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FROM

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EDNA BILOG-CAMBA
DEPUTY CLERK OF COURT & REPORTER

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SPECIAL FIRST DIVISION

[G.R. No. 165424. June 9, 2009]

LESTER BENJAMIN S. HALILI, *petitioner, vs.* **CHONA M. SANTOS-HALILI and THE REPUBLIC OF THE PHILIPPINES,** *respondents.*

SYLLABUS

CIVIL LAW; FAMILY CODE; MARRIAGE; DECLARATION OF NULLITY; PSYCHOLOGICAL INCAPACITY AS A GROUND; WHEN PRESENT; CASE AT BAR. — It has been sufficiently established that petitioner had a psychological condition that was grave and incurable and had a deeply rooted cause. This Court, in the same *Te* case, recognized that individuals with diagnosable personality disorders usually have long-term concerns, and thus therapy may be long-term. Particularly, personality disorders are "long-standing, inflexible ways of behaving that are not so much severe mental disorders as dysfunctional styles of living. *These disorders affect all areas of functioning and, beginning in childhood or adolescence, create problems for those who display them and for others."* From the foregoing, it has been shown that petitioner is indeed suffering from psychological incapacity that effectively renders him unable to perform the essential obligations of marriage. Accordingly, the marriage between petitioner and respondent is declared null and void.

APPEARANCES OF COUNSEL

Santiago Cruz & Sarte Law Office for petitioner.
The Solicitor General for public respondent.

R E S O L U T I O N

CORONA, *J.*:

This resolves the motion for reconsideration of the April 16, 2008 resolution of this Court denying petitioner's petition for review on *certiorari* (under Rule 45 of the Rules of Court). The petition sought to set aside the January 26, 2004 decision[1] and September 24, 2004 resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 60010.

Petitioner Lester Benjamin S. Halili filed a petition to declare his marriage to respondent Chona M. Santos-Halili null and void on the basis of his psychological incapacity to perform the essential obligations of marriage in the Regional Trial Court (RTC), Pasig City, Branch 158.

He alleged that he wed respondent in civil rites thinking that it was a "joke." After the ceremonies, they never lived together as husband and wife, but maintained the relationship. However, they started fighting constantly a year later, at which point petitioner decided to stop seeing respondent and started dating other women. Immediately thereafter, he received prank calls telling him to stop dating other women as he was already a married man. It was only upon making an inquiry that he found out that the marriage was not "fake."

Eventually, the RTC found petitioner to be suffering from a mixed personality disorder, particularly dependent and self-

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[1] Penned by Associate Justice Godardo A. Jacinto (deceased) and concurred in by Associate Justices Elvi John S. Asuncion (dismissed from the service) and Lucas P. Bersamin of the Former Fourth Division of the Court of Appeals. *Rollo,* pp. 10-20.

[2] *Id.,* pp. 22-24.

defeating personality disorder, as diagnosed by his expert witness, Dr. Natividad Dayan. The court *a quo* held that petitioner's personality disorder was serious and incurable and directly affected his capacity to comply with his essential marital obligations to respondent. It thus declared the marriage null and void.[3]

On appeal, the CA reversed and set aside the decision of the trial court on the ground that the totality of the evidence presented failed to establish petitioner's psychological incapacity. Petitioner moved for reconsideration. It was denied.

The case was elevated to this Court via a petition for review under Rule 45. We affirmed the CA's decision and resolution upholding the validity of the marriage.

Petitioner then filed this motion for reconsideration reiterating his argument that his marriage to respondent ought to be declared null and void on the basis of his psychological incapacity. He stressed that the evidence he presented, especially the testimony of his expert witness, was more than enough to sustain the findings and conclusions of the trial court that he was and still is psychologically incapable of complying with the essential obligations of marriage.

We grant the motion for reconsideration.

In the recent case of *Te v. Yu-Te and the Republic of the Philippines*,[4] this Court reiterated that courts should interpret the provision on psychological incapacity (as a ground for the declaration of nullity of a marriage) on a case-to-case basis —

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[3] Decision penned by Judge Jose R. Hernandez. *Id.*, pp. 106-109.

[4] G.R. No. 161793, 13 February 2009, p. 25. See *Salita v. Magtolis*, G.R. No. 106429, 13 June 1994, 233 SCRA 100, citing *Sempio-Diy*, *Handbook on the Family Code of the Philippines*, 1988, p. 37. Although the case pertained mainly to a petition to declare the parties' marriage as null and void on the ground of psychological incapacity of one of them, this Court, however, did not rule on the issue as the assigned error in the petition for review filed in this Court dealt with rules of procedure.

See also *Santos v. CA, et al.*, 310 Phil. 21, 36, (1995), which reiterated the above cited principle.

guided by experience, the findings of experts and researchers in psychological disciplines and by decisions of church tribunals.

Accordingly, we emphasized that, by the very nature of Article 36, courts, despite having the primary task and burden of decision-making, must consider as essential the expert opinion on the psychological and mental disposition of the parties.[5]

In this case, the testimony[6] of petitioner's expert witness revealed that petitioner was suffering from dependent personality disorder. Thus:

> Q. Dr. Dayan, going back to the examinations and interviews which you conducted, can you briefly tell this court your findings [and] conclusions?
>
> A. Well, **the petitioner is suffering from** a personality disorder. It is a mixed personality disorder from self-defeating personality disorder to **[dependent] personality disorder** and this is brought about by [a] dysfunctional family that petitioner had. He also suffered from partner relational problem during his marriage with Chona. There were lots of fights and it was not truly a marriage, sir.
>
> Q. Now, what made you conclude that Lester is suffering from psychological incapacity to handle the essential obligations of marriage?
>
> A. Sir, for the reason that his motivation for marriage was very questionable. It was a very impulsive decision. I don't think he understood what it meant to really be married and after the marriage, there was no consummation, there was no sexual intercourse, he never lived with the respondent. And after three months he refused

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[5] *Id.*, pp. 28-29, citing Archbishop Oscar V. Cruz, D.D. of the Archdiocese of Lingayen-Dagupan, who explained in the *Marriage Tribunal Ministry*, 1992 ed., that "[s]tandard practice shows the marked advisability of [e]xpert intervention in [m]arriage [c]ases accused of nullity on the ground of defective matrimonial consent on account of natural incapacity by reason of any factor causative of lack of sufficient use of reason, grave lack of due discretion and inability to assume essential obligations – although the law categorically mandates said intervention only in the case of impotence and downright mental disorder."

[6] TSN, 11 December 1997, pp. 3-10.

to see or talk with the respondent and afterwards, I guess the relationship died a natural death, and he never thought it was a really serious matter at all.

x x x x x x x x x

Q. Likewise, you stated here in your evaluation that Lester Halili and respondent suffered from a grave lack of discretionary judgment. Can you expound on this?

A. x x x I don't think they truly appreciate the civil [rites which] they had undergone. [It was] just a spur of the moment decision that they should get married x x x I don't think they truly considered themselves married.

x x x x x x x x x

Q. Now [from] what particular portion of their marriage were you able to conclude x x x that petitioner and respondent are suffering from psychological incapacity?

A. x x x they never lived together[.] [T]hey never had a residence, they never consummated the marriage. During the very short relationship they had, there were frequent quarrels and so there might be a problem also of lack of respect [for] each other and afterwards there was abandonment.

In *Te*, this Court defined dependent personality disorder[7] as

[a] personality disorder characterized by a pattern of dependent and submissive behavior. Such individuals usually lack self-esteem and frequently belittle their capabilities; they fear criticism and are easily hurt by others' comments. At times they actually bring about dominance by others through a quest for overprotection.

Dependent personality disorder usually begins in early adulthood. Individuals who have this disorder may be unable to make everyday decisions without advice or reassurance from others, may allow others to make most of their important decisions (such as where to live), tend to agree with people even when they believe they are wrong, have difficulty starting projects or doing things on their own, volunteer to do things that are demeaning in order to get approval from other

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[7] *Te v. Yu-Te*, *supra* note 4, p. 35, citing Kahn and Fawcett, *THE ENCYCLOPEDIA OF MENTAL HEALTH*, 1993 ed., p. 131.

people, feel uncomfortable or helpless when alone and are often preoccupied with fears of being abandoned.

In her psychological report,[8] Dr. Dayan stated that petitioner's dependent personality disorder was evident in the fact that petitioner was very much attached to his parents and depended on them for decisions.[9] Petitioner's mother even had to be the one to tell him to seek legal help when he felt confused on what action to take upon learning that his marriage to respondent was for real.[10]

Dr. Dayan further observed that, as expected of persons suffering from a dependent personality disorder, petitioner typically acted in a self-denigrating manner and displayed a self-defeating attitude. This submissive attitude encouraged other people to take advantage of him.[11] This could be seen in the way petitioner allowed himself to be dominated, first, by his father who treated his family like robots[12] and, later, by respondent who was as domineering as his father.[13] When petitioner could no longer take respondent's domineering ways, he preferred to hide from her rather than confront her and tell her outright that he wanted to end their marriage.[14]

Dr. Dayan traced petitioner's personality disorder to his dysfunctional family life, to wit:[15]

Q. And what might be the root cause of such psychological incapacity?

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[8] Exhibit C. RTC records, pp. 42-57.

[9] *Id.*, p. 44.

[10] *See* RTC Decision, *rollo*, p. 107.

[11] Exhibit C, *supra* at 51.

[12] TSN, *supra* note 6, p. 7.

[13] *Id.*, p. 8. Respondent was described as domineering, demanding and short-tempered.

[14] Exhibit C, *supra* at 44.

[15] TSN, *supra* note 6, p. 7.

A. Sir, I mentioned awhile ago that Lester's family is dysfunctional. The father was very abusive, very domineering. The mother has been very unhappy and the children never had affirmation. They might [have been] x x x given financial support because the father was [a] very affluent person but it was never an intact family. x x x The wife and the children were practically robots. And so, I would say Lester grew up, not having self-confidence, very immature and somehow not truly understand[ing] what [it] meant to be a husband, what [it] meant to have a real family life.

Ultimately, Dr. Dayan concluded that petitioner's personality disorder was grave and incurable and already existent at the time of the celebration of his marriage to respondent.[16]

It has been sufficiently established that petitioner had a psychological condition that was grave and incurable and had a deeply rooted cause. This Court, in the same *Te* case, recognized that individuals with diagnosable personality disorders usually have long-term concerns, and thus therapy may be long-term.[17] Particularly, personality disorders are "long-standing, inflexible ways of behaving that are not so much severe mental disorders as dysfunctional styles of living. *These disorders affect all areas of functioning and, beginning in childhood or adolescence, create problems for those who display them and for others.*"[18]

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[16] *Id.*, *see* pp. 9-10:

Q. Now, would you say that this psychological incapacity which you identified and described earlier, is it beyond treatment?

A. Yes, sir.

x x x x x x x x x

Q. Now, based on your findings and what you said, would you say then that the psychological incapacity of the petitioner was already apparent even before he got married?

A. Yes, sir.

[17] *Te v. Yu-Te*, *supra* note 4, p. 34, citing Kahn and Fawcett, *THE ENCYCLOPEDIA OF MENTAL HEALTH*, 1993 ed., p. 292.

[18] *Id.*, p. 35, citing Bernstein, Penner, Clarke-Stewart and Roy, *PSYCHOLOGY*, 7th ed., 2006, pp. 613-614.

From the foregoing, it has been shown that petitioner is indeed suffering from psychological incapacity that effectively renders him unable to perform the essential obligations of marriage. Accordingly, the marriage between petitioner and respondent is declared null and void.

WHEREFORE, the motion for reconsideration is hereby *GRANTED*. The April 16, 2008 resolution of this Court and the January 26, 2004 decision and September 24, 2004 resolution of the Court of Appeals in CA-G.R. CV No. 60010 are *SET ASIDE*.

The decision of the Regional Trial Court, Pasig City, Branch 158 dated April 17, 1998 is hereby *REINSTATED*.

SO ORDERED.

Puno, C.J. (Chairperson), Velasco, Jr.,[*] *Leonardo-de Castro* and *Peralta,*[**] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 168215. June 9, 2009]

LBC EXPRESS — METRO MANILA, INC. and LORENZO A. NIÑO, *petitioners, vs.* **JAMES MATEO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; GROSS AND HABITUAL NEGLIGENCE AS A GROUND;

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[*] Additional member per raffle dated May 27, 2009.

[**] Additional member in lieu of Justice Minita V. Chico-Nazario per Special Order No. 653 dated June 1, 2009.

DEFINED; PRESENT IN CASE AT BAR.— The services of a regular employee may be terminated only for just or authorized causes, including gross and habitual negligence under Article 282, paragraph (b) of the Labor Code. Gross negligence is characterized by want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected. An employer cannot legally be compelled to continue with the employment of a person admittedly guilty of gross negligence in the performance of his duties. This holds true specially if the employee's continued tenure is patently inimical to the employer's interest. What happened was not a simple case of oversight and could not be attributed to a simple lapse of judgment. No amount of good intent, or previous conscientious performance of duty, can assuage the damage Mateo caused LBC when he failed to exercise the requisite degree of diligence required of him under the circumstances.

2. ID.; ID.; ID.; THE LAW MERELY REQUIRES THE EMPLOYEE TO BE INFORMED OF THE PARTICULAR ACTS OR OMISSIONS FOR WHICH HIS DISMISSAL IS SOUGHT; SATISFIED IN CASE AT BAR.— The memorandum directing Mateo to be present for investigation clearly provided the reasons or grounds for Mateo's investigation. As stated there, the grounds were the "alleged carnapping of the motorcycle and the alleged pilferage of a package." Nothing could be clearer. What the law merely requires is that the employee be informed of the particular acts or omissions for which his dismissal is sought. The memorandum did just that. Mateo was thereafter given the opportunity to explain his side and was handed the requisite second notice (of termination). Procedural due process was therefore complied with. The law protecting the rights of the employee authorizes neither oppression nor self-destruction of the employer. All told, Mateo's dismissal was for just cause and was validly carried out.

APPEARANCES OF COUNSEL

Lameyra Law Office for petitioners.
Riguera & Riguera Law Office for respondent.

D E C I S I O N

CORONA, *J.*:

Respondent James Mateo, designated as a customer associate, was a regular employee of petitioner LBC Express — Metro Manila, Inc. (LBC). His job was to deliver and pick-up packages to and from LBC and its customers. For this purpose, Mateo was assigned the use of a Kawasaki motorcycle.[1]

On April 30, 2001 at about 6:10 p.m., Mateo arrived at LBC's Escolta office, along Burke Street, to drop off packages coming from various LBC airposts. He parked his motorcycle directly in front of the LBC office, switched off the engine and took the key with him. However, he did not lock the steering wheel because he allegedly was primarily concerned with the packages, including a huge sum of money that needed to be immediately secured inside the LBC office. He returned promptly within three to five minutes but the motorcycle was gone. He immediately reported the loss to his superiors at LBC and to the nearest police station.

LBC, through its vice-president petitioner, Lorenzo A. Niño, directed Mateo to appear in his office to explain his side and for formal investigation.[2] As directed, Mateo appeared and

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[1] The Kawasaki motorcycle was a model 1998, 100 cc, with a book value of ₱46,000. *Rollo*, p. 13.

[2] Via memorandum dated May 21, 2001. *Rollo*, pp. 30-31. The memorandum read:

"May 21, 2001

TO:	MR. JAMES T. MATEO ESCOLTA TEAM
FROM:	OVP-METRO MANILA HEAD OFFICE
RE:	NOTICE OF INVESTIGATION

You are hereby directed to appear before this office on May 23, 2001 at exactly 2:00 P.M. for an investigation relative to the following:

1. Alleged carnapping of Kawasaki MC with Pla[t]e No. 6964;
2. Alleged pilferage of a Transpak Small with [T]racking No. 27450040.

presented his side. After investigation, he received a notice of termination from LBC dated May 30, 2001.[3] He was barred from reporting for work.

Mateo thereafter filed a complaint for illegal dismissal, payment of backwages and reinstatement with damages. After the parties submitted their respective position papers, the labor arbiter found Mateo's dismissal to be lawful on the ground that he was grossly negligent.[4]

Mateo appealed to the National Labor Relations Commission which, however, affirmed the labor arbiter's decision.[5]

In resolving Mateo's petition for *certiorari*, the Court of Appeals (CA) ruled that Mateo was illegally dismissed.[6] Furthermore, due process was not observed in terminating Mateo's employment with LBC. The motion for reconsideration was denied.

LBC and Niño now seek a reversal of the CA decision. They contend that Mateo was grossly negligent in the performance of his duties and that habituality may be dispensed with, specially if the grossly negligent act resulted in substantial damage to the company.

Your failure to appear on the aforementioned date and time shall be construed as a waiver on your part to[i] defend your side and issues shall be resolved in accordance with the evidence[s] presented. You may seek the assistance of a legal counsel during the investigation.

For your information and strict compliance.

LORENZO A. NIÑO"

[3] *Rollo*, p. 31.

[4] Decision dated April 28, 2003 and penned by labor arbiter Eduardo G. Magno. *Rollo*, pp. 103-106.

[5] Resolution dated December 30, 2003. Penned by NLRC Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan. *Rollo*, pp. 138-143. Mateo's motion for reconsideration thereto was denied in a resolution dated May 31, 2004. *Rollo*, pp. 144-145.

[6] Decision dated February 18, 2005 in CA-G.R. SP No. 86034, penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Andres B. Reyes, Jr. and Lucas P. Bersamin. *Rollo*, pp. 28-47.

We agree.

The services of a regular employee may be terminated only for just or authorized causes, including gross and habitual negligence under Article 282, paragraph (b) of the Labor Code.

Gross negligence is characterized by want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected.[7]

Mateo was undisputedly negligent when he left the motorcycle along Burke Street in Escolta, Manila without locking it despite clear, specific instructions to do so. His argument that he stayed inside the LBC office for only three to five minutes was of no moment. On the contrary, it only proved that he did not exercise even the slightest degree of care during that very short time. Mateo deliberately did not heed the employer's very important precautionary measure to ensure the safety of company property. Regardless of the reasons advanced, the exact evil sought to be prevented by LBC (in repeatedly directing its customer associates to lock their motorcycles) occurred, resulting in a substantial loss to LBC.

Although Mateo's infraction was not habitual, we must take into account the substantial amount lost.[8] In this case, LBC lost a motorcycle with a book value of ₱46,000 which by any means could not be considered a trivial amount. Mateo was entrusted with a great responsibility to take care of and protect company property and his gross negligence should not allow him to walk away from that incident as if nothing happened and, worse, to be rewarded with backwages to boot.

An employer cannot legally be compelled to continue with the employment of a person admittedly guilty of gross negligence

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[7] *Tres Reyes v. Maxim's Tea House and Poon*, G.R. No. 140853, 27 February 2003, 398 SCRA 288, 299.

[8] *Fuentes v. NLRC*, G.R. No. 75955, 28 October 1988, 166 SCRA 752, 757.

in the performance of his duties.[9] This holds true specially if the employee's continued tenure is patently inimical to the employer's interest. What happened was not a simple case of oversight and could not be attributed to a simple lapse of judgment. No amount of good intent, or previous conscientious performance of duty, can assuage the damage Mateo caused LBC when he failed to exercise the requisite degree of diligence required of him under the circumstances.

LBC and Niño likewise assail the CA's finding that procedural due process was not observed in effecting Mateo's dismissal. Specifically, the CA held that the first written notice (for Mateo's investigation) allegedly did not specify the grounds for termination required by the implementing rules of the Labor Code. Mateo was allegedly not properly apprised of the grounds for his investigation. We disagree.

The memorandum directing Mateo to be present for investigation clearly provided the reasons or grounds for Mateo's investigation. As stated there, the grounds were the "alleged carnapping of the motorcycle and the alleged pilferage of a package." Nothing could be clearer. What the law merely requires is that the employee be informed of the particular acts or omissions for which his dismissal is sought.[10] The memorandum did just that. Mateo was thereafter given the opportunity to explain his side and was handed the requisite second notice (of termination). Procedural due process was therefore complied with.

The law protecting the rights of the employee authorizes neither oppression nor self-destruction of the employer.[11] All told, Mateo's dismissal was for just cause and was validly carried out.

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[9] *Id.* at 758.

[10] *Amadeo Fishing Corp. et al. v. Nierra et al.*, G.R. No. 163099, 4 October 2005, 472 SCRA 13, 33, citing *Pastor v. Austria*, 371 Phil. 340 (1999).

[11] *Supra* note 9.

WHEREFORE, the petition is hereby *GRANTED*. The decision of the Court of Appeals dated February 18, 2005 and resolution dated May 23, 2005 in CA-G.R. SP No. 86034 are *REVERSED and SET ASIDE*. The complaint for illegal dismissal is hereby *DISMISSED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 170126. June 9, 2009]

PHILIPPINE VETERANS BANK, *petitioner, vs.* **SOLID HOMES, INC.,**[1] *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; JUDGMENT OR ORDER BECOMES FINAL UPON THE LAPSE OF PERIOD TO APPEAL; PERIOD TO APPEAL, EXPLAINED. — It is settled that a judgment or order becomes final upon the lapse of the period to appeal, without an appeal being perfected or a motion for reconsideration being filed. In this case, petitioner received a copy of the February 22,

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[*] Additional member (per raffle list of 27 May 2009) in lieu of Justice Lucas P. Bersamin who took no part in this case for being a member of the Court of Appeals division that rendered the assailed CA decision.

[1] The Court of Appeals (CA) and RTC Judge Santiago G. Estrella were originally impleaded as respondents. Pursuant to Section 4, Rule 45 of the Rules of Court, they were excluded as party respondents in this case.

1994 resolution on March 10, 1994. Petitioner had 15 days from March 10, 1994 (or until March 25, 1994) within which to file either a motion for reconsideration or a notice of appeal. On the 11th day of the 15-day period (or on March 21, 1994), petitioner filed a motion for reconsideration which was denied. Petitioner received the denial on June 3, 1994. Petitioner had only four days (or until June 7, 1994) to file a notice of appeal but filed one only on June 13, 1994 or 10 days after receiving a copy of the denial of its motion for reconsideration. The February 22, 1994 resolution therefore became final and executory on June 8, 1994.

2. ID.; ID.; ID.; WHEN MAY BECOME FINAL AND EXECUTORY; APPLICATION IN CASE AT BAR.— A final and executory judgment may be executed by motion within five years or by action for revival of judgment within ten years reckoned from the *date of entry of judgment*. The date of entry, in turn, is the same as the date of finality of judgment. Here, the February 22, 1994 resolution became final and executory on June 8, 1994. *By operation of law,* June 8, 1994 is likewise the date of entry of judgment. The prescriptive period for execution of the February 22, 1994 resolution must be reckoned from June 8, 1994.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; FILING OF A PETITION FOR *CERTIORARI* DOES NOT TOLL THE RUNNING OF THE PRESCRIPTIVE PERIOD FOR EXECUTION; APPLICATION IN CASE AT BAR.— It is settled that an original action for *certiorari* is an independent action and is neither a continuation nor a part of the trial resulting in the judgment complained of. It does not interrupt the course of the original action if there was no writ of injunction, even if in connection with a pending case in a lower court. Section 7, Rule 65 of the Rules of Court is explicit: SEC. 7. *Expediting proceedings; injunctive relief.*— The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. *The petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further*

proceeding on the case. Clearly, the petition for *certiorari* (CA-G.R. SP No. 36500) assailing the February 22, 1994 resolution did not toll the running of the prescriptive period. The petition for review on *certiorari* (G.R. No. L-125418) had the same effect because it was merely a continuation of CA-G.R. SP No. 36500. Even if these actions sought a reversal of the February 22, 1994 resolution, they did not suspend the running of the prescriptive period for execution in favor of respondent. The very nature of a *certiorari* proceeding militates against considering it in favor of respondent. Besides, no writ of injunction was issued in favor of respondent which could have validly suspended the running of the prescriptive period. Respondent's motion for execution was filed only on June 14, 2005, or six years and nine months from entry of judgment. It was clearly beyond the five-year period but within the ten-year prescriptive period. We have, at various occasions, allowed a mere motion for execution even if filed beyond the five-year period, for reasons of equity. We apply the same liberality in this case in view of the peculiar situation in this case.

4. ID.; RULES OF COURT; WHEN LIBERAL INTERPRETATION IS WARRANTED.— Procedural rules are designed to facilitate the adjudication of cases but they must not defeat a just claim. Moreover, petitioner cannot legally invoke a strict application of the rules of procedure because the delays were due to its own maneuvers to prolong the case. In *Camacho v. CA and Dizon, et al.*, we held: It is revolting to the conscience to allow petitioner to further avert the satisfaction of her obligation because of sheer literal adherence to technicality. After all, the Rules of Court mandates that a liberal construction of the Rules be adopted in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding. This rule of construction is [s]pecially useful in the present case where adherence to the letter of the law would result in absurdity and manifest injustice. It would be unjust to frustrate respondent's effort to execute the February 22, 1994 resolution on sheer technicality. While strict compliance to the rules of procedure is desired, liberal interpretation is warranted in cases where a strict enforcement of the rules will not serve the ends of justice.

APPEARANCES OF COUNSEL

Alfredo F. Laya, Jr., Rydely C. Valmores, Rufer D. Tolentino, and Adeline Canbri-Cortez and *Tenefrancia Barlongay and Associates* for petitioner.

Melanio L. Zoreta for respondent.

D E C I S I O N

CORONA, *J.*:

This petition for review traces its history to a compromise agreement,[2] executed on April 3, 1992, between petitioner Philippine Veterans Bank and respondent Solid Homes, Inc. The agreement provided, among others, for the repurchase by respondent of all existing rights and interests of petitioner in various mortgaged properties for ₱57,875,931.90. Petitioner allegedly violated the terms of the agreement prompting respondent to file a complaint for specific performance, sum of money and damages in the Regional Trial Court (RTC) of Pasig City, Branch 68.

In its answer, petitioner averred that the compromise agreement was breached by respondent which allegedly failed to pay the agreed amortizations as they became due. Petitioner allegedly merely exercised its right to unilaterally rescind the compromise agreement.

Respondent eventually filed a motion for summary judgment. In response, petitioner filed a motion to dismiss.

In a resolution dated February 22, 1994, the RTC of Pasig City denied petitioner's motion to dismiss and granted respondent's motion for summary judgment.[3] Petitioner filed a

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[2] *Rollo*, pp. 82-85.

[3] The RTC ruled against the unilateral rescission of the compromise agreement by petitioner. There was nothing in the compromise agreement that authorized a unilateral rescission by petitioner. Even if petitioner was authorized to so rescind the agreement, its action was unjustified because the breach allegedly committed by respondent was not substantial. The dispositive portion of the February 22, 1994 resolution read:

motion for reconsideration but it was denied.[4] Petitioner then belatedly filed a notice of appeal which it later withdrew. Instead, petitioner assailed the February 22, 1994 resolution in a petition for *certiorari*[5] which was dismissed.[6] Petitioner elevated the case to us but the same was denied for having been filed out of time.[7]

On March 31, 1999, respondent filed a motion for clarification, for entry and issuance of a notice of judgment,[8]

"WHEREFORE, premises considered, and finding the "Motion for Summary Judgment" to be tenable, the Court hereby GRANTS the same. Judgment is hereby rendered directing the defendant to release and deliver to plaintiff 2,850 square meters of condominium units which is the equivalent of the payment effected by plaintiff to defendant in the amount of ₱28,937,965.95 computed at ₱10, 871.58 per square meter with legal interest thereon.

The plaintiff is however directed to pay the remaining balance of ₱28, 937, 965.95 in six (6) equal quarterly installments, the first installment shall start WITHIN 30 DAYS from finality of this decision/resolution and the succeeding installments to be paid within the first five (5) days of the month of the succeeding quarter thereafter plus 8% interest thereon per annum from this date.

SO ORDERED." *Id.,* pp. 45-47.

[4] *Id.,* p. 51.

[5] The petition was initially filed in the Supreme Court but we referred the case to the CA for resolution. There, petitioner alleged that the RTC of Pasig City committed grave abuse of discretion when it pegged the interest rate at 8% per annum. The petition was docketed as CA-G.R. SP No. 36500.

[6] In a decision dated March 11, 1996, the CA held that petitioner lost the remedy of appeal when it filed the notice of appeal beyond the reglementary period. Hence, the petition for *certiorari* was not a proper substitute for a lost appeal. Moreover, the CA held that the RTC did not commit grave abuse of discretion in issuing the February 22, 1994 resolution. *Rollo*, pp. 48-61.

[7] Petition for review on *certiorari*, docketed as G.R. No. L-125418. It was dismissed in a resolution dated August 28, 1996. *Id.*, p. 62.

[8] Copies of the February 22, 1994 resolution served on the parties pegged the interest rate on respondent's balance at 8% per annum but the copy on file in the RTC contained the interest rate of 18% per annum. In view of the variance in interest rates on its principal obligation, respondent sought a clarification of the interest rate. In its motion for clarification, for entry and for issuance of a notice of judgment, respondent alleged, among others:

which was granted by the RTC in an order dated May 6, 1999.[9]

Petitioner assailed the May 6, 1999 order in a petition for *certiorari* in this Court. We affirmed the RTC's May 6, 1999 order.[10]

Respondent filed a motion for the issuance of a writ of execution[11] (to enforce the February 22, 1994 resolution) on June 14, 2005. Petitioner filed its opposition.[12] In an order dated

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"(b) That the text of the RTC Resolution in the original records in this case, had been altered by adding in handwriting the figure "1" preceding the figure "8%", making the interest therein appear to be "18%" instead of "8%", manifestly surreptitiously, considering that said alteration was made after the copies had been released to the parties and without any reason on record at all for such alteration."

Petitioner countered:

"2. The interest of 18% should prevail over the 8% interest posited by the movant, not only because the records of this case elevated on appeal actually sustain this rate but also because, of which is more paramount, the rate of 18% conforms to the true intention and agreement of the parties:

3. Plaintiff should not be permitted to understate its obligation with PVB by hiding behind the alleged alteration of the figure in the rate of interest fixed by the Honorable Court."

[9] The dispositive portion of the May 6, 1999 order read:

(1) CLARIFY and DECLARE that the interest rate for the payment of the judgment debt of ₱28,937,965.65 by [respondent] to [petitioner] is pegged at 8% per annum;
(2) DIRECT the Entry of Judgment into the Book of Entries; and
(3) DIRECT the Branch Clerk of Court to issue the corresponding NOTICE to both parties that the records have been returned to this Court.

[10] *Philippine Veteran's Bank v. Estrella*, G.R. No. 138993, 27 June 2003, 405 SCRA 168, 171. We ruled that the May 6, 1999 order merely clarified the interest rate prescribed in the February 22, 1994 RTC resolution and rectified the error in the copy appended to the original records. The interest rate on respondent's obligation was finally pegged at 8% per annum.

[11] *Rollo*, pp. 163-167.

[12] Filed on June 20, 2005. *Id.*, pp. 168-170.

July 12, 2005,[13] the RTC granted respondent's motion for the issuance of a writ of execution. A writ of execution was issued on July 15, 2005.[14]

Petitioner (yet again) assailed the July 12, 2005 order and the July 15, 2005 writ of execution in a petition for *certiorari* and prohibition filed in the CA. In a resolution dated August 17, 2005,[15] the petition was once more dismissed because petitioner did not file a motion for reconsideration of the July 12, 2005 order. The CA likewise denied petitioner's motion for reconsideration in a resolution dated October 14, 2005.[16]

In this petition for review on *certiorari*, petitioner assails the August 17, 2005 and October 14, 2005 resolutions of the CA. Petitioner avers that respondent can no longer execute the February 22, 1994 resolution because it has prescribed and that subsequent incidents did not interrupt the running of the ten-year prescriptive period.[17]

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[13] *Id.*, pp. 172-175.

[14] Annex "J", *id.*, pp. 112-113. The motion for execution was erroneously dated May 15, 2005. In the *Notice for Compliance* dated July 18, 2005 (Annex "H," *id.*, p. 107) signed by the branch sheriff addressed to and received by petitioner, the writ of execution referred to was dated July 15, 2005. A perusal of the pleadings indicates that the July 15, 2005 writ is the same as the May 15, 2005 writ.

[15] Penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Rodrigo V. Cosico (retired) and Danilo B. Pine (retired) of the Eleventh Division of the Court of Appeals. *Id.*, pp. 178-179.

[16] *Id.*, pp. 190-191. In resolving petitioner's motion for reconsideration, the CA reasoned that a number of incidents interrupted the ten-year period provided in Section 6, Rule 39 of the Rules of Court. However, the CA did not elaborate on the matter. Whether or not there was an interruption of the ten-year period for execution will be discussed elsewhere in this decision.

[17] In support of its argument that respondent's right to execute has prescribed, petitioner contended that the February 22, 1994 resolution contained *two separate and distinct obligations*, namely: (a) the first paragraph of the dispositive portion pertained to the delivery to respondent of 2,850 square meters of condominium units equivalent to the ₱28,937,965.95 previously paid by respondent and (b) the second paragraph thereof which required respondent to pay petitioner the balance of ₱28,937,965.95 in six equal monthly installments at 8% *per*

We rule against petitioner.

It is settled that a judgment or order becomes final upon the lapse of the period to appeal, without an appeal being perfected or a motion for reconsideration being filed. In this case, petitioner received a copy of the February 22, 1994 resolution on March 10, 1994.[18] Petitioner had 15 days from March 10, 1994 (or until March 25, 1994) within which to file either a motion for reconsideration or a notice of appeal.

On the 11th day of the 15-day period (or on March 21, 1994), petitioner filed a motion for reconsideration[19] which was denied. Petitioner received the denial on June 3, 1994.[20] Petitioner had only four days (or until June 7, 1994) to file a notice of appeal[21] but filed one only on June 13, 1994 or 10 days after receiving a copy of the denial of its motion for reconsideration. The February 22, 1994 resolution therefore became final and executory on June 8, 1994.[22]

A final and executory judgment may be executed by motion within five years or by action for revival of judgment within ten years reckoned from the *date of entry of judgment*.[23] The

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annum. Petitioner argued that respondent should have moved for the execution of the judgment in its favor (delivery of the condominium units), and that respondent was not required to wait for the resolution of its motion for clarification of the interest rate imposed on the balance of ₱28,937,965.95. *Id.*, p. 32.

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

[19] *Id*.

[20] *Id*.

[21] The February 22, 1994 resolution became final and executory **prior to the ruling in *Neypes v. CA, et al.*,** G.R. No. 141524, 14 September 2005, 469 SCRA 633, which allowed for a fresh period of 15 days within which to file a notice of appeal in the RTC, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration. **Prior to the *Neypes* ruling, a party had only the remainder of the 15-day period within which to file a notice of appeal.**

[22] See notes 5 and 6.

[23] Section 6, Rule 39 of the Rules of Court provides:

"SEC. 6. *Execution by motion or by independent action.*— A final and executory judgment or order may be executed on motion within five (5) years

date of entry, in turn, is the same as the date of finality of judgment.[24] Here, the February 22, 1994 resolution became final and executory on June 8, 1994. *By operation of law*, June 8, 1994 is likewise the date of entry of judgment. The prescriptive period for execution of the February 22, 1994 resolution must be reckoned from June 8, 1994.

Petitioner, on one hand, argues that respondent had only until June 8, 2004 within which to execute the February 22, 1994 resolution. Respondent, on the other hand, posits that events,[25] *i.e.*, various actions filed by petitioner itself assailing the rulings against it subsequent to the February 22, 1994 resolution, interrupted the running of the prescriptive period

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from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations." (emphasis supplied)

During the five-year period within which respondent could have filed a motion for execution or during the 10-year period during which respondent could have filed an action for revival of judgment, revisions to the then Rules of Court were introduced. The revisions took effect on July 1, 1997. Thus, the February 22, 1994 resolution came within the purview of the 1997 Rules of Court.

[24] Section 2, Rule 36 of the Rules of Court provides:

"SEC. 2. *Entry of judgments and final orders.*— If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. **The date of finality of the judgment or final order shall be deemed to be the date of its entry**. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment or final order has become final and executory." (emphasis supplied)

[25] (1) Petition for *certiorari* filed by petitioner in the CA (CA G.R. No. 36500) questioning the February 22, 1994 resolution which was dismissed for lack of merit; (2) Petition for *certiorari* filed by petitioner in the Supreme Court (SC) questioning the dismissal of CA G.R. No. 36500. Petition was dismissed; (3) Motion for clarification, for entry and for the issuance of a notice of judgment filed by respondent in the RTC which was granted via the May 6, 1999 order; (4) Petition for *certiorari* filed by petitioner in the SC (G.R. No. 138993) questioning the May 6, 1999 order.

for its execution. Allegedly, these actions, except for the motion for clarification, for entry and issuance of a notice of judgment, were interposed to delay the execution of the February 22, 1994 resolution.

We partly agree with respondent.

After its promulgation, the February 22, 1994 resolution was subject to two separate spates of attacks by petitioner. The first spate came when petitioner filed a motion for reconsideration. Failing in that, petitioner attempted to appeal. When appeal was no longer available as a remedy, petitioner assailed the February 22, 1994 resolution through a petition for *certiorari* filed in the CA (CA-G.R. SP No. 36500) and thereafter, a petition for review on *certiorari* filed with us (G.R. No. L-125418). In all these actions, petitioner lost. The last of these was in 1996.

The second set of attacks came rather indirectly. The copies of the February 22, 1994 resolution sent to the parties contained an interest rate of 8% *per annum* on respondent's obligation. However, the copy of the February 22, 1994 resolution on file with the RTC was altered without authority, changing the interest rate imposed on respondent's obligation from 8% to 18% *per annum*. Because of the variance, respondent filed a motion for clarification which eventually was resolved in its favor on May 6, 1999. Petitioner assailed the May 6, 1999 resolution in a petition for *certiorari* (G.R. No. 138993) filed directly with us.

Did any of the numerous actions filed by petitioner toll the running of the prescriptive period for execution? Yes.

It is settled that an original action for *certiorari* is an independent action and is neither a continuation nor a part of the trial resulting in the judgment complained of.[26] It does not interrupt the course of the original action if there was no writ of injunction, even if in connection with a pending case in a lower court.[27] Section 7, Rule 65 of the Rules of Court is explicit:

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[26] *Palomares v. Jimenez,* 90 Phil. 774, 776 (1952).

[27] *Peza v. Alikpala*, G.R. No. L-29749, 15 April 1988, 160 SCRA 31, 35.

SEC. 7. *Expediting proceedings; injunctive relief.*— The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. **The petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding on the case**. (emphasis supplied)

Clearly, the petition for *certiorari* (CA-G.R. SP No. 36500) assailing the February 22, 1994 resolution did not toll the running of the prescriptive period. The petition for review on *certiorari* (G.R. No. L-125418) had the same effect because it was merely a continuation of CA-G.R. SP No. 36500. Even if these actions sought a reversal of the February 22, 1994 resolution, they did not suspend the running of the prescriptive period for execution in favor of respondent. The very nature of a *certiorari* proceeding militates against considering it in favor of respondent. Besides, no writ of injunction was issued in favor of respondent which could have validly suspended the running of the prescriptive period.

However, the same rule cannot be applied to G.R. No. 138993. Despite being an original *certiorari* proceeding, G.R. No. 138993 tolled the running of the prescriptive period. An analysis of its peculiar nature justifies taking it out of the ambit of the rule that *certiorari* proceedings do not toll the running of the prescriptive period.

In G.R. No. 138993, petitioner ascribed grave abuse of discretion on the RTC when it fixed the interest rate at 8% *per annum*. In resolving G.R. No. 138993 in favor of respondent, we stressed:

[T]hat the May 6, 1999 resolution did not amend or modify the Resolution of February 22, 1994, which had become final and executory. The assailed order merely clarified the interest rate prescribed in the earlier Resolution, which disposed of the case on the merits, to rectify a falsification of the copy of the said resolution appended to the original records. In the exercise of its supervisory

powers over the execution of a final and executory judgment, special circumstances attending its execution impelled the trial court to issue the assailed order clarifying the interest rate prescribed in the February 22, 1994 Resolution.[28]

Respondent already had a clear right to pay its obligation (under the February 22, 1994 resolution) at an interest rate of only 8% *per annum*. The clarity of the interest rate could not have been made better when we admonished petitioner in the *ponencia* in G.R. No. 138993:

> The petitioner cannot now feign ignorance of the interest rate prescribed therein because in its petition for *certiorari* in [CA-G.R. No. 36500 assailing the February 22, 1994 resolution], the petitioner declared that the rate of interest fixed by the trial court in its February 22, 1994 resolution was 8% per annum, to wit:
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> (c) The penult of his judgment states:
>
> "The plaintiff is however directed to pay the remaining balance of ₱28,937,965.95 (sic) in six (6) equal quarterly installments, the first installment shall start WITHIN 30 DAYS from finality of this decision/resolution and the succeeding installment to be paid within the first five (5) days of the month of the succeeding quarter thereafter plus 8% interest thereon per annum from this date.
>
> Under the Compromise Agreement of the parties, the balance of ₱28,937,965.95 (sic) shall be paid in SIX equal monthly installments. The first installment shall be paid within thirty days from date of the payment of ₱17,362,779.55 and the succeeding installments shall be payable within the first five (5) days of every month thereafter.
>
> x x x x x x x x x
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> **Worse, the Respondent Judge ordained payment of interest at EIGHT (8%) per cent less than what was stipulated in the parties' contract, without any factual and legal justification. Again, a constitutional violation.**[29]

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[28] *Supra* note 9, at 171.

[29] *Id.*, pp. 173-174.

Petitioner clearly knew and acknowledged the fact that the interest rate *as imposed by the RTC* in the February 22, 1994 resolution was 8%, not 18%. Otherwise, it would not have questioned the propriety of the rate imposed by the RTC when it filed CA-G.R. SP No. 36500. Petitioner may not have acquiesced to the 8% rate, but it can no longer question it under the doctrine of immutability of judgments.

By filing G.R. No. 138993, petitioner pretended to be ignorant of the interest rate fixed by the RTC in the February 22, 1994 resolution. It vainly attempted to modify an already final and executory judgment. In pursuance thereof, petitioner blatantly undermined established rules of procedure in the guise of enforcing a right which it perfectly knew did not exist.

Unfortunately for petitioner, we saw through its feigning. When we dismissed G.R. No. 138993, we did not heed petitioner's rigmarole. We will do the same in this case. Hence, we exclude the time during which respondent's motion for clarification was filed, as well as the filing and eventual resolution of G.R. No. 133893. The motion for clarification was filed on March 31, 1999.[30] It was finally decided in G.R. No. 138993 on June 27, 2003,[31] after four years, two months and 27 days. Therefore, this period must be excluded from the running of the prescriptive period for execution. All told, respondent's right has not prescribed.

Respondent's motion for execution was filed only on June 14, 2005, or six years and nine months from entry of judgment. It was clearly beyond the five-year period but within the ten-year prescriptive period. We have, at various occasions, allowed a mere motion for execution even if filed beyond the five-year period, for reasons of equity. We apply the same liberality in this case in view of the peculiar situation in this case.

We will not countenance petitioner's brazen use of technicalities to defeat its legal obligation to respondent. Procedural rules are

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[30] *Supra* note 9 at 170.

[31] *Id.*, p. 168.

designed to facilitate the adjudication of cases[32] but they must not defeat a just claim. Moreover, petitioner cannot legally invoke a strict application of the rules of procedure because the delays were due to its own maneuvers to prolong the case. In *Camacho v. CA and Dizon, et al.*,[33] we held:

> It is revolting to the conscience to allow petitioner to further avert the satisfaction of her obligation because of sheer literal adherence to technicality. After all, the Rules of Court mandates that a liberal construction of the Rules be adopted in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding. This rule of construction is [s]pecially useful in the present case where adherence to the letter of the law would result in absurdity and manifest injustice.[34]

It would be unjust to frustrate respondent's effort to execute the February 22, 1994 resolution on sheer technicality. While strict compliance to the rules of procedure is desired, liberal interpretation is warranted in cases where a strict enforcement of the rules will not serve the ends of justice.[35]

WHEREFORE, the petition is hereby *DENIED*.

Costs against petitioner.

SO ORDERED.

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

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[32] *Marohomsalic v. Cole*, G.R. No. 169918, 27 February 2008, 547 SCRA 98, 109.

[33] G.R. No. 118339, 19 March 1998, 287 SCRA 611.

[34] *Id.* at 617.

[35] *Central Surety and Insurance Company v. Planters Products, Inc.*, G.R. No. 149053, 7 March 2007.

EN BANC

[A.M. No. P-08-2450. June 10, 2009]
(Formerly OCA IPI No. 00-27-CA-P)

AURORA B. GO, *complainant, vs.* **MARGARITO A. COSTELO, JR., Sheriff IV, Regional Trial Court, Branch 11, Calubian, Leyte,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; AFFIDAVIT OF RECANTATION IS UNRELIABLE AND DESERVES SCANT CONSIDERATION; APPLICATION IN CASE AT BAR.— Respondent's belated submission of evidence, which was done only after the investigation had been completed, does not merit probative value, as the same was a mere afterthought. It has been consistently held that an affidavit of recantation is unreliable and deserves scant consideration, since the asserted motives for the repudiation are commonly held suspect, and the veracity of the statements made in the affidavit of repudiation are frequently and deservedly subject to serious doubt. Moreover, the OCA observed that the Daily Time Record appeared to be altered or falsified, as it was shown that there was no work on November 8, 2001 due to the inclement weather, but respondent was indicated as purportedly present.

2. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFF; GROSS MISCONDUCT AND DISHONESTY; WHEN PRESENT.— In *Malabanan v. Metrillo,* the Court defined misconduct as a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior; willful in character, improper or wrong behavior, while "gross" has been defined as "out of all measure beyond allowance; flagrant; shameful; such conduct as is not to be excused." As a sheriff and officer charged with the dispensation of justice, respondent's conduct and behavior must be circumscribed with the heavy burden of responsibility. In the present case, by the very nature of their functions, sheriffs, like respondent, are called upon to discharge their duties with care and utmost diligence and, above all, to be above suspicion. Instead of following what the MTCC directed

in its Order, respondent conducted a public auction sale when in fact he had no authority to do so and even falsified a Certificate of Sale. Having been in the service for 17 years, respondent should have taken the rules by heart, for it is expected that someone as considerably experienced as he is would know the proper procedure for disposing of property at a public auction sale. Notably, while the Investigating Judge concluded that the Certificate of Sale and Minutes of Auction Sale were fictitious, fabricated and spurious documents, he found respondent liable for gross misconduct and dishonesty without mentioning his findings as to respondent's acts of falsification and abuse of public authority. In the Court's assessment of the records, however, it finds that respondent was likewise liable for falsification of an official document *when* he falsified the Certificate of Sale and Minutes of Public Auction Sale, and abuse of public authority when he disposed of the property by auction sale instead of levying the same, as he was directed to do in the Order of the MTCC judge. Respondent's acts are clearly in violation of Canon IV of the Code of Conduct for Court Personnel, the pertinent provisions of which state: Sec. 1. Court personnel shall at all times perform official duties properly and with diligence, and to commit themselves exclusively to the business and responsibilities of their office during working hours. Sec. 3. Court personnel shall not alter, falsify, destroy or mutilate any record within their control. This provision does not prohibit amendment, correction or expungement of records or documents pursuant to a court order. Sec. 6. Court personnel shall expeditiously enforce rules and implement orders of the court within the limits of their authority.

3. ID.; ID.; ID.; ID.; ID.; PENALTY.— The Uniform Rules on Administrative Cases in the Civil Service likewise provides that grave misconduct is punishable by dismissal from the service under Section 52-A(3), Rule IV thereof, while falsification of official document is also punishable by dismissal from the service under Section 52-A(6) thereof. In *Padua v. Paz*, the Court found respondent sheriff liable for grave misconduct and falsification of public document and, accordingly, dismissed him from the service when the latter committed perjury and gave false testimony. In the present case, respondent's act of conducting a public auction sale, which amounted to grave misconduct, and his falsification of the

Certificate of Sale and the Minutes of Auction Sale are in flagrant disregard of the law and deserve the supreme penalty of dismissal. The Court has consistently held that sheriffs play a significant role in the administration of justice, for they are primarily responsible for the execution of a final judgment, which is "the fruit and end of the suit, and is the life of the law." Thus, sheriffs are expected to show a high degree of professionalism in performing their duties. As officers of the court, they are expected to uphold the norm of public accountability and to avoid any kind of behavior that would diminish or even just tend to diminish the faith of the people in the Judiciary. Herein respondent failed to abide by these postulates. Let this case serve as a warning to all court personnel that the Court, in the exercise of its administrative supervision over all courts and their personnel, will not hesitate to enforce the full extent of the law in disciplining and purging from the Judiciary all those who are not befitting the integrity and dignity of the institution, even if such enforcement would lead to the maximum penalty of dismissal from the service despite their length of service.

APPEARANCES OF COUNSEL

Daniel Matriano for complainant.
Redentor C. Villordon for respondent.

D E C I S I O N

PER CURIAM:

Before this Court is the affidavit-complaint[1] dated June 19, 2003 filed by complainant Aurora B. Go with the Office of the Court Administrator (OCA), charging respondent Margarito A. Costelo, Jr., Sheriff IV of the Regional Trial Court (RTC), Branch 11, Calubian, Leyte, with grave misconduct, falsification and abuse of authority.

In her complaint, Go alleged that she executed a Deed of Absolute Sale in favor of her sister Anita Conde over a parcel

[1] *Rollo,* Vol. I, pp. 8-13.

of land covered by Tax Declaration No. ARP 09004-00109. On November 8, 2001, while the complainant was in Taiwan, she received a call from Conde, who informed her that respondent Sheriff was going to subject said parcel of land to an auction sale on that same day, pursuant to a Writ of Execution[2] dated July 18, 2001 issued against complainant by the Municipal Trial Court in Cities (MTCC) of Cebu City in an ejectment case.[3] Complainant advised Conde to avail herself of legal remedies such as filing a third-party claim to prevent the auction, but despite proof of ownership shown by Conde to respondent, the latter proceeded with the sale.

Complainant further alleged that respondent Sheriff: (1) took advantage of her absence from the Philippines and surreptitiously and hastily proceeded with the auctioning of the real property; (2) persisted in conducting the auction sale with patent partiality in favor of Doris Sunbanon, the prevailing party in the ejectment case; (3) made it appear that a person residing in the subject property received the notice of auction by falsifying the signature of the alleged person in the purportedly received copy of the notice, but such person was unknown to complainant and Conde; (4) failed to make proper posting of the notice of auction; (5) did not acknowledge the documents evidencing the transfer of ownership of property from complainant to Conde, and said that the Deed of Absolute Sale was "*gawa-gawa*" [simulated]; and (6) falsified the entries in the Certificate of Sale by stating that it was executed and notarized on November 8, 2001 by a certain Atty. Roberto dela Peña when in truth a certified photocopy of the notarial book of Atty. Dela Peña shows that no such document was notarized on said date or immediately thereafter.

Also, complainant stated that it was doubtful whether respondent actually conducted an auction sale on November 8, 2001, considering that a strong typhoon hit Calubian from November 6 to 8, 2001, as a result of which offices were closed. She further averred that, on the day of the auction sale, Conde

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[2] *Id.* at 187-189.

[3] Docketed as Civil Case No. R-36953, entitled *"Doris Sunbanon v. Aurora Go."*

went to the Sheriff's Office, where she was told by respondent that there would be no auction sale that day. Conde was advised to bring the Deed of Sale and third-party claim to respondent's house, so that he could make a report to the MTCC, Branch 2, Cebu City that Conde was the new owner of the property. When Conde brought the required documents to respondent's house, she learned that respondent still failed to report to the court her claim over the property. This prompted Conde to file a Third-Party Claim[4] on November 15, 2001 before the MTCC, Branch 2, Cebu City. However, when Conde went to respondent's office to deliver a photocopy of her third-party claim, respondent showed her the Certificate of Sale[5] in the name of Doris Sunbanon, who was the highest bidder in the auction sale held on November 8, 2001.

On the other hand, respondent filed his Comment[6] dated September 9, 2003, wherein he denied that he committed irregularities in auctioning the subject property, for a Levy on Execution had been made based on the certified true copy of the tax declaration issued by the Municipal Assessor of Calubian, Leyte and the same was duly annotated by the Register of Deeds for the Province of Leyte. He claimed that, before November 12, 2001, he had no knowledge that the property sold at public auction was owned by a certain Anita Conde, and that the sole basis of the Levy on Execution and the Sheriff's auction sale was the mere fact that the declared owner of the property was complainant Go, the losing party in the ejectment case. It was only when Conde filed her third-party claim that respondent came to know that there was a third-party claimant over the property in question.

Respondent also denied having described the Deed of Absolute Sale as "*gawa-gawa*." He averred that before he conducted the auction sale, he sent a copy of the Notice of Sale on Execution of Real Property to the complainant by registered mail, but it

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[4] *Rollo*, Vol. I, p. 15.

[5] *Id.* at 16.

[6] *Id.* at 26-28.

was returned with a notation "party moved out" and marked "RTS" by the Calubian Post Office. He, likewise, claimed that the auction sale had not been cancelled or postponed due to inclement weather, and that he had the Certificate of Sale duly notarized on November 8, 2001.

Respondent pointed out that the complainant executed the Deed of Absolute Sale in favor of Conde on January 24, 2001, barely two months after the Court of Appeals promulgated its decision in the ejectment case dated November 16, 2000 against complainant, which showed that the complainant transferred her property to prevent the court from levying the same.

On June 29, 2004, the OCA recommended that the complaint be referred to Judge Alejandro Diongzon of the RTC of Calubian, Leyte on the ground that the issues raised by the complainant could not be resolved on the basis of the submitted pleadings and documents alone, and that a full-blown investigation was necessary,[7] a recommendation that the Court adopted in its Resolution[8] dated October 20, 2004. However, on January 19, 2005, complainant filed with the OCA an Urgent Motion for Inhibition[9] of Judge Diongzon claiming that the latter would be partial in handling the case, because said judge was the approving officer of the Certificate of Sale. In a Resolution[10] dated April 20, 2005, the Court recalled its Resolution dated October 20, 2004 and, instead, directed Judge Crisostomo Garrido of the RTC of Carigara, Leyte to conduct an investigation and submit a report and recommendation thereon within sixty (60) days from receipt of the Resolution.

On May 17, 2006, respondent filed before the Court a Motion[11] praying that the investigation of the case be returned to the RTC, Branch 11, Calubian, Leyte on the ground that Judge

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[7] *Id.* at 46-49.

[8] *Id.* at 50.

[9] *Id.* at 71-83.

[10] *Id.* at 80.

[11] *Id.* at 156-158.

Diongzon had already retired. His motion was denied in a Memorandum[12] of the OCA dated September 18, 2006.

In his Report and Recommendation[13] dated February 20, 2007, Judge Garrido found respondent to have acted without authority in conducting a public auction sale of the subject property on execution, stating that:

> Nowhere could be gleaned from the said order that Respondent Sheriff, Costelo, Jr. was authorized to conduct public auction sale of the property on execution. Neither was there any evidence presented that the Sheriff of MTCC, Branch 2, Cebu City has delegated such authority to Sheriff Costelo, Jr., to conduct a public auction sale of the property on execution. The Respondent Sheriff could have exercised prudence and restraint in the performance of his duty. Instead of conducting [a] public auction sale of the property on execution, he could have filed his return of the property levied, to the MTCC, Branch 2, Cebu City for its sheriff to conduct the public auction sale, pursuant to the provision of the 2nd paragraph of Sec. [6] Rule 39, 1997 Rules of Civil Procedure. Blinded by the expectation of sheriff's fees, the respondent sheriff had forgotten his bounden duties and responsibilities as employee of the judiciary that public office is a public trust.
>
> The Certificate of Sale, Minutes of Auction Sale dated November 8, 2001, are fictitious, fabricated and spurious documents, mere concoction of facts to give a semblance of legality to the illegal acts of Sheriff Costelo, Jr. This evaluation finds support from the Certification issued by the Cebu PAGASA and the Philippine Coast Guard, Cebu Station, Cebu City, *viz*:
>
> CERTIFICATION – Cebu PAGASA
>
> > On November 6, 7 & 8, 2001, Storm Signal No. 2, with heavy rains of gusty winds of 54 to 65 kilometers per hour were raised over the entire provinces of Cebu, Samar, Leyte, Dinagat Island, Bohol, Masbate and Panay Island, with rough to very rough seas, with wave height of 3 to 5 meters.[14]

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[12] *Rollo*, Vol. II, pp. 31-32.

[13] *Rollo*, Vol. I, pp. 228-241.

[14] *Id.* at 43-44.

CERTIFICATION – Philippine Coast Guard

> On these three days that the typhoon battered these islands in the Visayas, no vessels of 2000 gross tonnage and less were given clearance to leave Cebu for Leyte, Samar and other Visayan islands.[15]

Evidence admissible when original document is a public record. When the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof. (emphasis theirs)

Obviously, it was impossible for the judgment creditor Doris Sunbanon to be present in Leyte on November 6, 7 & 8, 2001, moreso, in Calubian, Leyte attending a public auction sale on November 8, 2001 at the Office of the Regional Trial Court, Branch 11, Calubian, Leyte, when all water and air transportation facilities in Cebu were not given any clearance to leave for Leyte and the other Visayan islands. Experience had taught us that when PAGASA raises typhoon signal No. 2 over the provinces affected, school classes and offices, both public and private, are automatically suspended.

Judgment Creditor Doris U. Sunbanon was not presented in Court during the hearing of this case, to corroborate the allegation of Respondent Sheriff that she was present during the auction sale of the real property on execution on November 8, 2001 in Calubian, Leyte, nor in the days prior thereto. There was no evidence presented that indeed, Doris U. Sunbanon was in Leyte on the aforesaid dates. Not even hotel bills, receipts of her stay in Leyte or marine vessel or airplane tickets were presented for her return trip to Cebu City from Leyte, after the November 8, 2001 alleged auction sale, indicia of her absence in the public auction sale of the real property on execution on November 8, 2001.

Neither any of the Court personnel of RTC Branch 11, Calubian, Leyte, who were allegedly present and had signed the logbook on November 8, 2001 was presented in Court, to corroborate the testimony of Sheriff Costelo, Jr., that indeed, they were holding office on November 8, 2001, despite typhoon signal no. 2 in the provinces of Samar and Leyte, indicative that the logbook allegedly signed by [the] Court employees is spurious and of doubtful

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[15] *Id.* at 46.

authenticity, unavailing and undeserving credit for it can be easily accomplished to serve one's ulterior motive.

The validity, genuineness, authenticity and due execution of the Certificate of Sale issued by Respondent Sheriff Costelo, Jr., dated November 8, 2001, was put in issue when Notary Public Roberto Dela Peña of Calubian, Leyte, who allegedly notarized the Certificate of Sale on November 8, 2001 was put to the witness stand. Roberto Dela Peña denied that he notarized the alluded Certificate of Sale and that his signature appearing on the acknowledgment portion of the said document is fake, a product of falsification and forgery. The entries denominated as Document 161, Page 37, Book 3, Series of 2000, appearing on the Certificate of Sale were forged, falsified and fictitious entries.

Document No. 161, Page No. 37, Book 3, Series of 2000 as entered in the Notarial Register of Notary Public Roberto Dela Peña refers to a document denominated as Cancellation and Discharge of Mortgage, executed by and between Spouses Fileo and Angeles Arias, and Baruel Rimandaman, Leonila B. Pepito and Alfredo Lagora, and not the Certificate of Sale issued by the respondent sheriff.

Court's observation and examination of the said entries on page 37 of the Notarial Register of Roberto Dela Peña, appears to be genuine and authentic, without any erasure or alteration, written in freehand writing and in chronological order of events, written in the middle portion of page 37 of the notarial registry, indicative that the document entered thereto is the true act of the notary public in recording his transaction for the day, pursuant to his oath of office.

There is credence to the testimony of Roberto Dela Peña that the Certificate of Sale issued by the respondent sheriff, was fictitious, falsified and a product of forgery. Moreover, Roberto Dela Peña, being 70 years old and in the twilight of his life, testified clearly and in a straightforward manner, relative to the entries on page 37 of his Notarial Register. Other infirmities in the other pages in his Notarial Register could only be attributed to old age.

Sheriff Margarito Costelo, Jr. having acted without [any] authority to conduct a public auction sale of the real property on execution, the public auction sale is illegal, invalid and *void ab initio*. Under the rules, *supra*, the public auction sale of the real property on execution shall only be conducted at the office of the Clerk of Court, MTCC, Branch 2, Cebu City, the Court which issued the Writ of Execution.

Judiciary officers must, at all times, be accountable to the people. They serve with utmost degree of integrity, responsibility, loyalty and efficiency in their duties. In the case at bar, respondent sheriff, Margarito Costelo, Jr. has [been] remiss of his duties and must account to the people who repose their trust on him. Such grave misconduct committed by the respondent sheriff, deserves the highest degree of sanctions. The respondent sheriff is a disgrace to the Judiciary.

WHEREFORE, premises considered, it is most respectfully recommended:

1. That the public auction sale of real property on execution be declared Null and Void;

2. That respondent MARGARITO COSTELO, JR., be dismissed from the service for Grave Misconduct, Dishonesty and unfit of a judicial officer (sic), with forfeiture of all benefits, except leave credits, if any, with prejudice for re-employment in the government or any agency and instrumentality thereof, including government-owned and controlled corporations.

RESPECTFULLY RECOMMENDED.[16]

On March 22, 2007, respondent filed with the RTC of Carigara, Leyte, a Motion for Reconsideration[17] of the Report and Recommendation of Judge Garrido; and on June 1, 2007, an Omnibus Supplemental Motion for Reconsideration/Motion to Re-Open the Case and to Inhibit the Investigating Judge.[18] He claimed that the penalty of dismissal from service was too harsh, considering the circumstances of the case, and submitted the following to support his motion: (1) affidavit[19] of Roberto dela Peña recanting his earlier affidavit and testimony that his signature in the Certificate of Sale was falsified; (2) Daily Time Records[20] of the court employees of the RTC, Branch 11, Calubian, Leyte,

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[16] *Id.* at 238-241.

[17] *Id.* at 242-245.

[18] *Rollo* (Vol. II), pp. 35-46.

[19] *Id.* at 58.

[20] *Id.* at 48-52.

showing perfect attendance and no late days for the month of November 2001, except for Utility Worker Elpidio Gudmalin, who filed a leave of absence from November 13 to 15, 2001; (3) photocopy of the Order[21] dated November 8, 2001 of the Investigating Judge during the hearing in Sp. Proc. No. 714, to prove that the Investigating Judge himself conducted a hearing on November 8, 2001; and (4) PNP Leyte Crime Laboratory Report dated June 7, 2007, stating that the signature of Roberto dela Peña appearing on the duplicate copy of the Sheriff's Certificate of Sale and his signature duly submitted belonged to one and the same person.

In a Resolution dated August 6, 2007, the Court referred Judge Garrido's Report and Recommendation dated February 20, 2007 to the OCA for evaluation, report and recommendation within 30 days from notice. On March 12, 2008, the OCA submitted a Memorandum stating that:

> We find no reason to disturb the findings of Judge Crisostomo Garrido. During the course of the investigation, the Investigating Judge saw the demeanor of the witnesses and he personally knows the conditions prevailing in the area during the time that there was allegedly a typhoon. Respondent had the opportunity to present transcripts of court hearing, if any, on November 8, 2001. The belated submission of the joint affidavit of his co-employees after learning that he would be dismissed from the service can be taken as a mere act of saving respondent from the recommended penalty of dismissal.
>
> We are inclined to believe that the Daily Time Records submitted [for] the month of November 2001 did not reflect the true attendance of court employees. It would seem improbable that in a coastal town like Calubian, all the employees would register a perfect attendance with no late despite hoisting of Storm Signal No. 2 in the province for 3 days. As convincingly observed by the Investigating Judge, not one among the court personnel who were allegedly present on November 8, 2001 testified during the investigation "indicative that the logbook signed by the court employees is spurious and of doubtful authenticity x x x."

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[21] *Id.* at 55.

As to the affidavit of Notary Public Roberto Dela Peña recanting his earlier testimony, the same hardly deserves credence. The Court has invariably regarded affidavits of recantation as highly unreliable. As held in *People vs. Rojo* (114 SCRA 304), an affidavit of retraction which indicates it [to] be a mere afterthought has no probative value.

As to the PN[P] Crime Laboratory Report yielding a same signature result, it must be noted that Roberto Dela Peña gave a specimen of his signature only on 31 May 2007, after he has executed his affidavit recanting his earlier testimony.

The rest of the alleged newly discovered evidence are obtainable at the time the investigation was conducted. For an evidence to be considered "newly discovered," it could not have been discovered prior to the trial by the exercise of due diligence.

In view of the foregoing, it is respectfully recommended that the instant case be redocketed as a regular administrative case and that, as submitted by the Investigating Judge, respondent Sheriff Margarito A. Costelo, Jr. be DISMISSED FROM THE SERVICE effective immediately with forfeiture of all benefits except his accrued leave credits with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.

The Court agrees with the recommendation of the OCA affirming the findings of Judge Garrido.

In his Report, the Investigating Judge confirmed that respondent effected a valid service of the Notice of Sale on the judgment debtor, herein complainant, in accordance with Section 6,[22] Rule 13 of the Rules of Civil Procedure. The Notice of Sale on Execution of Real Property was likewise duly published for three (3) consecutive weeks by the *Sunday Punch*, a newspaper of regional circulation in Leyte and Samar, from October 15 to

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[22] Sec. 6. *Personal service.* — Service of the papers may be made by delivering personally a copy of the party or his counsel, or by leaving it in his office with his clerk or with a person having charge thereof, if no person is found in his office, or his office is not known, or he has no office, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or counsel's residence, if known, with a person of sufficient age and discretion then residing therein.

21, 22 to 28 and October 29 to November 4, 2001, as evidenced by the Affidavit of Publication[23] executed by its publisher, Danilo Silvestrece.

However, respondent had no authority to conduct the public auction sale of the property in question. Neither was there any evidence to show that the Sheriff of the MTCC, Branch 2, Cebu City, delegated such authority to respondent. The Order dated September 25, 2001 of Presiding Judge Anatalio S. Necesario of the MTCC, Branch 2, Cebu City, clearly provided that the power and authority given to respondent was only to levy on the property, as quoted:

ORDER

Acting on the Amended Motion filed by plaintiff-movant for being well-taken and meritorious, the same is hereby granted.

The deficiency judgment in the amount of ₱143,294.39 is supported by the sheriff's return of the Writ of Execution already attached to the *expediente* of the case.

WHEREFORE, the Deputy Sheriff of this Court (Court) or the Deputy Sheriff of the Regional Trial Court of Calubian, Leyte is hereby **authorized to levy on the property of the defendants** situated in Calubian, Leyte for the full satisfaction of the deficiency judgment up to the extent of the sum of ₱143,294.39 exclusive of costs.

SO ORDERED.[24]

Even assuming that respondent was given the authority to hold an auction sale, the complainant was able to establish during the investigation that the former did not actually conduct a public auction sale of the property on execution, in violation of paragraphs (c) and (d) of Section 15, Rule 39 of the Rules of Civil Procedure, quoted as follows:

Sec. 15. *Notice of Sale of Property on Execution*. — Before the sale of property on execution, notice thereof must be given as follows:

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[23] *Rollo*, Vol. I, p. 35

[24] *Id.* at 237-238.

x x x x x x x x x

(c) In case of real property, by posting for twenty (20) days in the three (3) public places abovementioned, a similar notice particularly describing the property and stating where the property is to be sold, and if the assessed value of the property exceeds fifty thousand (₱50,000.00) pesos, by publishing a copy of the notice once a week for two (2) consecutive weeks in one newspaper selected by raffle, whether in English, Filipino, or any major regional language published, edited and circulated or, in the absence thereof, having general circulation in the province or city;

(d) In all cases, written notice of the sale shall be given to the judgment obligor, at least three (3) days before the sale, except as provided in paragraph (a) hereof where notice shall be given at any time before the sale, in the same manner as personal service of pleadings and other papers as provided by section 6 of Rule 13.

The notice shall specify the place, date and exact time of the sale which should not be earlier than nine o'clock in the morning and not later than two o'clock in the afternoon. **The place of the sale may be agreed upon by the parties. In the absence of such agreement, the sale of real property or personal property not capable of manual delivery shall be held in the office of the clerk of court of the Regional Trial Court or the Municipal Trial Court which issued the writ or which was designated by the appellate court.** In the case of personal property capable of manual delivery, the sale shall be held in the place where the property is located.[25]

The fact that a public auction sale could not have possibly taken place on November 8, 2001 is corroborated by the Certifications of Cebu PAGASA and the Philippine Coast Guard that there was a typhoon on the date of sale. Moreover, no evidence was presented in court to prove that Sunbanon was at the auction sale. Neither did any of the court personnel of the RTC, Branch 11, Calubian, Leyte, testify that they held office during the storm on November 8, 2001.

Respondent's belated submission of evidence, which was done only after the investigation had been completed, does not merit

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[25] Emphasis supplied.

probative value, as the same was a mere afterthought. It has been consistently held that an affidavit of recantation is unreliable and deserves scant consideration, since the asserted motives for the repudiation are commonly held suspect, and the veracity of the statements made in the affidavit of repudiation are frequently and deservedly subject to serious doubt.[26] Moreover, the OCA observed that the Daily Time Record appeared to be altered or falsified, as it was shown that there was no work on November 8, 2001 due to the inclement weather, but respondent was indicated as purportedly present.

In *Malabanan v. Metrillo*,[27] the Court defined misconduct as a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior; willful in character, improper or wrong behavior, while "gross" has been defined as "out of all measure beyond allowance; flagrant; shameful; such conduct as is not to be excused." As a sheriff and officer charged with the dispensation of justice, respondent's conduct and behavior must be circumscribed with the heavy burden of responsibility.[28] In the present case, by the very nature of their functions, sheriffs, like respondent, are called upon to discharge their duties with care and utmost diligence and, above all, to be above suspicion. Instead of following what the MTCC directed in its Order, respondent conducted a public auction sale when in fact he had no authority to do so and even falsified a Certificate of Sale. Having been in the service for 17 years, respondent should have taken the rules by heart, for it is expected that someone as considerably experienced as he is would know the proper procedure for disposing of property at a public auction sale.

Notably, while the Investigating Judge concluded that the Certificate of Sale and Minutes of Auction Sale were fictitious,

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[26] *Firaza v. People of the Philippines*, G.R. No. 154721, March 22, 2007, 518 SCRA 681, 692-693.

[27] A.M. No. P-04-1875, February 6, 2008, 544 SCRA 1, 7.

[28] *Vilar v. Angel*, A.M. P-06-2276, February 5, 2007, 514 SCRA 147, 153, citing *Civil Service Commission v. Cortez*, 430 SCRA 593 (2004).

fabricated and spurious documents, he found respondent liable for gross misconduct and dishonesty without mentioning his findings as to respondent's acts of falsification and abuse of public authority. In the Court's assessment of the records, however, it finds that respondent was likewise liable for falsification of an official document *when* he falsified the Certificate of Sale and Minutes of Public Auction Sale, and abuse of public authority when he disposed of the property by auction sale instead of levying the same, as he was directed to do in the Order of the MTCC judge.

Respondent's acts are clearly in violation of Canon IV of the Code of Conduct for Court Personnel,[29] the pertinent provisions of which state:

> Sec. 1. Court personnel shall at all times perform official duties properly and with diligence, and to commit themselves exclusively to the business and responsibilities of their office during working hours.
>
> Sec. 3. Court personnel shall not alter, falsify, destroy or mutilate any record within their control. This provision does not prohibit amendment, correction or expungement of records or documents pursuant to a court order.
>
> Sec. 6. Court personnel shall expeditiously enforce rules and implement orders of the court within the limits of their authority.

The Uniform Rules on Administrative Cases in the Civil Service[30] likewise provides that grave misconduct is punishable by dismissal from the service under Section 52-A(3), Rule IV thereof, while falsification of official document is also punishable by dismissal from the service under Section 52-A(6) thereof.

In *Padua v. Paz*,[31] the Court found respondent sheriff liable for grave misconduct and falsification of public document and,

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[29] A.M. No. 03-06-13-SC effective June 1, 2004.

[30] 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.

[31] A.M. No. P-00-1445, April 30, 2003, 402 SCRA 21.

accordingly, dismissed him from the service when the latter committed perjury and gave false testimony. In the present case, respondent's act of conducting a public auction sale, which amounted to grave misconduct, and his falsification of the Certificate of Sale and the Minutes of Auction Sale are in flagrant disregard of the law and deserve the supreme penalty of dismissal.

The Court has consistently held that sheriffs play a significant role in the administration of justice, for they are primarily responsible for the execution of a final judgment, which is "the fruit and end of the suit, and is the life of the law." Thus, sheriffs are expected to show a high degree of professionalism in performing their duties. As officers of the court, they are expected to uphold the norm of public accountability and to avoid any kind of behavior that would diminish or even just tend to diminish the faith of the people in the Judiciary.[32] Herein respondent failed to abide by these postulates.

Let this case serve as a warning to all court personnel that the Court, in the exercise of its administrative supervision over all courts and their personnel, will not hesitate to enforce the full extent of the law in disciplining and purging from the Judiciary all those who are not befitting the integrity and dignity of the institution, even if such enforcement would lead to the maximum penalty of dismissal from the service despite their length of service.

WHEREFORE, respondent Sheriff Margarito A. Costelo, Jr. is found *GUILTY* of grave misconduct, grave abuse of authority, and falsification of official document; and is *DISMISSED* from the service with forfeiture of all benefits and privileges, except accrued leave credits, if any, and with prejudice to re-employment in any branch or agency of the government, including government-owned or controlled corporations.

This Decision shall take effect immediately.

SO ORDERED.

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[32] *Flores v. Marquez*, A.M. P-06-2277, December 6, 2006, 510 SCRA 35, 44.

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

Carpio Morales, J., on official leave.

THIRD DIVISION

[G.R. No. 166498. June 11, 2009]

HON. SECRETARY OF FINANCE, and HON. GUILLERMO L. PARAYNO, JR., in his capacity as Commissioner of the Bureau of Internal Revenue, *petitioners, vs.* **LA SUERTE CIGAR AND CIGARETTE FACTORY, TELENGTAN BROTHERS & SONS, INC.,** *respondents.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); POWER TO RECLASSIFY CIGARETTE BRAND, NOT GRANTED IN THE REVENUE REGULATIONS; EFFECT THEREOF, EXPLAINED; APPLICATION IN CASE AT BAR.— This issue has been settled in the recent case of *British American Tobacco v. Camacho* where the Court held, among others, that Revenue Regulations Nos. 9-2003, 22-2003, and Revenue Memorandum Order No. 6-2003, as pertinent to cigarettes packed by machine, are invalid insofar as they grant the BIR the power to reclassify or update the classification of new brands every two years or earlier, to wit: Petitioner asserts that Revenue Regulations No. 1-97, as amended by Revenue Regulations No. 9-2003, Revenue Regulations No. 22-2003 and Revenue Memorandum Order No. 6-2003, are invalid insofar as they empower the BIR to reclassify or update the classification of new brands of cigarettes based on their current net retail prices every two years or earlier. It claims that RA 8240, even prior to its amendment by RA

9334, did not authorize the BIR to conduct said periodic resurvey and reclassification. x x x There is merit to the contention. In order to implement RA 8240 following its effectivity on January 1, 1997, the BIR issued Revenue Regulations No. 1-97, dated December 13, 1996, which mandates a one-time classification only. Upon their launch, new brands shall be initially taxed based on their suggested net retail price. Thereafter, a survey shall be conducted within three (3) months to determine their current net retail prices and, thus, fix their official tax classifications. However, the BIR made a turnaround by issuing Revenue Regulations No. 9-2003, dated February 17, 2003, which partly amended Revenue Regulations No. 1-97, by authorizing the BIR to periodically reclassify new brands (*i.e.*, every two years or earlier) based on their current net retail prices. Thereafter, the BIR issued Revenue Memorandum Order No. 6-2003, dated March 11, 2003, prescribing the guidelines on the implementation of Revenue Regulations No. 9-2003. This was patent error on the part of the BIR for being contrary to the plain text and legislative intent of RA 8240. It is clear that the afore-quoted portions of Revenue Regulations No. 1-97, as amended by Section 2 of Revenue Regulations 9-2003, and Revenue Memorandum Order No. 6-2003 unjustifiably emasculate the operation of Section 145 of the NIRC because they authorize the Commissioner of Internal Revenue to update the tax classification of new brands every two years or earlier subject only to its issuance of the appropriate Revenue Regulations, when nowhere in Section 145 is such authority granted to the Bureau. Unless expressly granted to the BIR, the power to reclassify cigarette brands remains a prerogative of the legislature which cannot be usurped by the former. The reclassification of Astro and Memphis pursuant to Revenue Regulations Nos. 9-2003 and 22-2003 constitutes the prohibited reclassification contemplated in *British American Tobacco v. Camacho*. It will be recalled that these brands were already classified by the BIR based on their current net retail prices in 1999 through a market survey. Consequently, their upward reclassification in 2003 by the BIR through another market survey is a prohibited reclassification.

2. ID.; ID.; ID.; REVENUE REGULATIONS NOS. 9-2003 AND 22-2003, DECLARED VOID; RATIONALE. — Under Section 7 of the NIRC, the Commissioner is authorized to delegate to his subordinates the powers vested in him except,

among others, the power to issue rulings of first impression. Here, the subject matter of the letter does not involve the exercise of the power to rule on novel issues. It merely implemented the revenue regulations then in force. Verily, the classification of Astro and Memphis based on the 1999 market survey conducted by the BIR itself remains uncontroverted because petitioners neither denied that a survey was indeed conducted nor questioned the validity of the results thereof and of the applicable excise tax rates on Astro and Memphis as stated in the subject letter. Considering that the classification of Astro and Memphis based on their actual net retail prices in 1999 is valid, their upward reclassification in 2003 constituted a prohibited reclassification. In sum, the trial court correctly ruled that Revenue Regulations Nos. 9-2003 and 22-2003 are void insofar as they empower the BIR to periodically review or re-determine the current net retail prices of cigarettes for purposes of updating their tax classification every two years or earlier consistent with the Court's pronouncements in *British American Tobacco v. Camacho*. Consequently, the upward reclassification of Astro and Memphis in Annex "A" of Revenue Regulations No. 22-2003 is invalid.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Platon Martinez Flores San Pedro & Leaño for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition assails the July 12, 2004 Decision[1] of the Regional Trial Court of Parañaque City, Branch 194, in Civil Case No. 03-0117 declaring as void Revenue Regulations Nos. 9-2003 and 22-2003 insofar as they authorize the Bureau of Internal Revenue (BIR) to periodically conduct a survey on the current net retail prices of cigarettes registered after January 1, 1997 for the purpose of updating their tax classification.

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[1] Penned by Judge Leoncia Real-Dimagiba; *rollo*, unpaged but attached as Annex "A" of the petition.

Republic Act (RA) No. 8240, entitled "An Act Amending Sections 138, 139, 140 and 142 of the National Internal Revenue Code (NIRC), as Amended and For Other Purposes" took effect on January 1, 1997. Subsequently, RA No. 8424 was passed recodifying the NIRC. Section 142 of the NIRC was renumbered as Section 145, paragraph (C) thereof provides for four tiers of tax rates based on the net retail price per pack of cigarettes, *viz*:

SEC. 145. *Cigars and cigarettes.* —

x x x x x x x x x

(C) *Cigarettes Packed by Machine.* — There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below:

(1) If the net retail price (excluding the excise tax and the value-added tax) is above Ten pesos (₱10.00) per pack, the tax shall be Twelve pesos (₱12.00) per pack; [₱13.44 effective January 1, 2000]

(2) If the net retail price (excluding the excise tax and the value-added tax) exceeds Six pesos and fifty centavos (₱6.50) but does not exceed Ten pesos (₱10.00) per pack, the tax shall be Eight pesos (₱8.00) per pack; [₱8.96 effective January 1, 2000]

(3) If the net retail price (excluding the excise tax and the value-added tax) is Five pesos (₱5.00) but does not exceed Six pesos and fifty centavos (₱6.50) per pack, the tax shall be Five pesos (₱5.00) per pack; [₱5.60 effective January 1, 2000]

(4) If the net retail price (excluding the excise tax and the value-added tax) is below Five pesos (₱5.00) per pack, the tax shall be One peso (₱1.00) per pack. [₱1.12 effective January 1, 2000]

x x x x x x x x x

The rates of specific tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) hereof, shall be increased by twelve percent (12%) on January 1, 2000.

Prior to the effectivity of RA 8240 on January 1, 1997, a survey of the net retail prices per pack of cigarettes as of October 1, 1996 was conducted. The results thereof were embodied as Annex "D" of the NIRC and classified existing brands as those registered and existing prior to January 1, 1997 which classification cannot be revised except by an act of Congress.[2]

To implement RA 8240, the BIR issued Revenue Regulations No. 1-97 which provided that new brands, or those registered after January 1, 1997, shall be initially assessed at their suggested retail prices. Three months after a new brand is launched in the market, a survey shall be conducted to determine its actual net retail price which shall be the basis in determining its specific tax classification. Pertinent portions thereof, read —

SECTION 2. Definition of Terms.

x x x x x x x x x

3. Duly registered or existing brand of cigarettes — shall include duly registered, existing or active brands of cigarettes, prior to January 1, 1997.

x x x x x x x x x

6. **New Brands — shall mean duly registered after January 1, 1997 and shall include duly registered, inactive brands of cigarette not sold in commercial quantity before January 1, 1997.**

x x x x x x x x x

SECTION 4. Classification and Manner of Taxation of Existing Brands, New Brands and Variant of Existing Brands.

x x x x x x x x x

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[2] The classification of each brand of cigarettes based on its average net retail price as of October 1, 1996, as set forth in Annex "D", shall remain in force until revised by Congress. (NIRC, Section 145, par. 7)

B. New Brand

New brands shall be classified according to their current net retail price. In the meantime that the current net retail price has not yet been established, the suggested net retail price shall be used to determine the specific tax classification. Thereafter, a survey shall be conducted in 20 major supermarkets or retail outlets in Metro Manila (for brands of cigarette marketed nationally) or in five (5) major supermarkets or retail outlets in the region (for brands which are marketed only outside Metro Manila) at which the cigarette is sold on retail in reams/cartons, **three (3) months after the initial removal of the new brand to determine the actual net retail price excluding the excise tax and value added tax which shall then be the basis in determining the specific tax classification.** In case the current net retail price is higher than the suggested net retail price, the former shall prevail. Otherwise, the suggested net retail price shall prevail. Any difference in specific tax due shall be assessed and collected inclusive of increments as provided for by the National Internal Revenue Code, as amended. (Emphasis supplied)

In February 1999, respondents introduced into the market Astro and Memphis cigarettes and their variants with suggested net retail prices below P5.00 per pack and a temporary excise tax pegged at P1.00 per pack.[3] On May 15, 1999, respondents requested the BIR to conduct a survey to determine the final tax classification of said brands of cigarettes.[4]

In the BIR's reply dated June 24, 1999,[5] Assistant Commissioner Leonardo B. Albar informed respondents that

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[3] SEC. 145. Cigars and cigarettes. —

x x x x x x x x x

(c) Cigarettes packed by machine. – There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below:

x x x x x x x x x

(4) If the net retail price (excluding the excise tax and the value-added tax) is below Five pesos (₱5.00) per pack, the tax shall be One peso (₱1.00) per pack.

[4] Exhibit "D", Folder of Exhibits, p. 5.

[5] Exhibit "D", Folder of Exhibits, p. 6.

based on the survey conducted by the BIR for purposes of determining the official and final tax classification, the specific tax per pack of Astro and Memphis cigarettes is ₱1.00. The survey showed that the average net retail prices per pack of said cigarettes is below ₱5.00, hence, the corresponding excise tax under Section 145 (C) (4) is P1.00 per pack. This was increased to ₱1.12 per pack, pursuant to the 12% tax rate increase under Section 145 of the NIRC, effective January 1, 2000.[6]

On February 17, 2003, the BIR issued the assailed **Revenue Regulations No. 9-2003**, Section 2 of which amended Revenue Regulations No. 1-97, by providing for a periodic review every two years or earlier of the current net retail prices of new brands and their variants to establish and update their tax classification. Section 4(B)(e)(c), 2nd paragraph of Revenue Regulations No. 1-97, as amended by Revenue Regulations No. 9-2003, reads:

> For the purpose of establishing or **updating the tax classification** of new brands and variant(s) thereof, their current net retail price shall be **reviewed periodically through the conduct of survey or any other appropriate activity, as mentioned above, every two (2) years unless earlier ordered by the Commissioner.** However, notwithstanding any increase in the current net retail price, the tax classification of such new brands shall remain in force until the same is altered or changed through the issuance of an appropriate Revenue Regulations. (Emphasis supplied)

Section 4 of Revenue Regulations No. 9-2003 also mandated the determination and re-determination of the current net retail prices of cigarettes launched into the market starting January 1, 1997 and which were not surveyed within the last two years from the effectivity of Revenue Regulations No. 9-2003. Thus —

> SEC. 4. TRANSITORY CLAUSE. — For all brands duly registered and introduced in the market beginning January 1, 1997 the current net retail price of which was not determined for the last two (2) years from the effectivity hereof, a determination or **re-**

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[6] The rates of excise tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) hereof, shall be increased by twelve percent (12%) on January 1, 2000 (NIRC, Section 145 (C) (4) par. 4).

determination of the current net retail prices thereof shall be conducted immediately upon the effectivity of these Regulations. (Emphasis supplied)

Subsequently, **Revenue Regulations No. 22-2003**[7] was issued on August 8, 2003 to implement the revised tax classification of certain new brands introduced in the market after January 1, 1997. This was based on the survey of the current net retail prices of new brands as mandated by Revenue Regulations No. 9-2003. The results of the survey (embodied as Annex "A" of Revenue Regulations No. 22-2003), revealed that the average net retail prices of Astro and Memphis cigarettes ranged from ₱5.72 to ₱6.13, thus increasing the applicable excise tax from ₱1.12 per pack to P5.60 per pack.[8]

On March 14, 2003, respondents filed a case for injunction with the trial court assailing the validity of Revenue Regulations No. 9-2003 and praying for the issuance of a temporary restraining order and/or writ of preliminary injunction to enjoin the implementation of said regulation insofar as it authorizes the BIR to update the tax classification of cigarettes registered after January 1, 1997.[9] The complaint was later amended[10] to include Revenue Regulations No. 22-2003. Respondents asserted that Section 145 of the NIRC does not give the BIR the power to reclassify cigarettes introduced into the market after January 1, 1997, hence, the reclassification thereof by the BIR constitutes usurpation of legislative powers.[11]

Petitioners, on the other hand, maintained that the assailed revenue regulations constitute a valid exercise of subordinate

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[7] *Id.* at 135.

[8] (3) If the net retail price (excluding the excise tax and the value-added tax) is Five pesos (₱5.00) but does not exceed Six pesos and fifty centavos (₱6.50) per pack, the tax shall be Five pesos and sixty centavos (₱5.60) per pack;

[9] *Rollo*, pp. 71-86.

[10] Amended Complaint, *rollo*, pp. 135-157.

[11] *Rollo*, pp. 145-146.

legislation having been issued pursuant to the powers of the Commissioner of Internal Revenue and the Secretary of Finance.

On July 12, 2004, the trial court rendered a decision declaring Revenue Regulations Nos. 9-2003 and 22-2003 unconstitutional insofar as they empower the BIR to reclassify cigarette brands; and enjoining petitioners from implementing the same insofar as they actually reclassified Astro and Memphis. The dispositive portion thereof reads:

> WHEREFORE, finding RR Nos. 9-2003 and 22-2003 not in conformity with Section 145 in relation to Section 244 of the Tax Code as they tend to infringe upon the legislative power of taxation, and therefore violative of the constitutional provision that tax laws should originate from Congress, the same are hereby declared unconstitutional and ineffective and as such, the defendants Secretary of Finance and Commissioner of Internal Revenue are hereby permanently enjoined from implementing thereof (sic) insofar as they require the re-determination and re-classification of Astro and Memphis brands and their variants for purposes of computing excise tax on such products.
>
> SO ORDERED.[12]

Petitioners filed a motion for reconsideration but the same was denied on December 22, 2004.[13]

Hence, the instant petition raising the issue of whether the BIR has the power to periodically review or re-determine the current net retail prices of new brands for the purpose of updating their tax classification pursuant to Revenue Regulations Nos. 9-2003 and 22-2003.

This issue has been settled in the recent case of *British American Tobacco v. Camacho*[14] where the Court held, among others, that Revenue Regulations Nos. 9-2003, 22-2003, and Revenue Memorandum Order No. 6-2003, as pertinent to

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[12] *Id.*, unpaged but found in Annex "A" of the Petition.

[13] *Id.*, unpaged but the Order denying the motion is appended as Annex "B" of the petition.

[14] G.R. No. 163583, August 20, 2008.

cigarettes packed by machine, are invalid insofar as they grant the BIR the power to reclassify or update the classification of new brands every two years or earlier, to wit:

> Petitioner asserts that Revenue Regulations No. 1-97, as amended by Revenue Regulations No. 9-2003, Revenue Regulations No. 22-2003 and Revenue Memorandum Order No. 6-2003, are invalid insofar as they empower the BIR to reclassify or update the classification of new brands of cigarettes based on their current net retail prices every two years or earlier. It claims that RA 8240, even prior to its amendment by RA 9334, did not authorize the BIR to conduct said periodic resurvey and reclassification.
>
> x x x x x x x x x
>
> There is merit to the contention.
>
> In order to implement RA 8240 following its effectivity on January 1, 1997, the BIR issued Revenue Regulations No. 1-97, dated December 13, 1996, which mandates a one-time classification only. Upon their launch, new brands shall be initially taxed based on their suggested net retail price. Thereafter, a survey shall be conducted within three (3) months to determine their current net retail prices and, thus, fix their official tax classifications. However, the BIR made a turnaround by issuing Revenue Regulations No. 9-2003, dated February 17, 2003, which partly amended Revenue Regulations No. 1-97, by authorizing the BIR to periodically reclassify new brands (*i.e.*, every two years or earlier) based on their current net retail prices. Thereafter, the BIR issued Revenue Memorandum Order No. 6-2003, dated March 11, 2003, prescribing the guidelines on the implementation of Revenue Regulations No. 9-2003. This was patent error on the part of the BIR for being contrary to the plain text and legislative intent of RA 8240.
>
> It is clear that the afore-quoted portions of Revenue Regulations No. 1-97, as amended by Section 2 of Revenue Regulations 9-2003, and Revenue Memorandum Order No. 6-2003 unjustifiably emasculate the operation of Section 145 of the NIRC because they authorize the Commissioner of Internal Revenue to update the tax classification of new brands every two years or earlier subject only to its issuance of the appropriate Revenue Regulations, when nowhere in Section 145 is such authority granted to the Bureau. Unless expressly granted to the BIR, the power to reclassify cigarette brands remains a prerogative of the legislature which cannot be usurped by the former.

More importantly, as previously discussed, the clear legislative intent was for new brands to benefit from the same freezing mechanism accorded to Annex "D" brands. To reiterate, in enacting RA 8240, Congress categorically rejected the DOF proposal and Senate Version which would have empowered the DOF and BIR to periodically adjust the excise tax rate and tax brackets, and to periodically resurvey and reclassify cigarette brands. (This resurvey and reclassification would have naturally encompassed both old and new brands.) It would thus, be absurd for us to conclude that Congress intended to allow the periodic reclassification of new brands by the BIR after their classification is determined based on their current net retail price while limiting the freezing of the classification to Annex "D" brands. Incidentally, Senator Ralph G. Recto expressed the following views during the deliberations on RA 9334, which later amended RA 8240:

> Senator Recto: Because, like I said, when Congress agreed to adopt a specific tax system [under R.A. 8240], when Congress did not index the brackets, and Congress did not index the rates but only provided for a one rate increase in the year 2000, we shifted from *ad valorem* which was based on value to a system of specific which is based on volume. Congress then, in effect, determined the classification based on the prices at that particular period of time and classified these products accordingly.
>
> Of course, Congress then decided on what will happen to the new brands or variants of existing brands. To favor government, a variant would be classified as the highest rate of tax for that particular brand. In case of a new brand, Mr. President, then the BIR should classify them. **But I do not think it was the intention of Congress then to give the BIR the authority to reclassify them every so often. I do not think it was the intention of Congress to allow the BIR to classify a new brand every two years, for example, because it will be arbitrary for the BIR to do so.** x x x[15] (Emphasis supplied)

For these reasons, the amendments introduced by RA 9334 to RA 8240, insofar as the freezing mechanism is concerned, must be seen merely as underscoring the legislative intent already in place

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[15] RECORD, SENATE 13TH CONGRESS (December 6, 2004).

then, *i.e.* new brands as being covered by the freezing mechanism after their classification based on their current net retail prices.

x x x x x x x x x

It should be noted though that on August 8, 2003, the BIR issued Revenue Regulations No. 22-2003 which implemented the revised tax classifications of new brands based on their current net retail prices through the market survey conducted pursuant to Revenue Regulations No. 9-2003. Annex "A" of Revenue Regulations No. 22-2003 lists the result of the market survey and the corresponding recommended tax classification of the new brands therein aside from Lucky Strike. However, whether these other brands were illegally reclassified based on their actual current net retail prices by the BIR must be determined on a case-to-case basis because it is possible that these brands were classified based on their actual current net retail price for the first time in the year 2003 just like Lucky Strike. Thus, we shall not make any pronouncement as to the validity of the tax classifications of the other brands listed therein.

The reclassification of Astro and Memphis pursuant to Revenue Regulations Nos. 9-2003 and 22-2003 constitutes the prohibited reclassification contemplated in *British American Tobacco v. Camacho*. It will be recalled that these brands were already classified by the BIR based on their current net retail prices in 1999 through a market survey. Consequently, their upward reclassification in 2003 by the BIR through another market survey is a prohibited reclassification.[16]

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[16] The legislative intent not to delegate to the BIR the authority to reclassify cigarette brands was made explicit in RA No. 9334, which on January 1, 2005 further amended Section 145 of the NIRC. As amended, Section 145 now provides that the BIR's classification of cigarettes launched between January 1, 1997 to December 31, 2003, under which category Astro and Memphis belong, cannot be reclassified further except by Congressional act. Pertinent portions thereof, read:

> New brands, as defined in the immediately following paragraph, shall initially be classified according to their suggested net retail price.
>
> New brands shall mean a brand registered after the date of effectivity of R.A. No. 8240 [on January 1, 1997].
>
> Suggested net retail price shall mean the net retail price at which new brands, as defined above, of locally manufactured or imported

Petitioners do not dispute that the BIR conducted a survey in 1999 to determine the actual net retail prices of Astro and Memphis months after their launch into the market. However, in their Supplemental Memorandum before the trial court, they contended that the classification of Astro and Memphis, as contained in the letter of BIR Assistant Commissioner Leonardo Albar, is invalid because (1) it was contained in a mere letter and not in a numbered ruling; and (2) it was not signed by the BIR Commissioner.[17]

The subject letter of the Assistant Commissioner, reads:

June 24, 1999

LA SUERTE CIGAR & CIGARETTE FACTORY
Km. 14, West Service Road, South Superhighway
Parañaque, Metro Manila

ATTENTION: Mr. Antonio B. Yao
Vice-President for Operations

This refers to the retail price survey conducted by this Office for purposes of determining the official and final tax classification

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cigarettes are intended by the manufacturer or importer to be sold on retail in major supermarkets or retail outlets in Metro Manila for those marketed nationwide, and in other regions, for those with regional markets. At the end of three (3) months from the product launch, the Bureau of Internal Revenue shall validate the suggested net retail price of the new brand against the net retail price as defined herein and determine the correct tax bracket under which a particular new brand of cigarette, as defined above, shall be classified. After the end of eighteen (18) months from such validation, the Bureau of Internal Revenue shall revalidate the initially validated net retail price against the net retail price as of the time of revalidation in order to finally determine the correct tax bracket under which a particular new brand of cigarettes shall be classified; **Provided however, That brands of cigarettes introduced in the domestic market between January 1, 1997 and December 31, 2003 shall remain in the classification under which the Bureau of Internal Revenue has determined them to belong as of December 31, 2003. Such classification of new brands and brands introduced between January 1, 1997 and December 31, 2003 shall not be revised except by an act of Congress.** (Emphasis added)

[17] Records, Vol. II, pp. 1573-1574.

of new brands of cigarette that your company has initially manufactured and distributed in major supermarkets located on designated regions, re:

BRANDS	REGION
Astro Menthol 100's	Pangasinan
Astro Filter King	Pangasinan
Astro Menthol King	Pangasinan
Memphis Menthol 100's	Pangasinan
Memphis Filter King	Pangasinan

Based on the results of the survey conducted at the said regions, together with their tax classifications, the average retail price per pack of the different brands of cigarette are as follows:

Brand Names	Average Retail Price/ Ream	VAT	Specific Tax	Average Net Retail Price/ pack	**Specific Tax Per Pack**
1. Astro Menthol 100's	₱63.71	₱.579	₱1.00	₱6.50	**₱1.00**
2. Astro Filter King	60.06	.546	1.00	6.00	**1.00**
3. Astro Menthol King	62.40	.567	1.00	6.40	**1.00**
4. Memphis Menthol 100's	64.00	.58	1.00	6.50	**1.00**
5.Memphis Filter King	59.00	.54	1.00	6.07	**1.00**

Accordingly, you are hereby required to submit the corresponding Manufacturer's Sworn Statement for each brand of cigarette prescribed under existing rules and regulations to the Assistant Commissioner, Excise Tax Service within ten (10) days from receipt hereof.

For your information and guidance.

Very truly yours,

LEONARDO B. ALBAR
Assistant Commissioner
Excise Tax Service[18]

[18] Exhibit "D", Folder of Exhibits, p. 6.

Contrary to petitioners' contention, the above classification of Astro and Memphis cigarettes is valid. The revenue regulations then in force merely required that the concerned taxpayer be notified of the result of the market survey which is then used as basis for fixing the official and final tax classification of a new brand. This has been sufficiently satisfied by the letter of the Assistant Commissioner, hence, the fact that the same was not in the form of a numbered ruling will not invalidate the classification contained therein.

Further, the Assistant Commissioner acted within his jurisdiction in signing the letter informing respondents of the conduct of the survey, the results thereof, as well as the applicable excise tax rates on Astro and Memphis. Under Section 7[19] of the NIRC, the Commissioner is authorized to delegate to his subordinates the powers vested in him except, among others, the power to issue rulings of first impression. Here, the subject matter of the letter does not involve the exercise of the power to rule on novel issues. It merely implemented the revenue regulations then in force. Verily, the classification of Astro and Memphis based on the 1999 market survey conducted by the BIR itself remains uncontroverted because petitioners neither denied that a survey was indeed conducted nor questioned the validity of the results thereof and of the applicable excise tax rates on Astro and Memphis as stated in the subject letter. Considering that the classification of Astro and Memphis based on their actual net retail prices in 1999 is valid, their upward reclassification in 2003 constituted a prohibited reclassification.

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[19] SEC. 7. Authority of the Commissioner to Delegate Power. — The Commissioner may delegate the powers vested in him under pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation for the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated:

x x x x x x x x x

(b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

In sum, the trial court correctly ruled that Revenue Regulations Nos. 9-2003 and 22-2003 are void insofar as they empower the BIR to periodically review or re-determine the current net retail prices of cigarettes for purposes of updating their tax classification every two years or earlier consistent with the Court's pronouncements in *British American Tobacco v. Camacho*. Consequently, the upward reclassification of Astro and Memphis in Annex "A" of Revenue Regulations No. 22-2003 is invalid.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

EN BANC

[G.R. No. 179452. June 11, 2009]

CIVIL SERVICE COMMISSION, *petitioner, vs.* **LARRY M. ALFONSO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CIVIL SERVICE COMMISSION; POWERS AND FUNCTIONS; CONSTRUED. — As the central personnel agency of the government, the CSC has jurisdiction to supervise the performance of and discipline, if need be, all government employees, including those employed in government-owned or controlled corporations with original charters such as PUP. Accordingly, all PUP officers and employees, whether they be classified as teachers or professors pursuant to certain provisions of law, are deemed, first and foremost, civil servants accountable to the people and answerable to the CSC in cases of complaints lodged by a citizen against them as public servants. Admittedly, the CSC has appellate jurisdiction over disciplinary cases decided by government departments, agencies

and instrumentalities. However, a complaint may be filed directly with the CSC, and the Commission has the authority to hear and decide the case, although it may opt to deputize a department or an agency to conduct the investigation. Specifically, Sections 9(j) and 37(a) of P.D. 807, otherwise known as the Civil Service Law of 1975, provide: SECTION 9. Powers and Functions of the Commission. – The Commission shall administer the Civil Service and shall have the following powers and function: x x x (j) Hear and decide administrative disciplinary cases **instituted directly with it** in accordance with Section 37 **or brought to it on appeal***;* x x x Section 37. Disciplinary Jurisdiction. — (a) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from Office. **A complaint may be filed directly with the Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation.** The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken.

2. ID.; ID.; ID.; JURISDICTION; ACTIVE PARTICIPATION IN THE PROCEEDINGS BARS IMPUNITY OF THE COMMISSION'S AUTHORITY; RATIONALE. — Equally significant is the fact that he had already submitted himself to the jurisdiction of the CSC when he filed his counter-affidavit and his motion for reconsideration and requested for a change of venue, not from the CSC to the BOR of PUP, but from the CSC-Central Office to the CSC-NCR. It was only when his motion was denied that he suddenly had a change of heart and raised the question of proper jurisdiction. This cannot be allowed because it would violate the doctrine of *res judicata*, a legal principle that is applicable to administrative cases as well. At the very least, respondent's active participation in the proceedings by seeking affirmative relief before the CSC already bars him from impugning the Commission's authority under the principle of estoppel by laches. x x x Verily, since the complaints were filed directly with the CSC, and the CSC has opted to assume jurisdiction over the complaint, the CSC's

exercise of jurisdiction shall be to the exclusion of other tribunals exercising concurrent jurisdiction. To repeat, it may, however, choose to deputize any department or agency or official or group of officials such as the BOR of PUP to conduct the investigation, or to delegate the investigation to the proper regional office. But the same is merely permissive and not mandatory upon the Commission.

3. ID.; ID.; ID.; PREVENTIVE SUSPENSION OF GOVERNMENT EMPLOYEES; KINDS. — There are two kinds of preventive suspension of government employees charged with offenses punishable by removal or suspension, *viz:* (1) preventive suspension pending investigation; and (2) preventive suspension pending appeal if the penalty imposed by the disciplining authority is suspension or dismissal and, after review, the respondent is exonerated. Preventive suspension pending investigation is not a penalty. It is a measure intended to enable the disciplining authority to investigate charges against respondent by preventing the latter from intimidating or in any way influencing witnesses against him. If the investigation is not finished and a decision is not rendered within that period, the suspension will be lifted and the respondent will automatically be reinstated. If after investigation, respondent is found innocent of the charges and is exonerated, he should be reinstated.

4. ID.; ID.; ID.; ID.; PENALTY, EXPLAINED. — A person charged with grave misconduct is put on notice that he stands accused of misconduct coupled with any of the elements of corruption or willful intent to violate the law or established rules. Meanwhile, conduct prejudicial to the best interest of the service is classified as a grave offense with a corresponding penalty of suspension for six (6) months and one (1) day to one (1) year for the first offense, and the penalty of dismissal for the second offense. In addition to the gravity of the charges against Alfonso, and equally relevant, is the opportunity available to him to use his position as Director of the Human Resources Management Department of the university to exert undue influence or pressure on the potential witnesses that the complainants may produce, or to tamper with the documentary evidence that may be used against him. Preventive suspension is, therefore, necessary so that respondent's delicate yet powerful position in the university may not be used to compromise the integrity and impartiality of the entire proceedings.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Solosa De Guzman and Associates for respondent.

D E C I S I O N

NACHURA, *J.*:

This is a Rule 45 petition assailing the May 21, 2007 Decision[1] and August 23, 2007 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 97284, which reversed Civil Service Commission (CSC) Resolution Nos. 061821[3] and 061908[4] dated October 16, 2006 and November 7, 2006, respectively, as well as its Order[5] dated December 11, 2006, formally charging respondent Larry Alfonso with Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service and preventively suspending him from his position as Director of the Human Resources Management Department of the Polytechnic University of the Philippines (PUP).

The facts, as summarized by the CA, are as follows:

Respondent Larry M. Alfonso is the Director of the Human Resources Management Department of PUP. On July 6, 2006, Dr. Zenaida Pia, Professor IV in PUP-Sta. Mesa, and Dindo Emmanuel Bautista, President of *Unyon ng mga Kawani sa PUP*, jointly filed an Affidavit-Complaint against Alfonso for violation of Republic Act (RA) No. 6713, charging the latter with grave misconduct, conduct prejudicial to the best interest of the Service, and violation of Civil Service Law, rules and

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[1] Penned by Associate Justice Magdangal M. de Leon, with Associate Justices Rebecca de Guia-Salvador and Ricardo R. Rosario, concurring; *rollo*, pp. 54-68.

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

[3] *Id.* at 71-76.

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

[5] *Id.* at 110-112.

regulations. The affidavit-complaint was lodged before the Civil Service Commission (CSC). In their affidavit, Dr. Pia and Bautista alleged, among others, that respondent repeatedly abused his authority as head of PUP's personnel department when the latter prepared and included his name in Special Order Nos. 0960 and 1004 for overnight services, ostensibly authorizing him to work for 24 hours straight from May 16 to 20, May 22 to 27 and May 29 to June 2, 2006. As a result thereof, Alfonso made considerable earnings for allegedly working in humanly impossible conditions 24 hours straight daily, for three consecutive weeks.[6]

In support of their complaint, Dr. Pia and Bautista submitted the following documentary evidence:

1. Special Order No. 1004, s. 2006;
2. Special Order No. 0960, s. 2006;
3. Daily time records of Saturday and Overnight Services of Alfonso;
4. PUP Perm-OT overnight May 2006 payroll register;
5. Xerox copy of check no. 162833 dated May 31, 2006;
6. Summary of Alfonso's Saturday, overnight and overtime schedule;
7. Computation of the number of hours, days and weeks that Alfonso allegedly served; and
8. Explanation of official time, night service, Saturday overtime and overnight services rendered by Alfonso for the month of May.[7]

On August 10, 2006, the Office of Legal Affairs (OLA) of the CSC issued an order directing Alfonso to submit his counter-affidavit/comment within three (3) days from receipt thereof.

In his Counter-Affidavit[8] dated August 30, 2006, respondent averred that he only rendered overnight work on May 17, 19, 22, 24, 26, 29 and 31, 2006. He explained that his daily time record explicitly indicates that it covers overnight services pursuant

[6] *Id.* at 55.

[7] *Id.* at 32-33.

[8] *Id.* at 113-122.

to S.O. No. 1004, series of 2006, and that an entry such as "Day 17, arrival 8:00 PM; Day 18, departure 8:00 AM" connoted only a day of overnight work and not continuous two (2) days of rendition of services.[9]

The CSC, however, found Alfonso's explanation wanting. On October 25, 2006, it issued Resolution No. 061821 formally charging Alfonso with grave misconduct and conduct prejudicial to the best interest of the Service, and imposing a 90-day preventive suspension against him.[10]

Aggrieved, respondent filed an omnibus motion for reconsideration of the preventive suspension order and requested a change of venue[11] from the CSC-Central Office to the CSC-National Capital Region (CSC-NCR). In the motion, he argued that it is the CSC-NCR regional office that has jurisdiction over the matter pursuant to Section 6 of CSC Resolution No. 99-1936, and that to hold otherwise may deprive him of his right to appeal.[12] The motion was denied.[13]

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[9] *Id.* at 55-56.

[10] Pertinent portion of the said Resolution states:

> WHEREFORE, the Commission hereby issues a FORMAL CHARGE against Larry M. Alfonso for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service. Accordingly, he is given five (5) days from receipt hereof to submit his written answer under oath, together with the affidavits of his witnesses and documentary evidence, if any. He is further directed to indicate in his Answer whether he elects a formal investigation or waive the same. Failure to file an answer shall be deemed a waiver on his part. A Motion to Dismiss, Request for Clarification, Bill of Particulars or any other pleadings shall be considered by the Commission as his Answer and shall be evaluated as such. Furthermore, he is advised of his right to the assistance of a counsel of his choice.
>
> A PREVENTIVE SUSPENSION is hereby issued against Larry M. Alfonso for ninety (90) days effective upon receipt hereof. (*Id.* at 75-76.)

[11] *Rollo,* pp. 77-93.

[12] *Id.* at 89-92.

[13] The dispositive portion of the said Resolution reads:

Undaunted, Alfonso filed another motion for reconsideration on November 20, 2006, accompanied by a motion to admit his supplemental answer.[14] This time, however, respondent argued that the CSC had no jurisdiction to hear and decide the administrative case filed against him. According to him, it is the PUP Board of Regents that has the exclusive authority to appoint and remove PUP employees pursuant to the provisions of R.A. No. 8292[15] in relation to R.A. No. 4670.[16]

Without ruling on the motion, Assistant Commissioner Atty. Anicia Marasigan-de Lima, head of CSC-NCR, issued an Order[17] dated December 11, 2006 directing the Office of the President of PUP to implement the preventive suspension order against respondent.[18]

WHEREFORE, the motion of Larry M. Alfonso to lift the order of preventive suspension issued against him by the Commission is hereby DENIED. Accordingly, Civil Service Commission (CSC) Resolution No. 061821 dated October 16, 2006, formally charging Alfonso of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service and simultaneously placing him under preventive suspension for a period of ninety (90) days, STANDS.

