accused by the complainant.[24] Such is the situation in

---

[20] *Cristobal*, *supra* note 15.

[21] CA *rollo*, p. 53.

[22] *People v. Guzman*, G.R. No. 169246, January 26, 2007, 513 SCRA 156, 171-172; *People v. Abes*, G.R. No. 138937, January 20, 2004, 420 SCRA 259, 274.

[23] *People v. Santiago*, G.R. No. 175326, November 28, 2007, 539 SCRA 198, 224; *People v. Torres*, G.R. No. 176262, September 11, 2007, 532 SCRA 654.

[24] *People v. Gingos*, G.R. No. 176632, September 11, 2007, 532 SCRA 670, 683.

the instant case. Malate was positively and categorically identified by the complainant. As has been consistently ruled by this Court, an affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness. And both alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.[25]

In conclusion, in criminal cases such as the one on hand, the prosecution is not required to show the guilt of the accused with absolute certainty. Only moral certainty is demanded, or that degree of proof which, to an unprejudiced mind, produces conviction.[26] We find that the prosecution has discharged its burden of proving the guilt of the accused with moral certainty.

In accordance with prevailing jurisprudence, the Court awards PhP 25,000 as exemplary damages to BBB without need of proof or pleading.[27]

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 02588 finding accused-appellant Jessie Malate guilty of the crime charged is *AFFIRMED* with *MODIFICATION* that he shall pay Php 25,000 as exemplary damages to BBB.

SO ORDERED.

Quisumbing (Chairperson), Ynares-Santiago,[*] *Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

---

[25] *People v. Tumulak*, G.R. No. 177299, November 28, 2007, 539 SCRA 296, 304.

[26] RULES OF COURT, Rule 133, Sec. 2.

[27] *People v. Diunsay-Jalandoni*, G.R. No. 174277, February 8, 2007, 515 SCRA 227, 240-241; *People v. Catubig*, G.R. No. 137842, August 23, 2001, 363 SCRA 621, 634-635.

[*] Additional member as per Special Order No. 645 dated May 15, 2009.

[**] Additional member as per Special Order No. 635 dated May 7, 2009.

SECOND DIVISION

[G.R. No. 185860. June 5, 2009]

ANTONIO ANDRES and RODOLFO DURAN, *petitioners, vs.* **THE PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; THE SUPREME COURT LIMITS ITS REVIEW TO ERRORS OF LAW; EXCEPTIONS. — A petition for review on *certiorari* under Rule 45 of the Revised Rules of Court limits this Court's review to errors of law, not of fact, unless the factual findings are devoid of evidentiary support or unless the assailed judgment is based on a misapprehension of facts. On factual matters, the factual findings of the CA are conclusive and beyond our review, particularly when the appellate court affirms the factual findings of the trial court, as we held in *Philippine Airlines, Inc. v. CA.* We see no palpable error or any arbitrariness in the lower courts' findings of fact and, thus, do not have any basis to review these findings.

2. CRIMINAL LAW; CARNAPPING; PENALTY. — Section 14 of R.A. No. 6539, as amended by R.A. No. 7659, provides: SEC. 14. *Penalty for Carnapping*. — Any person who is found guilty of carnapping, as this term is defined in Section Two of this Act, shall, irrespective of the value of the motor vehicle taken, be punished by imprisonment for not less than fourteen years and eight months and not more than seventeen years and four months, when the carnapping is committed without violence or intimidation of persons, or force upon things, and by imprisonment for not less than seventeen years and four months and not more than thirty years, when the carnapping is committed by means of violence against or intimidation of any person, or force upon things; and the penalty of *reclusion perpetua* to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof. In the present case, the Information charging the petitioners with violation of R.A. No. 6539, as amended,

did not allege that the carnapping was committed by means of violence against, or intimidation of, any person, or force upon things. ***While these circumstances were proven at the trial, they cannot be appreciated because they were not alleged in the Information.*** Thus, the lower courts erred when they took these circumstances into account in imposing the penalty which they pegged at seventeen (17) years and four (4) months to thirty (30) years imprisonment. In the absence of these circumstances, the charge against the petitioners is confined to **simple carnapping** whose imposable penalty should have been imprisonment for not less than fourteen (14) years and eight (8) months, and not more than seventeen (17) years and four (4) months. Under the Indeterminate Sentence Law, as applied to an offense punishable by a special law, the court shall sentence the accused to an indeterminate sentence expressed at a range whose maximum term shall not exceed the maximum fixed by the special law, and the minimum term not be less than the minimum prescribed.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
The Solicitor General for respondent.

D E C I S I O N

BRION, *J.*:

Submitted for our review in this Petition for Review on *Certiorari* are the Decision[1] and Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. CR No. 30243, affirming with modification the June 1, 2006 Decision[3] of the Regional Trial Court (*RTC*), Branch 18, Malolos City.

---

[1] Dated May 28, 2008; penned by Associate Justice Amelita G. Tolentino, and concurred in by Associate Justice Lucenito N. Tagle and Associate Justice Marlene B. Gonzales-Sison; *rollo*, pp. 90-100.

[2] Dated December 17, 2008; *id.*, pp. 115-116.

[3] Penned by Judge Victoria C. Fernandez-Bernardo; *id.*, pp. 52-60.

Petitioners Antonio Andres (*Antonio*) and Rodolfo Duran (*Rodolfo*) were charged with violation of Republic Act (*R.A.*) No. 6539[4] before the RTC, Branch 18, Malolos City, Bulacan, committed as follows:

> That on or about the 6th day of September, 2002, in the Municipality of Sta. Maria, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating together and mutually helping each other, with intent of gain and without the knowledge and consent of the owner, did then and there willfully, unlawfully and feloniously take, steal and carry away with them one Motorized Kawasaki Tricycle worth ₱140,000.00 belonging to Catalino Eugenio to the damage and prejudice of the said Catalino E. Eugenio in the amount of ₱140,000.00.
>
> Contrary to law.

The petitioners pleaded not guilty to the charge laid; trial on the merits thereafter followed.

In its decision of June 1, 2006, the RTC found petitioners Antonio and Rodolfo guilty of violating R.A. No. 6539, as amended, and sentenced them to suffer the penalty of seventeen (17) years and four (4) months to thirty (30) years imprisonment.