Likewise, the request of Alfonso for the transfer of venue of the instant case from the CSC Central Office to the CSC-National Capital Region (CSC-NCR) is DENIED. The Office of Legal Affairs (OLA) is directed to proceed with the formal investigation of the case. (*Id.* at 98.)

[14] *Rollo*, pp. 99-109.

[15] Entitled "An Act Providing for the Uniform Composition and Powers of the Governing Boards, the Manner of Appointment and Term of Office of the President of Chartered State Universities and Colleges, and for Other Purposes," or more commonly known as the Higher Education Modernization Act of 1997.

[16] Otherwise known as the *Magna Carta* for Public School Teachers.

[17] *Supra* note 5.

[18] The dispositive portion of the said Order reads:

WHEREFORE, the Polytechnic University of the Philippines, through its Acting President Dr. Dante G. Guevarra, is hereby directed to place Larry M. Alfonso under preventive suspension IMMEDIATELY upon receipt hereof pursuant to CSC Resolution Nos. 061821 and 061908.

Dissatisfied, respondent sought relief before the CA *via* a petition for *certiorari* and prohibition.

On May 21, 2007, the CA rendered a Decision[19] in favor of Alfonso. The pertinent portion of the decision declares:

> Applying the foregoing provisions, it appears that the CSC may take cognizance of an administrative case in two ways: (1) through a complaint filed by a private citizen against a government official or employee; and (2) appealed cases from the decisions rendered by Secretaries or heads of agencies, instrumentalities, provinces, cities and municipalities in cases filed against officers and employees under their jurisdiction.
>
> Indisputably, the persons who filed the affidavit-complaint against petitioner held positions in and were under the employ of PUP. Hence, they cannot be considered as private citizens in the contemplation of the said provision. It is likewise undisputed that the subject CSC resolutions were not rendered in the exercise of its power to review or its appellate jurisdiction but was an ordinary administrative case. Hence, the present case falls short of the requirement that would otherwise have justified the CSC's immediate exercise of its jurisdiction over the administrative case against petitioner.
>
> Even assuming that the CSC may directly entertain the complaints filed with it, the doctrine of exhaustion [of] administrative remedies still prevents it from entertaining the present administrative case. If a remedy within the administrative machinery can still be had by giving the administrative officer concerned every opportunity to decide on the matter that comes within his jurisdiction, then such remedy should be priorly exhausted.
>
> The circumstances in this case do not justify the disregard of the doctrine. Hence, the administrative complaint should have been lodged with the PUP board of regents.
>
> x x x x x x x x x

Failure to do so will constrain this Office to initiate contempt charges and file an administrative case against D. Guevarra for Neglect of Duty or Conduct Prejudicial to the Best Interest of the Service pursuant to Section 83 of the Uniform Rules on Administrative Cases in the Civil Service. (*Id.* at 112.)

[19] *Supra* note 1.

The CA ratiocinated that since Presidential Decree (P.D.) No. 1341, the law creating PUP, is the special law governing PUP, then it is the Board of Regents (BOR) that should carry out the duties of the investigating committee and has the proper authority to discipline PUP personnel corollary to the BOR's general powers of administration.[20] According to the CA, the power of the BOR to hire carries with it the corresponding power to discipline PUP personnel pursuant to Section 7(c) of P.D.1341, to wit:

> Section 7. The Board of Regents shall have the following powers and duties in addition to his general powers of administration and the exercise of all the powers of a corporation as provided in Section 13 of Act Numbered fourteen hundred fifty-nine as amended, otherwise known as the Philippine Corporation Law:
>
> x x x x x x x x x
>
> (c) To appoint, on the recommendation of the President of the University, professors, instructors, lecturers and other members of the faculty, and other officials and employees of the University; to fix their compensation, hours of service, and such, other duties and conditions as it may deem proper, any other provisions of the law to the contrary notwithstanding; to grant to them in his discretion, leave of absence under such regulations as it may promulgate, any other conditions of the law to the contrary notwithstanding, and to remove them for cause after an investigation and hearing shall have been had;
>
> x x x x x x x x x

This provision in the PUP Charter is substantially in accord with Section 4(h) of R.A. 8292,

> Section 4. *Powers and Duties of Governing Boards.* — The governing board shall have the following specific powers and duties in addition to its general powers of administration and the exercise of all the powers granted to the board of directors of a corporation under Section 36 of Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines:
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> x x x x x x x x x

[20] *Rollo,* pp. 64.

(h) to fix and adjust salaries of faculty members and administrative officials and employees subject to the provisions of the revised compensation and classification system and other pertinent budget and compensation laws governing hours of service, and such other duties and conditions as it may deem proper; to grant them, at its discretion, leaves of absence under such regulations as it may promulgate, any provisions of existing law to the contrary notwithstanding; and to remove them for cause in accordance with the requirements of due process of law.

Given the foregoing antecedents, the pivotal issue we have to resolve is whether the CSC has jurisdiction to hear and decide the complaint filed against Alfonso.

We find in favor of petitioner.

Section 2(1) and Section 3, Article IX-B of our Constitution, are clear, as they provide that:

Sec. 2. (1) The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.

Sec. 3. The Civil Service Commission, as the central personnel agency of the Government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. It shall strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability. It shall submit to the President and the Congress an annual report on its personnel programs.

As the central personnel agency of the government,[21] the CSC has jurisdiction to supervise the performance of and discipline, if need be, all government employees, including those employed in government-owned or controlled corporations with original charters such as PUP. Accordingly, all PUP officers and employees, whether they be classified as teachers or professors pursuant to certain provisions of law, are deemed, first and

[21] 1987 Philippine Constitution, Art. IX-B, Sec. 3.

foremost, civil servants accountable to the people and answerable to the CSC in cases of complaints lodged by a citizen against them as public servants. Admittedly, the CSC has appellate jurisdiction over disciplinary cases decided by government departments, agencies and instrumentalities. However, a complaint may be filed directly with the CSC, and the Commission has the authority to hear and decide the case, although it may opt to deputize a department or an agency to conduct the investigation. Specifically, Sections 9(j) and 37(a) of P.D. 807, otherwise known as the Civil Service Law of 1975, provide:

SECTION 9. Powers and Functions of the Commission. — The Commission shall administer the Civil Service and shall have the following powers and function:

x x x x x x x x x

(j) Hear and decide administrative disciplinary cases **instituted directly with it** in accordance with Section 37 **or brought to it on appeal**;

x x x x x x x x x

Section 37. Disciplinary Jurisdiction. — (a) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from Office. **A complaint may be filed directly with the Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation.** The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken.[22]

We are not unmindful of certain special laws that allow the creation of disciplinary committees and governing bodies in different branches, subdivisions, agencies and instrumentalities of the government to hear and decide administrative complaints

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[22] Emphasis supplied.

against their respective officers and employees. Be that as it may, we cannot interpret the creation of such bodies nor the passage of laws such as – R.A. Nos. 8292 and 4670 allowing for the creation of such disciplinary bodies – as having divested the CSC of its inherent power to supervise and discipline government employees, including those in the academe. To hold otherwise would not only negate the very purpose for which the CSC was established, *i.e.* to instill professionalism, integrity, and accountability in our civil service, but would also impliedly amend the Constitution itself.

In *Office of the Ombudsman v. Masing*,[23] we explained that it is error to contend that R.A. No. 4670 conferred exclusive disciplinary authority on the Department of Education, Culture and Sports (DECS, now Department of Education or DepEd) over public school teachers and to have prescribed exclusive procedure in administrative investigations involving them.[24] Hence, it is equally erroneous for respondent to argue that the PUP Charter and R.A. No. 8292 in relation to R.A. 4670 confer upon the BOR of PUP exclusive jurisdiction to hear disciplinary cases against university professors and personnel.

In *Civil Service Commission v. Sojor*,[25] an administrative case was filed against a state university president. There, we struck down the argument that the BOR has exclusive jurisdiction to hear and decide an administrative case filed against the respondent. We said:

> In light of the other provisions of R.A. No. 9299, respondent's argument that the BOR has exclusive power to remove its university officials must fail. Section 7 of R.A. No. 9299 states that the power to remove faculty members, employees, and officials of the university is granted to the BOR "in addition to its general powers of administration." This provision is essentially a reproduction of Section 4 of its predecessor, R.A. No. 8292, demonstrating that the

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[23] G.R. No. 165416, January 22, 2008, 542 SCRA 253.

[24] *Id.* at 275.

[25] G.R. No. 168766, May 22, 2008, 554 SCRA 160.

intent of the lawmakers did not change even with the enactment of the new law. x x x

x x x x x x x x x

Verily, the BOR of NORSU has the sole power of administration over the university. But this power is not exclusive in the matter of disciplining and removing its employee and officials.

Although the BOR of NORSU is given the specific power under R.A. No. 9299 to discipline its employees and officials, there is no showing that such power is exclusive. When the law bestows upon a government body the jurisdiction to hear and decide cases involving specific matters, it is to be presumed that such jurisdiction is exclusive unless it be proved that another body is likewise vested with the same jurisdiction, in which case, both bodies have concurrent jurisdiction over the matter.[26] (Emphasis supplied)

But it is not only for this reason that Alfonso's argument must fail. Equally significant is the fact that he had already submitted himself to the jurisdiction of the CSC when he filed his counter-affidavit[27] and his motion for reconsideration and requested for a change of venue, not from the CSC to the BOR of PUP, but from the CSC-Central Office to the CSC-NCR.[28] It was only when his motion was denied that he suddenly had a change of heart and raised the question of proper jurisdiction.[29] This cannot be allowed because it would violate the doctrine of *res judicata*, a legal principle that is applicable to administrative cases as well.[30] At the very least, respondent's active participation in the proceedings by seeking affirmative relief before the CSC

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[26] *Id.* at 176.

[27] *Supra* note 8.

[28] *Supra* note 11.

[29] *Supra* note 14.

[30] *Felipe Ysmael, Jr. & Co., Inc. v. Deputy Executive Secretary*, G.R. No. 79538, October 18, 1990, 190 SCRA 673. *See* also *United Housing Corporation v. Dayrit*, G.R. No. 76422, January 22, 1990, 181 SCRA 285; *Nasipit Lumber Co., Inc. v. NLRC*, G.R. No. 54424, August 31, 1989, 177 SCRA 93; and *Boiser v. National Telecommunications Commission*, G.R. No. 76592, January 13, 1989, 169 SCRA 198.

already bars him from impugning the Commission's authority under the principle of estoppel by laches.[31]

In this case, the complaint-affidavits were filed by two PUP employees. These complaints were not lodged before the disciplinary tribunal of PUP, but were instead filed before the CSC, with averments detailing respondent's alleged violation of civil service laws, rules and regulations. After a fact-finding investigation, the Commission found that a *prima facie* case existed against Alfonso, prompting the Commission to file a formal charge against the latter.[32] Verily, since the complaints were filed directly with the CSC, and the CSC has opted to assume jurisdiction over the complaint, the CSC's exercise of jurisdiction shall be to the exclusion of other tribunals exercising concurrent jurisdiction. To repeat, it may, however, choose to deputize any department or agency or official or group of officials such as the BOR of PUP to conduct the investigation, or to delegate the investigation to the proper regional office.[33] But the same is merely permissive and not mandatory upon the Commission.

We likewise affirm the order of preventive suspension issued by the CSC-NCR against respondent.

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[31] *Huertas v. Gonzalez*, G.R. No. 152443, February 14, 2005, 451 SCRA 256, 270; and *Emin v. de Leon*, 428 Phil. 172, 173 (2002).

[32] *Rollo*, p. 74.

[33] Pertinent portion of CSC Resolution No. 061908 dated November 7, 2006, which dismissed respondent's request for the transfer of venue, states:

> Under Section 6, Rule 1 of the Uniform Rules on Administrative Cases in the Civil Service (URACCS), the proper venue of the instant case should have been the CSC-NCR, the PUP being within its geographical location. Be it stated, however, that the authority of the regional office to hear a case is simply a delegated authority resorted to by the Commission pursuant to its power to prescribe, amend and enforce rules and regulations to effectively carry out its mandate (Section 12(2), Chapter 3, Title I, Subtitle (A), Book V of the Administrative Code of 1987 (Executive Order No. 292). Said delegated authority does not divest the Commission of its power to hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decision and actions of its offices and of the agencies attached to it (Section 12(11), *supra*).

There are two kinds of preventive suspension of government employees charged with offenses punishable by removal or suspension, *viz:* (1) preventive suspension pending investigation; and (2) preventive suspension pending appeal if the penalty imposed by the disciplining authority is suspension or dismissal and, after review, the respondent is exonerated. Preventive suspension pending investigation is not a penalty. It is a measure intended to enable the disciplining authority to investigate charges against respondent by preventing the latter from intimidating or in any way influencing witnesses against him. If the investigation is not finished and a decision is not rendered within that period, the suspension will be lifted and the respondent will automatically be reinstated. If after investigation, respondent is found innocent of the charges and is exonerated, he should be reinstated.[34]

The first kind, subject of the CSC Order against the respondent, is appropriately covered by Sections 51 and 52 of the Revised Administrative Code of 1987 (Executive Order No. 292) which provide:

SEC. 51. *Preventive Suspension*. — The proper disciplining authority may preventively suspend any subordinate officer or employee under his authority pending an investigation, if the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service.

SEC. 52. *Lifting of Preventive Suspension. Pending Administrative Investigation*. — When the administrative case against the officer or employee under preventive suspension is not finally decided by the disciplining authority within the period of ninety (90) days after the date of suspension of the respondent who is not a presidential appointee, the respondent shall be automatically reinstated in the service: *Provided*, That when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay shall not be counted in computing the period of suspension herein provided.

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[34] *Hon. Gloria v. Court of Appeals*, 365 Phil. 744, 746 (1999).

Respondent was charged with grave misconduct and conduct prejudicial to the best interest of the service. A person charged with grave misconduct is put on notice that he stands accused of misconduct coupled with any of the elements of corruption or willful intent to violate the law or established rules.[35] Meanwhile, conduct prejudicial to the best interest of the service is classified as a grave offense with a corresponding penalty of suspension for six (6) months and one (1) day to one (1) year for the first offense, and the penalty of dismissal for the second offense.[36]

In addition to the gravity of the charges against Alfonso, and equally relevant, is the opportunity available to him to use his position as Director of the Human Resources Management Department of the university to exert undue influence or pressure on the potential witnesses that the complainants may produce, or to tamper with the documentary evidence that may be used against him. Preventive suspension is, therefore, necessary so that respondent's delicate yet powerful position in the university may not be used to compromise the integrity and impartiality of the entire proceedings.

WHEREFORE, premises considered, the May 21, 2007 Decision[37] and August 23, 2007 Resolution[38] of the Court of Appeals in CA-G.R. SP No. 97284 are hereby *REVERSED* and *SET ASIDE*. Accordingly, Civil Service Commission Resolution Nos. 061821[39] and 061908[40] dated October 16, 2006 and November 7, 2006, respectively, as well as its Order[41] dated

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[35] *Civil Service Commission v. Ledesma,* G.R. No. 154521, September 30, 2005, 471 SCRA 589.

[36] *Civil Service Commission v. Manzano*, G.R. No. 160195, October 30, 2006, 506 SCRA 113, 130.

[37] *Supra* note 1.

[38] *Supra* note 2.

[39] *Supra* note 3.

[40] *Supra* note 4.

[41] *Supra* note 5.

December 11, 2006 placing respondent under preventive suspension are hereby *REINSTATED*. The CSC is ordered to proceed hearing the administrative case against respondent with dispatch.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Chico-Nazario, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, and *Bersamin, JJ.,* concur.

Carpio Morales, J., on official leave.

EN BANC

[G.R. No. 180941. June 11, 2009]

CHAIRMAN PERCIVAL C. CHAVEZ, Chair and Chief Executive Officer, Presidential Commission for the Urban Poor (PCUP), *petitioner, vs.* **LOURDES R. RONIDEL and Honorable COURT OF APPEALS, Ninth Division,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES; ACCORDED GREAT RESPECT BY THE COURT; RATIONALE. — The question of respondent's qualifications is a factual issue which calls for the examination of the evidence presented by the contending parties. Certainly, it is beyond the power of this Court to review. This is especially true in the instant case, as the CSC-NCR, CSC and the CA have all found that, indeed, respondent possesses the required qualifications. As repeatedly held, we accord great respect to the findings of administrative agencies because they have acquired expertise in their jurisdiction; and we refrain

from questioning their findings, particularly when these are affirmed by the appellate tribunal. We are not inclined to re-examine and re-evaluate the probative value of the evidence proffered in the concerned forum, which had formed the basis of the latter's impugned decision, resolution or order, absent a clear showing of arbitrariness and want of any rational basis therefor.

2. POLITICAL LAW; LAW ON PUBLIC OFFICERS; PUBLIC OFFICE; OATH OF OFFICE IS A QUALIFYING REQUIREMENT THEREOF. — Well-settled is the rule that an oath of office is a qualifying requirement for a public office, a prerequisite to the full investiture of the office. Since petitioner took his oath and assumed office only on February 26, it was only then that his right to enter into the position became plenary and complete. Prior to such oath, Gasgonia still had the right to exercise the functions of her office. It is also well to note that per certification issued by Raymond C. Santiago, Accountant of PCUP, Gasgonia received her last salary for the period covering February 1-25, 2001; and petitioner received his first salary for the period covering February 26 to March 7, 200[1]. Clearly, at the time of respondent's appointment on February 23, Gasgonia still was the rightful occupant of the position and was, therefore, authorized to extend a valid promotional appointment.

3. ID.; ID.; ID.; APPOINTMENT AND PROMOTION; DISCRETION SHOULD BE GRANTED TO THOSE ENTRUSTED WITH THE RESPONSIBILITY OF ADMINISTERING THE OFFICE CONCERNED. — An appointment to a public office is the unequivocal act of designating or selecting, by one having the authority, an individual to discharge and perform the duties and functions of an office or trust. In the appointmnet or promotion of employees, the appointing authority considers not only their civil service eligibilities but also their performance, education, work experience, trainings and seminars attended, agency examinations and seniority. Consequently, the appointing authority has the right of choice which he may exercise freely according to his best judgment, deciding for himself who is best qualified among those who have the necessary qualifications and eligibilities. The final choice of the appointing authority should be respected and left undisturbed. Judges should not

substitute their judgment for that of the appointing authority. Sufficient, if not plenary, discretion should be granted to those entrusted with the responsibility of administering the offices concerned. They are in a position to determine who can best perform the functions of the office vacated. Not only is the appointing authority the officer primarily responsible for the administration of the office, he is also in the best position to determine who among the prospective appointees can effectively dishcarge the functions of the position.

4. ID.; ID.; ID.; ID.; LEGAL RIGHT TO A POSITION; WHEN ACQUIRED.— We would like to stress that once an appointment is issued and the moment the appointee assumes a position in the civil service under a completed appointment, he acquires a legal, not merely equitable, right to the position which is protected not only by statute, but also by the the Constitution; and it cannot be taken away from him either by revocation of the appointment or by removal, except for cause, and with previous notice and hearing.

5. ID.; ID.; ID.; WHEN RELAXATION OF THE RULES ON REPORTORIAL REQUIREMENT ALLOWED.— In *Civil Service Commission v. Joson, Jr.*, we had the occasion to relax the rules on the reportorial requirement and put a stamp of validity on an appointment that was not included in the agency's ROPA within the time prescribed by the rules. In *Joson*, the Philippine Overseas Employment Administration (POEA) failed to include Priscilla Ong's appointment in its ROPA for July 1995. The records, however, showed that the agency failed to include her appointment because its request for exemption from the educational requisite for confidential staff members was yet to be resolved by the CSC. In view thereof, we found the non-compliance with the rules justified, and insufficient to invalidate an appointment. In the instant case, it is obvious that respondent's appointment was not included in the ROPA because the new PCUP Chairperson and CEO had directed the Human Resources Department to stop the processing of respondent's appointment until after the assessment thereon was released from petitioner's office. In both this and the Joson case, the appointee could not be faulted for the non-compliance with the CSC reportorial requirement.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Jorico Favor Bayaua for respondents.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Court of Appeals (CA) Decision[1] dated August 8, 2007 and its Resolution[2] dated December 17, 2007 in CA-G.R. SP No. 89024.

The factual and procedural antecedents follow:

Respondent Lourdes R. Ronidel was an employee of the Presidential Commission for the Urban Poor (PCUP), occupying the position of Development Management Officer (DMO) III. On May 25, 2000, she applied for promotion to one of the two vacant positions of DMO V.

The minimum qualification standards for DMO V are:

Education:	Masteral Degree
Experience:	4 years in position/s involving management and supervision
Training:	24 hours of training in management and supervision
Eligibility:	Career Service (Professional) Second level eligibility[3]

and at the time of her application, respondent possessed the following qualifications:

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[1] Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta, concurring; *rollo*, pp. 32-49.

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

[3] *Id.* at 33.

Education:	Master[s] in Management
Experience:	OIC-Administrative and Finance Service (January 14 to June 4, 2000); Acting Director-National Capital Region (August 1998 to March 1999); Assistant NCR Director (January 1997-1998)
Training:	First Congress of Human Resource Management Practitioners and Area Coordinator Congress[4]

After a thorough evaluation, the PCUP National Selection Board (NSB) found respondent to have met the minimum qualifications for the position of DMO V. Accordingly, she, together with another applicant, Alicia S. Diaz (Diaz), were declared fit for promotion.[5]

Thus, on June 1, 2000 and February 23, 2001, then PCUP Chairperson Atty. Donna Z. Gasgonia (Gasgonia) issued promotional appointments in favor of Diaz and respondent, respectively, to the two DMO V positions. Respondent took her oath and assumed her new position on the date of her appointment.[6]

Meanwhile, on February 19, 2001, petitioner Percival C. Chavez was appointed as the new Chairperson and Chief Executive Officer (CEO) of PCUP, succeeding Gasgonia. However, petitioner took his oath and assumed office only on February 26, 2001.[7] On March 9, 2001, petitioner issued a Memorandum[8] to Ms. Susan Gapac (Gapac) of the PCUP Human Resources Department (HRD) instructing her to stop the processing of respondent's appointment papers until such time that an assessment thereon would be officially released by the office of petitioner. Petitioner, in effect, sought to recall and invalidate respondent's appointment on the following grounds:

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[4] *Id.* at 33.

[5] *Id.* at 34.

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

[7] *Id.* at 35.

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

1. That respondent did not meet the "experience" requirement for the contested position;
2. That the authority of Gasgonia as PCUP Chairman ceased when the president appointed petitioner to the post on February 19, 2001;
3. That respondent's appointment as DMO V was a midnight appointment, hence, prohibited;
4. That respondent's appointment was not effective since it was not in accordance with pertinent laws and rules; and
5. Notwithstanding the initial approval of respondent's appointment, the same can be recalled for non-compliance with the criteria provided by PCUP's promotion plan.[9]

Aggrieved by petitioner's inaction on her appointment, respondent appealed to the Civil Service Commission (CSC), National Capital Region (NCR). On January 17, 2003, the CSC-NCR issued an Order[10] in favor of respondent, the pertinent portion of which reads:

> WHEREFORE, we find the Appeal meritorious. Ronidel's appointment as Development Management Officer V of PCUP is deemed valid and she is, therefore, allowed to assume the duties of said position.
>
> SO ORDERED.[11]

Considering that Gasgonia received her salary until February 25, 2001 and petitioner took his oath and assumed office only the following day, the CSC-NCR concluded that at the time of respondent's appointment on February 23, 2001, Gasgonia was still the appointing authority. It further held that although the appointment was issued a few days prior to the expiration of Gasgonia's tenure, the same was deliberated upon for almost a year; thus, it cannot be considered a midnight appointment. Finally, the CSC-NCR upheld respondent's appointment since it had been passed upon by the PCUP-NSB.

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[9] *Rollo*, pp. 35-36.

[10] Penned by Director Agnes D. Padilla, CA *rollo*, pp. 14-24.

[11] *Id.* at 24.

On November 18, 2003, petitioner's motion for reconsideration was denied.[12] He, thereafter, elevated the matter to the CSC.

On September 23, 2004, the CSC granted[13] petitioner's appeal. While upholding the authority of Gasgonia, the questioned promotional appointment was nonetheless invalidated for non-compliance with certain procedural requirements set forth in CSC Resolution No. 973685[14] dated August 28, 1997. The CSC Resolution specifically required the submission of two copies of the monthly Report on Personnel Action (ROPA), and further provided that failure to comply with such requirement shall render the appointment lapsed and inefficacious. Since no ROPA was ever submitted by PCUP to CSC, respondent's appointment was, therefore, declared invalid.

On February 25, 2005, the CSC denied respondent's motion for reconsideration.[15]

On a petition for review, the CA reversed and set aside the CSC Resolutions and consequently affirmed the CSC-NCR's January 17, 2003 Order. The appellate court did not agree with the CSC's action invalidating respondent's appointment solely on technical grounds. It emphasized that the submission of the monthly ROPA was the responsibility of PCUP and not the respondent's. Hence, she should not be prejudiced by PCUP's inaction.

Aggrieved, petitioner, through the Office of the Solicitor General, now assails the CA decision in this petition for review on *certiorari* on the lone issue of the validity of respondent's appointment as PCUP DMO V.

The petition must fail.

In resolving the issue posed by petitioner, we must decide the following sub-issues: 1) whether Gasgonia had the authority

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[12] *Id.* at 25-38.

[13] Embodied in CSC Resolution No. 041051, *Id.* at 39-46.

[14] Granting the PCUP the authority to take final action on its appointments.

[15] Embodied in CSC Resolution No. 050285, CA *rollo*, pp. 47-51.

to appoint respondent to the position of DMO V notwithstanding the appointment of petitioner as the new chairperson of the PCUP; 2) whether respondent's appointment may be invalidated for failure to meet the qualification standards for said position; and 3) whether the failure of PCUP to submit two copies of the ROPA made respondent's appointment inefficacious.

The Court notes that on February 19, 2001, petitioner was appointed as the new chairperson and chief executive officer of PCUP. On February 23, 2001, Gasgonia issued a promotional appointment in favor of respondent. On the same day, respondent took her oath and assumed office. On February 26, 2001, petitioner also took his oath and assumed office.

Petitioner insists that since he was appointed as the new PCUP Chairperson on the 19th of February, Gasgonia no longer had the authority to extend a promotional appointment in favor of respondent on the 23rd of February. Respondent, on the other hand, claims that Gasgonia was still the appointing authority prior to petitioner's assumption of office on the 26th.

The CSC-NCR, CSC and the CA are one in saying that Gasgonia still had appointing authority at the time she issued respondent's promotional appointment.

We find no reason to depart from such conclusion.

Well-settled is the rule that an oath of office is a qualifying requirement for a public office, a prerequisite to the full investiture of the office.[16] Since petitioner took his oath and assumed office only on February 26, it was only then that his right to enter into the position became plenary and complete.[17] Prior to such oath, Gasgonia still had the right to exercise the functions of her office. It is also well to note that per certification issued by Raymond C. Santiago, Accountant of PCUP, Gasgonia received her last salary for the period covering February 1-25, 2001;

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[16] *Mendoza v. Laxina, Sr.*, 453 Phil. 1013, 1026-1027 (2003); *Lecaroz v. Sandiganbayan*, 364 Phil. 890, 904 (1999).

[17] *Id*.

and petitioner received his first salary for the period covering February 26 to March 7, 200[1].[18]

Clearly, at the time of respondent's appointment on February 23, Gasgonia still was the rightful occupant of the position and was, therefore, authorized to extend a valid promotional appointment.

Petitioner further contends that respondent's appointment should be invalidated for respondent's failure to meet the "experience" requirement for the contested position.

This contention is also without merit.

The question of respondent's qualifications is a factual issue which calls for the examination of the evidence presented by the contending parties. Certainly, it is beyond the power of this Court to review. This is especially true in the instant case, as the CSC-NCR, CSC and the CA have all found that, indeed, respondent possesses the required qualifications. As repeatedly held, we accord great respect to the findings of administrative agencies because they have acquired expertise in their jurisdiction; and we refrain from questioning their findings, particularly when these are affirmed by the appellate tribunal. We are not inclined to re-examine and re-evaluate the probative value of the evidence proffered in the concerned forum, which had formed the basis of the latter's impugned decision, resolution or order, absent a clear showing of arbitrariness and want of any rational basis therefor.[19]

An appointment to a public office is the unequivocal act of designating or selecting, by one having the authority, an individual to discharge and perform the duties and functions of an office or trust.[20] In the appointment or promotion of employees, the appointing authority considers not only their

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[18] CA *rollo*, p. 22.

[19] *Cabalitan v. Department of Agrarian Reform*, G.R. No. 162805, January 23, 2006, 479 SCRA 452, 458.

[20] *Bermudez v. Executive Secretary Torres*, 370 Phil. 769, 776 (1999).

civil service eligibilities but also their performance, education, work experience, trainings and seminars attended, agency examinations and seniority. Consequently, the appointing authority has the right of choice which he may exercise freely according to his best judgment, deciding for himself who is best qualified among those who have the necessary qualifications and eligibilities. The final choice of the appointing authority should be respected and left undisturbed. Judges should not substitute their judgment for that of the appointing authority.[21] Sufficient, if not plenary, discretion should be granted to those entrusted with the responsibility of administering the offices concerned. They are in a position to determine who can best perform the functions of the office vacated. Not only is the appointing authority the officer primarily responsible for the administration of the office, he is also in the best position to determine who among the prospective appointees can effectively discharge the functions of the position.[22]

Moreover, promotions in the Civil Service should always be made on the basis of qualifications, including occupational competence, moral character, devotion to duty, and loyalty to the service. The last trait should be given appropriate weight, to reward the civil servant who has chosen to make his employment in the government a lifetime career in which he can expect advancement through the years for work well done. Political patronage should not be necessary. His record alone should be sufficient assurance that when a higher position becomes vacant, he shall be seriously considered for the promotion and, if warranted, preferred to less devoted aspirants.[23]

We would like to stress that once an appointment is issued and the moment the appointee assumes a position in the

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[21] *Tapispisan v. Court of Appeals*, G.R. No. 157950, June 8, 2005, 459 SCRA 695, 709; *Civil Service Commission v. De la Cruz*, G.R. No. 158737, August 31, 2004, 437 SCRA 403, 412-413.

[22] *Civil Service Commission v. De la Cruz, supra*; *Abella, Jr. v. Civil Service Commission*, G.R. No. 152574, November 17, 2004, 442 SCRA 507, 515.

[23] *Civil Service Commission v. De la Cruz*, *supra* at 412.

civil service under a completed appointment, he acquires a legal, not merely equitable, right to the position which is protected not only by statute, but also by the Constitution; and it cannot be taken away from him either by revocation of the appointment or by removal, except for cause, and with previous notice and hearing.[24]

Lastly, we agree with the appellate court that respondent's appointment could not be invalidated solely because of PCUP's failure to submit two copies of the ROPA as required by CSC Resolution No. 97368. In the said resolution, the CSC delegated to PCUP the authority to take final action on its employees' appointments. It further required the submission within the first fifteen calendar days of each month two copies of the monthly ROPA, together with certified true copies of appointments acted upon. Finally, it provided that failure to submit the ROPAs within the prescribed period shall render all appointments listed therein lapsed and ineffective.

Pursuant to the above resolution, while upholding Gasgonia's appointing power, the CSC still invalidated respondent's appointment. The CA, however, reached a different conclusion by upholding the validity of the questioned appointment. We quote with approval the appellate court's ratiocination in this wise:

> To our minds, however, the invalidation of the [respondent's] appointment based on this sole technical ground is unwarranted, if not harsh and arbitrary, considering the factual milieu of this case. For one, it is not the [respondent's] duty to comply with the requirement of the submission of the ROPA and the certified true copies of her appointment to [the Civil Service Commission Field Office or] CSCFO within the period stated in the aforequoted *CSC Resolution*. The said resolution categorically provides that it is the PCUP, and not the appointee as in the case of the [respondent] here, which is required to comply with the said reportorial requirements.

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[24] *The General Manager, Phil. Ports Authority (PPA) v. Monserate*, 430 Phil. 832, 845.

Moreover, it bears pointing out that only a few days after the [petitioner] assumed his new post as PCUP Chairman, he directed the PCUP to hold the processing of [respondent's] appointment papers in abeyance, until such time that an assessment thereto is officially released from his office. Unfortunately, up to this very day, the [respondent] is still defending her right to enjoy her promotional appointment as DMO V. Naturally, her appointment failed to comply with the PCUP's reportorial requirements under *CSC Resolution* No. 97-3685 precisely because of the [petitioner's] inaction to the same.

We believe that the factual circumstances of this case calls for the application of equity. To our minds, the invalidation of the [respondent's] appointment due to a procedural lapse which is undoubtedly beyond her control, and certainly not of her own making but that of the [petitioner], justifies the relaxation of the provisions of *CSC Board Resolution No. 97-3685, pars. 6,7 and 8.* Hence, her appointment must be upheld based on equitable considerations, and that the non-submission of the ROPA and the certified true copies of her appointment to the CSCFO within the period stated in the aforequoted *CSC Resolution* should not work to her damage and prejudice. Besides, the [respondent] could not at all be faulted for negligence as she exerted all the necessary vigilance and efforts to reap the blessings of a work promotion. Thus, We cannot simply ignore her plight. She has fought hard enough to claim what is rightfully hers and, as a matter of simple justice, good conscience, and equity, We should not allow Ourselves to prolong her agony.

All told, We hold that the [respondent's] appointment is valid, notwithstanding the aforecited procedural lapse on the part of PCUP which obviously was the own making of herein [petitioner].[25]

In *Civil Service Commission v. Joson, Jr.*,[26] we had the occasion to relax the rules on the reportorial requirement and put a stamp of validity on an appointment that was not included in the agency's ROPA within the time prescribed by the rules. In *Joson*, the Philippine Overseas Employment Administration (POEA) failed to include Priscilla Ong's appointment in its ROPA

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[25] *Rollo*, pp. 47-48.

[26] G.R. No. 154674, May 27, 2004, 429 SCRA 773.

for July 1995. The records, however, showed that the agency failed to include her appointment because its request for exemption from the educational requisite for confidential staff members was yet to be resolved by the CSC. In view thereof, we found the non-compliance with the rules justified, and insufficient to invalidate an appointment.

In the instant case, it is obvious that respondent's appointment was not included in the ROPA because the new PCUP Chairperson and CEO had directed the Human Resources Department to stop the processing of respondent's appointment until after the assessment thereon was released from petitioner's office. In both this and the Joson case, the appointee could not be faulted for the non-compliance with the CSC reportorial requirement.

We, therefore, apply the same conclusion to both cases.

WHEREFORE, premises considered, the petition is *DENIED* for lack of merit. The CA decision and resolution dated August 8, 2007 and December 17, 2007, respectively, are *AFFIRMED*.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Chico-Nazario, Velasco, Jr., Leonardo-de Castro, Brion, and *Bersamin, JJ.,* concur.

Peralta, J., no part.

Carpio Morales, J., on official leave.

EN BANC

[A.C. No. 8010. June 16, 2009]

KELD STEMMERIK, represented by ATTYS. HERMINIO A. LIWANAG and WINSTON P.L. ESGUERRA, *complainant, vs.* **ATTY. LEONUEL N. MAS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SERVICE OF PLEADINGS UPON THE RESPONDENT; WHEN DEEMED WAIVED.— The respondent did not file any answer or position paper, nor did he appear during the scheduled mandatory conference. Respondent in fact abandoned his last known address, his law office in Olongapo City, after he committed the embezzlement. Respondent should not be allowed to benefit from his disappearing act. He can neither defeat this Court's jurisdiction over him as a member of the bar nor evade administrative liability by the mere ruse of concealing his whereabouts. Thus, service of the complaint and other orders and processes on respondent's office was sufficient notice to him. Indeed, since he himself rendered the service of notice on him impossible, the notice requirement cannot apply to him and he is thus considered to have waived it. The law does not require that the impossible be done. *Nemo tenetur ad impossibile*. The law obliges no one to perform an impossibility. Laws and rules must be interpreted in a way that they are in accordance with logic, common sense, reason and practicality. In this connection, lawyers must update their records with the IBP by informing the IBP National Office or their respective chapters of any change in office or residential address and other contact details. In case such change is not duly updated, service of notice on the office or residential address appearing in the records of the IBP National Office shall constitute sufficient notice to a lawyer for purposes of administrative proceedings against him. Lawyers, as members of a noble profession, have the duty to promote respect for the law and uphold the integrity of the bar. As men and women entrusted with the law, they must ensure that the law functions to protect liberty and not as an instrument of oppression or deception.

2. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; LAWYERS HAVE THE DUTY TO PROMOTE RESPECT FOR THE LAW AND UPHOLD THE INTEGRITY OF THE BAR; SUSTAINED. — All lawyers take an oath to support the Constitution, to obey the laws and to do no falsehood. That oath is neither mere formal ceremony nor hollow words. It is a sacred trust that should be upheld and kept inviolable at all times. Lawyers are servants of the law and the law is their master. They should not simply obey the laws, they should also inspire respect for and obedience thereto by serving as exemplars worthy of emulation. Indeed, that is the first precept of the Code of Professional Responsibility: CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

3. ID.; ID.; ID.; VIOLATION THEREOF. — Section 7, Article XII of the Constitution provides: SEC. 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain. This Court has interpreted this provision, as early as the 1947 case *Krivenko v. Register of Deeds*, to mean that "under the Constitution, aliens may not acquire private or agricultural lands, including residential lands." The provision is a declaration of imperative constitutional policy. Respondent, in giving advice that directly contradicted a fundamental constitutional policy, showed disrespect for the Constitution and gross ignorance of basic law. Worse, he prepared spurious documents that he knew were void and illegal. x x x For all this, respondent violated not only the lawyer's oath and Canon 1 of the Code of Professional Responsibility. He also transgressed the following provisions of the Code of Professional Responsibility: Rule 1.01. — **A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.** Rule 1.02. — *A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.* CANON 7 — **A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION** AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR. CANON 15 — **A LAWYER SHALL OBSERVE CANDOR, FAIRNESS** AND LOYALTY *IN ALL*

HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENT. CANON 16 — **A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT** THAT MAY COME INTO HIS POSSESSION. CANON 17 — **A LAWYER** OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE **SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.** A lawyer who resorts to nefarious schemes to circumvent the law and uses his legal knowledge to further his selfish ends to the great prejudice of others, poses a clear and present danger to the rule of law and to the legal system. He does not only tarnish the image of the bar and degrade the integrity and dignity of the legal profession, he also betrays everything that the legal profession stands for.

4. ID.; ID.; ID.; ID.; PENALTY. — WHEREFORE, respondent Atty. Leonuel N. Mas is hereby **DISBARRED**. The Clerk of Court is directed to immediately strike out the name of respondent from the Roll of Attorneys. Respondent is hereby **ORDERED** to return to complainant Keld Stemmerik the total amount of ₱4.2 million with interest at 12% per annum from the date of promulgation of this resolution until full payment. Respondent is further **DIRECTED** to submit to the Court proof of payment of the amount within ten days from payment. The National Bureau of Investigation (NBI) is **ORDERED** to locate Atty. Mas and file the appropriate criminal charges against him. The NBI is further **DIRECTED** to regularly report the progress of its action in this case to this Court through the Bar Confidant.

APPEARANCES OF COUNSEL

Jimenez Gonzales Liwanag Bello Valdez Caluya & Fernandez for complainant.

R E S O L U T I O N

***PER CURIAM*:**

Complainant Keld Stemmerik is a citizen and resident of Denmark. In one of his trips to the Philippines, he was introduced to respondent Atty. Leonuel N. Mas. That was his misfortune.

In one visit to the Philippines, complainant marveled at the beauty of the country and expressed his interest in acquiring real property in the Philippines. He consulted respondent who advised him that he could legally acquire and own real property in the Philippines. Respondent even suggested an 86,998 sq.m. property in Quarry, Agusuin, Cawag, Subic, Zambales with the assurance that the property was alienable.

Trusting respondent, complainant agreed to purchase the property through respondent as his representative or attorney-in-fact. Complainant also engaged the services of respondent for the preparation of the necessary documents. For this purpose, respondent demanded and received a ₱400,000 fee.

Confident that respondent would faithfully carry out his task, complainant returned to Denmark, entrusting the processing of the necessary paperwork to respondent.

Thereafter, respondent prepared a contract to sell the property between complainant, represented by respondent, and a certain Bonifacio de Mesa, the purported owner of the property.[1] Subsequently, respondent prepared and notarized a deed of sale in which de Mesa sold and conveyed the property to a certain Ailyn Gonzales for ₱3.8 million.[2] Respondent also drafted and notarized an agreement between complainant and Gonzales stating that it was complainant who provided the funds for the purchase of the property.[3] Complainant then gave respondent the full amount of the purchase price (₱3.8 million) for which respondent issued an acknowledgment receipt.[4]

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[1] *Rollo,* pp. 16-17.

[2] *Id.,* pp. 18-20. The circumstance of the fictitious sale to Gonzales was never adequately discussed by the complainant. However, coupled with the fact that respondent prepared and notarized another agreement (this time between Gonzales and complainant) whereby Gonzales recognized complainant as the source of funds, this showed that the sale to Gonzales was a link in the chain of acts committed by respondent to defraud complainant.

[3] *Id.,* pp. 22-23.

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

After the various contracts and agreements were executed, complainant tried to get in touch with respondent to inquire about when the property could be registered in his name. However, respondent suddenly became scarce and refused to answer complainant's calls and e-mail messages.

When complainant visited the Philippines again in January 2005, he engaged the services of the Jimenez Gonzales Liwanag Bello Valdez Caluya & Fernandez Law Office to ascertain the status of the property he supposedly bought. He was devastated to learn that aliens could not own land under Philippine laws. Moreover, verification at the Community Environment & Natural Resources Office (CENRO) of the Department of Environment and Natural Resources in Olongapo City revealed that the property was inalienable as it was situated within the former US Military Reservation.[5] The CENRO also stated that the property was not subject to disposition or acquisition under Republic Act No. 141.[6]

Thereafter, complainant, through his attorneys-in-fact,[7] exerted diligent efforts to locate respondent for purposes of holding him accountable for his fraudulent acts. Inquiry with the Olongapo Chapter of the Integrated Bar of the Philippines (IBP) disclosed that respondent was in arrears in his annual dues and that he had already abandoned his law office in Olongapo City.[8] Search of court records of cases handled by respondent only yielded his abandoned office address in Olongapo City.

Complainant filed a complaint for disbarment against respondent in the Commission on Bar Discipline (CBD) of the IBP.[9] He deplored respondent's acts of serious misconduct. In particular, he sought the expulsion of respondent from the legal profession

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[5] Certification dated February 7, 2005. *Id.*, p. 24.

[6] *Id.*

[7] Attys. Herminio A. Liwanag and Winston P.L. Esguerra.

[8] At the 3rd Floor of the Mely Rose Building at 34-23rd Street, WBB, Olongapo City.

[9] *Rollo,* pp. 1-8.

for gravely misrepresenting that a foreigner could legally acquire land in the Philippines and for maliciously absconding with complainant's ₱3.8 million.[10]

Respondent failed to file his answer and position paper despite service of notice at his last known address. Neither did he appear in the scheduled mandatory conference. In this connection, the CBD found that respondent abandoned his law practice in Olongapo City after his transaction with complainant and that he did not see it fit to contest the charges against him.[11]

The CBD ruled that respondent used his position as a lawyer to mislead complainant on the matter of land ownership by a foreigner.[12] He even went through the motion of preparing falsified and fictitious contracts, deeds and agreements. And for all these shameless acts, he collected ₱400,000 from complainant. Worse, he pocketed the ₱3.8 million and absconded with it.[13]

The CBD found respondent to be "nothing more than an embezzler" who misused his professional status as an attorney as a tool for deceiving complainant and absconding with complainant's money.[14] Respondent was dishonest and deceitful. He abused the trust and confidence reposed by complainant in him. The CBD recommended the disbarment of respondent.[15]

The Board of Governors of the IBP adopted the findings and recommendation of the CBD with the modification that respondent was further required to return the amount of ₱4.2 million to respondent.[16]

We agree with the IBP.

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[10] *Id*.

[11] Report and Recommendation dated March 31, 2008 penned by Investigating Commissioner Rico A. Limpingco. *Id.*, pp. 45-47.

[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] Resolution No. XVIII-2008-423 dated May 22, 2008. *Id.*, pp. 43-44.

SUFFICIENCY OF NOTICE OF THE DISBARMENT PROCEEDINGS

We shall first address a threshold issue: was respondent properly given notice of the disbarment proceedings against him? Yes.

The respondent did not file any answer or position paper, nor did he appear during the scheduled mandatory conference. Respondent in fact abandoned his last known address, his law office in Olongapo City, after he committed the embezzlement.

Respondent should not be allowed to benefit from his disappearing act. He can neither defeat this Court's jurisdiction over him as a member of the bar nor evade administrative liability by the mere ruse of concealing his whereabouts. Thus, service of the complaint and other orders and processes on respondent's office was sufficient notice to him.

Indeed, since he himself rendered the service of notice on him impossible, the notice requirement cannot apply to him and he is thus considered to have waived it. The law does not require that the impossible be done. *Nemo tenetur ad impossibile.*[17] The law obliges no one to perform an impossibility. Laws and rules must be interpreted in a way that they are in accordance with logic, common sense, reason and practicality.[18]

In this connection, lawyers must update their records with the IBP by informing the IBP National Office or their respective chapters[19] of any change in office or residential address and other contact details.[20] In case such change is not duly updated,

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[17] *Santos, Jr. v. PNOC Exploration Corporation*, G.R. No. 170943, 23 September 2008.

[18] *Id.*

[19] In case the update is done in one's chapter, the said chapter shall promptly notify the IBP National Office about the matter.

[20] In this connection, the relevant portion of Section 19, Article II of the By-Laws of the IBP provides:

service of notice on the office or residential address appearing in the records of the IBP National Office shall constitute sufficient notice to a lawyer for purposes of administrative proceedings against him.

RESPONDENT'S ADMINISTRATIVE INFRACTIONS AND HIS LIABILITY THEREFOR

Lawyers, as members of a noble profession, have the duty to promote respect for the law and uphold the integrity of the bar. As men and women entrusted with the law, they must ensure that the law functions to protect liberty and not as an instrument of oppression or deception.

Respondent has been weighed by the exacting standards of the legal profession and has been found wanting.

Respondent committed a serious breach of his oath as a lawyer. He is also guilty of culpable violation of the Code of Professional Responsibility, the code of ethics of the legal profession.

All lawyers take an oath to support the Constitution, to obey the laws and to do no falsehood.[21]

Every change after registration in respect to any of the matters above specified [including office and residence addresses] shall be reported within sixty (60) days to the Chapter Secretary, who shall in turn promptly report the change to the National Office.

[21] The Lawyer's Oath which is taken by all members of the bar as a prerequisite for their admission to the legal profession states:

I, _____, do solemnly swear that I will maintain allegiance to the Republic of the Philippines; **I will support its Constitution and obey the laws** as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, or give aid nor consent to the same; I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion, with all good faith and fidelity as well to the courts as to my clients; and I impose upon myself this voluntary obligations without any mental reservation or purpose of evasion. So help me God.

That oath is neither mere formal ceremony nor hollow words. It is a sacred trust that should be upheld and kept inviolable at all times.[22]

Lawyers are servants of the law[23] and the law is their master. They should not simply obey the laws, they should also inspire respect for and obedience thereto by serving as exemplars worthy of emulation. Indeed, that is the first precept of the Code of Professional Responsibility:

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

Section 7, Article XII of the Constitution provides:

SEC. 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

This Court has interpreted this provision, as early as the 1947 case *Krivenko v. Register of Deeds*,[24] to mean that "under the Constitution, aliens may not acquire private or agricultural lands, including residential lands." The provision is a declaration of imperative constitutional policy.[25]

Respondent, in giving advice that directly contradicted a fundamental constitutional policy, showed disrespect for the Constitution and gross ignorance of basic law. Worse, he prepared spurious documents that he knew were void and illegal.

By making it appear that de Mesa undertook to sell the property to complainant and that de Mesa thereafter sold the property to Gonzales who made the purchase for and in behalf of complainant,

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[22] *Ting-Dumali v. Torres*, A.C. No. 5161, 14 April 2004, 427 SCRA 108.

[23] *Catu v. Rellosa*, A.C. No. 5738, 19 February 2008, 546 SCRA 209.

[24] 79 Phil. 461 (1947).

[25] *Godinez v. Pak Luen*, 205 Phil. 176 (1983).

he falsified public documents and knowingly violated the Anti-Dummy Law.[26]

Respondent's misconduct did not end there. By advising complainant that a foreigner could legally and validly acquire real estate in the Philippines and by assuring complainant that the property was alienable, respondent deliberately foisted a falsehood on his client. He did not give due regard to the trust and confidence reposed in him by complainant. Instead, he deceived complainant and misled him into parting with ₱400,000 for services that were both illegal and unprofessional. Moreover, by pocketing and misappropriating the ₱3.8 million given by complainant for the purchase of the property, respondent committed a fraudulent act that was criminal in nature.

Respondent spun an intricate web of lies. In the process, he committed unethical act after unethical act, wantonly violating laws and professional standards.

For all this, respondent violated not only the lawyer's oath and Canon 1 of the Code of Professional Responsibility. He also transgressed the following provisions of the Code of Professional Responsibility:

Rule 1.01. — **A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct**.

Rule 1.02. — **A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system**.

CANON 7 — **A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION** AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

CANON 15 — **A LAWYER SHALL OBSERVE CANDOR**, **FAIRNESS** AND LOYALTY **IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENT**.

CANON 16 — **A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT** THAT MAY COME INTO HIS POSSESSION.

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[26] Commonwealth Act No. 108, as amended by Presidential Decree No. 715.

CANON 17 — **A LAWYER** OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE **SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM**. (emphasis supplied)

A lawyer who resorts to nefarious schemes to circumvent the law and uses his legal knowledge to further his selfish ends to the great prejudice of others, poses a clear and present danger to the rule of law and to the legal system. He does not only tarnish the image of the bar and degrade the integrity and dignity of the legal profession, he also betrays everything that the legal profession stands for.

It is respondent and his kind that give lawyering a bad name and make laymen support Dick the Butcher's call, "Kill all lawyers!"[27] A disgrace to their professional brethren, they must be purged from the bar.

WHEREFORE, respondent Atty. Leonuel N. Mas is hereby *DISBARRED*. The Clerk of Court is directed to immediately strike out the name of respondent from the Roll of Attorneys.

Respondent is hereby *ORDERED* to return to complainant Keld Stemmerik the total amount of ₱4.2 million with interest at 12% per annum from the date of promulgation of this resolution until full payment. Respondent is further *DIRECTED* to submit to the Court proof of payment of the amount within ten days from payment.

The National Bureau of Investigation (NBI) is *ORDERED* to locate Atty. Mas and file the appropriate criminal charges against him. The NBI is further *DIRECTED* to regularly report the progress of its action in this case to this Court through the Bar Confidant.

Let copies of this resolution be furnished the Bar Confidant who shall forthwith record it in the personal file of respondent, the Court Administrator who shall inform all courts of the Philippines, the Integrated Bar of the Philippines which shall disseminate copies to all its chapters and members and all

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[27] Shakespeare, W., *Henry the VI, Part II*, Act IV, Scene 2, Line 72.

administrative and quasi-judicial agencies of the Republic of the Philippines.

SO ORDERED.

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

Carpio Morales, J., on official leave.

FIRST DIVISION

[A.M. No. P-08-2434-A. June 16, 2009]

LYN L. LLAMASARES, Branch Clerk of Court, Regional Trial Court (RTC) of Manila, Branch 40, *complainant, vs.* **MARIO M. PABLICO, Process Server, Regional Trial Court (RTC) of Manila, Branch 40,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; PUBLIC OFFICE IS A PUBLIC TRUST; VIOLATION IN CASE AT BAR. — By the very nature of their tasks and responsibilities, court employees are bound to observe the mandate of Section 1, Article XI of the Constitution which provides: Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiently, act with patriotism and justice and lead modest lives. We condemn any conduct, act or omission committed by those involved in the administration of justice that violates the norm of public accountability and diminishes or tends to diminish the faith of the people in the judiciary. Respondent not only unapologetically falsified his DTRs but also attended to his private affairs during office hours. Moreover, he was previously found to have been remiss in the performance of his duties as a process server. Worse, he

flagrantly and repeatedly violated our orders. His conduct certainly did not befit that of a responsible public officer.

2. ID.; ID.; ID.; ID.; IMPOSABLE PENALTY. — Respondent is therefore found guilty of dishonesty and consequently dismissed from the service. However, because respondent had already been dropped from the rolls, the penalty of dismissal can no longer be imposed upon him. Nevertheless, the accessory or additional penalties carried by dismissal, namely, cancellation of eligibility, forfeiture of retirement benefits and disqualification from reemployment in the government service are hereby imposed on him.

R E S O L U T I O N

CORONA, *J.*:

This is an administrative complaint against respondent Mario M. Pablico, process server, Regional Trial Court (RTC) of Manila, Branch 40.

Complainant Lyn L. Llamasares, branch clerk of court of RTC-Manila, Branch 40, averred that respondent repeatedly made false entries in his daily time records (DTRs). The arrival and departure times jotted down by respondent in the logbook did not correspond to the entries made by the branch clerk of court. Moreover, he habitually stepped out of the office without logging out and without permission.[1]

Complainant also asserted that respondent only served those court processes that he wanted, thus compelling other court personnel to perform his functions.[2]

Respondent was repeatedly ordered to answer the allegations against him but he refused.[3] He was ordered to comply therewith

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[1] Letter-complaint dated March 17, 2005. *Rollo*, pp. 2-9.

[2] Supplemental complaint dated November 15, 2005. *Id.*, pp. 89-91.

[3] Minute resolution dated March 20, 2006. *Id.*, pp. 376-377. Respondent was ordered to file a comment within a non-extendible period of 10 days and show cause why he should not be disciplined for his contumacious behavior.

and to pay a fine of ₱1,000.[4] Respondent subsequently filed his comment and paid the fine.

Respondent denied the allegations of falsification against him. He pointed out that the differences between his entries and those of the branch clerk of court were merely three to five minutes. He likewise explained that because of the administrative cases against him,[5] he was compelled to go out of the office without permission and consult with a lawyer from the Public Attorney's Office.

Meanwhile, on June 28, 2006, respondent was dropped from the rolls after three consecutive unsatisfactory performance ratings.[6]

And to make matters worse, on November 27, 2006, due to his failure to faithfully perform his duties as process server, respondent was found guilty of simple neglect of duty.[7]

Thereafter, this case was submitted to the Office of the Court Administrator (OCA) for evaluation, report and recommendation. It held:

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[4] Minute resolution dated February 19, 2007.

[5] Respondent had two other pending administrative cases.

[6] Minute resolution in A.M. No. 06-2-92-RTC issued by the Second Division of this Court. *Rollo,* p. 412. It states:

> Adm. Matter No. 06-2-92-RTC (RE: DROPPING FROM THE ROLLS OF MR. MARIO PABLICO, PROCESS SERVER, RTC. BR. 40, MANILA).—Considering the Report dated 31 January 2006 from the Office of the Court Administrator (OCA), the Court Resolves to (1) **DROP FROM THE ROLLS** Mr. Mario M. Pablico, Process Server, RTC, Br. 40, Manila, for obtaining "Unsatisfactory" performance ratings during the periods from July to December 2003, January to June 2004 and July to December 2004 WITHOUT PREJUDICE to the continuation of administrative complaints filed against him; and (2) **DECLARE VACANT** Mr. Pablico's position as Process Server, RTC, Br. 40, Manila.

[7] *Reyes v. Pablico,* A.M. No. P-06-2109, 27 November 2006, 508 SCRA 146.

[D]iscrepancies in the number of minutes (*i.e.*, five minutes more or less) as shown in the logbook for the dates in question readily show the propensity of herein respondent to falsify public records.

The OCA recommended that respondent be found guilty of dishonesty and dismissed from the service.[8]

We adopt the findings of the OCA.

By the very nature of their tasks and responsibilities, court employees are bound to observe the mandate of Section 1, Article XI of the Constitution which provides:

> Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiently, act with patriotism and justice and lead modest lives.

We condemn any conduct, act or omission committed by those involved in the administration of justice that violates the norm of public accountability and diminishes or tends to diminish the faith of the people in the judiciary.[9]

Respondent not only unapologetically falsified his DTRs but also attended to his private affairs during office hours. Moreover, he was previously found to have been remiss in the performance of his duties as a process server.[10] Worse, he flagrantly and repeatedly violated our orders. His conduct certainly did not befit that of a responsible public officer.

Respondent is therefore found guilty of dishonesty[11] and consequently dismissed from the service.[12] However, because respondent had already been dropped from the rolls, the penalty

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[8] Recommendation dated February 1, 2008.

[9] *Romero v. Castellano,* 440 Phil. 468, 474 (2002).

[10] *Supra* note 7.

[11] *Romero v. Castellano, supra* note 9. *See also Office of the Court Administrator v. Saa,* 457 Phil. 25 (2003) and *Office of the Court Administrator v. Sirios,* 457 Phil. 42 (2003).

[12] Revised Uniform Rules on Administrative Cases, Rule XVI, Sec. 22(a).

of dismissal can no longer be imposed upon him. Nevertheless, the accessory or additional penalties carried by dismissal, namely, cancellation of eligibility, forfeiture of retirement benefits and disqualification from reemployment in the government service are hereby imposed on him.[13]

WHEREFORE, Mario M. Pablico is hereby found *GUILTY* of dishonesty. The Civil Service Commission is ordered to cancel respondent's civil service eligibility. Respondent's retirement benefits, except accrued leave credits, are forfeited and he cannot be reemployed in any branch, agency or instrumentality of the government including government-owned and controlled corporations.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 157714. June 16, 2009]

MUNICIPALITY OF PATEROS, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS, THE MUNICIPALITY OF MAKATI, THE DIRECTOR OF LANDS, and THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; WHEN APPLICABLE RULES MAY BE RELAXED; JUSTIFIED. — In the interest

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[13] *Pagulayan-Torres v. Gomez,* A.M. No. P-03-1716, 9 June 2005, 460 SCRA 19, 24-25.

of justice and in order to write *finis* to this controversy, we opt to relax the rules. Our ruling in *Atty. Ernesto A. Tabujara III and Christine S. Dayrit v. People of the Philippines and Daisy Afable* provides us with ample justification, *viz.*: While it is true that rules of procedure are intended to promote rather than frustrate the ends of justice, and while the swift unclogging of the dockets of the courts is a laudable objective, it nevertheless must not be met at the expense of substantial justice. The Court has allowed some meritorious cases to proceed despite inherent procedural defects and lapses. This is in keeping with the principle that rules of procedure are mere tools designed to facilitate the attainment of justice, and that strict and rigid application of rules which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided. It is a far better and more prudent cause of action for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice. In those rare cases to which we did not stringently apply the procedural rules, there always existed a clear need to prevent the commission of a grave injustice. Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant is given the full opportunity for a just and proper disposition of his cause. The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, we have consistently held that rules must not be applied so rigidly as to override substantial justice.

2. ID.; CIVIL PROCEDURE; ACTIONS; JURISDICTION OF A TRIBUNAL OVER THE SUBJECT MATTER OF AN ACTION IS CONFERRED BY LAW; EXPLAINED. — Apart from the doctrine that the jurisdiction of a tribunal over the subject matter of an action is conferred by law, it is also the rule that the court's exercise of jurisdiction is determined by the material allegations of the complaint or information and the law applicable at the time the action was commenced. Lack

of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, by acquiescence, or even by express consent of the parties. Thus, the jurisdiction of a court over the nature of the action and the subject matter thereof cannot be made to depend upon the defenses set up in court or upon a motion to dismiss for, otherwise, the question of jurisdiction would depend almost entirely on the defendant. Once jurisdiction is vested, the same is retained up to the end of the litigation.

3. POLITICAL LAW; METROPOLITAN MANILA AUTHORITY; METROPOLITAN MANILA COUNCIL; POWERS. — The MMA's governing body, the Metropolitan Manila Council, although composed of the mayors of the component cities and municipalities, was merely given the power of: (1) formulation of policies on the delivery of basic services requiring coordination and consolidation; and (2) promulgation of resolutions and other issuances, approval of a code of basic services, and exercise of its rule-making power.

4. ID.; LOCAL GOVERNMENT CODE; DISPUTES AMONG LOCAL GOVERNMENT UNITS SHALL BE GOVERNED BY THE IMPLEMENTING RULES AND REGULATIONS. — The specific provision of the LGC, now made applicable because of the altered status of Makati, must be complied with. In the event that no amicable settlement is reached, as envisioned under Section 118(e) of the LGC, a certification shall be issued to that effect, and the dispute shall be formally tried by the *Sanggunian* concerned within sixty (60) days from the date of the aforementioned certification. In this regard, Rule III of the Rules and Regulations Implementing the LGC shall govern. Only upon failure of these intermediary steps will resort to the RTC follow, as specifically provided in Section 119 of the LGC: Section 119. *Appeal*. — Within the time and manner prescribed by the Rules of Court, any party may elevate the decision of the *sanggunian* concerned to the proper Regional Trial Court having jurisdiction over the area in dispute. The Regional Trial Court shall decide the appeal within one (1) year from the filing thereof. Pending final resolution of the disputed area prior to the dispute shall be maintained and continued for all legal purposes.

APPEARANCES OF COUNSEL

Rufino C. Lizardo for petitioner.
Arthur P. Castillo for DENR.
City Attorney (Makati) for Makati City.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition[1] for Review on *Certiorari* under Rule 45 of the Rules of Civil Procedure, seeking the reversal of the Court of Appeals (CA) Decision[2] dated January 22, 2003, which denied the appeal of petitioner Municipality of Pateros (Pateros) for undertaking a wrong mode of appeal. Subject of the appeal was the Order[3] of the Regional Trial Court (RTC) of Makati City, Branch 139, dated June 14, 1996, which dismissed petitioner's complaint for lack of jurisdiction.

The Facts

The property subject of this case consists of portions of then Fort William McKinley, now known as Fort Bonifacio (subject property), currently comprising Barangays Cembo, South Cembo, West Rembo, East Rembo, Comembo, Pembo, and Pitogo (entire property). The subject property is allegedly situated within the territorial jurisdiction of respondent Municipality (now City) of Makati (Makati) per Proclamation No. 2475[4] issued on January 7,

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[1] Dated May 7, 2003; *rollo*, pp. 7-29.

[2] Particularly docketed as CA-G.R. CV No. 55886, penned by Associate Justice Perlita J. Tria Tirona, with Associate Justices Roberto A. Barrios and Edgardo F. Sundiam (both deceased), concurring; *rollo*, pp. 200-208.

[3] Particularly docketed as Civil Case No. 93-4529, penned by then Judge Florentino A. Tuason, Jr. (now a Commissioner of the Commission on Elections); *rollo*, pp. 119-123.

[4] Entitled: EXCLUDING FROM THE OPERATION OF PROCLAMATION NO. 423, SERIES OF 1957 WHICH ESTABLISHED THE FORT WILLIAM MCKINLEY (NOW FORT BONIFACIO) MILITARY RESERVATION SITUATED IN THE MUNICIPALITIES OF PASIG, TAGUIG,

1986 (Proclamation No. 2475) by former President Ferdinand E. Marcos (President Marcos). Subsequently, on January 31, 1990, former President Corazon C. Aquino (President Aquino) issued Proclamation No. 518,[5] amending Proclamation No. 2475. Parenthetically, it may be noted that a similar boundary dispute over the entire property exists between the Municipality (now City) of Taguig and Makati, docketed as Civil Case No. 63896 and pending before the RTC of Pasig City, Branch 153.

As Proclamation Nos. 2475 and 518 respectively stated that the entire property is situated in Makati, Pateros, on January 18, 1991, filed an action[6] for Judicial Declaration of the Territorial Boundaries of Pateros against Makati before the RTC of Pasig City, Branch 154 (Pasig RTC). The case was, however, dismissed for lack of jurisdiction inasmuch as the subject property is located in Makati and it should have been filed before the Makati RTC.[7] Heeding the directive of the Pasig RTC, Pateros, on December 8, 1993, filed with the RTC of Makati a Complaint[8] against

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PARAÑAQUE, MAKATI AND PASAY CITY, METRO MANILA, A CERTAIN PORTION OF THE LAND EMBRACED THEREIN SITUATED IN THE MUNICIPALITY OF MAKATI AND DECLARING THE SAME OPEN TO DISPOSITION UNDER THE PROVISIONS OF ACT NO. 3038 AND REPUBLIC ACT NO. 274 IN RELATION [TO] THE PROVISIONS OF THE PUBLIC LAND ACT, AS AMENDED.

[5] Entitled: EXCLUDING FROM THE OPERATION OF PROCLAMATION NO. 423 DATED JULY 12, 1957 WHICH ESTABLISHED THE MILITARY RESERVATION KNOWN AS "FORT WILLIAM MCKINLEY" (NOW FORT ANDRES BONIFACIO) SITUATED IN THE MUNICIPALITIES OF PASIG, TAGUIG, PATEROS AND PARAÑAQUE, PROVINCE OF RIZAL AND PASAY CITY (NOW METROPOLITAN MANILA) AS AMENDED BY PROCLAMATION NO. 2475 DATED JANUARY 7, 1986, CERTAIN PORTIONS OF LAND EMBRACED THEREIN KNOWN AS BARANGAYS CEMBO, SOUTH CEMBO, WEST REMBO, EAST REMBO, COMEMBO, PEMBO AND PITOGO, SITUATED IN THE MUNICIPALITY OF MAKATI, METROPOLITAN MANILA AND DECLARING THE SAME OPEN FOR DISPOSITION UNDER THE PROVISIONS OF REPUBLIC ACT NO. 274, AND REPUBLIC ACT NO. 730 IN RELATION TO THE PROVISIONS OF THE PUBLIC LAND ACT, AS AMENDED.

[6] Records, pp. 281-287.

[7] *Id.* at 288-291.

[8] *Id.* at 1-10.

Makati and co-respondents, Director of Lands and the Department of Environment and Natural Resources (DENR), for the Judicial Declaration of the Territorial Boundaries of Pateros with a prayer for the issuance of a writ of Preliminary Injunction and Temporary Restraining Order (TRO). Pateros claimed that, based on historical and official records, it had an original area of one thousand thirty-eight (1,038) hectares, more or less. However, when a cadastral mapping was conducted by the Bureau of Lands in 1978, Pateros was appalled to learn that its territorial boundaries had been substantially reduced to merely one hundred sixty-six (166) hectares. Pateros opined that this disparity was brought about by the issuance of Proclamation Nos. 2475 and 518. Thus, Pateros prayed that the RTC judicially declare the territorial boundaries of Pateros based on supporting pieces of evidence, and that it nullify Proclamation No. 2475.

Makati filed a Motion to Dismiss,[9] contending that the issue was not the nullification of Proclamation No. 2475; that the RTC had no jurisdiction over the subject matter of the action because original jurisdiction to resolve boundary disputes among municipalities situated in Metro Manila is vested in the Metropolitan Manila Authority (MMA); that the RTC's jurisdiction is merely appellate; that the complaint failed to state a cause of action as Pateros failed to exhaust administrative remedies by failing to settle the dispute amicably; and that Pateros' claims had already been barred by laches because Makati, throughout the years, had already developed the subject property and had spent millions on such development.

Makati also filed a Motion to Suspend Proceedings,[10] arguing that the bill converting Makati into a city was pending approval before the Senate and portions of the subject property are included in the proposed charter. Makati, thus, opined that the continuation of the RTC proceedings would create a conflict between the

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[9] *Id.* at 32-40.

[10] *Id.* at 87-88.

judicial and the legislative branches. In its Order[11] dated October 21, 1994, the RTC granted Makati's Motion.

On July 19, 1994, Republic Act No. 7854[12] was enacted into law, converting Makati into a highly urbanized city. Pateros then moved for the revival of the proceedings before the RTC,[13] which it granted in its Order[14] dated March 17, 1995. However, due to the pending Motion to Dismiss earlier filed by Makati, the RTC required the parties to submit their respective Memoranda.

The RTC's Ruling

On June 14, 1996, the RTC issued an Order, dismissing the case on the ground of lack of jurisdiction. The RTC held that Proclamation No. 2475 specifically declared that the subject property is within the territorial jurisdiction of Makati and, inasmuch as the Proclamation was not declared unconstitutional, the same is a valid and subsisting law. In the main, citing Sections 10[15] and 11,[16] Article X of the 1987 Constitution, and pursuant to this Court's ruling in *Municipality of Sogod v. Rosal*,[17]

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[11] *Id.* at 104.

[12] An Act Converting the Municipality of Makati into a Highly Urbanized City to be known as the City of Makati.

[13] Records, pp. 201-203.

[14] *Id.* at 209.

[15] SECTION 10. No province, city, municipality, or *barangay* may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.

[16] SECTION 11. The Congress may, by law, create special metropolitan political subdivisions, subject to a plebiscite as set forth in Section 10 hereof. The component cities and municipalities shall retain their basic autonomy and shall be entitled to their own local executives and legislative assemblies. The jurisdiction of the metropolitan authority that will thereby be created shall be limited to basic services requiring coordination.

[17] G.R. Nos. L-38204 and L-38205, September 24, 1991, 201 SCRA 632, 640.

the RTC held that the modification or substantial alteration of boundaries of municipalities can be done only through a law enacted by Congress which shall be subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected. Hence, the RTC opined that it is without jurisdiction to fix the territorial boundaries of the parties. Pateros filed a Motion for Reconsideration[18] which was, however, denied by the RTC in its Order[19] dated August 30, 1996. Aggrieved, Pateros appealed to the CA.[20]

The CA's Ruling

On January 22, 2003, the CA denied Pateros' appeal. The CA held that the RTC did not make any findings of fact but merely applied various provisions of law and jurisprudence. Thus, the case presented a pure question of law, which Pateros should have brought directly to the Supreme Court, pursuant to Section 5(2),[21] Article VIII of the 1987 Constitution and

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[18] *Rollo,* pp. 124-132.

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

[20] *Id.* at 158-159.

[21] SECTION 5. The Supreme Court shall have the following powers:

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(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

(b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

(c) All cases in which the jurisdiction of any lower court is in issue.

(d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.

(e) All cases in which only an error or question of law is involved.

Section 2,[22] Rule 41 of the Revised Rules of Civil Procedure. The CA also held that it would amount to grave abuse of discretion amounting to lack of jurisdiction if the CA insisted on resolving the issues raised therein. Thus, by undertaking a wrong mode of appeal and citing Section 2,[23] Rule 50 of the Revised Rules of Civil Procedure, the CA denied Pateros' appeal. Pateros filed a Motion for Reconsideration,[24] which the CA denied in its Resolution[25] dated March 27, 2003.

The Issue

Hence, this Petition based on the sole ground that the CA committed grave abuse of discretion in dismissing the appeal for lack of jurisdiction.[26]

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[22] **SEC. 2.** *Modes of appeal.* —

(a) *Ordinary appeal.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) *Petition for review.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) *Appeal by certiorari.* — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45.

[23] **SEC. 2.** *Dismissal of improper appeal to the Court of Appeals.* — An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.

An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.

[24] *Rollo,* pp. 209-217.

[25] *Id.* at 222.

[26] *Supra* note 1, at 18.

Pateros asseverates that the issues raised before the CA involved mixed questions of fact and law, because Pateros sought the determination of its territorial boundaries and the nullification of Proclamation No. 2475; that Pateros does not seek the alteration, modification, or creation of another or a new local government unit (LGU), but is concerned only with its territorial boundaries which, according to existing records, consisted of 1,038 hectares; that non-presentation of evidence before the RTC does not make the appeal purely a question of law, because the parties were prevented from presenting any evidence due to the RTC's erroneous dismissal of the case based on lack of jurisdiction; that Proclamation Nos. 2475 and 518 suffer from Constitutional infirmity; that the alteration or modification of the boundaries of municipalities or cities can only be made by a law enacted by Congress and approved by the majority of the votes cast in a plebiscite in the political units directly affected; that Proclamation No. 2475, although issued by then President Marcos during the Marcos era, was not a legislative enactment, pursuant to Section 6 of the 1976 Amendment to the Constitution; and granting, without admitting, that Proclamation No. 2475 is a law, it should be subject to approval by the majority of the votes cast in a plebiscite in the political units directly affected. Thus, Pateros prays that the assailed CA Decision be reversed and set aside, and that the RTC be directed to proceed with the trial of the instant case.[27]

On the other hand, Makati claims that the sole issue in Pateros' appeal before the CA is jurisdiction and as the question of jurisdiction is a question of law and as the CA lacks jurisdiction over pure questions of law, therefore, Pateros resorted to a wrong mode of appeal. The issues raised by Pateros do not consist of questions of fact as the RTC rendered the assailed Order based on Makati's Motion to Dismiss and no trial on the merits was ever conducted. Makati points out that the CA quoted the decision of the RTC's discourse in order to show that only a question of law was involved in Pateros' appeal. Thus, Makati posits that Pateros defies the rules on trial, evidence, and

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[27] Pateros' Memorandum dated August 9, 2004; *rollo,* pp. 314-333.

jurisdiction in a desperate bid to extricate itself from its mistake in taking a wrong mode of appeal, *i.e.*, by notice of appeal to the CA rather than a petition for review on *certiorari* under Rule 45 of the Revised Rules of Civil Procedure filed before this Court. Makati submits that the dismissal of Pateros' appeal was proper, as mandated by Section 2, Rule 50 of the said Rules. Due to the availment of the wrong mode of appeal, the RTC's Order dismissing the case already attained finality.[28]

The Director of Lands and the DENR, through the Office of the Solicitor General (OSG), share the stand and arguments of Makati. The OSG stresses that the parties never presented any evidence before the RTC which resolved the case based on the parties' undisputed factual submissions and the application thereto of the pertinent laws, Rules of Civil Procedure, and jurisprudence. Hence, the OSG concludes that the appeal before the CA involved a pure question of law.[29]

Our Ruling

We agree that Pateros indeed committed a procedural infraction. It is clear that the issue raised by Pateros to the CA involves the jurisdiction of the RTC over the subject matter of the case. The jurisdiction of a court over the subject matter of the action is a matter of law; it is conferred by the Constitution or by law. Consequently, issues which deal with the jurisdiction of a court over the subject matter of a case are pure questions of law. As Pateros' appeal solely involves a question of law, it should have directly taken its appeal to this Court by filing a petition for review on *certiorari* under Rule 45, not an ordinary appeal with the CA under Rule 41. The CA did not err in holding that Pateros pursued the wrong mode of appeal.[30]

However, in the interest of justice and in order to write *finis* to this controversy, we opt to relax the rules. Our ruling in

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[28] Makati's Memorandum dated August 23, 2004; *rollo*, pp. 336-351.

[29] OSG's Comment dated April 16, 2004; *rollo*, pp. 279-289.

[30] *Quezon City and the City Treasurer of Quezon City v. ABS-CBN Broadcasting Corporation*, G.R. No. 166408, October 6, 2008.

Atty. Ernesto A. Tabujara III and Christine S. Dayrit v. People of the Philippines and Daisy Afable[31] provides us with ample justification, *viz.*:

> While it is true that rules of procedure are intended to promote rather than frustrate the ends of justice, and while the swift unclogging of the dockets of the courts is a laudable objective, it nevertheless must not be met at the expense of substantial justice.
>
> The Court has allowed some meritorious cases to proceed despite inherent procedural defects and lapses. This is in keeping with the principle that rules of procedure are mere tools designed to facilitate the attainment of justice, and that strict and rigid application of rules which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided. It is a far better and more prudent cause of action for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.
>
> In those rare cases to which we did not stringently apply the procedural rules, there always existed a clear need to prevent the commission of a grave injustice. Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant is given the full opportunity for a just and proper disposition of his cause.
>
> The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, we have consistently held that rules must not be applied so rigidly as to override substantial justice.

Given the circumstances surrounding the instant case, we find sufficient reason to relax the rules. Thus, we now resolve the sole issue of whether the RTC has jurisdiction to entertain the boundary dispute between Pateros and Makati.

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[31] G.R. No. 175162, October 29, 2008. (Citations omitted.)

Apart from the doctrine that the jurisdiction of a tribunal over the subject matter of an action is conferred by law, it is also the rule that the court's exercise of jurisdiction is determined by the material allegations of the complaint or information and the law applicable at the time the action was commenced. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, by acquiescence, or even by express consent of the parties. Thus, the jurisdiction of a court over the nature of the action and the subject matter thereof cannot be made to depend upon the defenses set up in court or upon a motion to dismiss for, otherwise, the question of jurisdiction would depend almost entirely on the defendant. Once jurisdiction is vested, the same is retained up to the end of the litigation.[32]

It is worth stressing that, at the time the instant case was filed, the 1987 Constitution and the Local Government Code (LGC) of 1991 were already in effect. Thus, the law in point is Section 118 of the LGC, which provides:

> Section. 118. *Jurisdictional Responsibility for Settlement of Boundary Disputes*. — Boundary disputes between and among local government units shall, as much as possible, be settled amicably. To this end:
>
> (a) Boundary disputes involving two (2) or more *barangays* in the same city or municipality shall be referred for settlement to the *sangguniang panlungsod* or *sangguniang bayan* concerned.
>
> **(b) Boundary disputes involving two (2) or more municipalities within the same province shall be referred for settlement to the *sangguniang panlalawigan* concerned**.
>
> (c) Boundary disputes involving municipalities or component cities of different provinces shall be jointly referred for settlement to the *sanggunians* of the province concerned.
>
> **(d) Boundary disputes involving a component city or municipality on the one hand and a highly urbanized city on**

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[32] *People v. Vanzuela*, G.R. No. 178266, July 21, 2008, 559 SCRA 234, 242-243, citing *Laresma v. Abellana*, 442 SCRA 156, 168 (2004).

the other, or two (2) or more highly urbanized cities, shall be jointly referred for settlement to the respective *sanggunians* of the parties.

(e) In the event the *sanggunian* fails to effect an amicable settlement within sixty (60) days from the date the dispute was referred thereto, it shall issue a certification to that effect. Thereafter, the dispute shall be formally tried by the *sanggunian* concerned which shall decide the issue within sixty (60) days from the date of the certification referred to above.[33]

Notably, when Pateros filed its complaint with the RTC of Makati, Makati was still a municipality. We take judicial notice of the fact that there was no *Sangguniang Panlalawigan* that could take cognizance of the boundary dispute, as provided in Section 118(b) of the LGC. Neither was it feasible to apply Section 118(c) or Section 118(d), because these two provisions clearly refer to situations different from that obtaining in this case. Also, contrary to Makati's postulation, the former MMA did not also have the authority to take the place of the *Sangguniang Panlalawigan* because the MMA's power was limited to the delivery of basic urban services requiring coordination in Metropolitan Manila. The MMA's governing body, the Metropolitan Manila Council, although composed of the mayors of the component cities and municipalities, was merely given the power of: (1) formulation of policies on the delivery of basic services requiring coordination and consolidation; and (2) promulgation of resolutions and other issuances, approval of a code of basic services, and exercise of its rule-making power.[34] Thus, there is no merit in Makati's argument that Pateros failed to exhaust administrative remedies inasmuch as the LGC is silent as to the governing body in charge of boundary disputes involving municipalities located in the Metropolitan Manila area.

However, now that Makati is already a highly urbanized city, the parties should follow Section 118(d) of the LGC and should

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[33] Emphasis supplied.

[34] *Metropolitan Manila Dev't. Authority v. Bel-Air Village Asso.*, 385 Phil. 586, 616 (2000).

opt to amicably settle this dispute by joint referral to the respective *sanggunians* of the parties. This has become imperative because, after all, no attempt had been made earlier to settle the dispute amicably under the aegis of the LGC. The specific provision of the LGC, now made applicable because of the altered status of Makati, must be complied with. In the event that no amicable settlement is reached, as envisioned under Section 118(e) of the LGC, a certification shall be issued to that effect, and the dispute shall be formally tried by the *Sanggunian* concerned within sixty (60) days from the date of the aforementioned certification. In this regard, Rule III of the Rules and Regulations Implementing the LGC shall govern.[35]

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[35] Rule III of Administrative Order No. 270 dated February 21, 1992, entitled "Prescribing the Implementing Rules and Regulations of the Local Government Code of 1991" provides:

RULE III
Settlement of Boundary Disputes

ARTICLE 15. *Definition and Policy*. — There is a boundary dispute when a portion or the whole of the territorial area of an LGU is claimed by two or more LGUs. Boundary disputes between or among LGUs shall, as much as possible, be settled amicably.

ARTICLE 16. *Jurisdictional Responsibility*. — Boundary disputes shall be referred for settlement to the following:

(a) *Sangguniang panlungsod* or *sangguniang bayan* for disputes involving two (2) or more *barangays* in the same city or municipality, as the case may be;

(b) *Sangguniang panlalawigan*, for those involving two (2) or more municipalities within the same province;

(c) Jointly, to the *sanggunians* of provinces concerned, for those involving component cities or municipalities of different provinces; or

(d) Jointly, to the respective *sanggunians*, for those involving a component city or municipality and a highly-urbanized city; or two (2) or more highly-urbanized cities.

ARTICLE 17. *Procedures for Settling Boundary Disputes*. — The following procedures shall govern the settlement of boundary disputes:

(a) Filing of petition — The *sanggunian* concerned may initiate action by filing a petition, in the form of a resolution, with the *sanggunian* having jurisdiction over the dispute.

(b) Contents of petition — The petition shall state the grounds, reasons or justifications therefor.

Only upon failure of these intermediary steps will resort to the RTC follow, as specifically provided in Section 119 of the LGC:

(c) Documents attached to petition — The petition shall be accompanied by:

(1) Duly authenticated copy of the law or statute creating the LGU or any other document showing proof of creation of the LGU;

(2) Provincial, city, municipal, or *barangay* map, as the case may be, duly certified by the LMB;

(3) Technical description of the boundaries of the LGUs concerned;

(4) Written certification of the provincial, city, or municipal assessor, as the case may be, as to territorial jurisdiction over the disputed area according to records in custody;

(5) Written declarations or sworn statements of the people residing in the disputed area; and

(6) Such other documents or information as may be required by the *sanggunian* hearing the dispute.

(d) Answer of adverse party — Upon receipt by the *sanggunian* concerned of the petition together with the required documents, the LGU or LGUs complained against shall be furnished copies thereof and shall be given fifteen (15) working days within which to file their answers.

(e) Hearing — Within five (5) working days after receipt of the answer of the adverse party, the *sanggunian* shall hear the case and allow the parties concerned to present their respective evidences.

(f) Joint hearing — When two or more *sanggunians* jointly hear a case, they may sit *en banc* or designate their respective representatives. Where representatives are designated, there shall be an equal number of representatives from each *sanggunian*. They shall elect from among themselves a presiding officer and a secretary. In case of disagreement, selection shall be by drawing lot.

(g) Failure to settle — In the event the *sanggunian* fails to amicably settle the dispute within sixty (60) days from the date such dispute was referred thereto, it shall issue a certification to that effect and copies thereof shall be furnished the parties concerned.

(h) Decision — Within sixty (60) days from the date the certification was issued, the dispute shall be formally tried and decided by the *sanggunian* concerned. Copies of the decision shall, within fifteen (15) days from the promulgation thereof, be furnished the parties concerned, DILG, local assessor, COMELEC, NSO, and other NGAs concerned.

(i) Appeal — Within the time and manner prescribed by the Rules of Court, any party may elevate the decision of the *sanggunian* concerned to the proper Regional Trial Court having jurisdiction over the dispute by filing

Section 119. *Appeal*. — Within the time and manner prescribed by the Rules of Court, any party may elevate the decision of the *sanggunian* concerned to the proper Regional Trial Court having jurisdiction over the area in dispute. The Regional Trial Court shall decide the appeal within one (1) year from the filing thereof. Pending final resolution of the disputed area prior to the dispute shall be maintained and continued for all legal purposes.

On this score, the jurisdiction of the RTC over boundary disputes among LGUs was settled in *National Housing Authority v. Commission on the Settlement of Land Problems*,[36] where this Court recognized the appellate jurisdiction of the proper RTC. The jurisdiction of the RTC was clarified in *Municipality of Kananga v. Judge Madrona*,[37] where this Court held that, even in the absence of any specific provision of law, "*RTCs have general jurisdiction to adjudicate all controversies except those expressly withheld from their plenary powers. They have the power not only to take judicial cognizance of a case instituted for judicial action for the first time, but also to do so to the exclusion of all other courts at that stage. Indeed, the power is not only original, but also exclusive*."

Corollarily, we feel obliged to inform Congress of the need to pass a law specifically delineating the metes and bounds of the disputing LGUs. In *Mariano, Jr. v. COMELEC*,[38] we held

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therewith the appropriate pleading, stating among others, the nature of the dispute, the decision of the *sanggunian* concerned and the reasons for appealing therefrom. The Regional Trial Court shall decide the case within one (1) year from the filing thereof. Decisions on boundary disputes promulgated jointly by two (2) or more *sangguniang panlalawigans* shall be heard by the Regional Trial Court of the province which first took cognizance of the dispute.

ARTICLE 18. *Maintenance of Status Quo*. — Pending final resolution of the dispute, the status of the affected area prior to the dispute shall be maintained and continued for all purposes.

ARTICLE 19. *Official Custodian*. — The DILG shall be the official custodian of copies of all documents on boundary disputes of LGUs. (Emphasis supplied)

[36] G.R. No. 142601, October 23, 2006, 505 SCRA 38.

[37] 450 Phil. 392, 400 (2003).

[38] 312 Phil. 259, 267 (1995).

that the existence of a boundary dispute does not *per se* present an unsurmountable difficulty which will prevent Congress from defining with reasonable certitude the territorial jurisdiction of an LGU. Congress, by virtue of the powers vested in it by the Constitution, could very well put an end to this dispute. We reiterate what we already said about the importance and sanctity of the territorial jurisdiction of an LGU:

> The importance of drawing with precise strokes the territorial boundaries of a local unit of government cannot be overemphasized. The boundaries must be clear for they define the limits of the territorial jurisdiction of a local government unit. It can legitimately exercise powers of government only within the limits of its territorial jurisdiction. Beyond these limits, its acts are ***ultra vires***. Needless to state, any uncertainty in the boundaries of local government units will sow costly conflicts in the exercise of governmental powers which ultimately will prejudice the people's welfare. This is the evil sought to be avoided by the Local Government Unit in requiring that the land area of a local government unit must be spelled out in metes and bounds, with technical descriptions.[39]

WHEREFORE, the instant Petition is *DENIED*, having been mooted by the conversion of respondent Municipality of Makati into a highly urbanized city. The parties are hereby *DIRECTED* to comply with Section 118(d) and (e) of the Local Government Code, and Rule III of the Rules and Regulations Implementing the Local Government Code of 1991 without prejudice to judicial recourse, as provided in the Local Government Code. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Velasco, Jr., and *Peralta, JJ.,* concur.

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[39] *Id.* at 265-266.

THIRD DIVISION

[G.R. No. 158877. June 16, 2009]

JOVEN DE GRANO, represented by VENUS P. DE GRANO, ERNESTO H. MALABANAN, and SIMPLICIA D. MALABANAN, *petitioner, vs.* **GREGORIO LACABA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; RULES OF PROCEDURE MAY BE RELAXED IN THE INTEREST OF SUBSTANTIAL JUSTICE. — Rules of procedure may be relaxed in the interest of substantial justice and in order to give a litigant the fullest opportunity to establish the merits of his complaint. However, concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to explain its failure to comply with the rules and prove the existence of exceptionally meritorious circumstances warranting such liberality.

2. ID.; CIVIL PROCEDURE; JUDGMENT; WHEN AMENDED; THE DATE OF AMENDMENT SHALL BE CONSIDERED AS THE DATE OF THE DECISION IN THE COMPUTATION OF THE PERIOD FOR PERFECTING THE APPEAL; EXCEPTION. — Respondent might have been confused with the rule that, when a judgment is amended, the date of the amendment should be considered the date of the decision in the computation of the period for perfecting the appeal. For all intents and purposes, the lower court rendered a new judgment from which the time to appeal must be reckoned. However, this rule presupposes that the amendment consists of a material alteration of such substance and proportion that would, in effect, give rise to an entirely new judgment. But when the amendment merely consists of the correction of a clerical error, no new judgment arises. In such case, the period for filing the appeal should still be counted from the receipt of the original judgment.

3. ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY SUIT; WHEN PROPER. — For a forcible entry suit to prosper, the complainant must allege and prove that he was in prior physical possession of the property and that he was deprived of such possession by means of force, intimidation, threat, strategy, or stealth. A party who can prove prior possession can recover such possession even against the owner himself. Whatever may be the character of his possession, if he has in his favor prior possession in time, he has the security that entitles him to remain in the property until a person with a better right lawfully ejects him. A party having the burden of proof must establish his case by a preponderance of evidence. In doing so, he must rely on the strength of his own evidence, not on the weakness of the defendant's.

4. CIVIL LAW; PROPERTY; TAX DECLARATIONS AND REALTY TAX PAYMENTS ARE NOT CONCLUSIVE PROOF OF POSSESSION; RATIONALE.— Tax declarations and realty tax payments are not conclusive proof of possession. They are merely good *indicia* of possession in the concept of owner based on the presumption that no one in his right mind would be paying taxes for a property that is not in his actual or constructive possession. It bears emphasizing that the word "possession," as used in forcible entry and unlawful detainer cases, means nothing more than physical possession, not legal possession in the sense contemplated in civil law. When the law speaks of possession, the reference is to prior physical possession or possession *de facto*, as contra-distinguished from possession *de jure*. Only prior physical possession, not title, is the issue. Issues as to the *right* of possession or ownership are not involved in the action; evidence thereon is not admissible, except only for the purpose of determining the issue of possession.

APPEARANCES OF COUNSEL

Malabanan & Andico-Malabanan Law Offices for petitioner.

Caparas Law & Surveying Lawyers and Surveyors for respondent.

D E C I S I O N

NACHURA, *J.*:

Assailed in this petition for review on *certiorari* is the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 67852 dated October 16, 2002 and Resolution dated June 18, 2003. This decision reversed the uniform decisions of the municipal and regional trial courts dismissing a forcible entry case filed by respondent Gregorio Lacaba. The antecedents of the petition are as follows:

Respondent Gregorio Lacaba[2] claims that he is the owner of two adjacent parcels of land, located in Barangay Niugan, Laurel, Batangas and identified as Cadastral Lot Nos. 6916 and 6917 in Survey No. REI-041011-001184. Lot No. 6916 has an area of 5,743 square meters, while Lot No. 6917 has an area of 804 square meters. Each parcel of land is covered by a separate tax declaration in the name of respondent.

On May 30, 2000, respondent filed a complaint for forcible entry with prayer for a temporary restraining order and/or preliminary injunction against petitioner Joven de Grano. According to respondent, he has been in physical possession of the two parcels of land for more than 30 years and has been paying real property taxes thereon. In 1978, respondent purportedly designated as caretakers the spouses Ely and Anita Mojica (spouses Mojica), who occupied the property until the present, and allowed three other spouses, including the spouses Silvestre and Amor Matilla (spouses Matilla), to build their respective houses on the property and conduct fruit vending and *carinderia* business.[3]

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[1] Penned by Associate Justice B. A. Adefuin-de la Cruz with Associate Justices Rebecca de Guia-Salvador and Edgardo F. Sundiam, concurring; *rollo*, pp. 52-60.

[2] Respondent's counsel informed this Court that his client, Gregorio Lacaba, passed away sometime in August 2005 but his heirs have not furnished him with a copy of the Death Certificate; *id.* at 412.

[3] *Id.* at 103-104.

Respondent alleged that, sometime during the second week of May 2000, petitioner, by means of force, intimidation, strategy and threats, and with the help of his men, destroyed the perimeter fence built by respondent. The fence was made of concrete posts and barbed wire. Respondent averred that petitioner effectively disrupted respondent's peaceful possession and occupation of the property by clearing the land of plants, bushes and trees and demolishing the house owned by the spouses Matilla. The continuous intrusion of petitioner caused serious fear and anxiety to the occupants of the properties.[4]

Respondent attached to the complaint Tax Declaration Nos. 016-00618 and 016-00619 and a copy of Official Receipt No. 5342125 dated May 30, 2000 of the payment of real property tax from 1998 until 2000.[5] In addition, respondent later submitted a Certification issued by Barangay Captain Marcelo Balba stating that respondent was the declared owner of Lot Nos. 6916 and 6917 based on Relocation Survey Plan No. REI-041011-001184, and a Certification dated June 6, 1997 issued by the Municipal Assessor of Laurel, Batangas stating that their records showed that respondent was the true and lawful owner of the properties covered by Tax Declaration Nos. 016-006618 and 016-00619, and that real property tax had been paid from previous years until 1997. Respondent's counsels also executed a Joint Affidavit[6] stating that they prepared affidavits for the caretakers and neighbors to sign, but the latter refused to sign for fear of their lives.

In his Answer, petitioner averred that the real owners and possessors of the property were the family of Ernesto Malabanan, as evidenced by Transfer Certificate of Title (TCT) No. T-31929 of the Register of Deeds of Tanauan, Batangas. He pointed out that Relocation Survey Plan No. REI-041011-001184 had already been cancelled by the Bureau of Lands on October 8, 1999; and that, on April 13, 2000, the Bureau of Lands approved

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[4] *Id.* at 104-105.

[5] *Id.* at 111-113.

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

a Consolidation and Subdivision Plan, which determined the metes and bounds of the properties of the Malabanans. Petitioner alleged that the Office of the Building Official approved the application of the Malabanans for the construction of a fence on a portion of their property; and petitioner, acting in accordance with the instructions of the Malabanans, caused the clearing of the property.[7] Petitioner submitted in evidence a copy of TCT No. T-31929;[8] Relocation Survey Plan No. REI-041011-001184 with a "cancelled" marking;[9] Order of cancellation of Relocation Survey Plan No. REI-041011-001184;[10] Consolidation and Subdivision Plan No. Pcs-04-015296;[11] *Sinumpaang Salaysay*[12] of Nepumuceno Noveno, also a caretaker of the Malabanan family; and uniformly worded affidavits[13] of the occupants of the property, stating that they were not connected with respondent, and that they were occupying the property upon the permission of Ernesto Malabanan.

On August 11, 2000, the Municipal Circuit Trial Court (MCTC) dismissed the complaint for lack of cause of action.[14] The court *a quo* found that respondent's claim, that he was in actual possession of the property through the possession of his caretakers and the other spouses he allowed to occupy the property, was belied by his own statement and that of Mr. Nepomuceno Noveno, a resident of the *barangay* where the property is located, who testified for petitioner.[15]

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[7] *Id.* at 115-116.

[8] CA *rollo,* p. 234.

[9] *Id.* at 235-240.

[10] *Id.* at 241.

[11] *Id.* at 242-246.

[12] *Id.* at 256-257.

[13] *Id.* at 258-292.

[14] *Rollo,* p. 234.

[15] *Id.* at 163.

On November 13, 2000, the Regional Trial Court (RTC) affirmed the MCTC Decision.[16] Respondent's counsel received a copy of the decision on November 21, 2000. On December 14, 2000, respondent filed a motion for reconsideration.

In an Order dated March 28, 2001, the RTC denied the motion for reconsideration, thus:

> Finding no cogent reason to modify the decision of the Court dated November 13, 2000, defendant's Motion for Reconsideration is hereby DENIED for lack of merit.[17]

Respondent's counsel received a copy of the Resolution on April 18, 2001.

On October 23, 2001, upon manifestation of petitioner that it was not he who filed the motion for reconsideration, the RTC modified the dispositive portion of its March 28, 2001 Order, changing "defendant" to "plaintiff."[18] Respondent received a copy of this resolution on November 12, 2001.

Alleging that the October 23, 2001 RTC Resolution was the resolution denying his motion for reconsideration, respondent filed a motion for extension of time to file a petition for review with the CA on November 27, 2001. The CA granted the motion subject to its timeliness. Finally on December 12, 2001, respondent filed a Petition for Review with the CA.

On January 8, 2002, petitioner filed a Manifestation with Motion to Dismiss Instant Petition and to Cite Petitioner (herein respondent) and Petitioner's Counsel for Contempt.[19] Petitioner alleged therein that respondent deliberately concealed the fact that the petition was filed out of time by not attaching the March 28, 2001 RTC Order which denied respondent's motion for reconsideration.

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[16] *Id.* at 86.

[17] CA *rollo,* p.153.

[18] *Id.* at 174.

[19] *Id.* at 128-136.

On October 16, 2002, the CA rendered a Decision with the following dispositive portion:

> WHEREFORE, the decision dated November 13, 2000, as well as the Order dated October 23, 2001 denying the motion for reconsideration of said decision, is hereby REVERSED and SET ASIDE. The respondent and all persons acting under his authority and/or in his behalf is hereby ordered to vacate the subject premises and to cease and desist from occupying the subject parcel of land, as well as from exercising any and all acts of possession and dominion over the same.
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> SO ORDERED.[20]

The CA dismissed the issue of the timeliness of the filing of respondent's motion for reconsideration before the RTC on the ground that such issue was raised for the first time before the appellate court. It, likewise, ignored the issue of the belated filing of the petition for review with the CA, ratiocinating that petitioner was barred by estoppel from questioning the timeliness of the petition, and that dismissing the case would not serve the ends of justice.[21]

On the merits, the CA concluded that respondent had been in prior, actual, open, peaceful, uninterrupted and adverse possession of the subject properties for more than 40 years based on the fact that he was paying taxes thereon. The CA did not give credence to the written manifestations of petitioner's witnesses whose statements were drafted in identical form. Instead, the CA gave weight to the statement of respondent's counsels that they failed to secure affidavits from the caretakers and the neighbors because the latter feared for their lives.[22]

Petitioner filed a motion for reconsideration. Thereafter, he filed a Manifestation with Request for Judicial Notice of the verification survey conducted by the DENR on February 15,

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[20] *Rollo,* p. 60.

[21] *Id.* at 59-60.

[22] *Id.* at 56-57.

2002, which shows that the subject property was part of the parcel of land registered in the name of the Malabanan family.

On June 18, 2003, the CA issued a Resolution denying petitioner's Motion for Reconsideration. In the same Resolution, the CA noted that Verification Plan No. VS-04-000534 was approved long after it had already rendered its decision.[23]

Disgruntled, petitioner filed this petition for review, raising the following issues:

I. WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN TAKING COGNIZANCE AND/OR GIVING DUE COURSE TO THE PETITION FOR REVIEW FILED BEFORE IT BY RESPONDENT LACABA.

II. WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT HEREIN RESPONDENT LACABA IS ENTITLED TO THE RELIEF BEING SOUGHT IN THE COMPLAINT FILED BEFORE THE MCTC.

III. WHETHER OR NOT THE COURT OF APPEALS PATENTLY ERRED IN NOT FINDING THAT HEREIN PETITIONER DE GRANO IS NOT THE REAL PARTY IN INTEREST.[24]

The petition is meritorious.

The CA erred in taking cognizance of the petition for review that was filed way beyond the reglementary period. Rules of procedure may be relaxed in the interest of substantial justice and in order to give a litigant the fullest opportunity to establish the merits of his complaint. However, concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to explain its failure to comply with the rules[25] and prove the existence of exceptionally meritorious circumstances warranting such liberality.[26]

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[23] *Id.* at 61.

[24] *Id.* at 374.

[25] *Land Bank of the Philippines v. Heirs of Fernando Alsua*, G.R. No. 167361, April 2, 2007, 520 SCRA 132, 138.

[26] *Eda v. Court of Appeals*, G.R. No. 155251, December 8, 2004, 445 SCRA 521, 528.

Respondent proffered no explanation for the delay as, in fact, he did not acknowledge that he filed his petition for review with the CA beyond the prescriptive period. In his motion for extension of time to file the petition for review with the CA, respondent alleged that it was the October 28, 2001 RTC Order that denied his motion for reconsideration. As a stratagem or out of plain ignorance, he counted the reglementary period from the date of his receipt of the said order. But, as the CA was well aware, the reglementary period should have been counted from the receipt of the March 28, 2001 Order.

Respondent might have been confused with the rule that, when a judgment is amended, the date of the amendment should be considered the date of the decision in the computation of the period for perfecting the appeal. For all intents and purposes, the lower court rendered a new judgment from which the time to appeal must be reckoned.[27] However, this rule presupposes that the amendment consists of a material alteration of such substance and proportion that would, in effect, give rise to an entirely new judgment.[28] But when the amendment merely consists of the correction of a clerical error, no new judgment arises. In such case, the period for filing the appeal should still be counted from the receipt of the original judgment.

In this case, there was no material alteration of the judgment. The amendment merely consisted of changing the word "defendant" with "plaintiff" in the dispositive portion, and it is obvious that it was "plaintiff" (herein respondent) who filed the motion for reconsideration. Hence, the prescriptive period for filing the petition for review with the CA should be counted from the date respondent received a copy of the first judgment denying his motion for reconsideration, which was on April 18, 2001. Respondent had until May 3, 2001 to file a petition for review, but he filed a motion for extension to file the petition only on November 27, 2001, or almost seven months later. In

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[27] *Rosales v. Court of Appeals,* 405 Phil. 638, 649-650 (2001).

[28] *See Magdalena Estate, Inc. v. Caluag,* 120 Phil. 338 (1964).

one case, the Court declared that a delay of almost seven months is far from reasonable.[29]

Despite respondent's failure to acknowledge his error, the CA, finding the petition to be meritorious, chose to excuse the belated filing of the petition to serve the ends of justice. This Court, however, finds otherwise, and holds that the MCTC, as affirmed by the RTC, was correct in dismissing the complaint.

For a forcible entry suit to prosper, the complainant must allege and prove that he was in prior physical possession of the property and that he was deprived of such possession by means of force, intimidation, threat, strategy, or stealth.[30] A party who can prove prior possession can recover such possession even against the owner himself. Whatever may be the character of his possession, if he has in his favor prior possession in time, he has the security that entitles him to remain in the property until a person with a better right lawfully ejects him.[31]

A party having the burden of proof must establish his case by a preponderance of evidence. In doing so, he must rely on the strength of his own evidence, not on the weakness of the defendant's.[32] To prove prior possession, respondent presented his tax declarations, tax receipt and a certification from the municipal assessor attesting that he has paid real property tax from previous years. He, likewise, testified that he appointed the spouses Mojica as his caretakers, and allowed three other spouses to build their houses on the property. Respondent's counsels also explained that they were not able to secure the affidavits of the occupants of the property and the neighbors because they feared for their lives.

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[29] *Caspe v. Court of Appeals*, G.R. No. 142535, June 15, 2006, 490 SCRA 588, 591.

[30] *Gonzaga v. Court of Appeals*, G.R. No. 130841, February 26, 2008, 546 SCRA 532, 540.

[31] *Domalsin v. Valenciano*, G.R. No. 158687, January 25, 2006, 480 SCRA 114, 131-132.

[32] *Buduhan v. Pakurao*, G.R. No. 168237, February 22, 2006, 483 SCRA 116, 122.

Respondent's evidence fails to make out a *prima facie* case of forcible entry as it does not satisfactorily establish that respondent has been in physical possession of the subject property prior to petitioner's occupation thereof.

For one, we cannot tack respondent's possession of the property on his alleged tenants' actual possession absent any proof that said tenants acknowledge that respondent is the owner and that they have occupied the property as respondent's tenants. For all we know, these tenants could have been in adverse possession of the property. We cannot simply rely on respondent's self-serving testimony that he designated the spouses Mojica as his caretakers and allowed the other families to occupy the property.

Tax declarations and realty tax payments are not conclusive proof of possession.[33] They are merely good *indicia* of possession in the concept of owner based on the presumption that no one in his right mind would be paying taxes for a property that is not in his actual or constructive possession.[34] It bears emphasizing that the word "possession," as used in forcible entry and unlawful detainer cases, means nothing more than physical possession, not legal possession in the sense contemplated in civil law.[35] When the law speaks of possession, the reference is to prior physical possession or possession *de facto*, as contra-distinguished from possession *de jure*.[36] Only prior physical possession, not title, is the issue.[37] Issues as to the *right* of possession or ownership are not involved in the action; evidence thereon is not admissible, except only for the purpose of determining the issue of possession.[38]

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[33] *Estrella v. Robles, Jr.*, G.R. No. 171029, November 22, 2007, 538 SCRA 60, 74.

[34] *Ganila v. Court of Appeals*, G.R. No. 150755, June 28, 2005, 461 SCRA 435.

[35] *Tirona v. Alejo*, 419 Phil. 285, 298 (2001).

[36] *Gonzaga v. Court of Appeals, supra* note 30.

[37] *Heirs of Pedro Laurora v. Sterling Technopark III*, G.R. No. 146815, April 9, 2003, 401 SCRA 181, 184.

[38] *Habagat Grill v. DMC-Urban Property Developer, Inc.*, G.R. No. 155110, March 31, 2005,454 SCRA 653, 670.

More importantly, no substantial injustice would be caused the respondent if we uphold the finality of the RTC judgment, considering that he still has another remedy to recover his alleged right to possess the property. Since respondent anchors his right to possess the property on his alleged ownership of the same, he may file the appropriate action to recover such ownership.

With the foregoing disquisition, we find no necessity to discuss the issue of whether petitioner is the real party in interest.

WHEREFORE, premises considered, the petition is *GRANTED*. The Court of Appeals' Decision dated October 16, 2002 and Resolution dated June 18, 2003 are *REVERSED* and *SET ASIDE*.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Velasco, Jr., and *Peralta, JJ.,* concur.

FIRST DIVISION

[G.R. No. 161366. June 16, 2009]

SYCIP, GORRES, VELAYO & COMPANY, *petitioner, vs.* **CAROL DE RAEDT,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL ISSUES ARE BEYOND THE PROVINCE OF THE SUPREME COURT; EXCEPTION. — The existence of an employer-employee relationship is ultimately a question of fact. As a general rule,

factual issues are beyond the province of this Court. However, this rule admits of exceptions, one of which is where there are conflicting findings of fact, such as in the present case. Consequently, this Court shall scrutinize the records to ascertain the facts for itself.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EXISTENCE OF THE EMPLOYER-EMPLOYEE RELATIONSHIP; FOUR-FOLD TEST; NOT PRESENT IN CASE AT BAR. — To determine the existence of an employer-employee relationship, case law has consistently applied the four-fold test, to wit: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee on the means and methods by which the work is accomplished. The so-called **"control test"** is the most important indicator of the presence or absence of an employer-employee relationship. There existed no employer-employee relationship between the parties. De Raedt is an independent contractor, who was engaged by SGV to render services to SGV's client TMI, and ultimately to DA on the CECAP project, regarding matters in the field of her special knowledge and training for a specific period of time. Unlike an ordinary employee, De Raedt received retainer fees and benefits such as housing and subsistence allowances and medical insurance. De Raedt's services could be terminated on the ground of end of contract between the DA and TMI, and not on grounds under labor laws. Though the end of the contract between the DA and TMI was not the ground for the withdrawal of De Raedt from the CECAP, De Raedt was disengaged from the project upon the instruction of SGV's client, TMI. Most important of all, SGV did not exercise control over the means and methods by which De Raedt performed her duties as Sociologist. SGV did impose rules on De Raedt, but these were necessary to ensure SGV's faithful compliance with the terms and conditions of the Sub-Consultancy Agreement it entered into with TMI.

APPEARANCES OF COUNSEL

Cruz Enverga & Lucero for petitioner.
E.L. Gayo and Associates for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] challenging the 7 October 2003 Decision[2] and 17 December 2003 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 59916. The Court of Appeals reversed the 16 February 2000 Decision[4] of the National Labor Relations Commission and partially reinstated the 14 July 1999 Decision[5] of Labor Arbiter Monroe C. Tabingan holding that respondent Carol De Raedt (De Raedt) was illegally dismissed by petitioner Sycip, Gorres, Velayo & Company (SGV).

The Facts

Sometime in June 1989, the Philippine Government and the Commission for European Communities (Commission) entered into a Financing Memorandum whereby the Commission undertook to provide financial and technical assistance for the implementation of rural micro projects in five provinces of the Cordillera area in Northern Luzon. Consequently, the Central Cordillera Agricultural Programme (CECAP) project was launched to be implemented by the Department of Agriculture (DA).

On 22 May 1989, the DA contracted Travers Morgan International Ltd. (TMI) to provide the required technical assistance services for CECAP.

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

[2] *Rollo*, pp. 32-40. Penned by Associate Justice Mario L. Guariña III with Associate Justices Martin S. Villarama, Jr. and Jose C. Reyes, Jr. concurring.

[3] *Id.* at 42.

[4] *Id.* at 58-65. Penned by Commissioner Ireneo B. Bernardo with Presiding Commissioner Lourdes C. Javier concurring. Commissioner Tito F. Genilo was on leave.

[5] *Id.* at 43-56.

On 1 July 1989, TMI and SGV entered into a Sub-Consultancy Agreement for the latter to undertake part of the technical assistance services requirements of the CECAP. SGV would provide for the Technical Assistance Services. Hence, SGV proposed qualified consultants as defined by the Terms of Reference.

The acceptance and appointment of the proposed consultants to the project were subject to the unanimous approval of the TMI, the DA and the Commission. For the position of Sociologist, SGV proposed Felino Lorente (Lorente). However, Thomas Gimenez (Gimenez) of the DA disputed the qualifications of Lorente and recommended instead De Raedt.

Martin Tull (Tull) of TMI replied to Gimenez that TMI would consider De Raedt for the sociologist position. Thus, Gimenez volunteered to call De Raedt to advise her of a possible assignment to the CECAP.

Eventually, the DA advised SGV that De Raedt's nomination, among others, had been approved by the Commission and the DA and that she was expected to start her assignment on 3 July 1989.

On 6 July 1989, De Raedt wrote SGV expressing her conformity to the consultancy contract, thus she was advised to sign the same. De Raedt signed the contract on 14 July 1989 but her start-up date with the CECAP was moved to 15 August 1989 with the approval of the DA because she was in Thailand to finish an assignment.

While the CECAP was in progress, TMI received verbal and written complaints from the project staff regarding De Raedt's performance and working relations with them.

An investigation was then conducted by the TMI on the above complaints. Thereafter, the TMI confirmed that De Raedt's retention would be counter-productive to the progress of the project because a number of project staff found it difficult to work with her. Thus, the TMI directed SGV to withdraw De Raedt from the CECAP.

In compliance with TMI's instructions, SGV facilitated De Raedt's withdrawal from the CECAP.

De Raedt filed a case against SGV for illegal dismissal and damages before the Arbitration Branch of the NLRC.

The Labor Arbiter rendered a decision in favor of De Raedt.

SGV appealed the decision of the Labor Arbiter to the NLRC, which rendered judgment in favor of SGV.

De Raedt filed a petition for *certiorari* with the Court of Appeals, which reversed the NLRC in a Decision promulgated on 7 October 2003.

SGV filed a motion for reconsideration, which was denied by the Court of Appeals in its Resolution dated 17 December 2003.

Hence, this petition.

The Ruling of the Labor Arbiter

The Labor Arbiter found De Raedt as an employee of SGV. How she conducted herself and how she carried out the project were dependent on and prescribed by SGV and TMI, respectively. The Labor Arbiter further ruled that SGV is considered as the employer of De Raedt since it acted indirectly in the interest of TMI, the entity directly in-charge of the CECAP project for which De Raedt was hired. Moreover, the Labor Arbiter found SGV as the entity which is the source of De Raedt's income and other benefits.

The Labor Arbiter found no sufficient valid ground to terminate De Raedt's services although procedural due process was observed. The dispositive portion of the 14 July 1999 Decision of the Labor Arbiter reads:

WHEREFORE, judgment is hereby rendered declaring complainant to have been illegally dismissed by respondent. Consequently, respondent Sycip, Gorres & Velayo and Co. is hereby ordered to pay complainant the following:

a) Unpaid salaries corresponding to the unexpired portion of the contract in the amount of Eight Hundred Two Thousand (₱802,000.00) Pesos;

b) Moral damages in the amount of Two Hundred Fifty Thousand (₱250,000.00) Pesos;

c) Exemplary damages in the amount of One Hundred Thousand (₱100,000.00) Pesos;

d) 10% of the total award as attorney's fees amounting to One Hundred Fifteen Thousand Two Hundred Pesos (₱115,200.00).

The computations of which are hereto attached as Annex "A" and made an integral part hereof.

SO ORDERED.[6]

The Ruling of the NLRC

The NLRC reversed the ruling of the Labor Arbiter and found that there was no employer-employee relationship between SGV and De Raedt.

The NLRC agreed with the Labor Arbiter's finding that SGV had no discretion in the selection of De Raedt for the position of Sociologist in the CECAP. The selection was made by the TMI, upon recommendation of Gimenez of the DA, to be approved by the DA and the Commission. The engagement of De Raedt was coursed through SGV.

The payment of De Raedt's service fee was done through SGV but the funds came from the TMI as shown by SGV's billings to TMI for De Raedt's professional fee.

As regards the power of dismissal, SGV merely implemented TMI's instructions to withdraw De Raedt from the CECAP.

The NLRC found that SGV did not exercise control over De Raedt's work. The Sub-Consultancy Agreement between TMI and SGV clearly required De Raedt to work closely with and under the direction and supervision of both the Team leader and the Project Coordinator.

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

Hence, SGV's participation is to merely monitor her attendance, through time records, for the payment of her retainer fee and to validate the time she expended in the project with her written reports.

The following circumstances also indicated that no employment relationship existed between the parties: (1) De Raedt was engaged on a contract basis; (2) the letter-agreement between the parties clearly states that there is no employer-employee relationship between the parties and that De Raedt was at all times to be considered an independent contractor; and (3) De Raedt was allowed to engage in other employment during all the time she was connected with the project.

The dispositive portion of the 16 February 2000 Decision of the NLRC reads:

> WHEREFORE, premises considered, the assailed decision of the Labor Arbiter is REVERSED and SET ASIDE and the complaint is DISMISSED for lack of jurisdiction.
>
> SO ORDERED.[7]

The Ruling of the Court of Appeals

The Court of Appeals reversed the ruling of the NLRC and reinstated the decision of the Labor Arbiter insofar as the latter found De Raedt as an employee of SGV.

The Court of Appeals found that based on the letter-agreement between the parties, SGV engaged De Raedt for the project on a contract basis for 40 months over a period of five years during which she was to work full time. She could not engage in any other employment. In fact, she had to resign from her teaching job at the University of the Philippines. She could not leave her place of assignment without SGV's consent. She must maintain an accurate record of the time she spent on the job, and prepare reports which may be required by her team leader and SGV. Whether actual supervision of her work had turned out to be

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[7] *Id.* at 64.

minimal or not, SGV reserved the right to exercise it at any time. Further, SGV asserted its right to terminate her services.[8]

The Court of Appeals found that De Raedt was removed from the project because of personality differences, which is not one of the grounds for a valid dismissal of an employee.[9]

The dispositive portion of the 7 October 2003 Decision of the Court of Appeals reads:

> IN VIEW OF THE FOREGOING, the assailed decision of the NLRC dated February 16, 2000 is REVERSED, and a new one ENTERED partially REINSTATING the Decision of Labor Arbiter Monroe Tabing[a]n on July 14, 1999, by affirming paragraph (a) thereof, deleting paragraph (b) and (c), and reducing the award of attorney's fees in paragraph (d) to 5% of the principal award.
>
> SO ORDERED.[10]

The Issue

The issue in this case is whether De Raedt was an employee of SGV. If so, whether De Raedt was illegally dismissed by SGV.

The Ruling of the Court

The petition is meritorious.

The existence of an employer-employee relationship is ultimately a question of fact. As a general rule, factual issues are beyond the province of this Court. However, this rule admits of exceptions, one of which is where there are conflicting findings of fact, such as in the present case. Consequently, this Court shall scrutinize the records to ascertain the facts for itself.[11]

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[8] *Id.* at 38.

[9] *Id.* at 39.

[10] *Id*.

[11] See *Social Security System v. Court of Appeals*, 401 Phil. 132, 141 (2000).

To determine the existence of an employer-employee relationship, case law has consistently applied the four-fold test, to wit: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee on the means and methods by which the work is accomplished. The so-called "**control test**" is the most important indicator of the presence or absence of an employer-employee relationship.[12]

A. Selection and Engagement of the Employee

De Raedt was contracted by SGV as part of the latter's obligation under the Sub-Consultancy Agreement with TMI, which was in turn contracted by the DA to provide the services required for the foreign-assisted CECAP project. De Raedt was neither engaged by SGV as an ordinary employee, nor was she picked by SGV from a pool of consultants already working for SGV. Hence, SGV engaged De Raedt's services precisely because SGV had an existing Sub-Consultancy Agreement with TMI to provide such services.

The Labor Arbiter and the NLRC both agree that SGV had no discretion in the selection of De Raedt for the position of Sociologist in the CECAP. The selection was made by the TMI, upon recommendation of Gimenez of the DA, to be approved by the DA and the Commission. The engagement of De Raedt was merely coursed through SGV.

Moreover, SGV's first choice for the Sociologist position was Lorente. However, Gimenez recommended De Raedt to SGV. De Raedt's testimony proves that her appointment was ultimately the DA's decision, and not SGV's, thus:

Q Madam Witness, how did you come to know the vacancy here in CECAP project for a position of project Sociologist?

A I was contacted when I was in Honolulu. I was contacted by the firm Sarmiento and Company who asked me if I would

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[12] *Almirez v. Infinite Loop Technology Corporation*, G.R. No. 162401, 31 January 2006, 481 SCRA 364, 373-374; *Sonza v. ABS-CBN Broadcasting Corporation*, G.R. No. 138051, 10 June 2004, 431 SCRA 583, 594-595.

list myself for the position of project sociologist for the CECAP project in 1987 when it was discussed by the NGO's in the Cordillera and finally I was contacted by the SGV. They asked me if I am interested in the position project sociologist. I was also contacted by Mr. Gimenez to ask me if SGV had contacted me regarding the position.

Q So among the informants who gave you an idea that the position of project sociologist is the project director himself, is it not?

A **He informed me that I have been considered by the Department of Agriculture for the position of project sociologist.**

Q Before you were considered for the position of (sic) the Department of Agriculture, did you give them an application?

A No, sir.

Q Do you know who gave your name to them?

A Not sure, may be the Department of Agriculture or Sarmiento, because I was asked by the consultancy firm Sarmiento if I would be willing to list with their business consultants for the CECAP project and this was before the bidding and Sarmiento did not make the bidding for the project.

Q Sarmiento is different from SGV is that correct?

A Yes, sir.[13] (Emphasis supplied)

B. Payment of Wages

The letter-agreement between the parties specifies the consideration for De Raedt's services as a retainer fee payable for every day of completed service in the project. In addition to this, monthly subsistence and housing allowances and medical insurance were to be given to De Raedt. The retainer fees and privileges given to De Raedt are not commonly given to ordinary employees, who receive basic monthly salaries and other benefits under labor laws.

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[13] *Rollo*, p. 80.

The Court notes that the retainer fees paid by SGV to De Raedt ultimately came from its "client," TMI. De Raedt was aware that the source of the funds was the grant from the Commission. By the terms of the Sub-Consultancy Agreement, TMI paid SGV remuneration of the fixed unit rate component of the part services.

However, whatever amount SGV received from TMI did not necessarily entitle De Raedt to the entire amount. In the parties' letter-agreement, SGV made it clear that payments made by TMI "should not be construed as being due [De Raedt] since these items are intended for the administration, overhead expenses, and other related expenses of [SGV] in the development, management, and supervision of [De Raedt's] assignment."

C. Power of Dismissal

Under the letter-agreement between the parties, SGV may terminate De Raedt's services "at anytime that the contract between the Department of Agriculture — Government of the Philippines and Travers Morgan International, Consulting Engineers, Planners and Management Consultants is terminated for any cause whatsoever."

De Raedt failed to show that SGV could terminate her services on grounds other than the end of the contract between the DA as implementing agency of the CECAP and TMI or the termination by TMI of the contract with SGV, such as retrenchment to prevent losses as provided under labor laws.[14]

Further, under the parties' agreement, should De Raedt decide to leave the project for any reason whatsoever other than a reasonable cause beyond her control which prevents her from performing the required services, De Raedt shall be liable for liquidated damages for breach of contract, in an amount equivalent to the retainer fee for a period of one month. This pre-termination with penalty clause in the parties' agreement clearly negates the existence of an employment relationship between the parties.

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[14] *Sonza v. ABS-CBN Broadcasting Corporation*, *supra* note 12 at 597.

If De Raedt were indeed SGV's employee, she should have been able to resign for whatever professional or personal reason at anytime, even prior to the end of the contract between the DA and TMI or between TMI and SGV, without incurring any liability for such resignation.

Besides, it was TMI, through Tull, which instructed SGV to disengage De Raedt from the project. Terminating De Raedt's services was beyond SGV's control, as SGV had no choice but to comply with the directive of its client (TMI). Clearly, De Raedt's retention as a Sociologist in the CECAP project was dependent on TMI's and DA's decisions. In his letter dated 14 June 1991 addressed to SGV, Tull wrote the following:

> Notwithstanding a number of staff on the project, all employed by the Department of Agriculture, have confirmed that they have found it difficult to work with Mrs de Raedt over the past few months which supports the earlier advice from the Department of Agriculture.
>
> **In the circumstances I consider we have no alternative but to replace Mrs de Raedt.** Would you please make arrangement for her to be withdrawn from the project by the end of June 1991. Payment of staff fees and housing allowances under the project in respect of Mrs de Raedt will be paid up to 30th June 1991.[15] (Emphasis supplied)

D. Power of Control

The letter-agreement between the parties required De Raedt to maintain an accurate time record, notify SGV of delays in De Raedt's schedule, secure a prior clearance to leave place of assignment, and prepare reports. These requirements hardly show that SGV exercises control over the means and methods in the performance of De Raedt's duties as a Sociologist of the CECAP. SGV was not concerned with De Raedt's ways of accomplishing her work as a Sociologist. Rather, SGV naturally expected to be updated regularly of De Raedt's "work progress," if any, on the project for which she was specifically engaged[16]

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[15] *Rollo*, p. 72.

[16] See *Almirez v. Infinite Loop Technology Corporation*, *supra* note 12.

to ensure SGV's compliance with the terms and conditions of the Sub-Consultancy Agreement with TMI. The services to be performed by her specified what she needed to achieve but not on how she was to go about it.[17]

In sum, there existed no employer-employee relationship between the parties. De Raedt is an independent contractor, who was engaged by SGV to render services to SGV's client TMI, and ultimately to DA on the CECAP project, regarding matters in the field of her special knowledge and training for a specific period of time. Unlike an ordinary employee, De Raedt received retainer fees and benefits such as housing and subsistence allowances and medical insurance. De Raedt's services could be terminated on the ground of end of contract between the DA and TMI, and not on grounds under labor laws. Though the end of the contract between the DA and TMI was not the ground for the withdrawal of De Raedt from the CECAP, De Raedt was disengaged from the project upon the instruction of SGV's client, TMI. Most important of all, SGV did not exercise control over the means and methods by which De Raedt performed her duties as Sociologist. SGV did impose rules on De Raedt, but these were necessary to ensure SGV's faithful compliance with the terms and conditions of the Sub-Consultancy Agreement it entered into with TMI.

WHEREFORE, the Court *GRANTS* the petition. The Court *SETS ASIDE* the 7 October 2003 Decision and 17 December 2003 Resolution of the Court of Appeals in CA-G.R. SP No. 59916 and *REINSTATES* the 16 February 2000 Decision of the National Labor Relations Commission.

SO ORDERED.

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

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[17] *Id*.

THIRD DIVISION

[G.R. No. 161794. June 16, 2009]

NESTOR J. BALLADARES, ROLDAN L. GUANIZO, ARNULFO E. MERTO, GERONIMO G. GOBUYAN, EDGARDO O. AVILA, and EDUARD F. RAMOS, JR., *petitioners, vs.* **PEAK VENTURES CORPORATION/ EL TIGRE SECURITY AND INVESTIGATION AGENCY and YANGCO MARKET OWNERS ASSOCIATION/LAO TI SIOK BEE,** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; THE SECRETARY OF LABOR AND HIS DULY AUTHORIZED REPRESENTATIVES IS NOW EMPOWERED TO HEAR AND DECIDE IN A SUMMARY PROCEEDING, RECOVERY OF WAGES AND MONETARY CLAIMS ARISING OUT OF EMPLOYER-EMPLOYEE RELATIONS; SUSTAINED. — The Secretary of Labor or his duly authorized representatives is now empowered to hear and decide, in a summary proceeding, any matter involving the recovery of any amount of wages and other monetary claims arising out of employer-employee relations at the time of the inspection, even if the amount of the money claim exceeds ₱5,000.00. Accordingly, we find no sufficient reason to warrant the certification of the instant case to the Labor Arbiter and divest the Regional Director of jurisdiction. Respondent did not contest the findings of the labor regulations officer. Even during the hearing, respondent never denied that petitioners were not paid correct wages and benefits. This was, in fact, even admitted by respondent in its petition filed before the CA. In its defense, respondent tried to pass the buck to YMOAA, which failed to pay the correct wages pursuant to the wage orders. Considering that the liability of the principal and the contractor is joint and solidary, respondent thereby prayed for a re-computation of the awards it claimed to be quite excessive. In the motion for reconsideration filed before the Regional Director, respondent submitted its own computation of the salary adjustment due petitioners in the

amount of ₱533,220.33 as wage differentials, deducting further the amount of ₱39,371.52, which was already allegedly received by petitioners, as shown in petitioners' sample pay slips and earning cards. It bears stressing that this petition clearly involves a labor standards case, and it is in keeping with the law that "the worker need not litigate to get what legally belongs to him, for the whole enforcement machinery of the DOLE exists to insure its expeditious delivery to him free of charge." We, therefore, sustain the jurisdiction of the DOLE Regional Director in this case.

APPEARANCES OF COUNSEL

Froilan M. Bacungan & Associates for respondent.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* of the decision[1] of the Court of Appeals (CA) dated September 16, 2003 and the resolution[2] denying the motion for reconsideration thereof in CA-G.R. SP No. 67587.

Petitioners Nestor J. Balladares, Roldan L. Guanizo, Arnulfo E. Merto, Geronimo G. Gobuyan, Edgardo O. Avila, and Eduard F. Ramos, Jr. were employed by respondent Peak Ventures Corporation/El Tigre Security and Investigation Agency (Peak Ventures) as security guards and were assigned at the premises of respondent Yangco Market Owners and Administrators Association (YMOAA). They filed a complaint for underpayment of wages against their employer, Peak Ventures, with the Department of Labor and Employment (DOLE).

Acting on the complaint, DOLE conducted an inspection of Peak Ventures on March 4, 1999, and the following violations were noted:

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Eubolo G. Verzola and Edgardo F. Sundiam, concurring; *rollo*, pp. 50-59.

[2] *Id.* at 61-62.

- underpayment of the minimum wage and other auxiliary benefits;
- pertinent employment records (payrolls, daily time records, contract of employment) were not available at the time of inspection.[3]

A Notice of Inspection Result was issued to and received by the Human Resource Department Manager, Ms. Cristina Q. Villacrusis. Peak Ventures was instructed to effect restitution and/or to file its objections within five (5) working days from receipt thereof.

Respondent failed to correct the violations or contest the findings as required; hence, the parties were summoned for hearing. During the scheduled hearing on March 26, 1999, both complainants and Peak Ventures moved to implead its client, YMOAA, represented by its President, Ms. Lao Ti Siok Bee, as party respondent. YMOAA opposed on the ground that it was not the employer of petitioners. On May 25, 1999, Peak Ventures filed a Third-Party Complaint and/or Position Paper with leave of court, alleging that Peak Ventures was entitled to indemnity or subrogation from YMOAA in respect to the monetary claims of petitioners, because the cause of the underpayment of wages, if any, arose from the failure of the YMOAA to pay the security agency the correct amount due petitioners as prescribed by various Wage Orders.[4]

In the Order dated July 21, 1999, Regional Director Maximo Baguyot Lim rendered judgment in favor of petitioners and ruled that the contractor was jointly and severally liable with the principal, pursuant to the law and jurisprudence on the matter.[5] He further stated that:

In view of the respondents' failure to controvert the complainants' contentions and repeated denial to give access to its employment

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[3] *Id.* at 43.

[4] CA Decision, *rollo*, p. 52.

[5] *Eagle Security Agency, Inc. v. NLRC*, G.R. No. 81314, May 18, 1989, 173 SCRA 479; Labor Code of the Philippines., Arts. 106, 107, and 109.

records despite demands by the labor inspector and hearing officer, it is deemed to have waived its constitutional right to due process, therefore, this is an implied admission of the violations discovered, hence, we have no other recourse but to rule in favor of the complainants and compute the salary differentials due them based on their affidavits x x x.

x x x x x x x x x

WHEREFORE, premises considered, respondents PEAK VENTURES CORP./EL TIGRE SECURITY AND INVESTIGATION AGENCY AND/OR YANGCO MARKET OWNERS AND ADMINISTRATORS ASSOCIATION/MS. LAO TI SIOK BEE are hereby jointly and severally ordered to pay complainants NESTOR BALLADARES AND TEN (10) OTHER SIMILARLY SITUATED EMPLOYEES the sum opposite their names or a total amount of ONE MILLION ONE HUNDRED SIX THOUSAND TWO HUNDRED NINETY EIGHT PESOS AND 07/100 (₱1,106,298.07) corresponding to their claims within ten (10) calendar days from receipt hereof, otherwise, WRIT OF EXECUTION shall be issued unless an Appeal shall have been filed within the reglementary period together with a Cash or Surety Bond equivalent to the monetary award.[6]

Respondent Peak Ventures filed a Motion for Reconsideration which was denied for lack of merit.

Respondent appealed the Order to the Office of the Secretary of Labor positing that the Regional Director committed serious errors in awarding the amount of ₱1,106,298.00 to petitioners, which it alleged to be quite excessive.

On December 7, 2000, respondent's appeal was dismissed.[7] A subsequent motion for reconsideration was, likewise, denied by the Secretary of Labor in a Resolution dated September 11, 2001.[8]

Undaunted, respondent Peak Ventures elevated the case to the CA, alleging that public respondent Secretary of DOLE acted

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[6] *Rollo*, pp. 45-48.

[7] *Id.* at 20.

[8] *Id.*

without, or in excess of, jurisdiction or with grave abuse of discretion.[9]

The CA granted the petition, ruling that the Regional Director had no jurisdiction to hear and decide the case, because the claims of each of the petitioners exceeded ₱5,000.00, and the power to adjudicate such claims belonged to the Labor Arbiter, pursuant to *Servando's, Inc. v. Secretary of Labor*.[10] The appellate court ratiocinated that this exclusive jurisdiction of the Labor Arbiters was confirmed by Article 129 of the Labor Code, which excludes from the jurisdiction of the Regional Directors or any hearing officer of the DOLE the power to hear and decide claims of employees arising from employer-employee relations exceeding the amount of ₱5,000.00 for each employee. The dispositive portion of the decision, thus, reads as follows:

> WHEREFORE, petition is **GRANTED**. The Order of public respondent Secretary of Labor and Employment dated December 7, 2000 and the Resolution dated September 11, 2001 are **SET ASIDE** and declared null and void. The case is **REFERRED** to the appropriate Labor Arbiter for proper determination.[11]

Petitioners now come to this Court assigning the following errors:

> The Court of Appeals, Third Division erred in applying Article 129 of the Labor Code instead of Article 128.
>
> The Court of Appeals, Third Division erred in applying the *Servando's, Inc. versus Secretary of Labor*, which had long been abandoned.[12]

Only Peak Ventures filed its comment. Several resolutions of the Court sent to respondent YMOAA were returned unserved, despite earnest efforts to obtain its current address. Meanwhile,

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[9] *Id.* at 54.

[10] G.R. No. 85840, June 5, 1991, 198 SCRA 156.

[11] *Rollo*, p. 28.

[12] *Id.* at 6.

the Court received a letter in the vernacular, dated May 16, 2006, from petitioner Nestor Balladares, for and on behalf of petitioners. Therein, petitioners expressed their apprehension over the sale by Lao Siok Bee of Section 9 of Yangco Market to her nephew, Kay Ken Wah, which may be detrimental to their cause, with a request for justice in this case. The letter was noted by the Court in the Resolution dated June 28, 2006.[13]

In its comment, Peak Ventures averred that the CA did not err in applying Article 129 and Article 217 of the Labor Code, because the instant case arose from a complaint for recovery of wages, simple money claims and other benefits, and the claims exceeded ₱5,000.00. It argued that the inspection conducted by the DOLE using the "visitorial and enforcement powers" of the Secretary of Labor and Employment did not, in any way, convert the case to one falling under Article 128, otherwise, there would be no need for Article 129.[14] It reiterated that Article 129[15] and Article 217[16] provide that it is the Labor Arbiter which has jurisdiction over claims arising from employer-employee relations, including those of persons in domestic or household service involving an amount exceeding ₱5,000.00.

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[13] *Id.* at 105.

[14] *Id.* at 73-74.

[15] **ART. 129. Recovery of wages, simple money claims and other benefits.**— Upon complaint of any interested party, the regional director of the Department of Labor and Employment or any of the duly authorized hearing officers of the Department is empowered, through summary proceeding and after due notice, to hear and decide any matter involving the recovery of wages and other monetary claims and benefits, including legal interest, owing to an employee or person employed in domestic or household service or household helper under this Code, arising from employer-employee relations: *Provided,* That such complaint does not include a claim for reinstatement*: Provided further,* That the aggregate money claims of each employee or household helper do not exceed five thousand pesos (₱5,000.00). x x x

[16] **ART. 217. Jurisdiction of Labor Arbiters and the Commission.**— (a) Except as otherwise provided under this Code, the Labor Arbiter 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:

We uphold the jurisdiction of the DOLE Regional Director.

It should be noted that petitioners' complaint involved underpayment of wages and other benefits. In order to verify the allegations in the complaint, DOLE conducted an inspection, which yielded proof of violations of labor standards. By the nature of the complaint and from the result of the inspection, the authority of the DOLE, under Article 128, came into play regardless of the monetary value of the claims involved.[17] The extent of this authority and the powers flowing therefrom are defined and set forth in Article 128 of the Labor Code, as amended by R.A. No. 7730,[18] the pertinent portions of which read as follows:

ART. 128. Visitorial and enforcement power. — (a) The Secretary of Labor or his duly authorized representatives, including labor regulation officers, shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may

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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.

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[17] *V.L. Enterprises v. Court of Appeals*, G.R. No. 167512, March 12, 2007, 518 SCRA 174, 181.

[18] *Cirineo Bowling Plaza, Inc. v. Sensing*, G.R. No. 146572, January 14, 2005, 448 SCRA 175, 186.

be necessary to determine violations or which may aid in the enforcement of this Code and of any labor law, wage order or rules and regulations issued pursuant thereto.

(b) Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the finding of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection.

An order issued by the duly authorized representative of the Secretary of Labor and Employment under this article may be appealed to the latter. In case said order involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Secretary of Labor and Employment in the amount equivalent to the monetary award in the order appealed from.

x x x x x x x x x

This Court has held in a plethora of cases[19] that reliance on the *Servando* ruling is no longer tenable in view of the enactment of R.A. No. 7730, amending Article 128 (b) of the Labor Code. The Secretary of Labor or his duly authorized representatives is now empowered to hear and decide, in a summary proceeding, any matter involving the recovery of any amount of wages and other monetary claims arising out of employer-employee relations at the time of the inspection, even if the amount of the money

[19] *Bay Haven, Inc. v. Abuan*, G.R. No. 160859, July 30, 2008, 560 SCRA 457; *V.L. Enterprises v. Court of Appeals*, *supra*; *EJR Crafts Corporation v. Court of Appeals*, G.R. No. 154101, March 10, 2006, 484 SCRA 340; *Cirineo Bowling Plaza, Inc. v. Sensing*, *supra*; *Batong Buhay Gold Mines, Inc. v. Dela Serna*, G.R. No. 86963, August 6, 1999, 312 SCRA 22.

claim exceeds ₱5,000.00. In *Ex-Bataan Veterans Security Agency, Inc. v. Laguesma*,[20] the Court elucidated:

In *Allied Investigation Bureau, Inc. v. Sec. of Labor,* we ruled that:

> While it is true that under Articles 129 and 217 of the Labor Code, the Labor Arbiter has jurisdiction to hear and decide cases where the aggregate money claims of each employee exceeds ₱5,000.00, said provisions of law do not contemplate nor cover the visitorial and enforcement powers of the Secretary of Labor or his duly authorized representatives. Rather, said powers are defined and set forth in Article 128 of the Labor Code (as amended by R.A. No. 7730) x x x
>
> The aforequoted provision explicitly excludes from its coverage Articles 129 and 217 of the Labor Code by the phrase "(N)otwithstanding the provisions of Articles 129 and 217 of this Code to the contrary x x x" thereby retaining and further strengthening the power of the Secretary of Labor or his duly authorized representatives to issue compliance orders to give effect to the labor standards provisions of said Code and other labor legislation based on the findings of labor employment and enforcement officer or industrial safety engineer made in the course of inspection.

This was further affirmed in our ruling in *Cirineo Bowling Plaza, Inc. v. Sensing,* where we sustained the jurisdiction of the DOLE Regional Director and held that: **"the visitorial and enforcement powers of the DOLE Regional director to order and enforce compliance with labor standard laws can be exercised even where the individual claim exceeds ₱5,000."**

However, if the labor standards case is covered by the exception clause in Article 128 (b) of the Labor Code, then the Regional Director will have to endorse the case to the appropriate Arbitration Branch of the NLRC. In order to divest the Regional Director or his representatives of jurisdiction, the following elements must be present: (a) that the employer contests the findings of the labor regulations officer and raises issues thereon; (b) that in order to resolve such issues, there is a need to examine evidentiary matters;

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[20] G.R. No. 152396, November 20, 2007, 537 SCRA 651, 652.

and (c) that such matters are not verifiable in the normal course of inspection. The rules also provide that the employer shall raise such objections during the hearing of the case or at any time after receipt of the notice of inspection results.

In this case, the Regional Director validly assumed jurisdiction over the money claims of private respondents even if the claims exceeded ₱5,000 because such jurisdiction was exercised in accordance with Article 128(b) of the Labor Code and the case does not fall under the exception clause.

The Court notes that EBVSAI did not contest the findings of the labor regulations officer during the hearing or after receipt of the notice of inspection results. It was only in its supplemental motion for reconsideration before the Regional Director that EBVSAI questioned the findings of the labor regulations officer and presented documentary evidence to controvert the claims of private respondent. But even if this was the case, the Regional Director and the Secretary of Labor still looked into and considered EBVSAI's documentary evidence and found that such did not warrant the reversal of the Regional Director's order. The Secretary of Labor also doubted the veracity and authenticity of EBVSAI's documentary evidence. Moreover, the pieces of evidence presented by EBVSAI were verifiable in the normal course of inspection because all the employment records of the employees should be kept and maintained in or about the premises of the workplace, which in this case is in Ambuklao Plant, the establishment where the private respondents were regularly assigned.[21]

Accordingly, we find no sufficient reason to warrant the certification of the instant case to the Labor Arbiter and divest the Regional Director of jurisdiction. Respondent did not contest the findings of the labor regulations officer. Even during the hearing, respondent never denied that petitioners were not paid correct wages and benefits. This was, in fact, even admitted by respondent in its petition filed before the CA.[22] In its defense, respondent tried to pass the buck to YMOAA, which failed to pay the correct wages pursuant to the wage orders. Considering that the liability of the principal and the contractor is joint and

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[21] *Id.* at 662–664.

[22] CA records, p. 8.

solidary, respondent thereby prayed for a re-computation of the awards it claimed to be quite excessive. In the motion for reconsideration filed before the Regional Director, respondent submitted its own computation of the salary adjustment due petitioners in the amount of ₱533,220.33 as wage differentials, deducting further the amount of ₱39,371.52, which was already allegedly received by petitioners, as shown in petitioners' sample pay slips and earning cards.[23] This contention, however, was unacceptable, as the Secretary of Labor ruled:

> The arguments of the respondents that the award of the Regional Director is excessive considering that it has only a total amount of ₱533,220.00 as they have computed, does not warrant consideration.
>
> As correctly pointed out by the Regional Director, "*the alleged salary adjustment of the complainants for the years 1996, 1997, 1998 and 1999 failed to show from what source and on what basis have respondent arrived at the said computations. Likewise, the documents presented is not sufficient to re-compute the award.*"
>
> "*With regard to the salary differentials paid to eight guards for the period covering June 30, 1997 as evidenced by the payment, but unfortunately nowhere in their annexes can we find a clear indication of such payment. However, complainants admitted having received such salary differentials from respondents, but the same was intended as wage adjustments under Wage Order No. 1, No. NCR-03. Their claims in this instant case are backpay for Wage Order Nos. NCR-04, NCR-5 and NCR-6. Hence, the amount of ₱39,371.52 cannot be deducted from the computed monetary award of ₱1,106,298.00.*"
>
> We find no cogent reason to deviate from the foregoing.[24]

It bears stressing that this petition clearly involves a labor standards case, and it is in keeping with the law that "the worker need not litigate to get what legally belongs to him, for the whole enforcement machinery of the DOLE exists to insure its expeditious delivery to him free of charge."[25] We, therefore,

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[23] *Id.* at 53-54.

[24] *Id.* at 15-16.

[25] *Batong Buhay Gold Mines, Inc. v. Dela Sern, supra* note 18.

sustain the jurisdiction of the DOLE Regional Director in this case.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals dated September 16, 2003 is *REVERSED* and *SET ASIDE*. The decision of the Secretary of Labor is *REINSTATED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Velasco, Jr., and *Peralta, JJ.,* concur.

FIRST DIVISION

[G.R. No. 164423. June 16, 2009]

TRIUMPH INTERNATIONAL (PHILS.), INC., *petitioner, vs.* **RAMON L. APOSTOL and BEN M. OPULENCIA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW FILED BEFORE THE SUPREME COURT MAY RAISE ONLY QUESTIONS OF LAW; EXCEPTIONS. — As a general rule, petitions for review under Rule 45 of the Rules of Civil Procedure filed before this Court may only raise questions of law. However, jurisprudence has recognized several exceptions to this rule. In *Almendrala v. Ngo*, we have enumerated several instances when this Court may review findings of fact of the Court of Appeals on appeal by *certiorari*, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on

misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

2. ID.; SPECIAL CIVIL ACTION; *CERTIORARI;* THE COURT OF APPEALS SHOULD REVIEW THE DECISIONS OF THE NATIONAL LABOR RELATIONS COMMISSION; SUSTAINED. — The power of the Court of Appeals to review NLRC decisions via a Petition for *Certiorari* under Rule 65 has been settled as early as our decision in *St. Martin Funeral Home v. NLRC.* In said case, we held that the proper vehicle for such review is a Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court, and that the case should be filed in the Court of Appeals in strict observance of the doctrine of the hierarchy of courts. Moreover, it is already settled that under Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902, the Court of Appeals —pursuant to the exercise of its original jurisdiction over petitions for *certiorari* — is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues. Section 9 clearly states: x x x The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. x x x

3. ID.; APPEALS; FACTUAL FINDINGS OF THE LABOR OFFICIALS WHO ARE DEEMED TO HAVE ACQUIRED EXPERTISE IN MATTERS WITHIN THEIR JURISDICTION, GENERALLY ACCORDED NOT ONLY RESPECT BUT FINALITY; EXCEPTION. — Settled is the

rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, *i.e.*, the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. But these findings are not infallible. When there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts.

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; TWO FACETS OF VALID TERMINATION. — In cases of termination of employees, the well-entrenched policy is that no worker shall be dismissed except for just or authorized cause provided by law and after due process. Dismissals of employees have two facets: first, the legality of the act of dismissal, which constitutes substantive due process; and second, the legality in the manner of dismissal, which constitutes procedural due process.

5. ID.; ID.; ID.; VALID GROUNDS. — These grounds are among the just causes for termination of employment under Article 282 of the Labor Code, to wit: ART. 282. Termination by employer. — An employer may terminate an employment for any of the following causes: a) s*erious 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.*

6. ID.; ID.; ID.; SUBSTANTIAL COMPLIANCE WITH THE DUE PROCESS UNDER THE IMPLEMENTING RULES OF THE LABOR CODE, REQUIRED. — Termination of employment based on Article 282 mandates that the employer substantially comply with the requirements of due process under the rules implementing the Labor Code, to wit: Section 2. Security of Tenure. x x x (d) In all cases of termination of employment,

the following standards of due process shall be substantially observed: For termination of employment based on just causes defined in Article 282 of the Labor Code: (i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side; (ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and (iii) a written notice of termination served on the employee, indicating that upon, due consideration of all the circumstances, grounds have been established to justify his termination.

7. ID.; ID.; ID.; FRAUD OR WILLFUL BREACH OF EMPLOYER'S TRUST AS A GROUND; EXPLAINED. — Fraud or willful breach of the employer's trust is a just cause for termination of employment under Article 282(c) of the Labor Code. This provision is premised on the fact that the employee concerned holds a position of trust and confidence, a situation which exists where such employee is entrusted by the employer with confidence on delicate matters, such as care and protection, handling or custody of the employer's property. But, in order to constitute a just cause for dismissal, the act complained of must be "work-related" such as would show the employee concerned to be unfit to continue working for the employer. Recent decisions of this Court have distinguished the treatment of managerial employees from that of the rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus, with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required. It is sufficient that there is some basis for the employer's loss of trust and confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy

of the trust and confidence demanded of his position. Nonetheless, the evidence must be substantial and must establish clearly and convincingly the facts on which the loss of confidence rests and not on the employer's arbitrariness, whims, and caprices or suspicion.

8. ID.; ID.; ID.; ID.; PRESENT IN CASE AT BAR. — The relationship of employer and employee, specially where the employee has access to the employer's property, necessarily involves trust and confidence. Where the rules laid down by the employer to protect its property are violated by the very employee who is entrusted and expected to follow and implement the rules, the employee may be validly dismissed from service. Finding the dismissal of respondents Apostol and Opulencia, based on willful breach of employer's trust, valid, we deem it unnecessary to further rule on TIPI's other ground for Apostol's dismissal, *i.e.*, uttering indecent, abusive and derogatory words against his supervisor. Note, however, that such act of an employee, if substantially proven, may be considered as serious misconduct which would warrant the termination of his employment.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez and Gatmaitan for petitioner.
Agabin Verzola Hermoso and Layaoen 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 Court of Appeals' Decision[2] dated 20 February 2004 and Resolution dated 5 July 2004 in CA-G.R. SP No. 69280. The Court of Appeals reversed the

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

[2] Penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Delilah Vidallon-Magtolis and Jose L. Sabio, Jr., concurring.

Decision[3] dated 16 July 2001 and Order dated 20 December 2001 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 026159-00 (NLRC NCR Case No. 39-01-0422-00).

The Antecedent Facts

Respondent Ramon L. Apostol (Apostol) was hired as assistant manager by petitioner Triumph International (Phils.), Inc. (TIPI) in March 1991, and was holding the same position until TIPI's termination of his employment on 21 January 2000. On the other hand, respondent Ben M. Opulencia (Opulencia) was hired as a warehouse helper by TIPI sometime in 1990, and was the company's warehouse supervisor at the time of the termination of his employment on 21 January 2000. Apostol was the immediate superior of Opulencia.

On 14 and 15 August 1999, TIPI conducted an inventory cycle count of its direct and retail sales in its Muñoz warehouse. The inventory cycle count yielded discrepancies between its result and the stock list balance as forwarded on 14 August 1999. Consequently, Leonardo T. Gomez (Gomez), TIPI's Comptroller, issued a memorandum dated 24 August 1999, addressed to Virginia A. Sugue (Sugue), TIPI's Marketing Services Manager –Direct, and R.S. Silva, Marketing and Sales Manager–Retail, requesting for a reconciliation of the discrepancies. On 6 September 1999, Sugue issued a memorandum addressed to Gomez, explaining that the discrepancy could be attributed to pilferage of finished goods at the warehouse, as stated in the affidavit dated 31 August 1999 of Opulencia, TIPI's Warehouse Supervisor. Two days later, or on 8 September 1999, Sugue sent a "show-cause letter" to Apostol, TIPI's Assistant Manager-Warehouse and Distribution, requiring him to explain in writing the negative variance based on the inventory cycle count. The letter also placed Apostol on leave with pay, pending the investigation being conducted by TIPI. Sugue issued a similar letter to Opulencia. On 10 September 1999, Apostol sent a

[3] Penned by Commissioner Vicente S.E. Veloso, with Presiding Commissioner Roy V. Señeres and Commissioner Alberto R. Quimpo, concurring.

letter-memorandum to Sugue, explaining that the negative variance was due to pilferage of finished goods by Alfred Hernandez, a security consultant of TIPI. Apostol also objected to his being placed on leave with pay. On the same day, Gomez issued a memorandum addressed to Sugue, stating that in the reconciliation of stock development report against stock list, he noted that significant adjustments were made by Opulencia and approved by Apostol.[4] Gomez asked Sugue if she approved such adjustments,[5] and at the same time, requested the latter to direct Opulencia and Apostol to explain the adjustments.

On 16 September 1999, Apostol issued a memorandum[6] addressed to Sugue, copy furnished Gomez, explaining the significant adjustments, to wit:

(1) Adjustments to conform against the physical existence of stock balance of 15,836 pcs. x x x

This is the adjustment made in accordance with the agreed cycle count during the Direct Sales coordination meeting with RSV, VAS and RLA of SMSD-Direct Sales. These are documented adjustments to correct the stocklist balance. This measure was agreed in order to address numerous complaints of dealers regarding unserved orders.

(2) Discrepancy on Stock transfer from Retail Sales to Direct Sales of 1,784 pcs. x x x

There are also adjustments to conform against the physical existence of stock balance of spot items mostly transfer fro (sic) Retail Sales. There are also documented adjustments and are meant to correct the stocklist balance.

For his part, Opulencia explained in another memorandum of the same date that the adjustments "were made to address

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[4] CA *rollo*, pp. 367-368. The significant adjustments referred to are:

(1) Adjustments to conform against physical existence of stock balance of 15,836 pcs.

(2) Discrepancy on stock transfer from Retail to Direct Sales of 1,784 pcs.

[5] *Id.*

[6] *Id.* at 369.

the problem of variances between the stocklist balance and the actual stocks. These were covered by the usual stock adjustment reports which were approved by the Asst. Manager-Warehouse and Distribution [*i.e.*, Apostol]."[7] Opulencia wrote Sugue a separate letter-memorandum objecting to his being placed on leave with pay.

On 22 October 1999, Sugue issued a memorandum[8] informing Apostol of the following findings of the TIPI investigation, to wit:

1. An inventory count was conducted at the Muñoz warehouse on the 14th and 15th of August 1999. The inventory count uncovered the pilferage of 15,574 pieces of finished products amounting to more or less ₱3.5 million;

2. Adjusting entries to the stock list totaling to (sic) 17,620 were made without proper investigation and reconciliation with the Accounting Department in conformity with the Company's records and accountability;

3. The warehouse keys, which should have been with (sic) Mr. Apostol's custody, were entrusted to the custody of contractual and/or regular employees in violation of the Company's Standard Operating Procedure;

4. Mr. Apostol failed to report the alleged fact of pilferage of Mr. Alfredo A. Hernandez, which act of pilferage having been committed under Mr. Apostol's area of control and supervision; and

5. On September 29, 1999, in a telephone conversation with Mr. Ralph Funtilla, Personnel Manager of the Company, Mr. Apostol uttered profane, indecent, abusive, derogatory remarks and indecorous words, and even threatened the former.

Sugue also required Apostol to show cause, within 24 hours, why he should not be terminated by TIPI for loss of confidence.[9]

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[7] *Id.* at 370.

[8] *Rollo*, pp. 36-37.

[9] *Id.*

On 27 October 1999, Apostol issued a reply to Sugue's memorandum, stating the following:[10]

1. The variance uncovered by the inventory cycle count is caused by pilferage. He referred to the report of Ms. Sugue to Mr. Gomez stating such fact;

2. The adjustments were made with the full knowledge of the Accounting Department of the company as reflected in a Summary Transaction Report which said department has a copy and which it never questioned. The adjusting entries to the stock list were made in accordance with the agreed cycle count during the Direct Sales coordination meeting in order to correct the stock list balance. These adjustments were done in order to address the numerous complaints of dealers regarding unserved orders. The adjusting entries do not violate any company rule and regulation or any of the Company's internal control systems. This procedure has also been followed since the start of the Direct Sales operations where adjustments are made on the stock list to conform with the actual situation;

3. The entrusting of the keys to warehouse staff is a practice since 1990 and had been known to all concerned, and no objections were relayed with regard to this practice. Sufficient control had been imposed in order to ensure that the staff member who had custody of the key may not pilfer any stock;

4. The pilferage of Mr. Hernandez was reported to Ms. Sugue and Mr. Valderama; and

5. No profane, indecent, abuse (sic), derogatory language, or threats were uttered against Mr. Funtilla.

TIPI conducted administrative investigations on 20 December 1999 and 10 January 2000. On 21 January 2000, TIPI, through Sugue, served notices to Apostol and Opulencia, stating that their employment had been terminated for committing infractions of the company's rules and regulations. Specifically, Apostol was found to have committed Offense No. 3 (Fraud or willful breach by an employee of the trust reposed in him by the Company) and Offense No. 25 (Using, uttering or saying profane, indecent, abusive, derogatory and/or indecorous words or language

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

against the employer or supervisor), while Opulencia was found to have committed Offense No. 3 only.

On 28 January 2000, Apostol and Opulencia filed with the Labor Arbiter a complaint for illegal dismissal and non-payment of salaries and other benefits against TIPI.

On 28 July 2000, the Labor Arbiter[11] rendered a Decision dismissing the Complaint for lack of merit.[12] On appeal, the NLRC affirmed the Decision of the Labor Arbiter.[13] Apostol and Opulencia filed a motion for reconsideration, but this was denied by the NLRC.[14]

The Court of Appeals' Ruling

Apostol and Opulencia filed with the Court of Appeals a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, assailing the Decision of the NLRC. On 20 February 2004, the Court of Appeals rendered judgment, reversing and setting aside the NLRC Decision. The dispositive portion of the Court of Appeals' Decision reads:

WHEREFORE, the instant petition is **GRANTED**. The assailed Decision dated July 16, 2001 and Order dated December 20, 2001, of the public respondent NLRC, First Division, Quezon City in NLRC NCR CA No. 026159-00 (NLRC NCR CASE NO. 39-01-0422-00) are **REVERSED** and **SET ASIDE**. In lieu thereof, the private respondent is hereby ordered to reinstate the petitioners with full backwages from the time their employments were terminated on January 21, 2000 up to the time the decision herein becomes final. However, if reinstatement is no longer feasible, due to the strained relation between the parties, the private respondent is ordered to pay the petitioners their separation pay equivalent to one (1) month pay for every year of service and, in addition, to backwages.

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[11] Labor Arbiter Pedro C. Ramos.

[12] *Rollo*, p. 157.

[13] *Id.* at 207.

[14] *Id.* at 211.

SO ORDERED.[15]

TIPI filed a Motion for Reconsideration, but this was denied by the Court of Appeals in its Resolution of 5 July 2004.[16]

Hence, this appeal.

The Issues

TIPI raises the following issues:

1. Whether the Court of Appeals exceeded its jurisdiction when it reversed the factual findings of the Labor Arbiter and the NLRC by reevaluating the evidence on record;
2. Whether the Court of Appeals contravened prevailing jurisprudence by requiring a higher quantum of proof for the dismissal of managerial employees on the ground of loss of trust; and
3. Whether the Court of Appeals gravely erred in ruling that respondents were illegally dismissed.

The Court's Ruling

We find the appeal meritorious.

At the outset, respondents contend that the issues raised by TIPI in this case entail an evaluation of the factual findings of the Court of Appeals, which is proscribed in a petition for review on *certiorari* where only questions of law may be raised. Respondents refer to Section 1, Rule 45 of the 1997 Rules of Civil Procedure which states:

> Section 1. Filing of petition with Supreme Court. — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. **The petition shall raise only questions of law which must be distinctly set forth.** (Emphasis supplied)

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[15] *Id.* at 47.

[16] *Id.* at 49.

Applying the above rule, respondents maintain that the instant petition should be dismissed *motu proprio* by this Court.

As a general rule, petitions for review under Rule 45 of the Rules of Civil Procedure filed before this Court may only raise questions of law. However, jurisprudence has recognized several exceptions to this rule. In *Almendrala v. Ngo*,[17] we have enumerated several instances when this Court may review findings of fact of the Court of Appeals on appeal by *certiorari*, to wit:[18] (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

In this case, the factual findings of the Court of Appeals are different from those of the NLRC and the Labor Arbiter. These conflicting findings led to the setting aside by the Court of Appeals of the decision of the NLRC which affirmed the Labor Arbiter. In view thereof, we deem a review of the instant case proper.

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[17] G.R. No. 142408, 30 September 2005, 471 SCRA 311.

[18] *Id.* at 322, citing *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, 28 April 2004, 428 SCRA 79, 86; *Aguirre v. Court of Appeals*, G.R. No. 122249, 29 January 2004, 421 SCRA 310, 319; and *C & S Fishfarm Corporation v. Court of Appeals*, 442 Phil. 279 (2002).

On whether the Court of Appeals exceeded its jurisdiction when it reversed the factual findings of the Labor Arbiter and the NLRC

TIPI contends that a reevaluation of the factual findings of the NLRC is not within the province of a petition for *certiorari* under Rule 65. TIPI asserts that the Court of Appeals can only pass upon such findings if they are not supported by evidence on record, or if the impugned judgment is based on misapprehension of facts — which circumstances are not present in this case. TIPI also emphasizes that the NLRC and the Labor Arbiter concurred in their factual findings which were based on substantial evidence and, therefore, should have been accorded great weight and respect by the Court of Appeals.

Respondents, on the other hand, contend that the Court of Appeals neither exceeded its jurisdiction nor committed error in reevaluating NLRC's factual findings since such findings are not in accord with the evidence on record and the applicable law or jurisprudence.

The power of the Court of Appeals to review NLRC decisions via a Petition for *Certiorari* under Rule 65 has been settled as early as our decision in *St. Martin Funeral Home v. NLRC*.[19] In said case, we held that the proper vehicle for such review is a Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court, and that the case should be filed in the Court of Appeals in strict observance of the doctrine of the hierarchy of courts.[20] Moreover, it is already settled that under Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902,[21] the Court of Appeals —pursuant to the exercise of its original jurisdiction over petitions for *certiorari* — is specifically given

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[19] 356 Phil. 811 (1998).

[20] *VMC Rural Electric Service Cooperative, Inc. v. Court of Appeals*, G.R. No. 153144, 16 October 2006, 504 SCRA 336; *Tanjuan v. Philippine Postal Savings Bank, Inc.*, 457 Phil. 993, 1006 (2003).

[21] An Act Expanding the Jurisdiction of the Court of Appeals, Amending for the Purpose Section Nine of Batas Pambansa Blg. 129 as amended, known as the Judiciary Reorganization Act of 1980.

the power to pass upon the evidence, if and when necessary, to resolve factual issues.[22] Section 9 clearly states:

x x x x x x x x x

The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. x x x

However, equally settled is the rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, *i.e.*, the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[23] But these findings are not infallible. When there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts.[24]

In this case, the NLRC sustained the factual findings of the Labor Arbiter. Thus, these findings are generally binding on the appellate court, unless there was a showing that they were arrived at arbitrarily or in disregard of the evidence on record. Questioned in a petition for *certiorari* under Rule 65, these factual findings were reexamined and reversed by the Court of Appeals for being "not in accord with the evidence on record and the applicable law or jurisprudence."[25] To determine if the Court of Appeals' reexamination of factual findings and reversal of the NLRC decision are proper and with sufficient basis, it is incumbent upon this Court to make its own evaluation of the evidence on record.

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[22] *R & E Transport, Inc. v. Latag*, 467 Phil. 355, 364 (2004).

[23] *C. Planas Commercial v. NLRC*, 362 Phil. 393 (1999); *Hacienda Fatima, v. National Federation of Sugarcane Workers-Food and General Trade*, 444 Phil. 587 (2003).

[24] *Id.*; *R & E Transport, Inc. v. Latag, supra*.

[25] *Rollo*, p. 47.

On whether the Court of Appeals erred in ruling that respondents were illegally dismissed

In cases of termination of employees, the well-entrenched policy is that no worker shall be dismissed except for just or authorized cause provided by law and after due process.[26] Dismissals of employees have two facets: first, the legality of the act of dismissal, which constitutes substantive due process; and second, the legality in the manner of dismissal, which constitutes procedural due process.[27]

Apostol and Opulencia were dismissed by TIPI allegedly for committing Offense No. 3 or "fraud or willful breach by an employee of the trust reposed in him by the company or the company's representative." Apostol was also found to have committed Offense No. 25 or "using, uttering or saying profane, indecent, abusive, derogatory and/or indecorous words or language against the employer or the supervisor." These grounds are among the just causes for termination of employment under Article 282 of the Labor Code, to wit:

> 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.* (Italicization supplied)

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[26] *Tirazona v. Court of Appeals*, G.R. No. 169712, 14 March 2008, 548 SCRA 560; *Shoemart, Inc. v. NLRC*, G.R. No. 74229, 11August 1989, 176 SCRA 385, 390.

[27] *Id*.

Termination of employment based on Article 282 mandates that the employer substantially comply with the requirements of due process under the rules implementing the Labor Code, to wit:[28]

> Section 2. Security of Tenure. x x x
>
> x x x x x x x x x
>
> (d) In all cases of termination of employment, the following standards of due process shall be substantially observed:
>
> For termination of employment based on just causes defined in Article 282 of the Labor Code:
>
> (i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side;
>
> (ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and
>
> (iii) a written notice of termination served on the employee, indicating that upon, due consideration of all the circumstances, grounds have been established to justify his termination.
>
> x x x x x x x x x

There is no question that TIPI, in dismissing Apostol and Opulencia, complied with the above requirements of procedural due process. The Court of Appeals even pointed out in its decision some of the documentary proofs of such compliance. We quote the pertinent portion of the Court of Appeals' decision, *viz*:

> x x x In the present case, the evidence shows that the private respondent [TIPI] had substantially complied with the requirements of procedural due process. The private respondent sent the following to the petitioners: (a) show cause letters addressed to the petitioners [Apostol and Opulencia] requiring them to explain in writing within

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[28] Sec. 2(d), Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code.

48 hours upon receipt, the discrepancy on the cycle count conducted on the Muñoz warehouse on August 14-15, 1999 and placing both of them on leave with pay until further notice pending investigation on the matter; (b) memorandum dated October 22, 1999 addressed to petitioner Apostol showing the findings after the investigation was conducted by the private respondent, requiring him to explain within 24 hours from receipt why he should not be terminated from his employment for loss of confidence; and (c) the notices of termination dated January 21, 2000.[29]

Thus, we are left with the question on whether the alleged causes for dismissal of respondents Apostol and Opulencia are supported by substantial evidence.

Apostol and Opulencia were dismissed mainly on ground of fraud or willful breach of trust. As previously mentioned, fraud or willful breach of the employer's trust is a just cause for termination of employment under Article 282(c) of the Labor Code. This provision is premised on the fact that the employee concerned holds a position of trust and confidence, a situation which exists where such employee is entrusted by the employer with confidence on delicate matters, such as care and protection, handling or custody of the employer's property.[30] But, in order to constitute a just cause for dismissal, the act complained of must be "work-related" such as would show the employee concerned to be unfit to continue working for the employer.[31]

Recent decisions of this Court have distinguished the treatment of managerial employees from that of the rank-and-file personnel,[32] insofar as the application of the doctrine of loss of

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[29] *Rollo*, p. 43.

[30] *Jardine Davies, Inc. v. NLRC*, 370 Phil. 310, 318-319 (1999).

[31] *Id.*, citing *Aris Philippines, Inc. v. NLRC*, G.R. No. 97817, 10 November 1994, 238 SCRA 59, 62.

[32] Article 212(m) of the Labor Code defines a "managerial employee" as "one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay off, recall, discharge, assign or discipline employees." A "supervisory employee" is one "who, in the interest of the employer, effectively recommends such managerial actions

trust and confidence is concerned.[33] Thus, with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient.[34] But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal.[35] Hence, in the case of managerial employees, proof beyond reasonable doubt is not required.[36] It is sufficient that there is some basis for the employer's loss of trust and confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position.[37] Nonetheless, the evidence must be substantial and must establish clearly and convincingly the facts on which the loss of confidence rests and not on the employer's arbitrariness, whims, and caprices or suspicion.[38]

In this case, Apostol and Opulencia were not ordinary rank and file employees; they were managerial and supervisory

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if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment." All employees not falling within these two definitions are considered "rank-and-file employees."

[33] *Velez v. Shangri-la Edsa Plaza Hotel,* G.R. No. 148261, 9 October 2006, 504 SCRA 13, 26.

[34] *Id*.

[35] *Id.*, citing *Maquiling v. Philippine Tuberculosis Society, Inc.*, 491 Phil. 43 (2005).

[36] *Manila Electric Company v. NLRC*, G.R. No. 60054, 2 July 1991, 198 SCRA 681, 687.

[37] *Jardine Davies, Inc. v. NLRC, supra* note 30, citing *Sajonas v. NLRC*, G.R. No. 49286, 15 March 1990, 183 SCRA 182, 188.

[38] *Manila Electric Company v. NLRC, supra*; *Velez v. Shangri-la Edsa Plaza Hotel, supra*, citing *Samson v. National Labor Relation Commission*, 386 Phil. 669 (2000).

employees. Apostol was TIPI's assistant manager for warehouse and distribution, while Opulencia was a warehouse supervisor. They were entrusted with the management and handling of the company's warehouse goods.

In the Notices of Termination,[39] TIPI explained the cause for dismissal of the respondents in this manner:

x x x x x x x x x

Offense No. 3 states that:

Fraud or willful breach by an employee of the trust reposed in him by the Company or the Company's Representative is a ground for dismissal.

x x x x x x x x x

An inventory count was conducted at the Muñoz warehouse on the 14th and 15th of August 1999 by the Company's Accounting Department. The inventory count uncovered the shortage/pilferage of 15,574 pieces of finished products amounting to more or less ₱3.5 Million.

It was further uncovered that you have made unauthorized and unreported adjusting entries to the stocklist totaling 17,620 pieces, without proper investigation and reconciliation with the Accounting Department, in conformity with the Company's records and accountability.

Such an action on your part constitutes a clear violation of the established internal control procedures of the Company which are meant primarily to safeguard Company assets. As required by generally accepted internal control standards, all inventory-related adjustments should be authorized by Management, including, but not limited to the preparation of formal reports indicating the parties responsible for as well as the parties who approved such adjustments. In this respect, it is the Company's finding that you have failed to comply with such mandatory internal control requirement.

As a responsible officer of the Company, you are mandated to strictly observe such internal control procedures, knowing fully well

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[39] CA *rollo*, pp. 380-381.

the adverse consequences of breakdown in internal control. More so, since you are directly responsible for the custody and safekeeping of goods, in the "direct sales" warehouse. Your culpable negligence in this respect, has resulted in millions of pesos lost in pilfered goods which could have been uncovered earlier had you reported to Management the abnormal discrepancy in the amount of inventory per stocklist *vis-a-vis* the actual inventory count. (Emphasis supplied)

Thus, respondents were found by TIPI to have made unauthorized and unreported adjusting entries to the stocklist without proper investigation and reconciliation with the Accounting Department, without prior authorization by management, and without preparation of formal reports indicating the parties responsible for the adjustments and those who approved the same. This, according to TIPI, is a clear violation of the company's internal control procedures, which resulted to the loss of the company's trust and confidence in the respondents.

Internal control procedures are usually adopted by large manufacturing companies, such as petitioner TIPI, to efficiently monitor production and safeguard company assets and inventories. As part of its internal control procedure, TIPI requires the conduct of a monthly physical inventory in the finished goods warehouse, with an accompanying report as to discrepancies between the records and actual count.[40] Adjusting entries can be made on the inventory report, provided that a specific procedure is followed. This procedure, which was outlined in the affidavit[41] of Zenaida Galang, TIPI's assistant manager-operations accounting, was never questioned by the respondents. It provides:

x x x x x x x x x

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[40] *Id.* at 385; TIPI Internal Memorandum dated 27 November 1979, Re: Finished Goods Warehouse, states:

1. Effective end of November, there should be a monthly physical inventory in the finished goods warehouse with an accompanying report as to discrepancies between the records and actual count.

x x x x x x x x x

[41] *Id.* at 405. Dated 17 May 2000.

3. The procedure for making an adjusting entry to the inventory report is as follows: First, the Sales and Marketing Services Department, including Mr. Ramon Apostol, must recommend that such adjusting entry should be made. Second, the Department Head, namely, Ms. Virginia A. Sugue, must approve such recommendation. Third, the adjustment made is reflected in the stock development report prepared by Mr. Apostol, noted by Ms. Sugue and submitted to me [Galang] for my checking and review on or before the 10th day of [the] month. Fourth, the adjustment made must be reviewed and approved by Leonardo T. Gomez, the Chief Financial Officer of Triumph.

Respondents do not deny making adjustment entries to the stocklist. In fact, both admitted making such adjustments in the office memoranda and affidavits submitted as evidence in this case.[42] The question, therefore, is whether respondents Apostol and Opulencia, in making such adjustments, violated TIPI internal control procedures.

After a careful evaluation of the evidence on record, we are convinced that the respondents made unauthorized adjustments in TIPI's stocklist, in violation of the company's internal control procedures. This act warrants respondents' dismissal for willful breach of employer's trust.

Respondents claim that they made the adjustments[43] in accordance with the agreed cycle count during the Direct Sales coordination meeting with other TIPI managerial employees,[44] and that these were documented adjustments made to correct the stocklist balance.[45] They also claim that the adjustments

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[42] *Id.* at 369 (Memorandum dated 16 September 1999 sent by Apostol to Sugue), 370 (Memorandum dated 16 September 1999 sent by Opulencia to Sugue), 371 (Joint Affidavit dated 10 January 2000, executed by Apostol and Opulencia), and *rollo*, p. 37 (Reply-Memorandum dated 27 October 1999 sent by Apostol to Sugue).

[43] Adjustments to conform against the physical existence of stock balance of 15,836 pcs.

[44] That is, RSV (Valderama), VAS (Sugue) and RLA of SMSD-Direct Sales.

[45] CA *rollo*, pp. 369-370. Memoranda dated 16 September 1999 of Apostol and Opulencia.

were made with full knowledge of the Accounting Department, as reflected in a Summary Transaction Report which remained in the custody of said department.[46]

These claims of the respondents are negated by the statements of other TIPI employees. In an affidavit dated 17 May 2000, Galang, the person handling the TIPI's accounting records pertaining to the inventory report of the Direct and Retail Sales Department, stated that she was not informed by either Apostol or Opulencia that they would make adjusting entries to the stocklist. Moreover, the Stock Development Reports submitted to her by Apostol and Opulencia for the months of April to July 1999 did not reflect that they made adjusting entries. We quote the relevant portion of Galang's affidavit, thus:

x x x x x x x x x

4. I was not informed by either Mr. Ramon L. Apostol or Mr. Ben M. Opulencia, the persons-in-charge of the Muñoz warehouse, that they will be making adjusting entries to the stocklist balance in the total quantity of 15,836 pieces under the heading "Adjustment to conform against physical existence of stock balance," as follows:

April 1999	5,435
May 1999	1,383
June 1999	6,011
July 1999	3,007
TOTAL	15,836

5. The stock development reports that were submitted to me by Mr. Apostol and Mr. Opulencia in the months that the above adjusting entries were made did not reflect that they made adjusting entries.

6. I never gave any formal or informal authority to either Mr. Opulencia or Mr. Apostol to make such adjusting entries to the stocklist balance because it is not within my authority to

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[46] *Rollo*, p. 37. Reply-Memorandum dated 27 October 1999 of Apostol.

do so. I can only recommend, after my review, that an adjusting entry be made but it is Mr. Gomez who gives the final approval.

7. I was shocked when Mr. Apostol informed me only after the inventory cycle count done in August 14 and 15, 1999 that he made adjusting entries to the stocklist balance without going through with the above procedures as I have never encountered an adjusting entry being made in such a manner in my twenty-one (21) years with Triumph.[47] (Emphasis supplied)

It is also apparent from the memorandum dated 10 September 1999,[48] sent by Gomez, TIPI's chief financial officer, to Sugue, that Gomez did not know of the adjustments made by Apostol and Opulencia. In the memorandum, Gomez informed Sugue that in the Reconciliation of the Stock Development Report against Stocklist (ending inventory as of 13 August 1999), he noted "significant adjustments done by Mr. Ben Opulencia and approved by Mr. Mon Apostol x x x." Gomez asked Sugue if she approved the adjustments and even requested her (Sugue) to ask Opulencia and Apostol to explain the adjustments.

Sugue, on the other hand, stated in her affidavit dated 26 April 2000,[49] that although she might have given Apostol an informal authorization to make any adjusting entry, she still expected Apostol to submit a formal report for her (Sugue's) approval; and that she received no such formal report from Apostol or Opulencia, but discovered that adjustments were made only sometime in July or August, after the cycle count was completed.[50]

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[47] CA *rollo,* pp. 405-406.

[48] *Id.* at 367.

[49] *Id.* at 407-410.

[50] The Affidavit dated 26 April 2000 of Virginia Sugue states:

x x x x x x x x x

6. During the hearing of December 22, 1999, which was recorded on tape, Atty. Cleofe Villar-Verzola asked me the following questions:"And as the superior, the immediate superior of these two respondents [Apostol and Opulencia], do you know of any act which they committed which would constitute

Moreover, respondents' claim that the adjustments were with full knowledge of the Accounting Department as reflected in the Summary Transaction Report remains unsubstantiated. No Summary Transaction Report was adduced in evidence.

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willful breach of trust reposed on them by the company?" to which I answered, "Well, only in as far as the stock adjustments are concerned. *I was not informed that adjustments were actually really made on stocks*."

7. During the same hearing, Atty. Cresencio Meneses questioned me on whether I authorized Mr. Apostol or Mr. Opulencia to make adjusting entries to the stocklist balance. The following are his questions and my answers:

Atty. Meneses: In the said memo dated September 16, 1999 x x x there was a statement made by Mr. Apostol stating that this is the adjustment made in accordance with the agreed cycle count during the direct sales coordination meeting with RSV, VAS, LRA of SMSD-Direct Sales. Can you confirm that there was a direct sales coordination meeting between you, Mr. Apostol, Mr. Valderama and Mr. Opulencia? x x x

Ms. Sugue: Coordination meetings. These are monthly meetings. But I cannot remember of a coordination meeting that there was an agreement about a cycle count.

Atty. Meneses: So, you were not aware. You don't remember any meeting wherein an agreement as to a cycle count was made between you, Mr. Valderama and Mr. Apostol?

Ms. Sugue: No, I don't remember.

Atty. Meneses: Were you aware, Mr. Sugue? (sic) Did Mr. Apostol inform you that adjusting entries will be made with the stock balance book?

Ms. Sugue: As regards to cycle?

Atty. Meneses: Yes?

Ms. Sugue: Yes. He did. He said he made in the past, he has made adjustments in the stocklist.

Atty. Meneses: But were you informed that you will be making adjusting entries to the present stocklist as per agreed upon between you, Mr. Valderama and himself?

Ms. Sugue: Sorry, can you repeat the question?

Atty. Meneses: At any point in a direct sales coordination meeting as stated by Mr. Apostol, did you authorize him to make an adjusting entry to the stock balance?

Considering the importance of such report which could have proven respondents' allegation that the adjustments made were formally documented and had, at least, the authorization of the accounting department, failure of respondents to exert effort to secure and present the same as evidence is beyond us.

Ms. Sugue: I said I cannot remember a meeting that has taken place, a coordination meeting that a cycle count was being agreed upon. So in that regard, I don't remember anything but as regards making adjustments in the stocklist is concerned, there were some discussions not in that type of venue. Probably in meetings with only Mr. Apostol about when he said he was conducting a cycle count already. I asked him if he can consult with the finance department about the procedure for stocklist adjustment.

Atty. Meneses: So you just told him to consult with the finance department as to the procedure in adjusting, in stock adjustments?

Ms. Sugue: Specifically for cycle count.

Atty. Meneses: *But you did not authorize him whether verbally or in writing to make such an adjustment?*

Ms. Sugue: *There was no formal memo. I said to consult finance department about the stocklist adjustment.* So later on he came back to me. He said he has already consulted Zeny Galang of finance and then of course, that he has been making adjustments in the past being with the company for 10 years already and that actually, that stocks, there's a master record. There's a forecast stock development being handled by finance that is the master records that cannot be tampered with or adjusted and that serves as the control records wherein he will be forced any variances on this master record with, of course, being explained by budget.

x x x x x x x x x

Atty. Meneses: *Just one last question to Ms. Sugue. Did you authorize Mr. Apostol to make any adjusting entry?*

Ms. Sugue: *Not formally. It was, there were a series, a couple of discussions about stock adjustment. There might have been, I cannot remember. There are small notes that are passed on from him to me but I expected, of course, even if there was informal authority to adjust the stocklist, I expected a report on the final number, on the final figure of adjustment for my approval.*

As regards respondents' claim that the adjustments were made pursuant to a long standing company practice and with the informal authorization of Sugue, suffice it to say that considering TIPI's formal requirements in making adjusting entries, an informal and verbal authorization given by Sugue, even if true, cannot be considered sufficient, especially considering the materiality of the discrepancies involved in this case and the resulting loss to the company.

Finally, we quote with approval the following findings of the Labor Arbiter:

> It has been established that none of the steps [for making adjustments] were undertaken by complainants when they made the entry adjustments. x x x
>
> What makes the case worse for the complainants [respondents] is that these entry adjustments were made as far back as April 1999. These entry adjustments could have accounted for the discrepancies discovered during the August 4 and 15, 1999 cycle count, aside from the pilferages committed by Mr. Hernandez, assuming these pilferages were true. Yet, complainants never volunteered this fact to the Company officials. It was only after the discovery by Mr. Gomez of these unauthorized entry adjustments that they admitted to have made such adjustments.
>
> Because of the total disregard of the complainants of the internal control procedure of the Company, the latter was definitely prejudiced

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Atty. Meneses: *Did you receive such final report from Mr. Apostol as to the final figure of the adjustment?*

Ms. Sugue: *No, there was none of the report.*

Atty. Meneses: *One final... Did Mr. Apostol officially inform you in writing that he made an adjusting entry to the stocklist balance?*

Ms. Sugue: *No. He did not. I only discovered, as I said, when the adjustments were made sometime in July or August, when the cycle count is finished. Then I got to know about some final figure.*

4. I did not give any formal authorization to either Mr. Apostol or Mr. Opulencia to make adjusting entries to the stocklist balance. Neither did either of them give me a formal report that they made adjusting entires to the stocklist balance.(Italicization supplied)

since it was in a sense "blind' as to the real status of the stocks it has on hand in the warehouse being supervised by the complainants. This being the case, the Company would have had no idea as to whether it should increase or decrease its inventory level *vis-a-vis* the existing market conditions and whether or not its operations are profitable.

Regarding the pilferage allegedly committed by Mr. Hernandez, this Office finds that such allegations are, in fact, irrelevant in these proceedings. Assuming, *arguendo*, that such pilferage existed, it does not and cannot exculpate complainants from facing the consequences of the unauthorized entry adjustments they committed.[51]

Considering the foregoing, we find that respondents Apostol and Opulencia were dismissed by TIPI for a valid and just cause. The relationship of employer and employee, specially where the employee has access to the employer's property, necessarily involves trust and confidence.[52] Where the rules laid down by the employer to protect its property are violated by the very employee who is entrusted and expected to follow and implement the rules, the employee may be validly dismissed from service.

Finding the dismissal of respondents Apostol and Opulencia, based on willful breach of employer's trust, valid, we deem it unnecessary to further rule on TIPI's other ground for Apostol's dismissal, *i.e.*, uttering indecent, abusive and derogatory words against his supervisor. Note, however, that such act of an employee, if substantially proven, may be considered as serious misconduct which would warrant the termination of his employment.

WHEREFORE, we *GRANT* the petition. We *REVERSE* the Court of Appeals' Decision dated 20 February 2004 in CA-G.R. SP No. 69280, and *REINSTATE* the Decision dated 16 July 2001 and Order dated 20 December 2001 of the National Labor Relations Commission in NLRC NCR CA No. 026159-00 (NLRC NCR Case No. 39-01-0422-00).

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[51] *Rollo*, pp. 151-152. Decision of the Labor Arbiter, pp. 7-8.

[52] *Philippine Education Co., Inc. v. Union of Philippine Education Employees, et al.*, 107 Phil. 1003 (1960).

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 166518. June 16, 2009]

NATIONAL HOUSING AUTHORITY, *petitioner, vs.* **HEIRS OF ISIDRO GUIVELONDO, REGIONAL TRIAL COURT OF CEBU CITY, BRANCH 19, and the COURT OF APPEALS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; THE JURISDICTION OF A COURT TO EXECUTE ITS JUDGMENT CONTINUES EVEN AFTER THE JUDGMENT HAD BECOME FINAL AND EXECUTORY.— It is well-settled that the jurisdiction of the court to execute its judgment continues even after the judgment had become final for the purpose of enforcement of judgment. The present case is no exception. Therefore, notwithstanding the final resolution on the validity of the expropriation made by this Court on June 19, 2003 in G.R. No. 154411, the RTC, Branch 19 can still rule on the motions for the issuance of an *alias* writ of execution and payment of interest. As the CA correctly stated: "...the duty of the court does not end with the tender of the decision. Equal is the duty of the court to enforce said decision to the fullest of its intent, tenor and mandate. To sustain a contrary view would not only trivialize the decision, but would also render it meaningless; the justice sought by the aggrieved party and supposedly conferred by the court turned inutile."

2. ID.; ID.; ID.; ISSUANCE OF THE *ALIAS* WRIT OF EXECUTION COVERING THE DEFICIENCY IN THE EXECUTION OF JUDGMENT, PROPER; CASE AT BAR.— As to the issue of the validity of the *alias* writ of execution, we affirm the finding of the CA that there was no irregularity in the issuance thereof. The rule is that a writ of execution must conform substantially to every essential particular of the judgment promulgated. An execution which is not in harmony with the judgment is bereft of validity; it must conform particularly to that ordained in the dispositive portion of the decision. In the case at bar, the sheriff himself discovered a deficiency in the execution of the judgment in the amount of ₱70,300.00. Therefore, upon report of the same by the sheriff, an *alias* writ of execution covering said deficiency is only proper to preserve the tenor of the judgment and to ensure the faithful execution thereof.

3. ID.; ID.; ID.; NO PATENT ERROR IN THE IMPOSITION OF INTEREST ON PETITIONER DUE TO THE DELAY IN THE PAYMENT OF MONEY JUDGMENT.— *Dalmacio Urtula vs. Republic of the Philippines* is not applicable to the instant case for the simple reason that respondents herein do not ask for interest as part of the judgment in an expropriation case, but for interest which is imposed due to the delay in the payment of a money judgment. As stated above, the former is imposed in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred, while the latter is considered as legal interest, to be computed at 12% per annum from such finality until its satisfaction, because the interim period is deemed to be equivalent to a forebearance of credit. Consequently, the award of the former needs to be stated in the judgment, while the award of the latter need not. Moreover, the former is computed from the date of possession or filing of the complaint for expropriation, the latter is merely computed from the time the judgment becomes final and executory. Therefore, we find no patent error in the imposition of interest on petitioner.

APPEARANCES OF COUNSEL

Legal Department (NHA) for petitioner.
Jo & Pintor Law Offices for private respondents.

D E C I S I O N

PUNO, *C.J.*:

Before us is a petition for review on *certiorari* under Rule 45 seeking the reversal of the Decision[1] of the Court of Appeals (CA) in CA G.R. SP No. 85807 affirming the omnibus order[2] of the Regional Trial Court (RTC), Branch 19, Cebu City, and the order[3] denying the reconsideration thereof.

This case is an offshoot of G.R. No. 154411, promulgated on June 19, 2003, entitled ***National Housing Authority (NHA) v. Heirs of Guivelondo***, in which we resolved once and for all the validity of the order of expropriation issued by the RTC of Cebu City, Branch 11, condemning the properties of respondents located in Barangay Carreta, Cebu City at ₱11,200.00 per square meter and the propriety of the garnishment against petitioner's funds and personal properties for the payment of just compensation to respondents. Pending the final resolution of G.R. No. 154411, a writ of execution was issued on January 14, 2001 by the RTC, Branch 11 in the amount of ₱104,641,600.00, as computed from respondents' 9,343 square meters of land valued at ₱11,200.00 each. Pursuant to said writ of execution, the court sheriff of RTC, Branch 11, Mr. Pascual Abordo, commenced levy and garnishment upon NHA properties, which included bank deposits in various banks. Hence, on June 16, 2001, the Philippine National Bank (PNB) and the Land Bank of the Philippines (LBP) released the amount of ₱24,305,774.82 to respondents, bringing the balance of the unsatisfied just compensation to ₱80,335,825.18. On December 26, 2001, petitioner's account with the Philippine Veterans' Bank (PVB) was garnished in the amount of ₱24,305,774.82, which then brought the computed balance of unpaid just compensation to ₱80,299,506.72, though the PVB had yet to release said amount to respondents. On July 10, 2003, the Development Bank of

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[1] Promulgated on December 16, 2004.

[2] Dated February 16, 2004.

[3] Dated July 27, 2004.

the Philippines (DBP) released the garnished amount of ₱78,754,907.07, further bringing down the balance to ₱1,544,299.65. Subsequently, on July 31, 2003, upon the release by the LBP of the garnished amount of ₱1,474,299.65, the payment of respondents' just compensation seemed to have been fully satisfied, save for the release of the earlier garnished amount of ₱24,305.774.82. Finally, on August 28, 2003, the amount of ₱36,318.46 was remitted to respondents by the PVB, prompting Sheriff Abordo to issue a notice of lifting or discharge of levy/garnishment to the PNB, LBP, DBP, PVB and to the General Manager/Property Custodian of NHA.

On October 8, 2003, Sheriff Abordo received a letter from respondents' counsel requesting the former for the listing of the garnished and released accounts of petitioner. In his reply letter dated October 9, 2003, Sheriff Abordo summarized said garnishments and revealed that there was an unsatisfied amount of ₱70,300.00. Hence, in his progress report to the RTC, Branch 11, dated October 14, 2003, Sheriff Abordo informed the court to wit:

> Further, undersigned Sheriff respectfully informs the Honorable Court that when he prepared his aforesaid Reply Letter and made a reconciliation of the garnished and released accounts of plaintiff, he discovered that he **inaccurately** reflected in his Progress Report dated July 14, 2003 a balance of **₱80,229,206.72** where it should have been **₱80,299,206.72** which, as stated in the same report **"was arrived at after deducting from the total just compensation of ₱104,641,600.00 the garnished and released money deposits of NHA with PNB and Landbank in the amount of ₱24,305,774.82 and the garnished but not yet released /claimed money deposit of NHA with"** Philippine Veterans Bank in the amount of ₱36,618.46. In other words, by mathematical computation: ₱104,641,600.00 – ₱24,305,774.82 – ₱36,618.36 = **₱80,299,206.72** and not ₱80,229,206.72. The balance reflected in the undersigned Sheriff's Progress Report dated July 14, 2003 is short by ₱70,000.00, hence, this did not result to over satisfaction of the judgment of the Honorable Court.
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> Futhermore, undersigned Sheriff respectfully informs the Honorable Court that the amount released by Philippine Veterans Bank is only P36,318.46 albeit its letter dated December 26, 2001

stated an amount of P36,618.46 (short by P300).[4] (emphases in the original)

On November 6, 2003, seeking to claim the unsatisfied amount of ₱70,300.00, respondents filed with the RTC a motion for the issuance of an *alias* writ of execution. On November 12, 2003, respondents likewise filed a motion for payment of interest anchored on the premise that petitioner made piecemeal payments of the judgment amount, causing a 32-month delay in the full satisfaction thereof which entitled respondents to the payment of a legal interest of 12% per annum. To simplify matters, respondents confined their claim to the interest for the principal amount of ₱80,335,825.18 reckoned from October 31, 2000, the date the entry of judgment was issued, to July 2003, when the last garnishment took place, without including the ₱70,300.00 yet to be satisfied in the said principal amount.

Pursuant to a motion for inhibition filed by petitioner on August 4, 2003, the case was re-raffled to the RTC, Branch 19, which ordered petitioner to file its comment/opposition to both motions. After hearing the case, the RTC, Branch 19 issued an omnibus order dated February 16, 2004, disposing of the issues as follows:

> WHEREFORE, on the Motion for Issuance of an *Alias* Writ of [E]xecution, the same is GRANTED. Let an *Alias* Writ of Execution issue to satisfy the shortage amount of Php70,300.00.
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> Defendants' Motion for Payment of Interest is likewise GRANTED. Plaintiff is hereby directed to pay the defendants within five (5) days from receipt hereof the amount of Php25,695,746.15 representing interest of 12% p.a. for thirty two (32) months of the unsatisfied portion of the just compensation in the amount of Php80,299,206.72. Plaintiff is futher directed to pay interest of 12% p.a. on the Php25,695,746.15 interest from the date the five-day period given by the Court expired until the same is paid.
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> SO ORDERED.[5]

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[4] *Rollo*, p. 223.

[5] *Id.*, pp. 50-51.

On February 24, 2004, petitioner filed a motion for reconsideration which was denied by the RTC, Branch 19 in an order dated July 27, 2004. Aggrieved, petitioner filed a petition for review on *certiorari* with the CA which was denied for lack of merit in a decision dated December 16, 2004, ratiocinating thus:

> We now come to the question on whether respondent judge was correct in imposing interest of 12% per annum for the delay in payment of just compensation by petitioner sans an explicit pronouncement for such provision in the decision. We rule in the affirmative on the following reasons:
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> 1) A judgment is not confined to what appears on the face of the decision but also those necessarily included therein or necessary thereto. Where a legal provision exists providing for legal interest, the same not only constitute judicial notice, but by operation of law, becomes inherent in every decision.
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> 2) The imposition of interest at the time the decision was rendered would be purely conjectural and speculative considering that delay in the payment could only be ascertained at the time following after the rendition of the decision. The remedy for any delay may be ventilated during the execution stage as in this case. Delay takes the nature of a supervening event between the rendition of the decision and its due execution, and the judge may take cognizance of it not only for the purpose of expediency but also to prevent multiplicity of suits. At any rate, the judge is now familiar with the history and development of the case, and it is he who can give the most prudent assessment over an issue such as that of delay and the concomitant damages for the delay.
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> Conversely, [w]e also find nothing irregular in issuance of the *alias* writ of execution by respondent judge covering the deficiency in the actual judgment amount. The rule is that the execution must conform substantially to that ordained or decreed in the dispositive part of the decision. Therefore, upon report of the sheriff of a deficiency in the execution of the judgment amount, an *alias* writ of execution covering said deficiency is proper.[6]

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[6] *Id.*, pp. 44-45.

Hence, petitioner filed the instant petition for review, where it argues that the CA gravely erred in affirming the RTC when it granted respondents' motion for issuance of an *alias* writ of execution and motion for payment of interest, considering that expropriation proceedings have already been terminated and that the order to pay respondents just compensation was silent on the payment of interest.

We deny the petition.

As a side issue, petitioner points out that the CA erred in ruling that RTC, Branch 19 had jurisdiction over the case, as petitioner was allegedly not notified of 1) the Order dated October 16, 2003 where the Presiding Judge of Branch 11 inhibited himself from handling the expropriation, 2) the Order of the Executive Judge of the RTC approving such inhibition, and 3) the Order re-raffling the case to RTC, Branch 11. We are not convinced. In the first place, it was petitioner which filed a Motion for Inhibition against the presiding judge of RTC, Branch 11, Hon. Isaias Dicdican, a move that precipitated the re-raffling of the case to Branch 19 of the same RTC. Hence, petitioner cannot deny that it had knowledge of moves to have the case handled by another branch. Assuming *arguendo* that petitioner honestly believed that the case was still pending with Branch 11, petitioner still cannot claim that it had no knowledge of the proceedings in Branch 19. It is well to remember that the court frowns upon the undesirable practice of a party submitting his case for decision and then accepting the judgment only if favorable, and attacking it for lack of jurisdiction when adverse.[7] While jurisdiction of a tribunal may be challenged at any time, sound public policy bars petitioner from doing so after having procured that jurisdiction himself, speculating on the fortunes of litigation.[8] In the instant case, the fact remains that petitioner filed motions with Branch 19 and even sought relief therefrom

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[7] *Tijam v. Sibonghanoy*, G.R. No. L-21450, April 15, 1968, 23 SCRA 29, 36.

[8] *Ong Ching v. Ramolete*, G.R. No. L-35356, May 18, 1973, 51 SCRA 14, 20.

when it opposed the two motions subject of this petition. As such, it is estopped from attacking the jurisdiction of RTC, Branch 19 in the instant case.

Petitioner likewise contends that the trial court erred in exercising jurisdiction in resolving the two motions as the subject thereof constituted new, independent, separate, and substantial matters which are foreign to the expropriation case which had already been terminated.[9] Petitioner's contention is untenable.

It is well-settled that the jurisdiction of the court to execute its judgment continues even after the judgment had become final for the purpose of enforcement of judgment.[10] The present case is no exception. Therefore, notwithstanding the final resolution on the validity of the expropriation made by this Court on June 19, 2003 in G.R. No. 154411, the RTC, Branch 19 can still rule on the motions for the issuance of an *alias* writ of execution and payment of interest. As the CA correctly stated: "...the duty of the court does not end with the tender of the decision. Equal is the duty of the court to enforce said decision to the fullest of its intent, tenor and mandate. To sustain a contrary view would not only trivialize the decision, but would also render it meaningless; the justice sought by the aggrieved party and supposedly conferred by the court turned inutile."[11]

On the issue of payment of interest, we find petitioner's theory implausible. Petitioner insists that the payment of interest to respondents is not proper since nowhere in the records–from the orders of the RTC all the way to this Court–does it state that respondents are entitled to damages.[12] As such, petitioner asserts that respondents had already waived its right to claim interest. We are not persuaded.

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[9] *Id.,* pp. 15-16.

[10] *Natalia v. CA*, G.R. No. 126462, November 12, 2002, 391 SCRA 370, 386-387.

[11] *Rollo,* p. 43.

[12] *Id.,* p. 24.

In support of its argument, petitioner cites ***Dalmacio Urtula v. Republic of the Philippines***,[13] which ruled that:

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Urtula's dilemma lies in his mistaken concept of the nature of the interest that he failed to claim in the expropriation case and which he now claims in this separate case. Said interest is not contractual, nor based on delict or quasi-delict, but one that —

> runs as a matter of law and follows as a matter of course from the right of the landowner to be placed in as good a position as money can accomplish, as of the date of the taking (30 C.J.S. 230).

Understood as such, Urtula, as defendant in the expropriation case, could have raised the matter of interest before the trial court even if there had been no actual taking yet by the Republic and the said court could have included the payment of interest in its judgment *but conditioned upon the actual taking*, because the rate of interest upon the amount of just compensation (6%) is a known factor, and it can reasonably be expected that at some future time, the expropriator would take possession of the property, though the date be not fixed. In this way, multiple suits would be avoided. Moreover, nothing prevented appellee from calling the attention of the appellate courts (even by motion to reconsider before judgment became final) to the subsequent taking of possession by the condemnor, and asking for allowance of interest on the indemnity, since that followed the taking as a matter of course, and raised no issue requiring remand of the records to the Court of origin.

As the issue of interest could have been raised in the former case but was not raised, *res judicata* blocks the recovery of interest in the present case. It is settled that a former judgment constitutes a bar, as between the parties, not only as to matters expressly adjudged, but all matters that could have been adjudged at the time. It follows that interest upon the unrecoverable interest, which plaintiff also seeks, cannot, likewise, be granted.

It is not amiss to note that Section 3 of Rule 67 of the Revised Rules of Court, in fact, directs the defendant in an expropriation case to "present in a single motion to dismiss or *for other appropriate*

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[13] G.R. No. L-22061, January 31, 1968, 22 SCRA 477.

relief, all of his objections and defenses . . ." and if not so presented "*are waived.*" As it is, the judgment allowing the collection of interest, now under appeal in effect amends the final judgment in the expropriation case, a procedure abhorrent to orderly judicial proceedings.[14] (citations omitted)

Unfortunately for petitioner, the abovequoted doctrine is not applicable to the instant case for the simple reason that respondents herein do not ask for interest as part of the judgment in an expropriation case, but for interest which is imposed due to the delay in the payment of a money judgment. As stated above, the former is imposed in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred, while the latter is considered as legal interest, to be computed at 12% per annum from such finality until its satisfaction,[15] because the interim period is deemed to be equivalent to a forebearance of credit.[16] Consequently, the award of the former needs to be stated in the judgment, while the award of the latter need not.[17] Moreover, the former is computed from the date of possession or filing of the complaint for expropriation,[18] the latter is merely computed from the time the judgment becomes final and executory.[19] Therefore, we find no patent error in the imposition of interest on petitioner.

As to the issue of the validity of the *alias* writ of execution, we affirm the finding of the CA that there was no irregularity in the issuance thereof. [20] The rule is that a writ of execution

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[14] *Id.,* at 480-482.

[15] *Republic v. Court of Appeals*, G.R. No. 146587, July 2, 2002, 383 SCRA 611, 623.

[16] *Eastern Assurance and Surety Corporation (EASCO) v. Court of Appeals*, G.R. No. 127135, January 18, 2000, 322 SCRA 73, 79.

[17] *Ibid.*

[18] *Supra note 15*.

[19] *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78, 97.

[20] *Rollo*, p. 45.

must conform substantially to every essential particular of the judgment promulgated.[21] An execution which is not in harmony with the judgment is bereft of validity; it must conform particularly to that ordained in the dispositive portion of the decision.[22] In the case at bar, the sheriff himself discovered a deficiency in the execution of the judgment in the amount of ₱70,300.00. Therefore, upon report of the same by the sheriff, an *alias* writ of execution covering said deficiency is only proper to preserve the tenor of the judgment and to ensure the faithful execution thereof.

IN VIEW WHEREOF, the instant petition is *DENIED*. The decision of the Court of Appeals is *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 169276. June 16, 2009]

DIONISIA MONIS LAGUNILLA and RAFAEL MONIS, *petitioners, vs.* **ANDREA MONIS VELASCO and MACARIA MONIS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; JURISDICTION; FOR THE COURT TO EXERCISE THE AUTHORITY TO DISPOSE A CASE ON THE MERITS, IT MUST ACQUIRE

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[21] *Separa v. Maceda*, A.M. No. P-02-1546, April 18, 2002, 381 SCRA 305, 311.

[22] *Ibid.*

JURISDICTION OVER THE SUBJECT MATTER AND THE PARTIES.— Much as we would like to make a definitive conclusion on the respective rights of all the parties and decide, once and for all, their interests over the subject property, we are barred by a jurisdictional issue. Jurisdiction is the power invested in courts for administering justice, that is, to hear and decide cases. For the court to exercise the authority to dispose of the case on the merits, it must acquire jurisdiction over the subject matter and the parties. Courts acquire jurisdiction over a party plaintiff upon the filing of the complaint. On the other hand, jurisdiction over the person of a party defendant is assured upon the service of summons in the manner required by law or, otherwise, by his voluntary appearance. As a rule, if a defendant has not been summoned, the court acquires no jurisdiction over his person, and a personal judgment rendered against such defendant is null and void. A decision that is null and void for what of jurisdiction of the trial court is not a decision in contemplation of law and can never become final and executory.

2. ID.; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; COMPULSORY JOINDER OF INDISPENSABLE PARTIES; EVIDENT INTENT OF THE RULE IS THE COMPLETE DETERMINATION OF ALL POSSIBLE ISSUES, NOT ONLY BETWEEN THE PARTIES THEMSELVES BUT ALSO AS REGARDS OTHER PERSONS WHO MAY BE AFFECTED BY THE JUDGMENT.— Corollary to the issue of jurisdiction, and equally important, is the mandatory rule on joinder of indispensable parties set forth in Section 7, Rule 3 of the Rules of Court, to wit: SEC. 7. *Compulsory joinder of indispensable parties*.— Parties in interest without whom to final determination can be had of an action *shall be joined either as plaintiffs or defendants*. The general rule with reference to parties to a civil action requires the joinder of all necessary parties, where possible, and the joinder of all indispensable parties under any and all conditions. The evident intent of the Rules on the joinder of indispensable and necessary parties is the complete determination of all possible issues, not only between the parties themselves but also as regards other persons who may be affected by the judgment.

3. ID.; ID.; ID.; ID.; EVEN IF THE COURT RESOLVES THE VALIDITY OF THE ASSAILED EXTRAJUDICIAL

SETTLEMENT, THERE WOULD BE NO FINAL ADJUDICATION OF THE CASE WITHOUT INVOLVING THE INDISPENSABLE PARTY'S INTEREST.— Even without having to scrutinize the records, a mere reading of the assailed decision readily reveals Pedro is an indispensable party. At the time of the filing of the complaint, the title to the Quezon City property was already registered in the name of Pedro, after TCT No. 60455 (190472) in the names of Pedro Velasco, Andrea, Magdalena and Patricio Monis was cancelled, pursuant to the extrajudicial settlement with donation executed by respondents. The central thrust of the complaint was that respondents, by themselves, could not have transferred the Quezon City property to Pedro because petitioners, as heirs of Patricio and Magdalena, also have rights over it. Accordingly, petitioners specifically prayed that the extrajudicial settlement with donation be annulled and the transfer certificate of title and tax declarations (in the name of Pedro) issued pursuant thereto be canceled. The pertinent portion of the complaint is quoted for easy reference: WHEREFORE, in view of the foregoing, it is respectfully prayed that judgment be rendered as follows — 1. By ordering the annulment of Annex "A" hereof as well as the cancellation of transfer certificate of title and tax declarations issued pursuant thereto. If such prayed and trust were to be decided (as held by the trial and appellate courts), the problem would be less obvious, as the *status quo* would be maintained. However, if they were to be upheld, Pedro's title to the property would undoubtedly be directly and injuriously affected. Even if we only resolve the validity of the extrajudicial settlement, there would be no final adjudication of the case without involving Pedro's interest.

4. ID.; ID.; ID.; ID.; THE INDISPENSABLE PARTY'S INTEREST IN THE SUBJECT MATTER OF THE SUIT AND IN THE RELIEF SOUGHT ARE SO INEXTRICABLY INTERTWINED WITH THAT OF THE OTHER PARTIES; HIS LEGAL PRESENCE AS A PARTY TO THE PROCEEDINGS IS AN ABSOLUTE NECESSITY.— Pedro's interest in the subject matter of the suit and in the relief sought are so inextricably intertwined with that of the other parties. His legal presence as a party to the proceedings is, therefore, an absolute necessity. His interest in the controversy and in the subject matter is not separable from the interest of the other parties. It is unfortunate that petitioners failed to implead

Pedro as defendant in their complaint. Interestingly, however, they realized such mistake, *albeit* belatedly, and thus sought the amendment of the complaint to join him as a defendant, but the RTC refused to grant the same.

5. ID.; ID.; ID.; ID.; TO RENDER A PREMATURE JUDGMENT ON THE MERITS IN CASE AT BAR COULD RESULT IN A POSSIBLE VIOLATION OF DUE PROCESS; REMAND OF THE CASE TO THE COURT OF ORIGIN FOR INCLUSION OF THE INDISPENSABLE PARTY IS NECESSARY FOR EFFECTIVE AND COMPLETE RESOLUTION OF THE CASE AND IN ORDER TO ACCORD ALL PARTIES THE BENEFIT OF DUE PROCESS AND FAIR PLAY.— Well-settled is the rule that joinder of indispensable parties is mandatory. It is a condition *sine qua non* to the exercise of judicial power. The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present. Without the presence of indispensable parties to the suit, the judgment of the court cannot attain finality. One who is not a party to a case is not bound by any decision of the court; otherwise, he will be deprived of his right to due process. That is why the case is generally remanded to the court of origin for further proceedings. In light of these premises, no final ruling can be had on the validity of the extrajudicial settlement. While we wish to abide by the mandate on speedy disposition of cases, we cannot render a premature judgment on the merits. To do so could result in a possible violation of due process. The inclusion of Pedro is necessary for the effective and complete resolution of the case and in order to accord all parties the benefit of due process and fair play. Nevertheless, as enunciated in *Commissioner Domingo v. Scheer, Lotte Phil. Co., Inc. v. Dela Cruz,* and *Pepsi Co, Inc. v. Emerald Pizza, Inc*., the non-joinder of indispensable parties is not a ground for the dismissal of an action. The remedy is to implead the non-party claimed to be indispensable. Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or at such times as are just. If the plaintiff refuses to implead an indispensable party despite the order of the court, then the court may dismiss the complaint for the plaintiff's failure to comply with a lawful court order.

APPEARANCES OF COUNSEL

Ferdinand B. Concubierta for petitioners.
Osoteo Law Office for respondents.

D E C I S I O N

NACHURA, *J.*:

For review is the Court of Appeals (CA) Decision[1] dated July 13, 2005 in CA-G.R. CV No. 56998 affirming with modification the Regional Trial Court (RTC) Decision[2] dated April 24, 1997 in Civil Case No. 466 for *Annulment of Documents and Damages*.

The facts, as culled from the records, are as follows:

Rev. Fr. Patricio (Patricio), Magdalena Catalina (Magdalena), Venancio, and respondent Macaria, all surnamed Monis, as well as respondent Andrea Monis - Velasco (Andrea), are siblings. Venancio is the father of petitioners Dionisia Monis Lagunilla and Rafael Monis. During their lifetime, Patricio and Magdalena acquired several properties which included several parcels of land in the province of La Union and another one situated in Quezon City, with an area of 208.35 sq. m. (otherwise known as the Quezon City property).[3] The Quezon City property was co-owned by Patricio and Magdalena, together with Andrea and Pedro Velasco.

After the death of Patricio and Magdalena, or on February 24, 1993, Andrea and Macaria (to the exclusion of Venancio's children) executed a Deed of Extrajudicial Settlement with Donation[4] (hereinafter referred to as the subject Deed) involving the Quezon City property, and donated the same to Andrea's

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[1] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Danilo B. Pine and Arcangelita Romilla Lontok, concurring; *rollo*, pp. 44-64.

[2] Penned by Judge Senecio O. Tan, CA *rollo*, pp. 71-81.

[3] *Rollo*, p. 45.

[4] Exhibit "A"; records, pp. 158-160.

son, Pedro Monis Velasco, Jr. (Pedro). By virtue of said Deed, Transfer Certificate of Title (TCT) No. RT-60455 (190472)[5] was cancelled and a new one (TCT No. 85837) was issued in the name of Pedro.[6]

On June 1, 1993, petitioners instituted an action for *Annulment of Documents and Damages*[7] before the Regional Trial Court (RTC) of Balaoan, La Union against respondents. The case was raffled to Branch 34 and was docketed as Civil Case No. 466. In their complaint, petitioners sought the annulment of the subject Deed, allegedly because of the fraudulent act committed by respondents in executing the same. They claimed that respondents misrepresented that they were the only surviving heirs of Patricio and Magdalena when, in fact, they (petitioners) were also surviving heirs by virtue of their right to represent their deceased father Venancio. In short, being Patricio and Magdalena's nephew and niece, they were asserting their rights, as co-heirs, to the Quezon City property. Respondents' fraudulent act was, according to petitioners, a ground for the annulment of the subject Deed. As a consequence of the nullity of the extrajudicial settlement, they further sought the cancellation of the title and tax declarations issued pursuant thereto, in the name of Pedro.

Respondents countered that nowhere in the subject Deed did they assert to be the only surviving heirs of Patricio and Magdalena. Admittedly, however, they claimed to be the only legitimate sisters of the deceased. They added that annulment of the Deed was not tenable, considering that petitioners already received advances on their share of the properties of the decedent; besides, there were other properties that had not been the subject of partition from which they could obtain reparation, if they are so entitled. Contrary to petitioners' claim, respondents insisted

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[5] Registered under the names of Pedro Velasco, Andrea, Magdalena and Patricio Monis; records, p. 161.

[6] Records, p. 163.

[7] *Id.* at 1-3.

that there was no way that the subject Deed could be annulled in the absence of any valid ground to rely on.[8]

No amicable settlement was reached during the pre-trial; thus, trial on the merits ensued.

After petitioners rested their case, they moved for the amendment of the complaint to implead additional party and to conform to the evidence presented.[9] Petitioners averred that the resolution of the case would affect the interest of Pedro as donee; hence, he is an indispensable party. The RTC, however, denied the motion, as the amendment of the complaint would result in the introduction of a different cause of action prejudicial to respondents. The court further held that the amendment of the complaint would unduly delay the resolution of the case.

On April 24, 1997, the RTC decided in favor of respondents, disposing, as follows:

> WHEREFORE, taken in the above light, the Court hereby orders the case DISMISSED and further orders the plaintiffs to pay the defendants jointly and severally the following, thus:
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> 1) ₱100,000.00 as moral damages;
> 2) ₱50,000.00 as exemplary damages;
> 3) ₱100,000.00 as attorney's fees; and
> 4) To pay the costs of this suit.
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> SO ORDERED.[10]

Applying Article 887 of the Civil Code, the RTC ruled that petitioners are not compulsory heirs; thus, they could not invoke bad faith as a ground to rescind the subject Deed. As to respondents' declaration that they were the only surviving heirs of the decedents, the trial court said that it was, in a way, a non-recognition of petitioners' claim that they, too, are heirs. The court, likewise, gave credence to respondents' claim that petitioners had previously received advances on their share of

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[8] *Id.* at 19-26.

[9] *Id.* at 233-239.

[10] CA *rollo*, p. 81.

the inheritance. As to the remedy of rescission, the court declared that it was not available in the instant case because of the existence of other remedies that may be availed of by petitioners, considering that there were other properties from which they could obtain reparation, assuming they are entitled.[11]

On appeal to the Court of Appeals, the appellate court affirmed with modification the trial court's decision, *viz.*:

> WHEREFORE, premises considered, the assailed decision dated April 24, 1997 of the Regional Trial Court of Balao[a]n, La Union in Civil Case No. 466 is hereby **AFFIRMED** with **MODIFICATION,** in that the award of exemplary damages and attorney's fees is deleted. No pronouncement as to costs.
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> SO ORDERED.[12]

The appellate court made a definitive conclusion that petitioners, together with respondents, are heirs of Macaria and Patricio. However, considering that petitioners are not compulsory heirs, it agreed with the RTC that they could not use "bad faith" as a ground to rescind the contract as provided for in Article 1104 of the New Civil Code. The appellate court also agreed with the trial court that bad faith on the part of respondents was wanting. While recognizing the doctrine that the subject Deed was not binding on petitioners because they did not participate therein, the appellate court refused to annul the contract on the basis thereof, in view of the existence of other properties previously received by petitioners and those that may still be the subject of partition. The court further denied the prayer to annul the donation made in favor of Pedro, inasmuch as it was belatedly raised by petitioners.[13] The appellate court likewise found the

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[11] *Id.* at 71-81.

[12] *Rollo*, p. 64.

[13] The appellate court noted that petitioners moved to amend their complaint, but the same was rejected by the RTC because such motion was made only after they rested their case. In seeking to amend their complaint, petitioners were in effect raising a new issue (that is, the validity of the donation) not raised in the original complaint; and impleading new defendant (Pedro).

deletion of the award of exemplary damages and attorney's fees proper.[14]

Unsatisfied, petitioners come to this Court in this petition for review on *certiorari* raising the following issues:

I. WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AND MANIFESTLY OVERLOOKED RELEVANT FACTS NOT DISPUTED AND WHICH IF PROPERLY CONSIDERED WOULD JUSTIFY A DIFFERENT CONCLUSION THAT THERE IS FRAUD OR BAD FAITH ON THE PART OF DEFENDANTS-APPELLEES IN EXCLUDING PLAINTIFFS-APPELLANTS FROM THE DEED OF EXTRA JUDICIAL SETTLEMENT WITH DONATION.

II. WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN CONCLUDING THAT "THE MERE ACT OF REPUDIATING THE INTEREST OF A CO-OWNER IS NOT SUFFICIENT TO SUPPORT A FINDING OF BAD FAITH SINCE NO BAD FAITH CAN BE ATTRIBUTED TO A PERSON WHO ONLY EXERCISES A PRIVILEGE GRANTED BY LAW."

III. WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN CONCLUDING THAT THERE IS ABSENCE OF FRAUD OR BAD FAITH ON THE PART OF DEFENDANTS-APPELLEES IN EXCLUDING PLAINTIFFS-APPELLANTS IN THE EXTRA JUDICIAL SETTLEMENT BASED ON AN INFERENCE THAT IS MANIFESTLY MISTAKEN THAT PLAINTIFFS-APPELLANTS HAVE ALREADY OBTAINED THEIR ADVANCE OF INHERITANCE FROM THE DECEDENTS.

IV. WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR OF LAW AND GRAVE ABUSE OF DISCRETION IN CONCLUDING THAT THE ASSAILED EXTRAJUDICIAL SETTLEMENT CANNOT BE ANNULLED SINCE THE MISREPRESENTATION IS NOT SO GRAVE IN CHARACTER AS TO AMOUNT TO BAD

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[14] *Rollo,* pp. 44-64.

FAITH (AND) RULE 74, SECTION 1, SECOND PARAGRAPH, DOES NOT DISCOUNT THE POSSIBILITY THAT SOME HEIRS MAY HAVE BEEN EXCLUDED IN THE EXECUTION OF THE EXTRAJUDICIAL SETTLEMENT.

V. WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO AN ERROR OF LAW IN CONCLUDING THAT THE DEED OF EXTRAJUDICIAL SETTLEMENT WITH DONATION CANNOT BE ANNULLED.

VI. WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN AWARDING MORAL DAMAGES DESPITE FINDING THAT THE SUIT WAS MADE IN GOOD FAITH.

VII. WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT THAT THE MOTION TO AMEND COMPLAINT TO IMPLEAD ADDITIONAL PARTY AND TO CONFORM TO THE EVIDENCE PRESENTED FILED BY THE PLAINTIFFS-APPELLANTS IS NOT PROPER.[15]

In fine, petitioners challenge the appellate court's conclusions on the validity of the extrajudicial settlement with donation and the denial of the motion to amend the complaint to implead an indispensable party and conform to the evidence presented.

Much as we would like to make a definitive conclusion on the respective rights of all the parties and decide, once and for all, their interests over the subject property, we are barred by a jurisdictional issue.

Jurisdiction is the power invested in courts for administering justice, that is, to hear and decide cases. For the court to exercise the authority to dispose of the case on the merits, it must acquire jurisdiction over the subject matter and the parties.[16]

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[15] *Id.* at 23-25.

[16] *Perkin Elmer Singapore Pte Ltd. v. Dakila Trading Corporation*, G.R. No. 172242, August 14, 2007, 530 SCRA 170, 186.

Courts acquire jurisdiction over a party plaintiff upon the filing of the complaint. On the other hand, jurisdiction over the person of a party defendant is assured upon the service of summons in the manner required by law or, otherwise, by his voluntary appearance. As a rule, if a defendant has not been summoned, the court acquires no jurisdiction over his person, and a personal judgment rendered against such defendant is null and void. A decision that is null and void for want of jurisdiction of the trial court is not a decision in contemplation of law and can never become final and executory.[17]

Corollary to the issue of jurisdiction, and equally important, is the mandatory rule on joinder of indispensable parties set forth in Section 7, Rule 3 of the Rules of Court, to wit:

> SEC. 7. *Compulsory joinder of indispensable parties.* – Parties in interest without whom no final determination can be had of an action **shall be joined either as plaintiffs or defendants**.

The general rule with reference to parties to a civil action requires the joinder of all necessary parties, where possible, and the joinder of all indispensable parties under any and all conditions.[18] The evident intent of the Rules on the joinder of indispensable and necessary parties is the complete determination of all possible issues, not only between the parties themselves but also as regards other persons who may be affected by the judgment.[19]

In this case, petitioners challenge the denial of their motion to amend the complaint to implead Pedro who, they claim, is an indispensable party to the case. We are, therefore, compelled to address this important question.

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[17] *Arcelona v. CA*, 345 Phil. 250, 267 (1997).

[18] *Regner v. Logarta*, G.R. No. 168747, October 19, 2007, 537 SCRA 277, 289; *Arcelona v. CA, id.*

[19] *Moldes v. Villanueva*, G.R. No. 161955, August 31, 2005, 468 SCRA 697, 708.

In *Regner v. Logarta*[20] and *Arcelona v. CA*,[21] we laid down the test to determine if a party is an indispensable party, *viz.*:

> An indispensable party is a party who has an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest, a party who has not only an interest in the subject matter of the controversy, but also has an interest of such nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete or equitable. Further, an indispensable party is one who must be included in an action before it may properly go forward.
>
> A person is not an indispensable party, however, if his interest in the controversy or subject matter is separable from the interest of the other parties, so that it will not necessarily be directly or injuriously affected by a decree which does complete justice between them. Also, a person is not an indispensable party if his presence would merely permit complete relief between him and those already parties to the action, or if he has no interest in the subject matter of the action. It is not a sufficient reason to declare a person to be an indispensable party that his presence will avoid multiple litigation.[22]

In upholding the denial of the motion to amend the complaint, the appellate court concluded that the sole desire of petitioners in instituting the case was the annulment of the extrajudicial settlement. Effectively, it separated the question of the validity of the extrajudicial settlement from the validity of the donation. Accordingly, the court said, the latter issue could be threshed out in a separate proceeding later. This explains why Pedro was not considered an indispensable party by the trial and appellate courts.

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[20] *Supra*.

[21] *Supra*.

[22] *Regner v. Logarta*, *supra* at 291; *Arcelona v. CA*, *supra*, at 269-270.

We beg to differ.