The petitioners appealed to the CA which affirmed the RTC decision with modification, as follows:

> WHEREFORE, premised considered, the appeal is DISMISSED for lack of merit. The challenged decision of the court *a quo* in Criminal Case No. 429-M-2003 is hereby AFFIRMED, with the MODIFICATION that the accused-appellants shall suffer the indeterminate prison term of SEVENTEEN YEARS AND FOUR MONTHS, as minimum, to THIRTY YEARS, as maximum.
>
> Costs against the accused-appellants.

The petitioners moved to reconsider this decision, but the CA denied their motion in its resolution of December 17, 2008; hence, the present recourse to us pursuant to Rule 45 of the Rules of Court.

---

[4] The Anti-Carnapping Act of 1992, as amended.

The petitioners argue that the CA gravely erred –

(a) in giving full credence to the testimonies of the prosecution witnesses and in disregarding the theory of the defense;

(b) in convicting them despite of the prosecution's failure to prove their guilt beyond reasonable doubt; and

(c) in imposing upon them the penalty of seventeen (17) years and four (4) months to thirty (30) years.

In support of the first two (2) assigned errors, the petitioners alleged that it was unlikely for Eres Eugenio (*Eres*) to have recognized the suspects, considering that the light coming from the nearby canteen was not directed at the suspects' faces. The petitioners further argued that Eres' attention during the carnapping was not focused on the identities of the suspects; and that he (Eres) never had the full opportunity to look at their faces. Moreover, the prosecution failed to establish that the tricycle's headlight was directed at the faces of the suspects when they alighted from the tricycle. The petitioners also alleged that their out-of-court identification was improperly suggestive; thus, it fell short of the "totality of circumstances" test.

The petitioners also contend that assuming they were guilty of the crime charged, the penalty imposed by the lower courts was erroneous. They argue that the information failed to allege any circumstance that would warrant the imposition of a higher penalty.

We find the petition meritorious with respect to the penalty imposed and, thus, PARTIALLY GRANT the petition. In all other respects, we AFFIRM the decision and resolution of the CA in CA-G.R. CR No. 30243.

A petition for review on *certiorari* under Rule 45 of the Revised Rules of Court limits this Court's review to errors of law, not of fact,[5] unless the factual findings are devoid of evidentiary

[5] A question of fact is involved when the doubt or difference arises as to the truth or falsehood of alleged facts or when the query necessarily invites calibration of the whole evidence, considering mainly the credibility

support or unless the assailed judgment is based on a misapprehension of facts. On factual matters, the factual findings of the CA are conclusive and beyond our review, particularly when the appellate court affirms the factual findings of the trial court, as we held in *Philippine Airlines, Inc. v. CA.*[6] We see no palpable error or any arbitrariness in the lower courts' findings of fact and, thus, do not have any basis to review these findings.

The appropriate question, a legal one, for our review is the third assigned error — the propriety of the penalty imposed. Section 14 of R.A. No. 6539, as amended by R.A. No. 7659,[7] provides:

> SEC. 14. *Penalty for Carnapping.* — Any person who is found guilty of carnapping, as this term is defined in Section Two of this Act, shall, irrespective of the value of the motor vehicle taken, be punished by imprisonment for not less than fourteen years and eight months and not more than seventeen years and four months, when the carnapping is committed without violence or intimidation of persons, or force upon things, and by imprisonment for not less than seventeen years and four months and not more than thirty years, when the carnapping is committed by means of violence against or intimidation of any person, or force upon things; and the penalty of *reclusion perpetua* to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof. [*Underscoring ours*]

In the present case, the Information charging the petitioners with violation of R.A. No. 6539, as amended, did not allege that the carnapping was committed by means of violence against, or intimidation of, any person, or force upon things. ***While these***

---

of witnesses, existence and relevance of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation.

[6] See *Fangonil-Herrera v. Fangonil*, G.R. No. 169356, August 28, 2007, 531 SCRA 486, citing *Philippine Airlines, Inc. v. Court of Appeals*, 274 Phil. 624 (1997).

[7] The Death Penalty Law.

circumstances were proven at the trial, they cannot be appreciated because they were not alleged in the Information. Thus, the lower courts erred when they took these circumstances into account in imposing the penalty which they pegged at seventeen (17) years and four (4) months to thirty (30) years imprisonment. In the absence of these circumstances, the charge against the petitioners is confined to **simple carnapping** whose imposable penalty should have been imprisonment for not less than fourteen (14) years and eight (8) months, and not more than seventeen (17) years and four (4) months.

Under the Indeterminate Sentence Law, as applied to an offense punishable by a special law, the court shall sentence the accused to an indeterminate sentence expressed at a range whose maximum term shall not exceed the maximum fixed by the special law, and the minimum term not be less than the minimum prescribed.[8]

WHEREFORE, premises considered, we *PARTIALLY GRANT* the instant petition and hereby *SENTENCE* the petitioners to an indeterminate penalty of fourteen (14) years and eight (8) months, as minimum, to seventeen (17) years and four (4) months, as maximum. We *AFFIRM* the decision and resolution of the Court of Appeals in CA-G.R. CR No. 30243 in all other respects.

SO ORDERED.

Quisumbing (Chairperson), Ynares-Santiago,[*] *Velasco, Jr.,* and *Leonardo-de Castro,*[**] *JJ.,* concur.

---

[8] See: *People v. Bustinera*, G.R. No. 148233, June 8, 2004, 431 SCRA 284.

[*] Designated additional Member of the Second Division per Special Order No. 645 dated May 15, 2009.

[**] Designated additional Member of the Second Division effective May 11, 2009 per Special Order No. 635 dated May 7, 2009.

THIRD DIVISION

[G.R. Nos. 147925-26. June 8, 2009]

ELPIDIO S. UY, doing business under the name and style EDISON DEVELOPMENT & CONSTRUCTION, *petitioner, vs.* **PUBLIC ESTATES AUTHORITY and the HONORABLE COURT OF APPEALS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS TO THE COURT OF APPEALS; PERIOD TO APPEAL IS INTERRUPTED BY THE MOTION FOR CORRECTION OF COMPUTATION. — Appeals from judgment of the CIAC shall be taken to the CA by filing a petition for review within fifteen (15) days from the receipt of the notice of award, judgment, final order or resolution, or from the date of its last publication if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. Admittedly, Uy received the CIAC decision on June 7, 2000; that instead of filing a verified petition for review with the CA, Uy filed a motion for correction of computation on June 16, 2000, pursuant to Section 9, Article XV of the Rules of Procedure Governing Construction Arbitration: Section 9. Motion for Reconsideration. — As a matter of policy, no motion for reconsideration shall be allowed. Any of the parties may, however, file a motion for correction within fifteen (15) days from receipt of the award upon any of the following grounds: a. An evident miscalculation of figures, a typographical or arithmetical error; b. An evident mistake in the description of any party, person, date, amount, thing or property referred to in the award. The filing of the motion for correction shall interrupt the running of the period for appeal. With the filing of the motion for correction, the running of the period to appeal was effectively interrupted. CIAC was supposed to resolve the motion for correction of computation within 30 days from the time the comment or opposition thereto was submitted. In Uy's case, no resolution was issued despite the lapse of the 30-day period, and Uy considered it as a denial of

his motion. Accordingly, he elevated his case to the CA on July 24, 2000. But not long thereafter, or on August 1, 2000, the CIAC issued an Order denying the motion for correction of computation. Obviously, when Uy filed his petition for review with the CA, the period to appeal had not yet lapsed; it was interrupted by the pendency of his motion for computation.