Even without having to scrutinize the records, a mere reading of the assailed decision readily reveals that Pedro is an indispensable party. At the time of the filing of the complaint, the title to the Quezon City property was already registered in the name of Pedro, after TCT No. 60455 (190472) in the names of Pedro Velasco, Andrea, Magdalena and Patricio Monis was cancelled, pursuant to the extrajudicial settlement with donation executed by respondents. The central thrust of the complaint was that respondents, by themselves, could not have transferred the Quezon City property to Pedro because petitioners, as heirs of Patricio and Magdalena, also have rights over it. Accordingly, petitioners specifically prayed that the extrajudicial settlement with donation be annulled and the transfer certificate of title and tax declarations (in the name of Pedro) issued pursuant thereto be canceled. The pertinent portion of the complaint is quoted for easy reference:

> WHEREFORE, in view of the foregoing, it is respectfully prayed that judgment be rendered as follows —
>
> 1. By ordering the annulment of Annex "A" hereof as well as the cancellation of transfer certificate of title and tax declarations issued pursuant thereto.[23]

If such prayer and thrust were to be denied (as held by the trial and appellate courts), the problem would be less obvious, as the *status quo* would be maintained. However, if they were to be upheld, Pedro's title to the property would undoubtedly be directly and injuriously affected. Even if we only resolve the validity of the extrajudicial settlement, there would be no final adjudication of the case without involving Pedro's interest.

Verily, Pedro's interest in the subject matter of the suit and in the relief sought are so inextricably intertwined with that of the other parties. His legal presence as a party to the proceedings is, therefore, an absolute necessity.[24] His interest in the controversy

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[23] Records, p. 2.

[24] *Regner v. Logarta*, *supra* note 18, at 291-292.

and in the subject matter is not separable from the interest of the other parties.

It is unfortunate that petitioners failed to implead Pedro as defendant in their complaint. Interestingly, however, they realized such mistake, *albeit* belatedly, and thus sought the amendment of the complaint to join him as a defendant, but the RTC refused to grant the same.

Well-settled is the rule that joinder of indispensable parties is mandatory.[25] It is a condition *sine qua non* to the exercise of judicial power.[26] The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.[27] Without the presence of indispensable parties to the suit, the judgment of the court cannot attain finality.[28] One who is not a party to a case is not bound by any decision of the court; otherwise, he will be deprived of his right to due process.[29] That is why the case is generally remanded to the court of origin for further proceedings.[30]

In light of these premises, no final ruling can be had on the validity of the extrajudicial settlement. While we wish to abide by the mandate on speedy disposition of cases, we cannot render a premature judgment on the merits. To do so could result in a possible violation of due process. The inclusion of Pedro is necessary for the effective and complete resolution of the case

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[25] *Moldes v. Villanueva, supra* note 19, at 708.

[26] *Orbeta v. Sendiong*, G.R. No. 155236, July 8, 2005, 463 SCRA 180, 192; *Aron v. Realon*, G.R. No. 159156, January 31, 2005, 450 SCRA 372, 389.

[27] *Orbeta v. Sendiong, supra*.

[28] *Moldes v. Villanueva, supra*.

[29] *Aron v. Realon, supra*.

[30] *Moldex Realty, Inc. v. Housing and Land Use Regulatory Board*, G.R. No. 149719, June 21, 2007, 525 SCRA 198, 208; *see Speed Distributing Corp. v. Court of Appeals*, 469 Phil. 739 (2004).

and in order to accord all parties the benefit of due process and fair play.[31]

Nevertheless, as enunciated in *Commissioner Domingo v. Scheer,*[32] *Lotte Phil. Co., Inc. v. Dela Cruz,*[33] and *PepsiCo, Inc. v. Emerald Pizza, Inc.,*[34] the non-joinder of indispensable parties is not a ground for the dismissal of an action. The remedy is to implead the non-party claimed to be indispensable. Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or at such times as are just. If the plaintiff refuses to implead an indispensable party despite the order of the court, then the court may dismiss the complaint for the plaintiff's failure to comply with a lawful court order.

In light of the foregoing, a remand of the case to the trial court is imperative.

WHEREFORE, the Decision of the Court of Appeals dated July 13, 2005 in CA-G.R. CV No. 56998 is *SET ASIDE*. Let the case be *REMANDED* to the Regional Trial Court for the inclusion of Pedro Velasco, Jr. as an indispensable party, and for further proceedings.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Velasco, Jr., and *Peralta, JJ.,* concur.

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[31] *PepsiCo, Inc. v. Emerald Pizza, Inc.*, G.R. No. 153059, August 14, 2007, 530 SCRA 58, 67.

[32] 466 Phil. 235.

[33] G.R. No. 166302, July 28, 2005, 464 SCRA 591.

[34] *Supra*.

THIRD DIVISION

[G.R. No. 169589. June 16, 2009]

JOAQUIN SOLIMAN, LAZARO ALMARIO, ISIDRO ALMARIO, BALDOMERO ALMARIO, DEMETRIO SOLIMAN, ROMEO ABARIN, ERNESTO TAPANG and CRISOSTOMO ABARIN, *petitioners, vs.* **PAMPANGA SUGAR DEVELOPMENT COMPANY (PASUDECO), INC. and GERRY RODRIGUEZ,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW; TENANTS; DEFINED; ESSENTIAL ELEMENTS OF TENANCY.— Tenants are defined as persons who — in themselves and with the aid available from within their immediate farm households — cultivate the land belonging to or possessed by another, with the latter's consent, for purposes of production, sharing the produce with the landholder under the share tenancy system, or paying to the landholder a price certain or ascertainable in produce or money or both under the leasehold tenancy system. Based on the foregoing definition of a tenant, entrenched in jurisprudence are the following essential elements of tenancy: 1) the parties are the landowner and the tenant or agricultural lessee; 2) the subject matter of the relationship is an agricultural land; 3) there is consent between the parties to the relationship; 4) the purpose of the relationship is to bring about agricultural production; 5) there is personal cultivation on the part of the tenant or agricultural lessee; and 6) the harvest is shared between landowner and tenant or agricultural lessee. The presence of all these elements must be proved by substantial evidence. Unless a person has established his status as a *de jure* tenant, he is not entitled to security of tenure and is not covered by the Land Reform Program of the Government under existing tenancy laws. Tenancy relationship cannot be presumed. Claims that one is a tenant do not automatically give rise to security of tenure.

2. ID.; ID.; ID.; ID.; ID.; TWO MODES FOR THE ESTABLISHMENT OF AGRICULTURAL LEASEHOLD RELATION; TENANCY BY OPERATION OF LAW UNDER SECTION 5 OF R.A. NO. 3844; DEFINED.— The pronouncement of the DARAB that there is, in this case, tenancy by operation of law under Section 5 of R.A. No. 3844 is not correct. In *Reyes v. Reyes*, we held: Under R.A. 3844, two modes are provided for in the establishment of an agricultural leasehold relation: (1) by operation of law in accordance with Section 4 of the said act; or (2) by oral or written agreement, either express or implied. **By operation of law simply means the abolition of the agricultural share tenancy system and the conversion of share tenancy relations into leasehold relations.** The other method is the agricultural leasehold contract, which may either be oral or in writing.

3. ID.; ID.; ID.; ID.; ID.; CASE AT BAR IS AN ALLEGED CASE OF TENANCY BY IMPLIED CONSENT; AS SUCH, THE EXISTENCE OF TWO OF THE ESSENTIAL ELEMENTS OF CONSENT AND SHARING AND/OR PAYMENT OF LEASE RENTALS IS CRUCIAL FOR THE CREATION OF TENANCY RELATIONS.— Rather, consistent with the parties' assertions, what we have here is an alleged case of tenancy by implied consent. As such, crucial for the creation of tenancy relations would be the existence of two of the essential elements, namely, consent and sharing and/or payment of lease rentals.

4. ID.; ID.; ID.; ID.; ID.; ELEMENTS OF SHARING AND/OR PAYMENT OF LEASE RENTALS ARE ABSENT IN CASE AT BAR.— After a meticulous review of the records, we find that the elements of consent and sharing and/or payment of lease rentals are absent in this case. Tenancy relationship can only be created with the consent of the true and lawful landholder who is either the owner, lessee, usufructuary or legal possessor of the property, and not through the acts of the supposed landholder who has no right to the property subject of the tenancy. To rule otherwise would allow collusion among the unscrupulous to the prejudice of the true and lawful landholder. As duly found by the PARAD and the CA, Gerry was not authorized to enter into a tenancy relationship with the petitioners. In fact, there is no proof that he, indeed, entered into one. Other than their bare assertions, petitioners rely on the certification of Ciriaco who, likewise, failed to substantiate his claim that Gerry authorized him to select individuals and

install them as tenants of the subject property. Absent substantial evidence showing Ciriaco's authority from PASUDECO, or even from Gerry, to give consent to the creation of a tenancy relationship, his actions could not give rise to an implied tenancy.

5. ID.; ID.; ID.; ID.; ID.; THE FACT OF WORKING ON ANOTHER'S LANDHOLDING, STANDING ALONE, DOES NOT RAISE A PRESUMPTION OF THE EXISTENCE OF AGRICULTURAL TENANCY.— The alleged sharing and/or payment of lease rentals was not substantiated other than by the deposit-payments with the LBP, which petitioners characterized as amortizations. We cannot close our eyes to the absence of any proof of payment prior to the deposit-payments with LBP. Not a single receipt was ever issued by Gerry, duly acknowledging payment of these rentals from Ciriaco who, allegedly, personally collected the same from the petitioners. Notably, the fact of working on another's landholding, standing alone, does not raise a presumption of the existence of agricultural tenancy. Substantial evidence necessary to establish the fact of sharing cannot be satisfied by a mere scintilla of evidence; there must be concrete evidence on record adequate to prove the element of sharing. Thus, to prove sharing of harvests, a receipt or any other credible evidence must be presented, because self-serving statements are inadequate.

6. ID.; ID.; ID.; ID.; ID.; CERTIFICATIONS ATTESTING TO PETITIONERS' STATUS AS ALLEGED *DE JURE* TENANTS ARE INSUFFICIENT AND DOES NOT BIND THE JUDICIARY.— The certifications attesting to petitioners' alleged status as *de jure* tenants are insufficient. In a given locality, the certification issued by the Secretary of Agrarian Reform or an authorized representative, like the MARO or the BARC, concerning the presence or the absence of a tenancy relationship between the contending parties, is considered merely preliminary or provisional, hence, such certification does not bind the judiciary. The *onus* rests on the petitioners to prove their affirmative allegation of tenancy, which they failed to discharge with substantial evidence.

7. ID.; ID.; ID.; ID.; ID.; OCCUPANCY AND CONTINUED POSSESSION OF THE LAND WILL NOT *IPSO FACTO* MAKE ONE A *DE JURE* TENANT, BECAUSE THE

PRINCIPAL FACTOR IN DETERMINING WHETHER A TENANCY RELATION EXISTS IS INTENT.— Petitioners' assertion that they were allowed to cultivate the subject property without opposition, does not mean that PASUDECO impliedly recognized the existence of a leasehold relation. Occupancy and continued possession of the land will not *ipso facto* make one a *de jure* tenant, because the principal factor in determining whether a tenancy relationship exists is intent.

8. ID.; ID.; ID.; ID.; ID.; THE LONG PERIOD OF PETITIONERS' ALLEGED CULTIVATION OF THE SUBJECT PROPERTY CANNOT GIVE RISE TO EQUITABLE ESTOPPEL; THE REAL OFFICE OF EQUITABLE NORM OF ESTOPPEL IS LIMITED TO SUPPLYING DEFICIENCY IN THE LAW AND NOT SUPPLANT POSITIVE LAW.— The long period of petitioners' alleged cultivation of the subject property cannot give rise to equitable estoppel. It should be remembered that estoppel in *pais*, or equitable estoppel arises when one, by his acts, representations or admissions or by his silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and the other rightfully relies and acts on such beliefs so that he will be prejudiced if the former is permitted to deny the existence of such facts. The real office of the equitable norm of estoppel is limited to supplying deficiency in the law, but it should not supplant positive law. The elements for the existence of a tenancy relationship are explicit in the law and these elements cannot be done away with by conjectures.

APPEARANCES OF COUNSEL

Jord Achaes R. David for petitioners.
Carag De Mesa & Zaballero for respondents.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition[1] for Review on *Certiorari* under Rule 45 of the Rules of Civil Procedure seeking the reversal

[1] *Rollo,* pp. 10-31.

of the Court of Appeals (CA) Decision[2] dated April 12, 2005 which reversed the Decision[3] of the Department of Agrarian Reform Adjudication Board (DARAB) dated January 15, 2004 and reinstated the Decision[4] of the Provincial Agrarian Reform Adjudicator (PARAD) of San Fernando, Pampanga dated August 16, 1995.

The Facts

The respondents recount the antecedents, as follows:

The property subject of this case is situated at Cabalantian, Bacolor, Pampanga, with an area of ten (10) hectares, more or less, previously covered by Transfer Certificate of Title (TCT) No. 70829-R (subject property) and formerly owned by one Dalmacio Sicat (Dalmacio).

On December 2, 1969, Dalmacio offered to sell the subject property to respondent Pampanga Sugar Development Company (PASUDECO), a domestic corporation engaged in sugar milling, to be used as a housing complex for PASUDECO's laborers and employees. The land was offered for sale at the price of ₱8.00 per square meter.[5] On January 26, 1970, Dalmacio reduced the price to ₱5.00 per square meter.[6] In a meeting held on April 15, 1970, the Board of Directors of PASUDECO issued Board Resolution No. 057[7] authorizing the purchase of the subject property at ₱4.00 per square meter.

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[2] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justice Lucas P. Bersamin (now a member of this Court) and Associate Justice Celia C. Librea-Leagogo, concurring; *rollo,* pp. 34-52.

[3] *Rollo,* pp. 194-202.

[4] *Id.* at 171-189.

[5] *Id.* at 289.

[6] *Id.* at 290.

[7] *Id.* at 297.

On May 22, 1970, Dalmacio and his tenants[8] jointly filed a Petition[9] with the then Court of Agrarian Relations (CAR), San Fernando, Pampanga, seeking approval of the voluntary surrender of the subject property with payment of disturbance compensation. On the same date, the CAR rendered a Decision,[10] approving the voluntary surrender of the subject property by the tenants to Dalmacio, thus, terminating their tenancy relationship effective May 21, 1970, the date when the parties entered into the agreement.

On May 22, 1970, a Deed[11] of Sale with Mortgage was executed between Dalmacio and PASUDECO. Thereafter, the documents needed for the conversion of the land to residential purposes were prepared, such as the subdivision layout with specifications as to the size of each lot; topographic survey; monumenting of all corners of the subdivision lots; and approval of the plan including the technical description of the land. "No trespassing" signs were also installed around the premises. Thus, on May 31, 1974, TCT Nos. 110325-R,[12] 110326-R[13] and 110327-R[14] were registered in favor of PASUDECO. However, due to financial setbacks suffered after the imposition of Martial Law in 1972, PASUDECO deferred the construction of the housing project. PASUDECO averred that no person was authorized to occupy and/or cultivate the subject property.

On the other hand, the petitioners have a totally different version.

Petitioners Joaquin Soliman, Lazaro Almario, Isidro Almario, Baldomero Almario, Demetrio Soliman, Romeo Abarin, Ernesto

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[8] These tenants were Ambrosio David, Roque Pamintuan, Tiburcio Mendoza, Felix Quizon, Bonifacio Quizon and Arsenio Quizon. To note, these former tenants are not parties to this case.

[9] *Rollo*, pp. 291-293.

[10] *Id.* at 294-296.

[11] *Id.* at 298.

[12] *Id.* at 284.

[13] *Id.* at 285-286.

[14] *Id.* at 287-288.

Tapang and Crisostomo Abarin (petitioners) claimed that, sometime in November 1970, they started working on the subject property with a corresponding area of tillage, as certified to by the *Barangay* Agrarian Reform Committee (BARC) on December 6, 1989, to wit: (1) Lazaro Almario with an area of 1.65 hectares;[15] (2) Demetrio Soliman with an area of 1.70 hectares;[16] (3) Crisostomo Abarin with an area of 1.10 hectares;[17] (4) Baldomero Almario with an area of 1.5 hectares;[18] (5) Isidro Almario with an area of 1.5 hectares;[19] (6) Romeo Abarin with an area of 0.400 hectare;[20] and (7) Ernesto Tapang with an area of .6500 hectare.[21] A Certification[22] dated December 28, 1989 was also issued by the *Samahang Nayon* in favor of petitioner Joaquin Soliman with respect to the remaining area of 1.5 hectares. Likewise, on December 28, 1989, the Barangay Chairperson of Macabacle, Bacolor, Pampanga, certified that the eight (8) petitioners had been the actual tenant-tillers of the subject property from 1970 up to the present,[23] and that petitioner Baldomero Almario (Baldomero) was issued Certificate of Land Transfer (CLT) No. 0-043466[24] with an area of 3.2185 hectares on July 22, 1981.

The Ocular Inspection and the Investigation Report[25] issued by the Municipal Agrarian Reform Officer (MARO) on March 13, 1990 showed that since 1970, petitioners cultivated the subject

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[15] *Id.* at 81.

[16] *Id.* at 82.

[17] *Id.* at 83.

[18] *Id.* at 84.

[19] *Id.* at 85.

[20] *Id.* at 86.

[21] *Id.* at 87.

[22] *Id.* at 88.

[23] *Id.* at 89.

[24] *Id.* at 121.

[25] *Id.* at 90.

property, allegedly managed by the late respondent Gerry Rodriguez (Gerry), manager of PASUDECO from 1970-1991. Petitioners alleged that in 1970, Gerry made one Ciriaco Almario (Ciriaco) his overseer/caretaker, tasked to collect lease rentals from petitioners. In turn, Ciriaco remitted the rentals to Gerry. On May 14, 1990, Ciriaco certified that petitioners were the actual tenant-tillers of the subject property.[26] Moreover, petitioners deposited their alleged rentals with the Land Bank of the Philippines (LBP) in San Fernando, Pampanga, as land amortizations, in varying amounts, from 1989 to 1993, as shown by the official receipts issued by LBP.[27] Thus, petitioners averred that from 1970 up to 1990 or for a period of almost twenty (20) years, they had been in actual and peaceful possession and cultivation of the subject property.

The real controversy arose when PASUDECO decided to pursue the development of the property into a housing project for its employees in the latter part of April 1990. On May 14, 1990, petitioners filed a Complaint[28] for Maintenance of Peaceful Possession with a Prayer for the issuance of a Preliminary Injunction against Gerry before the PARAD to restrain him from harassing and molesting petitioners in their respective landholdings. Petitioners alleged that Gerry, together with armed men, entered the property and destroyed some of their crops. Traversing the complaint, Gerry raised as one of his defenses the fact that PASUDECO was the owner of the subject property. Thus, on November 26, 1990, petitioners filed their Amended Complaint[29] impleading PASUDECO as a party-defendant. Meanwhile, PASUDECO asserted that petitioners were not tenants but merely interlopers, usurpers and/or intruders into the subject property.

Trial on the merits ensued. In the process, the PARAD conducted an ocular inspection and found that the subject property

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[26] *Id.* at 119.

[27] *Id.* at 91-118.

[28] *Id.* at 127-130.

[29] *Id.* at 137-141.

was planted with *palay* measuring one (1) foot high. There were also several dikes or *pilapil* dividing the subject property. The PARAD also observed that there was a big sign installed therein, reading "Future Site of PASUDECO Employees Housing Project."[30]

The PARAD's Ruling

On August 16, 1995, the PARAD dismissed petitioners' complaint and denied their application for the writ of preliminary injunction. The PARAD held that petitioners had not shown direct and convincing proof that they were tenants of the subject property. Petitioners could not show any receipt proving payment of lease rentals either to PASUDECO or Gerry. In addition to the absence of sharing, the PARAD ruled that there was no consent given by PASUDECO in order to create a tenancy relationship in favor of the petitioners.

Aggrieved, petitioners filed a Notice of Appeal with the DARAB on September 7, 1995 on the following grounds: (a) that the PARAD abused its discretion by ignoring or disregarding evidence which, if considered, would result in a decision favorable to the petitioners; and (b) that there were errors in the findings of fact from which equally erroneous conclusions were drawn, which, if not corrected on appeal, would cause grave and irreparable damage or injury to the petitioners.

While the case was pending resolution before the DARAB, the subject property was devastated by lahar due to the eruption of Mount Pinatubo sometime in October 1995. As a result, the farming activities on the subject property ceased. Shortly thereafter, PASUDECO fenced the subject property and placed additional signs thereon, indicating that the same was private property.[31] At present, the subject property is unoccupied and uncultivated.[32]

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

[31] *Id.* at 190.

[32] *Id.* at 332-337 and 347.

The DARAB's Ruling

On January 15, 2004, the DARAB rendered its Decision in favor of the petitioners, reversing the findings and conclusions of the PARAD. The DARAB held that, without the approval of the conversion application filed by PASUDECO, it could not be substantiated that the subject property was indeed residential property intended for housing purposes. Because of this, and the fact that petitioners tilled the subject property for almost twenty (20) years, the same remained agricultural in character. Moreover, the DARAB held that, contrary to the findings of the PARAD, the elements of consent and sharing were present in this case. The DARAB, citing Section 5 of Republic Act (R.A.) No. 3844,[33] ratiocinated that petitioners entered the subject property in 1970 upon the request of Ciriaco who, with the consent of Gerry as manager of PASUDECO, was authorized to look for people to cultivate the subject property. Petitioners cultivated the same and shared their harvests with PASUDECO, received by Gerry through Ciriaco. Later on, when Gerry refused to accept their lease rentals, petitioners deposited the money with LBP. The DARAB opined that these pieces of evidence established the fact of consent and sharing. While express consent was not given, the fact that Gerry accepted the lease rentals for a considerable number of years signified an implied consent which, in turn, bound PASUDECO.

PASUDECO filed a Motion for Reconsideration[34] which was, however, denied by the DARAB in its Resolution[35] dated May 21, 2004. Thus, PASUDECO went to the CA for recourse.[36]

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[33] Entitled "An Act To Ordain The Agricultural Land Reform Code And To Institute Land Reforms In The Philippines, Including The Abolition of Tenancy And The Channeling Of Capital Into Industry, Provide For The Necessary Implementing Agencies, Appropriate Funds Therefor And For Other Purposes," which took effect on August 8, 1963.

[34] *Rollo,* pp. 349-358.

[35] *Id.* at 361-362.

[36] *Id.* at 363-405.

However, some of the records were found missing, as certified by the DARAB on June 22, 2004.[37]

The CA's Ruling

On April 12, 2005, the CA reversed the DARAB's ruling and reinstated the PARAD's decision. The CA held that, while the subject property was agricultural, there was no tenancy relationship between the parties, express or implied. The CA concurred in the findings of the PARAD and found no credible evidence to support the contention that petitioners were *de jure* tenants inasmuch as the elements of consent and sharing were absent. Citing these Court's rulings in *Hilario v. Intermediate Appellate Court*[38] and *Bernas v. Court of Appeals*,[39] the CA reiterated that tenancy is not merely a factual relationship but also a legal relationship; hence, the fact that PASUDECO, being the owner of the subject property, was uninvolved in and oblivious to petitioners' cultivation thereof, tenancy relations did not exist. Thus, the CA concluded that in the absence of any tenancy relationship between the parties, the case was outside the jurisdiction of the DARAB.

Petitioners filed their Motion for Reconsideration,[40] which was denied by the CA in its Resolution[41] dated August 3, 2005.

Hence, the instant Petition assigning the following errors:

I. The Honorable Court of Appeals failed to appreciate the facts of the case when it ruled that the occupation of the petitioners of the subject lot was without the consent of the respondents, express or implied.

II. The Honorable Court of Appeals erred in applying the principles laid down in the cases of *Hilario v.* [*Intermediate Appellate Court*]and *Bernas v. Court of Appeals* and [in]

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[37] *Id.* at 331.

[38] G.R. No. 70736, March 16, 1987, 148 SCRA 573.

[39] G.R. No. 85041, August 5, 1993, 225 SCRA 119.

[40] *Rollo,* pp. 54-63.

[41] *Id.* at 66.

consequently ruling that there is no tenancy relation between the parties.

III. The Honorable Court of Appeals failed to appreciate the provision[s] of Section 5[,] Republic Act No. 3844 which provides for the establishment of agricultural leasehold relation by mere operation of law.

IV. The Honorable Court of Appeals erred when it ruled that the instant case [does] not fall under the jurisdiction of the Department of Agrarian Reform Adjudication [Board].[42]

This submission boils down to the sole issue of whether petitioners are *de jure* tenants of the subject property.

Our Ruling

The instant Petition is bereft of merit.

Tenants are defined as persons who — in themselves and with the aid available from within their immediate farm households — cultivate the land belonging to or possessed by another, with the latter's consent, for purposes of production, sharing the produce with the landholder under the share tenancy system, or paying to the landholder a price certain or ascertainable in produce or money or both under the leasehold tenancy system.[43]

Based on the foregoing definition of a tenant, entrenched in jurisprudence are the following essential elements of tenancy: 1) the parties are the landowner and the tenant or agricultural lessee; 2) the subject matter of the relationship is an agricultural land; 3) there is consent between the parties to the relationship; 4) the purpose of the relationship is to bring about agricultural production; 5) there is personal cultivation on the part of the tenant or agricultural lessee; and 6) the harvest is shared between landowner and tenant or agricultural lessee.[44] The presence of

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[42] *Supra* note 1 at 18.

[43] *Bautista v. Mag-isa Vda. de Villena*, G.R. No. 152564, September 13, 2004, 438 SCRA 259, 265-266.

[44] *Tanenglian v. Lorenzo*, G.R. No. 173415, March 28, 2008, 550 SCRA 348, 369; *Dalwampo v. Quinocol Farm Workers and Settlers' Association*,

all these elements must be proved by substantial evidence. Unless a person has established his status as a *de jure* tenant, he is not entitled to security of tenure and is not covered by the Land Reform Program of the Government under existing tenancy laws.[45] Tenancy relationship cannot be presumed. Claims that one is a tenant do not automatically give rise to security of tenure.[46]

Pertinent are Sections 4 and 5 of Republic Act No. 3844 as amended, which provide:

SEC. 4. *Abolition of Agricultural Share Tenancy.* — Agricultural share tenancy, as herein defined, is hereby declared to be contrary to public policy and shall be abolished: *Provided,* That existing share tenancy contracts may continue in force and effect in any region or locality, to be governed in the meantime by the pertinent provisions of Republic Act Numbered Eleven hundred and ninety-nine, as amended, until the end of the agricultural year when the National Land Reform Council proclaims that all the government machineries and agencies in that region or locality relating to leasehold envisioned in this Code are operating, unless such contracts provide for a shorter period or the tenant sooner exercises his option to elect the leasehold system: *Provided, further,* That in order not to jeopardize international commitments, lands devoted to crops covered by marketing allotments shall be made the subject of a separate proclamation that adequate provisions, such as the organization of cooperatives, marketing agreements, or other similar workable arrangements, have been made to insure efficient management on all matters requiring synchronization of the agricultural with the processing phases of such crops: *Provided, furthermore,* That where the agricultural share tenancy contract has ceased to be operative by virtue of this Code, or where such a tenancy contract has been

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G.R. No. 160614, April 25, 2006, 488 SCRA 208, 221; and *Benavidez v. Court of Appeals*, G.R. No. 125848, September 6, 1999, 313 SCRA 714, 719.

[45] *Ambayec v. Court of Appeals*, G.R. No. 162780, June 21, 2005, 460 SCRA 537, 543.

[46] *Heirs of Jugalbot v. Court of Appeals*, G.R. No. 170346, March 12, 2007, 518 SCRA 202, 213; and *Valencia v. Court of Appeals*, 449 Phil. 711, 737 (2003).

entered into in violation of the provisions of this Code and is, therefore, null and void, and the tenant continues in possession of the land for cultivation, there shall be presumed to exist a leasehold relationship under the provisions of this Code, without prejudice to the right of the landowner and the former tenant to enter into any other lawful contract in relation to the land formerly under tenancy contract, as long as in the interim the security of tenure of the former tenant under Republic Act Numbered Eleven hundred and ninety-nine, as amended, and as provided in this Code, is not impaired: *Provided,* finally, That if a lawful leasehold tenancy contract was entered into prior to the effectivity of this Code, the rights and obligations arising therefrom shall continue to subsist until modified by the parties in accordance with the provisions of this Code.

SEC. 5. *Establishment of Agricultural Leasehold Relation*. — The agricultural leasehold relation shall be established by operation of law in accordance with Section four of this Code and, in other cases, either orally or in writing, expressly or impliedly.

The pronouncement of the DARAB that there is, in this case, tenancy by operation of law under Section 5 of R.A. No. 3844 is not correct. In *Reyes v. Reyes*,[47] we held:

Under R.A. 3844, two modes are provided for in the establishment of an agricultural leasehold relation: (1) by operation of law in accordance with Section 4 of the said act; or (2) by oral or written agreement, either express or implied.

By operation of law simply means the abolition of the agricultural share tenancy system and the conversion of share tenancy relations into leasehold relations. The other method is the agricultural leasehold contract, which may either be oral or in writing.

Rather, consistent with the parties' assertions, what we have here is an alleged case of tenancy by implied consent. As such, crucial for the creation of tenancy relations would be the existence of two of the essential elements, namely, consent and sharing and/or payment of lease rentals.

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[47] G.R. No. 140164, September 6, 2002, 388 SCRA 471, 481-482.

After a meticulous review of the records, we find that the elements of consent and sharing and/or payment of lease rentals are absent in this case.

Tenancy relationship can only be created with the consent of the true and lawful landholder who is either the owner, lessee, usufructuary or legal possessor of the property, and not through the acts of the supposed landholder who has no right to the property subject of the tenancy. To rule otherwise would allow collusion among the unscrupulous to the prejudice of the true and lawful landholder.[48] As duly found by the PARAD and the CA, Gerry was not authorized to enter into a tenancy relationship with the petitioners. In fact, there is no proof that he, indeed, entered into one. Other than their bare assertions, petitioners rely on the certification of Ciriaco who, likewise, failed to substantiate his claim that Gerry authorized him to select individuals and install them as tenants of the subject property. Absent substantial evidence showing Ciriaco's authority from PASUDECO, or even from Gerry, to give consent to the creation of a tenancy relationship, his actions could not give rise to an implied tenancy.[49]

Likewise, the alleged sharing and/or payment of lease rentals was not substantiated other than by the deposit-payments with the LBP, which petitioners characterized as amortizations. We cannot close our eyes to the absence of any proof of payment prior to the deposit-payments with LBP. Not a single receipt was ever issued by Gerry, duly acknowledging payment of these rentals from Ciriaco who, allegedly, personally collected the same from the petitioners. Notably, the fact of working on another's landholding, standing alone, does not raise a presumption of the existence of agricultural tenancy. Substantial evidence necessary to establish the fact of sharing cannot be satisfied by a mere scintilla of evidence; there must be concrete evidence

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[48] *Masaquel v. Orial*, G.R. No. 148044, October 19, 2007, 537 SCRA 51, 63 and *Bautista v. Araneta*, G.R. No. 135829, February 22, 2000, 326 SCRA 234, citing *Lastimoza v. Blanco*, 110 Phil. 835, 838 (1961).

[49] *Reyes v. Reyes*, *supra* note 47 at 483.

on record adequate to prove the element of sharing. Thus, to prove sharing of harvests, a receipt or any other credible evidence must be presented, because self-serving statements are inadequate.[50]

The certifications attesting to petitioners' alleged status as *de jure* tenants are insufficient. In a given locality, the certification issued by the Secretary of Agrarian Reform or an authorized representative, like the MARO or the BARC, concerning the presence or the absence of a tenancy relationship between the contending parties, is considered merely preliminary or provisional, hence, such certification does not bind the judiciary.[51]

The *onus* rests on the petitioners to prove their affirmative allegation of tenancy, which they failed to discharge with substantial evidence. Simply put, he who makes an affirmative allegation of an issue has the burden of proving the same, and in the case of the plaintiff in a civil case, the burden of proof never parts. The same rule applies to administrative cases. In fact, if the complainant, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner the facts upon which he bases his claim, the respondent is under no obligation to prove his exception or defense.[52]

Petitioners' assertion that they were allowed to cultivate the subject property without opposition, does not mean that PASUDECO impliedly recognized the existence of a leasehold relation. Occupancy and continued possession of the land will not *ipso facto* make one a *de jure* tenant, because the principal factor in determining whether a tenancy relationship exists is

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[50] *Valencia v. Court of Appeals*, G.R. No. 122363, April 29, 2003, 401 SCRA 666, 690-691. (Citations omitted)

[51] *Salmorin v. Zaldivar*, G.R. No. 169691, July 23, 2008, 559 SCRA 564, 571-572.

[52] *Cornes v. Leal Realty Centrum Co., Inc.*, G.R. No. 172146, July 30, 2008, 560 SCRA 545, 569.

intent.[53] This much we said in *VHJ Construction and Development Corporation v. Court of Appeals*,[54] where we held that:

> Indeed, a tenancy relationship cannot be presumed. There must be evidence to prove this allegation. The principal factor in determining whether a tenancy relationship exists is intent. Tenancy is not a purely factual relationship dependent on what the alleged tenant does upon the land. It is also a legal relationship. As we ruled in *Chico v. Court of Appeals*[347 SCRA 35 (2000)]:
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> "Each of the elements hereinbefore mentioned is essential to create a *de jure* leasehold or tenancy relationship between the parties. This *de jure* relationship, in turn, is the *terra firma* for a security of tenure between the landlord and the tenant. The leasehold relationship is not brought about by a mere congruence of facts but, being a legal relationship, the mutual will of the parties to that relationship should be primordial."
>
> Thus, the intent of the parties, the understanding when the farmer is installed, and their written agreements, provided these are complied with and are not contrary to law, are even more important.

Thus, we agree with the following findings of the CA:

> *First*, there is no credible evidence to show that the alleged caretaker, Ciriaco Almario, was designated by PASUDECO or its manager, Gerry Rodriguez, to facilitate the cultivation of the property. There is likewise no evidence to suggest that the respondents ever dealt directly with and acted upon the instruction of PASUDECO with respect to the cultivation of the property.
>
> *Second,* it is indeed inconceivable, as petitioner claims, for the respondents to allow petitioners to work on the property considering that before its purchase, the prior owner, Dalmacio Sicat, sought for the voluntary surrender of the landholding agreement with the previous tenants of the property so that the same can be sold to PASUDECO free from tenancy. This proves to be true considering that it is undisputed that the subject property was offered for sale

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[53] *Nicorp Management and Development Corporation v. Leonida de Leon*, G.R. No. 176942 and G.R. No. 177125, August 28, 2008. (Citations omitted)

[54] G.R. No. 128534, August 13, 2004, 436 SCRA 392, 398.

by Dalmacio Sicat to the petitioner in order for the latter to build its low cost housing project thereon.

Third, the certifications issued by Isidro S. Almario as BARC Chairman of Agdiman, Bacolor, Pampanga to the effect that respondents were actually cultivating he (sic) subject property deserves scant consideration. Said certifications can easily be considered as self-serving since the issuing officer is himself one of the respondents who claimed to be tenants of the subject property and it is quite natural for him not to declare anything which is adverse to his interest. The same scant consideration can also be accorded to the certification issued by the *Barangay* Captain of Macabacle, Bacolor, Pampanga, As it was held in *Esquivel v. Reyes* [G.R. No. 152957, September 8, 2003, 410 SCRA 404]. Obviously, the *barangay* captain — or the mayor whose attestation appears on the document — was not the proper authority to make such determination. Even certifications issued by administrative agencies and/or officials concerning the presence or the absence of a tenancy relationship are merely preliminary or provisional and are not binding on the courts.

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Not a single piece of traceable evidence was shown by respondents when and how much are the rental payments that they supposedly paid before 1988. In fact, they neither mentioned the terms and conditions of their oral tenancy agreement, *i.e.* kind of agricultural crops to be planted, if indeed it existed; nor did they mention that such payments were made in the form of harvest sharing equivalent to a certain percentage agreed upon by the parties. While there were indeed payments made with the Land Bank of the Philippines in varying amounts starting 1988 and thereafter, it cannot be ignored that such payments were precipitated only by PASUDECO's resistance of respondents' presence in the subject property. Thus, we concede to the Adjudicator *a quo*'s finding that said payment was made only as *afterthought*.[55]

Finally, the long period of petitioners' alleged cultivation of the subject property cannot give rise to equitable estoppel. It should be remembered that estoppel in *pais*, or equitable estoppel arises when one, by his acts, representations or admissions or

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[55] *Supra* note 2 at 48-50 and 51.

by his silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and the other rightfully relies and acts on such beliefs so that he will be prejudiced if the former is permitted to deny the existence of such facts. The real office of the equitable norm of estoppel is limited to supplying deficiency in the law, but it should not supplant positive law. The elements for the existence of a tenancy relationship are explicit in the law and these elements cannot be done away with by conjectures.[56]

WHEREFORE, the instant Petition is *DENIED* and the Decision of the Court of Appeals in CA-G.R. S.P. No. 84405 dated April 15, 2005 is *AFFIRMED*. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Velasco, Jr., and *Peralta, JJ.,* concur.

FIRST DIVISION

[G.R. Nos. 172045-46. June 16, 2009]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **FIRST EXPRESS PAWNSHOP COMPANY, INC.,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; DOCUMENTARY STAMP TAX; THE DOCUMENTARY STAMP TAX UNDER SECTION 175 IS IMPOSED ON THE ORIGINAL ISSUE OF SHARES OF STOCK AS AN EXCISE

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[56] *Ganzon v. Court of Appeals,* 434 Phil. 626, 641 (2002).

TAX LEVIED UPON THE PRIVILEGE, THE OPPORTUNITY AND THE FACILITY OF ISSUING SHARES OF STOCK.— In Section 175 of the Tax Code, DST is imposed on the original issue of shares of stock. The DST, as an excise tax, is levied upon the privilege, the opportunity and the facility of issuing shares of stock. In *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc.*, this Court explained that the DST attaches upon acceptance of the stockholder's subscription in the corporation's capital stock regardless of actual or constructive delivery of the certificates of stock.

2. ID.; ID.; ID.; THE DOCUMENTARY STAMP TAX UNDER SECTION 176 IS IMPOSED ON THE SALES, AGREEMENTS TO SELL, MEMORANDA OF SALES, DELIVERIES OR TRANSFER OF SHARES OR CERTIFICATES OF STOCK.— In Section 176 of the Tax Code, DST is imposed on the sales, agreements to sell, memoranda of sales, deliveries or transfer of shares or certificates of stock in any association, company, or corporation, or transfer of such securities by assignment in blank, or by delivery, or by any paper or agreement, or memorandum or other evidences of transfer or sale whether entitling the holder in any manner to the benefit of such certificates of stock, or to secure the future payment of money, or for the future transfer of certificates of stock. In *Compagnie Financiere Sucres et Denrees v. Commissioner of Internal Revenue*, this Court held that under Section 176 of the Tax Code, sales to secure the future transfer of due-bills, certificates of obligation or certificates of stock are subject to documentary stamp tax.

3. ID.; ID.; ID.; SECTIONS 175 AND 176 OF THE TAX CODE CONTEMPLATE A SUBSCRIPTION AGREEMENT IN ORDER FOR A TAXPAYER TO BE LIABLE TO PAY THE DOCUMENTARY STAMP TAX.— Revenue Memorandum Order No. 08-98 (RMO 08-98) provides the guidelines on the corporate stock documentary stamp tax program. RMO 08-98 states that: 1. All existing corporations shall file the Corporation Stock DST Declaration, and the DST Return, if applicable **when DST is still due on the subscribed share issued by the corporation**, on or before the tenth day of the month following publication of this Order. x x x 3. All existing corporations

with authorization for increased capital stock shall file their Corporate Stock DST Declaration, together with the DST Return, if applicable **when DST is due on subscriptions made after the authorization**, on or before the tenth day of the month following the date of authorization. RMO 08-98, reiterating Revenue Memorandum Circular No. 47-97 (RMC 47-97), also states that what is being taxed is the privilege of issuing shares of stock, and, therefore, the taxes accrue at the time the shares are issued. RMC 47-97 also defines issuance as the point in which the stockholder acquires and may exercise attributes of ownership over the stocks. As pointed out by the CTA, Sections 175 and 176 of the Tax Code contemplate a subscription agreement in order for a taxpayer to be liable to pay the DST. A subscription contract is defined as any contract for the acquisition of unissued stocks in an existing corporation or a corporation still to be formed. A stock subscription is a contract by which the subscriber agrees to take a certain number of shares of the capital stock of a corporation, paying for the same or expressly or impliedly promising to pay for the same.

4. ID.; ID.; ID.; THE DEPOSIT ON STOCK SUBSCRIPTION AS REFLECTED IN RESPONDENT'S BALANCE SHEET OF 1998 IS NOT A SUBSCRIPTION AGREEMENT SUBJECT TO DOCUMENTARY STAMP TAX; THE DEPOSIT ON SUBSCRIPTION IS NOT SUPPORTED BY A SUBSCRIPTION AGREEMENT WHICH CREATES RIGHTS AND OBLIGATIONS BETWEEN THE SUBSCRIBER AND THE CORPORATION.— Based on Rosario's testimony and respondent's financial statements as of 1998, there was no agreement to subscribe to the unissued shares. Here, the deposit on stock subscription refers to an amount of money received by the corporation as a deposit with the possibility of applying the same as payment for the future issuance of capital stock. In *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc.*, we held: We are firmly convinced that the Government stands to lose nothing in imposing the documentary stamp tax only on those stock certificates duly issued, or wherein the stockholders can freely exercise the attributes of ownership and with value at the time they are originally issued. **As regards those certificates of stocks temporarily subject to suspensive conditions they shall be liable for said tax only when released from said conditions, for then and only then shall they truly acquire**

any practical value for their owners. Clearly, the deposit on stock subscription as reflected in respondent's Balance Sheet as of 1998 is not a subscription agreement subject to the payment of DST. There is no ₱800,000 worth of subscribed capital stock that is reflected in respondent's GIS. The deposit on stock subscription is merely an amount of money received by a corporation with a view of applying the same as payment for additional issuance of shares in the future, an event which may or may not happen. The person making a deposit on stock subscription does not have the standing of a stockholder and he is not entitled to dividends, voting rights or other prerogatives and attributes of a stockholder. Hence, respondent is not liable for the payment of DST on its deposit on subscription for the reason that there is yet no subscription that creates rights and obligations between the subscriber and the corporation.

5. ID.; ID.; FINALITY OF ASSESSMENT; THE TERM "RELEVANT SUPPORTING DOCUMENTS" SHOULD BE UNDERSTOOD AS THOSE DOCUMENTS NECESSARY TO SUPPORT THE LEGAL BASIS IN DISPUTING AN ASSESSMENT AS DETERMINED BY THE TAXPAYER; THE BUREAU OF INTERNAL REVENUE CANNOT DEMAND WHAT TYPE OF SUPPORTING DOCUMENTS TO BE SUBMITTED, OTHERWISE, A TAXPAYER WILL BE AT THE MERCY OF THE BUREAU WHICH MAY REQUIRE THE PRODUCTION OF DOCUMENTS THAT A TAXPAYER CANNOT SUBMIT.— We reject petitioner's view that the assessment has become final and unappealable. It cannot be said that respondent failed to submit relevant supporting documents that would render the assessment final because when respondent submitted its protest, respondent attached the GIS and Balance Sheet. Further, petitioner cannot insist on the submission of proof of DST payment because such document does not exist as respondent claims that it is not liable to pay, and has not paid, the DST on the deposit on subscription. The term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.

6. ID.; ID.; RESPONDENT'S TAX ASSESSMENT CANNOT BE CONSIDERED FINAL, EXECUTORY AND DEMANDABLE SINCE THE REQUISITES IN DISPUTING AN ASSESSMENT UNDER SECTION 228 OF THE TAX CODE HAS BEEN COMPLIED WITH.— After respondent submitted its letter-reply stating that it could not comply with the presentation of the proof of DST payment, no reply was received from petitioner. Section 228 states that if the protest is not acted upon within 180 days from submission of documents, the taxpayer adversely affected by the inaction may appeal to the CTA within 30 days from the lapse of the 180-day period. Respondent, having submitted its supporting documents on the same day the protest was filed, had until 31 July 2002 to wait for petitioner's reply to its protest. On 28 August 2002 or within 30 days after the lapse of the 180-day period counted from the filing of the protest as the supporting documents were simultaneously filed, respondent filed a petition before the CTA. Respondent has complied with the requisites in disputing an assessment pursuant to Section 228 of the Tax Code. Hence, the tax assessment cannot be considered as final, executory and demandable. Further, respondent's deposit on subscription is not subject to the payment of DST. Consequently, respondent is not liable to pay the deficiency DST of ₱12,328.45.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Siguion Reyna Montecillo & Ongsiako for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

The Commissioner of Internal Revenue (petitioner) filed this Petition for Review[1] to reverse the Court of Tax Appeals'

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

Decision[2] dated 24 March 2006 in the consolidated cases of C.T.A. EB Nos. 60 and 62. In the assailed decision, the Court of Tax Appeals (CTA) *En Banc* partially reconsidered the CTA First Division's Decision[3] dated 24 September 2004.

The Facts

On 28 December 2001, petitioner, through Acting Regional Director Ruperto P. Somera of Revenue Region 6 Manila, issued the following assessment notices against First Express Pawnshop Company, Inc. (respondent):

a. Assessment No. 31-1-98[4] for deficiency income tax of ₱20,712.58 with compromise penalty of ₱3,000;

b. Assessment No. 31-14-000053-98[5] for deficiency value-added tax (VAT) of ₱601,220.18 with compromise penalty of ₱16,000;

c. Assessment No. 31-14-000053-98[6] for deficiency documentary stamp tax (DST) of ₱12,328.45 on deposit on subscription with compromise penalty of ₱2,000; and

d. Assessment No. 31-1-000053-98[7] for deficiency DST of ₱62,128.87 on pawn tickets with compromise penalty of ₱8,500.

Respondent received the assessment notices on 3 January 2002. On 1 February 2002, respondent filed its written protest on the above assessments. Since petitioner did not act on the

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[2] Penned by Associate Justice Caesar A. Casanova with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, and Olga Palanca-Enriquez, concurring and Presiding Justice Ernesto D. Acosta, concurring and dissenting.

[3] Penned by Associate Justice Lovell R. Bautista with Presiding Justice Ernesto D. Acosta, concurring and Associate Justice Juanito C. Castañeda, Jr., concurring and dissenting.

[4] BIR Records, pp. 147-149.

[5] *Id.* at 144-146.

[6] *Id.* at 141-143.

[7] *Id.* at 138-140.

protest during the 180-day period,[8] respondent filed a petition before the CTA on 28 August 2002.[9]

Respondent contended that petitioner did not consider the supporting documents on the interest expenses and donations which resulted in the deficiency income tax.[10] Respondent maintained that pawnshops are not lending investors whose services are subject to VAT, hence it was not liable for deficiency VAT.[11] Respondent also alleged that no deficiency DST was due because Section 180[12] of the National Internal Revenue Code (Tax Code)

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[8] Section 228, Republic Act No. 8424.

Section 228. Protesting of Assessment. — x x x

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If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

[9] CTA *rollo*, pp. 1 and 3.

[10] *Id.* at 4.

[11] *Id.* at 5-6.

[12] Section 180 of the Tax Code states:

SEC. 180. *Stamp Tax on All Bonds, Loan Agreements, Promissory Notes, Bills of Exchange, Drafts, Instruments and Securities Issued by the Government or Any of its Instrumentalities, Deposit Substitute Debt Instruments, Certificates of Deposits Bearing Interest and Others Not Payable on Sight or Demand.* — On all bonds, loan agreements, including those signed abroad, wherein the object of the contract is located or used in the Philippines, bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities, deposit substitute debt instruments, certificates of deposits drawing interest, orders for the payment of any sum of money otherwise than at sight or on demand, on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (₱0.30) on each Two hundred pesos (₱200), or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note; *Provided,* That only one documentary stamp tax

does not cover any document or transaction which relates to respondent. Respondent also argued that the issuance of a pawn ticket did not constitute a pledge under Section 195[13] of the Tax Code.[14]

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shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax: *Provided*, however, That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (₱250,000) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this Section.

[13] Section 195 of the Tax Code provides:

SEC. 195. *Stamp Tax on Mortgages, Pledges and Deeds of Trust.*— On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing of forborne to be paid, being payable and on any conveyance of land, estate, or property whatsoever, in trust or to be sold, or otherwise converted into money which shall be and intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax at the following rates:

(a) When the amount secured does not exceed Five thousand pesos (₱5,000), Twenty pesos (₱20.00).

(b) On each Five thousand pesos (₱5,000), or fractional part thereof in excess of Five thousand pesos (₱5,000), an additional tax of Ten pesos (₱10.00).

On any mortgage, pledge, or deed of trust, where the same shall be made as a security for the payment of a fluctuating account or future advances without fixed limit, the documentary stamp tax on such mortgage, pledge or deed of trust shall be computed on the amount actually loaned or given at the time of the execution of the mortgage, pledge or deed of trust. However, if subsequent advances are made on such mortgage, pledge or deed of trust, additional documentary stamp tax shall be paid which shall be computed on the basis of the amount advanced or loaned at the rates specified above: *Provided, however*, That if the full amount of the loan or credit, granted under the mortgage, pledge or deed of trust is specified in such mortgage, pledge or deed of trust, the documentary stamp tax prescribed in this Section shall be paid and computed on the full amount of the loan or credit granted.

[14] CTA *rollo*, pp. 6-7.

In its Answer filed before the CTA, petitioner alleged that the assessment was valid and correct and the taxpayer had the burden of proof to impugn its validity or correctness. Petitioner maintained that respondent is subject to 10% VAT based on its gross receipts pursuant to Republic Act No. 7716, or the Expanded Value-Added Tax Law (EVAT). Petitioner also cited BIR Ruling No. 221-91 which provides that pawnshop tickets are subject to DST.[15]

On 1 July 2003, respondent paid ₱27,744.88 as deficiency income tax inclusive of interest.[16]

After trial on the merits, the CTA First Division ruled, thus:

IN VIEW OF ALL THE FOREGOING, the instant petition is hereby **PARTIALLY GRANTED**. Assessment No. 31-1-000053-98 for deficiency documentary stamp tax in the amount of Sixty-Two Thousand One Hundred Twenty-Eight Pesos and 87/100 (₱62,128.87) and Assessment No. 31-14-000053-98 for deficiency documentary stamp tax on deposits on subscription in the amount of Twelve Thousand Three Hundred Twenty-Eight Pesos and 45/100 (₱12,328.45) are **CANCELLED** and **SET ASIDE**. However, Assessment No. 31-14-000053-98 is hereby **AFFIRMED** except the imposition of compromise penalty in the absence of showing that petitioner consented thereto *(UST vs. Collector,* 104 SCRA 1062; *Exquisite Pawnshop Jewelry, Inc. vs. Jaime B. Santiago, et al., supra).*

Accordingly petitioner is **ORDERED to PAY** the deficiency value added tax in the amount of Six Hundred One Thousand Two Hundred Twenty Pesos and 18/100 (₱601,220.18) inclusive of deficiency interest for the year 1998. In addition, petitioner is **ORDERED to PAY** 25% surcharge and 20% delinquency interest *per annum* from February 12, 2002 until fully paid pursuant to Sections 248 and 249 of the 1997 Tax Code.

SO ORDERED.[17] (Boldfacing in the original)

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

[16] *Id.* at 12.

[17] *Id.* at 66-67.

Both parties filed their Motions for Reconsideration which were denied by the CTA First Division for lack of merit. Thereafter, both parties filed their respective Petitions for Review under Section 11 of Republic Act No. 9282 (RA 9282) with the CTA *En Banc*.[18]

On 24 March 2006, the CTA *En Banc* promulgated a Decision affirming respondent's liability to pay the VAT and ordering it to pay DST on its pawnshop tickets. However, the CTA En Banc found that respondent's deposit on subscription was not subject to DST.[19]

Aggrieved by the CTA *En Banc*'s Decision which ruled that respondent's deposit on subscription was not subject to DST, petitioner elevated the case before this Court.

The Ruling of the Court of Tax Appeals

On the taxability of deposit on subscription, the CTA, citing *First Southern Philippines Enterprises, Inc. v. Commissioner of Internal Revenue*,[20] pointed out that deposit on subscription is not subject to DST in the absence of proof that an equivalent amount of shares was subscribed or issued in consideration for the deposit. Expressed otherwise, deposit on stock subscription is not subject to DST if: (1) there is no agreement to subscribe; (2) there are no shares issued or any additional subscription in the restructuring plan; and (3) there is no proof that the issued shares can be considered as issued certificates of stock.[21]

The CTA ruled that Section 175[22] of the Tax Code contemplates a subscription agreement. The CTA explained that there can be

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[18] *Id.* at 14.

[19] *Id.* at 23-44.

[20] CTA Case No. 5988, 17 January 2002.

[21] *Rollo*, pp. 34-35.

[22] Section 175 of the Tax Code provides:

Section 175. *Stamp Tax on Original Issue of Shares of Stock.* — On every original issue, whether on organization or reorganization or for any lawful purpose, of shares of stock by any association, company

subscription only with reference to shares of stock which have been unissued, in the following cases: (a) the original issuance from authorized capital stock at the time of incorporation; (b) the opening, during the life of the corporation, of the portion of the original authorized capital stock previously unissued; or (c) the increase of authorized capital stock achieved through a formal amendment of the articles of incorporation and registration of the articles of incorporation with the Securities and Exchange Commission.[23]

The CTA held that in this case, there was no subscription or any contract for the acquisition of unissued stock for ₱800,000 in the taxable year assessed. The General Information Sheet (GIS) of respondent showed only a capital structure of ₱500,000 as Subscribed Capital Stock and ₱250,000 as Paid-up Capital Stock and did not include the assessed amount. Mere reliance on the presumption that the assessment was correct and done in good faith was unavailing *vis-à-vis* the evidence presented by respondent. Thus, the CTA ruled that the assessment for deficiency DST on deposit on subscription has not become final.[24]

The Issue

Petitioner submits this sole issue for our consideration: whether the CTA erred on a question of law in disregarding the rule on finality of assessments prescribed under Section 228 of the Tax Code. Corollarily, petitioner raises the issue on whether respondent is liable to pay ₱12,328.45 as DST on deposit on subscription of capital stock.

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or corporation, there shall be collected a documentary stamp tax of Two pesos (₱2.00) on each Two hundred pesos (₱200.00) or fractional part thereof, of the par value, of such shares of stock: *Provided*, That in the case of original issue of shares of stock without par value the amount of the documentary stamp tax herein prescribed shall be based upon the actual consideration for the issuance of such shares of stock: *Provided, further*, That in the case of stock dividends, on the actual value represented by each share.

[23] *Rollo*, p. 35.

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

The Ruling of the Court

Petitioner contends that the CTA erred in disregarding the rule on the finality of assessments prescribed under Section 228 of the Tax Code.[25] Petitioner asserts that even if respondent filed a protest, it did not offer evidence to prove its claim that the deposit on subscription was an "advance" made by respondent's stockholders.[26] Petitioner alleges that respondent's failure to submit supporting documents within 60 days from the filing of its protest as required under Section 228 of the Tax Code caused the assessment of ₱12,328.45 for deposit on subscription to become final and unassailable.[27]

Petitioner alleges that revenue officers are afforded the presumption of regularity in the performance of their official functions, since they have the distinct opportunity, aside from competence, to peruse records of the assessments. Petitioner invokes the principle that by reason of the expertise of administrative agencies over matters falling under their jurisdiction, they are in a better position to pass judgment thereon; thus, their findings of fact are generally accorded great respect, if not finality, by the courts. Hence, without the supporting documents to establish the non-inclusion from DST of the deposit on subscription, petitioner's assessment pursuant to Section 228 of the Tax Code had become final and unassailable.[28]

Respondent, citing *Standard Chartered Bank-Philippine Branches v. Commissioner of Internal Revenue*,[29] asserts that the submission of all the relevant supporting documents within the 60-day period from filing of the protest is directory.

Respondent claims that petitioner requested for additional documents in petitioner's letter dated 12 March 2002, to wit:

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[25] *Id.* at 138.

[26] *Id*.

[27] *Id.* at 140.

[28] *Id*.

[29] CTA Case No. 5696, 16 August 2001.

(1) loan agreement from lender banks; (2) official receipts of interest payments issued to respondent; (3) documentary evidence to substantiate donations claimed; and (4) proof of payment of DST on subscription.[30] It must be noted that the only document requested in connection with respondent's DST assessment on deposit on subscription is proof of DST payment. However, respondent could not produce any proof of DST payment because it was not required to pay the same under the law considering that the deposit on subscription was an advance made by its stockholders for future subscription, and no stock certificates were issued.[31] Respondent insists that petitioner could have issued a subpoena requiring respondent to submit other documents to determine if the latter is liable for DST on deposit on subscription pursuant to Section 5(c) of the Tax Code.[32]

Respondent argues that deposit on future subscription is not subject to DST under Section 175 of the Tax Code. Respondent explains:

> It must be noted that deposits on subscription represent advances made by the stockholders and are in the nature of liabilities for which stocks may be issued in the future. Absent any express agreement between the stockholders and petitioner to convert said advances/ deposits to capital stock, either through a subscription agreement or any other document, these deposits remain as liabilities owed by respondent to its stockholders. For these deposits to be subject to DST, it is necessary that a conversion/subscription agreement be made by First Express and its stockholders. Absent such conversion, no DST can be imposed on said deposits under Section 175 of the Tax Code.[33] (Underscoring in the original)

Respondent contends that by presenting its GIS and financial statements, it had already sufficiently proved that the amount sought to be taxed is deposit on future subscription, which is

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[30] *Rollo*, p. 155.

[31] *Id.* at 156.

[32] *Id.*

[33] *Id.* at 158.

not subject to DST.[34] Respondent claims that it cannot be required to submit proof of DST payment on subscription because such payment is non-existent. Thus, the burden of proving that there was an agreement to subscribe and that certificates of stock were issued for the deposit on subscription rests on petitioner and his examiners. Respondent states that absent any proof, the deficiency assessment has no basis and should be cancelled.[35]

On the Taxability of Deposit on Stock Subscription

DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. DST is actually an excise tax because it is imposed on the transaction rather than on the document.[36] DST is also levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments.[37] The Tax Code provisions on DST relating to shares or certificates of stock state:

> Section 175. *Stamp Tax on Original Issue of Shares of Stock.* — On every original issue, whether on organization, reorganization or for any lawful purpose, of shares of stock by any association, company or corporation, there shall be collected a documentary stamp tax of Two pesos (₱2.00) on each Two hundred pesos (₱200), or fractional part thereof, of the par value, of such shares of stock: *Provided*, That in the case of the original issue of shares of stock without par value the amount of the documentary stamp tax herein prescribed shall be based upon the actual consideration for the issuance of such shares of stock: *Provided, further*, That in the case of stock dividends, on the actual value represented by each share.[38]

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[34] *Id.* at 159.

[35] *Id.* at 160.

[36] Section 173, 1997 Tax Code; DE LEON AND DE LEON, *THE NATIONAL INTERNAL REVENUE CODE,* ANNOTATED, 8th ed., Volume 2 (2003). See also *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166786, 3 May 2006, 489 SCRA 147, 152-153.

[37] *Philippine Home Assurance Corporation v. Court of Appeals*, 361 Phil. 368, 372-373 (1999).

[38] As amended by Republic Act Nos. 7660 and 8424.

Section 176. *Stamp Tax on Sales, Agreements to Sell, Memoranda of Sales, Deliveries or Transfer of Due-bills, Certificates of Obligation, or Shares or Certificates of Stock.* — On all sales, or agreements to sell, or memoranda of sales, or deliveries, or transfer of due-bills, certificates of obligation, or shares or certificates of stock in any association, company or corporation, or transfer of such securities by assignment in blank, or by delivery, or by any paper or agreement, or memorandum or other evidences of transfer or sale whether entitling the holder in any manner to the benefit of such due-bills, certificates of obligation or stock, or to secure the future payment of money, or for the future transfer of any due-bill, certificate of obligation or stock, there shall be collected a documentary stamp tax of One peso and fifty centavos (₱1.50) on each Two hundred pesos (₱200), or fractional part thereof, of the par value of such due-bill, certificate of obligation or stock: *Provided*, That only one tax shall be collected on each sale or transfer of stock or securities from one person to another, regardless of whether or not a certificate of stock or obligation is issued, indorsed, or delivered in pursuance of such sale or transfer: And *provided, further*, That in the case of stock without par value the amount of the documentary stamp tax herein prescribed shall be equivalent to twenty-five percent (25%) of the documentary stamp tax paid upon the original issue of said stock.[39]

In Section 175 of the Tax Code, DST is imposed on the original issue of shares of stock. The DST, as an excise tax, is levied upon the privilege, the opportunity and the facility of issuing shares of stock. In *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc.*,[40] this Court explained that the DST attaches upon acceptance of the stockholder's subscription in the corporation's capital stock regardless of actual or constructive delivery of the certificates of stock. Citing *Philippine Consolidated Coconut Ind., Inc. v. Collector of Internal Revenue*,[41] the Court held:

The documentary stamp tax under this provision of the law may be levied only once, that is upon the original issue of the certificate.

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[39] As amended by Republic Act No. 7660.

[40] 230 Phil. 76, 80-81 (1986).

[41] 162 Phil. 32 (1976).

The crucial point therefore, in the case before Us is the proper interpretation of the word 'issue.' In other words, when is the certificate of stock deemed 'issued' for the purpose of imposing the documentary stamp tax? Is it at the time the certificates of stock are printed, at the time they are filled up (in whose name the stocks represented in the certificate appear as certified by the proper officials of the corporation), at the time they are released by the corporation, or at the time they are in the possession (actual or constructive) of the stockholders owning them?

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Ordinarily, when a corporation issues a certificate of stock (representing the ownership of stocks in the corporation to fully paid subscription) the certificate of stock can be utilized for the exercise of the attributes of ownership over the stocks mentioned on its face. The stocks can be alienated; the dividends or fruits derived therefrom can be enjoyed, and they can be conveyed, pledged or encumbered. The certificate as issued by the corporation, irrespective of whether or not it is in the actual or constructive possession of the stockholder, is considered issued because it is with value and hence the documentary stamp tax must be paid as imposed by Section 212 of the National Internal Revenue Code, as amended.

In Section 176 of the Tax Code, DST is imposed on the sales, agreements to sell, memoranda of sales, deliveries or transfer of shares or certificates of stock in any association, company, or corporation, or transfer of such securities by assignment in blank, or by delivery, or by any paper or agreement, or memorandum or other evidences of transfer or sale whether entitling the holder in any manner to the benefit of such certificates of stock, or to secure the future payment of money, or for the future transfer of certificates of stock. In *Compagnie Financiere Sucres et Denrees v. Commissioner of Internal Revenue*, this Court held that under Section 176 of the Tax Code, sales to secure the future transfer of due-bills, certificates of obligation or certificates of stock are subject to documentary stamp tax.[42]

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[42] G.R. No. 133834, 28 August 2006, 499 SCRA 664, 669. The Court ruled in this case that the transfer or assignment of deposits on stock subscription is subject to DST.

Revenue Memorandum Order No. 08-98 (RMO 08-98) provides the guidelines on the corporate stock documentary stamp tax program. RMO 08-98 states that:

> 1. All existing corporations shall file the Corporation Stock DST Declaration, and the DST Return, if applicable **when DST is still due on the subscribed share issued by the corporation**, on or before the tenth day of the month following publication of this Order.
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> 3. All existing corporations with authorization for increased capital stock shall file their Corporate Stock DST Declaration, together with the DST Return, if applicable **when DST is due on subscriptions made after the authorization,** on or before the tenth day of the month following the date of authorization. (Boldfacing supplied)

RMO 08-98, reiterating Revenue Memorandum Circular No. 47-97 (RMC 47-97), also states that what is being taxed is the privilege of issuing shares of stock, and, therefore, the taxes accrue at the time the shares are issued. RMC 47-97 also defines issuance as the point in which the stockholder acquires and may exercise attributes of ownership over the stocks.

As pointed out by the CTA, Sections 175 and 176 of the Tax Code contemplate a subscription agreement in order for a taxpayer to be liable to pay the DST. A subscription contract is defined as any contract for the acquisition of unissued stocks in an existing corporation or a corporation still to be formed.[43] A stock subscription is a contract by which the subscriber agrees to take a certain number of shares of the capital stock of a corporation, paying for the same or expressly or impliedly promising to pay for the same.[44]

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[43] Section 60, The Corporation Code of the Philippines, Batas Pambansa Blg. 68, 1 May 1980.

[44] LOPEZ, ROSARIO N., *THE CORPORATION CODE OF THE PHILIPPINES*, ANNOTATED, Volume Two, 1994, p. 750.

In this case, respondent's Stockholders' Equity section of its Balance Sheet as of 31 December 1998[45] shows:

STOCKHOLDERS' EQUITY	1998	1997
Authorized Capital Stock	₱ 2,000,000.00	₱ 2,000,000.00
Paid-up Capital Stock	250,000.00	250,000.00
Deposit on Subscription	800,000.00	
Retained Earnings	62,820.34	209,607.20
Net Income	(858,498.38)	(146,786.86)
TOTAL	₱ 254,321.96	₱ 312,820.34

The GIS submitted to the Securities and Exchange Commission on 31 March 1999 shows the following Capital Structure:[46]

B. Financial Profile

1. Capital Structure :

AUTHORIZED	-	₱2,000,000.00
SUBSCRIBED	-	500,000.00
PAID-UP	-	250,000.00

These entries were explained by Miguel Rosario, Jr. (Rosario), respondent's external auditor, during the hearing before the CTA on 11 June 2003. Rosario testified in this wise:

Atty. Napiza
Q. Mr. Rosario, I refer you to the balance sheet of First Express for the year 1998 particularly the entry of deposit on subscription in the amount of ₱800 thousand, will you please tell us what is (sic) this entry represents?

Mr. Rosario Jr.
A. **This amount of ₱800 thousand represents the case given by the stockholders to the company but does not necessarily made (sic) payment to subscribed portion.**

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[45] CTA First Division *rollo*, p. 89.

[46] *Id.* at 92.

Atty. Napiza
Q. **What is (sic) that payment stands for?**

Mr. Rosario Jr.
A. **This payment stands as (sic) for the deposit for future subscription.**

Atty. Napiza
Q. Would you know if First Express issued corresponding shares pertinent to the amount being deposited?

Mr. Rosario Jr.
A. No.

Atty. Napiza
Q. What do you mean by no? Did they or they did not?

Mr. Rosario Jr.
A. **They did not issue any shares because that is not the payment of subscription. That is just a mere deposit.**

Atty. Napiza
Q. Would you know, Mr. Rosario, how much is the Subscribed Capital of First Express Pawnshop?

Mr. Rosario Jr.
A. The Subscribed Capital of First Express Pawnshop Company, Inc. for the year 1998 is ₱500 thousand.

Atty. Napiza
Q. How about the Paid Up Capital?

Mr. Rosario Jr.
A. The Paid Up Capital is ₱250 thousand.

Atty. Napiza
Q. Are (sic) all those figures appear in the balance sheet?

Mr. Rosario Jr.
A. The Paid Up Capital appeared here but the Subscribed Portion was not stated. (Boldfacing supplied)

Based on Rosario's testimony and respondent's financial statements as of 1998, there was no agreement to subscribe to the unissued shares. Here, the deposit on stock subscription refers to an amount of money received by the corporation as a deposit with the possibility of applying the same as payment

for the future issuance of capital stock.[47] In *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc.*,[48] we held:

We are firmly convinced that the Government stands to lose nothing in imposing the documentary stamp tax only on those stock certificates duly issued, or wherein the stockholders can freely exercise the attributes of ownership and with value at the time they are originally issued. **As regards those certificates of stocks temporarily subject to suspensive conditions they shall be liable for said tax only when released from said conditions, for then and only then shall they truly acquire any practical value for their owners.** (Boldfacing supplied)

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[47] BIR Ruling No. 015-2003. EBC Strategic Holdings Corporation, 17 November 2003. The BIR ruled that the One Billion Pesos deposited by Equitable PCI Bank to its subsidiary company Equitable Strategic Holdings Corporation (ESHC) to be applied for future subscription to an increase in capital is not subject to documentary stamp tax under Section 175 of the Tax Code of 1997. The BIR, quoting the CTA Case entitled First Southern Philippines Enterprises, Inc. *v.* Commissioner of Internal Revenue promulgated on 17 January 2002, ruled that deposit on stock subscription is not subject to the payment of documentary stamp tax. The BIR explained that there was no agreement to subscribe to the issuance of stock of ESHC. The BIR further explained in this wise:

> Capital stock issued connotes permanence of funds flowing into a corporation which cannot be withdrawn. The phrase 'issuance of shares of stock' upon which the documentary stamp tax is to be computed must likewise be viewed as permanent in character. It is considered as a trust fund for the payment of the debts of the corporation, to which the creditors may look for satisfaction. Consequently, to be so categorized, all conditions and requirements, such as the execution of the subscription agreements, and approval by regulatory authorities must be secured to facilitate the issuance of the shares of stock.
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> Viewed from the foregoing, it can be inferred that future subscription to an increase in capital stock is not an original issue of shares of stock nor is it a sale or transfer of shares of stock contemplated under Sections 175 and 176 of the Tax Code of 1997, but it is a standard accounting term which refers to an amount of money transmitted by a stockholder to a corporation on deposit with the possibility of the same being later subscribed in the company's capital.

[48] *Supra* note 40.

Clearly, the deposit on stock subscription as reflected in respondent's Balance Sheet as of 1998 is not a subscription agreement subject to the payment of DST. There is no ₱800,000 worth of subscribed capital stock that is reflected in respondent's GIS. The deposit on stock subscription is merely an amount of money received by a corporation with a view of applying the same as payment for additional issuance of shares in the future, an event which may or may not happen. The person making a deposit on stock subscription does not have the standing of a stockholder and he is not entitled to dividends, voting rights or other prerogatives and attributes of a stockholder. Hence, respondent is not liable for the payment of DST on its deposit on subscription for the reason that there is yet no subscription that creates rights and obligations between the subscriber and the corporation.

On the Finality of Assessment as Prescribed under Section 228 of the Tax Code

Section 228 of the Tax Code provides:

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

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

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

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

(d) When the excise tax due on 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.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. **Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (Boldfacing supplied)

Section 228 of the Tax Code[49] provides the remedy to dispute a tax assessment within a certain period of time. It states that

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[49] Revenue Regulations No. 12-99, Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, 6 September 1999.

> Sec. 3.1.5 Disputed Assessment. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes

an assessment may be protested by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment by the taxpayer. Within 60 days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

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or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date

In this case, respondent received the tax assessment on 3 January 2002 and it had until 2 February 2002 to submit its protest. On 1 February 2002, respondent submitted its protest and attached the GIS and Balance Sheet as of 31 December 1998. Respondent explained that it received ₱800,000 as a deposit with the possibility of applying the same as payment for the future issuance of capital stock.

Within 60 days from the filing of protest or until 2 April 2002, respondent should submit relevant supporting documents. Respondent, **having submitted the supporting documents together with its protest**, did not present additional documents anymore.

In a letter dated 12 March 2002, petitioner requested respondent to present proof of payment of DST on subscription. In a letter-reply, respondent stated that it could not produce any proof of DST payment because it was not required to pay DST under the law considering that the deposit on subscription was an advance made by its stockholders for future subscription, and no stock certificates were issued.

Since respondent has not allegedly submitted any relevant supporting documents, petitioner now claims that the assessment has become final, executory and demandable, hence, unappealable.

We reject petitioner's view that the assessment has become final and unappealable. It cannot be said that respondent failed

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of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.

If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable. (Boldfacing supplied)

to submit relevant supporting documents that would render the assessment final because when respondent submitted its protest, respondent attached the GIS and Balance Sheet. Further, petitioner cannot insist on the submission of proof of DST payment because such document does not exist as respondent claims that it is not liable to pay, and has not paid, the DST on the deposit on subscription.

The term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.

After respondent submitted its letter-reply stating that it could not comply with the presentation of the proof of DST payment, no reply was received from petitioner.

Section 228 states that if the protest is not acted upon within 180 days from submission of documents, the taxpayer adversely affected by the inaction may appeal to the CTA within 30 days from the lapse of the 180-day period. Respondent, having submitted its supporting documents on the same day the protest was filed, had until 31 July 2002 to wait for petitioner's reply to its protest. On 28 August 2002 or within 30 days after the lapse of the 180-day period counted from the filing of the protest as the supporting documents were simultaneously filed, respondent filed a petition before the CTA.

Respondent has complied with the requisites in disputing an assessment pursuant to Section 228 of the Tax Code. Hence, the tax assessment cannot be considered as final, executory and demandable. Further, respondent's deposit on subscription is not subject to the payment of DST. Consequently, respondent is not liable to pay the deficiency DST of ₱12,328.45.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Court of Tax Appeals' Decision dated 24 March 2006 in the consolidated cases of C.T.A. EB Nos. 60 and 62.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 172198. June 16, 2009]

MA. LOURDES C. DE CASTRO, *petitioner, vs.* **CRISPINO DE CASTRO, JR., OFFICE OF THE CITY PROSECUTOR FOR MANILA, and THE OFFICE OF THE SOLICITOR GENERAL,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; NO DENIAL OF DUE PROCESS AFTER HAVING BEEN GRANTED NUMEROUS MOTIONS FOR POSTPONEMENT; CASE AT BAR.— Petitioner argues that the lower courts erred in ruling that she waived her right to present further evidence when she failed to appear at the August 20, 2003 hearing. She contends that in effect, she was declared in default, which is violative of the state policy on marriage as a social institution and the due process clause of the Constitution. We disagree. The instant case was set for hearing twelve times. x x x After having been granted numerous motions for postponement, petitioner cannot now claim that she was denied due process. In ***Ortigas, Jr. v. Lufthansa German Airlines***, we ruled that: Where a party seeks postponement of the hearing of this case for reasons caused by his own inofficiousness, lack of resourcefulness and diligence if not total indifference to his own interests or to the interests of those he represents, thereby resulting in his failure to present his own evidence, the court would not extend to him its mantle of protection. If it was he who created the situation that brought about the resulting adverse consequences, he cannot plead for his day in court nor claim that he was so denied of it.

2. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR POSTPONEMENT; BASIC DUTY OF A LITIGANT TO MOVE FOR POSTPONEMENT BEFORE THE DAY OF THE HEARING.— In ***Hap Hong Hardware Co. v. Philippine Company***, we sustained the trial court's denial of a motion for postponement on the ground that the defendant's witnesses, officers of the company, could not come because it was the beginning of the milling season in the municipality of San Jose, Mindoro Occidental and their presence in the Central was necessary. We held that the reason adduced was "not unavoidable and one that could not have been foreseen." We take note of the fact that all motions for postponement by petitioner were made on the scheduled hearing dates themselves. xxx In the case at bar, petitioner's excuse — that she was still in the U.S. taking care of her newborn grandchild, while her witness, Dr. Maria Cynthia Ramos-Leynes, who conducted a psychiatric evaluation on her, was likewise out of the country, attending a convention — was unjustified. These reasons were "not unavoidable and one that could not have been foreseen." The date of the trial was set one month prior, and as of July 25, 2003, petitioner was in the U.S. Certainly, petitioner would know in advance if she could make it to the August 20, 2003 hearing. xxx The least that petitioner could have done was to instruct her counsel to make a timely representation with the trial court by filing an early motion-manifestation for the resetting of the hearing. xxx. Likewise, attending a convention is a scheduled event, also something known in advance. It is the basic duty of a litigant to move for postponement before the day of the hearing, so that the court could order its resetting and timely inform the adverse party of the new date. We thus hold that the trial court did not abuse its discretion in denying the motion for postponement.

3. ID.; EVIDENCE; PRESENTATION OF EVIDENCE; TESTIMONY THAT HAS NOT BEEN CROSS-EXAMINED NOT RENDERED USELESS IN CASE AT BAR.— Petitioner contends that because her direct examination has not been completed and as she has not been cross-examined, her testimony has become useless. Apparently, petitioner is alluding to the rule that oral testimony may be taken into account only when it is complete, that is, if the witness has been wholly cross-examined by the adverse party; until such cross-examination has been finished, the testimony of the witness

cannot be considered as complete and may not, therefore, be allowed to form part of the evidence to be considered by the court in deciding the case. The rule will not apply to the instant case. Private respondent, who was present in court during the August 20, 2003 hearing and did not register any objection to the trial court's order nor move to strike out petitioner's testimony from the records, is deemed to have waived his right to cross-examine petitioner. Thus, petitioner's testimony is not rendered worthless. The waiver will not expunge the testimony of petitioner off the records. The trial court will still weigh the evidence presented by petitioner *vis-à-vis* that of private respondent's.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & De Los Angeles for petitioner.

Ugalingan Law Office for private respondent.

D E C I S I O N

PUNO, *C.J.*:

This is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 81856, dated April 4, 2006, which found no grave abuse of discretion in the Orders dated August 20, 2003 and December 12, 2003, issued by Acting Judge Marvic Balisi-Umali of the Regional Trial Court (RTC) of Manila in Civil Case No. 96-79135 for the declaration of nullity of marriage.

First, the facts:

Petitioner Ma. Lourdes C. De Castro and private respondent Crispino De Castro, Jr. were married on January 1, 1971. In 1996, private respondent filed a petition[2] for the declaration of nullity of their marriage before the RTC of Manila.

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[1] *Rollo*, pp. 36-47.

[2] Annex "B", *rollo*, pp. 48-52.

In his petition, private respondent alleged that he was impulsive and reckless in his youth; that while still in school, he impregnated petitioner, and they got married so as not to expose both their families to further embarrassment; that their quarrels intensified during the marriage; that due to immaturity and inability to cope with their problems, he abandoned his family many times and became involved in affairs with different women. He further alleged that they tried to save their marriage through counseling, but to no avail. In 1992, he left the family home for good, and lived with another woman with whom he had three illegitimate children.

For failure of petitioner to file her Answer to the petition and upon motion of private respondent, the case was set for hearing and private respondent testified. Further, he presented psychiatrist, Dr. Cecilia Albaran, as an expert witness. He then rested his case, with no opposition from the public prosecutor.

On June 22, 1998, the RTC annulled the marriage between petitioner and private respondent, *viz*.:

> After a thorough review of the evidence adduced and the testimonies of petitioner [herein private respondent] and Dra. Cecilia Albaran, the Court finds and so holds that both parties are psychologically incapacitated to enter into marriage. The Court, therefore, is convinced that from the evidence presented, there appears sufficient basis to declare that herein parties are psychologically incapacitated to enter into marriage, which, under the provisions of the Family Code, is a valid ground for the annulment of marriage.
>
> WHEREFORE, premises considered, Decision is hereby rendered declaring the marriage entered into by the parties herein on January 1, 1971 at Santuario de San Jose, Greenhills, Mandaluyong City null and void and of no legal effect.
>
> The Local Civil Registrar of Mandaluyong City is hereby directed to cancel from the Registry of Marriages the marriage contract entered into by the parties herein on January 1, 1971 at Mandaluyong City.
>
> Let a copy of this Decision be furnished the Local Civil Registrar of Mandaluyong City for proper annotation and recording, as required by law; the Local Civil Registrar of Manila and the National Census and Statistics Office for record purposes.

SO ORDERED.[3]

On August 3, 1998, petitioner filed a Motion for Leave[4] to file an Omnibus Motion[5] seeking a new trial or reconsideration of the June 22, 1998 Decision. She alleged that she was misled and prevented from participating in the annulment case by private respondent, because of his promise of continuous adequate support for the children, and the transfer of title to their three children of their family home, including its lot, located in Blue Ridge Subdivision, Libis, Quezon City and another piece of real property in Tagaytay.

The trial court granted the omnibus motion in an Order dated December 11, 1998. In the Order, petitioner was required to submit a question-and-answer form affidavit which would constitute her direct testimony. Further, the cross-examination of petitioner and her witnesses was scheduled on February 4, 1999.

On December 27, 1999, petitioner filed her Answer. She controverted the allegations of private respondent. She alleged that they were both psychologically and emotionally prepared for marriage; that, except for a few slightly turbulent months in 1981, their life as a married couple was smooth and blissful and remained so for twenty years, or until 1990; that they were well adapted to each other, and their quarrels were few and far between; that the communication lines between them were always open and they were able to settle their differences through discussion; that private respondent was a devoted and faithful husband, and did not abandon them repeatedly; and that petitioner knew of only one extramarital affair of private respondent.

The trial court conducted hearings on petitioner's (1) application for support *pendente lite* and (2) urgent motion for judicial deposit of petitioner's [herein private respondent's] separation benefits,[6] in light of his retirement/separation from employment

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[3] *Rollo,* p. 57.

[4] Annex "D", *rollo,* pp. 58-59.

[5] *Rollo,* pp. 60-69.

[6] Annex "H", *rollo,* pp. 89-96.

at Petron Corporation, effective August 31, 2000; and private respondent's (3) motion for judicial approval of the alleged voluntary agreement on the dissolution of the conjugal partnership of gains and partition of the conjugal properties.[7] The first has been resolved,[8] but the second and third remain pending.

On July 17, 2002, petitioner was to present her first witness. The trial court reset the hearing to August 21, 2002 as there was no return of the notice sent to private respondent and his counsel.[9]

On August 21, 2002, petitioner started her direct testimony. However, considering the length of her testimony, the continuance of her direct examination was set on October 2, 2002.

On September 30, 2002, private respondent moved to reset the October 2, 2002 hearing to November 13, 2002, due to his trip to Europe.[10]

On November 8, 2002, private respondent again moved to reset the November 13, 2002 hearing to December 11, 2002 or at the earliest possible date as the calendar of the trial court would allow, for the reason that his counsel was "out of the country for important personal reasons and cannot attend the hearing."[11]

During the hearing on December 11, 2002, petitioner's counsel moved for its cancellation because of the absence of petitioner who was at that time attending a very urgent business meeting in connection with her volunteer work for Bantay Bata. The hearing was reset to February 6, 2003.[12] However, the records reveal that no hearing was conducted on said date.

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[7] Annex "I", *rollo*, pp. 97-103.

[8] Annex "G", *rollo*, p. 88.

[9] Annex "L", *rollo*, p. 119.

[10] Annex "M", *rollo*, p. 120.

[11] Annex "N", *rollo*, pp. 122-123.

[12] Annex "O", *rollo*, p. 124.

On the next hearing of February 20, 2003, petitioner's counsel again moved for the resetting of the hearing to March 27, 2003.[13]

On March 27, 2003, the hearing was reset to April 10, 2003 because the Presiding Judge was on official leave.[14]

On April 10, 2003, the hearing was again reset to May 8, 2003, by agreement of the parties.[15]

On May 8, 2003, the hearing was likewise reset to July 25, 2003 because of the absence of counsel of both petitioner and private respondent.[16]

During the hearing on July 25, 2003, petitioner's counsel moved to reset the hearing because of the absence of petitioner who was then in the U.S. helping her daughter in taking care of her newborn baby. The trial court then ordered the resetting of the hearing to August 20, 2003 for the last time, *viz*.:

> As prayed for by respondent's counsel for the cancellation of today's hearing as according to her the respondent is out of the country, over the vehement objection of petitioner's counsel, the hearing today is cancelled and reset for the last time to August 20, 2003 at 9:30 o'clock (sic) in the morning.
>
> In the event the respondent cannot present any evidence on the next scheduled hearing, on proper motion the case shall be submitted for decision.
>
> It appears that the presentation of respondent's evidence had been reset twice at the instance of defendant's counsel, the respondent is hereby directed to pay a postponement fee of Php100.00 and to show proof of compliance.
>
> Both counsels are notified in open Court.
>
> SO ORDERED.

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[13] Annex "P", *rollo*, p. 125.

[14] Annex "Q", *rollo*, p. 126.

[15] Annex "R", *rollo*, p. 127.

[16] Annex "S", *rollo*, p. 128.

Given in open Court this 25th day of July 2003 in the City of Manila, Philippines.[17]

In the hearing on August 20, 2003, counsel for petitioner again requested that it be cancelled and reset due to the unavailability of witnesses. Petitioner was still in the U.S. taking care of her newborn grandchild, while Dr. Maria Cynthia Ramos-Leynes, who conducted a psychiatric evaluation on petitioner, was likewise out of the country, attending a convention. The motion was denied by the trial court, *viz*.:

> In its Order of July 25, 2003, respondent (sic) was given today her last chance to present her evidence, with the warning that if no evidence is presented today, then the case shall be submitted for decision.
>
> In today's hearing, respondent (sic) failed to present any evidence. As ordered and on motion of petitioner's counsel, the Court deems the respondent to have waived her right to present further evidence. In view thereof, she is hereby given fifteen (15) days from today within which to make an offer of her exhibits, copy of which she shall furnish the petitioner's counsel, who is hereby given the same period of time from receipt thereof within which to make his comments thereon. Within thirty (30) days from receipt of the Court's resolution on respondent's offer of exhibits, parties are directed to file their respective Memorandum of Authorities.
>
> Thereafter, this case which is of 1996 vintage shall be submitted for the decision once again.
>
> SO ORDERED.
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> Given in open Court, this 20th day of August, 2003 in Manila.[18]

Petitioner moved to reconsider the August 20, 2003 Order. She claimed that her reasons for her absence during the hearings were justifiable and she had no intention to delay the proceedings of this case. Further, she argued that there were pending incidents yet to be resolved by the trial court, referring to her motion for judicial deposit of private respondent's separation benefits and

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[17] Annex "T", *rollo*, p. 129.

[18] Annex "U", *rollo*, p. 130.

private respondent's motion for judicial approval of the alleged voluntary agreement on the dissolution of the conjugal partnership of gains and partition of the conjugal properties.[19]

This motion was denied in an Order dated December 12, 2003, which states:

> This resolves respondent's Motion for Reconsideration on the August 20, 2003 Order directing her to submit her formal offer of exhibits after the Court deemed her to have waived her right to present further evidence for her failure to appear on the hearing which was previously set on said date by her counsel.
>
> The record of the case reveals that respondent commenced the presentation of her evidence on August 21, 2002. The subsequent settings were all cancelled on motion of respondent's counsel for one reason or another.
>
> On July 25, 2003, the hearing was again cancelled on motion of respondent's counsel and was reset for the last time to August 20, 2003 with the warning that if the respondent still fails to present evidence, the case shall be submitted for decision. On August 20, 2003, respondent failed to adduce her evidence.
>
> The respondent's Motion for Reconsideration deserves a DENIAL.
>
> It is more than apparent that the respondent was given all opportunity to adduce her evidence but she failed to do so. The Court had stretched its leniency to the limit but it is apparent the respondent is merely trifling with the Court's precious time.
>
> Wherefore, respondent's Motion for Reconsideration is hereby DENIED. Respondent is given ten (10) days from notice to file her offer of exhibits.
>
> SO ORDERED.
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> Manila, December 12, 2003.[20]

Petitioner filed a petition for *certiorari* under Rule 65 of the Rules of Court before the Court of Appeals, seeking to annul

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[19] Annex "V", *rollo*, pp. 131-137.

[20] Annex "W", *rollo*, pp. 138-139.

the Orders dated August 20, 2003 and December 12, 2003, for having been issued with grave abuse of discretion. Upon motion of petitioner, the trial court held in abeyance its Order to file the formal offer of exhibits, pending resolution by the Court of Appeals of the petition for *certiorari*.

The Court of Appeals dismissed the petition. It ruled:

> . . . A reading of the assailed Orders reveals that public respondent's denial of petitioner's motion for cancellation and resetting of the hearing for continuance of her testimony was for cause. We take notice of the several postponements of the hearings on the continuation of petitioner's testimony, mostly on account of petitioner's own urgings. Particularly, we find remarkably militating against petitioner's cause the Order dated 25 July 2003 where public respondent, maybe exasperated at petitioner's seemingly shallow interest to proceed with the case as manifested in the prior motions to cancel the hearing, dutifully warned that another postponement of the scheduled presentation of testimony would compel the court to consider the case submitted for decision. We see this as a reasonable exercise of discretion on the part of public respondent. Petitioner was properly apprised and warned of the consequence of another non-appearance in the hearing. Petitioner insists that her inability to be present on the scheduled hearing on August 20, 2003 was due to physical impossibility to appear as she was out of the country on that day. We find the excuse flimsy. Aware in advance that she could not make it on the 20 August 2003 hearing, the least that she could have done was to instruct her counsel to make a timely representation with the court by filing an early motion-manifestation for the resetting of the hearing. Between July 25, 2003 and August 20, 2003 she had sufficient time to file one. Had the counsel not waited for the August 20, 2003 hearing to make the motion, petitioner may have elicited a kinder action from public respondent.
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> x x x x x x x x x

> The Orders being assailed are interlocutory that will lead to a rendering of a judgment in the case by public respondent. Should such judgment be adverse to petitioner as she assumes it would be, she is not completely rendered helpless and without remedy as there will always be the remedy of appeal where facts and issues raised in the instant petition such as errors of law and errors of facts will still be ventilated and passed upon.

Certiorari is not available as a remedy against an interlocutory order except when such interlocutory order is patently erroneous and the remedy of appeal would not afford an adequate and expeditious relief. We do not find the assailed Orders patently erroneous and in case of an eventual unfavorable judgment, the remedy of appeal is an adequate relief always available to petitioner. Hence, *certiorari*, in the case at bar, will not lie.

WHEREFORE, the petition is DISMISSED.[21]

Hence, this petition where petitioner invokes the following grounds:

THE COURT OF APPEALS ERRED IN RULING THAT JUDGE UMALI DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN ISSUING HIS ORDERS DATED 20 AUGUST 2003 AND 12 DECEMBER 2003.[22]

Petitioner argues that the lower courts erred in ruling that she waived her right to present further evidence when she failed to appear at the August 20, 2003 hearing. She contends that in effect, she was declared in default, which is violative of the state policy on marriage as a social institution and the due process clause of the Constitution.

We disagree.

The instant case was set for hearing twelve times, or on the following dates:

1. July 17, 2002
2. August 21, 2002
3. October 2, 2002
4. November 13, 2002
5. December 11, 2002
6. February 6, 2003
7. February 20, 2003

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[21] CA *rollo*, pp. 223-226.

[22] *Rollo*, p. 24.

8. March 27, 2003
9. April 10, 2003
10. May 8, 2003
11. July 25, 2003
12. August 20, 2003

The hearing of March 27, 2003 was cancelled because the presiding judge was on official leave, while the April 10, 2003 hearing was reset by agreement of the parties. Likewise, the hearing of May 8, 2003 was reset because the counsels of both parties were absent.

On the other hand, the following postponements were made at the instance of private respondent: (1) October 2, 2002 hearing, where private respondent, on September 30, 2002, moved to reset the hearing because of his trip to Europe; and (2) November 13, 2002 hearing, where private respondent, on November 8, 2002, moved to reset the hearing because his counsel was out of the country for important personal reasons.

In contrast, the following postponements were made at the instance of petitioner: (1) December 11, 2002 hearing, where petitioner's counsel, on the day itself, moved for the cancellation of the hearing because of the absence of his client who was at that time attending a very urgent business meeting in connection with her volunteer work for Bantay Bata; (2) February 20, 2003 hearing, where petitioner's counsel, on the day itself, moved for the resetting of the hearing; (3) July 25, 2003 hearing, where petitioner's counsel, on the day itself, moved to reset the hearing because his client was in the U.S. taking care of her newborn grandchild; and (4) August 20, 2003 hearing, where petitioner's counsel, again only on the day itself, moved to cancel the hearing because his client was still in the U.S. Further, Dr. Ramos-Leynes, petitioner's witness who conducted a psychiatric evaluation on her, was likewise out of the country.

We take note of the fact that all motions for postponement by petitioner were made on the scheduled hearing dates themselves. On the August 20, 2003 hearing, despite previous

warning that no further postponement would be allowed, petitioner still failed to appear. We agree with the Court of Appeals when it pointed out that petitioner obviously knew in advance that she could not make it to the August 20, 2003 hearing. As of the last scheduled hearing of July 25, 2003, she was still out of the country. The least that petitioner could have done was to instruct her counsel to make a timely representation with the trial court by filing an early motion-manifestation for the resetting of the hearing. Between July 25, 2003 and August 20, 2003 she had sufficient time to file one. Obviously, the warning by the court of the consequence of another non-appearance in the hearing fell on deaf ears. After having been granted numerous motions for postponement, petitioner cannot now claim that she was denied due process. In ***Ortigas, Jr. v. Lufthansa German Airlines***,[23] we ruled that:

> Where a party seeks postponement of the hearing of this case for reasons caused by his own inofficiousness, lack of resourcefulness and diligence if not total indifference to his own interests or to the interests of those he represents, thereby resulting in his failure to present his own evidence, the court would not extend to him its mantle of protection. If it was he who created the situation that brought about the resulting adverse consequences, he cannot plead for his day in court nor claim that he was so denied of it.

Further in ***Hap Hong Hardware Co. v. Philippine Company***,[24] we sustained the trial court's denial of a motion for postponement on the ground that the defendant's witnesses, officers of the company, could not come because it was the beginning of the milling season in the municipality of San Jose, Mindoro Occidental and their presence in the Central was necessary. We held that the reason adduced was "not unavoidable and one that could not have been foreseen." We ratiocinated:

> The reason adduced in support of the motion for postponement is not unavoidable and one that could not have been foreseen. Defendant ought to have known long before the date of trial that the

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[23] G.R. No. L-28773, June 30, 1975, 64 SCRA 610.

[24] G.R. No. L-16773, May 23, 1961, 2 SCRA 68, *cited* in *id.*

milling season would start when the trial of the case would be held. The motion should have been presented long in advance of the hearing, so that the court could have taken steps to postpone the trial without inconvenience to the adverse party. As it is, however, the motion was presented on the day of the trial. Knowing as it should have known that postponements lie in the court's discretion and there being no apparent reason why the defendant could not have presented the motion earlier, thus avoiding inconvenience to the adverse party, the appellant can not claim that the trial court erred in denying postponement. Under all the circumstances we hold that the court was perfectly justified in denying the motion for postponement.

In the case at bar, petitioner's excuse — that she was still in the U.S. taking care of her newborn grandchild, while her witness, Dr. Maria Cynthia Ramos-Leynes, who conducted a psychiatric evaluation on her, was likewise out of the country, attending a convention — was unjustified. These reasons were "not unavoidable and one that could not have been foreseen." The date of the trial was set one month prior, and as of July 25, 2003, petitioner was in the U.S. Certainly, petitioner would know in advance if she could make it to the August 20, 2003 hearing. Likewise, attending a convention is a scheduled event, also something known in advance. It is the basic duty of a litigant to move for postponement before the day of the hearing, so that the court could order its resetting and timely inform the adverse party of the new date. This was not the case at bar for the subject motion was presented only on the day of the trial without any justification. We thus hold that the trial court did not abuse its discretion in denying the motion for postponement.

Consequently, we cannot strike down the trial court's following orders: (1) dated August 20, 2003, which denied petitioner's motion for postponement, and, instead, directed petitioner to submit her formal offer of exhibits after the trial court considered her to have waived her right to present further evidence; and (2) dated December 12, 2003, which denied petitioner's motion for reconsideration. These orders are not violative of the state policy on marriage as a social institution, for the trial judge has the duty to resolve judicial disputes without unreasonable delay.

Petitioner contends that because her direct examination has not been completed and as she has not been cross-examined, her testimony has become useless. Apparently, petitioner is alluding to the rule that oral testimony may be taken into account only when it is complete, that is, if the witness has been wholly cross-examined by the adverse party; until such cross-examination has been finished, the testimony of the witness cannot be considered as complete and may not, therefore, be allowed to form part of the evidence to be considered by the court in deciding the case.[25] The rule will not apply to the instant case.

Private respondent, who was present in court during the August 20, 2003 hearing and did not register any objection to the trial court's order nor move to strike out petitioner's testimony from the records, is deemed to have waived his right to cross-examine petitioner. Thus, petitioner's testimony is not rendered worthless. The waiver will not expunge the testimony of petitioner off the records. The trial court will still weigh the evidence presented by petitioner *vis-à-vis* that of private respondent's. The situation is not akin to default at all, where, for failure of defendant to file his responsive pleading and after evidence for the plaintiff has been received *ex parte*, the court renders a judgment by default on the basis of such evidence.

Lastly, the appellate court correctly pointed out that the assailed Orders are interlocutory and there is yet no judgment in the case by the court *a quo*. If the trial court renders a judgment that is adverse to petitioner, she can always avail of the remedy of appeal to protect her legal rights.

IN VIEW WHEREOF, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. SP No. 81856, dated April 4, 2006, is *AFFIRMED*.

SO ORDERED.

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

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[25] *Bachrach Motor Co. v. Court of Industrial Relations*, G.R. No. L-26136, October 30, 1978, 86 SCRA 27, *citing Ortigas, Jr. v Lufthansa German Airlines*, *supra* note 23 at 636-637.

FIRST DIVISION

[G.R. No. 174862. June 16, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **YVONNE SEVILLA *y* CABALLERO,** *appellant*.

SYLLABUS

CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; SALE OF ILLEGAL DRUGS; ESTABLISHED IN CASE AT BAR; LEGALITY OF BUY-BUST OPERATION, UPHELD.— In cases involving the sale of illegal drugs, the prosecution must prove (1) the identity of the seller, the object and the consideration and (2) the delivery of the thing sold and the payment thereof. Here, SPO2 Sevilla testified that appellant handed him a sachet containing metamphetamine hydrochloride or *shabu* in exchange for ₱100 during a buy bust operation. Testimonies of police officers who conduct buy-bust operations are generally accorded full faith and credit as they are presumed to have performed their duties in a regular manner. This presumption can be overturned only if the accused is able to prove that the officers acted with improper motives. Inasmuch as appellant failed to show that SPO2 Sevilla and his companions had improper motives to charge her, we uphold the legality of the buy-bust operation. It is well-settled that a buy-bust operation (which is a form of entrapment) is a valid means of arresting violators of RA 9165.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

R E S O L U T I O N

CORONA, *J.*:

On December 9, 2002, appellant Yvonne Sevilla *y* Caballero[1] was charged with violation of Section 5, Article III of RA[2]

[1] Ybonne Sevilla in other parts of the record.

[2] Republic Act.

9165[3] in the Regional Trial Court (RTC) of Quezon City, Branch 103[4] under the following Information:

> That on or about the 4th day of December 2002 in Quezon City, Philippines, [appellant], not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug did, then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, 0.02 gram of white crystalline substance containing [methamphetamine] hydrochloride, a dangerous drug.[5]

Appellant pleaded not guilty upon arraignment.

During trial, the prosecution presented SPO2 Levi Sevilla of Police Station 3 in Barrio Talipapa, Quezon City as its principal witness. He testified that, on December 4, 2002, he received information about the illegal drug trade at Gana Compound in Unang Sigaw, Balintawak, Quezon City. He immediately relayed this information to the station chief and a buy-bust operation was thereupon organized. SPO2 Sevilla likewise stated that he participated in the said operation as poseur buyer.[6]

Upon reaching appellant's residence at around 7:15 p.m., the informant knocked on appellant's door and introduced him (SPO2 Sevilla), saying *"Ate Ybonne kung may item ka raw, itong kaibigan ko, gusto umiscor."* After the short conversation, appellant handed SPO2 Sevilla a sachet containing a white crystalline substance while the latter gave the former a ₱100 marked bill.[7] Thereafter, SPO2 Sevilla signaled his companions that the transaction had been consummated.

Appellant was promptly arrested and immediately brought to the station. SPO2 Sevilla surrendered the sachet and the ₱100

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[3] Comprehensive Dangerous Drugs Act of 2002.

[4] Docketed as Criminal Case No. Q-02-113803.

[5] CA *rollo,* pp. 10-11.

[6] Aside from SPO2 Sevilla and the confidential informant, the operatives acting as back-ups were identified as Panlilio, Calsado and Buluran.

[7] SPO2 Sevilla wrote his initials "LBS" on the bill.

marked bill to the desk officer. Subsequently, a forensic chemist of the Philippine National Police confirmed that the white crystalline substance in the sachet was methampethamine hydrochloride or "*shabu.*"

For her defense, appellant insisted she was innocent. She claimed that she and her daughter were about to have dinner when several policemen barged into her house and arrested her. The arrest was allegedly because of her refusal to cooperate with them to entrap "Nene," a known drug pusher in the area.

In a decision dated December 20, 2004,[8] the RTC noted that, despite her assertion that her daughter was present during her arrest, none of her family members corroborated her testimony. It pointed out:

> With the scenario painted by the [appellant] in her testimony, it is clear that her daughter, who was already 24-years-old, was present when the police barged into their house and the latter was able to witness how the [appellant] was forcibly arrested by the police. Assuming that this is true, [appellant's] daughter, had behaved very unusual, indifferent and unnatural for she did not even exert any form of resistance if she is of the belief that her mother is innocent of the crime being attributed by the police. … Human instinct and nature dictate that a person would, without hesitation, instantly lift a finger to someone whose life and limb is endangered for no justifiable reason, especially if that person who needed help is no less than his or her mother, although he or she believes otherwise.

Thus, the RTC found appellant guilty beyond reasonable doubt of violation of Section 5, Article III of RA 9165 and sentenced her to life imprisonment and to pay a fine of ₱500,000.

The Court of Appeals, on intermediate appellate review,[9] affirmed the decision of the RTC *in toto.*[10]

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[8] Penned by Judge Jaime N. Salazar, Jr., CA *rollo*, pp. 2-11 and 87-89.

[9] Docketed as CA-G.R. CR-HC No. 00492.

[10] Decision penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Andres B. Reyes and Vicente Q. Roxas (dismissed from the service). Dated June 26, 2006. *Rollo*, pp. 2-11.

We dismiss the appeal.

In cases involving the sale of illegal drugs, the prosecution must prove (1) the identity of the seller, the object and the consideration and (2) the delivery of the thing sold and the payment thereof.[11] Here, SPO2 Sevilla testified that appellant handed him a sachet containing metamphetamine hydrochloride or *shabu* in exchange for ₱100 during a buy bust operation.

Testimonies of police officers who conduct buy-bust operations are generally accorded full faith and credit as they are presumed to have performed their duties in a regular manner. This presumption can be overturned only if the accused is able to prove that the officers acted with improper motives.[12]

Inasmuch as appellant failed to show that SPO2 Sevilla and his companions had improper motives to charge her, we uphold the legality of the buy-bust operation. It is well-settled that a buy-bust operation (which is a form of entrapment) is a valid means of arresting violators of RA 9165.[13]

WHEREFORE, the June 26, 2006 decision of the Court of Appeals in CA-G.R. CR-HC No. 00492 is hereby *AFFIRMED*. Appellant Yvonne Sevilla *y* Caballero is found guilty of violating Section 5, Article III of Republic Act No. 9165 and is accordingly sentenced to life imprisonment and to pay a fine of ₱500,000.

The Regional Trial Court of Quezon City, Branch 103 is ordered to transfer the custody of the 0.02 gram of methamphetamine hydrochloride to the Philippine Drug Enforcement Agency for proper disposition.

SO ORDERED.

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

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[11] *People v. Evangelista,* G.R. No. 175281, 27 September 2008, 534 SCRA 241, 255 and *People v. Miranda,* G.R. No. 174773, 2 October 2008, 534 SCRA 552, 567.

[12] *People v. Evangelista, id.,* p. 250.

[13] *People v. Corpuz,* 442 Phil. 405, 414-415 (2002).

FIRST DIVISION

[G.R. No. 176015. June 16, 2009]

MERCEDITA T. GUASCH, *petitioner, vs.* **ARNALDO DELA CRUZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; DECISION ATTAINS FINALITY WHEN NO TIMELY MOTION FOR RECONSIDERATION IS FILED; PURPOSE.— As a general rule, the statutory requirement that when no motion for reconsideration is filed within the reglementary period, the decision attains finality and becomes executory in due course must be strictly enforced as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business. The purposes for such statutory requirement are **twofold: first, to avoid delay in the administration of justice** and thus, procedurally, to make orderly the discharge of judicial business, and, **second, to put an end to judicial controversies**, at the risk of occasional errors, which are precisely why courts exist. Controversies cannot drag on indefinitely. The rights and obligations of every litigant must not hang in suspense for an indefinite period of time.

2. ID.; ID.; ID.; ID.; EXCEPTIONAL CASES WHEN APPEAL MAY BE GIVEN DUE COURSE ALTHOUGH THE REGLEMENTARY PERIOD TO APPEAL WAS NOT OBSERVED; CASE AT BAR.—However, in exceptional cases, substantial justice and equity considerations warrant the giving of due course to an appeal by suspending the enforcement of statutory and mandatory rules of procedure. Certain elements are considered for the appeal to be given due course, such as: (1) the existence of special or compelling circumstances, (2) the merits of the case, (3) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (4) lack of any showing that the review sought is merely frivolous and dilatory, and (5) the other party will not be unduly prejudiced thereby. Several of these elements obtain in the case at bar. Where the trial court denied the Motion to Amend the Order of June 16, 2005 on the ground that the

petitioner was acquitted and the order of acquittal had already attained its final and executory stage simply because the motion was filed beyond the time fixed by the rules.

3. ID.; ID.; ID.; ID.; ID.; TRIAL COURT WAS DUTY BOUND TO DETERMINE THE CIVIL LIABILITY OF PETITIONER PURSUANT TO PARAGRAPH 2, SECTION 2, RULE 120 OF THE RULES OF CRIMINAL PROCEDURE.— The records show that petitioner admits her civil obligation to respondent. In her *Kontra-Salaysay*, petitioner alleged that she owed respondent a total of ₱3,300,000.00 as a result of their joint lending business whereby petitioner borrows money from respondent with interest and petitioner, in turn, lends the money to her clients. Respondent did not waive, reserve, nor institute a civil action for the recovery of civil liability. As correctly observed by the Court of Appeals, respondent's actual and active participation in the criminal proceedings through a private prosecutor leaves no doubt with respect to his intentions to press a claim for the unpaid obligation of petitioner in the same action. Hence, since the civil action is deemed instituted with the criminal action, the trial court was duty-bound to determine the civil liability of petitioner pursuant to paragraph 2, Section 2, Rule 120 of the Rules on Criminal Procedure.

4. ID.; ID.; ID.; PETITIONER WILL NOT BE UNDULY PREJUDICED IF RESPONDENT'S MOTION TO AMEND THE ORDER OF ACQUITTAL FOR THE SOLE PURPOSE OF INCLUDING THE CIVIL LIABILITY OF PETITIONER IS ALLOWED.— It cannot be said that petitioner will be unduly prejudiced if respondent's Motion to Amend (Order dated June 16, 2005) for the sole purpose of including the civil liability of petitioner in the order of acquittal shall be allowed. Foremost, petitioner admits her civil obligation to respondent. **Respondent concededly has an available remedy even if his Motion to Amend was denied, which is to institute a separate civil action to recover petitioner's civil liability. However, to require him to pursue this remedy at this stage will only prolong the litigation between the parties which negates the avowed purpose of the strict enforcement of reglementary periods to appeal, that is, to put an end to judicial controversies.** Not only will that course of action be a waste of time, but also a waste of the resources of both parties and the court as well.

5. ID.; ID.; ID.; THE EVIDENCE TO MAKE A DETERMINATION OF PETITIONER'S LIABILITY IS ALREADY AT THE DISPOSAL OF THE TRIAL COURT; A COURT SHOULD ALWAYS STRIVE TO SETTLE THE ENTIRE CONTROVERSY IN A SINGLE PROCEEDING LEAVING NO ROOT OR BRANCH TO BEAR THE SEEDS OF FUTURE LITIGATION.— A review of the records below shows that the evidence to make a determination of petitioner's civil liability is already at the disposal of the trial court. For example, the checks covering the amounts owed by petitioner to respondent in the total amount of ₱3,300,000.00 were already submitted by petitioner to the trial court as Annexes to the Motion to Quash that she filed. Neither can it be said that petitioner's right to due process shall be violated if her civil liability be determined in the same case. In ***Padilla v. Court of Appeals,*** we held: **There appear to be no sound reasons to require a separate civil action to still be filed considering that the facts to be proved in the civil case have already been established in the criminal proceedings where the accused was acquitted. Due process has been accorded the accused.** He was, in fact, exonerated of the criminal charged. xxx As we ruled in ***Gayos v. Gayos,*** "it is a cherished rule of procedure that a court should always strive to settle the entire controversy in a single proceeding leaving no root or branch to bear the seeds of future litigation."

APPEARANCES OF COUNSEL

Victor R. De Guzman for petitioner.
Zamora Poblador Vasquez & Bretaña for respondent.

D E C I S I O N

PUNO, *C.J.*:

Before us is a Petition for Review[1] on *Certiorari* under Rule 45 of the Rules of Court to set aside the Decision[2] dated

[1] *Rollo,* pp. 9-18.

[2] *Id.* at 19-22, 27-33; penned by Associate Justice Mariano C. Del Castillo and concurred in by Associate Justices Lucas P. Bersamin and Normandie B. Pizarro.

August 31, 2006 of the Court of Appeals which reversed the Order[3] dated September 20, 2005 of the Regional Trial Court, Branch 50, Manila in Criminal Case No. 02-199357.

On November 10, 2000, respondent Arnaldo dela Cruz (respondent) filed a Complaint-Affidavit[4] against petitioner Mercedita T. Guasch (petitioner) with the City Prosecutor of Manila. Respondent alleged that petitioner was his neighbor and *kumadre*. On several occasions, petitioner transacted business with him by exchanging cash for checks of small amount without interest. On July 26, 1999, petitioner went to his residence requesting him to exchange her check with cash of ₱3,300,000.00. Initially, he refused. However, petitioner returned the next day and was able to convince him to give her ₱3,300,000.00 in cash in exchange for her Insular Savings Bank Check No. 0032082 dated January 31, 2000 upon her assurance that she will have the funds and bank deposit to cover the said check by January 2000. On the date of maturity and upon presentment, however, the check was dishonored for the reason that the account against which it was drawn was already closed.

On March 2, 2001, the City Prosecutor of Manila issued a Resolution[5] recommending that an information for estafa be filed against petitioner. On February 7, 2002, the City Prosecutor of Manila filed an Information[6] for estafa against petitioner. The case was docketed as Criminal Case No. 02-199357 and raffled to Honorable William Simon P. Peralta, Presiding Judge of the Regional Trial Court, Branch 50, Manila.

After petitioner entered her plea of not guilty and after the prosecution rested its case, petitioner filed a Motion With Leave To Admit Demurrer to Evidence[7] with attached Demurrer to Evidence[8] on April 1, 2005.

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[3] Records, pp. 364-366.

[4] *Id.* at 6-8.

[5] *Id.* at 2-4.

[6] *Id.* at 1.

[7] *Id.* at 310-311.

[8] *Id.* at 312-319.

The trial court issued an Order[9] dated June 16, 2005 granting the demurrer to evidence and dismissing the case. The trial court found that respondent's assertion of misrepresentation by petitioner that her check will be fully funded on the maturity date was not supported by the evidence on record. Accordingly, her guilt not having been proven beyond reasonable doubt, petitioner was acquitted.

On June 28, 2005, respondent received a copy of the said order. On July 14, 2005, respondent filed a Manifestation[10] with attached Motion to Amend Order dated June 16, 2005[11] (Motion to Amend) to include a finding of civil liability of petitioner. In the Manifestation, respondent's counsel justified his failure to file the motion within the reglementary period of 15 days because all postal offices in Metro Manila were allegedly ordered closed in the afternoon due to the rally staged on Ayala Avenue.

Meantime, on August 30, 2005, respondent filed a Petition for *Certiorari*[12] with the Court of Appeals praying that the trial court's Order dated June 16, 2005 granting the demurrer to evidence be set aside.

The trial court denied respondent's Motion to Amend in its Order[13] dated September 20, 2005 finding that counsel for respondent was inexcusably negligent; hence, the Order dated June 16, 2005 has become final and executory. Respondent filed a Motion for Reconsideration[14] but the same was denied by the trial court in its Order[15] dated November 7, 2005.

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[9] *Id.* at 328-334.

[10] *Id.* at 335-337.

[11] *Id.* at 338-342.

[12] CA *rollo*, pp. 2-15.

[13] Records, pp. 364-366.

[14] *Id.* at 369-376.

[15] *Id.* at 378.

On December 7, 2005, respondent filed a Notice of Appeal[16] informing the trial court that he was appealing the Order dated September 20, 2005 and the Order dated November 7, 2005. The trial court likewise denied the notice of appeal in an Order[17] dated December 13, 2005.

Consequently, on February 13, 2006, respondent filed a Supplemental Petition for *Certiorari*[18] with the Court of Appeals to set aside the Order dated September 20, 2005, the Order dated November 7, 2005, and the Order dated December 13, 2005.

On August 31, 2006, the Court of Appeals rendered the assailed Decision.[19] On the issue of whether the issuance of the Order dated June 16, 2005 granting the demurrer to evidence was made with grave abuse of discretion, the Court of Appeals ruled in the negative as it found that the trial court did not anchor the acquittal of petitioner on evidence other than that presented by the prosecution as contended by petitioner. On the issue of whether the denial of respondent's Motion to Amend was tainted with grave abuse of discretion, the Court of Appeals ruled in the affirmative. The Court of Appeals ratiocinated that matters of paramount importance outweigh rules of procedure in this instance. Accordingly, the Court of Appeals ruled as follows:

> WHEREFORE, the assailed order dated September 20, 2005 denying petitioner's Motion to Amend Order dated 16 [June] 2005 is hereby SET ASIDE. Public respondent is hereby directed to determine and fix the amount due the petitioner.
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> SO ORDERED.

Petitioner filed a Motion for Partial Reconsideration[20] arguing that the Court of Appeals erred in ruling that the trial court

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[16] *Id.* at 393.

[17] *Id.* at 400-401.

[18] CA *rollo*, pp. 139-154.

[19] *Supra* note 2.

[20] CA *rollo*, pp. 233-238.

committed grave abuse of discretion when it denied respondent's Motion to Amend. However, the same was denied by the Court of Appeals in its Resolution[21] dated December 20, 2006.

Hence, this petition.

The lone issue in this case is whether the Court of Appeals erred in holding that the trial court committed grave abuse of discretion when it denied respondent's Motion to Amend.

We affirm the ruling of the Court of Appeals.

Respondent contends that the delay of one day in filing his motion was due to circumstances beyond his control. He submitted a Certification[22] from the Makati Central Post Office stating that it was closed in the afternoon of July 13, 2005 due to the rally along Ayala Avenue per declaration by the City Mayor.

Petitioner, on the one hand, alleges that the denial of respondent's Motion to Amend was due to the inexcusable negligence of respondent's counsel; hence, the trial court did not commit grave abuse of discretion. Furthermore, the Order dated June 16, 2005 granting the demurrer to evidence has become final and executory and the remedy of *certiorari* cannot be used as a substitute for a lost appeal.

Respondent's counsel received a copy of the Order dated June 16, 2005 granting the demurrer to evidence on June 28, 2005. However, he only filed his Motion to Amend on July 14, 2005 which was one day beyond the 15-day reglementary period to file a motion for reconsideration of final orders of the trial court pursuant to Section 1, Rule 37 of the Rules of Court.

As a general rule, the statutory requirement that when no motion for reconsideration is filed within the reglementary period, the decision attains finality and becomes executory in due course must be strictly enforced as they are considered indispensable interdictions against needless delays and for orderly discharge

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[21] *Id.* at 276.

[22] *Id.* at 196.

of judicial business. The purposes for such statutory requirement are **twofold**: **first, to avoid delay in the administration of justice** and thus, procedurally, to make orderly the discharge of judicial business, and, **second, to put an end to judicial controversies**, at the risk of occasional errors, which are precisely why courts exist. Controversies cannot drag on indefinitely. The rights and obligations of every litigant must not hang in suspense for an indefinite period of time.[23]

However, in exceptional cases, substantial justice and equity considerations warrant the giving of due course to an appeal by suspending the enforcement of statutory and mandatory rules of procedure.[24] Certain elements are considered for the appeal to be given due course, such as: (1) the existence of special or compelling circumstances, (2) the merits of the case, (3) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (4) lack of any showing that the review sought is merely frivolous and dilatory, and (5) the other party will not be unduly prejudiced thereby.[25]

Several of these elements obtain in the case at bar.

First, there is ostensible merit to respondent's cause. The records show that petitioner admits her civil obligation to respondent. In her *Kontra-Salaysay*,[26] petitioner alleged that she owed respondent a total of ₱3,300,000.00 as a result of their joint lending business whereby petitioner borrows money from respondent with interest and petitioner, in turn, lends the money to her clients. Respondent did not waive, reserve, nor institute a civil action for the recovery of civil liability. As correctly observed by the Court of Appeals, respondent's actual

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[23] *Ginete v. Court of Appeals*, G.R. No. 127596, September 24, 1998, 296 SCRA 38, 54.

[24] *Philippine National Bank v. Court of Appeals*, G.R. No. 108870, July 14, 1995, 246 SCRA 304; *Siguenza v. Court of Appeals*, G.R. No. L-44050, July 16, 1985, 137 SCRA 570, 576; *Gutierrez v. Secretary of Labor*, G.R. No. 142248, December 16, 2004, 447 SCRA 107, 122.

[25] *Supra* note 23 at 53.

[26] Records, pp. 12-17.

and active participation in the criminal proceedings through a private prosecutor leaves no doubt with respect to his intentions to press a claim for the unpaid obligation of petitioner in the same action. Hence, since the civil action is deemed instituted with the criminal action, the trial court was duty-bound to determine the civil liability of petitioner pursuant to paragraph 2, Section 2, Rule 120 of the Rules on Criminal Procedure which provides:

> SECTION 2. *Contents of the judgment.* —
>
> x x x x x x x x x
>
> In case the judgment is of acquittal, it shall state whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist. (2a)

Second, it cannot be said that petitioner will be unduly prejudiced if respondent's Motion to Amend for the sole purpose of including the civil liability of petitioner in the order of acquittal shall be allowed. Foremost, petitioner admits her civil obligation to respondent. **Respondent concededly has an available remedy even if his Motion to Amend was denied, which is to institute a separate civil action to recover petitioner's civil liability. However, to require him to pursue this remedy at this stage will only prolong the litigation between the parties which negates the avowed purpose of the strict enforcement of reglementary periods to appeal, that is, to put an end to judicial controversies.** Not only will that course of action be a waste of time, but also a waste of the resources of both parties and the court as well. We agree with the following observation made by the Court of Appeals:

> To sustain the denial of the Motion to Amend the Order of June 16, 2005 on the ground that the private respondent was acquitted and the order of acquittal had already attained its final and executory stage simply because the motion was filed beyond the time fixed by the rules **will necessarily constrained (sic) petitioner to institute a separate civil action which in the end results in needless**

clogging of court dockets and unnecessary duplication of litigation with all its attendant loss of time, effort and money on the part of all concerned. Finally, the amendment of the order of acquittal for the sole purpose of including therein the civil liability of private complainant **will not unduly prejudice her. It bears stressing that private complainant was the first to agree that the transaction is a loan and she never denied but even admitted her debt or obligation to herein petitioner**.[27] (Emphasis supplied)

A review of the records below shows that the evidence to make a determination of petitioner's civil liability is already at the disposal of the trial court. For example, the checks covering the amounts owed by petitioner to respondent in the total amount of ₱3,300,000.00 were already submitted by petitioner to the trial court as Annexes to the Motion to Quash[28] that she filed. Neither can it be said that petitioner's right to due process shall be violated if her civil liability be determined in the same case. In ***Padilla v. Court of Appeals,***[29] we held:

There appear to be no sound reasons to require a separate civil action to still be filed considering that the facts to be proved in the civil case have already been established in the criminal proceedings where the accused was acquitted. Due process has been accorded the accused. He was, in fact, exonerated of the criminal charged. **The constitutional presumption of innocence called for more vigilant efforts on the part of prosecuting attorneys and defense counsel, a keener awareness by all witnesses of the serious implications of perjury, and a more studied consideration by the judge of the entire records and of applicable statutes and precedents.** To require a separate civil action simply because the accused was acquitted would mean needless clogging of court dockets and unnecessary duplication of litigation with all its attendant loss of time, effort, and money on the part of all concerned. (emphasis supplied)

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[27] *Supra* note 2 at 31-32.

[28] Records, pp. 82-94.

[29] G.R. No. L-39999, May 31, 1984, 129 SCRA 558, 567.

As we ruled in ***Gayos v. Gayos***,[30] "it is a cherished rule of procedure that a court should always strive to settle the entire controversy in a single proceeding leaving no root or branch to bear the seeds of future litigation." Given the circumstances in this case, we find that the trial court committed grave abuse of discretion when it denied respondent's Motion to Amend.

IN VIEW WHEREOF, the petition is *DENIED*. The decision of the Court of Appeals is *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Carpio, Corona, Chico-Nazario,[*] and *Leonardo-de Castro, JJ.,* concur.

EN BANC

[G.R. No. 176135. June 16, 2009]

CARLOS IRWIN G. BALDO, JR., *petitioner, vs.* **COMMISSION ON ELECTIONS, THE MUNICIPAL BOARD OF CANVASSERS OF CAMALIG, ALBAY and ROMMEL MUÑOZ,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; MOOT AND ACADEMIC ISSUES; INSTANT PETITION IS MOOT AND ACADEMIC.— A case becomes moot when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits. Courts will not

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[*] Additional member per Raffle dated June 8, 2009, vice *J.* Lucas P. Bersamin who inhibited.

[30] G.R. No. L-27812, September 26, 1975, 67 SCRA 146, 151.

determine a moot question in a case in which no practical relief can be granted. It is unnecessary to indulge in academic discussion of a case presenting a moot question, as a judgment thereon cannot have any practical legal effect or, in the nature of things, cannot be enforced. In *Garcia v. COMELEC*, this Court held that where the issues have become moot and academic, there is no justiciable controversy, thereby rendering the resolution of the same of no practical use or value. Similarly, in *Gancho-on v. Secretary of Labor and Employment*, the Court ruled that: It is a rule of universal application, almost, that courts of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases. And where the issue has become moot and academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value. There is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the petition. Since the present Petition is grounded on petitioner Baldo's specific objections to the 26 ERs in the previous local elections, no practical or useful purpose would be served by still passing on the merits thereof. Even if the Court sets aside the assailed COMELEC Resolutions and orders the exclusion of the disputed ERs from the canvass of votes, and as a result thereof, petitioner Baldo would emerge as the winning candidate for municipal mayor of Camalig, Albay, in the 10 May 2004 local elections, it would be an empty victory. It is already impossible for petitioner Baldo to still assume office as municipal mayor of Camalig, Albay, elected in the 10 May 2004 local elections, since his tenure as such had ended on 30 June 2007. Petitioner Baldo himself is currently occupying the very same office as the winning candidate in the 14 May 2007 local elections. Irrefragably, the Court can no longer grant to petitioner Baldo any practical relief capable of enforcement. Consequently, the Court is left with no other recourse than to dismiss the instant Petition on the ground of mootness.

APPEARANCES OF COUNSEL

Sibayan & Associates Law Office for petitioner.

The Solicitor General for public respondent.

Brillantes Navarro Jumamil Arcilla Escolin Martinez & Vivero Law Offices for Rommel G. Muñoz

D E C I S I O N

CHICO-NAZARIO, *J.*:

Averring grave abuse of discretion in its issuance, the instant Petition for *Certiorari*, under Rule 65 of the Revised Rules of Court, seeks the review of the Resolution dated 8 January 2007 of the Commission on Elections (COMELEC) *En Banc*, affirming the Resolution dated 12 September 2006 of the COMELEC First Division in SPC Case No. 04-087, which dismissed the appeal, filed by petitioner Carlos Irwin G. Baldo, Jr. (Baldo), of the ruling of the Municipal Board of Canvassers (MBOC) of Camalig, Albay, to include in the canvassing of votes the election returns (ERs) objected to by petitioner Baldo.

Petitioner Baldo and respondent Rommel Muñoz (Muñoz) were candidates for the position of municipal mayor of Camalig, Albay in the 10 May 2004 local elections. At 6 p.m. of 10 May 2004, the MBOC convened to begin the canvass of the ERs.

During the canvass proceedings on 11 May 2004, petitioner Baldo objected to the inclusion of 26 ERs from various precincts based on the following grounds: (1) eight ERs lack inner seal; (2) seven ERs lack material data; (3) one ER lacks signatures; (4) four ERs lack signatures and thumbmarks of the members of the Board of Election Inspectors (BEIs) on the envelope containing them; (5) one ER lacks the name and signature of the poll clerk on the second page thereof; (6) one ER lacks the number of votes in words and figures; and (7) four ERs were prepared under duress and intimidation.

On 13 May 2004, the MBOC overruled petitioner Baldo's objections and included the disputed ERs in the canvassing of votes. Petitioner Baldo appealed to the COMELEC the unfavorable ruling of the MBOC on his objections to the ERs in question. His appeal was docketed as SPC Case No. 04-087 and was raffled to the COMELEC First Division.

Despite the pendency of SPC Case No. 04-087 with the COMELEC First Division, the MBOC proclaimed respondent

Muñoz as the winning candidate for municipal mayor of Camalig, Albay, on 19 May 2004.

On 21 May 2004, petitioner Baldo filed with the COMELEC a Petition seeking to annul, for being premature, the proclamation of respondent Muñoz as the municipal mayor of Camalig, Albay. The Petition was docketed as SPC No. 04-124 and was again raffled to the COMELEC First Division.

On 12 September 2006, the COMELEC First Division issued its Resolution in SPC No. 04-087, dismissing petitioner Baldo's appeal. The COMELEC First Division decreed thus:

> WHEREFORE, in view of the foregoing, the appeal is hereby DISMISSED for lack of merit. Accordingly, the election returns for Precinct Nos. 127B, 40A/41A, 24A, 8A, 57A, 6A/6B, 54A/54B, 141A, 71A/71B, 72A, 19A, 44A, 154A. 47A, 86A, 132A, 145A, 171A,/171B, 39A, 112A, 137A/133A, 99A, 93A, 175A, 106A, 95A, which were either not included or which were temporarily tallied in a separate statement of votes and are hereby DIRECTED to be INCLUDED into the OFFICIAL TALLY in order to determine the total number of votes actually received by the candidates for mayor in the municipality.
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> The Municipal Board of Canvassers of Camalig, Albay is ORDERED to immediately convene with proper notice to the parties, for the purpose of including in the official canvass the contested election returns and/or transferring into the official tally the results of the precincts which were temporarily tallied, compute the complete results from ALL the 134 precincts which functioned in Camalig, Albay, in the May 10, 2004 elections and forthwith PROCLAIM the winning candidate for mayor of Camalig, Albay.[1]

Petitioner Baldo sought reconsideration of the foregoing, but on 8 January 2007, the COMELEC *En Banc* issued a Resolution affirming the judgment of the COMELEC First Division. The dispositive portion of the said Resolution reads:

> WHEREFORE, premises considered, the Commission RESOLVED, as it hereby RESOLVES to AFFIRM the Resolution

[1] *Rollo,* p. 36.

of the Commission (First Division) with the MODIFICATION that the board of election inspectors concerned in Precinct No. 127B be summoned by the Municipal Board of Canvassers of Camalig, Albay, to complete the necessary data in the election returns of the said precinct.[2]

Petitioner Baldo filed the instant Petition for *Certiorari* based on the following grounds:

A. THE COMELEC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND EXCESS OF ITS JURISDICTION WHEN IT AFFIRMED THE ASSAILED RULINGS OF PUBLIC RESPONDENT MBOC IN THE 26 CONTESTED ELECTION RETURNS FOR PRECINCT NOS. 99A, 93A, 175A, 106A, 95A, 127B, 40A/41A, 24A, 8A, 57A, 6A/6B, 54A/54B, 141A, 71A/71B, 72A, 132A, 145A, 171A/171B, 39A, 112A, 137A,/133A, 19A, 44A, 154A, 47A, 86A; AND

B. THE COMELEC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND EXCESS OF ITS JURISDICTION WHEN IT ORDERED THE INCLUSIONS OF THE SAID RETURNS IN THE OFFICIAL TALLY, AS THE SAME ARE MATERIALLY AND FATALLY DEFECTIVE, WHICH ARE PROPER GROUNDS FOR A PRE-PROCLAMATION CONTROVERSY WITHIN THE AMBIT OF SECTION 243 (b) OF THE OMNIBUS ELECTION CODE.[3]

While the instant Petition is pending before this Court, national and local elections were held on **14 May 2007**, and the winners therein assumed office by **1 July 2007**. In said elections, petitioner Baldo won and is now serving as the municipal mayor of Camalig, Albay. Therefore, the term of office for the seat of municipal mayor of Camalig, Albay, being contested herein, had already expired on **30 June 2007**, rendering the instant Petition moot.

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[2] *Id*. at 41-42.

[3] *Id*. at 12-13.

In *Malaluan v. COMELEC,*[4] this Court pronounced that the expiration of the challenged term of office renders the corresponding petition moot, to wit:

> It is significant to note that the term of office of the local officials elected in the May, 1992 elections expired on June 30, 1995. This petition, thus, has become moot and academic insofar as it concerns petitioner's right to the mayoralty seat in his municipality because **expiration of the term of office contested in the election protest has the effect of rendering the same moot and academic.**
>
> When the appeal from a decision in an election case has already become moot, the case being an election protest involving the office of [the] mayor the term of which had expired, the appeal is dismissible on that ground, unless the rendering of a decision on the merits would be of practical value. This rule we established in the case of *Yorac v. Magalona* which we dismissed because it had been mooted by the expiration of the term of office of the Municipal Mayor of Saravia, Negros Occidental. x x x. (Underscoring ours.) (Citation omitted.)

A case becomes moot when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits. Courts will not determine a moot question in a case in which no practical relief can be granted.[5] It is unnecessary to indulge in academic discussion of a case presenting a moot question,[6] as a judgment thereon cannot have any practical legal effect or, in the nature of things, cannot be enforced.[7]

In *Garcia v. COMELEC,*[8] this Court held that where the issues have become moot and academic, there is no justiciable controversy, thereby rendering the resolution of the same of no practical use or value.

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[4] 324 Phil. 676, 683 (1996).

[5] *Villarico v. Court of Appeals,* 424 Phil. 26, 33-34 (2002).

[6] *Pepsi-Cola Products Philippines, Inc. v. Secretary of Labor,* 371 Phil. 30, 43 (1999).

[7] *Lanuza, Jr. v. Yuchengco,* G.R. No. 157033, 28 March 2005, 454 SCRA 130, 138.

[8] 328 Phil. 288 (1996).

Similarly, in *Gancho-on v. Secretary of Labor and Employment*,[9] the Court ruled that:

> It is a rule of universal application, almost, that courts of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases. And where the issue has become moot and academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value. There is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the petition.

Since the present Petition is grounded on petitioner Baldo's specific objections to the 26 ERs in the previous local elections, no practical or useful purpose would be served by still passing on the merits thereof. Even if the Court sets aside the assailed COMELEC Resolutions and orders the exclusion of the disputed ERs from the canvass of votes, and as a result thereof, petitioner Baldo would emerge as the winning candidate for municipal mayor of Camalig, Albay, in the 10 May 2004 local elections, it would be an empty victory. It is already impossible for petitioner Baldo to still assume office as municipal mayor of Camalig, Albay, elected in the 10 May 2004 local elections, since his tenure as such had ended on 30 June 2007. Petitioner Baldo himself is currently occupying the very same office as the winning candidate in the 14 May 2007 local elections. Irrefragably, the Court can no longer grant to petitioner Baldo any practical relief capable of enforcement. Consequently, the Court is left with no other recourse than to dismiss the instant Petition on the ground of mootness.

IN VIEW OF THE FOREGOING, the Petition is *DISMISSED* for being *MOOT*.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, and *Bersamin, JJ.,* concur.

Carpio Morales, J., on official leave.

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[9] 337 Phil. 654, 658 (1997).

THIRD DIVISION

[G.R. No. 176530. June 16, 2009]

SPOUSES CONSTANTE AGBULOS AND ZENAIDA PADILLA AGBULOS, *petitioners, vs.* **NICASIO GUTIERREZ, JOSEFA GUTIERREZ and ELENA G. GARCIA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; ATTORNEYS; A LAWYER WHO REPRESENTS A CLIENT BEFORE THE TRIAL COURT IS PRESUMED TO REPRESENT SUCH CLIENT BEFORE THE APPELLATE COURT; CASE AT BAR.— A lawyer who represents a client before the trial court is presumed to represent such client before the appellate court. Section 22 of Rule 138 creates this presumption, thus: SEC. 22. *Attorney who appears in lower court presumed to represent client on appeal.* — An attorney who appears *de parte* in a case before a lower court shall be presumed to continue representing his client on appeal, unless he files a formal petition withdrawing his appearance in the appellate court.

2. ID.; ID.; ID.; AN UNAUTHORIZED APPEARANCE OF AN ATTORNEY MAY BE RATIFIED BY THE CLIENT EITHER EXPRESSLY OR IMPLIEDLY.— An unauthorized appearance of an attorney may be ratified by the client either expressly or impliedly. Ratification retroacts to the date of the lawyer's first appearance and validates the action taken by him. Implied ratification may take various forms, such as by silence or acquiescence, or by acceptance and retention of benefits flowing therefrom. Respondents' silence or lack of remonstration when the case was finally elevated to the CA means that they have acquiesced to the filing of the appeal.

3. ID.; ID.; ID.; A LAWYER IS MANDATED TO SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.— Moreover, a lawyer is mandated to "serve his client with competence and diligence." Consequently, a lawyer is

entreated not to neglect a legal matter entrusted to him; otherwise, his negligence in connection therewith shall render him liable.

4. ID.; CIVIL PROCEDURE; JURISDICTION; JURISDICTION OVER THE CASE LIES WITH THE REGIONAL TRIAL COURT AND NOT WITH THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB).— For the DARAB to have jurisdiction over a case, there must be a tenancy relationship between the parties. It is, therefore, essential to establish all the indispensable elements of a tenancy relationship, to wit: (1) that the parties are the landowner and the tenant or agricultural lessee; (2) that the subject matter of the relationship is an agricultural land; (3) that there is consent between the parties to the relationship; (4) that the purpose of the relationship is to bring about agricultural production; (5) that there is personal cultivation on the part of the tenant or agricultural lessee; and (6) that the harvest is shared between the landowner and the tenant or agricultural lessee. Basic is the rule that jurisdiction is determined by the allegations in the complaint.

5. ID.; ID.; APPEALS; ORDINARY APPEALED CASES; APPELLANT'S BRIEF FOUND SUFFICIENT IN FORM AND SUBSTANCE.— The requirements in Section 13, Rule 44 are intended to aid the appellate court in arriving at a just and proper resolution of the case. Obviously, the CA found the appellants' brief sufficient in form and substance as the appellate court was able to arrive at a just decision. We have repeatedly held that technical and procedural rules are intended to help secure, not to suppress, substantial justice. A deviation from a rigid enforcement of the rules may, thus, be allowed in order to attain this prime objective for, after all, the dispensation of justice is the core reason for the existence of courts.

APPEARANCES OF COUNSEL

Heraldo A. Dacayo, Jr. for petitioners.
Adriano B. Magbitang for respondents.

R E S O L U T I O N

NACHURA, *J.*:

This petition for review on *certiorari* seeks the review of the Decision[1] of the Court of Appeals (CA) dated February 6, 2007 in CA–G.R. CV No. 83994 which set aside the dismissal of a complaint for declaration of nullity of contract, cancellation of title, reconveyance and damages.

The case stems from the following antecedents:

On October 16, 1997, respondents, Dr. Nicasio G. Gutierrez, Josefa Gutierrez de Mendoza and Elena G. Garcia, through their counsel, Atty. Adriano B. Magbitang, filed with the Regional Trial Court (RTC) of Gapan, Nueva Ecija, a complaint against petitioners, spouses Constante Agbulos and Zenaida Padilla Agbulos, for declaration of nullity of contract, cancellation of title, reconveyance and damages. The complaint alleged that respondents inherited from their father, Maximo Gutierrez, an eight-hectare parcel of land located in Callos, Penaranda, Nueva Ecija, covered by Transfer Certificate of Title (TCT) No. NT-123790 in the name of Maximo Gutierrez. Through fraud and deceit, petitioners succeeded in making it appear that Maximo Gutierrez executed a Deed of Sale on July 21, 1978 when, in truth, he died on April 25, 1977. As a result, TCT No. NT-123790 was cancelled and a new one, TCT No. NT-188664, was issued in the name of petitioners. Based on the notation at the back of the certificate of title, portions of the property were brought under the Comprehensive Agrarian Reform Program (CARP) and awarded to Lorna Padilla, Elenita Nuega and Suzette Nuega who were issued Certificates of Land Ownership Award (CLOAs).

In their defense, petitioners averred that respondents were not the real parties in interest, that the Deed of Sale was regularly

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[1] Penned by Associate Justice Estela M. Perlas-Bernabe with Associate Justices Rodrigo V. Cosico and Lucas P. Bersamin (now a member of this Court), concurring; *rollo*, pp. 29-36.

executed before a notary public, that they were possessors in good faith, and that the action had prescribed.

On the day set for the presentation of the respondents' (plaintiffs') evidence, petitioners filed a Motion to Dismiss, assailing the jurisdiction of the RTC over the subject matter of the case. Petitioners contended that the Department of Agrarian Reform Adjudication Board (DARAB), not the RTC, had jurisdiction since the subject land was covered by the CARP, and CLOAs had been awarded to tenants. Respondents opposed the motion, arguing that the motion had been filed beyond the period for filing an Answer, that the RTC had jurisdiction over the case based on the allegations in the complaint, and that the DARAB had no jurisdiction since the parties had no tenancy relationship.

In an Order[2] dated October 24, 2002, the RTC granted the petitioners' motion and dismissed the complaint for lack of jurisdiction. The RTC held that the DARAB had jurisdiction, since the subject property was under the CARP, some portions of it were covered by registered CLOAs, and there was *prima facie* showing of tenancy. [3]

Respondents filed a motion for reconsideration. On November 13, 2003, the RTC denied the motion.[4]

Atty. Magbitang filed a Notice of Appeal[5] with the RTC, which gave due course to the same.[6] The records reveal that on December 15, 2003, respondent Elena G. Garcia wrote a letter to Judge Arturo M. Bernardo, Acting Judge of RTC Gapan, Branch 87, stating that they were surprised to receive a communication from the court informing them that their notice of appeal was ready for disposition. She also stated in the letter that there was no formal agreement with Atty. Magbitang as to

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[2] Penned by Judge Victoriano B. Cabanos; *rollo,* pp. 37-38.

[3] *Rollo,* p. 38.

[4] Records, p. 105.

[5] *Id.* at 106.

[6] *Id.* at 108.

whether they would pursue an appeal with the CA, because one of the plaintiffs was still in America.[7]

On February 6, 2007, the CA rendered a Decision in favor of respondents. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, the appeal is hereby GRANTED and the assailed Order dated October 24, 2002 issued by the Regional Trial Court (RTC) of Gapan, Nueva Ecija, Branch 87, is REVERSED and SET ASIDE. Accordingly, the subject complaint is reinstated and the records of the case is (sic) hereby remanded to the RTC for further proceedings.
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> SO ORDERED.[8]

The CA concluded that the dispute between the parties was purely civil, not agrarian, in nature. According to the CA, the allegations in the complaint revealed that the principal relief sought was the nullification of the purported deed of sale and reconveyance of the subject property. It also noted that there was no tenurial, leasehold, or any other agrarian relations between the parties.

Thus, this petition, raising the following issues for the resolution of this Court:

> 1. Whether or not the CA erred in not dismissing the appeal despite the undisputed fact that Atty. Magbitang filed the notice of appeal without respondents' knowledge and consent;
>
> 2. Whether or not the CA erred in giving due course to the appeal despite the fact that Atty. Magbitang's appellants' brief failed to comply with the mandatory requirements of Section 13, Rule 44 of the Rules of Court regarding the contents of an appellants' brief; and
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> 3. Whether or not the CA erred in ruling that the RTC (Regional Trial Court), not the DARAB (Department of Agrarian Reform Adjudication Board) or the PARAD/RARAD (Provincial/Regional

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[7] *Id.* at 109.

[8] *Rollo,* pp. 35-36.

Agrarian Provincial Agrarian Reform Adjudicator), has jurisdiction over respondents' complaint.[9]

The CA did not err in giving due course to the appeal, on both procedural and substantive grounds.

A lawyer who represents a client before the trial court is presumed to represent such client before the appellate court. Section 22 of Rule 138 creates this presumption, thus:

> SEC. 22. *Attorney who appears in lower court presumed to represent client on appeal.* — An attorney who appears *de parte* in a case before a lower court shall be presumed to continue representing his client on appeal, unless he files a formal petition withdrawing his appearance in the appellate court.

A reading of respondent Elena Garcia's letter to the RTC would show that she did not actually withdraw Atty. Magbitang's authority to represent respondents in the case. The letter merely stated that there was, as yet, no agreement that they would pursue an appeal.

In any case, an unauthorized appearance of an attorney may be ratified by the client either expressly or impliedly. Ratification retroacts to the date of the lawyer's first appearance and validates the action taken by him.[10] Implied ratification may take various forms, such as by silence or acquiescence, or by acceptance and retention of benefits flowing therefrom.[11] Respondents' silence or lack of remonstration when the case was finally elevated to the CA means that they have acquiesced to the filing of the appeal.

Moreover, a lawyer is mandated to "serve his client with competence and diligence."[12] Consequently, a lawyer is entreated

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[9] *Id*. at 15.

[10] *Land Bank of the Philippines v. Pamintuan Development Co.*, G.R. No. 167886, October 25, 2005, 474 SCRA 344, 350.

[11] *Chong v. Court of Appeals*, G.R. No. 148280, July 10, 2007, 527 SCRA 144, 160.

[12] Code of Professional Responsibility, Canon 18.

not to neglect a legal matter entrusted to him; otherwise, his negligence in connection therewith shall render him liable.[13] In light of such mandate, Atty. Magbitang's act of filing the notice of appeal without waiting for her clients to direct him to do so was understandable, if not commendable.

The CA was likewise correct in holding that the case is within the jurisdiction of the RTC, not the DARAB.

For the DARAB to have jurisdiction over a case, there must be a tenancy relationship between the parties. It is, therefore, essential to establish all the indispensable elements of a tenancy relationship, to wit: (1) that the parties are the landowner and the tenant or agricultural lessee; (2) that the subject matter of the relationship is an agricultural land; (3) that there is consent between the parties to the relationship; (4) that the purpose of the relationship is to bring about agricultural production; (5) that there is personal cultivation on the part of the tenant or agricultural lessee; and (6) that the harvest is shared between the landowner and the tenant or agricultural lessee.[14]

Basic is the rule that jurisdiction is determined by the allegations in the complaint.[15] Respondents' complaint did not contain any allegation that would, even in the slightest, imply that there was a tenancy relation between them and the petitioners. We are in full agreement with the following findings of the CA on this point:

x x x A reading of the material averments of the complaint reveals that the principal relief sought by plaintiffs-appellants is for the nullification of the supposedly forged deed of sale which resulted in the issuance of TCT No. NT-188664 covering their 8-hectare property as well as its reconveyance, and not for the cancellation of CLOAs as claimed by defendants-appellees. Moreover, the parties

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[13] Code of Professional Responsibility, Canon 18, Rule 18.03.

[14] *Heirs of Julian dela Cruz and Leonora Talaro v. Heirs of Alberto Cruz,* G.R. No. 162890, November 22, 2005, 475 SCRA 743, 758.

[15] *Philippine Veterans Bank v. Court of Appeals,* G.R. No. 132561, June 30, 2005, 462 SCRA 336, 342.

herein have no tenurial, leasehold, or any other agrarian relations whatsoever that could have brought this controversy under the ambit of the agrarian reform laws. Neither were the CLOA awardees impleaded as parties in this case nor the latter's entitlement thereto questioned. Hence, contrary to the findings of the RTC, the herein dispute is purely civil and not agrarian in nature falling within the exclusive jurisdiction of the trial courts.

On the alleged deficiency of the appellants' brief filed before the CA by the respondents, suffice it to state that the requirements in Section 13, Rule 44 are intended to aid the appellate court in arriving at a just and proper resolution of the case. Obviously, the CA found the appellants' brief sufficient in form and substance as the appellate court was able to arrive at a just decision. We have repeatedly held that technical and procedural rules are intended to help secure, not to suppress, substantial justice. A deviation from a rigid enforcement of the rules may, thus, be allowed in order to attain this prime objective for, after all, the dispensation of justice is the core reason for the existence of courts.[16]

WHEREFORE, premises considered, the petition is *DENIED*. The Court of Appeals' Decision dated February 6, 2007 is *AFFIRMED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Velasco, Jr., and *Peralta, JJ.,* concur.

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[16] *Acme Shoes, Rubber & Plastic Corp. v. Court of Appeals,* 329 Phil. 531 (1996).

FIRST DIVISION

[G.R. No. 181084. June 16, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BARTOLOME TAMPUS**[1] **and IDA MONTESCLAROS,** *defendants.* **IDA MONTESCLAROS,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; ACCOMPLICES; REQUISITES IN ORDER THAT A PERSON CAN BE CONSIDERED AN ACCOMPLICE.— Accomplices are persons who, not being included in Article 17 of the Revised Penal Code, cooperate in the execution of the offense by previous or simultaneous acts. The following requisites must be proved in order that a person can be considered an accomplice: (a) community of design, *i.e.*, knowing that criminal design of the principal by direct participation, he concurs with the latter in his purpose; (b) he cooperates in the execution of the offense by previous or simultaneous acts; and, (c) there must be a relation between the acts done by the principal and those attributed to the person charged as accomplice.

2. ID.; ID.; ID.; PRESENT IN CASE AT BAR.— The testimony of ABC establishes that Ida cooperated in the execution of the rape by Tampus when prior to the act of rape by Tampus, she forced ABC to drink beer and she agreed to Tampus' request for him to have sexual intercourse with ABC. Ida's acts show that she had knowledge of and even gave her permission to the plan of Tampus to have sexual intercourse with her daughter. All the requisites concur in order to find Ida guilty as an accomplice to Tampus in the rape of ABC. The testimony of ABC shows that there was community of design between Ida and Tampus to commit the rape of ABC. Ida had knowledge of and assented to Tampus' intention to have sexual intercourse with her daughter. She forced ABC to drink beer, and when ABC was already drunk, she left ABC alone with Tampus, with the knowledge and even with her express consent to Tampus' plan to have sexual intercourse with her daughter.

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[1] Deceased.

3. ID.; ID.; ID.; ID.; THE PREVIOUS ACTS OF COOPERATION BY THE ACCOMPLICE SHOULD NOT BE INDISPENSABLE TO THE COMMISSION OF THE CRIME; CASE AT BAR.— It is settled jurisprudence that the previous acts of cooperation by the accomplice should not be indispensable to the commission of the crime; otherwise, she would be liable as a principal by indispensable cooperation. The evidence shows that the acts of cooperation by Ida are not indispensable to the commission of rape by Tampus. First, because it was both Ida and Tampus who forced ABC to drink beer, and second because Tampus already had the intention to have sexual intercourse with ABC and he could have consummated the act even without Ida's consent. The acts of Ida are closely related to the eventual commission of rape by Tampus. They both forced ABC to drink beer; when ABC was already drunk, Tampus asked Ida if he could have sexual intercourse with ABC and Ida gave her consent; and lastly, Ida left ABC alone with Tampus so that he proceed with his plan to rape ABC.

4. ID.; MITIGATING CIRCUMSTANCES; WHEN SCHIZOPHRENIA MAY BE CONSIDERED MITIGATING; CASE AT BAR.— We agree with both the trial and appellate courts in their appreciation of the mitigating circumstance of illness as would diminish the exercise of willpower of Ida without depriving her of the consciousness of her acts, pursuant to Article 13(9) of the Revised Penal Code. Dr. Costas testified that Ida was provisionally treated for schizophrenia a few months before the incident, from November 11, 1994 to January 12, 1995. Based on his expert opinion, Ida was not totally deprived of intelligence at the time of the incident; but, she may have poor judgment. We have previously held that Schizophrenia may be considered mitigating under Art. 13(9) if it diminishes the exercise of the willpower of the accused. In this case, the testimony of Dr. Costas shows that even though Ida was diagnosed with schizophrenia, she was not totally deprived of intelligence but her judgment was affected. Thus, on the basis of the Medical Certification that Ida suffered from and was treated for schizophrenia a few months prior to the incident, and on the testimony of Dr. Costas, Ida's schizophrenia could be considered to have diminished the exercise of her willpower although it did not deprive her of the consciousness of her acts.

5. ID.; RAPE; AGGRAVATING CIRCUMSTANCES MUST BE ALLEGED AND PROVED FOR THEM TO SERVE AS QUALIFYING CIRCUMSTANCES UNDER ARTICLE 266-B OF THE REVISED PENAL CODE; CASE AT BAR.— We note that in the case at bar, the undisputed fact that Ida is the mother of ABC—who was 13 years old at the time of the incident—could have been considered as a special qualifying circumstance which would have increased the imposable penalty to death, under Article 266-B of the Revised Penal Code. Both the circumstances of the minority and the relationship of the offender to the victim, either as the victim's parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim, must be alleged in the information and proved during the trial in order for them to serve as qualifying circumstances under Article 266-B of the Revised Penal Code. In the case at bar, although the victim's minority was alleged and established, her relationship with the accused as the latter's daughter was not properly alleged in the Information, and even though this was proven during trial and not refuted by the accused, it cannot be considered as a special qualifying circumstance that would serve to increase the penalty of the offender.

6. ID.; ID.; ID.; PROPER PENALTY IN CASE AT BAR.—Under the 2000 Rules of Criminal Procedure, which should be given retroactive effect following the rule that statutes governing court proceedings will be construed as applicable to actions pending and undetermined at the time of their passage, every Information must state the qualifying and the aggravating circumstances attending the commission of the crime for them to be considered in the imposition of the penalty. Since in the case at bar, the Information in Criminal Case No. 013324-L did not state that Ida is the mother of ABC, this circumstance could not be appreciated as a special qualifying circumstance. Ida may only be convicted as an accomplice in the crime of simple rape, which is punishable by *reclusion perpetua*. In any event, Republic Act No. 9346, entitled an "An Act Prohibiting the Imposition of Death Penalty in the Philippines," which was signed into law on June 24, 2006 prohibits the imposition of the death penalty.

7. ID.; ID.; PENALTIES; LIABILITY OF EACH ACCUSED IN A CRIME COMMITTED BY MANY DEPENDS ON THE NATURE AND DEGREE OF HIS PARTICIPATION IN THE COMMISSION OF THE CRIME.— It becomes relevant to determine the particular amount for which each accused is liable when they have different degrees of responsibility in the commission of the crime and, consequently, differing degrees of liability. When a crime is committed by many, each one has a distinct part in the commission of the crime and though all the persons who took part in the commission of the crime are liable, the liability is not equally shared among them. Hence, an accused may be liable either as principal, accomplice or accessory. The particular liability that each accused is responsible for depends on the nature and degree of his participation in the commission of the crime. The penalty prescribed by the Revised Penal Code for a particular crime is imposed upon the principal in a consummated felony. The accomplice is only given the penalty next lower in degree than that prescribed by the law for the crime committed and an accessory is given the penalty lower by two degrees. However, a felon is not only criminally liable, he is likewise civilly liable. Apart from the penalty of imprisonment imposed on him, he is also ordered to indemnify the victim and to make whole the damage caused by his act or omission through the payment of civil indemnity and damages.

8. ID.; ID.; CIVIL LIABILITY ARISING FROM THE CRIME; THE COURTS HAVE THE DISCRETION TO DETERMINE THE APPORTIONMENT OF THE CIVIL INDEMNITY WHICH THE PRINCIPAL, ACCOMPLICE AND ACCESSORY ARE RESPECTIVELY LIABLE FOR, WITHOUT GUIDELINES WITH RESPECT TO THE BASIS OF ALLOTMENT.— Civil liability arising from the crime is shared by all the accused. Although, unlike criminal liability—in which the Revised Penal Code specifically states the corresponding penalty imposed on the principal, accomplice and accessory—the share of each accused in the civil liability is not specified in the Revised Penal Code. The courts have the discretion to determine the apportionment of the civil indemnity which the principal, accomplice and accessory are respectively liable for, without guidelines with respect to the basis of the allotment. Article 109 of the Revised Penal Code

provides that "[i]f there are two or more persons civilly liable for a felony, the courts shall determine the amount for which each must respond." Notwithstanding the determination of the respective liability of the principals, accomplices and accessories within their respective class, they shall also be subsidiarily liable for the amount of civil liability adjudged in the other classes. Article 110 of the Revised Penal Code provides that "[t]he principals, accomplices, and accessories, each within their respective class, shall be liable severally (*in solidum*) among themselves for their quotas, and subsidiarily for those of the other persons liable." As courts are given a free hand in determining the apportionment of civil liability, previous decisions dealing with this matter have been grossly inconsistent.

9. ID.; ID.; ID.; ID.; THE POWER OF THE COURTS TO GRANT INDEMNITY AND DAMAGES DEMANDS FACTUAL, LEGAL AND EQUITABLE JUSTIFICATION.— The cases cited demonstrate the *ad hoc* method by which the ratio of shares of the civil indemnity and damages among the principal, accomplice and accessory is determined. Though the responsibility to decide the respective shares of persons liable for a felony is left to the courts, this does not mean that this amount can be decided arbitrarily or upon conjecture. The power of the courts to grant indemnity and damages demands factual, legal and equitable justification, and cannot be left to speculation and caprice. The entire amount of the civil indemnity, together with the moral and actual damages, should be apportioned among the persons who cooperated in the commission of the crime according to the degree of their liability, respective responsibilities and actual participation in the criminal act.

10. ID.; ID.; ID.; ID.; ID.; THE PERSON WITH GREATER PARTICIPATION IN THE COMMISSION OF THE CRIME SHOULD HAVE A GREATER SHARE IN THE CIVIL LIABILITY THAN THOSE WHO PLAYED A MINOR ROLE IN THE CRIME.— We must stress, however, that the courts' discretion should not be untrammelled and must be guided by the principle behind differing liabilities for persons with varying roles in the commission of the crime. The person with greater participation in the commission of the crime should have a greater share in the civil liability than those who played a minor role in the crime or those who had no participation in the crime

but merely profited from its effects. Each principal should shoulder a greater share in the total amount of indemnity and damages than every accomplice, and each accomplice should also be liable for a greater amount as against every accessory.

11. ID.; ID.; ID.; ID.; ID.; ID.; RULING THAT THE ACCOMPLICE IS SOLIDARILY LIABLE WITH THE PRINCIPAL FOR THE ENTIRE AMOUNT OF THE CIVIL INDEMNITY IS ERRONEOUS.— In the case at bar, the trial court ruled that the accomplice is solidarily liable with the principal for the entire amount of the civil indemnity of ₱50,000.00. This is an erroneous apportionment of the civil indemnity. First, because it does not take into account the difference in the nature and degree of participation between the principal, Tampus, versus the accomplice, Ida. Ida's previous acts of cooperation include her acts of forcing ABC to drink beer and permitting Tampus to have sexual intercourse with her daughter. But even without these acts, Tampus could have still raped ABC. It was Tampus, the principal by direct participation, who should have the greater liability, not only in terms of criminal liability, but also with respect to civil liability. Second, Article 110 of the Revised Penal Code states that the apportionment should provide for a quota amount for every class for which members of such class are solidarily liable within their respective class, and they are only subsidiarily liable for the share of the other classes. The Revised Penal Code does not provide for solidary liability among the different classes, as was held by the trial court in the case at bar.

12. ID.; ID.; ID.; LIABILITY OF PRINCIPAL ACCUSED FOR CIVIL INDEMNITY *EX DELICTO* IS EXTINGUISHED BY REASON OF HIS DEATH BEFORE FINAL JUDGMENT; SUBSIDIARY LIABILITY OF ACCOMPLICE THEREFOR IS ALSO EXTINGUISHED.— Taking into consideration the difference in participation of the principal and accomplice, the principal, Tampus, should be liable for two-thirds (2/3) of the total amount of the civil indemnity and moral damages and appellant Ida should be ordered to pay one-third (1/3) of the amount. Civil indemnity for simple rape was correctly set at ₱50,000.00 and moral damages at ₱50,000.00. The total amount of damages to be divided between Tampus and Ida is ₱100,000.00, where Tampus is liable for ₱66,666.67 (which is two-thirds [2/3] of ₱100,000.00) and Ida is liable for

₱33,333.33 (which is one-third [1/3] of ₱100,000.00). This is broken down into civil indemnity of ₱16,666.67 and moral damages of ₱16,666.67. However, since the principal, Tampus, died while the case was pending in the Court of Appeals, his liability for civil indemnity *ex delicto* is extinguished by reason of his death before the final judgment. His share in the civil indemnity and damages cannot be passed over to the accomplice, Ida, because Tampus' share of the civil liability has been extinguished. And even if Tampus were alive upon the promulgation of this decision, Ida would only have been subsidiarily liable for his share of the civil indemnity of ₱66,666.67. However, since Tampus' civil liability *ex delicto* is extinguished, Ida's subsidiary liability with respect to this amount is also eliminated, following the principle that the accessory follows the principal. Tampus' obligation to pay ₱66,666.67 — his quota of the civil indemnity — is the principal obligation, for which Ida is only subsidiarily liable. Upon the extinguishment of the principal obligation, there is no longer any accessory obligation which could attach to it; thus, the subsidiary liability of Ida is also extinguished.

13. ID.; ID.; ID.; EXEMPLARY DAMAGES WERE INCORRECTLY AWARDED SINCE NO QUALIFYING OR AGGRAVATING CIRCUMSTANCE WAS APPRECIATED AGAINST APPELLANT; CASE AT BAR.— We find that exemplary damages were incorrectly awarded by the Court of Appeals. In criminal cases, exemplary damages are imposed on the offender as part of the civil liability when the crime was committed with one or more aggravating circumstances. Also known as "punitive" or "vindictive" damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrongdoings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. Exemplary damages may be awarded only when one or more aggravating circumstances are alleged in the information and proved during the trial. In the case at bar, no qualifying or aggravating circumstance was appreciated against Ida. Although, the minority of the victim coupled with the fact that the offender is the parent of the victim could have served to qualify the crime of rape, the presence of these concurring circumstances cannot justify the award of exemplary damages since the

relationship of the offender, Ida, to the victim, ABC, was not alleged in the Information. The minority of the rape victim and her relationship with the offender must both be alleged in the information and proved during the trial in order to be appreciated as an aggravating/qualifying circumstance.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for appellant.

D E C I S I O N

PUNO, *C.J.*:

On appeal is the decision[2] of the Court of Appeals, Visayas Station, dated September 29, 2006 in CA-G.R. CR-HC No. 00215. The Court of Appeals affirmed, with modification, the decision[3] of the Regional Trial Court of Lapu-lapu City in Criminal Case No. 013324-L, finding appellant Ida Montesclaros (Ida) guilty as an accomplice in the commission of rape.

The present appeal stems from two criminal cases: (1) Criminal Case No. 013324-L charging Bartolome Tampus (Tampus) and Ida as conspirators in the rape of ABC[4] on April 1, 1995 at

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[2] *Rollo,* pp. 4-24.

[3] CA *rollo,* pp. 24-36.

[4] Pursuant to **Republic Act No. 9262**, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with the real names of her immediate family members, is withheld and fictitious initials instead are used to represent her, to protect her privacy. (*People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 421-426.)

Section 44 of R.A. No. 9262 provides:

SECTION 44. Confidentiality. — All records pertaining to cases of violence against women and their children including those in the *barangay* shall be confidential and all public officers and employees and public or private clinics to hospitals shall respect the right to privacy of the

4:30 p.m.; and (2) Criminal Case No. 013325-L charging Tampus of raping ABC on April 4, 1995 at 1:00 a.m.

The Information[5] in each case reads as follows:

CRIM. CASE NO. 013324-L[6]

That on the 1st day of April 1995, at about 4:30 o'clock [sic] in the afternoon, in Looc, Lapulapu City, Philippines, within the jurisdiction of this Honorable Court, accused Bartolome Tampus, taking advantage that [ABC] was in deep slumber due to drunkenness, did then and there willfully, unlawfully and feloniously have carnal knowledge with [sic] the latter, who was at that time thirteen (13) years old, against her will, in conspiracy with the accused Ida Montesclaros who gave permission to Bartolome Tampus to rape [ABC].

CONTRARY TO LAW.

CRIM. CASE NO. 013325-L[7]

That on the 3rd day of April, 1995,[8] at about 1:00 o'clock [sic] dawn, in Looc, Lapulapu City, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, armed with a wooden club (poras), by means of threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with [sic] [ABC], who was at that time thirteen (13) years old, against her will.

CONTRARY TO LAW.

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victim. Whoever publishes or causes to be published, in any format, the name, address, telephone number, school, business address, employer, or other identifying information of a victim or an immediate family member, without the latter's consent, shall be liable to the contempt power of the court.

x x x x x x x x x

[5] In the Records of this case, the Information is labelled as the Complaint.

[6] Original Records, Vol. 2, pp. 1-3.

[7] *Id.* at Vol. 2, pp. 1-2.

[8] On March 22, 1996, the prosecution filed a motion for leave of court to file an amended complaint stating that the incident of rape happened at one o'clock of dawn of April 4, 1995, and not one o'clock of dawn of April 3, 1995. Finding the motion meritorious, the motion was granted by the RTC in its March 28, 1996 Order; see Original Records, Vol. 2, pp. 26-27.

The offended party, ABC, is the daughter of appellant Ida, and was 13 years old at the time of the incident. Ida worked as a waitress in Bayanihan Beer House in Mabini, Cebu City. On February 19, 1995, Ida and ABC started to rent a room in a house owned by Tampus, a *baranga*y tanod. On April 1, 1995, about 4:30 p.m., ABC testified that she was in the house with Ida and Tampus[9] who were both drinking beer at that time. They forced her to drink beer[10] and after consuming three and one-half (3 ½) glasses of beer, she became intoxicated and very sleepy.[11] While ABC was lying on the floor of their room, she overheard Tampus requesting her mother, Ida, that he be allowed to "*remedyo*"[12] or have sexual intercourse with her.[13] Appellant Ida agreed and instructed Tampus to leave as soon as he finished having sexual intercourse with ABC. Ida then went to work, leaving Tampus alone with ABC. ABC fell asleep and when she woke up, she noticed that the garter of her panties was loose and rolled down to her knees. She suffered pain in her head, thighs, buttocks, groin and vagina, and noticed that her panties and short pants were stained with blood which was coming from her vagina.[14] When her mother arrived home from work the following morning, she kept on crying but appellant Ida ignored her.[15]

ABC testified that on April 4, 1995 around 1:00 a.m., she was left alone in the room since her mother was at work at the beer house.[16] Tampus went inside their room and threatened to kill her if she would report the previous sexual assault to anyone.[17]

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[9] TSN, February 28, 1996, pp. 11-12.

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

[11] *Id*.

[12] "*Remedyo*" is a Visayan term for sexual intercourse; see *rollo,* p. 5.

[13] TSN, February 28, 1996, p. 14.

[14] *Id.* at pp. 14-15.

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

[16] *Id* at p. 17.

[17] *Id.* at p. 18.

He then forcibly removed her panties. ABC shouted but Tampus covered her mouth and again threatened to kill her if she shouted.[18] He undressed himself, spread ABC's legs, put saliva on his right hand and he applied this to her vagina; he then inserted his penis into ABC's vagina and made a push and pull movement.[19] After consummating the sexual act, he left the house. When ABC told appellant Ida about the incident, the latter again ignored her.[20]

On May 4, 1995, after being maltreated by her mother, ABC sought the help of her aunt, Nellie Montesclaros (Nellie). She told Nellie about the rape and that her mother sold her.[21] ABC, together with Nellie and Norma Andales, a traffic enforcer, reported the incident of rape to the police. On May 9, 1995, Nestor A. Sator , M.D. (Dr. Sator), head of the Medico-Legal Branch of the Philippine National Crime Laboratory Services, Regional Unit 7, conducted a physical examination of ABC and issued a Medico-Legal Report.[22] Dr. Sator testified that the result of his examination of ABC revealed a deep healed laceration at the seven (7) o'clock position and a shallow healed laceration at the one (1) o'clock position on ABC's hymen.

On September 22, 1995, ABC filed two Complaints. She accused Tampus of taking advantage of her by having carnal knowledge of her, against her will, while she was intoxicated and sleeping on April 1, 1995 at 4:30 p.m. She declared in her Complaint that this was done in conspiracy with accused Ida who gave permission to Tampus to rape her. And again, she stated that on April 3, 1995, she was threatened with a wooden club by Tampus, who then succeeded in having sexual intercourse with her, against her will.

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[18] *Id.* at p. 20.

[19] *Id.* at pp. 21-22.

[20] *Id.* at p. 23.

[21] TSN, March 19, 1996, p. 43.

[22] Original Records Vol. 1, p. 6.

Tampus denied raping ABC on April 1, 1995. He claimed that at 4:00 p.m. of April 1, 1995, he left the house to go to the public market of Lapu-lapu City. When he arrived home at 6:00 p.m., ABC and Ida were not there as they usually go to the beer house at 4:00 p.m. or 5:00 p.m.[23] He denied forcing ABC to drink beer. He also denied asking Ida to allow him to have sexual intercourse with ABC.[24] Appellant Ida also testified that she and ABC left for the beer house at 4:00 p.m. of April 1, 1995 and they came back at 6:00 a.m. the following day.[25] She said that she always brought her daughter to the beer house with her and there was never an instance when she left her daughter alone in the house.[26] She denied forcing ABC to drink beer at 4:30 p.m. of April 1, 1995, and she denied giving permission to Tampus to have sexual intercourse with ABC.[27]

Tampus also denied raping ABC on April 4, 1995. He testified that he arrived at the *Barangay* Tanod Headquarters between 7:00 p.m. and 8:00 p.m. of April 3, 1995[28] and that his actual duty time shift was from midnight to 5:00 a.m. of April 4, 1995. Guillermo Berdin (Berdin), a defense witness, testified that on April 3, 1995, Tampus reported for duty at the police outpost at 8:00 p.m. and left at 5:00 a.m. of April 4, 1995, as reflected in the attendance logbook. However, on cross-examination, Berdin could not tell whether the signature appearing on the logbook really belonged to Tampus. It was noted by the trial court that the handwriting used by Tampus in the logbook entry on April 2, 1995 is different from his handwriting appearing on April 3, 1995.[29] It was also revealed that the house of Tampus is just 500 meters away or just a three-minute walk from the

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[23] TSN, August 8, 1996, p. 7.

[24] *Id.* at p. 8.

[25] TSN, October 22, 1996, pp. 5-6.

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

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

[28] TSN, August 27, 1996, pp. 15-16.

[29] CA *rollo*, p. 30.

barangay tanod outpost and that the *barangay* tanod on duty could leave the outpost unnoticed or without permission.[30]

Agustos B. Costas, M.D.[31] (Dr. Costas), the Head of the Department of Psychiatry of the Vicente Sotto Memorial Medical Center, issued a Medical Certification,[32] which showed that appellant Ida was treated as an outpatient at the Vicente Sotto Memorial Medical Center Psychiatry Department from November 11, 1994 to January 12, 1995 and was provisionally diagnosed with Schizophrenia, paranoid type.

The trial court convicted Tampus of two counts of rape, as principal in Criminal Case No. 013324-L and Criminal Case No. 013325-L. Appellant Ida was found guilty as an accomplice in Criminal Case No. 013324-L. The trial court appreciated in Ida's favor the mitigating circumstance of illness which would diminish the exercise of will-power without depriving her of the consciousness of her acts, pursuant to Article 13(9) of the Revised Penal Code.[33] The dispositive portion of the trial court's decision states, *viz.*:

WHEREFORE, in the light of the foregoing considerations, the Court finds accused **Bartolome Tampus** GUILTY BEYOND REASONABLE DOUBT of **two counts of rape,** as principals [sic], in Criminal Case No. 013324-L and Criminal Case No. 013325-L and he is hereby sentenced to suffer the penalty of ***Reclusion Perpetua*** **in each of the aforementioned cases.**

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[30] *Id*.

[31] Dr. Costas is a graduate of South Western University in 1965. He is the head of the Psychiatry Department of Vicente Sotto Memorial Medical Center and has been working with the same institution, at the time he testified, for more than 12 years; TSN, September 28, 1998, p. 6.

[32] Original Records, Vol. 1, p. 66.

[33] ARTICLE 13. MITIGATING CIRCUMSTANCES.—The following are mitigating circumstances:

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(9) Such illness of the offender as would diminish the exercise of the will-power of the offender without however depriving him of consciousness of his acts.

The Court also finds accused **Ida Montesclaros** GUILTY BEYOND REASONABLE DOUBT as an accomplice in Criminal Case No. 013324-L, and she is hereby sentenced to suffer the penalty of **twelve (12) years and one (1) day to fourteen (14) years, and eight (8) months of *Reclusion Temporal*.**

Both accused are hereby ordered, jointly and severally, to indemnify the offended party, [ABC], the sum of ₱50,000.00 in Criminal Case No. 013324-L.

With costs against the accused.

SO ORDERED.[34]

Pending resolution of the appeal before the Court of Appeals, accused Tampus died on November 16, 2000[35] and his appeal was dismissed by the Third Division of this Court.[36] Thus, the appeal before the Court of Appeals dealt only with that of appellant Ida. The appellate court gave credence to the testimony of ABC and affirmed the trial court's decision with modification. It appreciated the mitigating circumstance of illness in favor of Ida, but found that Ida failed to prove that she was completely deprived of intelligence on April 1, 1995. On the basis of the medical report and the testimony of the attending physician, Ida's schizophrenia was determined by both the trial court and the Court of Appeals to have diminished the exercise of her will-power though it did not deprive her of the consciousness of her acts. The dispositive portion of the decision of the Court of Appeals states:

WHEREFORE, the instant appeal is ***DISMISSED*** for lack of merit. The assailed decision is **AFFIRMED with MODIFICATION.** Appellant Ida Montesclaros is guilty beyond reasonable doubt as accomplice in the commission of rape and hereby sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day of *prision mayor* as minimum, to twelve (12) years and one (1) day of *reclusion temporal* as maximum. Further, she is **ORDERED** to pay moral

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[34] CA *rollo,* pp. 35-36.

[35] Certificate of Death; CA *rollo,* p. 57.

[36] *Id.* at p. 70.

damages in the amount of fifty thousand pesos (Php 50,000.00) and exemplary damages in the amount of twenty-five thousand pesos (Php 25,000.00).[37]

We find the findings of the lower courts to be well-taken.

The finding of guilt of Ida as an accomplice in the rape of ABC is dependent on proving the guilt of the principal accused. Upon examination of the records of the case, we agree with the ruling of the trial and appellate courts that the testimony of ABC is clear and straightforward, and is sufficient to conclude that Tampus is guilty beyond reasonable doubt as principal in the rape of ABC, in Criminal Case No. 013324-L, as well as to convict appellant Ida as an accomplice in the same criminal case.

The findings of the trial courts carry great weight and respect and, generally, appellate courts will not overturn said findings unless the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case.[38] The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.[39]

The trial court has carefully scrutinized the testimony of complainant ABC and has given full faith and credence to her testimony. Both the trial and appellate courts found that the rape of ABC by Tampus on April 1, 1995 has been established beyond reasonable doubt. Indeed, it is highly inconceivable for a young girl to impute the crime of rape, implicate her own mother in such a vile act, allow an examination of her private parts and subject herself to public trial if she has not been a victim of rape and was impelled to seek justice for the defilement

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[37] *Rollo*, p. 23.

[38] *People v. Manuel Aguilar*, G.R. No. 177749, December 17, 2007, 540 SCRA 509, 522; *People v. Blancaflor*, 466 Phil. 86, 96 (2004).

[39] *People v. Cabugatan*, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 547.

of her person. Testimonies of child-victims are normally given full credit.[40]

Tampus was positively identified by ABC as the person who had carnal knowledge of her against her will on April 1, 1995. The denial of Tampus cannot prevail over the positive and direct identification by the victim, ABC. Although ABC was asleep and unconscious at the time the sexual debasement was committed by Tampus, circumstantial evidence established beyond doubt that it is Tampus who raped ABC. Circumstantial evidence is sufficient for conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[41] In cases like the one at bar, the Court takes into consideration the events that transpired before and after the victim lost consciousness in order to establish the commission of the act of coitus.[42]

The trial court correctly determined, thus:

> The prosecution has clearly established by its evidence that accused Bartolome Tampus had carnal knowledge of [ABC] on April 1, 1995 under the circumstance set forth in Article 335 (2) of the Revised Penal Code, as amended; that is, when the woman is deprived of reason or otherwise unconscious.
>
> x x x x x x x x x
>
> The Court cannot accept accused Bartolome Tampus' defense of denial and alibi. His denial pales in effect against the positive evidence given by [ABC] that he ravished her [on] two occasions.
>
> x x x x x x x x x
>
> It is true that in the first incident on April 1, 1995, [ABC] did not see Tampus lie down with her. What she saw was the aftermath of

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[40] *People v. Patricio Pioquinto,* G.R. No. 168326, April 11, 2007, 520 SCRA 712, 720; *People v. Alvero*, G.R. Nos. 134536-38, April 5, 2000, 329 SCRA 737, 753.

[41] RULES OF COURT, Rule 133, Sec. 4.

[42] *People v. Villanueva*, 459 Phil. 856, 867-868 (2003).

her deflowering upon waking up. Nevertheless, the Court has taken note of the following circumstances: (1) The drinking session where the complainant was forced to drink beer by both accused; (2) The conversation between the two accused when accused Tampus requested accused Ida Montesclaros, and was granted by the latter, permission to have sexual intercourse with the complainant; (3) Accused Tampus and the complainant were the only persons left in the house when Ida Montesclaros went to work after acceding to the request of Tampus; (4) The bloodstained pants, the pain and blood in complainant's vagina and the pain in her head, groin and buttocks; (5) The threat made by accused Tampus on the complainant in the dawn of April 4, 1995 that he would kill her if she would tell about the previous incident on April 1, 1995; and (6) The second incident of rape that immediately ensued. These circumstances form a chain that points to accused Bartolome Tampus as the person who had carnal knowledge of [ABC] when she was asleep in an inebriated condition.[43]

After establishing the guilt of Tampus as principal, the trial court then determined the guilt of Ida. Although Ida was charged as a conspirator, the trial court found her liable as an accomplice. The trial court ruled that her act of forcing or intimidating ABC to drink beer and then acceding to the request of co-accused Tampus to be allowed to have sexual intercourse with ABC did not prove their conspiracy.[44] Hence, it held that, "[u]ndoubtedly, Ida Montesclaros participated in the commission of the crime by previous acts but her participation, not being indispensable, was not that of a principal. She is liable as an accomplice."[45]

In her appeal, appellant Ida argued that it is against human nature for a mother to allow her daughter to be raped. She maintained that there was no instance when she left ABC alone in the house. The Court of Appeals dismissed appellant Ida's appeal as it also gave credence to the testimony of ABC.

In her appeal brief filed before this Court, Ida raises the following assignment of errors:

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[43] CA *rollo*, pp. 32-33.

[44] *Id.* at p. 35.

[45] *Id*.

I

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED BARTOLOME TAMPUS OF THE CRIMES OF RAPE DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT ERRED IN CONVICTING IDA MONTESCLAROS AS ACCOMPLICE TO THE CRIME OF RAPE DESPITE FAILURE OF THE PROSECUTION TO PROVE HER GUILT BEYOND REASONABLE DOUBT.[46]

We affirm the trial and appellate courts in ruling that Ida is liable as an accomplice in the rape of her daughter, ABC.

Accomplices are persons who, not being included in Article 17 of the Revised Penal Code, cooperate in the execution of the offense by previous or simultaneous acts.[47] The following requisites must be proved in order that a person can be considered an accomplice:

(a) community of design, *i.e.*, knowing that criminal design of the principal by direct participation, he concurs with the latter in his purpose;

(b) he cooperates in the execution of the offense by previous or simultaneous acts; and,

(c) there must be a relation between the acts done by the principal and those attributed to the person charged as accomplice.[48]

The testimony of ABC establishes that Ida cooperated in the execution of the rape by Tampus when prior to the act of rape by Tampus, she forced ABC to drink beer and she agreed to Tampus' request for him to have sexual intercourse with ABC. Ida's acts show that she had knowledge of and even gave her

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[46] CA *rollo,* p. 73.

[47] REVISED PENAL CODE, Art. 18.

[48] *People v. Roche,* G.R. No. 115182, April 6, 2000, 330 SCRA 91, 113-144.

permission to the plan of Tampus to have sexual intercourse with her daughter.

During the cross-examination by the defense counsel, Atty. Paulito Cabrera, of witness ABC, she testified that:

Q Before this date, April 1, 1995, did you already usually drink beer?

A No, sir.

Q So, you are telling the Honorable Court that it was only on April 1, 1995 that you first drank beer?

A Yes, sir.

Q What did you say, you were forced to drink beer?

A Yes, sir.

Q Who forced you to drink beer in that afternoon of April 1, 1995?

A Bartolome Tampus and "*Nanay*," my mother.[49]

x x x x x x x x x

Q By the way, your mother proposed to you to drink beer?

A Yes, sir.

Q Before you concede to her proposition, did you not complain that you had not been used to drinking beer and then, why suddenly, she would let you drink beer at that time?

A No, sir.

Q Did you not tell her that, "I am not used to drinking beer, so, I would not drink beer"?

A Because the beer was mixed with Coke.

Q So, you mean that you also agreed to drink beer at that time?

A I just agreed to the proposal of my mother.

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[49] TSN, March 19, 1996, pp. 8-9.

Q But you never voiced any complaint or any refusal to her at that time?

A No, sir because I was afraid that she might maltreat me.

Q At that time when she proposed to you to drink beer, was she already threatening to maltreat you if you would not drink that beer?

A Not yet.

Q And how were you able to conclude that she might maltreat you if you would not drink that beer that she proposed for you to drink?

A Because "*Nanay*" stared at me sharply and she had a wooden stick prepared.

Q Are you sure that she was doing that while she was offering the glass of beer to you?

A Yes, sir.[50]

x x x x x x x x x

Q While you were drinking beer, your mother and Bartolome went out of the house and you overheard Bartolome asking or proposing to your mother that he would have sexual intercourse with you which you term in the Visayan dialect "*remedyo*," Bartolome would want to have a "*remedyo*" with you. When [sic], particular moment did you allegedly hear this statement, while you were drinking beer or after you had finished drinking beer?

A When I was already lying on the floor of the room we were renting.[51]

x x x x x x x x x

Q And, of course, as you have stated now, it was you, you were quite sure that it was you who was being referred by Bartolome Tampus when he said to your mother in the Visayan dialect that "*gusto siya moremedyo nimo*," he wants to have sexual intercourse with you?

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[50] *Id.* at pp. 9-11.

[51] *Id.* at pp. 11-12.

A Yes, sir, but I don't know the meaning of "*remedyo*."

Q At that time, you did not know the meaning of "*remedyo*"?

A Not yet, sir.[52]

x x x x x x x x x

Q Was that the very first time that you ever heard of the word "*remedyo*"?

A Yes, sir.[53]

x x x x x x x x x

Q And when your mother came back from work at about 7:00 o'clock [sic] in the morning of April 2, 1995, did you not also bother to tell her of what you suspected that something serious or bad had happened to you in the previous day?

A Because she already knew, sir.

Q How did you know that she already knew?

A Because I heard her telling Omeng,[54] "After you have sexual intercourse with her, leave her immediately!"[55]

x x x x x x x x x

Q Considering that you never knew what is the meaning of the word, "*remedyo*," when your mother arrived in the morning of April 2, 1995, did you not confront your mother, did you not tell her that, "Is this what you mean by "*remedyo*," as what you had agreed with Bartolome Tampus that he would do something to my genitals?

A No sir, because when she arrived, she kept on laughing.[56]

All the requisites concur in order to find Ida guilty as an accomplice to Tampus in the rape of ABC. The testimony of

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

[53] *Id.* at p. 14.

[54] Omeng is short for the name of the accused, Bartolome Tampus.

[55] TSN, March 19, 1996, p. 19.

[56] *Id.* at p. 20.

ABC shows that there was community of design between Ida and Tampus to commit the rape of ABC. Ida had knowledge of and assented to Tampus' intention to have sexual intercourse with her daughter. She forced ABC to drink beer, and when ABC was already drunk, she left ABC alone with Tampus, with the knowledge and even with her express consent to Tampus' plan to have sexual intercourse with her daughter.

It is settled jurisprudence that the previous acts of cooperation by the accomplice should not be indispensable to the commission of the crime; otherwise, she would be liable as a principal by indispensable cooperation. The evidence shows that the acts of cooperation by Ida are not indispensable to the commission of rape by Tampus. First, because it was both Ida and Tampus who forced ABC to drink beer, and second because Tampus already had the intention to have sexual intercourse with ABC and he could have consummated the act even without Ida's consent.

The acts of Ida are closely related to the eventual commission of rape by Tampus. They both forced ABC to drink beer; when ABC was already drunk, Tampus asked Ida if he could have sexual intercourse with ABC and Ida gave her consent; and lastly, Ida left ABC alone with Tampus so that he proceed with his plan to rape ABC.

Circumstances affecting the liability of the Appellant as an Accomplice

We agree with both the trial and appellate courts in their appreciation of the mitigating circumstance of illness as would diminish the exercise of willpower of Ida without depriving her of the consciousness of her acts, pursuant to Article 13(9) of the Revised Penal Code.

Dr. Costas testified that Ida was provisionally treated for schizophrenia a few months before the incident, from November 11, 1994 to January 12, 1995. Based on his expert opinion, Ida was not totally deprived of intelligence at the time of the incident; but, she may have poor judgment. On Direct Examination of

Dr. Costas by City Prosecutor Celso V. Espinosa, he testified as follows:

Q Doctor, taking into consideration your diagnosis, as you said, is provisional, would you say that the patient [sic] totally deprived of intelligence or reason?

A Not totally.

Q She will be conscious of her acts?

A She may be, that is possible, for certain cause.

Q And there will be loss of intelligence?

A There could be.

Q Now, Doctor, she is charged her [sic] as one of the principals in the commission of the crime of rape for having given her daughter to be sexually abused by her co-accused, allegedly convinced by her co-accused on the first day of April, 1995. Now, if she was then under treatment, Doctor, from November 11, 1994 to January 12, 1995, would you say, Doctor, that having taken this diagnosis for [sic] schizophrenic patient, at the time, after January 12, 1995, she must have acted with discernment?

A It is possible because you are this kind of mental illness even with the treatment, and even without any medication, it may be what we called spontaneous, really it will get back.

Q At that time it will loss the intelligence? [sic]

A I think because it might be back, the treatment should be yearly.

Q Doctor, in your opinion, since our office is very much concern [sic] on this, if a person is totally deprived of intelligence, he has still discernment, she is unconscious of her act, she or he may be exempted from any criminal liability, please tell, Doctor, in your personal opinion for the purpose of this proceedings she may be acting with discernment and with certain degree of intelligence?

A It is possible but I think of a mother feeding her own daughter to somebody, I think there is a motive, she wants to gain financial or material things from the daughter if no material

gain, then perhaps it was borne out of her illness. This is my opinion.[57]

x x x x x x x x x

Q Doctor, is this schizophrenic person can distinguish the right or wrong? [*sic*]

A If they are in the [sic] state of illness, judgment is impaired to discern between right or wrong.

Q In the case of this particular accused, what would you say at the state of her ailment?

A When she was brought to the hospital, Your Honor, I think, although the mother alleged that the sickness could be more than one year duration, it is in acute stage because she was allegedly destroying everything in the house according to the mother, so she was in acute stage.[58]

On cross-examination by Atty. Paulito Cabrera, Dr. Costas testified thus:

Q Would you say, Doctor, that that particular ailment of Ida Montesclaros affected her sense of judgment?

A I think, so.

Q And that being scizophronic [sic] somehow, it has, while in that stage, the patient lost contact with reality?

A Yes, that is possible.

Q In your opinion, Doctor, granting, for the sake of argument, the alleged accusation against her is true, being an expert on scizophrania (sic), could you tell the Honorable Court as a mother, who would allegedly do such an offense to her daughter, is it still in her sound mind or proper mental sane [sic]?

A I think, as I said, one thing to be considered is the motivation if she want [sic] to gain some material things, if not, it is because of her judgment.

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[57] TSN, September 29, 1998, pp. 10-11.

[58] *Id.* at pp. 12-13.

Q If she would not gain anything from allowing her daughter allegedly to be rubbished by another person, then there must be something wrong?

A There must be something wrong and it came up from scizpphrania (sic).

A It is the judgment, in the case of the schizophrenic.[59]

We have previously held that Schizophrenia may be considered mitigating under Art. 13(9) if it diminishes the exercise of the willpower of the accused.[60] In this case, the testimony of Dr. Costas shows that even though Ida was diagnosed with schizophrenia, she was not totally deprived of intelligence but her judgment was affected. Thus, on the basis of the Medical Certification that Ida suffered from and was treated for schizophrenia a few months prior to the incident, and on the testimony of Dr. Costas, Ida's schizophrenia could be considered to have diminished the exercise of her willpower although it did not deprive her of the consciousness of her acts.

We note that in the case at bar, the undisputed fact that Ida is the mother of ABC—who was 13 years old at the time of the incident—could have been considered as a special qualifying circumstance which would have increased the imposable penalty to death, under Article 266-B of the Revised Penal Code, *viz.:*

ARTICLE 266-B. Penalties. —

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian,

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[59] *Id.* at pp. 15-16.

[60] *People v. Villanueva,* G.R. No. 172697, September 25, 2007, 534 SCRA 147, 154; *People v. Pambid,* G.R. No. 124453, March 15, 2000, 328 SCRA 158; *People v. Banez,* G.R. No. 125849, January 20, 1999, 301 SCRA 248, 262.

relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

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Both the circumstances of the minority and the relationship of the offender to the victim, either as the victim's parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim, must be alleged in the information and proved during the trial in order for them to serve as qualifying circumstances under Article 266-B of the Revised Penal Code.[61]

In the case at bar, although the victim's minority was alleged and established, her relationship with the accused as the latter's daughter was not properly alleged in the Information, and even though this was proven during trial and not refuted by the accused, it cannot be considered as a special qualifying circumstance that would serve to increase the penalty of the offender. Under the 2000 Rules of Criminal Procedure, which should be given retroactive effect following the rule that statutes governing court proceedings will be construed as applicable to actions pending and undetermined at the time of their passage,[62] every Information must state the qualifying and the aggravating circumstances attending the commission of the crime for them to be considered in the imposition of the penalty.[63] Since in the case at bar, the

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[61] *People v. Opong*, G.R. No. 177822, June 17, 2008, 554 SCRA 706, 729; *People v. Ching*, G.R. No. 177150, 22 November 2007, 538 SCRA 117, 131.

[62] *People v. Delos Santos*, G.R. No. 135919, May 9, 2003, 403 SCRA 153, 164.

[63] Rule 110, SEC. 8. Designation of the offense. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

SEC. 9. Cause of the accusation. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating

Information in Criminal Case No. 013324-L did not state that Ida is the mother of ABC, this circumstance could not be appreciated as a special qualifying circumstance. Ida may only be convicted as an accomplice in the crime of simple rape, which is punishable by *reclusion perpetua*. In any event, Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," which was signed into law on June 24, 2006 prohibits the imposition of the death penalty.

Civil indemnity imposed against the appellant

The dispositive portion of the trial court's decision ordered Tampus and Ida "jointly and severally, to indemnify the offended party, [ABC], the sum of ₱50,000.00 in Criminal Case No. 013324-L."[64] The Court of Appeals, however, did not award any civil indemnity to ABC, and only awarded moral and exemplary damages. We deem it necessary and proper to award ABC civil indemnity of ₱50,000.00. Civil indemnity *ex delicto* is mandatory upon finding of the fact of rape. This is distinct from moral damages awarded upon such finding without need of further proof, because it is assumed that a rape victim has actually suffered moral injuries entitling the victim to such award.[65]

Consistent with prevailing jurisprudence, the victim in simple rape cases is entitled to an award of ₱50,000.00 as civil indemnity *ex delicto* and another ₱50,000.00 as moral damages.[66] However,

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circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

[64] CA *rollo,* p. 36.

[65] *People v. Calongui*, G.R. No. 170566, March 3, 2006, 484 SCRA 76, 88.

[66] *People v. Alberto Mahinay,* G.R. No. 179190, January 20, 2009; *People v. Restituto Valenzuela,* G.R. No. 182057, February 6, 2009; *People v. Richard Sulima,* G.R. No. 183702, February 10, 2009; *People v. Elmer Baldo,* G.R. No. 175238, February 24, 2009; *People v. Agustin Abellera,* G.R. No. 166617, July 3, 2007, 526 SCRA 329.

Tampus' civil indemnity *ex delicto* has been extinguished by reason of his death before the final judgment, in accordance with Article 89 of the Revised Penal Code.[67] Thus, the amount of civil indemnity which remains for accomplice Ida to pay is put at issue.

It becomes relevant to determine the particular amount for which each accused is liable when they have different degrees of responsibility in the commission of the crime and, consequently, differing degrees of liability. When a crime is committed by many, each one has a distinct part in the commission of the crime and though all the persons who took part in the commission of the crime are liable, the liability is not equally shared among them. Hence, an accused may be liable either as principal, accomplice or accessory.

The particular liability that each accused is responsible for depends on the nature and degree of his participation in the commission of the crime. The penalty prescribed by the Revised Penal Code for a particular crime is imposed upon the principal in a consummated felony.[68] The accomplice is only given the penalty next lower in degree than that prescribed by the law for the crime committed[69] and an accessory is given the penalty lower by two degrees.[70] However, a felon is not only criminally liable, he is likewise civilly liable.[71] Apart from the penalty of imprisonment imposed on him, he is also ordered to indemnify

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[67] REVISED PENAL CODE, Art. 89.

ART. 89. HOW CRIMINAL LIABILITY IS TOTALLY EXTINGUISHED.—Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefore is extinguished only when the death of the offender occurs before final judgment;

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[68] REVISED PENAL CODE, Art. 46.

[69] REVISED PENAL CODE, Art. 52.

[70] REVISED PENAL CODE, Art. 53.

[71] REVISED PENAL CODE, Art. 100.

the victim and to make whole the damage caused by his act or omission through the payment of civil indemnity and damages.

Civil liability arising from the crime is shared by all the accused. Although, unlike criminal liability—in which the Revised Penal Code specifically states the corresponding penalty imposed on the principal, accomplice and accessory—the share of each accused in the civil liability is not specified in the Revised Penal Code. The courts have the discretion to determine the apportionment of the civil indemnity which the principal, accomplice and accessory are respectively liable for, without guidelines with respect to the basis of the allotment.

Article 109 of the Revised Penal Code provides that "[i]f there are two or more persons civilly liable for a felony, the courts shall determine the amount for which each must respond." Notwithstanding the determination of the respective liability of the principals, accomplices and accessories within their respective class, they shall also be subsidiarily liable for the amount of civil liability adjudged in the other classes. Article 110 of the Revised Penal Code provides that "[t]he principals, accomplices, and accessories, each within their respective class, shall be liable severally (*in solidum*) among themselves for their quotas, and subsidiarily for those of the other persons liable."[72]

As courts are given a free hand in determining the apportionment of civil liability, previous decisions dealing with this matter have been grossly inconsistent.

In ***People v. Galapin***,[73] ***People v. Continente***,[74] ***United States v. Lasada***,[75] ***People v. Mobe***,[76] ***People v. Irinea***,[77] ***People v.***

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[72] REVISED PENAL CODE, Art. 110.

[73] G.R. No. 124215, July 31, 1998, 293 SCRA 474.

[74] G.R. Nos. 100801-02, August 25, 2000, 339 SCRA 1.

[75] 21 Phil. 647 (1912).

[76] G.R. No. L-1292, May 24, 1948, 81 SCRA 58.

[77] G.R. Nos. L-44410-11, August 5, 1988, 164 SCRA 121.

Rillorta,[78] ***People v. Cagalingan***,[79] ***People v. Villanueva,***[80] ***People v. Magno***,[81] ***People v. del Rosario***,[82] ***People v. Yrat***,[83] ***People v. Saul***,[84] and ***People v. Tamayo***,[85] the principal and accomplice were ordered to pay jointly and severally the entire amount of the civil indemnity awarded to the victim. In ***People v. Sotto***,[86] the accomplice was ordered to pay half of the amount of civil indemnity imposed by the trial court, while the principal was liable for the other half. In ***People v. Toring***,[87] the principal, accomplice and the accessory were made jointly and severally liable for the entire amount of the civil indemnity.

In the cases mentioned above, the principal and accomplice were made to pay equal shares of the civil indemnity. This makes the accomplice who had less participation in the commission of the crime equally liable with the principal for the civil indemnity. The degree of their participation in the crime was not taken into account in the apportionment of the amount of the civil indemnity. This is contrary to the principle behind the treble division of persons criminally responsible for felonies, *i.e.*, that the liability must be commensurate with the degree of participation of the accused in the crime committed. In such a situation, the accomplice who just cooperated in the execution of the offense but whose participation is not indispensable to the commission of the crime is made to pay the same amount of civil indemnity as the principal by direct participation who took a direct part in the execution of the criminal act. It is an

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[78] G.R. No. 57415, December 15, 1989,180 SCRA 102.

[79] G.R. No. 79168, August 3, 1990, 188 SCRA 313.

[80] G.R. No. 110613, March 26, 1997, 270 SCRA 456.

[81] G.R. No. 134535, January 19, 2000, 322 SCRA 494.

[82] G.R. Nos. 107297-98, December 19, 2000, 348 SCRA 603.

[83] G.R. No. 130415, October 11, 2001, 367 SCRA 154.

[84] G.R. No. 124809, December 19, 2001, 372 SCRA 636.

[85] G.R. No. 138608, September 24, 2002, 389 SCRA 540.

[86] G.R. Nos. 106083-84, March 29, 1996, 255 SCRA 344.

[87] G.R. No. 56358, October 26, 1990, 191 SCRA 38.

injustice when the penalty and liability imposed are not commensurate to the actual responsibility of the offender; for criminal responsibility is individual and not collective, and each of the participants should be liable only for the acts actually committed by him.[88] The proportion of this individual liability must be graduated not only according to the nature of the crime committed and the circumstances attending it, but also the degree and nature of participation of the individual offender.

In ***Garces v. People***,[89] ***People v. Flores***,[90] ***People v. Barbosa***,[91] ***People v. Ragundiaz***,[92] ***People v. Bato***,[93] and ***People v. Garalde***,[94] the accomplice was held to be solidarily liable with the principal for only one-half (1/2) of the amount adjudged as civil indemnity. In **Garces**, the accomplice was held solidarily liable for half of the civil indemnity *ex delicto* but was made to pay the moral damages of ₱50,000.00 separately from the principal. In ***Flores***, ***Ragundiaz***, ***Bato***, and ***Garalde***, the accomplice was held solidarily liable for half of the combined amounts of the civil indemnity *ex delicto* and moral damages. In ***Ragundiaz***, the accomplice was also made solidarily liable with the principal for half of the actual damages, and in ***Garalde*** the accomplice was also held solidarily liable with the principal for half of the exemplary damages, aside from the civil and moral damages.

In these cases, the accomplice was made jointly and severally liable with the principal for only half of the amount of the civil indemnity and moral damages, only for purposes of the enforcement of the payment of civil indemnity to the offended party. When the liability *in solidum* has been enforced, as when payment has been made, the person by whom payment has

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[88] *United States v. Magcomot*, 13 Phil. 386, 390 (1909).

[89] G.R. No. 173858, July 17, 2007, 527 SCRA 827.

[90] Phil. 532, 552 (2000).

[91] G.R. No. L-39779, November 7, 1978, 86 SCRA 217.

[92] G.R. No. 124977, June 22, 2000, 334 SCRA 193.

[93] G.R. No. 127843, December 15, 2000, 348 SCRA 253.

[94] G.R. No. 173055, April 13, 2007, 521 SCRA 327.

been made shall have a right of action against the other persons liable for the amount of their respective shares.[95] As against each other, whoever made the payment may claim from his co-debtors only the share that corresponds to each, with interest for the payment already made.[96] In these cases, therefore, payment is made by either the principal or the accomplice, the one who made the payment to the victim could demand payment of the part of the debt corresponding to his co-debtor. If for example the principal paid the victim the entire amount of the civil indemnity, he could go against the accomplice for one-fourth (1/4) of the total amount of civil indemnity and damages. The principal was primarily liable for only one-half (1/2) of the total amount of civil indemnity and he was solidarily liable with the accomplice for the other half. Since the principal paid for the half which the accomplice is solidarily liable with, he could claim one-half (1/2) of that amount from the accomplice. Thus, the principal would have become ultimately liable for three-fourths (3/4) of the total amount of the civil indemnity and damages, while the accomplice would have become liable for one-fourth (1/4) of such amount.

In ***People v. Cortes***,[97] ***People v. Budol***,[98] ***People v. Nulla***,[99] and ***People v. Madali***,[100] the principal was ordered to pay twice the share of the accomplice in the civil indemnity. In ***Nulla***, the Court determined the respective amounts for which the principal, accomplice and accessory were liable for. The principal was ordered to pay ₱20,000.00, the accomplice was ordered to pay ₱10,000.00, and the accessory was ordered to pay ₱2,000.00. Unlike the cases cited above where the principal and accomplice were held solidarily liable for the entire amount of the civil indemnity or half of it, in ***Nulla***, the court particularly determined

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[95] REVISED PENAL CODE, Art. 110.

[96] CIVIL CODE, Art. 1217.

[97] 55 Phil. 143, 150 (2000).

[98] 227 Phil. 225 (1986).

[99] G.R. No. 69346, August 31, 1987, 153 SCRA 471.

[100] G.R. Nos. 67803-04, July 30, 1990, 188 SCRA 69.

the amount for which each shall respond. This is consistent with Article 109 and Article 110 of the Revised Penal Code, which require that the courts should determine the amount for which the principals, accomplices and accessories must respond to and upon specifying this amount, the principals are solidarily liable within their class for their quota, the accomplices are solidarily liable among themselves for their quota and the accessories are solidarily liable for their quota. If any one of the classes is unable to pay for its respective quota, it becomes subsidiarily liable for the quota of the other classes, which shall be enforced first against the property of the principals; next, against that of the accomplices; and lastly, against that of the accessories.[101]

There are also cases where the principal was ordered to pay more than double the amount that the accomplice is liable for. In ***Lumiguis v. People***,[102] the civil liability of ₱6,000.00 was apportioned as follows: the sole principal was primarily liable for ₱3,000.00, the four accomplices were primarily liable *in solidum* among themselves for the other half of the indemnity, or ₱3,000.00. Thus, each accomplice was answerable for one-fourth (1/4) of ₱3,000.00 or one-eighth (1/8) of the entire amount of civil indemnity, which is ₱750.00.

Similarly in ***People v. Bantagan***,[103] the principal was required to indemnify the heirs of the deceased in the amount of ₱500.00. In case of his insolvency, his three accomplices should be jointly and severally liable. The three accomplices were jointly and severally liable for the other ₱500 and in case of their insolvency the principal was secondarily liable for such amount.

In ***People v. Castillo***,[104] the accomplice was ordered to pay one-fourth (1/4) of the amount of the civil indemnity, while the principal was liable for the remaining three-fourths (3/4).

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[101] REVISED PENAL CODE, Article 110.

[102] G.R. No. L-20338, April 27, 1967, 19 SCRA 842, 847.

[103] 54 Phil. 834 (1930).

[104] G.R. No. L-32864, March 8, 1989, 171 SCRA 30.

In ***People v. Cariaga***,[105] the total amount of indemnity and damages due to the heirs of the victim amounted to ₱601,000.00. The sole accomplice was ordered to pay ₱101,000.00 which is roughly one-sixth (1/6) of the entire civil indemnity, while the two principals were ordered to pay the rest of the indemnity and damages amounting to ₱500,000.00.

The cases cited above demonstrate the *ad hoc* method by which the ratio of shares of the civil indemnity and damages among the principal, accomplice and accessory is determined. Though the responsibility to decide the respective shares of persons liable for a felony is left to the courts, this does not mean that this amount can be decided arbitrarily or upon conjecture. The power of the courts to grant indemnity and damages demands factual, legal and equitable justification, and cannot be left to speculation and caprice.

The entire amount of the civil indemnity, together with the moral and actual damages, should be apportioned among the persons who cooperated in the commission of the crime according to the degree of their liability, respective responsibilities and actual participation in the criminal act. Salvador Viada, an authority in criminal law, is of the opinion that there are no fixed rules which are applicable in all cases in order to determine the apportionment of civil liability among two or more persons civilly liable for a felony, either because there are different degrees of culpability of offenders, or because of the inequality of their financial capabilities.[106] On this note, he states in his commentaries

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[105] G.R. No. 135029, September 12, 2003, 411 SCRA 40.

[106] SALVADOR VIADA, *CODIGO PENAL REFORMADO DE 1870, Con Las Variaciones Introducias En El Mismo, Comentado* 4th ed. 1890, *Tomo* I, p. 549.

The Spanish text provides, *viz.,:*

Pues bien, cuando tal ocurra, como quiera que no cabe determinar reglas fijas que resuelvan todos los casos, ora por ser distintos los grados de culpabilidad de los delincuentes, ora por la desigualdad de sus fortunas, ha creído conveniente la Ley dejar la resolución de cada caso al prudente arbitrio de los Tribunales, determinado que éstos señalaran la cuota de que deba responder

on the 1870 Penal Code of Spain that the law should leave the determination of the amount of respective liabilities to the discretion of the courts.[107] The courts have the competence to determine the exact participation of the principal, accomplice, and accessory in the commission of the crime relative to the other classes because they are able to directly consider the evidence presented and the unique opportunity to observe the witnesses.

We must stress, however, that the courts' discretion should not be untrammelled and must be guided by the principle behind differing liabilities for persons with varying roles in the commission of the crime. The person with greater participation in the commission of the crime should have a greater share in the civil liability than those who played a minor role in the crime or those who had no participation in the crime but merely profited from its effects. Each principal should shoulder a greater share in the total amount of indemnity and damages than every accomplice, and each accomplice should also be liable for a greater amount as against every accessory. Care should also be taken in considering the number of principals versus that of accomplices and accessories. If for instance, there are four principals and only one accomplice and the total of the civil indemnity and damages is ₱6,000.00, the court cannot assign two-thirds (2/3) of the indemnity and damages to the principals and one-third (1/3) to the accomplice. Even though the principals, as a class, have a greater share in the liability as against the accomplice—since one-third (1/3) of ₱6,000.00 is ₱2,000.00, while two-thirds (2/3) of ₱6,000.00 is ₱4,000.00—when the civil liability of every person is computed, the share of the accomplice ends up to be greater than that of each principal. This is so because the two-thirds (2/3) share of the principals—or ₱4,000.00—is still divided among all the four principals, and thus every principal is liable for only ₱1,000.00.

In the case at bar, the trial court ruled that the accomplice is solidarily liable with the principal for the entire amount of the

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cada uno de los que en el hecho participación ó intervención tuveiron.

[107] *Id.*

civil indemnity of ₱50,000.00. This is an erroneous apportionment of the civil indemnity. First, because it does not take into account the difference in the nature and degree of participation between the principal, Tampus, versus the accomplice, Ida. Ida's previous acts of cooperation include her acts of forcing ABC to drink beer and permitting Tampus to have sexual intercourse with her daughter. But even without these acts, Tampus could have still raped ABC. It was Tampus, the principal by direct participation, who should have the greater liability, not only in terms of criminal liability, but also with respect to civil liability. Second, Article 110 of the Revised Penal Code states that the apportionment should provide for a quota amount for every class for which members of such class are solidarily liable within their respective class, and they are only subsidiarily liable for the share of the other classes. The Revised Penal Code does not provide for solidary liability among the different classes, as was held by the trial court in the case at bar.

Thus, taking into consideration the difference in participation of the principal and accomplice, the principal, Tampus, should be liable for two-thirds (2/3) of the total amount of the civil indemnity and moral damages and appellant Ida should be ordered to pay one-third (1/3) of the amount. Civil indemnity for simple rape was correctly set at ₱50,000.00 and moral damages at ₱50,000.00. The total amount of damages to be divided between Tampus and Ida is ₱100,000.00, where Tampus is liable for ₱66,666.67 (which is two-thirds [2/3] of ₱100,000.00) and Ida is liable for ₱33,333.33 (which is one-third [1/3] of ₱100,000.00). This is broken down into civil indemnity of ₱16,666.67 and moral damages of ₱16,666.67. However, since the principal, Tampus, died while the case was pending in the Court of Appeals, his liability for civil indemnity *ex delicto* is extinguished by reason of his death before the final judgment.[108] His share in the civil indemnity and damages cannot be passed over to the accomplice, Ida, because Tampus' share of the civil liability has been extinguished. And even if Tampus were alive upon the promulgation of this decision, Ida would only

[108] *Supra,* note 67.

have been subsidiarily liable for his share of the civil indemnity of ₱66,666.67. However, since Tampus' civil liability *ex delicto* is extinguished, Ida's subsidiary liability with respect to this amount is also eliminated, following the principle that the accessory follows the principal. Tampus' obligation to pay ₱66,666.67 — his quota of the civil indemnity — is the principal obligation, for which Ida is only subsidiarily liable. Upon the extinguishment of the principal obligation, there is no longer any accessory obligation which could attach to it; thus, the subsidiary liability of Ida is also extinguished.

On the matter of exemplary damages, we find that exemplary damages were incorrectly awarded by the Court of Appeals.

In criminal cases, exemplary damages are imposed on the offender as part of the civil liability when the crime was committed with one or more aggravating circumstances.[109] Also known as "punitive" or "vindictive" damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrongdoings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct.[110] Exemplary damages may be awarded only when one or more aggravating circumstances are alleged in the information and proved during the trial.[111]

In the case at bar, no qualifying or aggravating circumstance was appreciated against Ida. Although, the minority of the victim coupled with the fact that the offender is the parent of the victim could have served to qualify the crime of rape, the presence of these concurring circumstances cannot justify the award of

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[109] CIVIL CODE, Art. 2230.

[110] *People v. Orilla*, G.R. Nos. 148939-40, February 13, 2004, 422 SCRA 620, 643, citing *People v. Catubig*, G.R. No. 137842, August 23, 2001, 363 SCRA 621.

[111] *People v. Opong*, G.R. No. 177822, June 17, 2008, 554 SCRA 706; *People v. Cachapero*, G.R. No. 153008, May 20, 2004, 428 SCRA 744, 758, citing *Talay v. Court of Appeals*, 446 Phil. 256, 278-279 (2003); *People v. Villanueva*, 440 Phil. 409, 425 (2002); *People v. Catubig*, 416 Phil. 102, 119 (2001).

exemplary damages since the relationship of the offender, Ida, to the victim, ABC, was not alleged in the Information.[112] The minority of the rape victim and her relationship with the offender must both be alleged in the information and proved during the trial in order to be appreciated as an aggravating/qualifying circumstance.[113] While the information in the instant case alleged that ABC was a minor during the incident, there was no allegation that Ida was her parent. Since the relationship between ABC and appellant was not duly established, the award of exemplary damages is not warranted.

IN VIEW WHEREOF, the Decision of the Court of Appeals, Visayas Station, dated September 29, 2006, in CA-G.R. CR-HC No. 00215, finding appellant Ida Montesclaros guilty beyond reasonable doubt as accomplice in the crime of rape and sentencing her to suffer the indeterminate penalty of ten (10) years and one (1) day of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal,* as maximum, is *AFFIRMED* with *MODIFICATION*. Appellant Ida Montesclaros is *ORDERED* to pay civil indemnity in the amount of sixteen thousand, six hundred sixty-six pesos and sixty-seven centavos (₱16,666.67), and moral damages in the amount of sixteen thousand, six hundred sixty-six pesos and sixty-seven centavos (₱16,666.67). The award of exemplary damages is *DELETED*.

SO ORDERED.

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

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[112] RULES OF COURT, Rule 110, SEC. 8.

[113] *People v. Ching*, G.R. No. 177150, 22 November 2007, 538 SCRA 117, 131.

EN BANC

[G.R. No. 187883. June 16, 2009]

ATTY. OLIVER O. LOZANO and ATTY. EVANGELINE J. LOZANO-ENDRIANO, *petitioners, vs.* **SPEAKER PROSPERO C. NOGRALES, Representative, Majority, House of Representatives,** *respondent.*

[G.R. No. 187910. June 16, 2009]

LOUIS "BAROK" C. BIRAOGO, *petitioner, vs.* **SPEAKER PROSPERO C. NOGRALES, Speaker of the House of Representatives, Congress of the Philippines,** *respondent.*

SYLLABUS

1. POLITICAL LAW; 1987 CONSTITUTION; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; THE "CASE-OR-CONTROVERSY" REQUIREMENT BANS THE COURT FROM DECIDING "ABSTRACT, HYPOTHETICAL OR CONTINGENT QUESTIONS," LEST THE COURT GIVE OPINIONS IN THE NATURE OF ADVICE CONCERNING LEGISLATIVE OR EXECUTIVE ACTIONS.— It is well settled that it is the duty of the judiciary to say what the law is. The determination of the nature, scope and extent of the powers of government is the exclusive province of the judiciary, such that any mediation on the part of the latter for the allocation of constitutional boundaries would amount, not to its supremacy, but to its mere fulfillment of its "solemn and sacred obligation" under the Constitution. This Court's power of review may be awesome, but it is limited to actual cases and controversies dealing with parties having adversely legal claims, to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. **The "case-or-controversy" requirement bans this court from deciding "abstract, hypothetical or contingent questions," lest the court give opinions in the nature of advice concerning legislative or executive action.** In the illuminating words of the learned Justice Laurel in ***Angara v. Electoral Commission****:* Any attempt at abstraction could only

lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. Narrowed as its function is in this manner, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.

2. ID.; ID.; ID.; ID.; AN ASPECT OF THE "CASE OR CONTROVERSY" REQUIREMENT IS THE REQUISITE OF "RIPENESS."— An aspect of the "case-or-controversy" requirement is the requisite of **"ripeness."** In the United States, courts are centrally concerned with whether a case involves uncertain contingent future events that may not occur as anticipated, or indeed may not occur at all. Another approach is the evaluation of the **twofold** aspect of ripeness: first, the fitness of the issues for judicial decision; and second, the hardship to the parties entailed by withholding court consideration. In our jurisdiction, the issue of ripeness is generally treated in terms of actual injury to the plaintiff. Hence, a question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. An alternative road to review similarly taken would be to determine whether an action has already been accomplished or performed by a branch of government before the courts may step in.

3. ID.; ID.; ID.; ID.; THE FITNESS OF PETITIONER'S CASE FOR THE EXERCISE OF JUDICIAL REVIEW IS GROSSLY LACKING; PETITIONERS HAVE NOT SUFFICIENTLY PROVEN ANY ADVERSE INJURY OR HARDSHIP FROM THE ACT COMPLAINED OF AND NO PROPOSAL HAS YET BEEN MADE, HENCE, NO USURPATION OF POWER OR GROSS ABUSE OF DISCRETION HAS YET TAKEN PLACE.— In the present case, the fitness of petitioners' case for the exercise of judicial review is grossly lacking. In the **first place**, petitioners have not sufficiently proven any adverse injury or hardship from the act complained of. In the second place,

House Resolution No. 1109 only resolved that the House of Representatives shall convene at a future time for the purpose of proposing amendments or revisions to the Constitution. No actual convention has yet transpired and no rules of procedure have yet been adopted. **More importantly**, no proposal has yet been made, and hence, no usurpation of power or gross abuse of discretion has yet taken place.

4. ID.; ID.; ID.; ID.; HOUSE RESOLUTION NO.1109 INVOLVES A QUINTESSENTIAL EXAMPLE OF AN UNCERTAIN CONTINGENT FUTURE EVENT THAT MAY OCCUR AS ANTICIPATED. OR INDEED MAY NOT OCCUR AT ALL; THE HOUSE HAS NOT YET PERFORMED A POSITIVE ACT THAT WOULD WARRANT AN INTERVENTION FROM THE COURT.— In short, House Resolution No. 1109 involves a quintessential example of an uncertain contingent future event that may not occur as anticipated, or indeed may not occur at all. The House has not yet performed a positive act that would warrant an intervention from this Court. ***Tan v. Macapagal*** presents a similar factual milieu. In said case, petitioners filed a petition assailing the validity of the Laurel-Langley resolution, which dealt with the range of authority of the 1971 Constitutional Convention. The court resolved the issue thus: More specifically, as long as any proposed amendment is still unacted on by it, there is no room for the interposition of judicial oversight. Only after it has made concrete what it intends to submit for ratification may the appropriate case be instituted. Until then, the courts are devoid of jurisdiction. That is the command of the Constitution as interpreted by this Court. Unless and until such a doctrine loses force by being overruled or a new precedent being announced, it is controlling. It is implicit in the rule of law.

5. ID.; ID.; ID.; ID.; *LOCUS STANDI*; THE LACK OF PETITIONER'S PERSONAL STAKE IN THE CASE IS NO MORE EVIDENT THAN IN PETITIONERS' THREE-PAGE PETITION THAT IS DEVOID OF ANY LEGAL OR JURISPRUDENTIAL BASIS.— Yet another requisite rooted in the very nature of judicial power is *locus standi* or standing to sue. Thus, generally, a party will be allowed to litigate only when he can demonstrate that (1) he has personally suffered some actual or threatened injury because of the allegedly illegal

conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by the remedy being sought. In the cases at bar, petitioners have not shown the elemental injury in fact that would endow them with the standing to sue. *Locus standi* requires a personal stake in the outcome of a controversy for significant reasons. **It assures adverseness and sharpens the presentation of issues for the illumination of the Court in resolving difficult constitutional questions.** The lack of petitioners' personal stake in this case is no more evident than in Lozano's three-page petition that is devoid of any legal or jurisprudential basis.

6. ID.; ID.; ID.; ID.; NEITHER CAN THE LACK OF *LOCUS STANDI* BE CURED BY THE CLAIM OF PETITIONERS THAT THEY ARE INSTITUTING THE CASE AT BAR AS TAXPAYERS AND CONCERNED CITIZENS; IT IS UNDISPUTED THAT THERE HAS BEEN NO ALLOCATION OR DISBURSEMENT OF PUBLIC FUNDS IN CASE AT BAR.— Neither can the lack of *locus standi* be cured by the claim of petitioners that they are instituting the cases at bar as taxpayers and concerned citizens. A taxpayer's suit requires that the act complained of directly involves the illegal disbursement of public funds derived from taxation. **It is undisputed that there has been no allocation or disbursement of public funds in this case as of yet.** To be sure, standing as a citizen has been upheld by this Court in cases where a petitioner is able to craft an issue of transcendental importance or when paramount public interest is involved. While the Court recognizes the *potential* far-reaching implications of the issue at hand, the possible consequence of House Resolution No. 1109 is yet *unrealized* and does not infuse petitioners with *locus standi* under the "transcendental importance" doctrine.

7. ID.; ID.; ID.; ID.; THE RULE ON *LOCUS STANDI* IS NOT A PLAIN PROCEDURAL RULE BUT A CONSTITUTIONAL REQUIREMENT DERIVED FROM SECTION 1, ARTICLE VIII OF THE CONSTITUTION, WHICH MANDATES COURTS OF JUSTICE TO SETTLE ONLY ACTUAL CONTROVERSIES INVOLVING RIGHTS WHICH ARE LEGALLY DEMANDABLE AND ENFORCEABLE.— The rule on *locus standi* is not a plain

procedural rule but a constitutional requirement derived from Section 1, Article VIII of the Constitution, which mandates courts of justice to settle *only* "actual controversies involving rights which are legally demandable and enforceable." As stated in ***Kilosbayan, Incorporated v. Guingona, Jr.***, *viz.*: x x x [C]ourts are neither free to decide *all* kinds of cases dumped into their laps nor are they free to open their doors to *all* parties or entities claiming a grievance. The rationale for this constitutional requirement of *locus standi* is by no means trifle. It is intended "to assure a vigorous adversary presentation of the case, and, perhaps more importantly to warrant the judiciary's overruling the determination of a coordinate, democratically elected organ of government." It thus goes to the very essence of representative democracies. x x x A lesser but not insignificant reason for screening the standing of persons who desire to litigate constitutional issues is economic in character. Given the sparseness of our resources, the capacity of courts to render efficient judicial service to our people is severely limited. For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice. To be sure, this is an evil that clearly confronts our judiciary today.

8. ID.; ID.; ID.; ID.; WHILE THE COURT HAS TAKEN AN INCREASING LIBERAL APPROACH TO THE RULE OF *LOCUS STANDI*, EVOLVING FROM THE STRINGENT REQUIREMENTS OF "PERSONAL INJURY" TO THE BROADER "TRANSCENDENTAL IMPORTANCE" DOCTRINE, SUCH LIBERALITY IS NOT TO BE ABUSED; IT IS NOT AN OPEN INVITATION FOR THE IGNORANT AND THE IGNOBLE TO FILE PETITIONS THAT PROVE NOTHING BUT THEIR CEREBRAL DEFICIT.— While the Court has taken an increasingly liberal approach to the rule of *locus standi*, evolving from the stringent requirements of "personal injury" to the broader "transcendental importance" doctrine, such liberality is not to be abused. It is not an open invitation for the ignorant and the ignoble to file petitions that prove nothing but their cerebral deficit. In the final scheme, judicial review is effective largely because it is not available simply at the behest of a partisan faction, but is exercised only to remedy

a particular, concrete injury. When warranted by the presence of indispensible minimums for judicial review, this Court shall not shun the duty to resolve the constitutional challenge that may confront it.

APPEARANCES OF COUNSEL

Lozano & Lozano Law Office for petitioners.

R E S O L U T I O N

PUNO, *C.J.*:

This Court, so long as the fundamentals of republicanism continue to guide it, shall not shirk its bounden duty to wield its judicial power 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 a lack or excess of jurisdiction on the part of any branch or instrumentality of the government."[1] Be that as it may, no amount of exigency can make this Court exercise a power where it is not proper.