2. ID.; ID.; GRAVE ABUSE OF DISCRETION; EXPLAINED. — By grave abuse of discretion is meant such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave, as when it is exercised arbitrarily or despotically by reason of passion or personal hostility; and such abuse must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

3. ID.; CIVIL PROCEDURE; JUDGMENT; DOCTRINE OF *LITIS PENDENTIA*; REQUISITES. — The doctrine of *litis pendentia,* has for its requisites: (a) identity of parties, or at least such parties who represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity with respect to the two preceding particulars in the two (2) cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.

4. ID.; ID.; FORUM SHOPPING; WHEN PRESENT. — Forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other. The principle of bar by prior judgment raised by the PEA, *i.e., res judicata*, finds application only upon a showing of a final judgment as one of its requisites, which is not yet present under the present circumstances. It bears stressing that 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.* Accordingly, based on Our holding that the final resolution of the instant petitions takes precedence as it is the *appropriate vehicle for litigating the issues between the parties*, now that the instant petitions before Us have come full circle with this joint resolution and, if the

parties herein so choose, may seek further relief to the High Tribunal afterwards. We cannot allow CIAC CASE NO. 03-2001 to proceed because to do so would render inutile the proscriptions against forum shopping which is frowned upon in Our jurisdiction. Hence, the grant of injunctive relief. This must be done, or else a travesty of the efficient administration of justice would lamentably result.

5. ID.; ID.; PRINCIPLE OF *RES JUDICATA*; ADDING PARTIES TO A CASE WILL NOT ESCAPE THE EFFECT THEREOF. — A party, by varying the form or action or by bringing forward in a second case additional parties or arguments, cannot escape the effects of the principle of *res judicata* when the facts remain the same at least where such new parties or matter could have been impleaded or pleaded in the prior action.

6. CIVIL LAW; CONTRACTS; CONTRACTS FOR A PIECE OF WORK; CLAIMS FOR INCREASE IN PRICE; REQUISITES. — Article 1724 of the Civil Code provides: ART. 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the land-owner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided: (1) Such change has been authorized by the proprietor in writing; and (2) The additional price to be paid to the contractor has been determined in writing by both parties. By this article, a written authorization from the owner is required before the contractor can validly recover his claim. The evident purpose of the provision is to avoid litigation for added costs incurred by reason of additions or changes in the original plan. Undoubtedly, it was adopted to serve as a safeguard or a substantive condition precedent to recovery.

7. ID.; ID.; ID.; ID.; CANNOT BE OVERCOME BY THE PRINCIPLE OF UNJUST ENRICHMENT; APPLICATION IN CASE AT BAR. — The principle of unjust enrichment cannot be validly invoked by the respondent who, through his own act or omission, took the risk of being denied payment for additional costs by not giving the petitioners prior notice of such costs and/or by not securing their written consent thereto, as required by law and their contract.

8. ID.; DAMAGES; ATTORNEY'S FEES; MAY BE REDUCED BY THE COURTS IF IT IS INIQUITOUS OR UNCONCIONABLE; PRESENT IN CASE AT BAR. — Articles 1229 and 2227 of the Civil Code empower the courts to reduce the penalty if it is iniquitous or unconscionable. The determination of whether the penalty is iniquitous or unconscionable is addressed to the sound discretion of the court and depends on several factors such as the type, extent, and purpose of the penalty, the nature of the obligation, the mode of breach and its consequences. The Court finds Uy's claim for attorney's fees *equivalent to 20% of whatever amount is due and payable* to be exorbitant. The CIAC and the CA, therefore, correctly awarded 10% of the total amount due and payable as reasonable attorney's fees.

APPEARANCES OF COUNSEL

Lucas C. Carpio, Jr. and *Villaraza & Angangco Law Office* for petitioner.

Government Corporate Counsel for respondents.

D E C I S I O N

NACHURA, *J.*:

Petitioner Elpidio S. Uy (Uy) appeals by *certiorari* the Joint Decision[1] dated September 25, 2000 and the Joint Resolution[2] dated April 25, 2001 of the Court of Appeals (CA) in the consolidated cases CA-G.R. SP Nos. 59308 and 59849.

Respondent Public Estates Authority (PEA) was designated as project manager by the Bases Conversion Development Authority (BCDA), primarily tasked to develop its 105-hectare demilitarized lot in Fort Bonifacio, Taguig City into a first-class memorial park to be known as Heritage Park. PEA then engaged the services of Makati Development Corporation (MDC) to

[1] Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Romeo J. Callejo, Sr. (a retired member of this Court) and Juan Q. Enriquez, Jr., concurring; *rollo*, pp. 101-112.

[2] *Id.* at 114-117.

undertake the horizontal works on the project; and Uy, doing business under the name and style Edison Development and Construction (EDC), to do the landscaping.

For a contract price of Three Hundred Fifty-Five Million Eighty Thousand One Hundred Forty-One and 15/100 Pesos (₱355,080,141.15), PEA and EDC signed the Landscaping and Construction Agreement[3] on November 20, 1996. EDC undertook to complete the landscaping works in four hundred fifty (450) days commencing on the date of receipt of the notice to proceed.

EDC received the notice to proceed on December 3, 1996;[4] and three (3) days after, or on December 6, 1996,[5] it commenced the mobilization of the equipment and manpower needed for the project. PEA, however, could not deliver any work area to EDC because the horizontal works of MDC were still ongoing. EDC commenced the landscaping works only on January 7, 1997 when PEA finally made an initial delivery of a work area.