The two petitions, filed by their respective petitioners in their capacities as concerned citizens and taxpayers, prayed for the nullification of House Resolution No. 1109 entitled "*A Resolution Calling upon the Members of Congress to Convene for the Purpose of Considering Proposals to Amend or Revise the Constitution, Upon a Three-fourths Vote of All the Members of Congress*." In essence, both petitions seek to trigger a justiciable controversy that would warrant a definitive interpretation by this Court of Section 1, Article XVII, which provides for the procedure for amending or revising the Constitution. Unfortunately, this Court cannot indulge petitioners' supplications. While some may interpret petitioners' moves as vigilance in preserving the rule of law, a careful perusal of their petitions would reveal that they cannot hurdle the bar of

[1] Article VIII, Section 1, 1987 Constitution.

justiciability set by this Court before it will assume jurisdiction over cases involving constitutional disputes.

It is well settled that it is the duty of the judiciary to say what the law is.[2] The determination of the nature, scope and extent of the powers of government is the exclusive province of the judiciary, such that any mediation on the part of the latter for the allocation of constitutional boundaries would amount, not to its supremacy, but to its mere fulfillment of its "solemn and sacred obligation" under the Constitution.[3] This Court's power of review may be awesome, but it is limited to actual cases and controversies dealing with parties having adversely legal claims, to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented.[4] **The "case-or-controversy" requirement bans this court from deciding "abstract, hypothetical or contingent questions,"**[5] **lest the court give opinions in the nature of advice concerning legislative or executive action.**[6] In the illuminating words of the learned Justice Laurel in ***Angara v. Electoral Commission***[7]:

> Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. Narrowed as its function is in this manner, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.

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[2] *Marbury v. Madison*, 1 Cranch 137, 2L. Ed. 60 [1803].

[3] *Angara v. Electoral Commission*, 63 Phil. 139 (1936).

[4] *Ibid*.

[5] *Alabama State Fed. of Labor v. McAdory*, 325 U.S. 450 461 (1945).

[6] *Muskrat v. United States*, 219 U.S. 346, 362 (1911).

[7] *Supra*, *see* note 3.

An aspect of the "case-or-controversy" requirement is the requisite of "**ripeness**." In the United States, courts are centrally concerned with whether a case involves uncertain contingent future events that may not occur as anticipated, or indeed may not occur at all.[8] Another approach is the evaluation of the **twofold** aspect of ripeness: first, the fitness of the issues for judicial decision; and second, the hardship to the parties entailed by withholding court consideration.[9] In our jurisdiction, the issue of ripeness is generally treated in terms of actual injury to the plaintiff. Hence, a question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it.[10] An alternative road to review similarly taken would be to determine whether an action has already been accomplished or performed by a branch of government before the courts may step in.[11]

In the present case, the fitness of petitioners' case for the exercise of judicial review is grossly lacking. In the **first place**, petitioners have not sufficiently proven any adverse injury or hardship from the act complained of. In the second place, House Resolution No. 1109 only resolved that the House of Representatives shall convene at a future time for the purpose of proposing amendments or revisions to the Constitution. No actual convention has yet transpired and no rules of procedure have yet been adopted. **More importantly**, no proposal has yet been made, and hence, no usurpation of power or gross abuse of discretion has yet taken place. **In short, House Resolution No. 1109 involves a quintessential example of an uncertain contingent future event that may not occur as anticipated, or indeed may not occur at all. The House has not yet performed a positive act that would warrant an intervention from this Court.**

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[8] Tribe, *American Constitutional Law*, 3rd ed. 2000, p. 335.

[9] *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967).

[10] *Guingona, Jr. v. Court of Appeals*, 354 Phil. 415, 427-428 (1998).

[11] *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 901-902 (2003).

Tan v. Macapagal presents a similar factual milieu. In said case, petitioners filed a petition assailing the validity of the Laurel-Langley resolution, which dealt with the range of authority of the 1971 Constitutional Convention. The court resolved the issue thus:

> More specifically, as long as any proposed amendment is still unacted on by it, there is no room for the interposition of judicial oversight. Only after it has made concrete what it intends to submit for ratification may the appropriate case be instituted. Until then, the courts are devoid of jurisdiction. That is the command of the Constitution as interpreted by this Court. Unless and until such a doctrine loses force by being overruled or a new precedent being announced, it is controlling. It is implicit in the rule of law.[12]

Yet another requisite rooted in the very nature of judicial power is *locus standi* or standing to sue. Thus, generally, a party will be allowed to litigate only when he can demonstrate that (1) he has personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by the remedy being sought.[13] In the cases at bar, petitioners have not shown the elemental injury in fact that would endow them with the standing to sue. *Locus standi* requires a personal stake in the outcome of a controversy for significant reasons. **It assures adverseness and sharpens the presentation of issues for the illumination of the Court in resolving difficult constitutional questions**.[14] The lack of petitioners' personal stake in this case is no more evident than in Lozano's three-page petition that is devoid of any legal or jurisprudential basis.

Neither can the lack of *locus standi* be cured by the claim of petitioners that they are instituting the cases at bar as taxpayers and concerned citizens. A taxpayer's suit requires

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[12] G.R. No. L-34161, February 29, 1972, 43 SCRA 677, 682.

[13] *Tolentino v. COMELEC*, 465 Phil. 385, 402 (2004).

[14] *Kilosbayan, Incorporated v. Morato*, G.R. No. 118910, July 17, 1995, 246 SCRA 540.

that the act complained of directly involves the illegal disbursement of public funds derived from taxation.[15] **It is undisputed that there has been no allocation or disbursement of public funds in this case as of yet**. To be sure, standing as a citizen has been upheld by this Court in cases where a petitioner is able to craft an issue of transcendental importance or when paramount public interest is involved.[16] While the Court recognizes the *potential* far-reaching implications of the issue at hand, the possible consequence of House Resolution No. 1109 is yet *unrealized* and does not infuse petitioners with *locus standi* under the "transcendental importance" doctrine.

The rule on *locus standi* is not a plain procedural rule but a constitutional requirement derived from Section 1, Article VIII of the Constitution, which mandates courts of justice to settle *only* "actual controversies involving rights which are legally demandable and enforceable." As stated in ***Kilosbayan, Incorporated v. Guingona, Jr.***,[17] *viz*.:

> x x x [C]ourts are neither free to decide *all* kinds of cases dumped into their laps nor are they free to open their doors to *all* parties or entities claiming a grievance. The rationale for this constitutional requirement of *locus standi* is by no means trifle. It is intended "to assure a vigorous adversary presentation of the case, and, perhaps more importantly to warrant the judiciary's overruling the determination of a coordinate, democratically elected organ of government." It thus goes to the very essence of representative democracies.
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> A lesser but not insignificant reason for screening the standing of persons who desire to litigate constitutional issues is economic in character. Given the sparseness of our resources, the capacity of courts to render efficient judicial service to our people is severely

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[15] *Pascual v. Secretary of Public Works*, 110 Phil. 331 (1960).

[16] *Integrated Bar of the Philippines v. Zamora*, G.R. No. 141284, August 15, 2000, 338 SCRA 81.

[17] *See* Dissent of then Associate Justice Reynato S. Puno, G.R. No. 113375, May 5, 1994, 232 SCRA 110.

limited. For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice. To be sure, this is an evil that clearly confronts our judiciary today.

Moreover, while the Court has taken an increasingly liberal approach to the rule of *locus standi*, evolving from the stringent requirements of "personal injury" to the broader "transcendental importance" doctrine, such liberality is not to be abused. It is not an open invitation for the ignorant and the ignoble to file petitions that prove nothing but their cerebral deficit.

In the final scheme, judicial review is effective largely because it is not available simply at the behest of a partisan faction, but is exercised only to remedy a particular, concrete injury.[18] When warranted by the presence of indispensible minimums for judicial review, this Court shall not shun the duty to resolve the constitutional challenge that may confront it.

IN VIEW WHEREOF, the petitions are *DISMISSED*.

SO ORDERED.

Quisumbing, Ynares-Santiago, Carpio, Corona, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, and *Bersamin, JJ.,* concur.

Carpio Morales, J., on official leave.

Chico-Nazario, J., no part.

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[18] *Sierra Club v. Morton*, 405 U.S. 727, 740-741, n. 16 (1972).

EN BANC

[A.M. No. MTJ-06-1659. June 18, 2009]

ANNA JANE D. LIHAYLIHAY, Clerk III, Regional Trial Court, Branch 28, Liloy, Zamboanga del Norte, *complainant, vs.* **JUDGE ALEJANDRO T. CANDA, Municipal Circuit Trial Court, Liloy-Tampilisan, Zamboanga del Norte,** *respondent.*

[A.M. No. P-06-2254. June 18, 2009]

JUDGE ALEJANDRO T. CANDA, Municipal Circuit Trial Court, Liloy-Tampilisan, Zamboanga del Norte, *complainant, vs.* **ANNA JANE D. LIHAYLIHAY, Clerk III, Regional Trial Court, Branch 28, Liloy, Zamboanga del Norte,** *respondent.*

[A.M. No. MTJ-09-1730. June 18, 2009]

ANNA JANE D. LIHAYLIHAY, Clerk III, Regional Trial Court, Branch 28, Liloy, Zamboanga del Norte, *complainant, vs.* **JUDGE ALEJANDRO T. CANDA, Municipal Circuit Trial Court, Liloy-Tampilisan, Zamboanga del Norte,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; RESPONDENT JUDGE IS GUILTY OF GROSS MISCONDUCT; RESPONDENT JUDGE LIKEWISE VIOLATED SEVERAL CANONS OF THE NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY.— The Court finds Judge Canda liable for gross misconduct. Judge Canda harassed and publicly humiliated Lihaylihay: (1) he asked her to stay away from Alimpolo; (2) when she reported the matter to the police, he took it as a "declaration of war" and warned her that she will have her "fair share of trouble in due time"; (3) indeed, three days after sending the threatening text message, he filed a complaint with Judge Tomarong accusing her of several things, asking that she be disciplined and removed from the service, and describing her as a "GRO," "undignified," a "whore,"

"disgusting," "repulsive," and "*pakialamera*"; (4) two days after filing the first complaint, he filed another complaint accusing her of violating office rules and describing her as "offensive," "demeaning," "inappropriate," a "GRO," "undignified," "repulsive," and a "whore"; (5) still unsatisfied, he had his second complaint published in the newspaper; and (6) when she published her comment in the newspaper, he filed a criminal case for libel against her. Section 1, Canon 2 of the New Code of Judicial Conduct for the Philippine Judiciary states that **"Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer."** Section 2, Canon 2 of the Code states that **"The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary."** Section 2, Canon 4 of the Code states that **"As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen** and should do so freely and willingly. In particular, **"judges shall conduct themselves in a way that is consistent with the dignity of the judicial office."** Section 6, Canon 4 of the Code states that **"Judges, like any other citizen, are entitled to freedom of expression x x x, but in exercising such [right], they shall always conduct themselves in such a manner as to preserve the dignity of the judicial office."** Section 6, Canon 6 of the Code states that **"Judges shall x x x be x x x dignified and courteous."** Judge Canda violated these provisions.

2. ID.; ID.; RESPONDENT JUDGE'S ACTS ARE VERY UNBECOMING OF A JUDGE.— Judges are required to be temperate in their language at all times. They must refrain from inflammatory or vile language. They should be dignified in demeanor and refined in speech, exhibit that temperament of utmost sobriety and self-restraint, and be considerate, courteous, and civil to all persons. In *Juan de la Cruz v. Carretas*, the Court held that: A judge should possess the virtue of *gravitas*. **He should be** x x x **dignified in demeanor, refined in speech and virtuous in character.** x x x **[H]e must exhibit that hallmark judicial temperament of utmost sobriety and self-restraint.** x x x **[A] judge must at all times be temperate in his language. He must choose his words, written or spoken, with utmost care and sufficient control.** x x x **[A] judge should always keep his passion guarded. He can never**

allow it to run loose and overcome his reason. He descends to the level of a sharp-tongued, ill-mannered petty tyrant when he utters harsh words [or] snide remarks x x x. As a result, he degrades the judicial office and erodes public confidence in the judiciary. In *Re: Anonymous Complaint dated February 18, 2005 of a "Court Personnel" against Judge Francisco C. Gedorio, Jr., RTC, Branch 12, Ormoc City*, the Court held that: **[A] judge x x x ought to conduct himself in a manner befitting a gentleman and a high officer of the court.** x x x **The Court has repeatedly reminded members of the bench to conduct themselves irreproachably,** not only while in the discharge of official duties but also in their personal behavior every day. x x x It bears stressing that **as a dispenser of justice, respondent should exercise judicial temperament at all times, avoiding vulgar and insulting language. He must maintain composure and equanimity.** The judicial office circumscribes the personal conduct of a judge and imposes a number of restrictions. This is a price that judges have to pay for accepting and occupying their exalted positions in the administration of justice. Irresponsible or improper conduct on their part erodes public confidence in the judiciary. Thus, it is their duty to avoid any impression of impropriety in order to protect the image and integrity of the judiciary. Judge Canda's acts of (1) threatening Lihaylihay with her "fair share of trouble in due time"; (2) filing administrative complaints and a criminal case to harass her; (3) describing her as a "GRO," "undignified," a "whore," "disgusting," "repulsive," "*pakialamera*," "offensive," "demeaning," and "inappropriate"; and (4) publishing such foul remarks in the newspaper are very unbecoming a judge. The image of the judiciary is reflected in the conduct of its officials and Judge Canda subjected the judiciary to embarrassment.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court are two complaints for grave misconduct filed by Anna Jane D. Lihaylihay (Lihaylihay), Clerk III, Regional Trial Court (RTC), Branch 28, Liloy, Zamboanga del Norte,

against Judge Alejandro T. Canda (Judge Canda), Municipal Circuit Trial Court (MCTC), Liloy-Tampilisan, Judicial Region IX, Zamboanga del Norte.

The Facts

On 25 February 2005, Sheriff IV Camilo Bandivas (Sheriff Bandivas) of the RTC retired from the service. Lihaylihay alleged that Judge Canda asked Process Server Emmanuel Tenefrancia (Tenefrancia) of the RTC to apply for the position vacated by Sheriff Bandivas. To the dismay of Judge Canda, a certain Jesus V. Alimpolo (Alimpolo) applied for the vacated position. Judge Canda strongly opposed Alimpolo's application.

Judge Canda was of the impression that Lihaylihay was assisting Alimpolo in his application for the position of Sheriff IV. On 5 January 2006, Judge Canda sent a text message to Lihaylihay stating, "*Maayo tingali modistansya ka anang mga tawhana kay basin masabit ka, pakiusap lang ni*." Taking the text message as a threat, Lihaylihay reported it to the police and requested that a blotter entry be made. On 6 January 2006, Judge Canda sent another text message stating, "For maliciously causing it to appear as threatening in the police blotter of what is otherwise a very harmless text message of appeal **I consider the same as declaration of war, don't worry you will have your owned** [sic] **fair share of trouble in due time**."

In a letter[1] dated 9 January 2006 and addressed to Executive Judge Oscar D. Tomarong (Judge Tomarong) of the RTC, Judge Canda accused Lihaylihay of (1) actively supporting Alimpolo; (2) using the facilities of the RTC in preparing Alimpolo's medical certificate; (3) being at the beck and call of Alimpolo; (4) blatantly disregarding the Code of Conduct for Court Personnel; (5) fraudulently scheming against the court; (6) performing highly contemptuous acts; (7) being unworthy of her position as Clerk III; (8) failing to distance herself from Alimpolo; (9) failing to stay neutral; (10) having a distorted sense of values that deserves disciplinary action; (11) being

[1] *Rollo* (A.M. No. P-06-2254), pp. 23-25.

arrogant, insolent and cocky; and (12) disrespecting him. He added that:

> And speaking of Ms. Lihaylihay, it is the observation of the Court employees and the public that her personality does not speak well of her employment with the judiciary which is characterized by the inappropriateness of her attire. **She exudes herself like a GRO** or going to a party when reporting to work, **not to mention her very undignified appearance as a chain smoker which is akin to a WHORE** and who does not hesitate to smoke inside the office in the very eyes of her office mates and the public. But what is **very disgusting** in spite of her being very new to her position is her being an UPSTART who doesn't care to get involve [sic] in matters that earns the ire and contempt of the court users and her co-workers. **She is that repulsive "*PAKIALAMERA*" type** very few would want to associate with. (Emphasis supplied)

In another letter[2] dated 11 January 2006 and addressed to Judge Tomarong, Judge Canda charged Lihaylihay with violation of reasonable office rules and regulations. He stated that:

> On my behalf and in behalf of all the Court employees especially within the administrative area of your court, I would like to make manifest this FORMAL PROTEST against Ms. Ana [sic] Jane D. Lihaylihay, Docket Clerk III of your Court for her actuations which is [sic] **highly offensive and demeaning** not only to your Court but the entire judiciary as well, to wit:
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> 1) The unmitigated inappropriateness of her attire when reporting to work which to us is very **offensive** to the taste of decency because **she exudes herself like a GRO** (Guest Relations Officer). She is supposed to be wearing uniform or decent attire instead of very tight fitting jeans and blouses with very low hemline [sic] that almost exposes [sic] her breast or cocktail dresses as if she is [sic] going to a party or attending high profile gatherings of elite [sic].
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> 2) **her** [sic] **very undignified and repulsive appearance as a chain smoker with heavily made up face which reminds us of her to be like a WHORE**, and who [sic] does not hesitate to smoke inside the office in the very eyes of her

[2] *Id.* at 26-27.

> office mates and the public, an act which is in gross violation of existing rules and regulations against smoking in public places and government offices. (Emphasis supplied)

In his 1st Indorsement[3] dated 12 January 2006, Judge Tomarong directed Lihaylihay to comment on Judge Canda's 9 and 11 January 2006 letters. On 13 January 2006, before Lihaylihay could comment on the letters, Judge Canda gave a copy of the 11 January 2006 letter to the desk editor of the Mindanao Observer and asked that it be published in the newspaper. In his affidavit[4] dated 27 February 2006, Dennis C. Baguio stated that (1) he was a reporter and photographer of the Mindanao Observer; (2) he saw Judge Canda talking with the desk editor of the Mindanao Observer; (3) he saw Judge Canda giving a copy of the letter to the desk editor; and (4) he heard Judge Canda asking the desk editor to publish the letter.

The 11 January 2006 letter was published in the 15 January 2006 issue of the Mindanao Observer. The front page headline read, "*Huwes miprotesta batok sa seksi nga docket clerk*." The text of the letter was printed in the newspaper with the omission of words which were deemed unprintable.

In her comment[5] dated 20 January 2006, Lihaylihay stated that (1) she did not participate in Alimpolo's application for the position of Sheriff IV; (2) Judge Canda ridiculed, humiliated, and besmirched her reputation by publishing in the newspaper the 11 January 2006 letter describing her as a GRO and a whore; (3) Judge Canda's text messages threatened her; and (4) she followed the office dress code. Lihaylihay alleged that Judge Canda wanted Tenefrancia to apply for the position of Sheriff IV so that Tenefrancia's position as process server would become vacant — Judge Canda's son, Alejandro Canda, was qualified for the position of process server. Lihaylihay also alleged that, before the present case started, Judge Canda sent her several

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[3] *Id.* at 4.

[4] *Id.* at 16.

[5] *Id.* at 28-33.

indecent text messages stating, "You're sexy today," "I missed your gorgeous face," and "I missed your golden voice when you sing." Lihaylihay also alleged that she was shocked and disgusted when Judge Canda invited her to go out of town with him.

Alan D. Marapao (Marapao), publisher and editor of Tingog Peninsula, contacted Lihaylihay. He asked her if he could interview her, have a copy of her 20 January 2006 comment, and take her picture. Lihaylihay agreed. Without asking for Lihaylihay's permission, Marapao published the 20 January 2006 comment in the 22 January 2006 issue of the Tingog Peninsula. Irked, Judge Canda filed a criminal case for libel against Lihaylihay.

Lihaylihay filed a complaint[6] dated 20 January 2006 with the Office of the Court Administrator (OCA) charging Judge Canda of (1) bullying her; (2) ridiculing, humiliating, and besmirching her reputation by publishing in the newspaper the 11 January 2006 letter describing her as a GRO and a whore; (3) sending her threatening text messages; and (4) sending her indecent text messages. The case was docketed as MTJ-06-1659.

Judge Canda filed a complaint[7] dated 25 January 2006 with the OCA charging Lihaylihay with conduct unbecoming a court employee for publishing in the newspaper her 20 January 2006 comment. The case was docketed as A.M. No. P-06-2254.

In its 1st Indorsement[8] dated 15 February 2006, the OCA directed Lihaylihay to comment on Judge Canda's 25 January 2006 complaint. In her comment[9] dated 22 March 2006, Lihaylihay stated that (1) the publishing of her 20 January 2006 comment in the newspaper unlikely affected Judge Tomarong's impartiality and objectivity; (2) Judge Canda published his 11

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[6] *Rollo* (A.M. No. MTJ-06-1659), pp. 1-6.

[7] *Rollo* (A.M. No. P-06-2254), p. 1.

[8] *Id.* at 13.

[9] *Id.* at 14-15.

January 2006 letter in the newspaper; (3) Tingog Peninsula published her comment without asking for her permission; and (4) Judge Canda was arrogant.

Lihaylihay filed another complaint[10] dated 4 May 2006 with the OCA containing the same allegations as her 20 January 2006 complaint with the additional allegation that Judge Canda had several documents sworn to before MCTC Clerk of Court Rosalio M. Manigsaca without paying the required legal fees. The case was docketed as MTJ-09-1730.

In its 1st Indorsement[11] dated 20 July 2006, the OCA directed Judge Canda to comment on the 4 May 2006 complaint. In his comment[12] dated 16 August 2006, Judge Canda denied the allegation that he failed to pay the required legal fees.

In its Report[13] dated 24 August 2006, the OCA found that Lihaylihay and Judge Canda failed to preserve the good image of the judiciary. The OCA stated that:

> This Office is disappointed, nay, ashamed of the actuations of the complainant and respondent in this case. Their disgraceful behavior adversely affects the good image of the judiciary. Their actuations degraded the image of the courts before the eyes of the public.
>
> In the instant case, respondent, although not directly responsible for the publication of her comment should have exercised prudence in dealing with the media considering the interest generated by the publication of the complaint against her by Judge Canda. She should have known that the media would take advantage of the opportunity to sensationalize the case considering the personalities involved.
>
> Complainant Judge Canda, on the other hand, should not have caused the publication of his complaint against the respondent. As a judge, complainant should have known that administrative proceedings before the Court are confidential in nature in order to protect the respondent

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[10] *Rollo* (A.M. No. MTJ-09-1730), pp. 4-10.

[11] *Id.* at 25.

[12] *Rollo* (A.M. No. MTJ-06-1659), pp. 61-62.

[13] *Rollo* (A.M. No. P-06-2254), pp. 36-39.

therein who may later turn out to be innocent of the charges. The public airing of his complaint unnecessarily exposed the Court to the eyes of the public. No justifiable or unselfish purpose would be served by such media exposure of the complaint already filed in Court and therefore covered by the mantle of confidentiality, except to sensationalize the same and to defile the reputation of the respondent.

The OCA recommended that Lihaylihay be admonished and that her 22 March 2006 comment be treated as a complaint for gross misconduct against Judge Canda.

In a Resolution[14] dated 9 October 2006, the Court admonished Lihaylihay for her irresponsible behavior and consolidated A.M. No. P-06-2254 with A.M. No. MTJ-06-1659. In the same Resolution, the Court treated Lihaylihay's 22 March 2006 comment as a complaint for gross misconduct against Judge Canda, re-docketed the 22 March 2006 comment as a regular administrative matter, and directed Judge Canda to comment.

In his comment[15] dated 5 December 2006, Judge Canda stated that his description of Lihaylihay as a GRO and a whore was not a "malicious imputation" but a "formal accusation," and that the publication of his 11 January 2006 letter in the newspaper was a "journalistic endeavour."

In a Resolution[16] dated 12 January 2009, the Court (1) docketed the 4 May 2006 complaint as a regular administrative matter; (2) consolidated A.M. No. MTJ-09-1730 with A.M. No. P-06-2254 and A.M. No. MTJ-06-1659; and (3) directed Judge Canda to comment on the allegation that he sent threatening and indecent text messages.

In his comment[17] dated 23 February 2009, Judge Canda (1) denied that he sent Lihaylihay indecent text messages;

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[14] *Id.* at 40-41.

[15] *Rollo* (A.M. No. MTJ-06-1659), p. 29.

[16] *Rollo* (A.M. No. P-06-2254), pp. 51-52.

[17] *Rollo* (A.M. No. MTJ-06-1659), pp. 71-73.

(2) described his 5 January 2006 text message as "brotherly;" and (3) stated that his 6 January 2006 text message was not intimidating — it only reflected the natural reaction of an angry person.

The OCA's Report and Recommendations

In its Report[18] dated 7 October 2008, the OCA found Judge Canda liable for using inappropriate language. The OCA recommended that (1) Judge Canda be found guilty of gross misconduct; (2) Judge Canda be fined ₱21,000; (3) the 4 May 2006 complaint be docketed as a regular administrative matter; (4) A.M. No. MTJ-09-1730 be consolidated with A.M. No. P-06-2254 and A.M. No. MTJ-06-1659; and (5) Judge Canda be directed to comment on the allegation that he sent Lihaylihay indecent text messages. The OCA stated that:

> Judge Canda's contention that he had nothing to do with the publication of his complaint as it was the Mindanao Observer which decided to pursue the story runs on shallow grounds.
>
> x x x x x x x x x
>
> Judge Canda already did the right thing when he brought to the attention of the Executive Judge the matter of Ms. Lihaylihay's alleged administrative transgressions. However, he stepped out of bounds when he allowed the Mindanao Observer to publish a copy of his complaint. The newspaper would not have had the audacity to publish the complaint if Judge Canda did not consent to it. Suffice it to say, Judge Canda should have known better.
>
> Judge Canda stands accused of Gross Misconduct. He did not only refer to Ms. Lihaylihay as a "whore" in the complaint he filed before the Executive Judge; he also caused the publication of the document in a newspaper. If the Court can penalize a judge for *uttering* a foul term, it can definitely provide for a heavier penalty in the instant case where respondent judge even contributed to the *publication* of his utterance.

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[18] *Rollo* (A.M. No. P-06-2254), pp. 46-47.

The Court's Ruling

The Court finds Judge Canda liable for gross misconduct.

Judge Canda harassed and publicly humiliated Lihaylihay: (1) he asked her to stay away from Alimpolo; (2) when she reported the matter to the police, he took it as a "declaration of war" and warned her that she will have her "fair share of trouble in due time"; (3) indeed, three days after sending the threatening text message, he filed a complaint with Judge Tomarong accusing her of several things, asking that she be disciplined and removed from the service, and describing her as a "GRO," "undignified," a "whore," "disgusting," "repulsive," and "*pakialamera*"; (4) two days after filing the first complaint, he filed another complaint accusing her of violating office rules and describing her as "offensive," "demeaning," "inappropriate," a "GRO," "undignified," "repulsive," and a "whore"; (5) still unsatisfied, he had his second complaint published in the newspaper; and (6) when she published her comment in the newspaper, he filed a criminal case for libel against her.

Section 1, Canon 2 of the New Code of Judicial Conduct for the Philippine Judiciary states that "**Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer**." Section 2, Canon 2 of the Code states that "**The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary**." Section 2, Canon 4 of the Code states that "**As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen** and should do so freely and willingly. In particular, **judges shall conduct themselves in a way that is consistent with the dignity of the judicial office**." Section 6, Canon 4 of the Code states that "**Judges, like any other citizen, are entitled to freedom of expression** x x x**, but in exercising such** [**right**]**, they shall always conduct themselves in such a manner as to preserve the dignity of the judicial office**." Section 6, Canon 6 of the Code states that "**Judges shall** x x x **be** x x x **dignified and courteous**." Judge Canda violated these provisions.

Judges are required to be temperate in their language at all times. They must refrain from inflammatory or vile language. They should be dignified in demeanor and refined in speech, exhibit that temperament of utmost sobriety and self-restraint, and be considerate, courteous, and civil to all persons.[19] In *Juan de la Cruz v. Carretas*,[20] the Court held that:

> A judge should possess the virtue of *gravitas*. **He should be** x x x **dignified in demeanor, refined in speech and virtuous in character**. x x x [**H**]**e must exhibit that hallmark judicial temperament of utmost sobriety and self-restraint**. x x x
>
> [**A**] **judge must at all times be temperate in his language. He must choose his words, written or spoken, with utmost care and sufficient control**. x x x
>
> [**A**] **judge should always keep his passion guarded. He can never allow it to run loose and overcome his reason. He descends to the level of a sharp-tongued, ill-mannered petty tyrant when he utters harsh words** [**or**] **snide remarks** x x x. As a result, he degrades the judicial office and erodes public confidence in the judiciary. (Emphasis supplied)

In *Re: Anonymous Complaint dated February 18, 2005 of a "Court Personnel" against Judge Francisco C. Gedorio, Jr., RTC, Branch 12, Ormoc City*,[21] the Court held that:

> [**A**] **judge** x x x **ought to conduct himself in a manner befitting a gentleman and a high officer of the court**.
>
> x x x x x x x x x
>
> **The Court has repeatedly reminded members of the bench to conduct themselves irreproachably**, not only while in the discharge of official duties but also in their personal behavior every day. x x x

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[19] *Dagudag v. Paderanga*, A.M. No. RTJ-06-2017, 19 June 2008, 555 SCRA 217, 235.

[20] A.M. No. RTJ-07-2043, 5 September 2007, 532 SCRA 218, 227-229.

[21] A.M. No. RTJ-05-1955, 25 May 2007, 523 SCRA 175, 181-183.

It bears stressing that **as a dispenser of justice, respondent should exercise judicial temperament at all times, avoiding vulgar and insulting language. He must maintain composure and equanimity**.

The judicial office circumscribes the personal conduct of a judge and imposes a number of restrictions. This is a price that judges have to pay for accepting and occupying their exalted positions in the administration of justice. Irresponsible or improper conduct on their part erodes public confidence in the judiciary. Thus, it is their duty to avoid any impression of impropriety in order to protect the image and integrity of the judiciary. (Emphasis supplied)

Judge Canda's acts of (1) threatening Lihaylihay with her "fair share of trouble in due time"; (2) filing administrative complaints and a criminal case to harass her; (3) describing her as a "GRO," "undignified," a "whore," "disgusting," "repulsive," "*pakialamera*," "offensive," "demeaning," and "inappropriate"; and (4) publishing such foul remarks in the newspaper are very unbecoming a judge. The image of the judiciary is reflected in the conduct of its officials and Judge Canda subjected the judiciary to embarrassment.

Section 8, Rule 140 of the Rules of Court classifies gross misconduct constituting violations of the Code of Judicial Conduct as a serious offense. It is punishable by (1) dismissal from the service, forfeiture of benefits, and disqualification from reinstatement to any public office; (2) suspension from office without salary and other benefits for more than three months but not exceeding six months; or (3) a fine of more than ₱20,000 but not exceeding ₱40,000.[22]

The Court notes that this is Judge Canda's second offense. In *Barbarona v. Judge Canda*,[23] the Court fined him for violation of Circular No. 1-90 and warned him that the repetition of similar acts would be dealt with more severely. Considering the gravity of Judge Canda's offense and the fact that this is his second offense, the Court fines him ₱40,000.

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[22] RULES OF COURT, Rule 140, Sec. 11(A).

[23] 409 Phil. 1 (2001).

The charges that Judge Canda sent Lihaylihay indecent text messages and that he failed to pay the required legal fees are unsubstantiated, thus, they must be dismissed. In administrative proceedings, the complainant has the burden of proving, by substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, the allegations in the complaint. The Court cannot rely on mere conjectures or suppositions.[24]

WHEREFORE, the Court finds Judge Alejandro T. Canda, Municipal Circuit Trial Court, Liloy-Tampilisan, Judicial Region IX, Zamboanga del Norte, *GUILTY of GROSS MISCONDUCT CONSTITUTING VIOLATIONS OF THE CODE OF JUDICIAL CONDUCT*. Accordingly, the Court *FINES* him ₱40,000 and *STERNLY WARNS* him that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Corona, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, and *Bersamin, JJ.,* concur.

Carpio Morales, J., on leave.

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[24] *Anonymous Letter-Complaint Against Atty. Miguel Morales, Clerk of Court, Metropolitan Trial Court of Manila,* A.M. No. P-08-2519, 19 November 2008.

FIRST DIVISION

[G.R. No. 152928. June 18, 2009]

METROPOLITAN BANK and TRUST COMPANY, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, FELIPE A. PATAG and BIENVENIDO C. FLORA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; WAGES; PROHIBITION AGAINST ELIMINATION OR DIMINUTION OF BENEFITS; TO BE CONSIDERED A COMPANY PRACTICE, THE GIVING OF THE BENEFITS SHOULD HAVE BEEN DONE OVER A LONG PERIOD OF TIME, AND MUST BE SHOWN TO HAVE BEEN CONSISTENT AND DELIBERATE; CASE AT BAR.— To be considered a company practice, the giving of the benefits should have been done over a long period of time, and must be shown to have been consistent and deliberate. The test or rationale of this rule on long practice requires an indubitable showing that the employer agreed to continue giving the benefits knowing fully well that said employees are not covered by the law requiring payment thereof. It was the NLRC's finding, as affirmed by the CA, that there is a company practice of paying improved benefits to petitioner bank's officers effective every January 1 of the same year the improved benefits are granted to rank and file employees in a CBA. We find that the NLRC's and CA's factual conclusions were fully supported by substantial evidence on record. Respondents were able to prove that for the period 1986-1997, Metrobank issued at least four (4) separate memoranda, coinciding with the approval of four (4) different CBAs with the rank and file, wherein bank officers were granted benefits, including retirement benefits, that were commensurate or superior to those provided for in Metrobank's CBA with its rank and file employees. Respondents attached to their position paper filed with the Labor Arbiter copies of the CBAs that petitioner entered into with its rank and file employees for the period 1986-1997 and also the various officers' benefits memoranda issued by the bank after each

CBA signing. Respondents had no hand in the preparation of these officers' benefits memoranda for they appeared to be issuances of the bank alone, signed by its President or other proper officer. Thus, petitioner cannot credibly argue that respondents' claim of a company practice was baseless or self-serving.

2. ID.; ID.; ID.; ID.; PETITIONER COMPANY HAS CONSISTENTLY, DELIBERATELY AND VOLUNTARILY, FOR OVER A DECADE, GRANTED IMPROVED BENEFITS TO ITS OFFICERS, AFTER THE SIGNING OF EACH COLLECTIVE BARGAINING AGREEMENT WITH ITS RANK AND FILE EMPLOYEES, RETROACTIVE TO JANUARY 1 OF THE SAME YEAR AND WITHOUT ANY CONDITION THAT THE OFFICERS SHOULD REMAIN EMPLOYEES AS OF A CERTAIN DATE.— The record further reveals that these improved officers' benefits were always made to retroact effective every January 1 of the year of issuance of said memoranda and without any condition regarding the term or date of employment. The condition that the managerial employee or bank officer must still be employed by petitioner as of a certain date was imposed **for the first time** in the 1998 Officers' Benefits Memorandum. In other words, for over a decade, Metrobank has **consistently, deliberately and voluntarily** granted improved benefits to its officers, after the signing of each CBA with its rank and file employees, retroactive to January 1st of the same year as the grant of improved benefits and without the condition that the officers should remain employees as of a certain date. This undeniably indicates a unilateral and voluntary act on Metrobank's part, to give said benefits to its officers, knowing that such act was not required by law or the company retirement plan.

3. ID.; ID.; ID.; ID.; WHEN THE GRANT OF BENEFITS HAS RIPENED INTO COMPANY PRACTICE OR POLICY IT CANNOT BE PEREMPTORILY WITHDRAWN; THE COMMON DENOMINATOR IS THE REGULARITY AND DELIBERATENESS OF THE GRANT OF BENEFITS OVER A SIGNIFICANT PERIOD OF TIME.— With regard to the length of time the company practice should have been exercised to constitute voluntary employer practice which cannot be unilaterally withdrawn by the employer, jurisprudence has not laid down any hard and fast rule. In the case of *Davao Fruits*

Corporation v. Associated Labor Unions, the company practice of including in the computation of the 13th-month pay the maternity leave pay and cash equivalent of unused vacation and sick leave lasted for six (6) years. In another case, *Tiangco v. Leogardo, Jr.*, the employer carried on the practice of giving a fixed monthly emergency allowance from November 1976 to February 1980, or three (3) years and four (4) months. While in *Sevilla Trading v. Semana*, the employer kept the practice of including non-basic benefits such as paid leaves for unused sick leave and vacation leave in the computation of their 13th-month pay for at least two (2) years. In all these cases, this Court held that the grant of these benefits has ripened into company practice or policy which cannot be peremptorily withdrawn. The common denominator in these cases appears to be the regularity and deliberateness of the grant of benefits over a significant period of time.

4. ID.; ID.; ID.; ID.; THE CONDITION THAT AN OFFICER MUST STILL BE IN THE SERVICE OF PETITIONER BANK AS OF JUNE 15 1998 EFFECTIVELY REDUCED BENEFITS OF EMPLOYEES WHO RETIRED PRIOR TO THE ISSUANCE OF THE 1999 OFFICERS' BENEFIT MEMORANDUM.— In the case at bar, petitioner Metrobank favorably adjusted its officers' benefits, including retirement benefits, after the approval of each CBA with the rank and file employees, to be effective every January 1st of the same year as the CBA's approval, and without any condition regarding the date of employment of the officer, from 1986 to 1997 or for about eleven (11) years. This constitutes voluntary employer practice which cannot be unilaterally withdrawn or diminished by the employer without violating the spirit and intent of Art. 100 of the Labor Code, to wit: Art. 100. Prohibition against elimination or diminution of benefits.– Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code. The condition that an officer must still be in the service of petitioner bank as of June 15, 1998 effectively reduced benefits of employees who retired prior to the issuance of the 1998 Officers' Benefits Memorandum despite the fact in the past no such condition was imposed by the bank and previous retirees presumably enjoyed the higher benefits regardless of their date of retirement

as long as they were still employees of petitioner as of the January 1st effectivity date.

5. ID.; ID.; ID.; THE ESTABLISHED PRACTICE OF GRANTING BENEFITS HAS RIPENED INTO A VESTED RIGHT OF THE EMPLOYEES AND CANNOT BE UNILATERALLY REDUCED OR WITHDRAWN BY THE EMPLOYER.— Anent petitioner's line of reasoning that it had no obligation under Article 287 of the Labor Code or the express terms of the retirement plan to grant improved benefits to employees who are no longer in the service at the time of the grant, it appears to us that petitioner is deliberately missing the point. Ordinarily, an employee would have no right to demand benefits that the employer was not obligated by law or contract to give. However, it is the jurisprudential rule that where there is an established employer practice of regularly, knowingly and voluntarily granting benefits to employees over a significant period of time, despite the lack of a legal or contractual obligation on the part of the employer to do so, the grant of such benefits ripens into a vested right of the employees and can no longer be unilaterally reduced or withdrawn by the employer.

6. ID.; ID.; ID.; NO ESTOPPEL OR EVEN IMPLIED WAIVER OF RIGHTS ON THE PART OF RESPONDENTS; THERE IS NOTHING IN THE RECEIPTS/VOUCHERS SIGNED BY RESPONDENTS TO INDICATE THAT THEY ACKNOWLEDGED FULL RECEIPT OF ALL AMOUNTS DUE THEM OR THAT THEY ARE WAIVING THEIR RIGHT TO CLAIM DEFICIENCY IN THEIR BENEFITS.— With respect to petitioner's argument that respondents should be deemed "estopped" from claiming additional benefits in view of their "unqualified receipt" of their retirement benefits and other benefits, we find the same lacking in merit. There was nothing in the receipts/vouchers signed by respondents to indicate that they acknowledged full receipt of all amounts due them or that they are waiving their right to claim any deficiency in their benefits. Indeed, in this jurisdiction, even written, express quitclaims, releases and waivers in labor cases may be invalidated under certain circumstances. As a rule, quitclaims, waivers or releases are looked upon with disfavor and are commonly frowned upon as contrary to public policy and ineffective to bar claims for the measure of a worker's

legal rights. In this case, respondents' consistent acts of demanding the improved benefits before and after their actual receipt of their partial benefits belie any intention to waive their legal right to demand the deficiency in their benefits. Thus, we cannot accept petitioner's view that there is estoppel or even implied waiver on the part of respondents.

7. ID.; ID.; ID.; THE RIGHT TO FILE A LABOR COMPLAINT OR ASSERT A CAUSE OF ACTION AGAINST AN EMPLOYER IS A PERSONAL RIGHT OF EACH EMPLOYEE; EMPLOYEES WHO DECIDED, FOR WHATEVER REASON, NOT TO DEMAND PAYMENT OF THE IMPROVED BENEFITS, THAT IS THEIR OWN PREROGATIVE AND SHOULD NOT PREJUDICE RESPONDENTS OR BAN THEM FROM ASSERTING THEIR RIGHTS AND PURSUING THEIR LEGAL REMEDIES AGAINST PETITIONER.— Petitioner contends that the CA's ruling would result in unfair discrimination since there were at least twelve (12) other retirees in 1998 similarly situated as respondents whose retirement benefits were computed at the old rate but who did not file cases against Metrobank. Petitioner posits the view that the CA ruling would unlawfully grant greater benefits to respondents *vis a vis* the other retirees who did not demand the improved benefits. This argument similarly deserves no credit. The right to file a labor complaint or assert a cause of action against an employer is a personal right of each employee. It is most certainly not dependent on whether or not other employees similarly situated would also file a case against the employer. If there are other employees in the same boat as respondents who decided, for whatever reason, not to demand payment of the improved benefits, that would be their prerogative and their own look out. It should not prejudice respondents or ban them from asserting their rights and pursuing their legal remedies against petitioner.

8. ID.; ID.; ID.; THE IMPOSITION OF THE ASSAILED CONDITION SHORTLY AFTER RESPONDENTS MADE THEIR REQUESTS IS SUSPECT AND SUCH CONDUCT ON THE PART OF PETITIONER DESERVES NO SYMPATHY FROM THE COURT.— It is worth reiterating that the condition requiring bank officers to be still employed as of June 15, 1998 to be eligible to the adjusted benefits,

was included by Metrobank for the first time in the 1998 Officers' Benefits Memorandum dated June 10, 1998. Significantly, petitioner took such action only after Patag and Flora wrote letters dated February 2, 1998 and March 25, 1998, respectively, requesting the bank to use as basis in the computation of their retirement benefits the increased rate that might be granted with the signing of the 1998-2000 CBA between the bank and its rank and file employees. Thus, when Metrobank opted to impose a new condition in its Officers' Benefits Memorandum dated June 10, 1998, it already had knowledge of respondents' requests. Indeed, the imposition of the said condition shortly after respondents made their requests is suspicious, to say the least. Such conduct on the part of Metrobank deserves no sympathy from this Court. It is a time-honored rule that in controversies between a laborer and his master, doubts reasonably arising from the evidence or in the interpretation of agreements and writings should be resolved in the former's favor. The policy is to extend the applicability to a greater number of employees who can avail of the benefits under the law, which is in consonance with the avowed policy of the State to give maximum aid and protection to labor. This principle gives us even greater reason to affirm the findings of the CA.

APPEARANCES OF COUNSEL

De La Rosa and Nograles for petitioner.

Sanidad Abaya Te Viterbo Enriquez and Tan Law Firm for private respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

In this petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, petitioner seeks to set aside and annul the Decision[1] dated December 13, 2001 and the

[1] Penned by Associate Justice Delilah Vidallon-Magtolis (ret.), with Associate Justices Candido V. Rivero (ret.) and Juan Q. Enriquez, Jr. concurring; *rollo*, pp. 60-66.

Resolution[2] dated April 9, 2002 rendered by the Court of Appeals (CA) in *CA-G.R. No. 63144*.

The CA decision affirmed an earlier resolution[3] of the National Labor Relations Commission (NLRC) dated March 31, 2000 which ruled in favor of herein respondents.

The factual antecedents are as follows:

Respondents Felipe Patag (Patag) and Bienvenido Flora (Flora) were former employees of petitioner Metropolitan Bank and Trust Company (Metrobank). Both respondents availed of the bank's compulsory retirement plan in accordance with the 1995 Officers' Benefits Memorandum. At the time of his retirement on February 1, 1998, Patag was an Assistant Manager with a monthly salary of ₱32,100.00. Flora was a Senior Manager with a monthly salary of ₱48,500.00 when he retired on April 1, 1998. Both of them received their respective retirement benefits computed at 185% of their gross monthly salary for every year of service as provided under the said 1995 Memorandum. In all, Patag was fully paid the total amount of ₱1,957,782.71 while Flora was paid the total amount of ₱3,042,934.29 in retirement benefits.

Early in 1998, Collective Bargaining Agreement (CBA) negotiations were on-going between Metrobank and its rank and file employees for the period 1998-2000. Patag wrote a letter dated February 2, 1998[4] to the bank requesting that his retirement benefits be computed at the new rate should there be an increase thereof in anticipation of possible changes in officers' benefits after the signing of the new CBA with the rank and file. Flora likewise wrote Metrobank in March 25, 1998,[5] requesting the bank to use as basis in the computation of their retirement benefits the increased rate of 200% as

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[2] *Id*. at 68.

[3] *Id*. at 160-169.

[4] *Id*. at 244.

[5] *Id*. at 246.

embodied in the just concluded CBA between the bank and its rank and file employees. Metrobank did not reply to their requests.

The records show that since the 1986-1988 CBA, and continuing with each CBA concluded thereafter with its rank and file employees, Metrobank would issue a Memorandum granting similar or better benefits to its managerial employees or officers, retroactive to January 1st of the first year of effectivity of the CBA. When the 1998-2000 CBA was approved, Metrobank, in line with its past practice, issued on June 10, 1998, a Memorandum on Officers' Benefits, which provided for improved benefits to its officers (the 1998 Officers' Benefits Memorandum). This Memorandum was signed by then Metrobank President Antonio S. Abacan, Jr. Pertinently, the compulsory retirement benefit for officers was increased from 185% to 200% effective January 1, 1998, but with the condition that the benefits shall only be extended to those who remain in service as of June 15, 1998.[6]

On June 29, 1998, Flora again wrote a letter,[7] asking Metrobank for a reconsideration of its condition that the new officers' benefits shall apply only to those officers still employed as of June 15, 1998. Metrobank denied this request on July 17, 1998.[8]

Consequently on August 31, 1998, Patag and Flora, through their counsel, wrote a letter to Metrobank demanding the payment of their unpaid retirement benefits amounting to ₱284,150.00 and ₱448,050.00, respectively, representing the increased benefits they should have received under the 1998 Officers' Benefits Memorandum.[9]

In its letter-reply dated September 17, 1998, Metrobank's First Vice-President Paul Lim, Jr. informed Patag and Flora of their ineligibility to the improved officers' benefits as they had

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[6] *Id*. at 250-253.

[7] *Id*. at 255.

[8] *Id*. at 254.

[9] *Id*. at 149.

already ceased their employment and were no longer officers of the bank as of June 15, 1998.[10]

On September 25, 1998, Patag and Flora filed with the Labor Arbiter their consolidated complaint against Metrobank for underpayment of retirement benefits and damages, asserting that pursuant to the 1998 Officers' Benefits Memorandum, they were entitled to additional retirement benefits. Patag, for his part, also claimed he was entitled to payment of his 1997 profit share and 1998 structural adjustment.

On June 8, 1999, Labor Arbiter Geobel A. Bartolabac rendered a decision,[11] dismissing the complaint of Patag and Flora. As expected, Patag and Flora filed an appeal with the NLRC. In a resolution[12] dated March 31, 2000, the Third Division of the NLRC partially granted the appeal and directed Metrobank to pay Patag and Flora their unpaid beneficial improvements under the 1998 Officers' Benefits Memorandum.

Aggrieved with the ruling of the NLRC, Metrobank elevated the matter to the CA by way of a petition for *certiorari*, docketed as *CA-G.R. No. 63144*.

On December 13, 2001, the CA promulgated its assailed decision dismissing Metrobank's petition and affirming the resolution of the NLRC. In so ruling, the CA declared:

> Upon the other hand, the private respondents' (Patag and Flora) evidence reveals that from 1986 to 1995, it has been the practice of the petitioner (Metrobank) that whenever it enters and signs a new CBA with its rank and file employees, it likewise issues a memorandum extending benefits to its officers which are higher or at least the same as those provided in the said CBA for the rank and file employees effective every 1st of January of the year, without any condition that the officers-beneficiaries should remain employees of the petitioner as of a certain date of a given year. xxx. Under the

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[10] *Id.* at 150.

[11] *Id.* at 151-158.

[12] *Id.* at 160-169.

circumstances, the same may be deemed to have ripened into company practice or policy which cannot be peremptorily withdrawn.[13]

Petitioner's subsequent motion for reconsideration was denied by the CA in its Resolution dated April 9, 2002.

Hence, the instant petition where Metrobank raised the following arguments:

I. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN AFFIRMING THE NLRC'S DECISION AND RESOLUTION BY RULING THAT THE PRIVATE RESPONDENTS ARE ENTITLED TO THEIR BELATED CLAIM FOR ADDITIONAL (RETIREMENT) BENEFITS EVEN AFTER THEY EFFECTIVELY CEASED THEIR EMPLOYMENT WITH PETITIONER AND DESPITE THEIR UNQUALIFIED ACKNOWLEDGMENT AND RECEIPT OF THE PAYMENT IN FULL OF THEIR RETIREMENT BENEFITS, CONTRARY TO LAW AS WELL AS OTHER LAWFUL ORDERS AND SETTLED JURISPRUDENCE ON THE MATTER.[14]

II. THE HONORABLE COURT OF APPEALS' FAVORABLE APPLICATION OF THE 1998 IMPROVED OFFICERS' (RETIREMENT) BENEFITS TO THE RESPONDENTS DESPITE THEIR NON-COMPLIANCE WITH THE REQUIREMENTS OF ELIGIBILITY THERETO, IS PATENTLY CONTRARY TO LAW AND THE WELL-SETTLED JURISPRUDENCE ON THE MATTER.[15]

III. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT FINDING THAT RESPONDENTS ARE BARRED BY ESTOPPEL FROM INSTITUTING THE ACTION AFTER HAVING UNQUALIFIEDLY ACKNOWLEDGED AND RECEIVED THE FULL PAYMENT OF THEIR RETIREMENT BENEFITS.[16]

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[13] *Id.* at 65.

[14] *Id.* at 27.

[15] *Id.* at 40.

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

Petitioner contends that respondents Patag and Flora, having qualified for compulsory retirement under the 1995 Officers' Benefits Memorandum, cannot now claim to be eligible to higher retirement benefits under the 1998 Improved Benefits Memorandum. In fact, according to petitioner, Patag and Flora had unqualifiedly received the full payment of their retirement benefits. Also, the 1998 Improved Benefits Memorandum was issued after Patag and Flora compulsorily retired on February 1, 1998 and April 1, 1998, respectively, and there was an express condition in the 1998 Officers' Benefits Memorandum that the improved benefits shall apply only to officers who remain in service as of June 15, 1998.

From the facts, it is clear that the core issue hinges on whether respondents can still recover higher benefits under the 1998 Officers' Benefits Memorandum despite the fact that they have compulsorily retired prior to the issuance of said memorandum and did not meet the condition therein requiring them to be employed as of June 15, 1998.

The main issue in this case involves a question of fact. As a rule, the Supreme Court is not a trier of facts and this applies with greater force in labor cases. Hence, factual findings of quasi-judicial bodies like the NLRC, particularly when they coincide with those of the Labor Arbiter and if supported by substantial evidence, are accorded respect and even finality by this Court. However, where the findings of the NLRC and the Labor Arbiter are contradictory, as in this case, the reviewing court may delve into the records and examine for itself the questioned findings.[17]

It is Metrobank's position that the CA and the NLRC erred when they recognized that there was an established company practice or policy of granting improved benefits to its officers effective January 1 of the year and without any condition that the officers should remain employees of Metrobank as of a certain date. Metrobank claims that although its officers were

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[17] *Tres Reyes v. Maxim's Tea House*, G.R. No. 140853, February 27, 2003, 398 SCRA 288, 298.

extended the same as or higher benefits than those contained in its CBA with its rank and file employees from 1986 to 1997, the same cannot be concluded to have ripened into a company practice since the provisions of the retirement plan itself and the law on retirement should be controlling.

We do not agree.

To be considered a company practice, the giving of the benefits should have been done over a long period of time, and must be shown to have been consistent and deliberate. The test or rationale of this rule on long practice requires an indubitable showing that the employer agreed to continue giving the benefits knowing fully well that said employees are not covered by the law requiring payment thereof.[18]

It was the NLRC's finding, as affirmed by the CA, that there is a company practice of paying improved benefits to petitioner bank's officers effective every January 1 of the same year the improved benefits are granted to rank and file employees in a CBA. We find that the NLRC's and CA's factual conclusions were fully supported by substantial evidence on record. Respondents were able to prove that for the period 1986-1997, Metrobank issued at least four (4) separate memoranda, coinciding with the approval of four (4) different CBAs with the rank and file, wherein bank officers were granted benefits, including retirement benefits, that were commensurate or superior to those provided for in Metrobank's CBA with its rank and file employees. Respondents attached to their position paper filed with the Labor Arbiter copies of the CBAs that petitioner entered into with its rank and file employees for the period 1986-1997 and also the various officers' benefits memoranda issued by the bank after each CBA signing. Respondents had no hand in the preparation of these officers' benefits memoranda for they appeared to be issuances of the bank alone, signed by its President or other proper officer. Thus, petitioner cannot credibly argue that respondents' claim of a company practice was baseless or self-serving.

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[18] *National Sugar Refineries Corporation v. NLRC*, G.R. No. 101761, March 24, 1993, 220 SCRA 453, 463.

The record further reveals that these improved officers' benefits were always made to retroact effective every January 1 of the year of issuance of said memoranda and without any condition regarding the term or date of employment. The condition that the managerial employee or bank officer must still be employed by petitioner as of a certain date was imposed **for the first time** in the 1998 Officers' Benefits Memorandum.

In other words, for over a decade, Metrobank has **consistently, deliberately and voluntarily** granted improved benefits to its officers, after the signing of each CBA with its rank and file employees, retroactive to January 1st of the same year as the grant of improved benefits and without the condition that the officers should remain employees as of a certain date. This undeniably indicates a unilateral and voluntary act on Metrobank's part, to give said benefits to its officers, knowing that such act was not required by law or the company retirement plan.

With regard to the length of time the company practice should have been exercised to constitute voluntary employer practice which cannot be unilaterally withdrawn by the employer, jurisprudence has not laid down any hard and fast rule. In the case of *Davao Fruits Corporation v. Associated Labor Unions*,[19] the company practice of including in the computation of the 13th-month pay the maternity leave pay and cash equivalent of unused vacation and sick leave lasted for six (6) years. In another case, *Tiangco v. Leogardo, Jr.*,[20] the employer carried on the practice of giving a fixed monthly emergency allowance from November 1976 to February 1980, or three (3) years and four (4) months. While in *Sevilla Trading v. Semana*,[21] the employer kept the practice of including non-basic benefits such as paid leaves for unused sick leave and vacation leave in the computation of their 13th-month pay for at least two (2) years. In all these cases, this Court held that the grant of these benefits has ripened into company practice or policy which cannot be

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[19] G.R. No. 85073, August 24, 1993, 225 SCRA 562.

[20] G.R. No. 57636, May 16, 1983, 122 SCRA 267.

[21] G.R. No. 152456, April 28, 2004, 428 SCRA 239.

peremptorily withdrawn. The common denominator in these cases appears to be the regularity and deliberateness of the grant of benefits over a significant period of time.

In the case at bar, petitioner Metrobank favorably adjusted its officers' benefits, including retirement benefits, after the approval of each CBA with the rank and file employees, to be effective every January 1st of the same year as the CBA's approval, and without any condition regarding the date of employment of the officer, from 1986 to 1997 or for about eleven (11) years. This constitutes voluntary employer practice which cannot be unilaterally withdrawn or diminished by the employer without violating the spirit and intent of Art. 100 of the Labor Code, to wit:

> Art. 100. Prohibition against elimination or diminution of benefits.— Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.

The condition that an officer must still be in the service of petitioner bank as of June 15, 1998 effectively reduced benefits of employees who retired prior to the issuance of the 1998 Officers' Benefits Memorandum despite the fact in the past no such condition was imposed by the bank and previous retirees presumably enjoyed the higher benefits regardless of their date of retirement as long as they were still employees of petitioner as of the January 1st effectivity date.

If it were true that notwithstanding the existence of the previous officers' benefits memoranda (which all did not contain the same condition as the 1998 memorandum) there was no company practice of granting the improved benefits to officers who retired from the bank prior to the issuance of the officers' benefits memorandum, it would have been simple enough for the bank to prove this. A company as large and prestigious as petitioner would certainly have a comprehensive and efficient system of keeping employee records. All it had to do was show some examples of past retirees over the period 1986 to 1997 who retired prior to the issuance of the relevant officers' benefits

memorandum but after the usual January 1st memorandum effectivity date and whose retirement benefits were computed at the old rate and not at the improved rate. Unfathomably, Metrobank presented no such evidence. Contrary to petitioner's insistent view, the CA committed no error when it ruled that petitioner failed to present convincing evidence to substantiate its claims.

Anent petitioner's line of reasoning that it had no obligation under Article 287 of the Labor Code or the express terms of the retirement plan to grant improved benefits to employees who are no longer in the service at the time of the grant, it appears to us that petitioner is deliberately missing the point. Ordinarily, an employee would have no right to demand benefits that the employer was not obligated by law or contract to give. However, it is the jurisprudential rule that where there is an established employer practice of regularly, knowingly and voluntarily granting benefits to employees over a significant period of time, despite the lack of a legal or contractual obligation on the part of the employer to do so, the grant of such benefits ripens into a vested right of the employees and can no longer be unilaterally reduced or withdrawn by the employer.[22]

With respect to petitioner's argument that respondents should be deemed "estopped" from claiming additional benefits in view of their "unqualified receipt" of their retirement benefits and other benefits, we find the same lacking in merit. There was nothing in the receipts/vouchers signed by respondents to indicate that they acknowledged full receipt of all amounts due them or that they are waiving their right to claim any deficiency in their benefits. Indeed, in this jurisdiction, even written, express quitclaims, releases and waivers in labor cases may be invalidated under certain circumstances. As a rule, quitclaims, waivers or

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[22] *See*, for example, *Oceanic Pharmacal Employees Union v. Inciong*, No. 50568, November 7, 1979, 94 SCRA 270, 274; *Davao Integrated Port Services, Inc. v. Abarquez,*, G.R. No. 102132, March 19, 1993, 220 SCRA 197, 207; *Republic Planters Bank v. NLRC,* G.R. No. 117460, January 6, 1997, 266 SCRA 142, 148 and *Manila Electric Company v. Quisumbing*, G.R. No. 127598, January 27, 1999, 302 SCRA 173, 200.

releases are looked upon with disfavor and are commonly frowned upon as contrary to public policy and ineffective to bar claims for the measure of a worker's legal rights.[23] In this case, respondents' consistent acts of demanding the improved benefits before and after their actual receipt of their partial benefits belie any intention to waive their legal right to demand the deficiency in their benefits. Thus, we cannot accept petitioner's view that there is estoppel or even implied waiver on the part of respondents.

Finally, petitioner contends that the CA's ruling would result in unfair discrimination since there were at least twelve (12) other retirees in 1998 similarly situated as respondents whose retirement benefits were computed at the old rate but who did not file cases against Metrobank. Petitioner posits the view that the CA ruling would unlawfully grant greater benefits to respondents *vis a vis* the other retirees who did not demand the improved benefits. This argument similarly deserves no credit. The right to file a labor complaint or assert a cause of action against an employer is a personal right of each employee. It is most certainly not dependent on whether or not other employees similarly situated would also file a case against the employer. If there are other employees in the same boat as respondents who decided, for whatever reason, not to demand payment of the improved benefits, that would be their prerogative and their own look out. It should not prejudice respondents or ban them from asserting their rights and pursuing their legal remedies against petitioner.

It is worth reiterating that the condition requiring bank officers to be still employed as of June 15, 1998 to be eligible to the adjusted benefits, was included by Metrobank for the first time in the 1998 Officers' Benefits Memorandum dated June 10, 1998.[24] Significantly, petitioner took such action only after

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[23] *Phil. Employ Services and Resources, Inc. v. Paramio,* G.R. No. 144786, April 15, 2004, 427 SCRA 732, 755.

[24] *Rollo,* pp. 250-253.

Patag and Flora wrote letters dated February 2, 1998[25] and March 25, 1998,[26] respectively, requesting the bank to use as basis in the computation of their retirement benefits the increased rate that might be granted with the signing of the 1998-2000 CBA between the bank and its rank and file employees. Thus, when Metrobank opted to impose a new condition in its Officers' Benefits Memorandum dated June 10, 1998, it already had knowledge of respondents' requests. Indeed, the imposition of the said condition shortly after respondents made their requests is suspicious, to say the least. Such conduct on the part of Metrobank deserves no sympathy from this Court.

It is a time-honored rule that in controversies between a laborer and his master, doubts reasonably arising from the evidence or in the interpretation of agreements and writings should be resolved in the former's favor. The policy is to extend the applicability to a greater number of employees who can avail of the benefits under the law, which is in consonance with the avowed policy of the State to give maximum aid and protection to labor.[27] This principle gives us even greater reason to affirm the findings of the CA.

WHEREFORE, the petition for review is hereby *DENIED*. The assailed decision and resolution of the CA in *CA-G.R. No. 63144* are hereby *AFFIRMED*.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and *Bersamin, JJ.*, concur.

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[25] *Supra* note 4.

[26] *Supra* note 5.

[27] *Travelaire & Tours Corp. v. NLRC*, G.R. No. 131523, August 20, 1998, 294 SCRA 505, 511.

SECOND DIVISION

[G.R. No. 155502. June 18, 2009]

SARABIA OPTICAL and VIVIAN SARABIA-ONG, *petitioners, vs.* **JEANET B. CAMACHO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACTS OF LABOR OFFICIALS WHO ARE DEEMED TO HAVE ACQUIRED EXPERTISE IN MATTERS WITHIN THEIR RESPECTIVE JURISDICTIONS ARE GENERALLY ACCORDED NOT ONLY RESPECT, BUT EVEN FINALITY.— It is an established rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the Court of Appeals are conclusive and binding on the Court. We have likewise held that factual findings of labor officials who are deemed to have acquired expertise in matters within their respective jurisdictions are generally accorded not only respect, but even finality, and bind the Supreme Court. As borne by the records, the findings of facts of the Labor Arbiter, the NLRC and the Court of Appeals, are unanimous.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; TERMINATION BY EMPLOYER; LOSS OF TRUST AND CONFIDENCE; MUST BE BASED ON A WILLFUL BREACH OF TRUST AND FOUNDED ON CLEARLY ESTABLISHED FACTS.— To be a valid ground for dismissal, loss of trust and confidence must be based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. Further, the act complained of must be work-related and must show that

the employee concerned is unfit to continue working for the employer.

3. ID.; ID.; ID.; ID.; ID.; CLAIM OF ANOMALY ALLEGEDLY MASTERMINDED BY RESPONDENT, NOT SUBSTANTIATED BY EVIDENCE.— In this case, petitioners failed to substantiate their claim that instead of reporting the income derived from the sale of screws, solutions, and other miscellaneous items from September to November 1994, Camacho distributed the income among the branch personnel. The only evidence they presented was the Joint Affidavit of Navarro, Jasmin, and Cosep which merely stated that Camacho used her position and authority and engaged them to carry out the anomaly. Further, petitioners did not submit any audit report which would show the inventory of the screws, solutions, and other miscellaneous items before and after the period September to November 1994. Such audit report would have concretely shown the number of stocks sold which Camacho did not report as income of the SM Megamall Branch. Neither did petitioners present the sales invoices or purchase receipts of such screws, solutions, and other miscellaneous items. If an anomaly indeed took place, petitioners could have easily verified and proved it through an audit or inventory instead of relying on their employees' Joint Affidavit.

4. ID.; ID.; ID.; ID.; ID.; REQUIREMENTS OF DUE PROCESS BEFORE DISMISSING AN EMPLOYEE, NOT COMPLIED WITH IN CASE AT BAR.— To boot, petitioners failed to satisfy the requirements of due process before dismissing Camacho from her employment. Procedural due process requires the employer to give the employee two notices: (1) notice apprising him of the particular acts or omissions for which his dismissal is sought, and (2) subsequent notice informing him of the employer's decision to dismiss him. Apparently, no written notice of the charge informing Camacho of the specific act complained of and its corresponding penalty was sent to her. If petitioners gave Camacho such notice, then the same should have been presented as evidence and should have appeared on record. In sum, we find that Camacho was illegally dismissed due to petitioners' failure to show adequately that a valid cause for terminating her employment exists, and their failure to comply with the twin notice requirement.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes and Manalastas for petitioners.
Mojares-Buenaventura Law Offices for private respondent.

D E C I S I O N

QUISUMBING, *J.*:

This is an appeal from the Decision[1] dated September 30, 2002 of the Court of Appeals in CA-G.R. SP No. 58803 affirming the Decision[2] dated October 11, 1999 of the National Labor Relations Commission in NLRC NCR CA Case No. 016418-98. The NLRC had affirmed the Decision[3] dated September 22, 1997 of the Labor Arbiter in NLRC NCR Case No. 03-02049-96-A which declared Camacho's dismissal from her employment illegal.

Petitioner Sarabia Optical is a single proprietorship engaged in the optical business and is owned and managed by petitioner Vivian Sarabia-Ong. Respondent Jeanet B. Camacho was the branch manager of Sarabia Optical-SM Megamall at the time of her dismissal on March 9, 1995.

Sarabia-Ong claimed that during the inventory of consigned products in the SM Megamall Branch in August 1994, she was advised that twelve (12) pieces of Rayban™ eyewear were missing. Since Camacho could not explain the missing stocks, Camacho suggested that the costs thereof be deducted from her salary and that of her personnel.

On February 15, 1995, Sarabia-Ong received a phone call from an employee of the SM Megamall Branch informing her of an anomaly in the branch. In a one-on-one conference with

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[1] *Rollo*, pp. 34-44. Penned by Associate Justice Ruben T. Reyes (now a retired member of this Court), with Associate Justices Andres B. Reyes, Jr. and Mariano C. Del Castillo concurring.

[2] *Id.* at 65-69.

[3] *Id.* at 143-156.

the branch personnel, she learned that almost all of them were aware of the anomaly and they pointed to Camacho as its mastermind. They revealed that instead of reporting the income derived from the sale of screws, solutions, and other miscellaneous items from September to November 1994, Camacho divided it among the branch personnel. They added that Camacho devised the practice to cover for the deductions in their salaries due to the missing Rayban™ eyewear.

On March 3, 1995, Sarabia-Ong conducted an investigation and asked Camacho to explain her side. On March 8, 1995, Camacho was dismissed effective March 9, 1995 on the ground of loss of trust and confidence.[4]

Camacho filed a complaint for illegal dismissal, illegal deduction, separation pay, and attorney's fees. She claimed that sometime in 1994, Sarabia-Ong requested her to cooperate in fabricating a case against three old employees of the SM Megamall Branch to justify their dismissal. She refused to cooperate and offered to resign provided she would be paid separation pay. Because of this, Sarabia-Ong fabricated a case against her and accused her of not reporting the income derived from the sale of screws, solutions, and other miscellaneous items from September to November 1994.

In a Decision dated September 22, 1997, the Labor Arbiter ruled that petitioners failed to present material evidence that would support the charge against Camacho. *First*, petitioners failed to present an audit report showing the inventory of the screws, solutions, and other miscellaneous items at the time Camacho took over the management of the SM Megamall Branch and the number of stocks that were eventually sold. Neither were the sales invoices or purchase receipts presented. *Second*, petitioners did not show that they filed a complaint with the police authorities although the charge against Camacho amounted to qualified theft or *estafa*. *Third*, petitioners failed to prove that an administrative investigation was conducted since they did not present any written notice of the charge against Camacho

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[4] *Id.* at 90.

and her purported answer thereto. The decretal portion of the decision reads:

> CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered finding complainant's dismissal to be illegal. Accordingly, complainant should be reinstated or if not feasible because of a strained employer-employee relationship then in lieu thereof, payment of separation pay at one (1) month per year of service, a fraction of six (6) months being considered as one whole year. In addition, complainant should be paid her backwages which as of August 31, 1997 has amounted to ₱232,030.00.
>
> All other claims are dismissed for lack of merit.
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> SO ORDERED.[5]

Petitioners appealed to the NLRC which affirmed *in toto* the Labor Arbiter's finding of illegal dismissal.

Dissatisfied, petitioners elevated the matter to the Court of Appeals.

On September 30, 2002, the appellate court affirmed the NLRC decision. It agreed with the Labor Arbiter and the NLRC that the charge against Camacho was not satisfactorily proven. The Joint Affidavit[6] of Glenda Navarro, Evelyn Jasmin, and Roselle Cosep merely stated that Camacho used her position and authority and engaged them to carry out the anomaly. Petitioners also failed to submit any proof that they incurred losses from September to November 1994 due to the non-reporting of the sales. If the charge against Camacho was true, then petitioners should have filed the appropriate criminal complaint against her. Furthermore, petitioners failed to satisfy the requirements of due process before dismissing Camacho. Although a notice of termination was sent to Camacho, no written notice of the charge was given to her.

Petitioners now submit the following issues for our consideration:

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[5] *Id.* at 155.

[6] *Id.* at 88, 142.

I.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT RESPONDENT'S DISMISSAL FOR LOSS OF TRUST AND CONFIDENCE WAS ILLEGAL.

II.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT PETITIONERS FAILED TO SATISFY THE REQUIREMENTS OF DUE PROCESS.

III.

THE COURT OF APPEALS GRAVELY ERRED IN ORDERING THE PAYMENT OF BACKWAGES AND SEPARATION PAY TO RESPONDENT.[7]

In essence, the issue is: Was Camacho dismissed for cause and with due process?

Petitioners contend that their decision to dismiss Camacho on the ground of loss of trust and confidence was based on the Joint Affidavit of Navarro, Jasmin, and Cosep. These employees swore under oath that Camacho had been pocketing the income of the SM Megamall Branch. Petitioners also aver that they observed due process prior to dismissing Camacho from her employment. She was notified of the charge against her, confronted with the adverse evidence, and given several opportunities to refute the charge and explain her side.

Camacho did not file her Comment to the petition despite several directives from this Court.

In any case, we resolve to deny the petition.

It is an established rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the Court of Appeals

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[7] *Id.* at 19-20.

are conclusive and binding on the Court.[8] We have likewise held that factual findings of labor officials who are deemed to have acquired expertise in matters within their respective jurisdictions are generally accorded not only respect, but even finality, and bind the Supreme Court.[9]

As borne by the records, the findings of facts of the Labor Arbiter, the NLRC and the Court of Appeals, are unanimous.

To be a valid ground for dismissal, loss of trust and confidence must be based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer.[10] Further, the act complained of must be work-related and must show that the employee concerned is unfit to continue working for the employer.[11]

In this case, petitioners failed to substantiate their claim that instead of reporting the income derived from the sale of screws, solutions, and other miscellaneous items from September to November 1994, Camacho distributed the income among the

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[8] *Bank of the Philippine Islands v. Sarmiento*, G.R. No. 146021, March 10, 2006, 484 SCRA 261, 267-268; *Manila Electric Company v. Benamira*, G.R. No. 145271, July 14, 2005, 463 SCRA 331, 347.

[9] *Pelayo v. Aarema Shipping and Trading Co., Inc.*, G.R. No. 155741, March 31, 2006, 486 SCRA 368, 376; *The Philippine American Life and General Insurance Co. v. Gramaje*, G.R. No. 156963, November 11, 2004, 442 SCRA 274, 283.

[10] *AMA Computer College, Inc. v. Garay*, G.R. No. 162468, January 23, 2007, 512 SCRA 312, 316-317; *Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals*, G.R. No. 158232, March 31, 2005, 454 SCRA 737, 760.

[11] *C.F. Sharp & Co., Inc. v. Zialcita*, G.R. No. 157619, July 17, 2006, 495 SCRA 387, 394; *Cruz, Jr. v. Court of Appeals*, G.R. No. 148544, July 12, 2006, 494 SCRA 643, 655.

branch personnel. The only evidence they presented was the Joint Affidavit of Navarro, Jasmin, and Cosep which merely stated that Camacho used her position and authority and engaged them to carry out the anomaly. Further, petitioners did not submit any audit report which would show the inventory of the screws, solutions, and other miscellaneous items before and after the period September to November 1994. Such audit report would have concretely shown the number of stocks sold which Camacho did not report as income of the SM Megamall Branch. Neither did petitioners present the sales invoices or purchase receipts of such screws, solutions, and other miscellaneous items. If an anomaly indeed took place, petitioners could have easily verified and proved it through an audit or inventory instead of relying on their employees' Joint Affidavit.

To boot, petitioners failed to satisfy the requirements of due process before dismissing Camacho from her employment. Procedural due process requires the employer to give the employee two notices: (1) notice apprising him of the particular acts or omissions for which his dismissal is sought, and (2) subsequent notice informing him of the employer's decision to dismiss him.[12] Apparently, no written notice of the charge informing Camacho of the specific act complained of and its corresponding penalty was sent to her. If petitioners gave Camacho such notice, then the same should have been presented as evidence and should have appeared on record.

In sum, we find that Camacho was illegally dismissed due to petitioners' failure to show adequately that a valid cause for terminating her employment exists, and their failure to comply with the twin notice requirement.

WHEREFORE, the instant petition is *DENIED*. The Decision dated September 30, 2002 of the Court of Appeals in CA-G.R. SP No. 58803 is *AFFIRMED*.

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[12] *Millares v. Philippine Long Distance Co., Inc.*, G.R. No. 154078, May 6, 2005, 458 SCRA 102, 110-111. See *Heavylift Manila, Inc. v. Court of Appeals*, G.R. No. 154410, October 20, 2005, 473 SCRA 541, 550.

SO ORDERED.

Ynares-Santiago,[*] *Chico-Nazario,*[**] *Leonardo-de Castro,*[***] and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 159755. June 18, 2009]

GRACE GOSIENGFIAO GUILLEN, deceased EMMA GOSIENGFIAO GALAOS, represented by her daughter EMELYN GALAOS-MELARION, deceased FRANCISCO GOSIENGFIAO, JR., represented by his widow EDELWISA GOSIENGFIAO, JACINTO GOSIENGFIAO, and *absentees* ESTER GOSIENGFIAO BITONIO, NORMA GOSIENGFIAO, and PINKY BUENO PEDROSO, represented by their attorney-in-fact JACINTO GOSIENGFIAO, *petitioners, vs.* **THE COURT OF APPEALS, HON. JIMMY HENRY F. LUCZON, JR., in his capacity as Presiding Judge of the Regional Trial Court, Branch I, Tuguegarao, Cagayan, LEONARDO MARIANO, AVELINA TIGUE, LAZARO MARIANO, MERCEDES SAN PEDRO, DIONISIA M. AQUINO, and JOSE N.T. AQUINO,** *respondents.*

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[*] 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 Special Order No. 658.

[***] Designated member of the Second Division per Special Order No. 635 in view of the retirement of Associate Dante O. Tinga.

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; LEGAL REDEMPTION; THE RIGHT OF PETITIONER-HEIRS TO EXERCISE THEIR RIGHT OF LEGAL REDEMPTION STILL EXIST, AND THE RUNNING OF THE PERIOD FOR ITS EXERCISE HAS NOT EVEN BEEN TRIGGERED BECAUSE THEY HAVE BEEN NOTIFIED IN WRITING OF THE FACT OF SALE.— We grant the petition and hold — pursuant to the Mariano Decision and based on the subsequent pleaded developments – that the petitioner-heirs have effectively exercised their right of redemption and are now the owners of the redeemed property pursuant to the Sheriff's Certificate of Redemption. A significant aspect of *Mariano* that the CA failed to appreciate is our confirmation of the ruling that a written notice must be served by the vendor. We ruled as follows: The requirement of a written notice has long been settled as early as in the case of *Castillo v. Samonte* (106 Phil. 1023 [1960]) where this Court quoted the ruling in *Hernaez v. Hernaez* (32 Phil. 214), thus: Both the letter and spirit of the New Civil Code argue against any attempt to widen the scope of the notice specified in Article 1088 by including therein any other kind of notice, such as verbal or by registration. If the intention of the law had been to include verbal notice or any other means of information as sufficient to give the effect of this notice, then there would have been no necessity or reasons to specify in Article 1088 of the New Civil Code that the said notice be made in writing for, under the old law, a verbal notice or information was sufficient. x x x The ruling in *Castillo v. Samonte*, *supra*, was reiterated in the case of *Garcia v. Calaliman* (G.R. No. L-26855, April 17, 1989, 172 SCRA 201) where We also discussed the reason for the requirement of the written notice. We said: Consistent with aforesaid ruling, in the interpretation of a related provision (Article 1623 of the New Civil Code) this Court had stressed that written notice is indispensable, actual knowledge of the sale acquired in some other manners by the redemptioner, notwithstanding. He or she is still entitled to written notice, as exacted by the code to remove all uncertainty as to the sale, its terms and its validity, and to quiet any doubt that the alienation is not definitive. The law not having provided for any alternative, the method of notifications remains

exclusive, though the Code does not prescribe any particular form of written notice nor any distinctive method for written notification of redemption (*Conejero, et al. v. Court of Appeals et al.*, 16 SCRA 775 [1966]; *Etcuban v. Court of Appeals*, 148 SCRA 507 [1987]; *Cabrera v. Villanueva*, G.R. No. 75069, April 15, 1988). We also made the factual finding that: The records of the present petition, however, show no written notice of the sale being given whatsoever to private respondents [petitioner-heirs]. Although, petitioners allege that sometime on October 31, 1982 private respondent, Grace Gosiengfiao was given a copy of the questioned deed of sale and shown a copy of the document at the Office of the Barangay Captain sometime November 18, 1982, this was not supported by the evidence presented. x x x From these premises, we ruled that **"[P]etitioner-heirs have not lost their right to redeem, for in the absence of a written notification of the sale by the vendors, the 30-day period has not even begun to run." These premises and conclusion leave no doubt about the thrust of Mariano: The right of the petitioner-heirs to exercise their right of legal redemption exists, and the running of the period for its exercise has not even been triggered because they have not been notified in writing of the fact of sale.** This is what our Decision held, as the penultimate paragraph and the dispositive portion clearly state. This is the *law of the case* that should guide all other proceedings on the case, particularly its execution. For the Luczon ruling and the CA to miss or misinterpret the clear ruling in *Mariano* — the Decision subject of the execution — is a gross and patent legal error that cannot but lead to the reversal of their decisions.

2. ID.; ID.; ID.; ID.; THE COMPUTATION OF THE 30-DAY PERIOD TO EXERCISE THE LEGAL RIGHT OF REDEMPTION DID NOT START TO RUN FROM THE FINALITY OF THE *MARIANO* DECISION; PETITIONER-HEIRS SEASONABLY FILED, VIA A WRIT OF EXECUTION, THEIR NOTICE OF REDEMPTION, ALTHOUGH APPLIED FOR EIGHT (8) MONTHS AFTER THE FINALITY OF THE DECISION.— We hold that the computation of the 30-day period to exercise the legal right of redemption did not start to run from the finality of the *Mariano* Decision, and that the petitioner-heirs seasonably

filed, *via* a writ of execution, their notice of redemption, although they applied for the issuance of the writ some eight (8) months after the finality of the Decision. In seeking the execution of a final and executory decision of this Court, what controls is Section 11, Rule 51, in relation to Section 2, Rule 56, of the Rules of Court. Before the trial court executing the decision, Section 6, Rule 39, on the question of timeliness of the execution, governs. Eight (8) months after the finality of the judgment to be executed is still a seasonable time for execution by motion pursuant to this provision. The writ, notice of redemption, and the tender of payment were all duly served, so that it was legally in order for the Sheriff to issue a Certificate of Redemption when the respondent-buyers failed to comply with the writ and to accept the notice and the tender of payment.

APPEARANCES OF COUNSEL

Diosdado P. Peralta for petitioners.
Celso P. Mariano for respondents.

D E C I S I O N

BRION, *J.*:

At issue in this petition is the timeliness of the exercise of the right of legal redemption that this Court has recognized in a final and executory decision.

The petitioners, heirs of Francisco Gosiengfiao (*petitioner-heirs*), assail in this Rule 45 petition for review on *certiorari* the January 17, 2003 decision and September 9, 2003 resolution of the Court of Appeals (*CA*) in CA-G.R. CV No. 63093.[1] The assailed CA decision ruled that the thirty-day period for the exercise of the right of legal redemption should be counted, not from the notice of sale by the vendor but, from the finality of the judgment of this Court.

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[1] CA Justice Andres B. Reyes, Jr., *ponente*; Justices Delilah Vidallon-Magtolis and Regalado E. Maambong, concurring.

BACKGROUND FACTS

I. *G.R. No. 101522 - Mariano v. Court of Appeals*

The previous case where we recognized the petitioner-heirs' right of legal redemption is *Mariano v. CA*.[2] To quote, by way of background, the factual antecedents that *Mariano* recognized:

> It appears on record that the decedent Francisco Gosiengfiao is the registered owner of a residential lot located at Ugac Sur, Tuguegarao, Cagayan, particularly described as follows, to wit:
>
> > The eastern portion of Lot 1351, Tuguegarao Cadastre, and after its segregation now designated as Lot 1351-A, Plan PSD-67391, with an area of 1,346 square meters.
>
> and covered by Transfer Certificate of Title (*TCT*) No. T-2416 recorded in the Register of Deeds of Cagayan.
>
> The lot in question was mortgaged by the decedent to the Rural Bank of Tuguegarao (designated as mortgagee bank, for brevity) on several occasions before the last, being on March 9, 1956 and January 29, 1958.
>
> On August 15, 1958, Francisco Gosiengfiao died intestate survived by his heirs, namely: Third-Party Defendants: wife Antonia and Children Amparo, Carlos, Severino and herein plaintiffs-appellants Grace, Emma, Ester, Francisco, Jr., Norma, Lina (represented by daughter Pinky Rose), and Jacinto.
>
> The loan being unpaid, the lot in dispute was foreclosed by the mortgagee bank, and in the foreclosure sale held on December 27, 1963, the same was awarded to the mortgagee bank as the highest bidder.
>
> On February 7, 1964, third-party defendant Amparo Gosiengfiao-Ibarra redeemed the property by paying the amount of ₱1,347.89 and the balance of ₱423.35 was paid on December 28, 1964 to the mortgagee bank.
>
> On September 10, 1965, Antonia Gosiengfiao on her behalf and that of her minor children Emma, Lina, Norma, together with Carlos

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[2] G.R. No. 101522, May 28, 1993, 222 SCRA 736; Justice Rodolfo A. Nocon, *ponente*; Chief Justice Andres R. Narvasa (Chairperson), and Justices Teodoro R. Padilla and Florenz D. Regalado, concurring.

and Severino, executed a "Deed of Assignment of the Right of Redemption" in favor of Amparo G. Ibarra appearing in the notarial register of Pedro (Laggui) as Doc. No. 257, Page No. 6, Book No. 8, Series of 1965.

On August 15, 1966, Amparo Gosiengfiao sold the entire property to defendant Leonardo Mariano who subsequently established residence on the lot subject of this controversy. It appears in the Deed of Sale dated August 15, 1966 that Amparo, Antonia, Carlos and Severino were signatories thereto.

Sometime in 1982, plaintiff-appellant Grace Gosiengfiao learned of the sale of said property by the third-party defendants. She went to the *Barangay* Captain and asked for a confrontation with defendants Leonardo and Avelina Mariano to present her claim to the said property.

On November 27, 1982, no settlement having been reached by the parties, the *Barangay* Captain issued a certificate to file action.

On December 8, 1982, defendant Leonardo Mariano sold the same property to his children Lazaro F. Mariano and Dionicia M. Aquino as evidenced by a Deed of Sale notarized by Hilarion L. Aquino as Doc. No. 143, Page No. 19, Book No. V, Series of 1982.

On December 21, 1982, plaintiffs Grace Gosiengfiao, *et al*. [herein petitioner-heirs] filed a complaint for "recovery of possession and legal redemption with damages" against defendants Leonardo and Avelina Mariano [herein respondent-buyers]. Plaintiffs alleged in their complaint that as co-heirs and co-owners of the lot in question, they have the right to recover their respective shares in the said property as they did not sell the same, and the right of redemption with regard to the shares of other co-owners sold to the defendants.

Defendants in their answer alleged that the plaintiffs has [sic] no cause of action against them as the money used to redeem the lot in question was solely from the personal funds of third-party defendant Amparo Gosiengfiao-Ibarra, who consequently became the sole owner of the said property and thus validly sold the entire property to the defendants, and the fact that defendants had already sold the said property to their children, Lazaro Mariano and Dionicia M. Aquino. Defendants further contend that even granting that the plaintiffs are co-owners with the third-party defendants, their right of redemption had already been barred by the Statute of Limitations under Article 1144 of the Civil Code, if not by laches.

On September 16, 1986, the trial court dismissed the complaint before it, as "only Amparo redeemed the property from the bank" using her money and solely in her behalf so that the petitioner-heirs had lost all their rights to the property.[3] The trial court explained that what Gosiengfiao's heirs inherited from him was only the right to redeem the property, as it was then already owned by the bank. By redeeming the property herself, Amparo became the sole owner of the property, and the lot ceased to be a part of Gosiengfiao's estate.

On May 13, 1991, the CA reversed the trial court's decision, declaring the petitioner-heirs "co-owners of the property who may redeem the portions sold" to the respondent-buyers. The CA denied the respondent-buyers' motion for reconsideration;[4] thus, they came to this Court to question the CA's rulings.

Our Decision, promulgated on May 28, 1993, affirmed the appellate court decision.[5] It stated in its penultimate paragraph and in its dispositive portion that:

> Premises considered, respondents have not lost their right to redeem, for in the absence of a written notification of the sale by the vendors, the 30-day period has not begun to run.
>
> WHEREFORE, the decision of the Court of Appeals is hereby AFFIRMED. Costs against petitioners.

Aside from this express declaration, the Court explained that, as the property was mortgaged by the decedent, co-ownership existed among his heirs during the period given by law to redeem the foreclosed property. Redemption of the whole property by co-owner Amparo did not vest in her the sole ownership over the property, as the redemption inured to the benefit of all co-owners; redemption will not put an end to co-ownership, as it is not a mode of terminating a co-ownership. The Court also

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[3] The decision was penned by Judge Juan P. Jimenez, RTC, Branch 1, Tuguegarao, Cagayan.

[4] *Supra* note 1.

[5] *Supra* note 2.

distinguished[6] between Articles 1088[7] and 1620[8] of the Civil Code and ruled as inapplicable the doctrine that "the giving of a copy of the deed of sale to the co-heirs as equivalent to a notice."[9] On July 12, 1993, this Court denied the respondent-buyers' motion for reconsideration. The entry of judgment was made on August 2, 1993.

II. Execution of the Mariano Decision (G.R. No. 101522) By the Lower Court

a. *The Incidents*

On April 26, 1994, the petitioner-heirs, as winning parties, filed a motion for the execution of our Decision in G.R. No. 101522,

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[6] The Court held: "According to Tolentino, the fine distinction between Article 1088 and Article 1620 is that when the sale consists of an interest in some particular property or properties of the inheritance, the right of redemption that arises in favor of the other co-heirs is that recognized in Article 1620. On the other hand, if the sale is the hereditary right itself, fully or in part, in the abstract sense, without specifying any particular object, the right recognized in Article 1088 exists."

[7] Art. 1088. Should any of the heirs sell his hereditary rights to a stranger before the partition, any or all of the co-heirs may be subrogated to the rights of the purchaser by reimbursing him for the price of the sale, provided they do so within the period of one month from the time they were notified in writing of the sale by the vendor.

[8] Art. 1620. A co-owner of a thing may exercise the right of redemption in case the shares of all the other co-owners or of any of them are sold to a third person. If the price of the alienation is grossly excessive, the redemptioner shall pay only a reasonable one.

[9] The Court further held: "Petitioners allege that upon the facts and circumstances of the present case, respondents failed to exercise their right of legal redemption during the period provided by law, citing as authority the case of *Conejero, et al., v. Court of Appeals, et al.* (16 SCRA 775) wherein the Court adopted the principle that the giving of a copy of a deed is equivalent to the notice as required by law in legal redemption. We do not dispute the principle laid down in the *Conejero* case. However, the facts in the said case are not four square with the facts of the present case. In *Conejero*, redemptioner Enrique Conejero was shown and given a copy of the deed of sale of the subject property. The Court in that case stated that the furnishing of a copy of the deed was equivalent to the giving of a written notice required by law."

which motion the trial court granted on May 11, 1994.[10] The next day, the clerk of court issued a writ of execution and a notice to vacate.[11] The respondent-buyers moved for a reconsideration of the May 11, 1994 order and prayed for the nullification of the notice to vacate, arguing that the dispositive portion of the decision to be executed merely declared and recognized the petitioner-heirs as co-owners of the lot and did not authorize the sheriff to remove their houses from the land. They argued they can remain in possession of the property as co-owners because the judgment did not divest them of possession.[12] The sheriff later informed the trial court that copies of the notice to vacate and the writ of execution were served on, but were not signed by, the respondent-buyers. After the expiration of the 45-day period to vacate, the sheriff went back to check if the respondent-buyers had complied. They had not.

On March 31, 1995, the petitioner-heirs filed a notice of redemption with the court of origin, duly served on the respondent-buyers, for the shares of Amparo, Antonia, Carlos, and Severino, and tendered the redemption price of ₱53,760.[13] On April 18, 1995, the sheriff issued a certificate of redemption after the first and second buyers refused to sign the notice and accept the tender, and after the aggrieved heirs deposited the redemption money with the court.[14] On the same date, the sheriff issued a return of service informing the court that on March 31, 1995, the redemption money was tendered to, but was not accepted by, Engr. Jose Aquino who received, but did not sign, the notice of redemption.[15]

From 1994 to 1995, the respondent-buyers filed four motions: a motion for reconsideration of the May 11, 1994 order granting

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[10] Records, Vol. II, p. 164.

[11] *Id.,* pp. 161-163.

[12] *Rollo,* p. 429.

[13] *Id.,* pp. 111-112.

[14] *Id.,* p. 113.

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

the motion for the issuance of a writ of execution;[16] a motion to ascertain the redemptive shares of third-party defendants;[17] a motion to declare the petitioner-heirs to have lost their right of legal redemption;[18] and a motion to expunge from the records the petitioner-heirs' notice of redemption.[19]

b. *The Judge Beltran Rulings*

On December 4, 1995, the trial court, through Judge Orlando Beltran,[20] issued an order (1) recalling the writ of execution for "incorrectly" quoting the dispositive portion of the CA decision and nullifying the notice to vacate; (2) denying the motion to ascertain third-party defendants' shares, as Amparo's redemption inured to the benefit of her co-heirs, thus, each of the 10 heirs has 1/10 equal share of the lot; (3) denying the third motion as no written notice of the sale has been served on the petitioner-heirs by the vendor or by the vendee; and (4) denying the last motion for lack of legal and factual basis.[21] **The trial court thereafter denied the respondent-buyers' motion for reconsideration that followed.**[22]

On May 30, 1996, the court denied their motion to nullify the certificate of redemption and cancellation of the certificate at the back of TCT No. T-2416; the respondent-buyers moved to reconsider this denial on July 9, 1996.[23]

On June 11, 1996, the respondent-buyers filed **an omnibus motion for reconsideration,** arguing that the December 4, 1995 order is contrary to law, jurisprudence, and the decisions of the CA and this Court on this case.[24]

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[16] *Id.,* pp. 427-431.

[17] *Id.,* pp. 102-106.

[18] *Id.,* pp. 107-110.

[19] *Id.,* pp. 116-119.

[20] RTC, Branch IV, Tuguegarao, Cagayan.

[21] *Rollo,* pp. 120-123.

[22] *Id.,* p. 134.

[23] *Id.,* pp. 148-151.

[24] *Id.,* pp. 468-479.

On July 15, 1996, the respondent-buyers again filed **a motion for reconsideration of the May 30, 1996 order** denying their motion to nullify the certificate of redemption and to order its cancellation at the back of TCT No. T-2416, which move the petitioner-heirs opposed. They argued that the decision of this Court was not self-executing, and the sheriff had no power to do anything without a court sanction. They also argued that it was untrue that the basis of the April 18, 1995 certificate of redemption was the May 31, 1991 decision of the CA, as affirmed by this Court, because the certificate was "inexistent" when those decisions were promulgated.

c. *The Judge Luczon Rulings*

On September 26, 1997, the trial court, through Judge Jimmy Henry F. Luczon, Jr.,[25] issued an order granting the respondent-buyers' omnibus motion for reconsideration of the December 4, 1995 order, declaring the petitioner-heirs to have lost their right of redemption, and nullifying the notice and the certificate of redemption.[26] Noting the absence of a written notice of sale or manifestation received by the petitioner-heirs, the trial court deemed as notice of sale this Court's decision which became final and executory on August 2, 1993. The trial court considered September 1, 1993 as the last day of the redemption period, and, consequently, declared that the notice and the certificate of redemption were filed late.

The trial court denied the petitioner-heirs' motion for reconsideration of the September 26, 1997 order, ruling that the introduction of the deed of sale as the parties' evidence in the trial and higher courts was sufficient to give the petitioner-heirs written notice of the sale; and that the Civil Code does not require any particular form of written notice or distinctive method for written notification of redemption.

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[25] RTC, Branch 1, Tuguegarao, Cagayan.

[26] *Rollo*, pp. 152-155.

III. *The Assailed Court of Appeals Decision*

The petitioner-heirs thereupon went to the CA on a petition for *certiorari* to question the lower court's orders. (They had earlier filed an Appeal *Ad Cautelam* which the CA consolidated with the petition for *certiorari*.)[27] As grounds, they cited the lower court's lack of jurisdiction since the motions ruled upon were really initiatory pleadings based on causes of action independent of, although related to, Civil Case No. 3129, and that no certificate of non-forum shopping was attached, nor any docket fees paid. They also claimed that the respondent-buyers' motion was a prohibited second motion for reconsideration that the lower court could not rule upon, and one that was filed beyond the 15-day period of appeal.[28] Finally, they faulted the lower court for ignoring *the law of the case*, as established in *Mariano*.

The respondent-buyers questioned the petition on technicalities, but focused on the issue of whether the final and executory decision of this Court in *Mariano* was effectively a written notice of sale to the heirs; they continued to maintain that the redemption period should run from the finality of our Decision, and, thus, had already lapsed.

The CA followed the respondent-buyers' lead and likewise focused on the effect of our Decision on the petitioner-heirs' redemption of the disputed co-owned property. To quote the appellate court:

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[27] Per Resolution dated February 9, 2000 of the Former Fifteenth Division of the CA (*see* CA-G.R. SP No. 51857 *rollo*, pp. 245-247), CA-G.R. SP No. 51857 was ordered consolidated with CA-G.R. CV No. 63093, which involved the same issues and parties, provided that the *ponencia* of the civil case conformed to the consolidation pursuant to Rule 3, Section 7 (b) (3) of the Revised Internal Rules of the Court of Appeals directing that the consolidated cases shall pertain to the justice to whom the civil case is assigned. On February 23, 2000, Associate Justice Elvi John S. Asuncion of the then Seventh Division of the CA conformed to the consolidation of cases (*see* CA-G.R. CV No. 63093 *rollo*, p. 26).

[28] *Rollo*, pp. 71-73, supported by Annexes A to A-20.

The pivot of inquiry here is: whether or not the final and executory Decision of the Supreme Court constitutes written notice to plaintiffs-appellants [herein petitioner-heirs].

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It is undisputed that the Highest Magistrate's Decision in G.R. 101522 had become final and executory on 02 August 1993 and that it was only on 26 April 1994 or after the lapse of more than eight (8) months from the finality of the said Decision that plaintiffs-appellants filed a Motion for Execution.

The Entry of Judgment of G.R. 101522 states as follows, thus:

> This is to certify that on May 26, 1993 a decision rendered in the above-entitled case was filed in this Office, the dispositive portion of which reads as follows:
>
> Premises considered, respondents have not lost their right to redeem, for in the absence of a written certification of the sale by the vendors, the 30-day period has not even begun to run.
>
> WHEREFORE, the decision of the Court of Appeals is hereby AFFIRMED. Costs against the petitioners.
>
> SO ORDERED.
>
> and that the same has, on August 2, 1993 become final and executory and is hereby recorded in the book of Entries of Judgment.

As it is an established procedure in court that when an entry of judgment was issued, it means that the contending parties were already properly notified of the same either through the parties themselves or through their respective counsels.

Thus, the very existence of the Supreme Court's Entry of Judgment negates plaintiffs-appellants' claim that no notice of what [*sic*] nature was received by them insofar as G.R. 101522 was concerned.

Concomitantly, the Court concurs with the argument of respondents-appellees [herein respondent-buyers] that the thirty (30) days grace period within which to redeem the contested property should be counted from 02 August 1993.

As they failed to redeem the same in accordance with the instruction of the High Court, plaintiffs-appellants lost all the rights and privileges granted to them by the Supreme Court in G.R. 101522.

From the foregoing facts, it is clear that plaintiffs-appellants had slept from their rights and their failure to exercise the same within the period allowed by the High Court is deemed a waiver on their part.

All told, the Court holds and so rules that the court *a quo* erred not in reversing itself.

To summarize, the appellate court ruled that (1) because an entry of judgment had been made, the *Mariano* Decision is deemed to have been served on the petitioner-heirs; (2) based on this premise, the appellate court held that the 30-day redemption period should run from August 2, 1993 (the date of the entry of judgment); and (3) for the petitioner-heirs' failure to redeem within that period, they "lost all the rights and privileges granted to them by the Supreme Court in G.R. No. 101522."

THE PETITION

Faced with the CA's ruling and the denial of their motion for reconsideration, the petitioner-heirs filed the present petition with this Court. They argue in this petition and in their memorandum that the January 17, 2003 decision of the CA is erroneous for the reasons outlined below.

First. They clarify that their theory that the Decision of this Court is not the written notice required by law was not anchored on lack of notice of that decision, but on Article 1623 of the Civil Code: the written notice should be given by the vendor, not by this Court by virtue of a final decision. The CA erred and abused its discretion in concluding that they lost their right of redemption under this Court's Decision because the start of the redemption period is not reckoned from the date of the finality of that decision; the Decision is not the source of their right to redeem.

Second. They posit a redemption period is not a prescriptive period, and the lower courts erred in considering the 30-day

period as an extinctive prescriptive period because legal redemption under Article 1623 does not prescribe. The period has not even begun to run. Their use of the services of the sheriff to exercise their right of redemption through a motion for execution was approved by this Court as a method of redemption.

In their Comment, the respondent-buyers stress that the main issue in this petition is whether the petitioner-heirs' right of legal redemption, as recognized in G.R. No. 101522, had been lost. The "non-reviewable" findings of facts of the trial and appellate courts that plaintiffs exercised their right of redemption late, and that the decision in G.R. No. 101522 had already become final, bind this Court.

In their Reply to Comment, the petitioner-heirs argue that the 30-day redemption period under Article 1623 cannot be reckoned from the date of finality of this Court's Decision in G.R. No. 101522 because it is not and cannot be a "notice" in writing by the vendor; this Court is not the vendor and a written notice by the vendor is mandatory for the 30-day redemption period to run. The Decision negates the notion that it serves as a "notice," because it clearly states that the period of redemption had not begun to run. Having previously exercised the right of redemption, the execution was nothing more than the implementation of what had been the final ruling of this Court.

In their memorandum, the respondent-buyers maintain that the petitioner-heirs' "time-barred" right to redeem the property was not cured by the notice of redemption and by their "late" tender of the redemption money; since the petitioner-heirs were exercising their right of legal redemption by virtue of the Decisions of this Court and the CA, it was incumbent upon them to effectuate the steps of redemption seasonably. The "belated" notice of redemption and tender of payment of redemption price were not *bona fide*, as they were not made within the required period.

THE COURT'S RULING

The parties' positions all focus, and rightly so, on the main issue: **when did the 30-day period to redeem the subject property start?** This is a question of law, not of fact, as the

respondent-buyers erroneously claim; thus, the lower courts' findings cannot bind this Court.

The appellate court unfortunately failed to appreciate the *breadth* and *significance* of this issue, simply ruling on the case based on the implications of an entry of judgment. Because of this myopic view, it completely missed the *thrust* and *substance* of the *Mariano* Decision.

We grant the petition and hold — pursuant to the *Mariano* Decision and based on the subsequent pleaded developments — that the petitioner-heirs have effectively exercised their right of redemption and are now the owners of the redeemed property pursuant to the Sheriff's Certificate of Redemption.

A significant aspect of *Mariano* that the CA failed to appreciate is our confirmation of the ruling that a written notice must be served by the vendor.[29] We ruled as follows:

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[29] Parenthetically, *Mariano* is not the latest ruling on the requirement of notice from the vendor. In *Perpetua vda. De Ape v. Court of Appeals*, G.R. No. 133638, April 15, 2005, 456 SCRA 193, we said:

> Despite the plain language of the law, this Court has, over the years, been tasked to interpret the "written notice requirement" of the above-quoted provision. In the case *Butte v. Manuel Uy & Sons, Inc.*, we declared that —
>
> In considering whether or not the offer to redeem was timely, we think that the notice given by the vendee (buyer) should not be taken into account. The text of Article 1623 clearly and expressly prescribes that the thirty days for making the redemption are to be counted from notice in writing by the vendor. Under the old law (Civ. Code of 1889, Art. 1524), it was immaterial who gave the notice; so long as the redeeming co-owner learned of the alienation in favor of the stranger, the redemption period began to run. It is thus apparent that the Philippine legislature in Article 1623 deliberately selected a particular method of giving notice, and that method must be deemed exclusive. (39 Am. Jur., 237; *Payne v. State*, 12 S.W. 2(d) 528). As ruled in *Wampler v. Lecompte*, 150 Atl. 458 (affd. in 75 Law Ed. [U.S.] 275) —
>
> > why these provisions were inserted in the statute we are not informed, but we may assume until the contrary is shown, that a state of facts in respect thereto existed, which warranted the legislature in so legislating.

The requirement of a written notice has long been settled as early as in the case of *Castillo v. Samonte* (106 Phil. 1023 [1960]) where this Court quoted the ruling in *Hernaez v. Hernaez* (32 Phil. 214), thus:

> Both the letter and spirit of the New Civil Code argue against any attempt to widen the scope of the notice specified in Article 1088 by including therein any other kind of notice, such as verbal or by registration. If the intention of the law had been to include verbal notice or any other means of information as sufficient to give the effect of this notice, then there would have been no necessity or reasons to specify in Article 1088 of the New Civil Code that the said notice be made in writing for, under the old law, a verbal notice or information was sufficient.
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> x x x x x x x x x

The ruling in *Castillo v. Samonte, supra,* was reiterated in the case of *Garcia v. Calaliman* (G.R. No. L-26855, April 17, 1989, 172 SCRA 201) where We also discussed the reason for the requirement of the written notice. We said:

> The reasons for requiring that the notice should be given by the seller, and not by the buyer, are easily divined. The seller of an undivided interest is in the best position to know who are his co-owners that under the law must be notified of the sale. Also, the notice by the seller removes all doubts as to fact of the sale, its perfection; and its validity, the notice being a reaffirmation thereof, so that the party notified need not entertain doubt that the seller may still contest the alienation. This assurance would not exist if the notice should be given by the buyer.
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> The interpretation was somehow modified in the case of *De Conejero, et al. v. Court of Appeals, et al*., wherein it was pointed out that Article 1623 "does not prescribe a particular form of notice, nor any distinctive method for notifying the redemptioner" thus, as long as the redemptioner was notified in writing of the sale and the particulars thereof, the redemption period starts to run. This view was reiterated in *Etcuban v. The Honorable Court of Appeals, et al., Cabrera v. Villanueva, Garcia, et al. v. Calaliman, et al., Distrito, et al. v. The Honorable Court of Appeals, et al.*, and *Mariano, et al. v. Hon. Court of Appeals, et al.*
>
> However, in the case of *Salatandol v. Retes*, wherein the plaintiffs were not furnished any written notice of sale or a copy thereof by the vendor, this Court again referred to the principle enunciated in the case of *Butte*. As observed by Justice Vicente Mendoza, such reversion is only sound, thus:

> Consistent with aforesaid ruling, in the interpretation of a related provision (Article 1623 of the New Civil Code) this Court had stressed that written notice is indispensable, actual knowledge of the sale acquired in some other manners by the redemptioner, notwithstanding. He or she is still entitled to written notice, as exacted by the code to remove all uncertainty as to the sale, its terms and its validity, and to quiet any doubt that the alienation is not definitive. The law not having provided for any alternative, the method of notifications remains exclusive, though the Code does not prescribe any particular form of written notice nor any distinctive method for written notification of redemption (*Conejero, et al. v. Court of Appeals, et al.*, 16 SCRA 775 [1966]; *Etcuban v. Court of Appeals,* 148 SCRA 507 [1987]; *Cabrera v. Villanueva,* G.R. No. 75069, April 15, 1988).

We also made the factual finding that:

> The records of the present petition, however, show no written notice of the sale being given whatsoever to private respondents [petitioner-heirs]. Although, petitioners allege that sometime on October 31, 1982 private respondent, Grace Gosiengfiao was given a copy of the questioned deed of sale and shown a copy of the document at the Office of the *Barangay* Captain sometime November 18, 1982, this was not supported by the evidence presented. x x x

From these premises, we ruled that *"[P]etitioner-heirs have not lost their right to redeem, for in the absence of a written notification of the sale by the vendors, the 30-day period has*

> Art. 1623 of the Civil Code is clear in requiring that the written notification should come from the vendor or prospective vendor, not from any other person. There is, therefore, no room for construction. Indeed, the principal difference between Art. 1524 of the former Civil Code and Art. 1623 of the present one is that the former did not specify who must give the notice, whereas the present one expressly says the notice must be given by the vendor. Effect must be given to this change in statutory language.
>
> In this case, the records are bereft of any indication that Fortunato was given any written notice of prospective or consummated sale of the portions of Lot No. 2319 by the vendors or would-be vendors. The thirty (30)-day redemption period under the law, therefore, has not commenced to run.

not even begun to run." These premises and conclusion leave no doubt about the thrust of *Mariano*: **The right of the petitioner-heirs to exercise their right of legal redemption exists, and the running of the period for its exercise has not even been triggered because they have not been notified in writing of the fact of sale.** This is what our Decision held, as the penultimate paragraph and the dispositive portion clearly state. This is the *law of the case* that should guide all other proceedings on the case, particularly its execution.[30] For the Luczon ruling and the CA to miss or misinterpret the clear ruling in *Mariano* — the Decision subject of the execution — is a gross and patent legal error that cannot but lead to the reversal of their decisions.

In light of this conclusion, we see no need to discuss the other presented issues. We hold that the computation of the 30-day period to exercise the legal right of redemption did not start to run from the finality of the *Mariano* Decision, and that the petitioner-heirs seasonably filed, *via* a writ of execution, their notice of redemption, although they applied for the issuance of the writ some eight (8) months after the finality of the Decision. In seeking the execution of a final and executory decision of this Court, what controls is Section 11, Rule 51,[31] in relation to

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[30] In *Vios v. Pantangco, Jr.*, G.R. 163103, February 6, 2009, we defined the law of the case as:

> [T]he opinion delivered on a former appeal. It is a term applied to an established rule that when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal. It means that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.

[31] Rule 51, Sec. 11. *Execution of judgment.*

Except where the judgment or final order or resolution, or a portion thereof, is ordered to be immediately executory, the motion for its execution may only be filed in the proper court after its entry.

x x x x x x x x x

Section 2, Rule 56,[32] of the Rules of Court. Before the trial court executing the decision, Section 6, Rule 39,[33] on the question of timeliness of the execution, governs. Eight (8) months after the finality of the judgment to be executed is still a seasonable time for execution by motion pursuant to this provision. The writ, notice of redemption, and the tender of payment were all duly served, so that it was legally in order for the Sheriff to issue a Certificate of Redemption when the respondent-buyers failed to comply with the writ and to accept the notice and the tender of payment.

WHEREFORE, in light of the foregoing, we hereby *GRANT* the petition and, accordingly, *REVERSE* and *SET ASIDE* the January 17, 2003 decision and September 9, 2003 resolution of the Court of Appeals in CA-G.R. CV No. 63093. The **petitioner-heirs' exercise of their right of redemption** of co-heirs Amparo G. Ibarra, Antonio C. Gosiengfiao, Carlos Gosiengfiao, and Severino Gosiengfiao's shares over Lot 1351-A, Plan Psd-67391, covered by Transfer Certificate of Title No. T-2416, and located in Ugac Sur, Tuguegarao, Cagayan, in view of their March 31, 1995 Notice of Redemption and the April 18, 1995 Certificate of Redemption issued by the Sheriff of the Regional Trial Court, Branch IV, Tuguegarao, Cagayan, is hereby declared *VALID and LEGAL*.

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[32] Rule 56, Sec. 2. *Rules applicable.*

The procedure in original cases for *certiorari*, prohibition, *mandamus*, *quo warranto* and *habeas corpus* shall be in accordance with the applicable provisions of the Constitution, laws, and Rules 46, 48, 49, 51, 52 and this Rule, subject to the following provisions:

a) All references in said Rules to the Court of Appeals shall be understood to also apply to the Supreme Court;

x x x x x x x x x

[33] Rule 39, Sec. 6. *Execution by motion or by independent action.*

A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

Costs against the respondents.

SO ORDERED.

Quisumbing (Chairperson), Ynares-Santiago,[*] *Chico-Nazario,*[**] and *Leonardo-de Castro,*[***] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 162374. June 18, 2009]

RODOLFO B. ARCEÑO, *petitioner, vs.* **GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS),** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS); PERMANENT DISABILITY BENEFITS; OCCUPATIONAL DISEASES; THE APPELLATE COURT COULD NOT BE FAULTED FOR NOT MAKING ANY CATEGORICAL RULING ON WHETHER THE GSIS SHOULD HAVE GRANTED PETITIONER'S DISABILITY CLAIM BASED ON A CARDIOVASCULAR DISEASE BECAUSE ALL THROUGHOUT THE PROCEEDINGS BEFORE THE GSIS AND THE EMPLOYEES COMPENSATION COMMISSION (ECC), PETITIONER'S CLAIM IS BASED ON THE

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[*] Designated additional Member of the Second Division per Special Order No. 645 dated May 15, 2009.

[**] Designated additional Member of the Second Division effective June 3, 2009 per Special Order No. 658 dated June 3, 2009.

[***] Designated additional Member of the Second Division effective May 11, 2009 per Special Order No. 635 dated May 7, 2009.

ILLNESS OF *ADRENAL ADENOMA*.— The CA made no categorical ruling on whether the GSIS should have granted petitioner's disability claim based on cardiovascular disease, and not on the illness of adrenal adenoma alone. However, the CA could not be faulted for this altogether because all throughout the proceedings before the GSIS and the ECC, petitioner's claim was apparently based on the illness *adrenal adenoma*. It was only in his petition for review filed with the CA where petitioner advanced the argument that since he was also suffering from cardiovascular disease, he should be awarded disability benefits based on said illness. In fact, when the GSIS denied his claim, petitioner never even mentioned in his motion for reconsideration thereof that his claim for disability benefits was based on cardiovascular disease; instead, he was insisting that his *adrenal adenoma* was work-related as it was caused by the stress he suffered as a Prosecutor. His letter dated July 23, 2001 stated thus: This is a motion for consideration of your order/decision denying my claim for reimbursement and other benefits under PD 626, as amended, which was issued by your department on June 29, 2001, but received by the undersigned on July 14, 2001, based on the following grounds: 1. The Certification issued by Dr. Benjamin Mombay, dated July 17, 2001, who is my doctor and who diagnosed my adenoma stated that in his opinion my ailment could have been caused by stress or have been aggravated by it x x x. 2. I believe that as Trial Prosecutor I have been exposed to stress over an extended period of time. This is a modern accepted theory that stress was based on the idea that excessive demands in a person's life produces high levels of hormones. These hormones lower the body's resistance to disease and cause damage. The life of a Trial Prosecutor is one of the most stressful jobs in the government service for the reason that trial advocacy is adversarial. x x x Overtime, the daily hazzles (sic) day in and day out will take its toll. x x x In the early eighties as Trial Prosecutor, I had the belief that in order to deserve my pay, as Trial Prosecutor, I must be exposed to all kinds of stressful situations as possible. x x x. This is my explanation why I believe that my adenoma had been caused by stress. It cannot be any clearer that the illness upon which petitioner was basing his claim was *adrenal adenoma*. As a matter of fact, what may be gleaned from Dr. Mombay's Certification dated July 17, 2001, attached to the motion for reconsideration, is that

petitioner's *adrenal adenoma* was the cause of his hypertension, heart disease and respiratory failure.

2. ID.; ID.; ID.; ID.; NEW ISSUES CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL; PETITIONER'S LATER INSISTENCE ON APPEAL BEFORE THE COURT OF APPEALS THAT HE IS ALSO SUFFERING FROM CARDIOVASCULAR DISEASE RESULTING FROM HIS WORK AS PROSECUTOR IS CONSIDERED AS A MERE AFTERTHOUGHT AFTER THE GSIS DENIED HIS CLAIM BASED ON *ADRENAL ADENOMA*.— It appears that petitioner's present insistence that he is also suffering from cardiovascular disease resulting from his work as Prosecutor is a mere afterthought after the GSIS denied his claim based on *adrenal adenoma*. Verily, therefore, the CA was correct in not addressing the issue of whether petitioner should be compensated for his alleged cardiovascular disease, as **it is hornbook principle that new issues cannot be raised for the first time on appeal**. The Court emphasized this rule in *Tan v. Commission on Elections*, explaining that the rule is based on principles of fairness and due process, and is applicable to appealed decisions originating from regular courts, administrative agencies or quasi-judicial bodies, whether rendered in a civil case, a special proceeding, or a criminal case. Thus, in *Otilia Sta. Ana v. Spouses Leon and Aurora Carpo*, it was stated that courts must refrain from entertaining an issue raised by a petitioner for the first time on appeal. Clearly, petitioner's failure to emphasize before the GSIS and the ECC the issue of whether he may be compensated for his alleged cardiovascular disease is fatal to his case, for by this omission, he is deemed to have waived such issue. Although the Court commiserates with petitioner's sufferings, the Court cannot close its eyes to the need to ensure that the workmen's trust fund is protected from depletion due to claims for illnesses which may not be truly work-related. Thus, the Court emphasizes once again its admonition in *Government Service Insurance System v. Cuntapay*, to wit: x x x with prudence and judicial restraint, a tribunal's zeal in bestowing compassion should yield to the precept in administrative law that **absent a showing of grave abuse of discretion, courts are loathe to interfere with and should respect the findings of quasi-judicial agencies in fields where they are deemed and held to be**

experts due to their special technical knowledge and training. Compassion for the victims of diseases not covered by the law ignores the need to show a greater concern for the trust fund to which the tens and millions of workers and their families look for compensation whenever covered accidents, diseases and deaths occur.

APPEARANCES OF COUNSEL

Stephen C. Arceño for petitioner.
Chief Legal Counsel (GSIS) for respondent.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision[1] dated June 30, 2003 and Resolution[2] dated February 9, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 69255, denying petitioner's motion for reconsideration, be reversed and set aside.

The antecedent facts are as follows.

Petitioner rendered services to the government as a lawyer beginning April 23, 1971, first as a Legal Researcher in the then Court of First Instance of Capiz, then as Deputy Clerk of Court from 1976 to March 15, 1979. On March 16, 1979, he transferred to the Office of the Provincial Fiscal of Capiz, Roxas City and, after several promotions, he eventually held the position of Provincial Prosecutor from March 16, 1998 up to his retirement on August 31, 1999.

During the course of his government service, specifically on August 28, 1992, petitioner suffered respiratory arrest or

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[1] Penned by Associate Justice Roberto A. Barrios, with Associate Justices Josefina Guevara-Salonga and Lucas P. Bersamin (now a member of this Court), concurring; *rollo*, pp. 11-18.

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

failure, hypertension and cardiac malfunction, as a result of which, he was hospitalized and confined until September 19, 1992. During said hospitalization, he was also found to be suffering from *adrenal adenoma*, a benign tumor of the adrenal gland. Thus, after his hypertension was stabilized, he had an operation for removal of the tumor on November 18, 1992. Although the operation was successful, he was able to return to work only in April 1993.

Upon his return to work, he had to act as Trial Prosecutor for two branches of the Regional Trial Court of Roxas City and, in 1998, when he became the Provincial Prosecutor, he allegedly had to take on additional work load due to the resignations of four of their prosecutors.

On April 19, 1999, petitioner again suffered respiratory arrest while working in his office at the Justice Hall of Roxas City. On the same day, a 2-D echocardiogram was conducted on petitioner and Dr. Matias T. Apistar, his attending physician, made the following findings:

1. Dilated Aortic Root
2. Aortic Regurgitation Severe
3. Concentric Left Ventricular Hypertrophy
4. Paradoxical Motion of the Mid Anterior Septum[3]

Petitioner was then advised by the physician to retire on a total permanent disability as his work as Provincial Prosecutor would endanger his life.

On July 9, 1999, petitioner filed a total and permanent disability claim with respondent Government Service Insurance System (GSIS). Subsequently, or on July 26, 1999, he also applied for retirement effective August 31, 1999.

Petitioner's claim for income benefits under Presidential Decree No. 626, as amended, was denied by the GSIS in its letter dated June 29, 2001. In a letter dated July 23, 2001, petitioner moved for reconsideration of said denial. It was never mentioned

[3] See Medical Certificate (Annex "M" of the Petition), *rollo*, p. 60.

in his motion for reconsideration that his claim for disability benefits is based on cardiovascular disease; instead, he insisted that his *adenoma* was caused by the stress he suffered from being a Prosecutor. On July 26, 2001, the GSIS denied petitioner's motion for reconsideration, reiterating that the claimed ailment, "Adenoma, Adrenal Gland; Hypokalemia, HCVD sec.,"[4] is a non-compensable disease.

Upon request of petitioner, the GSIS then elevated the records of his case to the Employees' Compensation Commission (ECC) for the latter's review. In a Decision[5] dated December 14, 2001, the ECC upheld the GSIS's denial of petitioner's claim for compensation benefits.

Petitioner then filed a petition for review with the CA. For the very first time, petitioner put forth the allegation that his claimed ailment was not only *adrenal adenoma*, but also cardiovascular disease. On June 30, 2003, the appellate court promulgated its Decision dismissing the petition. The CA ruled that the evidence or certifications and medical records submitted by petitioner "do not convincingly prove a reasonable nexus between the ailment [*adrenal adenoma*] of Arceño and his work."[6] Petitioner's motion for reconsideration of the Decision was likewise denied per Resolution[7] dated February 9, 2004.

Hence, this petition where petitioner argues that the CA erred in not ruling squarely on the issue raised in the petition for review; that is, whether petitioner's claim for benefits should be approved, since his illness is not only *adrenal adenoma* but also cardiovascular disease, which is clearly compensable since it is included in Annex "A" of the Implementing Regulations on Occupational Diseases.

The petition is doomed to fail.

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[4] *Rollo,* p. 77.

[5] *Id.* at 79-84.

[6] *Id.* at 16.

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

Indeed, the CA made no categorical ruling on whether the GSIS should have granted petitioner's disability claim based on cardiovascular disease, and not on the illness of adrenal adenoma alone. However, the CA could not be faulted for this altogether because all throughout the proceedings before the GSIS and the ECC, petitioner's claim was apparently based on the illness *adrenal adenoma*. It was only in his petition for review filed with the CA where petitioner advanced the argument that since he was also suffering from cardiovascular disease, he should be awarded disability benefits based on said illness. In fact, when the GSIS denied his claim, petitioner never even mentioned in his motion for reconsideration thereof that his claim for disability benefits was based on cardiovascular disease; instead, he was insisting that his *adrenal adenoma* was work-related as it was caused by the stress he suffered as a Prosecutor. His letter[8] dated July 23, 2001 stated thus:

> This is a motion for consideration of your order/decision denying my claim for reimbursement and other benefits under PD 626, as amended, which was issued by your department on June 29, 2001, but received by the undersigned on July 14, 2001, based on the following grounds:
>
> 1. The Certification issued by Dr. Benjamin Mombay, dated July 17, 2001, who is my doctor and who diagnosed my adenoma stated that in his opinion my ailment could have been caused by stress or have been aggravated by it x x x.
>
> 2. I believe that as Trial Prosecutor I have been exposed to stress over an extended period of time. This is a modern accepted theory that stress was based on the idea that excessive demands in a person's life produces high levels of hormones. These hormones lower the body's resistance to disease and cause damage. The life of a Trial Prosecutor is one of the most stressful jobs in the government service for the reason that trial advocacy is adversarial. x x x Overtime, the daily hazzles (sic) day in and day out will take its toll.
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> x x x x x x x x x

[8] *Id.* at 73-74.

In the early eighties as Trial Prosecutor, I had the belief that in order to deserve my pay, as Trial Prosecutor, I must be exposed to all kinds of stressful situations as possible. x x x.

This is my explanation why I believe that my adenoma had been caused by stress.

It cannot be any clearer that the illness upon which petitioner was basing his claim was *adrenal adenoma*. As a matter of fact, what may be gleaned from Dr. Mombay's Certification[9] dated July 17, 2001, attached to the motion for reconsideration, is that petitioner's *adrenal adenoma* was the cause of his hypertension, heart disease and respiratory failure. Pertinent portions of the Certification are reproduced hereunder:

This is to certify that Fiscal Rodolfo B. Arceño has been a patient since September 1, 1992 at Iloilo Mission Hospital, Iloilo City. He was brought to Iloilo Mission Hospital at about 8:30 in the evening of August 31, 1992, suffering from hypertension, heart disease and respiratory failure.

In my interview with patient, he informed me that he had oftentimes weakness of both arms and legs starting in the early eighties. x x x At first, the patient dismissed the weakness as just a sign of advancing age, but as the years went by the weakness in both his arms and legs became more frequent and lasted longer, until he suffered respiratory arrest on August 31, 1992 at [the] Capiz Emmanuel Hospital, Roxas City.

Having suspected that patient had the growth of tumor somewhere in his body I ordered a C-T. Scan. The result showed that patient had adenoma (tumor) on the left adrenal gland of the size of 4.5 cm. x 3.5 x 4.2 cm.

x x x x x x x x x

The operation having proved a resounding success, I left the management and follow up of patient to my partner, Dr. Henry Gonzales.

The size of the adenoma and complaint of the patient that he had weakness or numbness of both his arms and legs whenever he is

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[9] *Id.* at 75-76. (Emphasis supplied)

subjected to stress made me conclude that tension and stress have caused or aggravated his condition for it is common knowledge that the job of a trial prosecutor is one of the most stressful jobs in the government service.

Wherefore, **it is recommended that the removal of the adenoma on the left adrenal gland of Fiscal Arceño had caused permanent partial disability** and he should be compensated or reimbursed of all his expenses and given other benefits consistent with law and equity.

Thus, it appears that petitioner's present insistence that he is also suffering from cardiovascular disease resulting from his work as Prosecutor is a mere afterthought after the GSIS denied his claim based on *adrenal adenoma*.

Verily, therefore, the CA was correct in not addressing the issue of whether petitioner should be compensated for his alleged cardiovascular disease, as **it is hornbook principle that new issues cannot be raised for the first time on appeal**. The Court emphasized this rule in *Tan v. Commission on Elections*,[10] explaining that the rule is based on principles of fairness and due process, and is applicable to appealed decisions originating from regular courts, administrative agencies or quasi-judicial bodies, whether rendered in a civil case, a special proceeding, or a criminal case.[11] Thus, in *Otilia Sta. Ana v. Spouses Leon and Aurora Carpo*,[12] it was stated that courts must refrain from entertaining an issue raised by a petitioner for the first time on appeal.

Clearly, petitioner's failure to emphasize before the GSIS and the ECC the issue of whether he may be compensated for his alleged cardiovascular disease is fatal to his case, for by this omission, he is deemed to have waived such issue.[13]

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[10] G.R. Nos. 166143-47, November 20, 2006, 507 SCRA 352.

[11] *Id*. at 373-375.

[12] G.R. No. 164340, November 28, 2008.

[13] *Suzuki v. De Guzman*, G.R. No. 146979, July 27, 2006, 496 SCRA 651, 665.

Although the Court commiserates with petitioner's sufferings, the Court cannot close its eyes to the need to ensure that the workmen's trust fund is protected from depletion due to claims for illnesses which may not be truly work-related. Thus, the Court emphasizes once again its admonition in *Government Service Insurance System v. Cuntapay*,[14] to wit:

> x x x with prudence and judicial restraint, a tribunal's zeal in bestowing compassion should yield to the precept in administrative law that **absent a showing of grave abuse of discretion, courts are loathe to interfere with and should respect the findings of quasi-judicial agencies in fields where they are deemed and held to be experts due to their special technical knowledge and training**. Compassion for the victims of diseases not covered by the law ignores the need to show a greater concern for the trust fund to which the tens and millions of workers and their families look for compensation whenever covered accidents, diseases and deaths occur.[15]

IN VIEW OF THE FOREGOING, the petition is *DENIED* for lack of merit. The Decision dated June 30, 2003 and the Resolution dated February 9, 2004 of the Court of Appeals in CA-G.R. SP No. 69255 are hereby *AFFIRMED*. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Velasco, Jr., and *Nachura, JJ.,* concur.

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[14] G.R. No. 168862, April 30, 2008, 553 SCRA 520.

[15] *Id.* at 531, citing *Government Service Insurance System v. Court of Appeals,* 296 SCRA 514, 537-538 (1998). (Emphasis supplied)

THIRD DIVISION

[G.R. No. 163924. June 18, 2009]

"J" MARKETING CORPORATION represented by its Branch Manager ELMUNDO DADOR, *petitioner, vs.* **CESAR L. TARAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; LIMITED TO REVIEWING ONLY ERRORS OF LAW.— The Labor Arbiter, the NLRC, and the CA all agreed that there was a verbal agreement between Caludac and respondent, without which the latter would not have tendered his resignation letter. We do not see any reason to depart from the findings of the three (3) tribunals regarding the existence of a verbal agreement between respondent and Caludac, which agreement was the underlying reason for respondent's submission of his resignation letter. We have held time and again that factual findings of labor administrative officials that are supported by substantial evidence are accorded great respect and finality, absent a showing that they arbitrarily disregarded or misapprehended evidence of such nature as to compel a contrary conclusion if properly appreciated. The Supreme Court does not review supposed errors in the decisions of quasi-judicial agencies that raise factual issues because this Court is essentially not a trier of facts.

2. ID.; ID.; ID.; FINDINGS OF FACT OF LABOR ADMINISTRATIVE OFFICIALS; RULE; NO REASON TO DEPART FROM THE FINDINGS OF THREE (3) TRIBUNALS REGARDING THE EXISTENCE OF A VERBAL AGREEMENT BETWEEN RESPONDENT AND HIS EMPLOYER WHICH AGREEMENT WAS THE UNDERLYING REASON FOR RESPONDENT'S SUBMISSION OF HIS RESIGNATION LETTER.— Well-settled is the rule that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are completely

devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts. None of the exceptions to the general rule is present in this case. Having said that, We shall now determine whether petitioner is liable to pay respondent his separation pay and other benefits due him.

3. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; NO PROVISION IN THE LABOR CODE THAT GRANTS SEPARATION PAY TO VOLUNTARY RESIGNING EMPLOYEES; CASES WHEN SEPARATION PAY IS AWARDED UPON TERMINATION OF EMPLOYMENT.— It is well to note that there is no provision in the Labor Code that grants separation pay to voluntarily resigning employees. Separation pay may be awarded only in cases when the termination of employment is due to (a) installation of labor-saving devices, (b) redundancy, (c) retrenchment, (d) closing or cessation of business operations, (e) disease of an employee and his continued employment is prejudicial to himself or his co-employees, or (f) when an employee is illegally dismissed but reinstatement is no longer feasible. In fact, the rule is that an employee who voluntarily resigns from employment is not entitled to separation pay, except when it is stipulated in the employment contract or collective bargaining agreement (CBA), or it is sanctioned by established employer practice or policy.

4. ID.; ID.; RESPONDENT WAS SEPARATED FROM EMPLOYMENT NOT ON THE GROUNDS PROVIDED BY LAW BUT WAS IMPELLED TO TENDER HIS RESIGNATION ON THE ASSURANCE BY HIS EMPLOYER THAT HE WOULD BE PAID HIS SEPARATION PAY.— Here, respondent was separated from his employment not on the grounds mentioned above. Neither was there a stipulation in his employment contract or CBA or even a company practice or policy that would grant separation pay to employees who voluntarily resigned. Nevertheless, the labor tribunals as well as the CA resolved to grant respondent his prayer for separation pay, explaining that he deserved to receive the same as a gratuity for his loyalty and long service to the company, not to mention the representation of Caludac that he would be given all the benefits due him. We agree. Clearly, the primary consideration that impelled respondent

to tender his resignation letter was the assurance that he would be paid his separation pay. It is thus unlikely for someone to just leave his employer for whom he has worked for twelve (12) years without any expectation of financial assistance. This We can glean from respondent's resignation letter stating: "I hope my resignation be granted and whatever help the management can extend to me and my family, I would highly appreciate it."

5. ID.; ID.; WHILE AN EMPLOYEE WHO VOLUNTARY RESIGNS NEED NOT BE PAID HIS SEPARATION, AN EMPLOYER WHO AGREES TO EXPEND BENEFIT AS AN INCIDENT OF THE RESIGNATION SHOULD NOT BE ALLOWED TO RENEGE ON THE FULFILLMENT OF SUCH COMMITMENT.— In *Alfaro v. Court of Appeals*, We held that as a general rule, separation pay need not be paid to an employee who voluntarily resigns. However, **an employer who agrees to expend such benefit as an incident of the resignation should not be allowed to renege on the fulfillment of such commitment.** In this case, Caludac, as OIC Branch Manager in Tacloban City, represented petitioner and was responsible for overseeing respondent's work in pursuance of the company's goal of an increase in sales and customer satisfaction. Such control was manifested through the communications of Caludac to respondent regarding the latter's performance. Corollarily, We cannot fault respondent for relying on Caludac's representations and promises, as in fact it was to him that he first verbally relayed his plan to resign from the company. Not only the CA, but also the Labor Arbiter and the NLRC, that was convinced that without the assurance of payment of benefits, respondent would not have tendered his resignation letter.

6. ID.; ID.; REASON FOR RESIGNATION BOILS DOWN TO EMPLOYER'S REPRESENTATION THAT RESPONDENT WOULD BE GIVEN HIS SEPARATION BENEFITS, AND SOONER IT WOULD BE AWARDED TO HIM, ONLY IF HE WOULD TENDER HIS RESIGNATION LETTER AT THE PRETEXT THAT HE WAS PHYSICALLY ILL, A CONDITION THAT MADE HIM INEFFICIENT IN HIS ASSIGNED WORK.— Respondent initially filed a complaint for illegal dismissal. However, he did not pursue such course of action and focused instead on his claim for separation pay. It is thus immaterial that petitioner ventilates the issue of

dismissal or the matter of respondent's failure to meet his sales quota. And even assuming that these matters are relevant here, We are in accord with the NLRC's finding that Caludac must have initiated the talk regarding respondent's resignation in view of his recent poor performance. In one case, We held that there is nothing illegal with this approach. Indeed, the practice of allowing an employee to resign, instead of terminating him for just cause so as not to smear his employment record, is commonly practiced in some companies. As aptly held by the NLRC, petitioner, through Caludac, "sweetened the pot" by promising respondent not only an "alternative venue for exit" — voluntary resignation — but also the payment of his separation benefits. There could have been no other reason for respondent to leave his employment other than the promise of payment of almost ₱40,000.00 by way of separation benefits, which, back in 1993, was already a substantial amount. In the end, it will all boil down to Caludac's representation that respondent would be given his separation benefits, and sooner would it be awarded to him, only if he would tender his resignation letter at the pretext that he was physically ill, a condition that made him inefficient in his assigned work.

7. ID.; ID.; PRESCRIPTION OF MONEY CLAIMS; SINCE RESPONDENT FILED HIS CLAIM FOR REST DAY DIFFERENTIAL IN JULY 1993, IT FOLLOWS THEN THAT HE IS ONLY ENTITLED TO HIS REST DAY WITHIN THE THREE-YEAR PERIOD COUNTED FROM THE TIME OF THE FILING OF HIS COMPLAINT, OR FROM JULY 1990.— Anent respondent's claim for rest day pay differential, We likewise uphold the disposition of the NLRC, thus: Finally, We are also not convinced by respondent's position that being a monthly paid employee, complainant is not entitled to rest day pay. An examination of the vouchers submitted by respondent showed that while complainant was paid bi-monthly, he was actually paid on the number of days worked. Thus, every time he is absent, he will not be paid for the day. He is for all intents and purposes, a daily paid employee. As such, he has to be paid rest day pay when he works on his rest days. With complainant's categorical assertion that he worked during his rest days especially in the month of December, the Labor arbiter did not err in awarding him rest day pay. There is however a need to modify this award to cover only the period from July 1990 up to July 1993 as the claim before 1990 had already prescribed.

Under Article 291 of the Labor Code, all money claims arising from employer-employee relations shall be filed within three (3) years from the time the cause of action accrued; otherwise, they shall forever be barred. It is settled jurisprudence that a cause of action has three elements, to wit, (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff. In the computation of the three-year prescriptive period, a determination must be made as to the time when the act constituting a violation of the workers' right to the benefits being claimed was committed. For if the cause of action accrued more than three (3) years before the filing of the money claim, said cause of action has already prescribed in accordance with Article 291 of the Labor Code. Respondent filed his claim for rest day differential in July 1993. It follows then that he is only entitled to his rest day pay within the three-year period counted from the time of the filing of his complaint, or from July 1990. Thus, the NLRC correctly ruled that respondent's claim before July 1990 had already prescribed in accordance with Article 291 of the Labor Code.

APPEARANCES OF COUNSEL

Tarcelo A. Sabarre, Jr. for petitioner.
Rolando V. Tomandao for respondent.

D E C I S I O N

PERALTA, *J.*:

The instant petition[1] for review assails the Decision[2] and Resolution[3] of the Court of Appeals dated September 4,

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[1] *Rollo,* pp. 12-24.

[2] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Delilah Vidallon-Magtolis and Hakim S. Abdulwahid, concurring, *rollo,* pp. 21-23.

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

2003 and March 8, 2004, respectively, in CA-G.R. SP No. 71155.

The facts, as culled from the records, follow.

From February 1981 to February 28, 1993, Cesar L. Taran (respondent) worked as credit investigator/collector for "J" Marketing Corporation (petitioner), an appliance and motorcycle dealer with a branch in Tacloban City.

Sometime in February 1993, respondent informed petitioner's then Officer-in-Charge (OIC) Branch Manager Hector L. Caludac (Caludac) of his intention to resign effective March 1, 1993. On February 13, 1993, Caludac sent respondent a Memorandum[4] requiring him to submit a formal resignation letter. On February 15, 1993, respondent filed his resignation letter.[5]

On July 26, 1993, respondent filed with the National Labor Relations Commission (NLRC), Regional Arbitration Branch No. VIII, Tacloban City a complaint[6] for illegal dismissal and holiday differential. He claimed that there was a verbal arrangement between him and petitioner whereby the latter would pay him 100% separation pay and other benefits, provided that he would formally tender his resignation from the company.[7] But after several follow-ups, petitioner failed to pay respondent his monetary claims;[8] hence, the latter was constrained to file a complaint.

Petitioner, on the other hand, postulated that respondent, as credit collector/investigator, was given a collection quota per month. However, in 1991 and 1992, he failed to meet the same.[9] It added that respondent was also subjected to an investigation for illegal custody of a colored television unit in violation of the

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[4] Records, p. 25.

[5] *Rollo*, p. 54.

[6] Records, pp. 1-2.

[7] Position Paper for Complainant, *id.* at 21-24.

[8] *Id.* at 22.

[9] Position Paper of Respondent, records, pp. 30-35.

company rules or policies.[10] In February 1993, respondent verbally informed petitioner of his decision to resign.[11] On February 15, 1993, he sent a letter of voluntary resignation, stating that he was resigning due to ill health effective March 1, 1993.[12] Petitioner contended that respondent's dismissal was justified, because he failed to meet his collection quota, in which poor performance compelled him to voluntarily resign due to inefficiency.[13]

On March 20, 1995, the Labor Arbiter rendered a Decision[14] in favor of respondent and ordered petitioner to pay him ₱39,600.00 as separation pay, ₱8,126.13 representing 30% of rest day pay from February 1984 to February 1993, plus 10% attorney's fees; or a total award of ₱52,498.74.

On petitioner's appeal,[15] the NLRC rendered a Decision[16] affirming with modification the Labor Arbiter's Decision by reducing the amount of rest day pay to ₱2,970.00 for the period February 1990 to February 1993 only. Petitioner moved for reconsideration,[17] but the NLRC denied the same in its Resolution[18] dated March 15, 2002.

Undaunted, petitioner filed with the Court of Appeals (CA) a petition for *certiorari*[19] contending that the NLRC committed

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[10] *Id.* at 31.

[11] *Supra* note 4.

[12] *Supra* note 5.

[13] Records, p. 34.

[14] Penned by Executive Labor Arbiter Joselito B. Latoja; *rollo*, pp. 59-65.

[15] Records, pp. 73-79.

[16] Penned by Commissioner Oscar S. Uy, with Presiding Commissioner Irenea E. Ceniza and Commissioner Edgardo M. Enerlan, concurring; *rollo*, pp. 66-69.

[17] Records, pp. 141-145.

[18] Penned by Commissioner Oscar S. Uy, with Presiding Commissioner Irenea E. Ceniza and Commissioner Edgardo M. Enerlan, concurring; *rollo*, pp. 70-71.

[19] *CA rollo*, pp. 2-11.

grave abuse of discretion in ordering the payment of separation pay, rest day pay and attorney's fees to respondent in spite of the latter's voluntary resignation from his job. In its Decision[20] dated September 4, 2003, the CA denied the petition for lack of merit "in fact and in law." Petitioner filed a motion for reconsideration,[21] but the same was denied in the Resolution[22] dated March 8, 2004.

Hence, the present petition.

Instead of alleging reversible error, petitioner imputes "grave abuse of discretion" to the CA when it affirmed the NLRC Decision because, "in truth and in fact respondent is not entitled to any benefit having resigned from petitioner voluntarily."[23]

Such erroneous imputation, notwithstanding, the Court shall still proceed to resolve the present petition. Although the Rules of Court specify "reversible errors" as grounds for a petition for review under Rule 45, the Court will lay aside for the nonce this procedural lapse and consider the allegations of "grave abuse" as statements of reversible errors of law.[24]

Essentially, the Court is tasked to resolve the sole question of whether or not respondent is entitled to any benefit under the law after having resigned voluntarily.

Respondent claimed that his resignation was not voluntary in the sense that he would not have tendered his resignation letter if not for the verbal arrangement he had with Caludac that petitioner would pay him 100% separation pay and other benefits. He maintained that without such an assurance, he would not have agreed to terminate his services, as "[n]o one who is in his right senses and having served [the] management for

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[20] *Supra* note 2.

[21] *CA rollo*, pp. 125-130.

[22] *Supra* note 3.

[23] *Rollo*, p. 18.

[24] *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*, G.R. No. 117847, October 7, 1998, 297 SCRA 170, 181.

more than 11 years will resign from his job if he cannot avail the benefits due him."[25] He also stated that, in fact, it was the management that prepared the resignation letter, and he merely affixed his signature thereto. He explained that he allowed the resignation letter[26] to be worded as such because Caludac assured him that such would pave the way for the early grant of all the benefits due him.[27]

Petitioner, on the other hand, countered that respondent's resignation was voluntary, and that he was neither coerced nor forced to resign. It contended that respondent's resignation was triggered by his physical illness, which made him inefficient in his assigned work. It also denied the existence of a verbal agreement between respondent and Caludac or any of its officials, claiming that the initiative to resign came from respondent alone.[28] As for respondent's claim for rest day differential, petitioner

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[25] Records, p. 23.

[26] The resignation letter is quoted in part below:

> I have the honor to tender my resignation as CI/Collector of J Marketing Corporation, Tacloban Branch effective March 01, 1993 **due to my physical illness**.
>
> Based on my personal evaluation, I feel that my performance for the past few months did not meet my accomplishment targets. I firmly believe that **my efficiency was greatly affected by my ill-health condition**. Whenever I traveled for official business often times I got sick. My physician advised me to have rest for 2-3 months while I am under medication. And knowing that I am not anymore fitted to do my job, it would be a liability to J Marketing Corporation if I stay any longer. I've been thinking this over and over again since last quarter of 1992, Surely, I will miss my job because I've been with JMC for more than ten (10) years and though how much I love my work. Finally, I have dedicated to give it up. I don't like to sacrifice the purpose of JMC just because of my need.
>
> x x x x x x x x x
>
> I hope my resignation be granted and whatever help the management can extend to me and to my family, I would highly appreciate it. (*Id.* at 48).

[27] Reply to Respondent's Position Paper, *id.* at 56.

[28] Reply to Complainant's Position Paper, *id.* at 54-55.

argued that the same had no basis, considering that it had already paid all the monetary benefits due to all its employees under the law.[29]

The Labor Arbiter, the NLRC, and the CA all agreed that there was a verbal agreement between Caludac and respondent, without which the latter would not have tendered his resignation letter. The CA Decision quoted the Labor Arbiter's disquisition on this matter, to wit:

> That complainant submitted a resignation letter is uncontroverted. **Our findings reveal that before complainant submitted his resignation letter, he had verbal agreement with the Regional Manager that he had to formally tender his resignation from the company to entitle him to a grant of 100% separation pay**. This verbal agreement can be inferred from the tenor of the letter sent to him on February 13, 1993, by Mr. J (sic) Caludac, Branch OIC, which states:
>
> > Upon receipt of this memo. Head Office requires you to submit a formal Resignation letter [in] which you verbally inform the Regional Manager of your intention to resign.
> >
> > In this connection[,] you have 24 hours to prepare and submit for final review and proper evaluation to Head Office your main duty and responsibility as CI/collector.
> >
> > For your strict compliance.
> >
> > (Annex 'A', p. 24, Record).
>
> **A reading of the memorandum especially the phrase "which you verbally inform the Regional Manager of your intention to resign," positively suggests that there was a prior arrangement between complainant and the Regional Manager of the former's intention to resign**. Why would complainant inform the Regional Manager beforehand of his intention to resign? **The presumption that can be drawn from the said statement is that he had been given some sort of an assurance of some benefits from the company**. Notice again the tenor of the last paragraph of his resignation letter, as it seeks the indulgence of management.

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[29] Records, p. 31.

'I hope my resignation be granted and whatever help the management can extend to me and my family, I would highly appreciate it.'

x x x x x x x x x

Moreover, one further proof that there was a prior arrangement to grant complainant his separation pay is the letter (Annex 'B') of Regional Manager-Visayas, Vicente Chan to Asst. Gen. Manager Eduardo S. Go, that the reason why complainant filed the instant case was the failure of respondent to pay the separation pay as previously agreed upon. (Annex 'B', p. 57, Record).

Complainant had complied with the requirement of respondent to file a formal letter of resignation before the benefit of separation pay could be given to him. Unfortunately[,] and for unknown reasons, respondent reneged on that promise. He was thus virtually left hanging on to an empty bag of false promises and deceit.[30]

We do not see any reason to depart from the findings of the three (3) tribunals regarding the existence of a verbal agreement between respondent and Caludac, which agreement was the underlying reason for respondent's submission of his resignation letter.

We have held time and again that factual findings of labor administrative officials that are supported by substantial evidence are accorded great respect and finality, absent a showing that they arbitrarily disregarded or misapprehended evidence of such nature as to compel a contrary conclusion if properly appreciated. The Supreme Court does not review supposed errors in the decisions of quasi-judicial agencies that raise factual issues because this Court is essentially not a trier of facts.[31]

Well-settled is the rule that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are completely

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[30] *Rollo,* pp. 32-33. (Emphasis supplied.)

[31] *Anonas Construction and Industrial Supply Corporation, et al. v. National Labor Relations Commission, et al.,* G.R. No. 164052, October 17, 2008.

devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts.[32] None of the exceptions to the general rule is present in this case. Having said that, We shall now determine whether petitioner is liable to pay respondent his separation pay and other benefits due him.

It is well to note that there is no provision in the Labor Code that grants separation pay to voluntarily resigning employees. Separation pay may be awarded only in cases when the termination of employment is due to (a) installation of labor-saving devices, (b) redundancy, (c) retrenchment, (d) closing or cessation of business operations, (e) disease of an employee and his continued employment is prejudicial to himself or his co-employees, or (f) when an employee is illegally dismissed but reinstatement is no longer feasible. In fact, the rule is that an employee who voluntarily resigns from employment is not entitled to separation pay, except when it is stipulated in the employment contract or collective bargaining agreement (CBA), or it is sanctioned by established employer practice or policy.[33]

Here, respondent was separated from his employment not on the grounds mentioned above. Neither was there a stipulation in his employment contract or CBA or even a company practice or policy that would grant separation pay to employees who voluntarily resigned. Nevertheless, the labor tribunals as well as the CA resolved to grant respondent his prayer for separation pay, explaining that he deserved to receive the same as a gratuity for his loyalty and long service to the company, not to mention the representation of Caludac that he would be given all the benefits due him.

We agree. Clearly, the primary consideration that impelled respondent to tender his resignation letter was the assurance

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[32] *Ramos v. Court of Appeals*, G.R. No. 145405, June 29, 2004, 433 SCRA 177, 182.

[33] *Hinatuan Mining Corporation v. National Labor Relations Commission*, G.R. No. 117394, February 21, 1997, 268 SCRA 622, 626.

that he would be paid his separation pay. It is thus unlikely for someone to just leave his employer for whom he has worked for twelve (12) years without any expectation of financial assistance. This We can glean from respondent's resignation letter stating: "I hope my resignation be granted and whatever help the management can extend to me and my family, I would highly appreciate it."

In *Alfaro v. Court of Appeals*,[34] We held that as a general rule, separation pay need not be paid to an employee who voluntarily resigns. However, **an employer who agrees to expend such benefit as an incident of the resignation should not be allowed to renege on the fulfillment of such commitment**. In this case, Caludac, as OIC Branch Manager in Tacloban City, represented petitioner and was responsible for overseeing respondent's work in pursuance of the company's goal of an increase in sales and customer satisfaction. Such control was manifested through the communications of Caludac to respondent regarding the latter's performance.[35] Corollarily, We cannot fault respondent for relying on Caludac's representations and promises, as in fact it was to him that he first verbally relayed his plan to resign from the company. Not only the CA, but also the Labor Arbiter and the NLRC, that was convinced that without the assurance of payment of benefits, respondent would not have tendered his resignation letter.

Significantly, respondent initially filed a complaint for illegal dismissal. However, he did not pursue such course of action and focused instead on his claim for separation pay. It is thus immaterial that petitioner ventilates the issue of dismissal or the matter of respondent's failure to meet his sales quota. And even assuming that these matters are relevant here, We are in

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[34] G.R. No. 140812, August 28, 2001, 363 SCRA 799, 801. (Emphasis supplied.)

[35] Memo Re: "Not Reporting After Five (5) Days in Travel," *rollo,* p. 43; Memo as "Last Warning" to collect or repossess petitioner's overdue accounts from its customers, *rollo,* p. 44; Memo Re: Illegal Custody of Colored TV unit, *rollo,* p. 55.

accord with the NLRC's finding that Caludac must have initiated the talk regarding respondent's resignation in view of his recent poor performance. In one case,[36] We held that there is nothing illegal with this approach. Indeed, the practice of allowing an employee to resign, instead of terminating him for just cause so as not to smear his employment record, is commonly practiced in some companies.

As aptly held by the NLRC, petitioner, through Caludac, "sweetened the pot" by promising respondent not only an "alternative venue for exit" — voluntary resignation — but also the payment of his separation benefits. There could have been no other reason for respondent to leave his employment other than the promise of payment of almost ₱40,000.00 by way of separation benefits, which, back in 1993, was already a substantial amount. In the end, it will all boil down to Caludac's representation that respondent would be given his separation benefits, and sooner would it be awarded to him, only if he would tender his resignation letter at the pretext that he was physically ill, a condition that made him inefficient in his assigned work.

Anent respondent's claim for rest day pay differential, We likewise uphold the disposition of the NLRC, thus:

> Finally, We are also not convinced by respondent's position that being a monthly paid employee, complainant is not entitled to rest day pay. An examination of the vouchers submitted by respondent showed that while complainant was paid bi-monthly, he was actually paid on the number of days worked. Thus, every time he is absent, he will not be paid for the day. He is for all intents and purposes, a daily paid employee. As such, he has to be paid rest day pay when he works on his rest days. With complainant's categorical assertion that he worked during his rest days especially in the month of December, the Labor arbiter did not err in awarding him rest day pay. There is however a need to modify this award to cover only the period from July 1990 up to July 1993 as the claim before 1990 had already prescribed.

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[36] *Samaniego v. NLRC*, G.R. No. 93059, June 3, 1991, 198 SCRA 111, 116.

Under Article 291 of the Labor Code, all money claims arising from employer-employee relations shall be filed within three (3) years from the time the cause of action accrued; otherwise, they shall forever be barred. It is settled jurisprudence that a cause of action has three elements, to wit, (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff.[37]

In the computation of the three-year prescriptive period, a determination must be made as to the time when the act constituting a violation of the workers' right to the benefits being claimed was committed. For if the cause of action accrued more than three (3) years before the filing of the money claim, said cause of action has already prescribed in accordance with Article 291 of the Labor Code.

Respondent filed his claim for rest day differential in July 1993. It follows then that he is only entitled to his rest day pay within the three-year period counted from the time of the filing of his complaint, or from July 1990. Thus, the NLRC correctly ruled that respondent's claim before July 1990 had already prescribed in accordance with Article 291 of the Labor Code.

WHEREFORE, premises considered, the instant Petition is *DENIED*. The Court of Appeals Decision dated September 4, 2003 and Resolution dated March 8, 2004, in CA-G.R. SP No. 71155, are hereby *AFFIRMED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Velasco, Jr., and *Nachura, JJ.,* concur.

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[37] *Auto Bus Transport Systems, Inc. v. Bautista*, G.R. No. 156367, May 16, 2005, 458 SCRA 578, 590.

THIRD DIVISION

[G.R. No. 165411. June 18, 2009]

WILMA TABANIAG, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ESTAFA; ELEMENTS.— The elements of *estafa* under Article 315, par. 1 (b) of the Revised Penal Code are the following: (a) that money, goods or other personal property is received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same; (b) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt; (c) that such misappropriation or conversion or denial is to the prejudice of another; and (d) there is demand by the offended party to the offender.

2. ID.; ID.; ID.; THE ESSENCE OF ESTAFA UNDER 315, PAR. 1(b) IS THE APPROPRIATION OR CONVERSION OF MONEY OR PROPERTY RECEIVED TO THE PREJUDICE OF THE OWNER.— The essence of *estafa* under Article 315, par. 1(b) is the appropriation or conversion of money or property received to the prejudice of the owner. The words "convert" and "misappropriate" connote an act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right.

3. ID.; ID.; ID.; ALTHOUGH IT CANNOT BE DENIED THAT PETITIONER RECEIVED THE PIECES OF JEWELRY FROM COMPLAINANTS, EVIDENCE IS WANTING IN PROVING THAT SHE MISAPPROPRIATED OR CONVERTED THE AMOUNT OF THE PIECES OF JEWELRY FOR HER OWN PERSONAL USE; THE MERE FACT THAT PETITIONER FAILED TO RETURN THE PIECES OF JEWELRY UPON DEMAND IS NOT PROOF OF CONSPIRACY, NOR IT IS PROOF OF

MISAPPROPRIATION OR CONVERSION.— The factual milieu of the case at bar is similar to *Serona v. Court of Appeals* (*Serona*) where pieces of jewelry were also transferred to a sub-agent. The Solicitor General, however, contends that the doctrine laid down in *Serona* is inapplicable as the agreement between complainants and petitioner provide a clear prohibition against sub-agency. The conditions set forth in the two trust receipts signed by petitioner read: x x x in good condition, to be sold in CASH ONLY within_____, days from date of signing this receipt. If I could not sell, I shall return all the jewelry within the period mentioned above. If I would be able to sell, I shall immediately deliver and account the whole proceeds of the sale thereof to the owner of the jewelries (sic) at his/her residence: my compensation or commission shall be the over-price on the value of each jewelry quoted above. **I am prohibited to sell any jewelry on credits** *or by* **installment, deposit,** *give for* **safekeeping, lend pledge or give as security or guarantee under any circumstances or manner, any jewelry to other person or persons, and that I received the above jewelry in the capacity of agent.** Contrary to the claim of the Solicitor General, the forementioned conditions do not, in any way, categorically state that petitioner cannot employ a sub-agent. A plain reading of the conditions clearly shows that the restrictions only pertain to the manner in which petitioner may dispose of the property: (1) to sell the jewelry on credit; (2) to sell the jewelry by installment; (3) to give the jewelry for safekeeping; (4) to lend the jewelry; (5) to pledge the jewelry; (6) to give the jewelry as security; and (7) to give the jewelry as guarantee. To this Court's mind, to maintain the position that the said conditions also prohibit the employment of a sub-agent would be stretching the plain meaning of the words too thinly. Petitioner is thus correct in citing *Serona*, which is instructive and may be applied by analogy. Petitioner thus cannot be criminally held liable for *estafa*. Although it cannot be denied that she received the pieces of jewelry from complainants, evidence is wanting in proving that she misappropriated or converted the amount of the pieces of jewelry for her own personal use. Likewise, the prosecution failed to present evidence to show that petitioner had conspired or connived with Bisquera. The mere fact that petitioner failed to return the pieces of jewelry upon demand is not proof of conspiracy, nor is it proof of misappropriation or conversion.

4. ID.; ID.; ID.; THE TRIAL COURT IN A SEPARATE CIVIL ACTION INSTITUTED BY COMPLAINANTS FOUND THAT PETITIONER HAD IN FACT TRANSFERRED THE PIECES OF JEWELRY TO HER CO-ACCUSED; PETITIONER COULD NOT HAVE CONVERTED THE SAME FOR HER OWN BENEFIT SINCE THE PIECES OF JEWELRY WERE NOT WITH HER AND THERE WAS NO EVIDENCE OF CONSPIRACY OR CONNIVANCE BETWEEN PETITIONER AND THE OTHER ACCUSED.— In addition, this Court takes notice of the findings of fact by the RTC in the separate civil action instituted by complainants, the same docketed as Civil Case No. 63131, dealing with the civil aspect of the case at bar: x x x **Jane Bisquera cannot interpose the defense that she is not privy to the transaction. Her admission that she has indeed received the pieces of jewelry which is the subject matter of the controversy** and her offer to extinguish the obligation by payment or *dacion en pago* is contradictory to her defense. Therefore, she is estopped from interposing such a defense. **Furthermore, earlier in her transaction with Wilma Tabaniag, the principals, Sps. Espiritu, were not alien to her but were in fact disclosed to her, hence, she has knowledge that the spouses are the principals of Tabaniag. Bisquera, being a sub-agent to Tabaniag, is in fact privy to the agreement.** x x x Based on the foregoing, it is clear that petitioner had in fact transferred the pieces of jewelry to Bisquera. Thus, contrary to the finding of the CA, petitioner could not have converted the same for her own benefit, especially since the pieces of jewelry were not with her, and there was no evidence of conspiracy or connivance between petitioner and Bisquera. Moreover, even Victoria cannot deny knowing that petitioner had given the pieces of jewelry to Bisquera, as Victoria herself was the one who deposited the checks issued by Bisquera to her account.

5. ID.; ID.; ID.; PETITIONER MAY HAVE BEEN NEGLIGENT IN ENTRUSTING THE PIECES OF JEWELRY TO HER CO-ACCUSED, BUT IN NO WAY CAN SUCH CONSTITUTE ESTAFA AS DEFINED IN THE REVISED PENAL CODE.— Although petitioner may have admitted that the cases she filed against Bisquera do not involve the same checks, which are the subject matter of the case at bar, the same does not necessarily manifest a criminal intent on her part. On the

contrary, what it shows is that petitioner too may be an unwilling victim of this day-to-day malady of bouncing checks, common in our business field. Certainly, petitioner may have been negligent in entrusting the pieces of jewelry to Bisquera, but in no way can such constitute *estafa* as defined in the RPC.

6. ID.; ID.; ID.; THE CRITICAL ELEMENTS OF MISAPPROPRIATION OR CONVERSION ARE ABSENT IN CASE AT BAR.— A reading of the records and transcript of the case seemingly shows an unintentional reference by the parties in describing the transaction as one of sale. The foregoing notwithstanding, if this Court were to consider the transaction as one of sale and not one of sub-agency, the same conclusion would nevertheless be reached, as the critical elements of misappropriation or conversion, as previously discussed, are absent in the case at bar.

APPEARANCES OF COUNSEL

De Guzman Dionido and Associates Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

For review before this Court is the February 27, 2004 Decision[1] and September 22, 2004 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CR No. 24906, which affirmed the October 16, 2000 Decision[3] of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 268, Pasig City, finding Wilma Tabaniag (petitioner) guilty of the Crime of *Estafa* as defined and penalized under Article 315 of the Revised Penal Code, with modification as to the penalty.

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[1] Penned by Associate Justice Mariano C. del Castillo, with Associate Justices Rodrigo V. Cosico and Vicente Q. Roxas, concurring; *rollo*, pp. 36-46.

[2] *Id.* at 61-62.

[3] CA *rollo*, pp. 22-28.

The Information[4] dated September 15, 1994, in Criminal Case No. 106995, reads as follows:

> That on or about and during the month of January 1992, in the Municipality of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding each other, received in trust from one Dennis Espiritu assorted jewelries (sic) amounting to ₱509,940.00 under the express obligation on the part of the accused to sell the same and thereafter to remit the proceeds of the sale and/or return said jewelries (sic) if not sold to said complainant, but the accused once in possession of said jewelries (sic), far from complying with their aforesaid obligation, with unfaithfulness and abuse of confidence, did then and there willfully, unlawfully and feloniously misapply, misappropriate, and convert to their own personal use and benefit and despite demands to pay the proceeds of the sale and/or to return the said jewelries (sic) in the amount of ₱509,940.00, they failed and refused, to the damage and prejudice of the complainant in the aforementioned amount of ₱509,940.00.
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> CONTRARY TO LAW.[5]

When arraigned, petitioner pleaded "not guilty." Co-accused Melandia Olandia (Olandia) was dropped from the Information upon the request[6] of complainant Dennis Espiritu (Dennis).[7] Thereafter, trial ensued.

The prosecution presented two witnesses, namely: Dennis and his wife Ma. Victoria (Victoria) [complainants].

On March 5, 1997, the prosecution filed a Motion[8] for the admittance of an Amended Information. The defense filed their Opposition[9] to the said motion.

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

[5] *Id.* at 8.

[6] Affidavit dated July 27, 1995; records, p. 98.

[7] TSN, May 23, 1996, pp. 11-12; records, p. 104.

[8] Records, pp. 186-188.

[9] *Id.* at 193-195.

On August 27, 1997, the RTC issued an Order[10] granting the motion of the prosecution. The RTC ruled that the amendments to the Information sought by the prosecution were merely amendments in form and thus allowable under the rules.

The Amended Information[11] reads as follows:

On or about and during the month of February 1992, in the Municipality of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, and mutually helping and aiding each other, received in trust from one Victoria Espiritu assorted jewelries (sic) amounting to ₱155,252.50 under the express obligation on the part of the accused to sell the same and thereafter to remit the proceeds of the sale and/or return said jewelries (sic) if not sold to said complainant, but the accused once in possession of said jewelries (sic), far from complying with their aforesaid obligation, with unfaithfulness and abuse of confidence, did then and there willfully, unlawfully and feloniously misapply, misappropriate, and convert to their own personal use and benefit and despite demands to pay the proceeds of the sale and/or to return the said jewelries (sic) in the amount of ₱155,252.50, they failed and refused, to the damage and prejudice of the complainant in the aforementioned amount of ₱155,252.50.

CONTRARY TO LAW.[12]

The defense presented two witnesses, namely: petitioner Tabaniag and Juan Tapang III (Tapang).

On October 16, 2000, the RTC found petitioner guilty of the crime of *Estafa*, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court finds the accused WILMA TABANIAG guilty beyond reasonable doubt of the crime of Estafa as defined and penalized under Article 315 of the Revised Penal Code and hereby sentences her to suffer the penalty of imprisonment from ten (10) years and one (1) day of *Prision Mayor*

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[10] *Id.* at 206-207.

[11] CA *rollo*, pp. 10-11.

[12] *Id.* at 10.

in its maximum period to fourteen (14) years and eight (8) months of *Reclusion Temporal* in its minimum period and to indemnify the offended party in the amount of Sixty-Two Thousand Nine Hundred (₱62,900.00). With costs.

SO ORDERED.[13]

The facts of the case as gleaned from the records are as follows:

Complainants, both doctors by profession, are engaged in part-time jewelry business.[14] Petitioner, on the other hand, is an agent who sells the pieces of jewelry of complainants on commission basis. On February 7, 1992, petitioner received from Victoria several pieces of jewelry amounting to Php106,000.00 as evidenced by a trust receipt[15] signed by petitioner. Later on February 16, 1992, petitioner again received several pieces of jewelry amounting to Php64,515.00 as evidenced by another trust receipt[16] signed by petitioner.

After weeks passed, Victoria alleged that she made several verbal demands[17] to petitioner to return the pieces of jewelry. Likewise, complainants filed a complaint[18] at *Barangay Kapitolyo,* Pasig City, against Tabaniag, Jane Bisquera (Bisquera) and Olandia for *estafa* and violations of *Batas Pambansa Bilang* 22 (BP 22).

Petitioner, in her defense, alleged that she entrusted the pieces of jewelry to Bisquera who issued Security Bank Checks[19] as payment. Petitioner claimed that Victoria knew that she was planning to sell the pieces of jewelry to Bisquera.[20] Moreover,

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[13] *Id.* at 28.

[14] TSN, October 10, 1996, p. 5.

[15] Exhibit "B", folder of exhibits, p. 2.

[16] Exhibit "C", folder of exhibits, p. 3.

[17] TSN, October 16, 1997, p. 14.

[18] Exhibit "D", folder of exhibits, p. 4.

[19] Exhibit "4", folder of exhibits, pp. 2-4.

[20] CA *rollo,* pp. 51-53.

petitioner contends that she and Olandia delivered the said Security Bank checks to Victoria, who then deposited the same to her account. The checks issued by Bisquera bounced as the accounts were closed and thus Victoria asked petitioner to do something about it. Petitioner claimed that she filed cases for *estafa* and violation of BP 22 against Bisquera. Likewise, petitioner asked the court for the issuance of an *alias* warrant of arrest and a hold departure order against Bisquera.[21]

On cross-examination, however, petitioner admitted that the cases she filed against Bisquera did not involve the same checks which are the subject matter of the case at bar.[22]

On February 27, 2004, the CA affirmed with modification the RTC decision, the dispositive portion of which reads as follows:

> WHEREFORE, the Decision finding accused-appellant Wilma Tabaniag guilty beyond reasonable doubt of the crime of *estafa* is AFFIRMED with the indeterminate penalty modified to four (4) years and two (2) months of *prision correccional*, as minimum, to twelve (12) years of *prision mayor*, as the maximum, and with the award of indemnity in the amount of Php62,900.00, deleted.
>
> SO ORDERED.[23]

The pertinent portions of the CA decision are hereunder reproduced, to wit:

> Tabaniag entered into an agreement with Victoria Espiritu for the sale of jewelry. She obligated herself, among others, to deliver and account for the proceeds of all jewelry sold and to return all other items she could not sell. The jewelry could not be sold on installment. She abused the confidence reposed upon her by misrepresenting herself to have sold the jewelry to a certain Bisquera and failing to remit the profit after demand to do so by Espiritu. Due to her failure to forward the returns from the sale of the jewelry, Espiritu suffered loss of income and profit.

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[21] TSN, August 12, 1999, p. 8.

[22] *Id.* at 19.

[23] CA *rollo*, p. 154.

The receipts issued to and signed by Tabaniag corroborate the prosecution's testimonial proof that she personally received the jewelry. Tabaniag's uncorroborated claim that Victoria Espiritu directly transferred the jewelry to a certain Jane Bisquera cannot stand along against this factual finding. The checks issued by Bisquera do not conclusively prove a direct transaction between her and Espiritu. x x x[24]

On March 26, 2004, petitioner filed a Motion for Reconsideration[25] assailing the CA decision.

On August 2, 2004, Dennis filed a Motion to Dismiss,[26] attaching thereto an Affidavit of Desistance,[27] to the effect that he was withdrawing the criminal complaint because he and petitioner had already reached an amicable settlement, the latter obligating herself to pay the civil aspect of the case.

On September 22, 2004, the CA issued a Resolution[28] denying petitioner's Motion for Reconsideration, as well as the Motion to Dismiss filed by Dennis.

Hence, herein appeal with the following assignment of errors:

First Assignment of Error

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN CONCLUDING THAT THERE WAS ABUSE OF CONFIDENCE ON THE PART OF ACCUSED/PETITIONER TABANIAG IN ENTRUSTING THE SUBJECT JEWELRIES (SIC) TO BISQUERA FOR SALE ON COMMISSION TO PROSPECTIVE BUYERS.

Second Assignment of Error

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN RULING ON THE VALIDITY OF THE AMENDMENT OF

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[24] *Rollo*, p. 43.

[25] CA *rollo*, pp. 160-172.

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

[27] *Id.* at 187.

[28] *Id.* at 194-195.

INFORMATION DESPITE ITS VIOLATION OF SUBSTANTIAL RIGHT OF ACCUSED TABANIAG.

Third Assignment of Error

THE HONORABLE COURT OF APPEALS SERIOUSLY ABUSED ITS DISCRETION IN RULING THAT THE LETTER COMPLAINT SENT TO THE BGY. CAPTAIN OF BGY. KAPITOLYO WHICH WAS NEVER RECEIVED BY ACCUSED A DEMAND IN CONTEMPLATION OF SECTION 1(b) OF ARTICLE 315 OF THE REVISED PENAL CODE.

Fourth Assignment of Error

THE RESPONDENT COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED THAT THE MOTION TO DISMISS/ AFFIDAVIT OF DESISTANCE OF ESPIRITU WILL NOT EXONERATE ACCUSED TABANIAG DESPITE IT BEING THE SAME PERSON WHO EXECUTED THE SAME AFFIDAVIT TO DISMISS CASE VERSUS ACCUSED MELANIA OLANDIA.

Fifth Assignment of Error

THE RESPONDENT COURT OF APPEALS SERIOUSLY ERRED WHEN IT FAILED TO RENDER A JUDGMENT OF ACQUITTAL OF THE ACCUSED ON GROUND OF REASONABLE DOUBT.[29]

The petition is impressed with merit.

The elements of *estafa* under Article 315, par. 1 (b) of the Revised Penal Code are the following: (a) that money, goods or other personal property is received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same; (b) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt; (c) that such misappropriation or conversion or denial is to the prejudice of another; and (d) there is demand by the offended party to the offender.[30]

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[29] *Rollo*, p. 16.

[30] *Salazar v. People of the Philippines*, G.R. No. 149472, August 18, 2004, 437 SCRA 41, 46.

Anent the first error raised by petitioner, this Court finds that, given the facts of the case and the evidence on record, the evidence is wanting to prove that petitioner had misappropriated or converted the pieces of jewelry entrusted to her by Victoria.

In his Complaint-Affidavit,[31] Dennis alleged that petitioner gave the pieces of jewelry to her sub-agent Bisquera for the latter to sell the same. Furthermore, Dennis alleged that the checks issued as payment were dishonored, the reason being that the accounts were closed.

Petitioner does not deny entrusting the pieces of jewelry to Bisquera. The records of the case reveal that petitioner had in fact entrusted the pieces of jewelry to Bisquera as evidenced by two receipts[32] dated February 16, 1992. The same is bolstered by the testimony of Tapang, who testified that he witnessed petitioner give the pieces of jewelry to Bisquera.[33] Thus, since the pieces of jewelry were transferred to Bisquera, petitioner argues that she could not be guilty of misappropriation or conversion as contemplated by Article 315, par. 1(b) of the Revised Penal Code.

The essence of *estafa* under Article 315, par. 1(b) is the appropriation or conversion of money or property received to the prejudice of the owner. The words "convert" and "misappropriate" connote an act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right.[34]

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[31] Records, p. 6.

[32] Exhibits "11" and "12" for the defense, folder of exhibits, pp. 19-20.

[33] TSN, January 20, 2000, p. 6.

[34] *Amorsolo v. People*, G.R. No. 76647, September 30, 1987, 154 SCRA 556, 563, citing *U.S. v. Ramirez*, 9 Phil. 67 (1907) and *U.S. v. Panes*, 37 Phil. 116 (1917).

The factual milieu of the case at bar is similar to *Serona v. Court of Appeals*[35] (*Serona*) where pieces of jewelry were also transferred to a sub-agent. The Solicitor General, however, contends that the doctrine laid down in *Serona* is inapplicable as the agreement between complainants and petitioner provide a clear prohibition against sub-agency.[36]

The conditions set forth in the two trust receipts signed by petitioner read:

> x x x in good condition, to be sold in CASH ONLY within _____, days from date of signing this receipt. If I could not sell, I shall return all the jewelry within the period mentioned above. If I would be able to sell, I shall immediately deliver and account the whole proceeds of the sale thereof to the owner of the jewelries (sic) at his/her residence: my compensation or commission shall be the over-price on the value of each jewelry quoted above. **I am prohibited to sell any jewelry on credits or by installment, deposit, give for safekeeping, lend pledge or give as security or guarantee under any circumstances or manner, any jewelry to other person or persons, and that I received the above jewelry in the capacity of agent.**[37]

Contrary to the claim of the Solicitor General, the aforementioned conditions do not, in any way, categorically state that petitioner cannot employ a sub-agent. A plain reading of the conditions clearly shows that the restrictions only pertain to the manner in which petitioner may dispose of the property: (1) to sell the jewelry on credit; (2) to sell the jewelry by installment; (3) to give the jewelry for safekeeping; (4) to lend the jewelry; (5) to pledge the jewelry; (6) to give the jewelry as security; and (7) to give the jewelry as guarantee. To this Court's mind, to maintain the position that the said conditions also prohibit the employment of a sub-agent would be stretching the plain meaning of the words too thinly.

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[35] G.R. No. 130423, November 18, 2002, 392 SCRA 35.

[36] *Rollo*, p. 131.

[37] Exhibits "B" and "C", folder of exhibits, pp. 2-3. (Emphasis and underscoring supplied.)

Petitioner is thus correct in citing *Serona,* which is instructive and may be applied by analogy, to wit:

> Petitioner did not *ipso facto* commit the crime of *estafa* through conversion or misappropriation by delivering the jewelry to a sub-agent for sale on commission basis. x x x
>
> It must be pointed out that the law on agency in our jurisdiction allows the appointment by an agent of a substitute or sub-agent in the absence of an express agreement to the contrary between the agent and the principal. In the case at bar, the appointment of Labrador as petitioner's sub-agent was not expressly prohibited by Quilatan, as the acknowledgment receipt, Exhibit B, does not contain any such limitation. Neither does it appear that petitioner was verbally forbidden by Quilatan from passing on the jewelry to another person before the acknowledgment receipt was executed or at any other time. Thus, it cannot be said that petitioner's act of entrusting the jewelry to Labrador is characterized by abuse of confidence because such an act was not proscribed and is, in fact, legally sanctioned.
>
> x x x x x x x x x
>
> In the case at bar, it was established that the inability of petitioner as agent to comply with her duty to return either the pieces of jewelry or the proceeds of its sale to her principal Quilatan was due, in turn, to the failure of Labrador to abide by her agreement with petitioner. Notably, Labrador testified that she obligated herself to sell the jewelry in behalf of petitioner also on commission basis or to return the same if not sold. In other words, the pieces of jewelry were given by petitioner to Labrador to achieve the very same end for which they were delivered to her in the first place. Consequently, there is no conversion since the pieces of jewelry were not devoted to a purpose or use different from that agreed upon.
>
> Similarly, it cannot be said that petitioner misappropriated the jewelry or delivered them to Labrador "without right." Aside from the fact that no condition or limitation was imposed on the mode or manner by which petitioner was to effect the sale, it is also consistent with usual practice for the seller to necessarily part with the valuables in order to find a buyer and allow inspection of the items for sale.
>
> In *People v. Nepomuceno,* the accused-appellant was acquitted of *estafa* on facts similar to the instant case. Accused-appellant

therein undertook to sell two diamond rings in behalf of the complainant on commission basis, with the obligation to return the same in a few days if not sold. However, by reason of the fact that the rings were delivered also for sale on commission to sub-agents who failed to account for the rings or the proceeds of its sale, accused-appellant likewise failed to make good his obligation to the complainant thereby giving rise to the charge of *estafa*. In absolving the accused-appellant of the crime charged, we held:

> **Where, as in the present case, the agents to whom personal property was entrusted for sale, conclusively proves the inability to return the same is solely due to malfeasance of a sub-agent to whom the first agent had actually entrusted the property in good faith, and for the same purpose for which it was received; there being no prohibition to do so and the chattel being delivered to the sub-agent before the owner demands its return or before such return becomes due, we hold that the first agent cannot be held guilty of estafa by either misappropriation or conversion. The abuse of confidence that is characteristic of this offense is missing under the circumstances.**

Furthermore, in *Lim v. Court of Appeals*, the Court, citing *Nepomuceno* and the case of *People v. Trinidad*, held that:

> **In cases of estafa, the profit or gain must be obtained by the accused personally, through his own acts, and his mere negligence in permitting another to take advantage or benefit from the entrusted chattel cannot constitute estafa under Article 315, paragraph 1-b, of the Revised Penal Code**; **unless of course the evidence should disclose that the agent acted in conspiracy or connivance with the one who carried out the actual misappropriation, then the accused would be answerable for the acts of his co-conspirators**. If there is no such evidence, direct or circumstantial, and if the proof is clear that the accused herself was the innocent victim of her sub-agent's faithlessness, her acquittal is in order.[38]

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[38] *Serona v. Court of Appeals, supra* note 35, at 41-44. (Emphasis and underscoring supplied.)

Petitioner thus cannot be criminally held liable for *estafa*. Although it cannot be denied that she received the pieces of jewelry from complainants, evidence is wanting in proving that she misappropriated or converted the amount of the pieces of jewelry for her own personal use. Likewise, the prosecution failed to present evidence to show that petitioner had conspired or connived with Bisquera. The mere fact that petitioner failed to return the pieces of jewelry upon demand is not proof of conspiracy, nor is it proof of misappropriation or conversion.

In addition, this Court takes notice of the findings of fact by the RTC in the separate civil action instituted by complainants, the same docketed as Civil Case No. 63131, dealing with the civil aspect of the case at bar:

x x x x x x x x x

Jane Bisquera cannot interpose the defense that she is not privy to the transaction. **Her admission that she has indeed received the pieces of jewelry which is the subject matter of the controversy** and her offer to extinguish the obligation by payment or *dacion en pago* is contradictory to her defense. Therefore, she is estopped from interposing such a defense.

Furthermore, earlier in her transaction with Wilma Tabaniag, the principals, Sps. Espiritu, were not alien to her but were in fact disclosed to her, hence, she has knowledge that the spouses are the principals of Tabaniag.

Bisquera, being a sub-agent to Tabaniag, is in fact privy to the agreement. x x x[39]

Based on the foregoing, it is clear that petitioner had in fact transferred the pieces of jewelry to Bisquera. Thus, contrary to the finding of the CA, petitioner could not have converted the same for her own benefit, especially since the pieces of jewelry were not with her, and there was no evidence of conspiracy or connivance between petitioner and Bisquera.

Moreover, even Victoria cannot deny knowing that petitioner had given the pieces of jewelry to Bisquera, as Victoria herself

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[39] *Rollo*, pp. 105-106. (Emphasis supplied.)

was the one who deposited the checks issued by Bisquera to her account, to wit:

Q. Now, madam witness, there is a (sic) mentioned here an amount of ₱300,000.00 regarding the violation of bouncing check, am I correct?
A. Yes, sir.

Q. And according to you, these were payments made by Wilma Tabaniag, am I correct?
A. Yes, sir.

Q. Who is the drawer of these checks with a ₱300,000.00 that you mentioned in this particular document, not less than ₱300,000.00?
A. The total check ₱300,000.00 was under my name.

Q. No, I mean, who is the drawer?
A. Mrs. Tabaniag issued and the other pieces of jewelry were issued by a certain Jane Bisquera.

Q. No, not jewelries, checks.
A. I'm sorry, checks.

Q. How much was issued by Jane Bisquera?
A. The total is ₱320,872.00

Q. That was by Jane Bisquera alone?
A. Yes, sir.[40]

Lastly, although petitioner may have admitted that the cases she filed against Bisquera do not involve the same checks, which are the subject matter of the case at bar, the same does not necessarily manifest a criminal intent on her part. On the contrary, what it shows is that petitioner too may be an unwilling victim of this day-to-day malady of bouncing checks, common in our business field. Certainly, petitioner may have been negligent in entrusting the pieces of jewelry to Bisquera, but in no way can such constitute *estafa* as defined in the RPC.

As a final note, a reading of the records and transcript of the case seemingly shows an unintentional reference by the parties

[40] TSN, October 16, 1997, pp. 24-25.

in describing the transaction as one of sale.[41] The foregoing notwithstanding, if this Court were to consider the transaction as one of sale and not one of sub-agency, the same conclusion would nevertheless be reached, as the critical elements of misappropriation or conversion, as previously discussed, are absent in the case at bar.

It is the primordial duty of the prosecution to present its side with clarity and persuasion so that conviction becomes the only logical and inevitable conclusion.[42] What is required of it is to justify the conviction of the accused with moral certainty.[43] In the case at bar, the prosecution has failed to discharge its burden. Based on the foregoing, it would then be unnecessary to discuss the other assigned errors.

Notwithstanding the above, however, petitioner is not entirely free from any liability towards complainants. The rule is that an accused acquitted of *estafa* may nevertheless be held civilly liable where the facts established by the evidence so warrant.[44] However, since there is a separate civil action instituted by complainants, this Court deems it proper for the civil aspect of the case at bar to be resolved therein.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals in CA-G.R. CR No. 24906, dated February 27, 2004, and its Resolution dated September 22, 2004 are *REVERSED* and *SET ASIDE*. Petitioner Wilma Tabaniag is *ACQUITTED* of the crime charged, without prejudice, however, to the recovery of civil liability in Civil Case No. 63131, before the Regional Trial Court, National Capital Judicial Region, Branch 268, Pasig City.

SO ORDERED.

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[41] See TSN, October 17, 1997, p. 12; TSN, October 10, 1996, pp. 6-7.

[42] *People v. Fernandez*, G.R. Nos. 139341-45, July 25, 2002, 385 SCRA 224, 232.

[43] Rules of Court, Rule 133, Section 2.

[44] *Serona v. Court of Appeals*, *supra* note 35.

Ynares-Santiago (Chairperson), Chico-Nazario, Velasco, Jr., and *Nachura, JJ.,* concur.

THIRD DIVISION

[G.R. No. 166393. June 18, 2009]

CRISTINA F. REILLO, LEONOR F. PUSO, ADELIA F. ROCAMORA, SOFRONIO S.J. FERNANDO, EFREN S.J. FERNANDO, ZOSIMO S.J. FERNANDO, JR., and MA. TERESA F. PIÑON, *petitioners, vs.* **GALICANO E.S. SAN JOSE, represented by his Attorneys-in-Fact, ANNALISA S.J. RUIZ and RODELIO S. SAN JOSE, VICTORIA S.J. REDONGO, CATALINA S.J. DEL ROSARIO and MARIBETH S.J. CORTEZ, collectively known as the HEIRS OF QUITERIO SAN JOSE and ANTONINA ESPIRITU SANTO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT ON THE PLEADINGS; CONSIDERING THAT PETITIONERS ALREADY ADMITTED RESPONDENTS AS THE CHILDREN AND GRANDCHILD OF THE ORIGINAL REGISTERED OWNERS OF THE SUBJECT PROPERTY, AND THUS EXCLUDING RESPONDENTS FROM THE DEED OF THE SETTLEMENT OF THE SUBJECT PROPERTY, THERE IS NO MORE GENUINE ISSUE BETWEEN THE PARTIES GENERATED BY THE PLEADINGS.— Where a motion for judgment on the pleadings is filed, the essential question is whether there are issues generated by the pleadings. In a proper case for judgment on the pleadings, there is no ostensible issue at all because of the failure of the defending party's answer to raise an issue. The answer would fail to tender an issue, of course, if it does

not deny the material allegations in the complaint or admits said material allegations of the adverse party's pleadings by confessing the truthfulness thereof and/or omitting to deal with them at all. In this case, respondents' principal action was for the annulment of the Deed of Extrajudicial Settlement of Estate Among Heirs with Waiver of Rights executed by petitioners and annulment of title on the ground that petitioners stated in the said Deed that they are the legitimate descendants and sole heirs of the spouses Quiterio and Antonina. Although petitioners denied in their Answer that the Deed was falsified, they, however, admitted respondents' allegation that spouses Quiterio and Antonina had 5 children, thus, supporting respondents' claim that petitioners are not the sole heirs of the deceased spouses. Petitioners' denial/admission in his Answer to the complaint should be considered in its entirety and not truncated parts. Considering that petitioners already admitted that respondents Galicano, Victoria, Catalina and Maribeth are the children and grandchild, respectively, of the spouses Quiterio and Antonina, who were the original registered owners of the subject property, and thus excluding respondents from the deed of settlement of the subject property, there is no more genuine issue between the parties generated by the pleadings, thus, the RTC committed no reversible error in rendering the judgment on the pleadings.

2. ID.; SPECIAL PROCEEDINGS; SUMMARY SETTLEMENT OF ESTATES; NO EXTRAJUDICIAL SETTLEMENT SHALL BE BINDING UPON ANY PERSON WHO HAS NOT PARTICIPATED THEREIN OR HAD NO NOTICE THEREOF; THE DEED OF SETTLEMENT MADE BY PETITIONERS IS INVALID BECAUSE IT EXCLUDED RESPONDENTS WHO WERE ENTITLED TO EQUAL SHARES IN THE SUBJECT PROPERTY.— A deed of extrajudicial partition executed without including some of the heirs, who had no knowledge of and consent to the same, is fraudulent and vicious. The deed of settlement made by petitioners was invalid because it excluded respondents who were entitled to equal shares in the subject property. Under the rule, no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof. Thus, the RTC correctly annulled the Deed of Extrajudicial Settlement of Estate Among Heirs with Waiver of Rights dated January 23, 1998 and TCT No. M-94400 in the name of Ma. Teresa S.J. Fernando issued pursuant to such deed.

3. ID.; ID.; NO MERIT IN PETITIONER'S CONTENTION THAT THE COUNTER-PETITION IN THEIR ANSWER WAS IN THE NATURE OF COMPULSORY COUNTERCLAIM WHICH DOES NOT REQUIRE THE PAYMENT OF DOCKET FEES; PETITIONER'S CLAIM DOES NOT ARISE OUT OF OR IS NECESSARILY CONNECTED WITH THE ACTION FOR THE ANNULMENT OF THE DEED OF EXTRAJUDICIAL SETTLEMENT, THUS, THE PAYMENT OF DOCKET FEES IS NECESSARY BEFORE THE TRIAL COURT COULD ACQUIRE JURISDICTION OVER THE PETITION.— A counterclaim is any claim which a defending party may have against an opposing party. It may either be permissive or compulsory. It is permissive if it does not arise out of or is not necessarily connected with the subject matter of the opposing party's claim. A permissive counterclaim is essentially an independent claim that may be filed separately in another case. A counterclaim is compulsory when its object arises out of or is necessarily connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. Unlike permissive counterclaims, compulsory counterclaims should be set up in the same action; otherwise, they would be barred forever. Respondents' action was for the annulment of the Deed of Extrajudicial Settlement, title and partition of the property subject of the Deed. On the other hand, in the Counter-Petition filed by petitioners in their Answer to respondents' complaint, they were asking for the partition and accounting of the other 12 parcels of land of the deceased spouses Quiterio and Antonina, which are entirely different from the subject matter of the respondents' action. Petitioners' claim does not arise out of or is necessarily connected with the action for the Annulment of the Deed of Extrajudicial Settlement of the property covered by TCT No. 458396. Thus, payment of docket fees is necessary before the RTC could acquire jurisdiction over petitioners' petition for partition. Petitioners, however, argue that the RTC could have simply issued a directive ordering them to pay the docket fees, for its non-payment should not result in the automatic dismissal of the case. We find *apropos* the disquisition of the CA on this matter, thus: The rule regarding the payment of docket fees upon the filing of the initiatory pleading is not without

exception. It has been held that if the filing of the initiatory pleading is not accompanied by payment of docket fees, the court may allow payment of the fee within reasonable time but in no case beyond the applicable prescriptive or reglementary period. It is apparent from the arguments of the defendants-appellants that they are blaming the trial court for their omission to pay the docket fees. It is, however, our opinion that the defendants-appellants cannot pass on to the trial court the performance of a positive duty imposed upon them by the law. It should be noted that their omission to file the docket fees was raised as one of the grounds to dismiss the counter petition for partition. The defendants-appellants opposed the said motion without, however, offering an answer to the said ground raised by the plaintiffs-appellees. In fact, during the period the motion was being heard by the trial court, the defendants–appellants never paid the docket fees for their petition so that it could have at least brought to the attention of the trial court their payment of the docket fees although belatedly done. They did not even ask the trial court for time within which to pay the docket fees for their petition. When the trial court ruled to dismiss the petition of the defendants-appellants, the latter did not, in their motion for reconsideration, ask the trial court to reconsider the dismissal of their petition by paying the required docket fees, neither did they ask for time within which to pay their docket fees. In other words, the trial court could have issued an order allowing the defendants-appellants a period to pay the docket fees for their petition if the defendants-appellants made such manifestation. What is apparent from the factual circumstances of the case is that the defendants-appellants have been neglectful in complying with this positive duty imposed upon them by law as plaintiffs of the counter petition for partition. Because of their omission to comply with their duty, no grave error was committed by the trial court in dismissing the defendants-appellants' counter petition for partition.

4. ID.; ID.; THE TRIAL COURT CANNOT ORDER THE COLLATION AND PARTITION OF THE OTHER PROPERTIES WHICH WERE NOT INCLUDED IN THE PARTITION THAT WAS THE SUBJECT MATTER OF THE ESTATE OF THE DECEASED SPOUSES; NO MULTIPLICITY OF SUITS SINCE A SEPARATE PROCEEDING IS NECESSARY AND PROPER.—

Petitioners argue that with the dismissal of their Counter-Petition for Partition, the partition of the other parcels of land owned by the deceased spouses Quiterio and Antonina will result to multiplicity of suits. We are not persuaded. Significantly, in petitioners' Answer with Counter-Petition for Partition, they enumerated 12 other parcels of land owned by the deceased spouses Quiterio and Antonina. They alleged that some of these properties had already been disposed of by respondents and some are still generating income under the control and administration of respondents, and these properties should be collated back by respondents to be partitioned by all the heirs of the deceased spouses. It bears stressing that the action filed by respondents in the RTC was an ordinary civil action for annulment of title, annulment of the deed of extrajudicial settlement and partition of a parcel of land now covered by TCT No. M-94400; hence, the authority of the court is limited to the property described in the pleading. The RTC cannot order the collation and partition of the other properties which were not included in the partition that was the subject matter of the respondents' action for annulment. Thus, a separate proceeding is indeed proper for the partition of the estate of the deceased spouses Quiterio and Antonina.

5. ID.; ID.; NO PUBLICATION IS REQUIRED IN A COMPLAINT IN AN ACTION FOR PARTITION OF REAL ESTATE UNDER SECTION 1, RULE 69 OF THE RULES OF COURT.— We find the ruling of the CA on the matter of the RTC's order of partition of land subject of the annulled deed of extrajudicial settlement worth quoting, thus: Considering that the subject document and the corresponding title were canceled, the logical consequence is that the property in dispute, which was the subject of the extrajudicial settlement, reverted back to the estate of its original owners, the deceased spouses Quiterio and Antonina San Jose. Since, it was admitted that all the parties to the instant suit are legal heirs of the deceased spouses, they owned the subject property in common. It is a basic rule that any act which is intended to put an end to indivision among co-heirs or co-owners is deemed to be a partition. Therefore, there was no reversible error committed by the trial court in ordering the partition of the subject property. We find nothing wrong with such ruling considering that the trial court ordered the partition of the subject property in accordance with the rules on intestate succession. The trial court found

the property to be originally owned by the deceased spouses Quiterio and Antonina San Jose and, in the absence of a will left by the deceased spouses, it must be partitioned in accordance with the rules on intestate succession. As the RTC nullified the Deed of Extrajudicial Settlement of Estate Among Heirs with Waiver of Rights executed by petitioners and the title issued in accordance therewith, the order of partition of the land subject of the settlement in accordance with the laws on intestate succession is proper as respondents' action filed in the RTC and respondents' prayer in their complaint asked for the partition of the subject property in accordance with intestate succession. The applicable law is Section 1, Rule 69 of the Rules of Court, which deals with action for partition, to wit: SECTION 1. *Complaint in action for partition of real estate.* — A person having the right to compel the partition of real estate may do so as provided in this Rule, setting forth in his complaint the nature and extent of his title and an adequate description of the real estate of which partition is demanded and joining as defendants all other persons interested in the property. And, under this law, there is no requirement for publication.

APPEARANCES OF COUNSEL

Felix T. De Ramos for petitioners.
Lyn G. Bautista for respondents.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* is the Decision[1] dated August 31, 2004 of the Court of Appeals (CA) in CA-G.R. CV No. 69261 which affirmed the Order dated May 9, 2000 of the Regional Trial Court (RTC) of Morong, Rizal, Branch 78, granting the motion for judgment on the pleadings and the motion to dismiss counter petition for partition filed by

[1] Penned by Associate Justice Perlita J. Tria Tirona, with Associate Justices Ruben T. Reyes (Retired Justice of this Court) and Jose C. Reyes, Jr., concurring; *rollo*, pp. 8-17.

respondents in Civil Case No. 99-1148-M. Also questioned is the CA Resolution[2] dated December 14, 2004 denying petitioners' motion for reconsideration.

Spouses Quiterio San Jose (Quiterio) and Antonina Espiritu Santo (Antonina) were the original registered owners of a parcel of land located in E. Rodriguez Sr. Avenue, Teresa, Rizal covered by Transfer Certificate of Title (TCT) No. 458396 of the Register of Deeds of Rizal. The said parcel of land is now registered in the name of Ma. Teresa F. Piñon (Teresa) under TCT No. M-94400.

Quiterio and Antonina had five children, namely, Virginia, Virgilio, Galicano, Victoria and Catalina. Antonina died on July 1, 1970, while Quiterio died on October 19, 1976. Virginia and Virgilio are also now deceased. Virginia was survived by her husband Zosimo Fernando, Sr. (Zosimo Sr.) and their seven children, while Virgilio was survived by his wife Julita Gonzales and children, among whom is Maribeth S.J. Cortez (Maribeth).

On October 26, 1999, Galicano, represented by his children and attorneys-in-fact, Annalisa S.J. Ruiz and Rodegelio San Jose, Victoria, Catalina, and Maribeth (respondents) filed with the RTC a Complaint[3] for annulment of title, annulment of deed of extra-judicial settlement, partition and damages against Zosimo Sr. and his children Cristina F. Reillo, Leonor F. Puso, Adelia F. Rocamora, Sofronio S.J. Fernando, Efren S.J. Fernando, Zosimo S.J. Fernando, Jr. and Ma. Teresa (petitioners) and the Register of Deeds of Morong, Rizal. The complaint alleged among other things:

> 6. Under date of January 23, 1998, defendants FERNANDO *et al*, without the knowledge and consent of all the other surviving heirs of the deceased spouses QUITERIO SAN JOSE and ANTONINA ESPIRITU SANTO, including herein plaintiffs, executed a Deed of Extrajudicial Settlement of Estate Among Heirs with Waiver of Rights making it appear therein that they are the "legitimate descendants and sole heirs of QUITERIO SAN JOSE and ANTONINA ESPIRITU

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[2] *Id*. at 20-22.

[3] Records, pp. 2-10.

SANTO"; and adjudicating among themselves, the subject parcel of land.

6.1 In the same document, defendants ZOSIMO SR., CRISTINA, LEONOR, ADELIA, SOFRONIO, EFREN and ZOSIMO JR., waived all their rights, participation and interests over the subject parcel of land in favor of their co-defendant MA. TERESA F. PIÑON (*a.k.a* MA. TERESA S.J. FERNANDO).

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7. On the strength of the said falsified Deed of Extrajudicial Settlement of Estate, defendant MA. TERESA PIÑON (a.k.a MA. TERESA S.J. FERNANDO) succeeded in causing the cancellation of TCT No. 458396 in the name of SPS. QUITERIO SAN JOSE and ANTONINA ESPIRITU SANTO and the issuance of a new Transfer Certificate of Title in her name only, to the extreme prejudice of all the other heirs of the deceased SPS. QUITERIO SAN JOSE and ANTONINA ESPIRITU SANTO, specifically, the herein plaintiffs who were deprived of their lawful participation over the subject parcel of land.

7.1 Thus, on July 6, 1999, Transfer Certificate of Title No. M-94400 was issued in the name of defendant MA. TERESA S.J. FERNANDO.

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8. As a result, the herein plaintiffs and the other surviving heirs of the deceased spouses QUITERIO SAN JOSE and ANTONINA ESPIRITU SANTO, who are legally entitled to inherit from the latter's respective estates, in accordance with the laws of intestate succession, have been duly deprived of their respective rights, interests and participation over the subject parcel of land.

8.1 Thus, there is sufficient ground to annul the subject Deed of Extrajudicial Settlement of Estate Among Heirs with Waiver of Rights dated January 23, 1998, and all other documents issued on the strength thereof, particularly Transfer Certificate of Title No. M-94400.[4]

It was also alleged that respondents filed a complaint before the *Lupong Tagapamayapa* of their *Barangay* which issued the

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[4] *Id*. at 4-6.

required certification to file action for failure of the parties to settle the matter amicably.

Petitioners filed their Answer with Counter-Petition and with Compulsory Counterclaim[5] denying that the Deed of Extrajudicial Settlement of Estate Among Heirs with Waiver of Rights which was the basis of the issuance of TCT No. M-94400, was falsified and that the settlement was made and implemented in accordance with law. They admitted that the deceased spouses Quiterio and Antonina had five children; that the subject property was not the only property of spouses Quiterio and Antonina and submitted in their counter-petition for partition the list of the other 12 parcels of land of the deceased spouses Quiterio and Antonina that petitioners alleged are in respondents' possession and control.

On January 18, 2000, respondents filed a Motion for Judgment on the Pleadings[6] alleging that: (1) the denials made by petitioners in their answer were in the form of negative pregnant; (2) petitioners failed to state the basis that the questioned document was not falsified; (3) they failed to specifically deny the allegations in the complaint that petitioners committed misrepresentations by stating that they are the sole heirs and legitimate descendants of Quiterio and Antonina; and (4) by making reference to their allegations in their counter-petition for partition to support their denials, petitioners impliedly admitted that they are not the sole heirs of Quiterio and Antonina.

Respondents filed a Reply to Answer with Compulsory Counterclaim[7] with a motion to dismiss the counter-petition for partition on the ground that petitioners failed to pay the required docket fees for their counter-petition for partition. Petitioners filed their Rejoinder[8] without tackling the issue of non-payment of docket fees.

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[5] *Id.* at 21-27.

[6] *Id*. at 40-44.

[7] *Id*. at 56-59.

[8] *Id*. at 73-74.

On February 4, 2000, petitioners filed their Comment[9] to respondents' motion for judgment on the pleading and prayed that the instant action be decided on the basis of the pleadings with the exception of respondents' unverified Reply. Petitioners also filed an Opposition to the motion to dismiss the counter-petition for partition.

On May 9, 2000, the RTC rendered its Order,[10] the dispositive portion of which reads:

1. The Extrajudicial Settlement of Estate Among Heirs with Waiver of Rights, dated January 23, 1998 and Transfer Certificate of Title No. M-94400 in the name of Ma. Teresa S.J. Fernando are declared null and void;

2. The Register of Deeds of Rizal, Morong Branch, is directed to cancel TCT No. 94400; and

3. The Heirs of Quiterio San Jose and Antonina Espiritu Santo is (sic) directed to partition the subject parcel of land covered by TCT No. M-458396 in accordance with the law of intestate succession.[11]

SO ORDERED.

The RTC found that, based on the allegations contained in the pleadings filed by the parties, petitioners misrepresented themselves when they alleged in the Deed of Extrajudicial Settlement of Estate Among Heirs with Waiver of Rights that they are the sole heirs of the deceased spouses Quiterio and Antonina; that petitioners prayed for a counter-petition for partition involving several parcels of land left by the deceased spouses Quiterio and Antonina which bolstered respondents' claim that petitioners falsified the Extrajudicial Settlement which became the basis for the issuance of TCT No. M-94400 in Ma. Teresa's name; thus, a ground to annul the Deed of Extrajudicial Settlement and the title. The RTC did not consider as filed petitioners'

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[9] *Id*. at 81-82.

[10] Penned by Judge Adelina Calderon-Bargas; *id*. at 94-97.

[11] Records, p. 97.

Counter-Petition for Partition since they did not pay the corresponding docket fees.

Petitioners filed their Motion for Reconsideration, which the RTC denied in an Order[12] dated August 29, 2000.

Dissatisfied, petitioners filed an appeal with the CA. After the parties filed their respective briefs, the case was submitted for decision.

On August 31, 2004, the CA rendered its assailed Decision affirming the May 9, 2000 Order of the RTC.

The CA found that, while the subject matter of respondents' complaint was the nullity of the Deed of Extrajudicial Settlement of Estate among Heirs with Waiver of Rights that resulted in the issuance of TCT No. M-94400 in Ma. Teresa's name, petitioners included in their Answer a Counter-Petition for Partition involving 12 other parcels of land of spouses Quiterio and Antonina which was in the nature of a permissive counterclaim; that petitioners, being the plaintiffs in the counter-petition for partition, must pay the docket fees otherwise the court will not acquire jurisdiction over the case. The CA ruled that petitioners cannot pass the blame to the RTC for their omission to pay the docket fees.

The CA affirmed the RTC's judgment on the pleadings since petitioners admitted that the deceased spouses Quiterio and Antonina had five children which included herein plaintiffs; thus, petitioners misrepresented themselves when they stated in the Deed of Extrajudicial Settlement that they are the legitimate descendants and sole heirs of the deceased spouses Quiterio and Antonina; that the deed is null and void on such ground since respondents were deprived of their rightful share in the subject property and petitioners cannot transfer the property in favor of Ma. Teresa without respondents' consent; that TCT No. M-94400 must be cancelled for lack of basis. The CA affirmed the RTC's Order of partition of the subject property in accordance with the rules on intestate succession in the absence of a will.

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[12] *Id.* at 110-111.

Petitioners filed the instant petition for review on *certiorari* raising the following assignment of errors, to wit:

THE COURT OF APPEALS ERRED IN NOT GIVING DUE COURSE TO THE APPEAL OF THE DEFENDANTS (HEREIN PETITIONERS) AND IN EVENTUALLY UPHOLDING THE DECISION OF THE COURT OF ORIGIN, CONSIDERING THAT SUCH RULING WILL RESULT TO MULTIPLICITY OF SUITS BETWEEN THE SAME PARTIES AND IN VIOLATION OF THE CONSTITUTIONAL GUARANTY OF DUE PROCESS OF LAW & PROPERTY AND PROPERTY RIGHTS.

THE COURT OF APPEALS ERRED IN NOT VACATING THE ORDER OF THE TRIAL COURT IN PARTITIONING THE ESTATE WITHOUT PUBLICATION AS REQUIRED BY RULE 74 AND 76 OF THE 1997 RULES OF CIVIL PROCEDURE.[13]

Petitioners contend that in their Comment to respondents' motion for judgment on the pleadings, they stated that they will not oppose the same provided that their Answer with Counter-Petition for Partition and Rejoinder will be taken into consideration in deciding the case; however, the RTC decided the case on the basis alone of respondents' complaint; that the Answer stated that the deed was not a falsified document and was made and implemented in accordance with law, thus, it was sufficient enough to tender an issue and was very far from admitting the material allegations of respondents' complaint.

Petitioners also fault the RTC for disregarding their claim for partition of the other parcels of land owned by the deceased spouses Quiterio and Antonina for their failure to pay the court docket fees when the RTC could have simply directed petitioners to pay the same; and that this error if not corrected will result to multiplicity of suits.

Petitioners argue that the RTC erred in ordering the partition of the subject property as it violates the basic law on intestate succession that the heirs should be named and qualified through a formal petition for intestate succession whereby blood relationship should be established first by the claiming heirs

[13] *Rollo*, p. 29.

before they shall be entitled to receive from the estate of the deceased; that the order of partition was rendered without jurisdiction for lack of publication as required under Rules 74 and 76 of the Rules of Civil Procedure for testate or intestate succession.

We find no merit in the petition.

The CA committed no reversible error in affirming the judgment on the pleadings rendered by the RTC.

Section 1, Rule 34 of the Rules of Court, states:

> SECTION 1. *Judgment on the pleadings*. — Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. x x x.

Where a motion for judgment on the pleadings is filed, the essential question is whether there are issues generated by the pleadings. In a proper case for judgment on the pleadings, there is no ostensible issue at all because of the failure of the defending party's answer to raise an issue.[14] The answer would fail to tender an issue, of course, if it does not deny the material allegations in the complaint or admits said material allegations of the adverse party's pleadings by confessing the truthfulness thereof and/or omitting to deal with them at all.[15]

In this case, respondents' principal action was for the annulment of the Deed of Extrajudicial Settlement of Estate Among Heirs with Waiver of Rights executed by petitioners and annulment of title on the ground that petitioners stated in the said Deed that they are the legitimate descendants and sole heirs of the spouses Quiterio and Antonina. Although petitioners denied in their Answer that the Deed was falsified, they, however, admitted respondents' allegation that spouses Quiterio and Antonina had

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[14] *Tan v. De la Vega*, G.R. No. 168809, March 10, 2006, 484 SCRA 538, 545, citing *Wood Technology Corporation v. Equitable Banking Corporation*, 451 SCRA 724, 731 (2005).

[15] *Id*.

5 children, thus, supporting respondents' claim that petitioners are not the sole heirs of the deceased spouses. Petitioners' denial/admission in his Answer to the complaint should be considered in its entirety and not truncated parts. Considering that petitioners already admitted that respondents Galicano, Victoria, Catalina and Maribeth are the children and grandchild, respectively, of the spouses Quiterio and Antonina, who were the original registered owners of the subject property, and thus excluding respondents from the deed of settlement of the subject property, there is no more genuine issue between the parties generated by the pleadings, thus, the RTC committed no reversible error in rendering the judgment on the pleadings.

A deed of extrajudicial partition executed without including some of the heirs, who had no knowledge of and consent to the same, is fraudulent and vicious.[16] The deed of settlement made by petitioners was invalid because it excluded respondents who were entitled to equal shares in the subject property. Under the rule, no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof.[17] Thus, the RTC correctly annulled the Deed of Extrajudicial Settlement of Estate Among Heirs with Waiver of Rights dated January 23, 1998 and TCT No. M-94400 in the name of Ma. Teresa S.J. Fernando issued pursuant to such deed.

Petitioners' claim that had there been a trial, they could have presented testamentary and documentary evidence that the subject land is the inheritance of their deceased mother from her deceased parents, deserves scant consideration. A perusal of petitioners' Answer, as well as their Rejoinder, never raised such a defense. In fact, nowhere in the Deed of Extrajudicial Settlement Among Heirs with Waiver of Rights executed by petitioners was there a statement that the subject property was inherited by petitioners' mother Virginia from her deceased parents Quiterio and Antonina.

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[16] *Pedrosa v. Court of Appeals*, G.R. No. 118680, March 5, 2001, 353 SCRA 620, citing *Villaruz v. Neme*, 1 SCRA 27, 30 (1963).

[17] Rules of Court, Rule 74, Sec. 1.

Notably, petitioners never opposed respondents' motion for judgment on the pleadings.

We also find no merit in petitioners' contention that the Counter-Petition for Partition in their Answer was in the nature of a compulsory counterclaim which does not require the payment of docket fees.

A counterclaim is any claim which a defending party may have against an opposing party.[18] It may either be permissive or compulsory. It is permissive if it does not arise out of or is not necessarily connected with the subject matter of the opposing party's claim.[19] A permissive counterclaim is essentially an independent claim that may be filed separately in another case.

A counterclaim is compulsory when its object arises out of or is necessarily connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.[20] Unlike permissive counterclaims, compulsory counterclaims should be set up in the same action; otherwise, they would be barred forever.

Respondents' action was for the annulment of the Deed of Extrajudicial Settlement, title and partition of the property subject of the Deed. On the other hand, in the Counter-Petition filed by petitioners in their Answer to respondents' complaint, they were asking for the partition and accounting of the other 12 parcels of land of the deceased spouses Quiterio and Antonina, which are entirely different from the subject matter of the respondents' action. Petitioners' claim does not arise out of or is necessarily connected with the action for the Annulment of the Deed of Extrajudicial Settlement of the property covered

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[18] Rules of Court, Rule 6, Sec. 6.

[19] *Lafarge Cement Philippines, Inc. v. Continental Cement Corporation*, G.R. No. 155173, November 23, 2004, 443 SCRA 522, 533-534, citing *Lopez v. Gloria*, 40 Phil. 26 (1919), per Torres, *J.*

[20] Rules of Court, Rule 6, Sec. 7.

by TCT No. 458396. Thus, payment of docket fees is necessary before the RTC could acquire jurisdiction over petitioners' petition for partition.

Petitioners, however, argue that the RTC could have simply issued a directive ordering them to pay the docket fees, for its non-payment should not result in the automatic dismissal of the case.

We find *apropos* the disquisition of the CA on this matter, thus:

> The rule regarding the payment of docket fees upon the filing of the initiatory pleading is not without exception. It has been held that if the filing of the initiatory pleading is not accompanied by payment of docket fees, the court may allow payment of the fee within reasonable time but in no case beyond the applicable prescriptive or reglementary period.
>
> It is apparent from the arguments of the defendants-appellants that they are blaming the trial court for their omission to pay the docket fees. It is, however, our opinion that the defendants-appellants cannot pass on to the trial court the performance of a positive duty imposed upon them by the law. It should be noted that their omission to file the docket fees was raised as one of the grounds to dismiss the counter petition for partition. The defendants-appellants opposed the said motion without, however, offering an answer to the said ground raised by the plaintiffs-appellees. In fact, during the period the motion was being heard by the trial court, the defendants–appellants never paid the docket fees for their petition so that it could have at least brought to the attention of the trial court their payment of the docket fees although belatedly done. They did not even ask the trial court for time within which to pay the docket fees for their petition. When the trial court ruled to dismiss the petition of the defendants-appellants, the latter did not, in their motion for reconsideration, ask the trial court to reconsider the dismissal of their petition by paying the required docket fees, neither did they ask for time within which to pay their docket fees. In other words, the trial court could have issued an order allowing the defendants-appellants a period to pay the docket fees for their petition if the defendants-appellants made such manifestation. What is apparent from the factual circumstances of the case is that the defendants-appellants have been neglectful in complying with this positive duty

imposed upon them by law as plaintiffs of the counter petition for partition. Because of their omission to comply with their duty, no grave error was committed by the trial court in dismissing the defendants-appellants' counter petition for partition.[21]

Petitioners argue that with the dismissal of their Counter-Petition for Partition, the partition of the other parcels of land owned by the deceased spouses Quiterio and Antonina will result to multiplicity of suits.

We are not persuaded.

Significantly, in petitioners' Answer with Counter-Petition for Partition, they enumerated 12 other parcels of land owned by the deceased spouses Quiterio and Antonina. They alleged that some of these properties had already been disposed of by respondents and some are still generating income under the control and administration of respondents, and these properties should be collated back by respondents to be partitioned by all the heirs of the deceased spouses. It bears stressing that the action filed by respondents in the RTC was an ordinary civil action for annulment of title, annulment of the deed of extrajudicial settlement and partition of a parcel of land now covered by TCT No. M-94400; hence, the authority of the court is limited to the property described in the pleading. The RTC cannot order the collation and partition of the other properties which were not included in the partition that was the subject matter of the respondents' action for annulment. Thus, a separate proceeding is indeed proper for the partition of the estate of the deceased spouses Quiterio and Antonina.

Finally, petitioners contend that the RTC erred when it ordered the heirs of Quiterio and Antonina to partition the subject parcel of land covered by TCT No. 458396 in accordance with the laws of intestate succession; that the RTC violated the requirement of publication under Sections 1 and 2 of Rule 74 and Section 3 of Rule 76 of the Rules of Court.

We do not agree.

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[21] *Rollo,* pp. 14-15.

We find the ruling of the CA on the matter of the RTC's order of partition of land subject of the annulled deed of extrajudicial settlement worth quoting, thus:

> Considering that the subject document and the corresponding title were canceled, the logical consequence is that the property in dispute, which was the subject of the extrajudicial settlement, reverted back to the estate of its original owners, the deceased spouses Quiterio and Antonina San Jose. Since, it was admitted that all the parties to the instant suit are legal heirs of the deceased spouses, they owned the subject property in common. It is a basic rule that any act which is intended to put an end to indivision among co-heirs or co-owners is deemed to be a partition. Therefore, there was no reversible error committed by the trial court in ordering the partition of the subject property. We find nothing wrong with such ruling considering that the trial court ordered the partition of the subject property in accordance with the rules on intestate succession. The trial court found the property to be originally owned by the deceased spouses Quiterio and Antonina San Jose and, in the absence of a will left by the deceased spouses, it must be partitioned in accordance with the rules on intestate succession.[22]

As the RTC nullified the Deed of Extrajudicial Settlement of Estate Among Heirs with Waiver of Rights executed by petitioners and the title issued in accordance therewith, the order of partition of the land subject of the settlement in accordance with the laws on intestate succession is proper as respondents' action filed in the RTC and respondents' prayer in their complaint asked for the partition of the subject property in accordance with intestate succession. The applicable law is Section 1, Rule 69 of the Rules of Court, which deals with action for partition, to wit:

> SECTION 1. *Complaint in action for partition of real estate.* — A person having the right to compel the partition of real estate may do so as provided in this Rule, setting forth in his complaint the nature and extent of his title and an adequate description of the real estate of which partition is demanded and joining as defendants all other persons interested in the property.

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[22] *Id.* at 17.

And, under this law, there is no requirement for publication.

WHEREFORE, the instant petition is *DENIED*. The Decision dated August 31, 2004 and the Resolution dated December 14, 2004, of the Court of Appeals in CA-G.R. CV No. 69261, are *AFFIRMED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Velasco, Jr., and *Nachura, JJ.,* concur.

FIRST DIVISION

[G.R. No. 170182. June 18, 2009]

LEONARDO TARONA, EUGENIA TARONA, NITA TARONA, LUIS TARONA, ROSALINDA TARONA, APOLONIA TARONA, CARLOS TARONA, LOURDES TARONA and ROGELIO TARONA, *petitioners, vs.* **COURT OF APPEALS (NINTH DIVISION), GAY T. LEAÑO, LEMUEL T. LEAÑO, NOEL T. LEAÑO, JEDD ANTHONY LEAÑO CUISON and JASON ANTHONY LEAÑO CUISON,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATIONS; AGRARIAN LAWS; AGRICULTURAL TENANCY, ESSENTIAL REQUISITES OF.— In order to establish a tenancy relationship, the following essential requisites must concur: (1) the parties are the landowner and the tenant or agricultural lessee; (2) the subject matter of the relationship is an agricultural land; (3) there is consent between the parties to the relationship; (4) the purpose

of the relationship is to bring about agricultural production; (5) there is personal cultivation on the part of the tenant or agricultural lessee; and (6) the harvest is shared between the landowner and the tenant or agricultural lessee. All these requisites are necessary to create a tenancy relationship and the absence of one or more will not make the alleged tenant a *de facto* tenant.

2. ID.; ID.; ID.; NO TENANCY RELATION IS CREATED IN THE ABSENCE OF PERSONAL CULTIVATION ON THE PART OF THE TENANT OR AGRICULTURAL LESSEE.— In the case at bar, the CA held that there is no tenancy relationship between the private respondents and petitioners Apolonia, Carlos, Lourdes and Rogelio Tarona due to the absence of personal cultivation of the subject landholding by the latter. In arriving at such a finding, the appellate court gave full credence to the evidence proffered by private respondents showing that the aforementioned petitioners are not residents of the locality where the subject landholding is and neither are they tenants of any lot thereat. The evidence, among others, consists of the Certification dated October 9, 2003 issued by the *Barangay* Captain of Mauban, now Nagbalayong, Morong, Bataan, stating that Apolonia, Carlos, Lourdes and Rogelio Tarona are not residents therein and that they do not personally cultivate the subject property; and the Certification of the election officer of Caloocan City showing that said persons are residents and registered voters of Caloocan City. We find no reason to disturb the aforesaid finding of the CA. Clearly, private respondents' evidence, which significantly the petitioners failed to refute, more than substantially proved the impossibility of personal cultivation. Petitioners (intervenors) have already left the place where the subject land lies in Morong, Bataan, and now live in another locality which is in Caloocan City. Since Bataan is of a considerable distance from Caloocan City, it would undeniably be physically impossible for the petitioners to personally cultivate the landholding. In *Deloso v. Marapao*, we upheld the ruling of the CA that while a tenant is not required to be physically present in the land at all hours of the day and night, such doctrine cannot be stretched to apply to a case wherein the supposed tenant has chosen to reside in another place so far from the land to be cultivated that it would be physically impossible to be present therein with some degree of constancy

as to allow the tenant to cultivate the same. Intervenors likewise argue in their petition that their transfer of residence to Caloocan City is immaterial since the tenant is allowed by law to cultivate the land through the aid of labor from members of their immediate farm household. However, there was no allegation made nor evidence presented in the proceedings below that there were such persons who were cultivating the land on intervenors' behalf. Even further weakening their position, intervenors were not able to substantiate, by the necessary quantum of evidence, the existence of a tenancy relationship by virtue of their alleged continuous and uninterrupted possession and cultivation of the subject land since 1957 up to the present. Aside from the leasehold agreement executed between the private respondents' and petitioners' predecessors-in-interest and their bare allegations of continuous possession, no other evidence was adduced in support of such claim. In the same vein, the record is bereft of evidence proving that the other petitioners, namely Leonardo, Eugenia, Nita, Luis and Rosalinda Tarona, have been continuously in possession and uninterrupted cultivation of the landholding as nephews and nieces and members of Juanito Tarona's immediate farm household since 1957. While *personal cultivation*, as defined by law, is cultivation by the lessee or lessor in person and/or with the aid of labor from within his immediate household, *i.e.*, members of the family of the lessee or lessor and other persons who are dependent upon him for support and who usually help him in his activities, there is nothing in this case to show that petitioners Leonardo, Eugenia, Nita, Luis and Rosalinda were indeed members of Juanito's immediate farm household who helped him in cultivating the land during his lifetime. Even assuming purely for the sake of argument that at some point in time these petitioners had been cultivating the land, there was no proof that the supposed occupation and cultivation of the land by these petitioners were with the knowledge or consent of private respondents or their predecessor-in-interest or that petitioners paid and private respondents received rentals. In view of this evidentiary dearth, we cannot uphold petitioners' argument that an agricultural tenancy relationship was "impliedly" created between Leonardo, Eugenia, Nita, Luis and Rosalinda, and the private respondents. Thus, the CA properly reversed the PARAD and DARAB ruling on this point. In the

absence of the requisite of personal cultivation as it is defined by law, we cannot but rule that all the petitioners herein are not tenants of the private respondents. It has been held that personal cultivation is an important factor in determining the existence of an agricultural lease relationship such that in its absence, an occupant of a tract of land, or a cultivator thereof, or planter thereon, cannot qualify as a *de jure* lessee. In sum, the CA did not err when it found that no tenancy relations existed between the private respondents and the petitioners.

3. ID.; ID.; R.A. 6657; THE POWER TO DETERMINE WHETHER THE LAND IS SUBJECT TO CARP COVERAGE LIES WITH THE DEPARTMENT OF AGRARIAN REFORM SECRETARY.— We part ways with the CA, however, with regard to its declaration that only 1.2854 hectares of the landholding is subject to the CARP. The power to determine whether a property is subject to CARP coverage lies with the DAR Secretary pursuant to Section 50 of R.A. No. 6657. Verily, it is explicitly provided under Section 1, Rule II of the DARAB Revised Rules that matters involving strictly the administrative implementation of the CARP and other agrarian laws and regulations, shall be the exclusive prerogative of and cognizable by the Secretary of the DAR. Moreover, under the Rules of Procedure for Agrarian Law Implementation (ALI) Cases, set forth in Administrative Order No. 06-00, it is provided that the DAR Secretary has exclusive jurisdiction over classification and identification of landholdings for coverage under the CARP, including protests or oppositions thereto and petitions for lifting of coverage. This being so, the CA's declaration regarding CARP coverage of the subject land was premature considering that the Order of the DAR Regional Director in A.R. Case No. LSD 015703, entitled *In Re Protest From CARP Coverage x x x* upon which the CA based its questioned declaration, was still pending review with the Office of the DAR Assistant Secretary, as per Certification dated February 18, 2005 by the Legal Affairs Office of the DAR.

APPEARANCES OF COUNSEL

Adonis J. Basa for petitioners.
Law Firm of Rolando Bondoc Miranda for private respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court is the **Decision dated April 27, 2005**[1] of the Court of Appeals (CA) in *CA-G.R. SP No. 86164*, reversing and setting aside the January 16, 2004 Decision and August 06, 2004 Resolution of the Department of Agrarian Reform Adjudication Board (DARAB) in *DARAB Case No. 9496*. The aforementioned DARAB Decision and Resolution affirmed the October 28, 1999 Decision of the Provincial Adjudicator of Dinalupihan, Bataan, in *Case No. R-0301-0115-98*, which in turn dismissed private respondents' action for recovery of possession of the landholding in question and ordering the latter to respect the status of the petitioners as *bona-fide* tenants thereof. Likewise questioned is the **Resolution dated October 19, 2005**[2] of the CA which denied petitioners' motion for reconsideration.