PEA continuously incurred delay in the turnover of work areas. Resultantly, the contract period of 450 days was extended to 693 days. PEA also failed to turn over the entire 105-hectare work area due to the presence of squatters. Thus, on March 15, 1999, the PEA Project Management Office (PEA-PMO) issued Change Order No. 2-LC,[6] excluding from the contract the 45-square-meter portion of the park occupied by squatters.

In view of the delay in the delivery of work area, EDC claimed additional cost from the PEA-PMO amounting to ₱181,338,056.30. Specifically, Uy alleged that he incurred additional rental costs for the equipment, which were kept on standby, and labor costs for the idle manpower. He added that the delay by PEA caused the topsoil at the original supplier to be depleted; thus, he was compelled to obtain the topsoil from a farther source, thereby incurring extra costs. He also claims that he had to mobilize

---

[3] *Rollo*, pp. 132-154.

[4] See Terms of Reference, *id.* at 252.

[5] *Rollo*, p. 155.

[6] Exhibit "E-8", Folder No. # 6, CIAC records.

water trucks for the plants and trees which had already been delivered to the site. Furthermore, it became necessary to construct a nursery shade to protect and preserve the young plants and trees prior to actual transplanting to the landscaped area. The PEA-PMO evaluated the EDC's claim and arrived at a lesser amount of ₱146,484,910.[7] The evaluation of PEA-PMO was then referred to the Heritage Park Executive Committee (ExCom) for approval.

On November 12, 1999, the Performance Audit Committee (PAC) reviewed the progress report submitted by the works engineer and noted that the EDC's landscaping works were behind schedule by twenty percent (20%). The PAC considered this delay unreasonable and intolerable, and immediately recommended to BCDA the termination of the landscaping contract.[8] The BCDA adopted PAC's recommendation and demanded from PEA the termination of the contract with EDC. In compliance, PEA terminated the agreement on November 29, 1999.

PEA fully paid all the progress billings up to August 26, 1999, but it did not heed EDC's additional claims. Consequently, Uy filed a Complaint[9] with the Construction Industry Arbitration Commission (CIAC), docketed as CIAC Case No. 02-2000.

On May 16, 2000, the CIAC rendered a Decision,[10] the dispositive portion of which reads:

WHEREFORE, Judgment is hereby rendered in favor of the [Petitioner] Contractor **ELPIDIO S. UY** and **Award** is hereby made on its monetary claims as follows:

Respondent **PUBLIC ESTATES AUTHORITY** is directed to pay the [petitioner] the following amounts:

---

[7] *Rollo*, p. 337.

[8] Annex 3, Respondent's Formal Offer of Evidence, Folder No. # 5, CIAC records.

[9] *Rollo*, pp. 118-131.

[10] *Id.* at 263-318.

₱19,604,132.06 - - - for the cost of idle time of equipment.
2,275,721.00 - - - for the cost of idled manpower.
6,050,165.05 - - - for the construction of the nursery shade net area.
605,016.50 - - - for attorney's fees.

Interest on the amount of **₱6,050,165.05** as cost for the construction of the nursery shade net area shall be paid at the rate of 6% per annum from the date the Complaint was filed on 12 January 2000. Interest on the total amount of **₱21,879,853.06** for the cost of idled manpower and equipment shall be paid at the same rate of 6% per annum from the date this Decision is promulgated. After finality of this Decision, interest at the rate of **12%** per annum shall be paid on the total of these 3 awards amounting to **₱27,930,018.11** until full payment of the awarded amount shall have been made, *"this interim period being deemed to be at that time already a forbearance of credit" (Eastern Shipping Lines, Inc. v. Court of Appeals, et al.*, 243 SCRA 78 [1994]; *Keng Hua Paper Products Co., Inc. v. Court of Appeals,* 286 SCRA 257 [1998]; *Crismina Garments, Inc. v. Court of Appeals,* G.R. No. 128721, March 9, 1999).

SO ORDERED.[11]

Uy received the CIAC decision on June 7, 2000. On June 16, 2000, Uy filed a motion for correction of computation,[12] followed by an amended motion for correction of computation,[13] on July 21, 2000. The CIAC, however, failed to resolve Uy's motion and amended motion within the 30-day period as provided in its rules, and Uy considered it as denial of the motion.

Hence, on July 24, 2000, Uy filed a petition for review[14] with the CA, docketed as CA-G.R. SP No. 59849. Uy's petition was consolidated with CA-G.R. SP No. 59308, the earlier petition filed by PEA, assailing the same CIAC decision.

On August 1, 2000, the CIAC issued an Order[15] denying Uy's motion for correction of computation.

---

[11] *Id.* at 317-318.

[12] *Id.* at 319-332.

[13] CIAC Document Folder # 2, Document No. 9.

[14] *Rollo*, pp. 355-401.

[15] *Id.* at 402-404.

On September 25, 2000, the CA rendered the now assailed Joint Decision dismissing both petitions on both technical and substantive grounds. PEA's petition was dismissed because the verification thereof was defective. Uy's petition, on the other hand, was dismissed upon a finding that it was belatedly filed. Further, the CA found no sufficient basis to warrant the reversal of the CIAC ruling, which it held is based on clear provisions of the contract, the evidence on record and relevant law and jurisprudence.

The CA disposed thus:

> WHEREFORE, premises considered, the petitions in CA-G.R. SP No. 59308, entitled *"**Public Estates Authority v. Elpidio S. Uy, doing business under the name and style of Edison [D]evelopment & Construction**,"* and CA-G.R. SP No. 59849, *"**Elpidio S. Uy, doing business under the name and style of Edison [D]evelopment & Construction v. Public Estates Authority**,"* are both hereby DENIED DUE COURSE and accordingly DISMISSED, for lack of merit.
>
> Consequently, the Award/Decision issued by the Construction Industry Arbitration Commission on May 16, 2000 in CIAC Case No. 02-2000, entitled *"**Elpidio S. Uy, doing business under the name and style of Edison [D]evelopment & Construction v. Public Estates Authority**,"* is hereby AFFIRMED *in toto.*
>
> No pronouncement as to costs.
>
> SO ORDERED.[16]

PEA and Uy filed motions for reconsideration. Subsequently, PEA filed with the CA an Urgent Motion for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction,[17] seeking to enjoin the CIAC from proceeding with CIAC Case No. 03-2001, which Uy had subsequently filed. PEA alleged that the case involved claims arising from the same Landscaping and Construction Agreement, subject of the cases pending with the CA.

---

[16] *Id.* at 111-112.

[17] CA *rollo*, pp. 532-539.

On April 25, 2001, the CA issued the assailed Joint Resolution, thus:

> WHEREFORE, the present Motion/s for Reconsideration in CA-G.R. SP No. 59308 and CA-G.R. SP No. 59849 are hereby both DENIED, for lack of merit.
>
> Accordingly, let an injunction issue permanently enjoining the Construction Industry Arbitration Commission from proceeding with CIAC CASE NO. 03-2001, entitled ***ELPIDIO S. UY, doing business under the name and style of EDISON DEVELOPMENT & CONSTRUCTION v. PUBLIC ESTATES AUTHORITY and/or HONORABLE CARLOS P. DOBLE***.
>
> SO ORDERED.[18]

PEA and Uy then came to us with their respective petitions for review assailing the CA ruling. PEA's petition was docketed as G.R. Nos. 147933-34, while that of Uy was docketed as G.R. Nos. 147925-26. The petitions, however, were not consolidated.

On December 12, 2001, this Court resolved G.R. Nos. 147933-34 in this wise:

> WHEREFORE, in view of the foregoing, the petition for review is DENIED. The Motion to Consolidate this petition with G.R. No. 147925-26 is also DENIED.
>
> SO ORDERED.[19]

Thus, what remains for us to resolve is Uy's petition, raising the following issues:

> I
>
> WHETHER OR NOT RESPONDENT COURT OF APPEALS HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS IN DISMISSING PETITIONER UY'S PETITION IN CA-G.R. SP NO. 59849 ON THE ALLEGED GROUND

---

[18] *Rollo*, p. 117.

[19] *Public Estates Authority v. Uy*, 423 Phil. 407, 419 (2001).

OF NON-COMPLIANCE WITH THE REGLEMENTARY PERIOD IN FILING AN APPEAL

II

WHETHER OR NOT THE RESPONDENT COURT OF APPEALS, IN AFFIRMING THE DECISION OF THE CIAC ARBITRAL TRIBUNAL INSOFAR AS IT DENIED CERTAIN CLAIMS OF PETITIONER UY, HAS DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORDANCE WITH LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT

III

WHETHER OR NOT THE RESPONDENT COURT OF APPEALS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ENJOINED THE PROCEEDINGS IN CIAC CASE NO. 03-2001 IN ITS JOINT RESOLUTION DATED 25 APRIL 2000, WHICH CASE IS TOTALLY DIFFERENT FROM THE CASE *A QUO*[20]

We will deal first with the procedural issue.

Appeals from judgment of the CIAC shall be taken to the CA by filing a petition for review within fifteen (15) days from the receipt of the notice of award, judgment, final order or resolution, or from the date of its last publication if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*.[21]

---

[20] *Rollo,* pp. 781-782.

[21] SEC. 4. *Period of appeal*. — The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (Rule 43, Revised Rules of Civil Procedure.)

Admittedly, Uy received the CIAC decision on June 7, 2000; that instead of filing a verified petition for review with the CA, Uy filed a motion for correction of computation on June 16, 2000, pursuant to Section 9, Article XV of the Rules of Procedure Governing Construction Arbitration:

> Section 9. Motion for Reconsideration. — As a matter of policy, no motion for reconsideration shall be allowed. Any of the parties may, however, file a motion for correction within fifteen (15) days from receipt of the award upon any of the following grounds:
>
> a. An evident miscalculation of figures, a typographical or arithmetical error;
>
> b. An evident mistake in the description of any party, person, date, amount, thing or property referred to in the award.
>
> The filing of the motion for correction shall interrupt the running of the period for appeal.

With the filing of the motion for correction, the running of the period to appeal was effectively interrupted.

CIAC was supposed to resolve the motion for correction of computation within 30 days from the time the comment or opposition thereto was submitted. In Uy's case, no resolution was issued despite the lapse of the 30-day period, and Uy considered it as a denial of his motion. Accordingly, he elevated his case to the CA on July 24, 2000. But not long thereafter, or on August 1, 2000, the CIAC issued an Order[22] denying the motion for correction of computation.

Obviously, when Uy filed his petition for review with the CA, the period to appeal had not yet lapsed; it was interrupted by the pendency of his motion for computation. There is no basis, therefore, to conclude that the petition was belatedly filed.

The foregoing notwithstanding, inasmuch as the CA resolved the petition on the merits, we now confront the substantive

---

[22] *Rollo*, pp. 402-404.

issue – the propriety of the CA's affirmance of the CIAC decision.

Uy cries foul on the award granted by CIAC, and affirmed by the CA. He posits that PEA already admitted its liability, pegged at ₱146,484,910.10, in its memorandum dated January 6, 2000. Thus, he faults the CA for awarding a lesser amount.

We meticulously reviewed the records before us and failed to discern any admission of liability on the part of PEA.

The PEA-PMO evaluation dated January 6, 2000,[23] where PEA allegedly admitted its liability, reads in full:

MEMORANDUM

For : Mr. Jaime R. Millan
Project Manager
Heritage Park Project

Subject: EDC's Various Claim
Landscape Development Works

Revision shall be made on our evaluation dated 28 December 1999 concerning various claims of contractor EDC-Landscape Development Works (Package IV), particularly on the claim on Project Equipment on Standby (item a of the earlier evaluation).

Reference to item 4 of the Terms and Conditions of 1998 ACEL Rate Equipment Guidebook, the CMO inadvertently did not consider are the wages and salaries of standby operator/driver corresponding to the equipment standby being claimed.

Thus, the corresponding gross amount to be incorporated shall be ₱4,925,600.00 computed based on the total man-months of each standby equipment being claimed.

A tabulation of the claims is shown hereinbelow:

---

[23] *Id.* at 545.

Nature of Claim	EDC Claim	Works Engineer Evaluation	PMO Evaluation
a. Project Equipment on Standby	₱95,740,834.30	67,422,840.40	81,851,396.08
Equipment Operator/Driver			4,925,600.00
b. Manpower on Standby	28,165,022.00	2,275,721.00	2,275,721.00
c. Topsoil Add'l Hauling Distance	37,780,200.00	37,780,200.00	37,780,200.00
d. Water Truck Operating Cost	19,652,000.00	15,467,800.00	19,652,000.00
Total	₱181,338,056.30	122,946,561.40	146,484,917.[08]

Further, it is being specified that the PMO maintains the earlier notes of the CMO in its memo of 18 October 1999 and that legal interpretations on each item of claims is likewise enjoined.

Attached are pertinent documents for your review and reference

(Sgd.)
ROGELIO H. IGNACIO
PMO-B

(Sgd.)
FLORO C. URCIA
Asst. Project Manager

By no stretch of the imagination can we consider this memorandum an admission of liability on the part of PEA. *First*, nowhere in the memorandum does it say that PEA is admitting its liability. The evaluation contained in the above memorandum is merely a verification of the accuracy of EDC's claims. As a matter of fact, the evaluation is still subject for review by the project manager, whose decision on the matter requires the approval of the Heritage Park ExCom. *Second*, Messrs. Ignacio and Urcia had no legal authority to make admissions on behalf of PEA. Thus, even assuming that the evaluation contained in the memorandum was in the nature of an admission, the same cannot bind PEA. *Third*, Uy filed his complaint with the CIAC because PEA did not act on EDC's various claims. This supports our conclusion that PEA never admitted, but on the contrary denied, whatever additional liabilities were claimed by Uy under the landscaping contract.

Neither do we find any admission of liability on the part of PEA during the proceedings before the CIAC. What was

admitted by PEA was that *PMO evaluated the claim at the lesser amount of ₱146,484,910 (Exh. "S")*.[24] The admission of the evaluation made by PEA cannot translate to an admission of liability. There is simply no basis for Uy to claim that PEA had admitted its liability.

This issue disposed of, we now resolve Uy's claims on the basis of the evidence presented.

Uy claims ₱95,740,834.30 as the standby equipment cost. CIAC, however, did not agree and granted only ₱19,604,132.06 as the cost of standby equipment using its so-called *equitable method*:

> [Uy] had mobilized manpower and equipment sufficient to do the landscaping works for the entire 105 hectares. The unilateral reduction in scope of work made by [PEA] thus laid idle the men and equipment of [Uy] in direct proportion to said reduction. In effect, therefore, Uy had on hand manpower and equipment amounting to 42.85% in excess of that necessary to perform the landscaping works for the reduced scope of work. [Uy] thus suffered costs in terms of excess manpower and equipment in proportion to the reduced scope of work.
>
> xxx xxx xxx
>
> The total contract period – original extensions – to complete the landscaping works for the entire 105 hectares is **693 days**. The reduction in scope of work **42.85%** laid idle his equipment by the same percentage of 42.85[%] or **296.95 days**. Since [Uy] calculated his claim for idled equipment on a per month basis, it is necessary to convert this into months. 296.95 days is equivalent of **9.89 months**. Multiplied by the rate of **₱1,982,217.60** per month of delay, this would translate to **₱19,604,132.06** as the cost of idle time for equipment by reason of the [delay].[25]

Upon review of the records before us, we find a need to modify, by increasing, the award for standby equipment cost.

CIAC found that PEA incurred delays in the turnover of work areas:

---

[24] *See* Terms of Reference, *id.* at 253.

[25] *Rollo*, pp. 281-283.

The **first delay** was the turn-over of a portion of Area 1 A that was made on 17 April 1997. The start of work on that area was scheduled for March, 1997. There was, therefore, a *delay of about one month*. The **second delay** was the turn-over of a portion of Area 2 A that was made on 20 October 1997. The start of work on that area was scheduled for May, 1997. There was, therefore, a *delay of about five months*. The **third delay** was the turn-over of a portion of Area 2 B that was made on 05 March 1998. The start of work on that area was scheduled for mid-February 1997. There was, therefore, a *delay of more than one (1) year. Altogether, the several periods of delayed turn-over of work areas total one year and six months* or **546 days**.[26]

Surely, on the days that EDC was waiting for the turn over of additional work areas, it was paying rentals for the equipment on standby. Yet, CIAC completely ignored these delays in determining the cost of equipment on standby, reasoning that:

> It must be pointed out, however, that the division of the vast area to be landscaped into distinct work areas with different start of work schedules under the PERT-CPM, [Uy] could easily have shifted his equipment from an area where the delivery was delayed to the area where there was an advanced turn-over.[27]

This is wrong.

Records establish that EDC promptly commenced the landscaping work on every area that was turned over. EDC, in fact, shifted its equipment where there was an advance delivery, if only to minimize the additional expenses incurred by reason of the long delays in the turnover of the other work areas. Thus, in addition to the award of ₱19,604,132.06 for cost of idle time for equipment by reason of the reduction of scope of work, Uy is entitled to the cost of idle time for equipment by reason of the delay incurred in the delivery of work areas.

The period of *owner-caused* delay was 546 days or 18.2 months. The rate given by the Association of Carriers and Equipment Lessors (ACEL), Inc., and which was also used as

---

[26] *Id.* at 279-280.

[27] *Id.* at 280.

basis by CIAC in granting the costs for equipment on standby, was ₱1,982,271.60 per month of delay. Considering that PEA was in delay for 564 days or 18.2 months, Uy is entitled to an additional award of ₱36,076,360.32. Accordingly, he is entitled to an aggregate amount of ₱55,680,492.38 for the equipment rentals on standby.

As to the awards of ₱2,275,721.00, for the cost of idle manpower, and ₱6,050,165.05, for the construction of the nursery shade net area, we find no reason to disturb the same, as Uy never raised this issue in his petition.

Next, we resolve Uy's claims for costs for additional hauling distance of topsoil and for mobilization of water truck.

The approved hauling cost of topsoil was only ₱12.00/kilometer or ₱120.00 for the 10 kms original source. Uy, however, claims that due to the delay in delivery of work areas, the original source became depleted; hence, he was constrained to haul topsoil from another source located at a much farther distance of 40 kms. Uy insists that the exhaustion of topsoil at the original source was solely attributable to the delay in the turnover of the project site. Thus, he claims from PEA the increased cost of topsoil amounting to ₱37,780,200.00.

Article 1724 of the Civil Code provides:

> ART. 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the land-owner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:
>
> (1) Such change has been authorized by the proprietor in writing; and
>
> (2) The additional price to be paid to the contractor has been determined in writing by both parties.

By this article, a written authorization from the owner is required before the contractor can validly recover his claim. The evident purpose of the provision is to avoid litigation for added costs incurred

by reason of additions or changes in the original plan. Undoubtedly, it was adopted to serve as a safeguard or a substantive condition precedent to recovery.[28]

This provision is echoed in the Landscaping Contract, *viz.*:

ARTICLE IX
CHANGE OF WORK

xxx xxx xxx

9.3. Under no circumstances shall PEA be held liable for the payment of change of work undertaken without the written approval of the PEA General Manager x x x.

ARTICLE X
EXTRA WORK

xxx xxx xxx

10.3. Under no circumstances shall PEA be held liable for the payment of extra work undertaken without the written approval of the PEA General Manager to perform the said work.[29]

Admittedly, EDC did not secure the required written approval of PEA's general manager before obtaining the topsoil from a farther source. As pointed out by the CIAC:

There is no change order authorizing payment for the increased cost upon which this claim is based. There is, therefore, no legal right based upon contract (the landscaping agreement or a change order) that would impose such a liability upon [PEA]. In a lump sum contract, as that entered into by the parties, the matter of how the contractor had made [a] computation to arrive at [a] bid that he submits is completely irrelevant. The contract amount of delivered topsoil is ₱780.00 per truckload of 5.5 cubic meters sourced from a distance of [10] km. or 100 [meters]. There is nothing in Exhibit "L" or in the landscaping contract (Exhibit "A") that would indicate an agreement of [PEA] to pay for the increase in hauling cost if the source of topsoil exceeds 10 kilometers.

---

[28] *Powton Conglomerate, Inc. v. Agcolicol*, 448 Phil. 643, 652 (2003).

[29] *Rollo*, pp. 141-142.

Corollarily, there is also nothing therein to show that [PEA] would also be entitled to decrease said costs by paying less if the distance would have been less than 10 kilometers. Had there been such a counterpart provision, there might have been more arguable claim for [Uy]. Unfortunately, no such provision exists.[30]

In *Powton Conglomerate, Inc. v. Agcolicol*,[31] we emphasized:

The written consent of the owner to the increased costs sought by the respondent is not a mere formal requisite, but a vital precondition to the validity of a subsequent contract authorizing a higher or additional contract price. Moreover, the safeguards enshrined in the provisions of Article 1724 are not only intended to obviate future misunderstandings but also to give the parties a chance to decide whether to bind one's self to or withdraw from a contract.

By proceeding to obtain topsoil up to a 40-kilometer radius without written approval from the PEA general manager, Uy cannot claim the additional cost he incurred.

Uy further claims ₱19,625,000.00 for cost of mobilization of water trucks. He asserts that PEA completely failed to provide the generator sets necessary to undertake the watering and/or irrigation works for the landscaping and construction activities.[32]

Uy, however, admitted that MDC had already installed a deep well in the project site, and EDC used it in its landscaping and construction activities.[33] Under the contract, the operational costs of the deep well and its appurtenant accessories, including the generator sets, shall be borne by EDC:

The CONTRACTOR shall shoulder all cost of electricity, maintenance, repairs, replacement of parts, when needed, and all costs of operation of the deepwell/s, and its appurtenant accessories, *i.e.* generator sets, *etc*. (which are already existing at the project site, constructed by another Contractor) while such deepwell/s are being

---

[30] *Id.* at 285.

[31] *Supra* note 28, at 655.

[32] *Rollo*, p. 816.

[33] TSN, March 25, 2000, p. 67.

used by CONTRACTOR herein for its landscaping and construction activities. These [deepwells] shall be turned over to PEA by CONTRACTOR in good operating/usable condition as when it was first used by CONTRACTOR.[34]

Thus, Uy cannot claim additional cost for providing generator sets.

Uy also attempts to justify his claim for cost of mobilization of water trucks by alleging that the water from the deep well provided by MDC and PEA was grossly insufficient to undertake the watering works for the project; hence, he was constrained to mobilize water trucks to save the plants from dying.

Indisputably, Uy mobilized water trucks for the landscaping projects and, certainly, incurred additional costs. But like his claim for additional cost of topsoil, such additional expenses were incurred without prior written approval of PEA's general manager. Thus, he cannot claim payment for such cost from PEA.

As aptly said by the CIAC:

Since [Uy] had presumably intended all along to charge [PEA] for the water truck operating costs, considering the very substantial amount of his claim, the prudence that he presumably has, as an experienced general contractor of the highest triple A category, should have dictated that he negotiate with the [PEA] for a change order or an extra work order before continuing to spend the huge amounts that he claims to have spent. [Uy] did just that in relation to his much smaller claim for the construction of the nursery shade x x x. He, however, made no effort to negotiate with the PEA for a similar change order or extra work order to safeguard his even bigger additional costs to operate the water trucks. No explanation was offered for such a mystifying differential treatment. He cannot, therefore, pass on without any contractual basis, such additional costs to the [PEA].

Neither can we hold PEA liable based on *solutio indebiti*, the legal maxim that no one should enrich itself at the expense of another. As we explained in *Powton Conglomerate, Inc. v. Agcolicol*,[35]

---

[34] Landscaping Agreement, Art. XXII, Sec. 21.11, *rollo*, p. 150.

[35] *Supra* note 28, at 655-656.

the principle of unjust enrichment cannot be validly invoked by the respondent who, through his own act or omission, took the risk of being denied payment for additional costs by not giving the petitioners prior notice of such costs and/or by not securing their written consent thereto, as required by law and their contract.

Uy cannot, therefore, claim from PEA the costs of the additional hauling distance of topsoil, and of the mobilization of water trucks.

Uy also assails the grant of attorney's fees equivalent to 10% of the total amount due. Citing paragraph 24.4 of the Landscaping and Construction Agreement, Uy asserts entitlement to attorney's fees of twenty percent (20%) of the total amount claimed. He ascribes error to the CIAC and the CA for reducing the stipulated attorney's fees from 20% to 10% of the total amount due.

Paragraph 24.4 of the agreement provides:

> Should the PEA be constrained to resort to judicial or quasi-judicial relief to enforce or safeguard its rights and interests under this Agreement, the CONTRACTOR if found by the court or [the] quasi-judicial body, as the case [may be], to have been at fault, shall be liable to PEA for attorney's fees in an amount equivalent to twenty percent (20%) of the total [amount] claimed in the complaint, exclusive of [any] damages and costs of suit.[36]

Clearly, the cited provision cannot support Uy's insistence. Paragraph 24.4 on stipulated attorney's fees is applicable only in complaints filed by PEA against the contractor. The provision is silent on the amount of attorney's fees that can be recovered from PEA.

Besides, even assuming that Paragraph 24.4 is applicable, the amount of attorney's fees may be reduced if found to be iniquitous or unconscionable. Thus:

> Articles 1229 and 2227 of the Civil Code empower the courts to reduce the penalty if it is iniquitous or unconscionable. The determination of whether the penalty is iniquitous or unconscionable

[36] *Rollo*, p. 152.

is addressed to the sound discretion of the court and depends on several factors such as the type, extent, and purpose of the penalty, the nature of the obligation, the mode of breach and its consequences.[37]

The Court finds Uy's claim for attorney's fees *equivalent to 20% of whatever amount is due and payable* to be exorbitant. The CIAC and the CA, therefore, correctly awarded 10% of the total amount due and payable as reasonable attorney's fees.

Finally, on the propriety of the writ of injunction.

Uy asserts that the CA acted without or in excess of jurisdiction when it enjoined the proceedings in CIAC Case No. 03-2001, despite the fact that the said case is totally different from the instant case.

By grave abuse of discretion is meant such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave, as when it is exercised arbitrarily or despotically by reason of passion or personal hostility; and such abuse must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[38]

The CA granted PEA's prayer for the injunctive writ not without reason. We quote its Joint Resolution, *viz.*:

> [T]here is no question that Elpidio S. Uy's amended complaint is based on the same *Landscaping and Construction Agreement*, as he himself admits. The claims pertinent thereto had already been arbitrated and passed upon in CIAC CASE NO. 02-2000 and the decision therein was already elevated to Us for review and, in view of Our joint decision in the instant petitions, a reconsideration thereof.
>
> Based on the foregoing, We are inclined to grant the prayer of PEA to enjoin the CIAC from further proceeding with CIAC CASE NO. 03-

---

[37] *Titan Construction Corporation v. Uni-Field Enterprises, Inc.*, G.R. No. 153874, March 1, 2007, 517 SCRA 180, 190.

[38] *Eastern Assurance & Surety Co. v. LTFRB*, 459 Phil. 395, 412 (2003).

2001, considering that the allegations therein constrain Us to apply the doctrine of *litis pendentia*, which has for its requisites: (a) identity of parties, or at least such parties who represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity with respect to the two preceding particulars in the two (2) cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case. Forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other. The principle of bar by prior judgment raised by the PEA, *i.e.*, *res judicata*, finds application only upon a showing of a final judgment as one of its requisites, which is not yet present under the present circumstances.

At this juncture, it bears stressing that 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*. Accordingly, based on Our holding that the final resolution of the instant petitions takes precedence as it is the *appropriate vehicle for litigating the issues between the parties*, now that the instant petitions before Us have come full circle with this joint resolution and, if the parties herein so choose, may seek further relief to the High Tribunal afterwards. We cannot allow CIAC CASE NO. 03-2001 to proceed because to do so would render inutile the proscriptions against forum shopping which is frowned upon in Our jurisdiction. Hence, the grant of injunctive relief. This must be done, or else a travesty of the efficient administration of justice would lamentably result.[39]

Indeed, the assailed resolution shows no patent or gross error amounting to grave abuse of discretion. Neither does it show an arbitrary or despotic exercise of power arising from passion or hostility.

At this point, it should be stated that the Court is not convinced by Uy's argument that the claims under CIAC Case No. 03-2001 are different from his claims in CIAC Case No. 02-2000. There is only one cause of action running through Uy's litigious undertakings – his alleged right under the Landscaping and Construction

[39] *Rollo*, pp. 116-117. (Citations omitted.)

Agreement. Therefore, the landscaping agreement is indispensable in prosecuting his claims in both CIAC Cases Nos. 02-2000 and 03-2001.

As we held in *Villanueva v. Court of Appeals*:[40]

> A party, by varying the form or action or by bringing forward in a second case additional parties or arguments, cannot escape the effects of the principle of *res judicata* when the facts remain the same at least where such new parties or matter could have been impleaded or pleaded in the prior action.

WHEREFORE, the petition is *PARTIALLY GRANTED*. The assailed Joint Decision and Joint Resolution of the Court of Appeals in CA-G.R. SP Nos. 59308 and 59849 are *AFFIRMED* with *MODIFICATIONS*. Respondent Public Estates Authority is ordered to pay Elpidio S. Uy, doing business under the name and style Edison Development and Construction, ₱55,680,492.38 for equipment rentals on standby; ₱2,275,721.00 for the cost of idle manpower; and ₱6,050,165.05 for the construction of the nursery shade net area; plus interest at 6% per annum to be computed from the date of the filing of the complaint until finality of this Decision and 12% per annum thereafter until full payment. Respondent PEA is further ordered to pay petitioner Uy 10% of the total award as attorney's fees.

SO ORDERED.

Ynares-Santiago (Chairperson), Corona,[*] *Velasco, Jr.,*[**] and *Peralta, JJ.,* concur.

---

[40] G.R. No. 110921, January 28, 1998, 285 SCRA 180, 192-193.

[*] Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 631 dated April 29, 2009.

[**] Additional member in lieu of Associate Justice Conchita Carpio Morales per Special Order No. 649 dated May 25, 2009.

INDEX

INDEX

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

Page

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

B. STATUTES

Page

Page

Page

Page

Page

Page

C. OTHERS

D. BOOKS
(Local)

Page

Oscar M. Herrera IV, Remedial Law (2007 Ed.), p. 929 365
Nolledo, J. and Nolledo, M., The NIRC of the Philippines, Annotated, 16th and Revised Edition, (1993), p. 414 14
Philippine Law Dictionary, 2nd Ed., p. 49 27
Regalado, Criminal Law Conspectus, First Edition, p. 205 780
Regalado, Remedial Law Compendium, Vol. I, 849 (2005) 697
Reyes, Revised Penal Code Book I, 13th Ed. (1993), p. 748 144
Tolentino, Civil Code of the Philippines, Vol. V, 51 (1999) 114
Tolentino, Civil Code of the Philippines (1991), Vol. IV, p. 516 435
Tolentino, Civil Code of the Philippines, Vol. IV, 481 (1985) 119
Vitug, J. and Acosta, E., Tax Law and Jurisprudence, 2nd Edition, (2000), p. 282 29

II. FOREIGN AUTHORITIES

BOOKS

48 Am. Jur. 2d, § 797, p. 509 479
Black's Law Dictionary, Sixth Edition, p. 1299 531
Black's Law Dictionary, 5th Ed., p. 107 27
Bouvier's Dictionary, Third (Rawle's) Revision, Vol. 2 531
77 C.J.S. 81-82 534
Webster's Third International Dictionary, 1993 Ed., p. 891 154