The parcel of land subject of this case is located in Mauban, now Nagbalayong, Morong, Bataan, with an area of 10.4758 hectares, more or less, covered by Transfer Certificate of Title No. 6986[3] and registered in the name of Antonia T. Leaño married to Federico Leaño.

As disclosed by the record, the instant case stemmed from a complaint[4] for recovery of possession of the subject landholding filed on May 22, 1998, with the Provincial Agrarian Reform Adjudication Board in Dinalupihan, Bataan, by herein private respondents Gay T. Leaño, Lemuel T. Leaño, Noel T. Leaño,

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[1] Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Amelita G. Tolentino and the late Roberto A. Barrios, concurring; *rollo*, pp. 38-50.

[2] *Id.* at 36.

[3] CA Record, p. 25; the precise area stated on TCT No. 6986 is 104,758 sq. m.

[4] DARAB Record, pp. 18-20.

Jedd Leaño Cuison and Jason Leaño Cuison, against petitioners Leonardo, Eugenia, Nita, Luis and Rosalinda, all surnamed Tarona. Later, the other petitioners, namely Apolonia, Carlos, Lourdes and Rogelio, likewise all surnamed Tarona, were allowed to join the action as intervenors.

Essentially, private respondents alleged that they are co-owners of the land subject of the case which they inherited from their late mother, Antonia T. Leaño, in whose name said property is titled. Private respondents claimed that the petitioners, then defendants and intervenors, are not lawful and *bona fide* tenants of the subject landholding because they have no legal or valid document evidencing tenancy or any proof of rental payments. The purported lease agreement executed by their father in favor of one Juanito Tarona was void for their father had no authority to deal with their mother's paraphernal property. They likewise alleged that during the lifetime of their mother, the land was administered by Cesario and Meliton Fronda, both of whom are now dead. It was after Antonia's death that then defendants Leonardo, Eugenia, Nita, Luis and Rosalinda Tarona entered the land and took possession of the same. Since *barangay* conciliation and mediation proceedings conducted by the Municipal Agrarian Reform Office of Morong failed, and subsequent demands for petitioners to vacate the land likewise proved futile, private respondents were thus constrained to file the complaint.

Answering the complaint, the original defendants, Leonardo, Eugenia, Nita, Luis and Rosalinda, and the intervenors, Apolonia, Carlos, Lourdes and Rogelio, denied the material allegations therein and averred that as nephews and nieces and the lawful heirs of the original agricultural lessee, Juanito Tarona, they have succeeded to the latter's tenancy rights and are, therefore, *bona fide* leasehold tenants. In support of the alleged existence of a tenancy relationship, defendants and intervenors presented in evidence a Leasehold Agreement dated July 12, 1956[5] between Juanito Tarona and Federico Leaño, the deceased husband of Antonia and the father of the private respondents. Leonardo, Eugenia, Nita, Luis and Rosalinda asserted that it was not the

[5] *Rollo*, pp. 53-54.

Frondas but their predecessor, Juanito, who actually cultivated the subject land and that they continued such cultivation after the latter's death. As for the allegation of private respondents that they are not paying lease rentals, then intervenors Apolonia, Carlos, Lourdes and Rogelio, all surnamed Tarona, pointed out that if such allegation was true then they should have been ejected from the landholding a long time ago for having violated the leasehold agreement. Insisting that the subject land was part of the late spouses Federico and Antonia Leaño's conjugal property and not that of Antonia's alone, the defendants and the intervenors asserted that the uninterrupted and physical possession by them of said land for many years has estopped the private respondents from questioning the validity of the leasehold agreement. The defendants and intervenors lastly asserted that the subject landholding is within the coverage of the Comprehensive Agrarian Reform Program (CARP) and should be distributed to them.

In a Decision dated October 28, 1999,[6] the Bataan Provincial Agrarian Reform Adjudicator (PARAD), finding that a tenancy relationship existed between the parties and that he had no authority to rule on the coverage of the CARP over the landholding, dismissed private respondents' complaint and rendered judgment in this wise:

> Wherefore, in the light of the foregoing, judgment is hereby rendered as follows:
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> 1). Ordering the plaintiffs to respect the tenurial status of the defendants and intervenors as the bona-fide tenants over the landholding in question containing an area of 10,000 hectares, more or less, covering Transfer Certificate of title No. T-6986;
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> 2). Ordering the plaintiffs, their heirs, assigns, successors-in-interest and all persons acting for and in their behalves or claiming rights under them to cease and desist from further harassing, disturbing, molesting or doing acts which tend to eject, oust, remove defendants and intervenors from their peaceful possession and occupation of the subject landholding;

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[6] *Id*. at 55-66.

3). Ordering the Municipal Agrarian Reform Officer to fix the lease rentals of the subject landholding on the basis of its harvest or produce.

Dismissing the instant complaint for lack of merit.

All other claims and counterclaims are hereby ordered dismissed.

SO DECIDED.

NO PRONOUNCEMENT AS TO COSTS.

SO ORDERED.[7]

On appeal, the DARAB affirmed the findings of the PARAD as it explained in its Decision of January 16, 2004:[8]

Records reveal that the property involved in the dispute was the subject of a Leasehold Agreement dated July 12, 1956, executed between Antonio T. Leano in the name of Federico C. Leano in favor of Juanito Tarona. It is to be noted that before the filing of the instant case, there was a previous case filed in the Regional Trial Court, Branch I of Balanga, Bataan, between the same parties over the same landholding docketed as Civil Case No. 6649 which was dismissed by the trial court on the ground that there exists a tenancy relationship with the [appellants] by virtue of the agreement executed by their respective predecessors-in-interest. Thereafter, [appellants] filed a complaint before the Honorable Adjudicator *a quo* against the same [appellees] for recovery of possession of the landholding in question. It is noteworthy to stress at this instant that the subject property was acquired by [appellants] through succession in 1995 as evidenced by the extrajudicial partition among them.

In fine, the Hon. Adjudicator *a quo*, after evaluation and weighing of the parties' contentions, has found that [appellees-intervenors] are *bona fide* tenants of the subject landholding. The validity of the Leasehold Agreement having been established, the [appellees-intervenors] merely succeeded to the rights and privileges of their predecessor-in-interest, Juanito Tarona, who was the tenant of the subject landholding. The requisites of tenancy relationship are present in the case at bar. x x x The consideration consists in the sharing

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[7] *Id*. at 65-66.

[8] *Id*. at 67-73.

of the harvest. The fact that [appellants] did not question the tenancy of [appellees-intervenors] over the landholding for several years, amounted to an implied admission or consent to the establishment of a tenancy relationship between the parties.[9] (Words in brackets ours.)

The private respondents moved for reconsideration of the foregoing decision. In its Resolution of August 6, 2004,[10] however, the DARAB denied their motion, prompting the private respondents to file a petition for review with motion for the issuance of a prohibitory injunction[11] with the Court of Appeals (CA).

In its herein assailed **Decision of April 27, 2005**,[12] the CA reversed and set aside the DARAB decision and resolution.

In its judgment of reversal, the CA first ruled on the extent of the coverage of the CARP over the subject landholding, holding that only 1.2854 hectares out of the total area of 10.4758 hectares is *carpable* as per the order of the Department of Agrarian Reform (DAR) Regional Director in *A.R. Case No. LSD 0157'03 "RE: Protest from CARP Coverage xxx,"* which was an action filed by the private respondents herein with the DAR involving the subject property. Anent the issue of the existence of tenancy relations, the CA noted that while the DARAB upheld the existence thereof between the private respondents Leaños and Apolonia, Carlos, Lourdes and Rogelio Tarona,[13] nowhere in said Board's decision is a similar conclusion with regard to Leonardo, Eugenia, Nita, Luis and Rosalinda Tarona.[14] Be that as it may, so the CA held, considering that the latter group of Taronas are the

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[9] *Id*. at 71-72.

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

[11] Docketed as CA-G.R. SP No. 86164; CA Records, pp. 2-18.

[12] *Supra* note 1.

[13] Intervenors-Appellees in CA-G.R. SP No. 86164 and Intervenors in DARAB Case No. 9496.

[14] Defendants-Appellees in CA-G.R. SP No. 86164 and Defendants in DARAB Case No. 9496.

nephews and nieces and members of the immediate farm household of the original agricultural tenant, Juanito Tarona, they cannot succeed as tenants-in-law because under Section 9 of Republic Act (R.A.) No. 3844, or the Agricultural Land Reform Code, succession of tenancy rights is limited only to direct descendants. As for Apolonia, Carlos, Lourdes and Rogelio, the CA found that they cannot be considered as tenants of the subject land because they are not residents of the place where the same lies, as evidenced by the certification of the *barangay* captain of Nagbalayong, Morong, Bataan and the certification of the election officer of Caloocan City that Apolonia, Carlos and Rogelio were residents and/or registered voters of Caloocan City.

In time, all the Taronas (both the originally impleaded defendants and the intervenors) filed a motion for reconsideration of the aforementioned decision. However, in its herein equally assailed **Resolution dated October 19, 2005**,[15] the CA denied said motion.

Hence, the Taronas, now the petitioners, are before us contending that the CA erred and gravely abused its discretion in (1) declaring that the transfer of residence by Apolonia, Carlos, Lourdes and Rogelio Tarona from Morong, Bataan, to Caloocan City, negated their claim of personal cultivation of the landholding in dispute which is located in Morong, Bataan; (2) not appreciating the fact that a tenancy relationship between the private respondents and Leonardo, Eugenia, Nita, Luis, and Rosalinda Tarona was impliedly created by virtue of the latter's continuous and uninterrupted possession and cultivation of the land since 1957 without any disturbance from the private respondents and Antonia Leaño; and (3) prematurely declaring that only 1.2854 hectares of the landholding is *carpable* despite pendency of the appeal on the issue of *carpability* of said land with the DAR.

The petition is devoid of merit.

As we see it, the first and second issues being raised herein hinge on the existence of tenancy relations between the parties.

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[15] *Supra* note 2.

This is a question of fact which generally is beyond this Court's scope of review under Rule 45 of the Rules of Court. However, we are compelled to review the facts of this case, since the findings of the CA are contrary to those of the DARAB.[16]

The PARAD essentially held that the status of petitioners as tenants was derived from their status as heirs of the deceased Juanito Tarona who was named the tenant in an agricultural lease agreement involving the subject property. As noted by the CA, even as the DARAB affirmed the PARAD decision on appeal, only intervenors Apolonia, Carlos, Lourdes and Rogelio were expressly held by the DARAB to be the heirs of Juanito Tarona. This is not surprising since petitioners Leonardo, Eugenia, Nita, Luis, and Rosalinda Tarona admitted repeatedly in their pleadings that they are the nephews and nieces of Juanito Tarona. As correctly held by the CA, succession of tenancy rights is limited to direct descendants only. Section 9 of R.A. No. 3844 clearly provides:

Section 9. *Agricultural Leasehold Relation Not Extinguished by Death or Incapacity of the Parties* — In case of death or permanent incapacity of the agricultural lessee to work his landholding, the leasehold shall continue between the agricultural lessor and the person who can cultivate the landholding personally, chosen by the agricultural lessor within one month from such death or permanent incapacity, from among the following: **(a) the surviving spouse; (b) the eldest direct descendant by consanguinity; or (c) the next eldest descendant or descendants in the order of their age**: Provided, That in case the death or permanent incapacity of the agricultural lessee occurs during the agricultural year, such choice shall be exercised at the end of that agricultural year: Provided, further, That in the event the agricultural lessor fails to exercise his choice within the periods herein provided, the priority shall be in accordance with the order herein established.

In case of death or permanent incapacity of the agricultural lessor, the leasehold shall bind his legal heirs. (Emphasis ours)

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[16] See *Deloso v. Marapao*, G.R. No. 144244, November 11, 2005, 474 SCRA 585, 592-593.

As for petitioners Apolonia, Carlos, Lourdes and Rogelio (intevernors in the proceedings *a quo*), allegedly the wife and children of Juanito Tarona, the Court cannot give credence to their claim of *bona fide* tenancy over any part of the subject property. To begin with, a careful perusal of the records of the case showed that not a shred of evidence was ever presented to buttress petitioners' assertion of relationship to Juanito Tarona.

Even assuming their relationship to Juanito Tarona was duly proved, we agree with the CA that not all the elements for the creation of a tenancy relationship between these petitioners (intervenors) and private respondents have been established in this case.

In order to establish a tenancy relationship, the following essential requisites must concur: (1) the parties are the landowner and the tenant or agricultural lessee; (2) the subject matter of the relationship is an agricultural land; (3) there is consent between the parties to the relationship; (4) the purpose of the relationship is to bring about agricultural production; (5) there is personal cultivation on the part of the tenant or agricultural lessee; and (6) the harvest is shared between the landowner and the tenant or agricultural lessee.[17] All these requisites are necessary to create a tenancy relationship and the absence of one or more will not make the alleged tenant a *de facto* tenant.[18]

In the case at bar, the CA held that there is no tenancy relationship between the private respondents and petitioners Apolonia, Carlos, Lourdes and Rogelio Tarona due to the absence of personal cultivation of the subject landholding by the latter.

In arriving at such a finding, the appellate court gave full credence to the evidence proffered by private respondents showing that the aforementioned petitioners are not residents of the locality where the subject landholding is and neither are they tenants of any lot thereat. The evidence, among others, consists of the

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[17] *Id.* at 593.

[18] *Suarez v. Saul, et al.*, G.R. No. 166664, October 20, 2005, 473 SCRA 628, 634.

Certification dated October 9, 2003[19] issued by the *Barangay* Captain of Mauban, now Nagbalayong, Morong, Bataan, stating that Apolonia, Carlos, Lourdes and Rogelio Tarona are not residents therein and that they do not personally cultivate the subject property; and the Certification[20] of the election officer of Caloocan City showing that said persons are residents and registered voters of Caloocan City.

We find no reason to disturb the aforesaid finding of the CA. Clearly, private respondents' evidence, which significantly the petitioners failed to refute, more than substantially proved the impossibility of personal cultivation. Petitioners (intervenors) have already left the place where the subject land lies in Morong, Bataan, and now live in another locality which is in Caloocan City. Since Bataan is of a considerable distance from Caloocan City, it would undeniably be physically impossible for the petitioners to personally cultivate the landholding. In *Deloso v. Marapao*,[21] we upheld the ruling of the CA that while a tenant is not required to be physically present in the land at all hours of the day and night, such doctrine cannot be stretched to apply to a case wherein the supposed tenant has chosen to reside in another place so far from the land to be cultivated that it would be physically impossible to be present therein with some degree of constancy as to allow the tenant to cultivate the same.

Intervenors likewise argue in their petition that their transfer of residence to Caloocan City is immaterial since the tenant is allowed by law to cultivate the land through the aid of labor from members of their immediate farm household. However, there was no allegation made nor evidence presented in the proceedings below that there were such persons who were cultivating the land on intervenors' behalf.

Even further weakening their position, intervenors were not able to substantiate, by the necessary quantum of evidence, the

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[19] CA Record, p. 331.

[20] *Id.* at 464-466.

[21] *Supra* note 16, pp. 593-594.

existence of a tenancy relationship by virtue of their alleged continuous and uninterrupted possession and cultivation of the subject land since 1957 up to the present. Aside from the leasehold agreement executed between the private respondents' and petitioners' predecessors-in-interest and their bare allegations of continuous possession, no other evidence was adduced in support of such claim.

In the same vein, the record is bereft of evidence proving that the other petitioners, namely Leonardo, Eugenia, Nita, Luis and Rosalinda Tarona, have been continuously in possession and uninterrupted cultivation of the landholding as nephews and nieces and members of Juanito Tarona's immediate farm household since 1957. While *personal cultivation*, as defined by law, is cultivation by the lessee or lessor in person and/or with the aid of labor from within his immediate household, *i.e.*, members of the family of the lessee or lessor and other persons who are dependent upon him for support and who usually help him in his activities,[22] there is nothing in this case to show that petitioners Leonardo, Eugenia, Nita, Luis and Rosalinda were indeed members of Juanito's immediate farm household who helped him in cultivating the land during his lifetime.

Even assuming purely for the sake of argument that at some point in time these petitioners had been cultivating the land, there was no proof that the supposed occupation and cultivation of the land by these petitioners were with the knowledge or consent of private respondents or their predecessor-in-interest or that petitioners paid and private respondents received rentals. In view of this evidentiary dearth, we cannot uphold petitioners' argument that an agricultural tenancy relationship was "impliedly" created between Leonardo, Eugenia, Nita, Luis and Rosalinda, and the private respondents. Thus, the CA properly reversed the PARAD and DARAB ruling on this point.

In the absence of the requisite of personal cultivation as it is defined by law, we cannot but rule that all the petitioners herein

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[22] *Verde v. Macapagal*, G.R. No. 151342, June 23, 2005, 461 SCRA 97, 106-107.

are not tenants of the private respondents. It has been held that personal cultivation is an important factor in determining the existence of an agricultural lease relationship such that in its absence, an occupant of a tract of land, or a cultivator thereof, or planter thereon, cannot qualify as a *de jure* lessee.[23] In sum, the CA did not err when it found that no tenancy relations existed between the private respondents and the petitioners.

We part ways with the CA, however, with regard to its declaration that only 1.2854 hectares of the landholding is subject to the CARP. The power to determine whether a property is subject to CARP coverage lies with the DAR Secretary[24] pursuant to Section 50 of R.A. No. 6657.[25] Verily, it is explicitly provided under Section 1, Rule II of the DARAB Revised Rules[26] that matters involving strictly the administrative implementation of

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[23] *Id.* at 106.

[24] *Sta. Rosa Development Corporation v. Juan B. Amante, et al.*, G.R. No. 112526, March 16, 2005, 453 SCRA 434, 471.

[25] Section 50 of R.A. No. 6657 (CARL) provides that:

> Sec. 50. Quasi-Judicial Powers of the DAR. — The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR).

[26] Rule II, Section 1 provides that:

> SECTION 1. Primary, Original and Appellate Jurisdiction. — The Agrarian Reform Adjudication Board shall have primary jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes, cases, controversies, and matters or incidents involving the implementation of the Comprehensive Agrarian Reform Program under Republic Act No. 6657, Executive Order Nos. 229, 228 and 129-A, Republic Act No. 3844 as amended by Republic Act No. 6389, Presidential Decree No. 27 and other agrarian laws and their implementing rules and regulations.
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> Specifically, such jurisdiction shall extend over but not be limited to the following:
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> x x x x x x x x x

the CARP and other agrarian laws and regulations, shall be the exclusive prerogative of and cognizable by the Secretary of the DAR. Moreover, under the Rules of Procedure for Agrarian Law Implementation (ALI) Cases,[27] set forth in Administrative Order No. 06-00,[28] it is provided that the DAR Secretary has exclusive jurisdiction over classification and identification of landholdings for coverage under the CARP, including protests or oppositions thereto and petitions for lifting of coverage. This being so, the CA's declaration regarding CARP coverage of the subject land was premature considering that the Order of the DAR Regional Director in A.R. Case No. LSD 015703, entitled *In Re Protest From CARP Coverage x x x*[29] upon which the CA based its questioned declaration, was still pending review with the Office of the DAR Assistant Secretary, as per Certification[30] dated February 18, 2005 by the Legal Affairs Office of the DAR. In any event, the resolution of the issue of whether the entire property or only part of it is subject to CARP coverage has no bearing on the issue in this case, *i.e.* whether petitioners can be considered *bona fide* tenants of herein private respondents.

Provided, however, that matters involving strictly the administrative implementation of the CARP and other agrarian laws and regulations, shall be the exclusive prerogative of and cognizable by the Secretary of the DAR.

[27] Section 2 of which pertinently provides the following:

SECTION 2. Cases Covered. — These Rules shall govern cases falling within the exclusive jurisdiction of the DAR Secretary which shall include the following:

(a) Classification and identification of landholdings for coverage under the Comprehensive Agrarian Reform Program (CARP), including protests or oppositions thereto and petitions for lifting of coverage;

x x x x x x x x x

[28] Issued on August 30, 2000.

[29] In full, the title of this case reads "Re: Protest from CARP Coverage of Gay T. Leaño, Lemuel T. Leaño, Noel T. Leaño, Jedd Anthony T. Leaño Cuison and Jason Anthony Leaño Cuison, Involving a Landholding Covered by TCT No. T-6986 With An Area of 10.4758 Hectares, More or Less, Located at Mauban Now Nagbalayong, Morong, Bataan;" *rollo*, pp. 76-79.

[30] *Id.* at 80.

WHEREFORE, the instant petition is *DENIED* and the assailed Decision dated April 27, 2005 and Resolution dated October 19, 2005 of the CA are *AFFIRMED* insofar as it declared the petitioners not tenants of the subject landholding, and *REVERSED* with respect to the finding of the extent of the coverage of the Comprehensive Agrarian Reform Program over the land subject of the case.

No pronouncement as to costs.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and *Bersamin, JJ.,* concur.

THIRD DIVISION

[G.R. No. 170222. June 18, 2009]

EDGAR ESQUEDA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; IDENTITY OF THE ACCUSED, ESTABLISHED.— It was firmness born of certainty that Venancia positively identified the petitioner as the one who stabbed her. She testified that she was able to see the petitioner even if the crime was committed at night. It was not completely dark, as the light coming from the moon illuminated the porch of their house. Notably, another witness, Venancia's live-in partner, Gaudencio, corroborated Venancia's testimony. x x x Venancia and Gaudencio both testified in a straightforward and categorical manner regarding the identity of the petitioner as the author of the wounds sustained by Venancia.

2. ID.; ID.; DENIAL; BARE DENIAL OF THE ACCUSED CANNOT PREVAIL OVER CATERGORICAL STATEMENTS OF THE WITNESSES.— In the present case, there appears to be a clash between the categorical statement of the prosecution, on one hand, and the defense of denial by the petitioner, on the other hand. We rule that the rivalry should be resolved in favor of the prosecution. Between the categorical statements of the prosecution witnesses and the bare denial of the petitioner, the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony, especially when it comes from the mouth of a credible witness. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable, but also because they are easily fabricated and concocted. In light of the foregoing, the defense of denial collapses.

3. ID.; ID.; ALIBI; PHYSICAL IMPOSSIBILITY TO BE AT THE SCENE OF THE CRIME AT THE TIME OF COMMISSION, NOT A CASE OF.— Basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime. Physical impossibility refers to the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places. Where there is least chance for the accused to be present at the crime scene, the defense of alibi must fail. Aside from the testimonies of petitioner's witnesses that he was fishing at Cawitan, Sta. Catalina from 8 o'clock in the evening of March 3, 1999 until 2 o'clock in the morning the following day, petitioner was unable to show that it was physically impossible for him to be at the scene of the crime. During the trial of the case, both the prosecution and defense witnesses testified that Nagbinlod and Cawitan, Sta. Catalina, were merely more than 5 kilometers apart which would only take about 20 to 40 minutes' ride. Thus, it was not physically impossible for the petitioner to be at the *locus criminis* at the time of the incident.

4. ID.; ID.; CREDIBILITY OF WITNESSES; MOTIVE, LACK OF.— Petitioner's allegation that Venancia may have had a

motive in falsely accusing him of a crime is bereft of merit. Although there is a possibility that Venancia and petitioner's mother were not in good terms due to a case of grave slander by deed that Venancia filed against petitioner's mother, We believe that such incident is not sufficient provocation for Venancia to give perjured evidence in order to impute a grave felony against the petitioner. If petitioner had really nothing to do with the crime, it is against the natural order of events and human nature, and against the presumption of good faith, that a prosecution witness would falsely testify against him. Further, assuming that Venancia may have had a grudge against petitioner's mother due to the foregoing case, still, the same would not affect the credibility of her testimony. In *People v. Medina* and *People v. Oliano* the existence of a grudge or an ill motive does not automatically render the testimony of a witness to be false and unreliable. Petitioner's allegation of false motive in charging him with a crime cannot overcome the affirmative and categorical statements of the prosecution witnesses pointing to him as the malefactor.

5. ID.; ID.; ID.; DELAY IN DISCLOSING THE IDENTITY OF THE ACCUSED DOES NOT IMPAIR THE CREDIBILITY OF THE WITNESS.— Delay or vacillation in making a criminal accusation does not necessarily impair the credibility of witnesses if such delay is satisfactorily explained. In her Affidavit, Venancia explained that she did not immediately disclose the identity of the accused because she was afraid that the perpetrators would kill her and her husband in the hospital. Further, they feared that a certain Cardo Quiniquito, who was said to have tailed the perpetrators after the incident, was missing. This prompted the private offended parties to seek police assistance to locate Cardo's whereabouts. When investigated, Cardo Quiniquito said that he did not follow the suspect, but he escaped because of fear. From the foregoing, it is clear that Venancia's failure to disclose the identity of the perpetrators was due to fear of reprisal. In *People v. Ompad, Jr.*, it was settled that delay in divulging the names of perpetrators of crimes, if sufficiently explained, does not impair the credibility of the witness and his testimony. The initial reluctance of a witness due to fear of reprisal is common and does not impair his credibility. What matters is that Venancia and Gaudencio testified, and the trial court found their testimonies credible.

6. ID.; ID.; GUILT BEYOND REASONABLE DOUBT, SUFFICIENTLY ESTABLISHED.— [W]e find that the evidence of petitioner's guilt was sufficiently established. The trial court had the unique opportunity of observing the witnesses firsthand as they testified, and it was, therefore, in the best position to assess whether these witnesses were telling the truth or not. The substance of the testimonies for the prosecution corresponded with the trial court's findings and intrinsically merited full faith and credence. The defense's evidence, on the other hand, provided no facts and circumstances of weight and substance sufficient to cast doubt on the trial court's evaluation of the credibility of the prosecution's witnesses.

7. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY, PRESENT.— We find ample evidence to establish that treachery attended the commission of the crime. There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and especially to insure its execution, without risk to himself arising from the defense which the offended party might take. There is treachery when the following essential elements are present, *viz.*: (a) at the time of the attack, the victim was not in a position to defend himself; and (b) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him. The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself. In the present case, treachery in the commission of the crime was sufficiently proven by the prosecution. When Gaudencio opened the door and went outside, Venancia tailed him. There they found two persons at the porch, one sitting at the bench and the other standing. Without warning, the unidentified man stood up and stabbed Gaudencio in the chest. Upon seeing this, Venancia shouted *"Watch out, Dong!"* She then turned her back, but was stabbed by petitioner and fell on the ground. While in this position, petitioner continued hitting her on different parts of her body. Clearly, the hapless Venancia was stabbed immediately after the unidentified person stabbed her live-in partner, thus, giving her no opportunity to retaliate or defend

herself. It could not have taken Venancia more than a second or two to run after Gaudencio was stabbed. The method of attack adopted by the petitioner placed Venancia in a situation where it would be impossible for her to resist the attack or defend her person. The suddenness of the attack is shown by the fact that Venancia was immediately stabbed by petitioner right after she turned her back to run. She was not able to safely distance herself due to the suddenness of the attack. Further, before opening the door, she and her live-in partner had no inkling that they would be attacked, since petitioner did not reveal his true identity to the victims. His partner in crime misrepresented that they were the men of Sgt. Torres and with them was Toto Vibar, the son of the *barangay* captain. Petitioner misled the victims, so the latter lowered their guard and suspicion. Thereafter, when the door was opened, the malefactors attacked them. Indeed, all these circumstances indicate that the assault on the victims was treacherous. x x x Treachery may also be appreciated even if the victim was warned of the danger to her life if she was defenseless and unable to flee at the time of the infliction of the *coup de grace*. Although Venancia witnessed the stabbing of Gaudencio and was able to warn Gaudencio of further assaults, she too, was immediately attacked while she was defenseless. She was unable to safely distance herself due to the swiftness of the attack. From the foregoing, it is evident that the crime was committed with *alevosia*.

8. ID.; FELONIES; FRUSTRATED; ELEMENTS.— The essential elements of a frustrated felony are as follows: 1. The offender *performs all the acts of execution*; 2. All the acts performed *would produce the felony as a consequence*; 3. But the *felony is not produced*; and 4. By reason of causes *independent of the will of the perpetrator*. A crime is frustrated when the offender has performed all the acts of execution which should result in the consummation of the crime. The offender has passed the subjective phase in the commission of the crime. Subjectively, the crime is complete. Nothing interrupted the offender while passing through the subjective phase. He did all that is necessary to consummate the crime. However, the crime is not consummated by reason of the intervention of causes independent of the will of the offender. In homicide cases, the offender is said to have performed all the acts of

execution if the wound inflicted on the victim is mortal and could cause the death of the victim barring medical intervention or attendance.

9. ID.; ID.; ID.; ELEMENTS OF FRUSTRATED MURDER PRESENT IN CASE AT BAR.— In the case at bar, petitioner commenced the performance of his unlawful act by stabbing Venancia at the back. After she was stabbed and fell on the ground, petitioner's intent to consummate the crime was shown by the fact that he continued stabbing Venancia even while she was on the ground. x x x Petitioner did all that was necessary to bring an end to the life of Venancia. However, the crime was not produced by reason of the timely medical intervention. Dr. Aurelia said that the wounds suffered by Venancia might have been caused by a sharp, pointed and sharp-edged instrument, and without proper medical attendance it might have resulted to death. x x x If one inflicts physical injuries on another but the latter survives, the crime committed is either consummated physical injuries, if the offender had no intention to kill the victim, or frustrated or attempted homicide or frustrated murder or attempted murder if the offender intends to kill the victim. Intent to kill may be proved by evidence of: (a) motive; (b) the nature or number of weapons used in the commission of the crime; (c) the nature and number of wounds inflicted on the victim; (d) the manner the crime was committed; and (e) the words uttered by the offender at the time the injuries are inflicted by him on the victim. In the case at bar, the intent to kill was sufficiently proven by the prosecution. The manner in which the crime was committed was shown by the fact that petitioner was armed with a knife. Petitioner's attack on the unarmed Venancia was swift and sudden. She had no means and there was no time to defend herself. Further, after she was stabbed and fell to the ground, the petitioner continued hitting her on different parts of her body, thereby showing petitioner's intent to kill her. Dr. Fidencio G. Aurelia, Chief of the Bayawan District Hospital, read the medical certificate of Venancia which he signed for and in behalf of Dr. Patrocinio Garupa. The certificate showed that she suffered from multiple stab and incised wounds on the left lumbar, left upper posterior chest, and on the left leg and left thigh. Dr. Aurelia said that the wounds might have been caused by a sharp, pointed and sharp-edged instrument, and may have resulted to death without proper

medical attendance. Venancia was also hospitalized for more than a week because of the injuries. In fact, at the trial, Venancia showed the scar located at the left side of her back, near her waistline. All these tend to show the nature and seriousness of the wounds suffered by Venancia, which might have caused her death had it not been for the timely intervention of medical science.

10. ID.; FRUSTRATED MURDER; PENALTY.— The penalty for frustrated murder is one degree lower than *reclusion perpetua* to death, which is *reclusion temporal*. Applying the Indeterminate Sentence Law, the maximum of the indeterminate penalty should be taken from *reclusion temporal* in its medium period, the penalty for the crime taking into account any modifying circumstances in the commission of the crime. The minimum of the indeterminate penalty shall be taken from the full range of *prision mayor* which is one degree lower than *reclusion temporal*. Since there is no modifying circumstance in the commission of frustrated murder, an indeterminate penalty of eight (8) years and one (1) day of *prision mayor* medium, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* medium, as maximum, is considered reasonable for the crime of frustrated murder under the facts of this case.

11. ID.; ID.; CIVIL LIABILITY; TEMPERATE DAMAGES AWARDED IN LIEU OF ACTUAL DAMAGES.— Where the amount of actual damages cannot be determined because of the absence of supporting receipts but entitlement is shown by the facts of the case, temperate damages in the amount of ₱25,000.00 may be awarded. In light of the fact that Venancia suffered injuries, was actually hospitalized and underwent medical treatment, it is prudent to award temperate damages in the amount of ₱25,000.00, in lieu of actual damages.

12. ID.; ID.; ID.; AWARD OF EXEMPLARY DAMAGES IS PROPER WHEN THE CRIME IS ATTENDED BY TREACHERY.— [T]he award of exemplary damages is also in order, considering that the crime was attended by the qualifying circumstance of treachery. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱30,000.00 as exemplary damages in accordance with Article 2230 of the New Civil Code and under existing jurisprudence is justifiable. This kind of damage is

intended to serve as a deterrent to serious wrongdoings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct.

13. ID.; ID.; ID.; FINDING OF SUFFICIENT BASIS TO AWARD MORAL DAMAGES.— Venancia is entitled to moral damages which this Court hereby awards in the amount of ₱40,000.00. Although she did not testify on the moral damages she suffered, the medical certificate issued by the hospital indicated that she suffered multiple stab wounds and incised wounds inflicted by the petitioner. This is sufficient basis to award moral damages as ordinary human experience and common sense dictate that such wounds inflicted on her would naturally cause physical suffering, fright, serious anxiety, moral shock, and similar injury.

14. ID.; ID.; ID.; AWARD OF ATTORNEY'S FEES IS IN ORDER IF THE VICTIM HIRED PRIVATE PROSECUTOR.— [S]ince Venancia hired a private prosecutor to prosecute her case, an award of attorney's fees in the amount of ₱10,000.00 is in order. Under Article 2208(11) of the Civil Code, attorney's fees can be awarded where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* of the Decision[1] dated August 19, 2004 and the Resolution[2] dated April 26, 2005

[1] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Elvi John S. Asuncion and Ramon Bato, Jr., concurring; *rollo*, pp. 48-56.

[2] *Id.* at 61-63.

of the Court of Appeals (CA) in CA-G.R. CR No. 26235, affirming the trial court's judgment finding Edgar Esqueda guilty beyond reasonable doubt of the crime of frustrated homicide.

Edgar Esqueda and one John Doe were charged with two (2) counts of Frustrated Murder in two (2) separate Amended Informations, which read:

In Criminal Case No. 14609

That on or about 11:30 o'clock in the evening of March 3, 1999, at Nagbinlod, Sta. Catalina, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused together with one John Doe, conspiring, confederating and helping one another, with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and stab one VENANCIA ALISER with the use of a knife with which the said accused were then armed and provided, thereby inflicting upon the said victim multiple injuries, thus performing all the acts of execution which would have produce (sic) the crime of Murder as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the perpetrators, that is, by the timely and able medical attendance rendered to said Venancia Aliser which prevented her death.

Contrary to Article 248, in relation to Articles 6 and 5, of the Revised Penal Code.[3]

In Criminal Case No. 14612

That on or about 11:30 o'clock in the evening of March 3, 1999, at Nagbinlod, Sta. Catalina, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused together with one John Doe, conspiring, confederating and helping one another, with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and stab one GAUDENCIO QUINIQUITO with the use of a knife with which the said accused were then armed and provided, thereby inflicting upon the said victim multiple injuries, thus performing all the acts of execution which would have produce (sic) the crime of Murder as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the perpetrators, that is,

[3] Records, p. 128.

by the timely and able medical attendance rendered to said GAUDENCIO QUINIQUITO which prevented his death.

Contrary to Article 248, in relation to Articles 6 and 5, of the Revised Penal Code.[4]

Accused Edgar entered a plea of not guilty. Accused John Doe remains at-large.

During the pre-trial, the parties admitted the identities of the accused and of the private offended parties, the jurisdiction of the court and that the accused and the private offended parties were all residents of Nagbinlod, Sta. Catalina, Negros Oriental. Since the evidence to be presented were common to both cases, the parties through their respective counsels agreed to a joint trial.[5]

The prosecution presented the testimonies of Venancia Aliser, Gaudencio Quiniquito and Dr. Fidencio G. Aurelia, hospital chief of the Bayawan District Hospital. The evidence of the prosecution tends to establish the following course of events:

Venancia Aliser (Venancia) and Gaudencio Quiniquito (Gaudencio) are live-in partners, living at *Sitio* Nagbinlod, Sta. Catalina, Negros Oriental, together with their children from their first marriages. They were already in bed when, at around 11:30 o'clock in the evening of March 3, 1999, Gaudencio was awakened by a voice coming from the outside of their house calling his live-in partner and asking for a drink. He immediately awakened his live-in partner. While inside the house, Venancia asked the person outside to identify himself. In response, the voice replied that he and his companions are men of Sgt. Torres conducting a roving patrol. When Venancia asked how many they were, the person replied that they are many and with them is Toto Vibar, the son of their *Barangay* Captain. Venancia directed Gaudencio to light a lamp. After lighting the lamp, Gaudencio proceeded to open the door and went out, while Venancia tailed him and stayed by the door. Outside, at the

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[4] *Id.* at 129.

[5] *Id.* at 136.

porch, they found a person sitting on a bamboo bench whom they could not identify, while a person whom they identified as Edgar Esqueda (petitioner herein) was standing at the side of the door leading to the porch. Suddenly, the unidentified man stood up and stabbed Gaudencio hitting him on the chest. When Venancia saw the stabbing, she shouted *"watch out Dong!"* and she turned her back to run away but was stabbed by petitioner. She then fell to the ground, but petitioner continued stabbing her on different parts of her body. Gaudencio lost his consciousness. Their children brought them to the crossing in Nagbinlod and they were brought to the Bayawan District Hospital by a *barangay* councilman. Dr. Patrocinio Garupa was the attending physician who treated them. The medical certificate of Gaudencio showed that he sustained a perforating stab wound at the left anterior chest, stab wounds at the neck, left arm and left part of the axillary area.[6] Venancia's certificate showed that she suffered from multiple stab and incised wounds.[7] SPO1 Jamandron conducted his initial investigation at the hospital by interrogating Venancia and Gaudencio. The offended parties were referred to the Negros Oriental Provincial Hospital, where they were confined for more than a week.

The defense, on the other hand, presented the testimonies of Claudio Babor, Domingo Dimol, SPO4 Hermenegildo Cadungog, SPO1 Winefredo Jamandron, Viviana Namoco and the accused Esqueda. The evidence of the defense was intended to establish the following:

On March 3, 1999, from 8 o'clock in the evening to 2 o'clock in the morning of March 4, 1999, petitioner was trawl-fishing in the sea of Cawitan, Sta. Catalina. Claudio Babor testified that he was also trawl- fishing at the same time. He and petitioner, together with their respective companions, were on different boats, which were side by side. Both were able to catch *Atay-atay* and *Tulakhang.*

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[6] *Id.* at 190.

[7] *Id.* at 191.

Domingo Dimol was at the beach of Cawitan, Sta. Catalina. He stayed there from 8 o'clock in the evening of March 3, 1999 until 2 o'clock in the morning of the following day waiting for petitioner and Claudio to buy fish from them. At 2 o'clock in the morning, petitioner came ashore and Domingo bought fish from him.

Viviana was at the seashore of Cawitan, Sta. Catalina from 8 o'clock in the evening of March 3, 1999 until 2 o'clock in the morning of March 4, 1999. She, together with twenty other persons, helped the group of petitioner in pulling the rope of the fishing net. Petitioner was manning the rudder. She said that there were two fishing groups. At 2 o'clock in the morning, they all went home and petitioner gave her fish for free.

SPO1 Jamandron conducted the initial investigation in the morning of March 4, 1999 at the Bayawan Emergency Hospital where Gaudencio and Venancia were confined. His investigation revealed that Gaudencio and Venancia could not identify their assailants. He also testified that Gaudencio and Venancia were both conscious, but were in pain during the investigation. He recorded the result of his investigation in the police blotter.

Petitioner denied having committed the crime imputed against him.

On December 12, 2001, the Regional Trial Court (RTC) of Dumaguete City, Branch 33, rendered a Decision[8] acquitting the petitioner in Criminal Case No. 14612 and convicting him in Criminal Case No. 14609. The dispositive portion of the Decision is as follows:

> WHEREFORE, from the foregoing considerations, this Court finds accused, Edgar Esqueda, guilty beyond reasonable doubt of the crime of frustrated homicide in Criminal Case No. 14609. Since there is (sic) no mitigating and aggravating circumstances to offset each other and after applying the Indeterminate Sentence Law, accused Edgar Esqueda is hereby sentenced to suffer the penalty of imprisonment of two (2) years, six (6) months and twenty (20) days

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[8] *Rollo,* pp. 29-35.

of *prision correccional*, as minimum, to eight (8) years, four (4) months and ten (10) days of *prision mayor* medium, as maximum. Since the complainant, Venancia Aliser, was not able to produce evidence as to how much she spent for her hospitalization nor presented evidence to prove other damages, this Court is constrained not to award her damages.

Since the element of conspiracy had not been sufficiently established by the prosecution and as had been admitted that it was the unknown person who stabbed Gaudencio Quiniquito, accused Edgar Esqueda is hereby acquitted in Criminal Case No. 14612.

Petitioner filed a Notice of Appeal[9] and the records of the case were transmitted to the CA.

The CA rendered a Decision[10] dated August 19, 2004 dismissing the appeal and affirming the decision of the RTC. The dispositive portion of the decision states:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DISMISSING the appeal filed in this case and AFFIRMING the decision dated December 12, 2001 of the RTC of Dumaguete City in Criminal Case No. 14609.

Hence, this petition assigning the following error:

WHETHER THE TRIAL COURT GRAVELY ERRED IN FINDING THE PETITONER GUILTY BEYOND REASONABLE DOUBT OF FRUSTRATED HOMICIDE AND IN TOTALLY DISREGARDING HIS DEFENSE.

Petitioner's defense is anchored on alibi and denial. His witnesses, Claudio, Domingo and Viviana, aver that during the time of the incident, petitioner was out at sea fishing. Petitioner, when called to the witness stand, denied having committed the crime.

Further, in his petition, petitioner alleges that Venancia may have had a motive in falsely accusing him of crime.

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[9] Records, pp. 246-247.

[10] *Rollo*, pp. 48-56.

Furthermore, the private offended parties failed to identify the perpetrators during the initial investigation. Petitioner averred that the private offended parties should have informed the authorities of the identities of their assailant during the initial investigation. He insisted that the trial court erred in totally disregarding his defense, which resulted in his conviction.

In its Comment to the Petition, respondent, through the Office of the Solicitor General (OSG), averred that the issues raised by the petitioner are factual, hence, inappropriate in a petition for review on *certiorari* before this Court.

The petition is denied for lack of merit.

We have unfailingly held that alibi and denial being inherently weak cannot prevail over the positive identification of the accused as the perpetrator of the crime.[11] In the present case, petitioner was positively identified by Venancia and Gaudencio as the author of the crime. We quote from the transcript of the stenographic notes:

Venancia on Direct-Examination

PRIVATE PROSECUTOR MARCELO FLORES:

Q. What did you do when your live-in partner opened the door?
A. He went out and I followed him.

Q. What transpired after that?
A. When he went out, I saw that he was stabbed by the person who was seated.

Q. Where was that person seated?
A. On a chair in the balcony.

Q. What kind of chair?
A. A bench.

Q. ***When he was stabbed, what did you do, if any***?
A. ***When I saw it, I called out saying, "watch out Dong," and I turned my back, and when I turned my back, I was stabbed by Edgar Esqueda***.

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[11] *People v. Mapalo*, G.R. No. 172608, February 6, 2007, 514 SCRA 689, 708-709, citing *People v. Clores, Jr.*, 431 SCRA 210, 218 (2004).

Q. When your live-in partner was stabbed, was he hit?
A. Yes.

Q. What part of his body was hit?
A. The first stab he was hit on the chest.

Q. When you saw your husband hit on the chest, what did you do?
A. I shouted "watch out Dong," and when I turned my back, I was stabbed by Edgar Esqueda.

Q. When that person stabbed your husband hitting him on the chest, where was Edgar Esqueda?
A. Inside, and he already stabbed me inside the house.

Q. ***When you were stabbed for the first time by Esqueda, were you hit?***
A. ***I was hit here (witness showing a scar located at the left side of her back, located at the waistline).***

Q. How many times were you stabbed at the back?
A. Nine times.

Q. At the back only.
A. Twice.

Q. After you were stabbed twice at the back, what happened to you?
A. I fell.

Q. ***When you fell, what did Edgar Esqueda do?***
A. ***He continued stabbing me.***

Q. How many wounds did you suffer by (sic) the stabbing of Edgar Esqueda?
A. Nine.

Q. ***Is that Edgar Esqueda who stabbed you nine times the same Edgar Esqueda the accused in this case?***
A. ***Yes.***[12]

x x x x x x x x x

Venancia on Cross-Examination.

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[12] TSN, October 18, 2000, pp. 5-7. (Emphasis supplied.)

ATTY. ELMIDO

Q. By requesting your live-in partner to light the kerosene lamp, we are correct to assume that the place around your house was dark, especially it was 11:30 in the evening.
A. Yes, because it was 11:30 in the evening, but if you go out there was a light from the moon.

Q. It was a moon-lit night.
A. Yes.

Q. You still have to light the kerosene lamp even if it was a moon-lit night?
A. Yes.

Q. Can you see the faces of those waking you up, calling you outside even if you have not yet lighted the kerosene lamp?
A. Yes, I saw their faces.

Q. You are sure of that?
A. Yes, because there was a light coming from the moon, besides, our house has no wall.

Q. ***You are sure, even if you did not light the kerosene lamp, you could see the faces of those calling you?***
A. ***Yes, but I only knew Edgar Esqueda.***

Q. ***You could identify Edgar Esqueda even without lighting the kerosene lamp?***
A. ***Yes***.[13]

It was firmness born of certainty that Venancia positively identified the petitioner as the one who stabbed her. She testified that she was able to see the petitioner even if the crime was committed at night. It was not completely dark, as the light coming from the moon illuminated the porch of their house.

Notably, another witness, Venancia's live-in partner, Gaudencio, corroborated Venancia's testimony. Gaudencio's testimony on direct examination reveals the following:

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[13] *Id.* at 13. (Emphasis supplied.)

PRIVATE PROSECUTOR MARCELO FLORES:

Q. Then, what did you do after hearing the request of Venancia Aliser?
A. After that, I lighted the lamp and we went out. I was ahead and she was following me.

Q. Were you able to reach the door that night?
A. While we were already outside we saw two persons. One was standing near the door, while the other one was sitting down.

Q. Who was that sitting?
A. I do not know the person who was sitting.

Q. ***How about the one standing?***
A. ***I know him.***

Q. **Who was he?**
A. **Edgar Esqueda *alias* "Loloy."**

Q. **Edgar Esqueda, the accused you identified in these cases?**
A. **Yes, Sir.**

Q. Upon seeing those two persons, one sitting, the other one accused Edgar Esqueda was standing, what transpired, if any?
A. The person who was sitting down stabbed me.[14]

x x x x x x x x x

Q. Now, let us go to your first stabbing. When you were first stabbed, where was your common-law wife, Venancia Aliser?
A. Inside the house standing near the door.

Q. What happened to her, if any?
A. ***She was also stabbed by Edgar Esqueda alias "Loloy."***

Q. ***Do you know what did (sic) accused Edgar Esqueda used (sic) in stabbing Venancia Aliser?***
A. ***A hunting knife.***

Q. Was Venancia Aliser hit by the first stabbing by Edgar Esqueda?
A. Yes.

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[14] TSN, October 30, 2000, pp. 10-11. (Emphasis supplied.)

Q. Whereat?
A. On her side (witness touching the left side of his body on the waistline).[15]

In fine, Venancia and Gaudencio both testified in a straightforward and categorical manner regarding the identity of the petitioner as the author of the wounds sustained by Venancia.

In the present case, there appears to be a clash between the categorical statement of the prosecution, on one hand, and the defense of denial by the petitioner, on the other hand. We rule that the rivalry should be resolved in favor of the prosecution.

Between the categorical statements of the prosecution witnesses and the bare denial of the petitioner, the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony, especially when it comes from the mouth of a credible witness. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable, but also because they are easily fabricated and concocted.[16] In light of the foregoing, the defense of denial collapses.

The same fate awaits the defense of alibi.

Basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime. Physical impossibility refers to the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.[17] Where there

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[15] *Id.* at 12-13.

[16] *People v. Togahan,* G.R. No. 174064, June 8, 2007, 524 SCRA 557, 573-574.

[17] *People v. Delim,* G.R. No. 175942, September 13, 2007, 533 SCRA 366, 379.

is least chance for the accused to be present at the crime scene, the defense of alibi must fail.[18]

Aside from the testimonies of petitioner's witnesses that he was fishing at Cawitan, Sta. Catalina from 8 o'clock in the evening of March 3, 1999 until 2 o'clock in the morning the following day, petitioner was unable to show that it was physically impossible for him to be at the scene of the crime.

During the trial of the case, both the prosecution and defense witnesses testified that Nagbinlod and Cawitan, Sta. Catalina, were merely more than 5 kilometers apart which would only take about 20 to 40 minutes' ride. Thus, it was not physically impossible for the petitioner to be at the *locus criminis* at the time of the incident.

In addition, positive identification destroys the defense of alibi and renders it impotent, especially where such identification is credible and categorical.[19]

Petitioner's allegation that Venancia may have had a motive in falsely accusing him of a crime is bereft of merit.

Although there is a possibility that Venancia and petitioner's mother were not in good terms due to a case of grave slander by deed that Venancia filed against petitioner's mother, We believe that such incident is not sufficient provocation for Venancia to give perjured evidence in order to impute a grave felony against the petitioner.

If petitioner had really nothing to do with the crime, it is against the natural order of events and human nature, and against the presumption of good faith, that a prosecution witness would falsely testify against him.[20]

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[18] *People v. FO1 Felipe Dela Cruz, Audi Dona, Alfredo Baracas, Eduardo Palacpac, Bernardo Ranara, Joemari Delos Reyes, Dominador Recepcion and Robert Alfonso,* G.R. No. 168173, December 24, 2008.

[19] *People v. Casitas, Jr.*, G.R. No. 137404, February 14, 2003, 397 SCRA 382, 397.

[20] *People v. Enciso,* G.R. No. 105361, June 25, 1993, 223 SCRA 675, 686.

Further, assuming that Venancia may have had a grudge against petitioner's mother due to the foregoing case, still, the same would not affect the credibility of her testimony.

In *People v. Medina*[21] and *People v. Oliano*[22] the existence of a grudge or an ill motive does not automatically render the testimony of a witness to be false and unreliable. Petitioner's allegation of false motive in charging him with a crime cannot overcome the affirmative and categorical statements of the prosecution witnesses pointing to him as the malefactor.

Petitioner insisted that the offended parties failed to identify the perpetrators during the initial investigation by the police, thus, casting doubt on the identity of the perpetrator.

The argument is way off the mark.

Delay or vacillation in making a criminal accusation does not necessarily impair the credibility of witnesses if such delay is satisfactorily explained.[23]

In her Affidavit,[24] Venancia explained that she did not immediately disclose the identity of the accused because she was afraid that the perpetrators would kill her and her husband in the hospital. Further, they feared that a certain Cardo Quiniquito, who was said to have tailed the perpetrators after the incident, was missing. This prompted the private offended parties to seek police assistance to locate Cardo's whereabouts. When investigated, Cardo Quiniquito said that he did not follow the suspect, but he escaped because of fear. From the foregoing, it is clear that Venancia's failure to disclose the identity of the perpetrators was due to fear of reprisal.

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[21] G.R. No. 155256, July 30, 2004, 435 SCRA 610, 620.

[22] G.R. No. 119013, March 6, 1998, 287 SCRA 158, 169.

[23] *People v. Lovedorial,* G.R. No. 139340, January 17, 2001, 349 SCRA 402, 415.

[24] Records, p. 8.

In *People v. Ompad, Jr.*,[25] it was settled that delay in divulging the names of perpetrators of crimes, if sufficiently explained, does not impair the credibility of the witness and his testimony. The initial reluctance of a witness due to fear of reprisal is common and does not impair his credibility. What matters is that Venancia and Gaudencio testified, and the trial court found their testimonies credible.

In sum, we find that the evidence of petitioner's guilt was sufficiently established. The trial court had the unique opportunity of observing the witnesses firsthand as they testified, and it was, therefore, in the best position to assess whether these witnesses were telling the truth or not. The substance of the testimonies for the prosecution corresponded with the trial court's findings and intrinsically merited full faith and credence. The defense's evidence, on the other hand, provided no facts and circumstances of weight and substance sufficient to cast doubt on the trial court's evaluation of the credibility of the prosecution's witnesses.[26]

However, with regard to the proper crime committed, We are inclined to modify the trial court's ruling.

Petitioner was charged with frustrated murder in an Amended Information. After trial on the merits, the court found that petitioner committed the crime of frustrated homicide. The trial court found that treachery, which would qualify the crime to frustrated murder, was wanting in the present case.

The trial court found that Venancia was already aware of what would happen to Gaudencio because she shouted *"watch out Dong"* before Gaudencio was stabbed. Before Venancia was stabbed by petitioner, she too was aware of the fate that befell her, because she tried to retreat to the confines of her house when she herself was unfortunately stabbed. The trial court postulated that Venancia must have already been alerted and forewarned of the impending attack; thus, there was no treachery.

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[25] G.R. Nos. 93730-31, June 10, 1994, 233 SCRA 62, 66.

[26] *People v. Felipe Dela Cruz, et al., supra* note 18.

We rule that the trial court's finding that there was no treachery is misplaced.

To begin with, an appeal in a criminal case opens the entire case for review on any question including one not raised by the parties.[27] We find ample evidence to establish that treachery attended the commission of the crime.

There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and especially to insure its execution, without risk to himself arising from the defense which the offended party might take.[28]

There is treachery when the following essential elements are present, *viz.*: (a) at the time of the attack, the victim was not in a position to defend himself; and (b) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him. The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself.[29]

In the present case, treachery in the commission of the crime was sufficiently proven by the prosecution. When Gaudencio opened the door and went outside, Venancia tailed him. There they found two persons at the porch, one sitting at the bench and the other standing. Without warning, the unidentified man stood up and stabbed Gaudencio in the chest. Upon seeing this, Venancia shouted *"Watch out, Dong!"* She then turned her back, but was stabbed by petitioner and fell on the ground. While in this position, petitioner continued hitting her on different parts of her body. Clearly, the hapless Venancia was stabbed immediately after the unidentified person stabbed her live-in

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[27] *Martinez v. Court of Appeals*, G.R. No. 168827, April 13, 2007, 521 SCRA 176, 200.

[28] Revised Penal Code, Art. 14, par. 16.

[29] *People v. Escote, Jr.*, G.R. No. 140756, April 4, 2003, 400 SCRA 603, 632-633.

partner, thus, giving her no opportunity to retaliate or defend herself. It could not have taken Venancia more than a second or two to run after Gaudencio was stabbed.

The method of attack adopted by the petitioner placed Venancia in a situation where it would be impossible for her to resist the attack or defend her person.

The suddenness of the attack is shown by the fact that Venancia was immediately stabbed by petitioner right after she turned her back to run. She was not able to safely distance herself due to the suddenness of the attack. Further, before opening the door, she and her live-in partner had no inkling that they would be attacked, since petitioner did not reveal his true identity to the victims. His partner in crime misrepresented that they were the men of Sgt. Torres and with them was Toto Vibar, the son of the *barangay* captain. Petitioner misled the victims, so the latter lowered their guard and suspicion. Thereafter, when the door was opened, the malefactors attacked them. Indeed, all these circumstances indicate that the assault on the victims was treacherous. Venancia, in her testimony, said:

PRIVATE PROSECUTOR MARCELO FLORES

Q. When you saw your husband hit on the chest, what did you do?
A. I shouted "watch out Dong," and when I turned my back I was stabbed by Edgar Esqueda.[30]

Treachery may also be appreciated even if the victim was warned of the danger to her life if she was defenseless and unable to flee at the time of the infliction of the *coup de grace*.[31]

Although Venancia witnessed the stabbing of Gaudencio and was able to warn Gaudencio of further assaults, she too, was immediately attacked while she was defenseless. She was unable to safely distance herself due to the swiftness of the attack.

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[30] TSN, October 18, 2000, p. 6.

[31] *People v. Escote, Jr., supra* note 29, at 633.

From the foregoing, it is evident that the crime was committed with *alevosia*.

Petitioner is guilty of frustrated murder under Article 248 in relation to Article 6, first paragraph of the Revised Penal Code, which reads:

> A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.

The essential elements of a frustrated felony are as follows:

1. The offender *performs all the acts of execution*;
2. All the acts performed *would produce the felony as a consequence*;
3. But the *felony is not produced*; and
4. By reason of causes *independent of the will of the perpetrator*.[32]

A crime is frustrated when the offender has performed all the acts of execution which should result in the consummation of the crime. The offender has passed the subjective phase in the commission of the crime. Subjectively, the crime is complete. Nothing interrupted the offender while passing through the subjective phase. He did all that is necessary to consummate the crime. However, the crime is not consummated by reason of the intervention of causes independent of the will of the offender. In homicide cases, the offender is said to have performed all the acts of execution if the wound inflicted on the victim is mortal and could cause the death of the victim barring medical intervention or attendance.[33]

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[32] *People v. Caballero*, G.R. Nos. 149028-30, April 2, 2003, 400 SCRA 424, 441.

[33] *Id.* at 442.

In the case at bar, petitioner commenced the performance of his unlawful act by stabbing Venancia at the back. After she was stabbed and fell on the ground, petitioner's intent to consummate the crime was shown by the fact that he continued stabbing Venancia even while she was on the ground.

Venancia on Direct Examination

PRIVATE PROSECUTOR MARCELO FLORES

Q. After you were stabbed twice at the back, what happened to you?
A. I fell.

Q. ***When you fell, what did Edgar Esqueda do?***
A. ***He continued stabbing me.***[34]

Petitioner did all that was necessary to bring an end to the life of Venancia. However, the crime was not produced by reason of the timely medical intervention. Dr. Aurelia said that the wounds suffered by Venancia might have been caused by a sharp, pointed and sharp-edged instrument, and without proper medical attendance it might have resulted to death.

Dr. Fidencio G. Aurelia on Direct Examination

PRIVATE PROSECUTOR MARCELO G. FLORES

Q. I am showing to you another medical certificate of one Venancia Aliser dated March 6, 2001, which alleged that she was admitted thereat on March 4, 1999, 1:30 A.M., please examine this and tell us if you can identify that?
A. Still I signed in behalf of Dr. Garupa and noted by myself as the chief of hospital.

Q. Will you please read to us the findings of (sic) the wounds she suffered?
A. "Multiple stab and incised wound," this is a general statement which was taken from the clinical records based on the medical records.

Q. What does your medical records state?
A. Multiple stab and incised wounds.

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[34] TSN, October 18, 2000, pp. 6-7. (Emphasis supplied.)

Q. What could have caused these wounds?
A. It might be caused by a sharp, pointed and a sharp-edged instrument.

Q. ***Could this cause death without medical attendance?***
A. ***Without proper medical attendance it may result to death.***[35]

If one inflicts physical injuries on another but the latter survives, the crime committed is either consummated physical injuries, if the offender had no intention to kill the victim, or frustrated or attempted homicide or frustrated murder or attempted murder if the offender intends to kill the victim. Intent to kill may be proved by evidence of: (a) motive; (b) the nature or number of weapons used in the commission of the crime; (c) the nature and number of wounds inflicted on the victim; (d) the manner the crime was committed; and (e) the words uttered by the offender at the time the injuries are inflicted by him on the victim.[36]

In the case at bar, the intent to kill was sufficiently proven by the prosecution. The manner in which the crime was committed was shown by the fact that petitioner was armed with a knife. Petitioner's attack on the unarmed Venancia was swift and sudden. She had no means and there was no time to defend herself. Further, after she was stabbed and fell to the ground, the petitioner continued hitting her on different parts of her body, thereby showing petitioner's intent to kill her.

Dr. Fidencio G. Aurelia, Chief of the Bayawan District Hospital, read the medical certificate of Venancia which he signed for and in behalf of Dr. Patrocinio Garupa. The certificate showed that she suffered from multiple stab and incised wounds[37] on the left lumbar, left upper posterior chest, and on the left leg and left thigh.[38] Dr. Aurelia said that the wounds might have been caused by a sharp, pointed and sharp-edged instrument,

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[35] TSN, March 27, 2001, pp. 8- 9.

[36] *People v. Caballero, supra* note 32, at 442.

[37] TSN, March 27, 2001, pp. 8-9.

[38] *Id.* at 18.

and may have resulted to death without proper medical attendance. Venancia was also hospitalized for more than a week because of the injuries. In fact, at the trial, Venancia showed the scar located at the left side of her back, near her waistline.[39] All these tend to show the nature and seriousness of the wounds suffered by Venancia, which might have caused her death had it not been for the timely intervention of medical science.

The penalty for frustrated murder is one degree lower than *reclusion perpetua* to death, which is *reclusion temporal*.[40] Applying the Indeterminate Sentence Law,[41] the maximum of the indeterminate penalty should be taken from *reclusion temporal* in its medium period, the penalty for the crime taking into account any modifying circumstances in the commission of the crime. The minimum of the indeterminate penalty shall be taken from the full range of *prision mayor* which is one degree lower than *reclusion temporal*. Since there is no modifying circumstance in the commission of frustrated murder, an indeterminate penalty of eight (8) years and one (1) day of *prision mayor* medium, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* medium, as maximum, is considered reasonable for the crime of frustrated murder under the facts of this case.

The trial court did not award damages to Venancia because the prosecution failed to present any evidence to substantiate her hospitalization expenses nor did it present evidence to prove other damages.

We rule that Venancia is entitled to damages.

Where the amount of actual damages cannot be determined because of the absence of supporting receipts but entitlement is shown by the facts of the case, temperate damages in the amount of ₱25,000.00 may be awarded.[42] In light of the fact that Venancia

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[39] TSN, October 18, 2000, p. 6.

[40] Revised Penal Code, Art. 61, par. 2.

[41] Act No. 4103, as amended by Act No. 4225.

[42] *People v. FOI Felipe Dela Cruz, et al., supra* note 18, citing *People v. Abrazaldo*, 397 SCRA 137, 149-150 (2003).

suffered injuries, was actually hospitalized and underwent medical treatment, it is prudent to award temperate damages in the amount of ₱25,000.00, in lieu of actual damages.

Further, the award of exemplary damages is also in order, considering that the crime was attended by the qualifying circumstance of treachery. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱30,000.00 as exemplary damages in accordance with Article 2230 of the New Civil Code and under existing jurisprudence is justifiable. This kind of damage is intended to serve as a deterrent to serious wrongdoings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct.[43]

Furthermore, Venancia is entitled to moral damages which this Court hereby awards in the amount of ₱40,000.00. Although she did not testify on the moral damages she suffered, the medical certificate issued by the hospital indicated that she suffered multiple stab wounds and incised wounds inflicted by the petitioner. This is sufficient basis to award moral damages as ordinary human experience and common sense dictate that such wounds inflicted on her would naturally cause physical suffering, fright, serious anxiety, moral shock, and similar injury.[44]

Finally, since Venancia hired a private prosecutor to prosecute her case, an award of attorney's fees in the amount of ₱10,000.00 is in order. Under Article 2208(11) of the Civil Code, attorney's fees can be awarded where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.[45]

WHEREFORE, the petition is *DENIED*. The assailed Decision of the Court of Appeals in CA-G.R. CR No. 26235, affirming

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[43] *People v. Tolentino*, G.R. No. 176385, February 26, 2008, 546 SCRA 671, 701-702.

[44] *Id.* at 701, citing *People v. Ibañez*, 407 SCRA 406, 431 (2003).

[45] *Ungsod v. People*, G.R. No. 158904, December 16, 2005, 478 SCRA 282, 297.

the Decision of the RTC of Dumaguete City, Branch 33, which found petitioner Edgar Esqueda guilty of the crime of Frustrated Homicide is *SET ASIDE* and a new one entered finding petitioner *GUILTY* beyond reasonable doubt of the crime of *Frustrated Murder* under Article 248, in relation to Article 6, first paragraph of the Revised Penal Code, and is sentenced to suffer an indeterminate penalty of eight (8) years and one (1) day of *prision mayor* medium, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* medium, as maximum.

Additionally, petitioner is *ORDERED* to pay Venancia Aliser the amount of ₱25,000.00 as temperate damages; ₱40,000.00 as moral damages; ₱30,000.00 as exemplary damages; and ₱10,000.00 as attorney's fees.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Velasco, Jr., and *Nachura, JJ.,* concur.

FIRST DIVISION

[G.R. No. 171453. June 18, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MANUEL DELPINO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ALIBI; FAILURE TO SATISFY THE REQUIREMENT OF PHYSICAL IMPOSSIBILITY.— As culled from his testimony, accused-appellant was at the JB Line Terminal washing buses on the alleged time and date of the incident. We note, however, that during the trial, it was also established that the said terminal

was so near to the victim's house that the distance of the two could be negotiated by walking in ten to twenty minutes. Considering the proximity of the bus terminal to the place of the crime, accused-appellant failed to satisfy the requirement of physical impossibility. We quote the trial court's observation in this regard: The Court has personal knowledge that the distance from the house of the victim to the JB Lines Terminal can be negotiated by walking in a matter of ten to twenty minutes, granting that they in fact worked in that evening of December 16, 1993 washing buses. To establish alibi, the accused must prove (a) that he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the scene of the crime. Physical impossibility "refers to the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places." In the case at bar, accused appellant failed to satisfy the said requisites, especially the second. It was shown during the trial that it would take the accused ten minutes to walk from the JB Line Terminal to the house of the victim. Besides, in going home, he would have to pass by the house of the victim.

2. ID.; ID.; CHILD WITNESS; REQUIREMENTS OF A CHILD'S COMPETENCE AS A WITNESS; APPLICATION.— [P]rosecution witness Mark Lorica readily pointed to the accused-appellant as the one who shot his father. He was candid in his testimony and he was able to pinpoint the accused-appellant in open court x x x The Court has held that a witness is not incompetent to give a testimony simply because he or she is of tender age. The requirements of a child's competence as a witness are: (1) capacity of observation; (2) capacity of recollection; and (3) capacity of communication. It is the degree of a child's intelligence that determines the child's competence as a witness. If the witness is sufficiently mature to receive correct impressions by his senses, to recollect and narrate intelligently, and to appreciate the moral duty to tell the truth, he is competent to testify. A minor's testimony will suffice to convict a person accused of a crime so long as it is credible. Even during the cross-examination, Mark was unfazed and consistent in his account of the event when his father was shot by accused-appellant.

3. ID.; ID.; ID.; DETERMINATION OF A CHILD'S INTELLECTUAL PREPAREDNESS TO BE A WITNESS RESTS PRIMARILY WITH THE TRIAL JUDGE.— The determination of a child's intellectual preparedness to be a witness rests primarily with the trial judge, who assesses the child's manners, his apparent possession or lack of intelligence, as well as his understanding of the obligations of an oath. These abstract matters cannot be photographed into the record. The judgment of the trial judge will not be disturbed on review, unless from that which is preserved, it is clear that it was erroneous. x x x The records reveal that the trial court duly noted the objections, closely observed the proceedings, and propounded its own questions to satisfy itself of the accuracy of the witness' testimony. We find no reason to disturb the factual findings of the trial court.

4. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY, PRESENT.— The trial court appreciated the presence of treachery as the accused-appellant had employed means in his execution of the crime without any risk to himself. There is treachery when the offenders commit any of the crimes against persons employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution without risk to himself arising from the defense which the offended party might make. In order that *alevosia* may be appreciated as a qualifying circumstance, it must be shown that: a.] the malefactor employed means, method or manner of execution affording the person attacked no opportunity to defend himself or to retaliate; and b.] the means, method or manner of execution was deliberately or consciously adopted by the offender. Its essence is the sudden, unexpected attack by the aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim. Here, the victim had no chance to defend himself, what with the sudden poking of the gun to his neck and without any warning that he will be shot. x x x [T]he victim had no idea what would befell him when he went to see the person knocking at their door. He had no means to defend himself. In fact, at the time he was shot, he was stooping down to get his slippers. In such a position, he was indeed, defenseless. The means employed

by the accused-appellant by using a firearm, and firing it when the accused was caught unaware at what could have hit him, was such that the victim would be unable to fight him back. The attack was so swift and unexpected that the unarmed victim had no chance to resist the attack. Accused-appellant was not exposed to any danger.

5. ID.; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION; REQUISITES THEREOF NOT PROVEN.— In *People v. Tigle*, we have held that to warrant a finding of evident premeditation, the prosecution must establish the confluence of the following requisites: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the offender clung to his determination; and (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act. We held that threats to kill do not necessarily prove evident premeditation. Here, the wife of the victim, Marilyn Lorica testified that two months before the killing or on October 28, 1993 accused-appellant poked a gun at her husband. But apart from her testimony, the prosecution had not presented anything to show that the accused had clung to his threat on that day until the shooting of the victim on December 16, 1993. There was no showing when and how the accused-appellant had planned and prepared to kill the victim. Accused-appellant's threats, unsupported by evidence disclosing a criminal state of mind, are merely casual remarks naturally emanating from a feeling of rancor and not proof of evident premeditation. This principle holds true only in debunking the allegation that the killing of the victim was attended by evident premeditation.

6. ID.; MURDER; FAILURE TO PRESENT THE MURDER WEAPON WOULD NOT EXCULPATE THE ACCUSED FROM CRIMINAL LIABILITY.— The firearm used in the killing of the victim was not presented during the trial. Both the trial court and the CA also did not discuss anything in relation thereto. The case of *People v. Ortiz* held that the failure to present the murder weapon would not exculpate the accused-appellant from criminal liability. Further, the presentation and identification of the weapon used are *not* indispensable to prove the guilt of the accused, as in this case, the perpetrator has been positively identified by a credible witness.

7. ID.; ID.; CIVIL LIABILITY; AWARD OF CIVIL INDEMNITY TEMPERATE, MORAL, AND EXEMPLARY DAMAGES, PROSPER.— As to the civil aspect of the case, the award of civil indemnity to the heirs in the amount of ₱50,000.00 is hereby affirmed. As to the award of ₱10,000.00 as actual damages, the same was based on the testimony of Marilyn Lorica that she spent the said amount for the wake, burial and internment of her husband. Other than her statement, no other proof was presented to justify the award of actual damages. To be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable to the injured party. Here, no receipts were ever presented to show that Marilyn spent the said amount which was awarded by the trial court. Thus, the award of actual damages is hereby deleted for lack of factual and legal basis. Nonetheless, the accused should pay the heirs of the victim temperate damages under Article 2224 of the Civil Code in the amount of ₱25,000.00. The award of moral damages in the amount of ₱50,000.00 is in order. Additionally, given the attendance of qualifying circumstance of treachery, the award of exemplary damages to the heirs of the victim in the amount of ₱25,000.00 in accordance with Article 2230 of the Civil Code is justified.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a petition for review of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 01513 affirming, with modification, the Decision[2] of the Regional Trial Court of

[1] Penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Josefina Guevarra-Salonga and Vicente S.E. Veloso; *rollo*, pp. 3-8.

[2] RTC Records, pp. 124-128.

Sorsogon, Sorsogon, Branch 52, in Criminal Case No. 3534, entitled "*People of the Philippines v. Manuel Delpino and John Doe.*"

The Information[3] dated January 26, 1994 charged accused-appellant Manuel Delpino and one John Doe of Murder for the death of Gabriel Lorica *y* Canon, the accusatory portion of which reads:

> That on or about the 16th day of December, 1993, in the municipality of Sorsogon, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a short firearm, with intent to kill and with treachery and evident premeditation, did then and there, willfully, unlawfully, and feloniously, shot one Gabriel Lorica, thereby inflicting upon the latter mortal injury which directly caused his death, to the damage and prejudice of his legal heirs.
>
> CONTRARY TO LAW.

Upon arraignment on May 10, 1994, the accused pleaded "not guilty" to the crime charged.[4] The case thereafter proceeded to trial.

The prosecution presented Mark Lorica,[5] the seven (7)-year old[6] son of the victim, Marilyn Lorica,[7] the victim's wife, and Dr. Myrna Listanco,[8] the Municipal Health Officer of Sorsogon, who conducted an autopsy on the body of the victim. The facts as alleged in the Brief for the appellees filed by the Solicitor General summarized the case as follows:

> On December 16, 1993, around 10:00 p.m., Mark Lorica (principal witness) and his father Gabriel (victim) were watching TV inside

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[3] *Id.* at 19.

[4] Order dated May 10, 1994, *id.* at 26.

[5] Transcript of Stenographic Notes (TSN), August 30, 1994; TSN, November 23, 1995.

[6] TSN, August 30, 1994, p. 3.

[7] TSN, February 21, 1996.

[8] TSN, April 18, 1996; January 14, 1997.

their house in Sampaloc, Sorsogon, Sorsogon, when they heard a knock at the door (TSN, August 30, 1994, p. 20). The victim asked who was knocking, but no one answered (*Ibid*.). The victim opened the door, and while he was stooping down to get his slippers, Manuel Delpino (appellant), armed with a short firearm, shot him on his neck (*Ibid*., p. 21). When the victim fell down, appellant approached him and verified whether he was already dead (*Ibid*., p. 11).

Mark tried to sneak to his aunt's house but failed because the culprit remained at the place. He returned to their house and waited for his mother who was still working at Philocean (*Ibid*., p. 12). When his mother arrived at 10:00 p.m., he told her about the incident (TSN, February 21, 1996, p. 5).

The family of the victim spent ₱10,000.00 for his wake, burial and interment.[9]

On the other hand, the defense presented the accused-appellant[10] and Oscar Lanuza (Lanuza),[11] who corroborated his testimony. Their respective testimonies were summarized in the Brief for the Appellant, to wit:

Manuel Delpino denied that he was the one who shot and killed Gabriel Lorica. He testified that on December 16, 1993 at about 10:00 o'clock in the evening, he and Lanuza and Winnie were inside the JB Line Terminal at Magsaysay St., Sorsogon, Sorsogon washing buses. They started washing buses at about 7:00 o'clock in the evening and finished at 1:00 o'clock in the morning. That he did not leave the JB Line Terminal from the start up to the time he finished washing all the buses in the terminal. They washed 18 buses and it took them at least ½ hour to wash one bus.

Oscar Lanuza corroborated the testimony of Manuel Delpino. He further testified that he and the accused worked from 7:00 o'clock in the evening to past 12:00 midnight on December 16, 1993 inside the JB Line Terminal. That Manuel Delpino did not leave the place because he was beside him sleeping and it was a rainy night. He was surprised why Manuel Delpino was implicated in the killing of Gabriel

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[9] CA *rollo*, pp. 61-62.

[10] TSN, August 13, 1997.

[11] TSN, September 30, 1997.

Lorica when he was with him washing JB Line buses that evening of December 16, 1993.[12]

On March 2, 1998, the trial court rendered a Decision finding the accused-appellant guilty beyond reasonable doubt of the crime of murder, the dispositive portion of which reads:

> WHEREFORE, the Court finds the accused Manuel Delpino guilty beyond reasonable doubt of the crime of Murder and there being no aggravating and mitigating circumstances, hereby sentences the accused to suffer imprisonment of *reclusion perpetua* and hereby ordered (sic) him to pay the heirs of Gabriel Lorica the amount of ₱10,000.00 for actual damages incurred during the wake and to indemnify the heirs of Gabriel Lorica the amount of ₱50,000.00 as civil indemnity without subsidiary imprisonment in case of insolvency and to pay the cost. The accused being a detention prisoner in the service of his sentence his detention shall be fully credited.
>
> SO ORDERED.[13]

The case, which was elevated by the accused to this Court pursuant to Article VIII, Sec. 5 (d) (2) of the Philippine Constitution,[14] was transferred to the CA in the Resolution dated October 6, 2004,[15] conformably with the decision in *People of the Philippines v. Efren Mateo y Garcia*.[16]

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[12] CA *rollo*, pp. 38-39.

[13] RTC Records, p. 128.

[14] Notice of Appeal, CA *rollo*, p. 25.

[15] *Id.* at 80.

[16] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, which modified the pertinent provisions of the Revised Rules on Criminal Procedure, specifically Sections 3 and 10, Rule 122, Section 13, Rule 124, Section 3, Rule 125 and any other rule insofar as they provide for direct appeals from the Regional Trial Courts to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua*, or life imprisonment and (b) Resolution of the Supreme Court, *en banc*, dated September 19, 1995 in "Internal Rules of the Supreme Court" in cases similarly involving the death penalty, pursuant to the Court's power to promulgate rules of procedure in all courts under Article VIII, Section 5 of the Constitution, and allowing an intermediate review by the Court of Appeals before such cases are elevated to this Court.

On December 19, 2005, the CA rendered a Decision[17] affirming, with modification, the appealed decision. The dispositive portion of the CA Decision reads:

> WHEREFORE, premises considered, the instant appeal is **DISMISSED**. The assailed decision of the court *a quo* is **AFFIRMED** with the **MODIFICATION** that the accused-appellant is ordered to pay the heirs of the victim Gabriel Lorica the amount of ₱50,000.00 as moral damages, in addition to the ₱50,000.00 civil indemnity and ₱10,000.00 actual damages awarded by the trial court.
>
> Costs against the accused-appellant.
>
> SO ORDERED.[18]

On February 27, 2006, the CA elevated the records of the case to this Court in view of the accused-appellant's Notice of Appeal[19] dated January 5, 2006.

In their respective Manifestations,[20] accused-appellant and the Solicitor General informed the Court that they will no longer file a supplemental brief, apart from their appellant's brief and appellee's brief earlier filed with this Court.

The crucial issue raised by accused-appellant pertains solely to the credibility of the prosecution witnesses, particularly the positive identification of accused-appellant as the assailant as against his defenses of denial and alibi.

Accused-appellant insists that at the time of the incident, he was inside the JB Line Terminal on Magsaysay St., Sorsogon, Sorsogon, washing buses. He testified that he was with Lanuza. The latter also testified in court and corroborated accused-appellant's testimony that they were together that entire evening. The accused-appellant testimony narrated that from 7:00 p.m. until 1:00 a.m., he and Lanuza were busy washing buses at the

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[17] *Supra* note 1.

[18] CA *rollo*, pp. 86-87.

[19] *Id.* at 90.

[20] *Rollo*, pp. 10-13.

terminal.[21] Lanuza further supplied that the accused-appellant did not leave the place as they even slept there.[22] Accused-appellant contends that since he was able to prove that he was somewhere else at the time of the incident, he should be acquitted of the crime charged.

In refutation of the accused-appellant's arguments, the prosecution asseverates that alibi cannot prevail over the positive identification of the accused-appellant as the culprit. Besides, for the defense of alibi to prosper, it must be so convincing as to preclude any doubt that the accused-appellant could not have been physically present at the crime scene at the time of the incident. The Solicitor General held that the accused-appellant failed to discharge this burden.

As culled from his testimony, accused-appellant was at the JB Line Terminal washing buses on the alleged time and date of the incident. We note, however, that during the trial, it was also established that the said terminal was so near to the victim's house that the distance of the two could be negotiated by walking in ten to twenty minutes. Considering the proximity of the bus terminal to the place of the crime, accused-appellant failed to satisfy the requirement of physical impossibility. We quote the trial court's observation in this regard:

> The Court has personal knowledge that the distance from the house of the victim to the JB Lines Terminal can be negotiated by walking in a matter of ten to twenty minutes, granting that they in fact worked in that evening of December 16, 1993 washing buses.[23]

To establish alibi, the accused must prove (a) that he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the scene of the crime.[24] Physical impossibility "refers to

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[21] TSN, August 13, 1997, p. 3.

[22] TSN, September 30, 1997, p. 6.

[23] RTC Decision, RTC records, p. 127.

[24] *People v. Mosquerra*, G.R. No. 129209, August 9, 2001, 362 SCRA 441, 450, citing *People v. Saban*, G.R. No. 110559, November 24, 1999, 319

the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places."[25] In the case at bar, accused appellant failed to satisfy the said requisites, especially the second. It was shown during the trial that it would take the accused ten minutes to walk from the JB Line Terminal to the house of the victim.[26] Besides, in going home, he would have to pass by the house of the victim.[27]

Alibi will not prevail if the accused was positively identified by the witness. As here, prosecution witness Mark Lorica readily pointed to the accused-appellant as the one who shot his father. He was candid in his testimony and he was able to pinpoint the accused-appellant in open court, thus:

q: Who is your father, Mark?
a: Gabriel Lorica, sir.

q: Do you know where he is now?
a: Yes, sir.

q: Where is he now at present?
a: He is in the cemetery.

q: Why is he or your father in the cemetery?
a: He is already dead.

q: Do you know the cause of his death?
a: Yes, sir.

q: What was the cause of his death?
a: He was shot.

q: Who shot your father, if you know?
a: Manuel Delpino.

SCRA 36, 46; *People v. Reduca*, G.R. Nos. 126094-95, January 21, 1999, 301 SCRA 516, 534.

[25] *Supra*, p. 450, citing *People v. De Labajan*, 317 SCRA 566, 575 (1999).

[26] TSN, August 13, 1997, pp. 10-11.

[27] *Id.* at 10.

q: When you said Manuel, you are referring to Manuel Delpino the accused in this case?
a: Yes, sir.

q: If he is around, will you be able to identify Manuel Delpino?
a: Yes, sir.

q: Please do so?
a: That person there (witness pointing to a man inside the courtroom who identified himself as Manuel Delpino.)[28]

The Court has held that a witness is not incompetent to give a testimony simply because he or she is of tender age. The requirements of a child's competence as a witness are: (1) capacity of observation; (2) capacity of recollection; and (3) capacity of communication.[29] It is the degree of a child's intelligence that determines the child's competence as a witness. If the witness is sufficiently mature to receive correct impressions by his senses, to recollect and narrate intelligently, and to appreciate the moral duty to tell the truth, he is competent[30] to testify. A minor's testimony will suffice to convict a person accused of a crime so long as it is credible.[31]

Even during the cross-examination, Mark was unfazed and consistent in his account of the event when his father was shot by accused-appellant, to wit:

ATTY. GABITO:

q: Do you remember what time of day when your father was shot? Was it nighttime or daytime?
a: It was night time.

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[28] TSN, August 30, 1994.

[29] *People v. Avendaño*, G.R. No. 137407, January 28, 2003, 396 SCRA 309, 320, citing *People v. Gonzales*, 311 SCRA 547, 559 (1999).

[30] *People v. Avendaño, supra,* citing *People v. Pearson*, 126 III App. 2d 166, 261 N.E.2d 519.

[31] *People v. Avendaño, supra*, citing *People v. Tumaru,* 319 SCRA 515, 527 (1999).

q: And, in what specific place was your father shot?
a: In the sala of our house.

q: Now, considering that it was nighttime, was your balcony lighted.
a: Yes, sir, it was lighted.

q: What kind of light was your light?
a: A bulb.

x x x x x x x x x

q: You said your father was shot on the balcony, was your father in that balcony before he was shot?
a: While we were watching TV program inside our house, somebody knocked, when he stepped out of the door, he stoop to see who was knocking, when he bend down he was poked with a gun.

x x x x x x x x x

a: And, after that a person suddenly entered, he poked a gun to my father and triggered the gun.

q: Now, who is that person that you saw?
a: Manuel Delpino.

x x x x x x x x x

q: Now, while these things were happening, where were you specifically, in what place of the house were you?
a: I was in the door.

q: And will you demonstrate to us, the nearness of your father to his assailant?
a: (The witness pointed to the court interpreter as the position of his father and behind his father is Manuel Delpino and fired the victim.)

(The distance demonstrated being one (1) meter to the court interpreter from where he [the witness] is seated.)

x x x x x x x x x[32]

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[32] TSN, November 23, 1995.

The determination of a child's intellectual preparedness to be a witness rests primarily with the trial judge, who assesses the child's manners, his apparent possession or lack of intelligence, as well as his understanding of the obligations of an oath. These abstract matters cannot be photographed into the record. The judgment of the trial judge will not be disturbed on review, unless from that which is preserved, it is clear that it was erroneous.[33] Relevant are the questions posited before Mark, thus:

Atty. Gojol:

x x x x x x x x x

q: Mr. Witness, after having been sworn as a witness to the case, you understand that you will tell the whole truth and nothing but the whole truth?
a: Yes, sir.

q: Are you aware that telling a lie is bad?
a: Yes, sir.

x x x x x x x x x

q: Did your teacher in kindergarten tell you what will happen if you will tell a lie?
a: I was told by my teacher that it is forbidden to tell a lie because God will get angry.

x x x x x x x x x[34]

The records reveal that the trial court duly noted the objections, closely observed the proceedings, and propounded its own questions to satisfy itself of the accuracy of the witness' testimony. We find no reason to disturb the factual findings of the trial court.

Accused-appellant was charged with the crime of murder penalized under Article 248 of the Revised Penal Code, as amended by R.A. No. 7659 which provides:

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[33] *People v. Avendaño, supra*, citing *People v. Mendoza*, 254 SCRA 18, 32-33 (1996).

[34] TSN, August 30, 1994.

Article 248. *Murder*. — Any person who, not falling within the provision of Article 246, shall kill another, shall be guilty of Murder and shall be punished by *reclusion perpetua* to death if committed with any of the following **attendant circumstances**:

1. **With treachery, taking advantage of superior strength**, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

x x x x x x x x x

5. **With evident premeditation**; (Emphasis supplied)

The Information alleged that the accused-appellant killed the victim with the use of a short firearm, and with treachery and evident premeditation.

The trial court and the CA were unanimous in convicting the accused-appellant of the crime of murder.

The trial court appreciated the presence of treachery as the accused-appellant had employed means in his execution of the crime without any risk to himself. There is treachery when the offenders commit any of the crimes against persons employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution without risk to himself arising from the defense which the offended party might make. In order that *alevosia* may be appreciated as a qualifying circumstance, it must be shown that: a.] the malefactor employed means, method or manner of execution affording the person attacked no opportunity to defend himself or to retaliate; and b.] the means, method or manner of execution was deliberately or consciously adopted by the offender. Its essence is the sudden, unexpected attack by the aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim.[35]

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[35] *People v. Andres Ortiz y Pebrero*, G.R. No. 133814, July 17, 2001, 361 SCRA 274, 296-297.

Here, the victim had no chance to defend himself, what with the sudden poking of the gun to his neck and without any warning that he will be shot. Prosecution witness Mark Lorica candidly related to the trial court the event that transpired in that evening of December 16, 1993. Thus:

ATTY. GOJOL:

q: You said that before your father was shot, you and your father were inside your house watching TV and exchanging jokes. Now, while you and your father were watching TV and exchanging jokes, what happened, if any?
a: Suddenly, there was a knock at the door.

q: After that knock on the door, what happened, if any?
a: My father asked who was the person at the door but the person did not answer.

q: And, after that, what happened next?
a: My father opened wide the door and while my father was stooping down to get his slippers, Ti'o Manuel poked the gun at him.

q: After your Ti'o Manuel, the accused in this case, poked the gun to your father, what happened next, if any?
a: My father fell down.

COURT:

q: Before your father fell down, did you actually see what happened to that gun being poked by accused Manuel at your father?
a: Yes, sir.

q: What did you see?
a: A gun, Your Honor.

q: Did you see what happened to that gun?
a: Yes, sir.

q: What happened to that gun while it is being poked to your father?
a: It was fired and my father was hit on is (sic) neck (witness pointed to the base of his neck.)

q: Did you see who fired that gun being poked at your father?
a: Yes, sir.

q: Whom did you see?
a: Ti'o Manuel.

q: The very same Manuel whom you pointed to a while ago in open Court?
a: Yes, sir.[36]

Verily, the victim had no idea what would befell him when he went to see the person knocking at their door. He had no means to defend himself. In fact, at the time he was shot, he was stooping down to get his slippers. In such a position, he was indeed, defenseless. The means employed by the accused-appellant by using a firearm, and firing it when the accused was caught unaware at what could have hit him, was such that the victim would be unable to fight him back. The attack was so swift and unexpected that the unarmed victim had no chance to resist the attack. Accused-appellant was not exposed to any danger.

The trial court, however, did not appreciate the aggravating circumstance of evident premeditation. It ruled that there was no direct evidence of the planning and the preparation to kill the victim, and that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at calm judgment. The prosecution did not present evidence on this matter. It dealt mainly on the moment when the victim was killed by the accused-appellant. Thus, no concrete proof was submitted as to how and when the plan to kill was formulated or what time had elapsed before it was carried out.

In *People v. Tigle*,[37] we have held that to warrant a finding of evident premeditation, the prosecution must establish the confluence of the following requisites: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the offender clung to his determination; and (c) a sufficient interval of time between the determination and the

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[36] TSN, August 30, 1994, pp. 19-22.

[37] G.R. No. 147667, January 21, 2004, 420 SCRA 424, 436, citing *People v. Baldogo*, G.R. Nos. 128106-07, January 24, 2003.

execution of the crime to allow him to reflect upon the consequences of his act. We held that threats to kill do not necessarily prove evident premeditation. Here, the wife of the victim, Marilyn Lorica testified that two months before the killing or on October 28, 1993 accused-appellant poked a gun at her husband.[38] But apart from her testimony, the prosecution had not presented anything to show that the accused had clung to his threat on that day until the shooting of the victim on December 16, 1993. There was no showing when and how the accused-appellant had planned and prepared to kill the victim. Accused-appellant's threats, unsupported by evidence disclosing a criminal state of mind, are merely casual remarks naturally emanating from a feeling of rancor and not proof of evident premeditation.[39] This principle holds true only in debunking the allegation that the killing of the victim was attended by evident premeditation. This, however, does not exculpate the accused-appellant from his guilt because he was positively identified by a credible witness as the perpetrator.

The firearm used in the killing of the victim was not presented during the trial. Both the trial court and the CA also did not discuss anything in relation thereto. The case of *People v. Ortiz*[40] held that the failure to present the murder weapon would not exculpate the accused-appellant from criminal liability. Further, the presentation and identification of the weapon used are *not* indispensable to prove the guilt of the accused,[41] as in this case,[42] the perpetrator has been positively identified by a credible witness.[43]

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[38] TSN, February 21, 1996, p. 8.

[39] *People v. Tigle*, *supra*, p. 436, citing *Rabor v. People*, 338 SCRA 381 (2000).

[40] *People v. Ortiz*, *supra*, p. 295.

[41] *Supra*, citing *People v. Sumaoy*, 263 SCRA 460 (1996), citing *People v. Fulinara*, 247 SCRA 28 (1995) and *People v. De Guzman*, 231 SCRA 737 (1994).

[42] TSN, August 30, 1994, pp. 19-22.

[43] *People v. Ortiz*, *supra*, p. 295, citing *People v. Padao*, 267 SCRA 64 (1997).

As testified to by Dr. Listanco, the bullet passed through the neck of the victim.

Q - You said that there was only one injury sustained by the victim. Where is this injury located?
A - 3 cm on the left neck (witness pointed on her left neck.)

Q - Could it be possible that the assailant is in front of the victim when the gun was fired?
A - If the assailant is right handed he can.

Q - Where is the point of entry?
A - Here (witness pointed to the left side of her neck.)[44]

The health officer's testimony and medical report coincide with Mark Lorica's testimony that when the victim was stooping down to get his slippers, the accused-appellant pointed his gun at him and shot him on the neck.

Murder is punishable by *reclusion perpetua* to death.[45] In relation thereto, Article 63 of the Revised Penal Code provides:

Art. 63. *Rules for the application of indivisible penalties.*—x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

3. When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

4. When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance,

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[44] TSN, April 18, 1996, p. 5.

[45] Article 248, Revised Penal Code, as amended by Republic Act No. 7659.

for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

While treachery qualified the killing to murder, neither aggravating nor mitigating circumstances attended the commission of the felony. Hence, the penalty of *reclusion perpetua* was properly imposed.

The trial court sentenced the accused-appellant to suffer imprisonment of *reclusion perpetua* and ordered him to pay the heirs of Gabriel Lorica the amount of ₱10,000.00 for actual damages incurred during the wake and to indemnify the heirs of Gabriel Lorica the amount of ₱50,000.00 as civil indemnity without subsidiary imprisonment in case of insolvency and to pay the cost. The accused being a detention prisoner in the service of his sentence his detention shall be fully credited.

The CA modified the assailed Decision in that the accused-appellant is ordered to pay the heirs of the victim Gabriel Lorica the amount of ₱50,000.00 as moral damages, in addition to the ₱50,000.00 civil indemnity and ₱10,000.00 actual damages awarded by the trial court.

As to the civil aspect of the case, the award of civil indemnity to the heirs in the amount of ₱50,000.00 is hereby affirmed.[46]

As to the award of ₱10,000.00 as actual damages, the same was based on the testimony of Marilyn Lorica that she spent the said amount for the wake, burial and internment of her husband.[47] Other than her statement, no other proof was presented to justify the award of actual damages. To be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable to the injured party.[48] Here, no receipts were ever presented to show

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[46] *People v. Nicolas*, G.R. No. 137782, April 1, 2003, 400 SCRA 217, 227.

[47] TSN, February 21, 1998, p. 6.

[48] *People v. Danny Delos Santos*, G.R. No. 135919, May 9, 2003, 403 SCRA 153, 165, citing *People v. Acosta*, G.R. No. 143386, November 29,

that Marilyn spent the said amount which was awarded by the trial court. Thus, the award of actual damages is hereby deleted for lack of factual and legal basis. Nonetheless, the accused should pay the heirs of the victim temperate damages under Article 2224 of the Civil Code[49] in the amount of ₱25,000.00.[50]

The award of moral damages in the amount of ₱50,000.00 is in order.[51] Additionally, given the attendance of qualifying circumstance of treachery, the award of exemplary damages to the heirs of the victim in the amount of ₱25,000.00[52] in accordance with Article 2230[53] of the Civil Code is justified.

WHEREFORE, the appealed Decision dated December 19, 2005 of the CA in CA-G.R. CR.-H.C. No. 01513, finding accused-appellant Manuel Delpino guilty of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua* is *AFFIRMED with MODIFICATION* in that the award of actual damages is deleted, and, in lieu thereof, accused-appellant is ordered to pay the heirs of the late Gabriel Lorica *y* Canon ₱25,000.00 as temperate damages, in addition to ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.

2001, 371 SCRA 181; *People v. Suelto*, 381 Phil. 351; 326 SCRA 49 (2000); *People v. Samolde*, G.R. No. 128551, July 31, 2000, 336 SCRA 632.

[49] Art. 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, form the nature of the case, be proved with certainty.

[50] *People v. Abrazaldo*, G.R. No. 124392, February 7, 2003, 397 SCRA 137.

[51] *People v. Nicolas*, *supra*, citing *People v. Panado*, 348 SCRA 679, 691, (2000).

[52] *Supra*, citing *People v. Catubig*, 363 SCRA 621, 635 (2001).

[53] Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and *Bersamin, JJ.,* concur.

SECOND DIVISION

[G.R. Nos. 172785-86. June 18, 2009]

CRUZVALE, INC., *petitioner, vs.* **JOSE ARMANDO L. EDUQUE, PETER A. BINAMIRA, JEANETTE C. DELGADO and MA. LETICIA R. JOSON,** *respondents.*

SYLLABUS

1. CIVIL LAW; LOANS; RULING IN *SESBREÑO* CASE, NOT APPLICABLE.— In the 1993 *Sesbreño* case, this Court ruled that Philfinance and Delta were mutually debtors and creditors of each other by virtue of the promissory notes they issued. But when they agreed to set-off the promissory notes, Philfinance stepped into the shoes of Delta and became Sesbreño's debtor. This Court also found that a fiduciary relationship was created between Sesbreño and Pilipinas Bank. Thus, Pilipinas Bank was obliged to return the promissory note upon Sesbreño's demand. In the 1995 *Sesbreño* case, Sesbreño sought the return of his investment from Philfinance not in its capacity as middleman or dealer but as debtor. We cannot therefore sweepingly apply our pronouncement therein that a money market transaction partakes of the nature of a loan and that nonpayment thereof would not give rise to criminal liability for *estafa* through misappropriation or conversion for the following reasons: *first,* the 1995 *Sesbreño* case involved a money market placement which dealt with a short-term credit instrument and not long term commercial papers as in this case. *Second*, the 1995 *Sesbreño* case dealt with the liability of Philfinance not as middleman or dealer but as debtor unlike the liability of East Asia as middleman or dealer and custodian as obtaining here.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; DETERMINATION OF PROBABLE CAUSE IS AN EXECUTIVE FUNCTION.— [W]e find no reason to depart from the recommendations of the City Prosecutor of Makati and the Secretary of Justice, which were affirmed by the appellate court, to dismiss the criminal charge against respondents for lack of probable cause. It bears stressing that the determination of probable cause for the filing of an information in court is an executive function which pertains at the first instance to the public prosecutor and then to the Secretary of Justice. Courts are not empowered to substitute their own judgment for that of the executive branch.

3. CRIMINAL LAW; REVISED PENAL CODE; ESTAFA; ELEMENTS.— To be held liable for *estafa* under Article 315(1)(b) of the Revised Penal Code, the following elements must concur: (1) that money, goods, or other personal properties are received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same; (2) that there is a misappropriation or conversion of such money or property by the offender or denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another; and (4) that there is a demand made by the offended party on the offender.

4. ID.; ID.; ID.; ID.; FAILURE TO SHOW MISAPPROPRIATION OR CONVERSION OF THE MONEY PLACEMENTS.— While East Asia acted as custodian of the LTCPs and was obliged to turn-over the proceeds of the matured LTCPs and to deliver the outstanding LTCPs to petitioner, with interest payments accruing thereto, there was no showing that respondents misappropriated or converted the same. East Asia periodically remitted the proceeds and interest payments to petitioner even before petitioner filed its complaint-affidavit. Moreover, apart from its sweeping allegation that respondents misappropriated or converted its money placements, petitioner failed to establish the particular role or actual participation of each respondent in the criminal act. Neither was it shown that they assented to its commission. It is basic that only corporate officers shown to have participated in the alleged anomalous acts may be held criminally liable.

5. REMEDIAL LAW; MOTION FOR RECONSIDERATION; THE PROPRIETY OF A SECOND MOTION FOR RECONSIDERATION IS NOT CONTINGENT UPON THE AVERNMENT OF "NEW" GROUNDS.— [P]etitioner's motion for partial reconsideration was a second motion for reconsideration with regard to the dismissal of the criminal charge for *estafa* under Article 315(1)(b) against Joson. Although it assailed two different orders of two different judges, the matter being questioned was the same. We reiterate that the propriety or acceptability of a second motion for reconsideration is not contingent upon the averment of "*new*" grounds to assail the judgment.

APPEARANCES OF COUNSEL

Poblador Bautista and Reyes for petitioner.

Romulo Mabanta Buenaventura Sayoc and Delos Angeles Law Offices for Jose Armando L. Eduque, Peter A. Binamira and Jeanette C. Delgado.

Martines Martinez Alcudia Law Offices for Ma. Leticia R. Joson.

D E C I S I O N

QUISUMBING, *J.*:

This is a petition for review on *certiorari* seeking the reversal of the Decision[1] dated March 1, 2006 of the Court of Appeals in CA-G.R. SP Nos. 81518 and 81526 and its Resolution[2] dated May 22, 2006, denying reconsideration. The appellate court ordered the dismissal of the criminal charge for *estafa* under Article 315(1)(b)[3] of the Revised Penal Code against respondents for lack of probable cause.

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[1] *Rollo*, pp. 85-109. Penned by Associate Justice Arturo G. Tayag, with Associate Justices Jose L. Sabio, Jr., and Fernanda Lampas Peralta concurring.

[2] *Id.* at 111-113.

[3] Art. 315. *Swindling* (*estafa*). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

Petitioner is a client of East Asia (AEA) Capital Corporation (East Asia) which is a duly licensed Philippine investment house engaged in the buy and sell or trading of securities and commercial papers. As a practice, East Asia purchases Long Term Commercial Papers (LTCPs) for petitioner from various corporations the latter has chosen. These LTCPs are registered with the issuing corporations in the name of East Asia in trust for petitioner. In turn, East Asia issues Outright Sales Invoices and Custodian Receipts to petitioner. Once the LTCPs mature, petitioner instructs East Asia to re-invest or roll-over the principal amounts and accrued interests to other similar LTCPs.

Petitioner alleged that sometime in April 2000, it learned of East Asia's irregular transactions and precarious financial condition. Thus, it asked East Asia for an accounting of all its LTCPs. Meanwhile, petitioner conducted its own investigation and discovered that: (1) some of its outstanding LTCPs were sold or assigned to third parties; (2) the proceeds of such sale or assignment were covered by petitioner's alleged purchase of East Asia promissory notes; (3) the proceeds of its matured LTCPs were not used to purchase other similar LTCPs but covered instead petitioner's alleged purchase of East Asia promissory notes; and (4) interest payments from its LTCPs were received by East Asia and covered petitioner's alleged purchase of East Asia promissory notes. All these were done without petitioner's prior knowledge and consent.

Petitioner's representatives met with respondent Jose Armando L. Eduque, Chief Executive Officer and Director of East Asia,

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x x x x x x x x x

1. With unfaithfulness or abuse of confidence, namely:

x x x x x x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods or any other personal property received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property;

to confirm and discuss the foregoing. Eduque proposed to: (1) secure the East Asia promissory notes with collateral; and/or (2) *dacion* the LTCPs with East Asia real properties and shares of stock.[4]

On June 23, 2000, Eduque proposed the conversion of a part or all of petitioner's LTCPs into East Asia equity. Petitioner declined the proposal and made a final demand for the turnover of the proceeds of its matured LTCPs and the delivery of its outstanding LTCPs, with interest payments accruing thereto.[5]

As the demand remained unheeded, petitioner filed a complaint-affidavit with the Office of the City Prosecutor of Makati charging respondents, as officers and/or directors of East Asia, with violation of Article 315(1)(b) and (2)(a)[6] of the Revised Penal Code.

On February 5, 2001, an Information for *estafa* under Article 315(1)(b) was filed against respondents. Joson filed a motion for reconsideration while Eduque, Binamira and Delgado filed a petition for review with the Department of Justice. In the meantime, the case was docketed as Criminal Case No. 01-328 and assigned to Judge Marissa M. Guillen of the Regional Trial Court of Makati City, Branch 61.

The Secretary of Justice granted the petition and directed the City Prosecutor of Makati to withdraw the information against respondents.[7] On the other hand, the City Prosecutor of Makati

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[4] *Rollo*, p. 164.

[5] *Id.* at 165-166.

[6] Art. 315. *Swindling (estafa).* —Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x x x x x x

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.

[7] *Rollo*, pp. 233-238.

granted Joson's motion and recommended the dismissal of the charge against her.[8]

The City Prosecutor of Makati then filed a motion to withdraw information which was denied by Judge Guillen.[9] Joson filed a motion for reconsideration separate from the motion for reconsideration filed by Eduque, Binamira and Delgado.

Judge Romeo F. Barza, who took over as presiding judge, granted[10] Joson's motion but denied[11] that of Eduque, Binamira and Delgado. Thereafter, they were arraigned over their objections. They filed another motion for reconsideration. Petitioner also moved to reconsider the withdrawal of the information against Joson.

Due to Judge Barza's voluntary inhibition, the case was re-raffled and re-assigned to Judge Rebecca R. Mariano of the RTC of Makati City, Branch 134. Judge Mariano dismissed the criminal case against all respondents due to the absence of probable cause.[12]

Petitioner moved for partial reconsideration which Judge Mariano granted.[13] She also denied respondents' motion for reconsideration and ordered the pre-trial to proceed.[14]

Before the Court of Appeals, Joson filed a petition for review docketed as CA-G.R. SP No. 81518 while Eduque, Binamira and Delgado filed a petition for review docketed as CA-G.R. SP No. 81526.

The appellate court granted the petitions on the following grounds: *First*, petitioner's motion for partial reconsideration

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[8] *Id.* at 239-241.

[9] *Id.* at 306-307.

[10] *Id.* at 326-327.

[11] *Id.* at 324-325.

[12] *Id.* at 361-372.

[13] *Id.* at 429-438.

[14] *Id.* at 492-494.

was a prohibited pleading which Judge Mariano should not have taken cognizance of. It was a second motion for reconsideration with regard to the dismissal of the criminal charge for *estafa* under Article 315(1)(b) against Joson. *Second*, there was no sufficient evidence to warrant Joson's indictment since petitioner failed to show that she participated in the alleged conversion of the LTCPs and conspired with the other respondents in committing the same. *Third*, the Supreme Court ruled in *Sesbreño v. Court of Appeals*[15] that a money market transaction partakes of a nature of a loan and therefore, the non-payment thereof would not give rise to criminal liability for *estafa* through misappropriation or conversion.[16] East Asia did not receive money in trust, or on commission or for administration, or under any other obligation to make delivery of or to return the same. It did not become a trustee of petitioner, nor was any fiduciary relationship created. Thus, the appellate court ordered the dismissal of the criminal charge for *estafa* under Article 315(1)(b) against respondents for lack of probable cause:

> ALL THE FOREGOING CONSIDERED, the instant consolidated petition (CA-G.R. SP No. 81518 and CA-G.R. SP No. 81526) is hereby ***GRANTED***. Accordingly, the assailed ***ORDERS*** dated 26 May 2003, 25 September 2003 and 29 December 2003, issued by public respondent are hereby ***REVERSED*** and ***SET ASIDE*** and the Order dated 13 December 2002 is hereby ***REINSTATED***.
>
> SO ORDERED.[17]

Petitioner submits these issues for our consideration:

I.

WHETHER OR NOT THE COURT OF APPEALS ACTED CONTRARY TO AND SUBSTANTIALLY DEPARTED FROM LAW AND SETTLED JURISPRUDENCE WHEN IT RULED THAT *SESBRE[Ñ]O V. COURT OF APPEALS* IS APPLICABLE IN THE INSTANT CASE.

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[15] G.R. No. 84096, January 26, 1995, 240 SCRA 606.

[16] *Id.* at 613.

[17] *Rollo*, p. 108.

II.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR AND ACTED CONTRARY TO LAW AND SETTLED JURISPRUDENCE WHEN IT RULED THAT SOME OF THE ELEMENTS OF *ESTAFA* WITH UNFAITHFULNESS OR ABUSE OF CONFIDENCE UNDER ARTICLE 315(1)(b) ARE ABSENT IN THE INSTANT CASE, THEREBY WARRANTING THE DISMISSAL OF THE CHARGES AGAINST THE RESPONDENTS FOR LACK OF PROBABLE CAUSE.

III.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR AND ACTED CONTRARY TO SETTLED JURISPRUDENCE WHEN IT HELD THAT PETITIONER CRUZVALE'S MOTION FOR PARTIAL RECONSIDERATION DATED 27 JANUARY 2003 IS A SECOND MOTION FOR RECONSIDERATION WHICH IS NOT ALLOWED UNDER THE LAW.[18]

Essentially, we are asked to resolve whether the Court of Appeals erred in: (1) applying *Sesbreño v. Court of Appeals*; (2) ruling that some of the elements of *estafa* under Article 315(1)(b) are absent; and (3) holding that petitioner's motion for partial reconsideration is a second motion for reconsideration which is a prohibited pleading.

Petitioner avers that the instant case is different from *Sesbreño* for the following reasons. *First*, respondents are charged not with the simple failure to return petitioner's investments, but rather, with: (1) the violation of their fiduciary obligation under the Custodian Receipts when they sold or assigned petitioner's outstanding LTCPs to third parties without its prior knowledge and consent; (2) the misrepresentation that they still had custody of these LTCPs despite the double sale to third parties; (3) the violation of their fiduciary obligation as middleman to remit and account for the interests and proceeds of petitioner's investments after the corporate borrowers have paid the same; (4) the misappropriation of these proceeds; and (5) the unilateral

[18] *Id.* at 43.

conversion of petitioner's investments in LTCPs into East Asia promissory notes without its knowledge and consent. *Second*, East Asia is not only the middleman but also the custodian of the LTCPs it purchased in behalf of petitioner as evidenced by the Custodian Receipts. As such, East Asia became a trustee who has the unconditional obligation to deliver the LTCPs to petitioner who is the beneficiary-placer. Its failure to deliver the LTCPs to petitioner amounts to conversion or unlawful deprivation. By selling the LTCPs to third parties and unilaterally replacing them with East Asia promissory notes without petitioner's knowledge and consent, East Asia breached its obligation to hold the same in trust for petitioner's account. Petitioner adds that the characterization of the transactions between the parties as *akin* to a loan is misplaced and contrary to *Fontanilla v. People*.[19] In *Fontanilla*, the Court ruled that a fiduciary relationship exists between an investor and the person to whom he entrusts money for the purpose of investment.[20] In the instant case, the Outright Sales Invoices and Custodian Receipts show that petitioner turned over money to East Asia for the purchase of LTCPs. The criminal charge against respondents constitutes *estafa* through misappropriation or conversion under Article 315(1)(b).

Petitioner also argues that the elements of *estafa* with unfaithfulness or abuse of confidence under Article 315(1)(b) are present in the instant case. The subject of the misappropriation was not the funds invested by petitioner *per se* but the LTCPs themselves and the interests and proceeds of petitioner's investments after the corporate borrowers have paid the same. It is not always essential for *estafa* that the complainant seek the return of the very same thing delivered under trust or for administration. Further, East Asia's failure to account for the unremitted portion of the investments, after demand was made, necessarily leads to the conclusion that the same were misappropriated or converted into personal use.

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[19] G.R. No. 120949, July 5, 1996, 258 SCRA 460.

[20] *Id.* at 470.

Finally, petitioner contends that its motion for partial reconsideration is not a second motion for reconsideration which is a prohibited pleading. The motions questioned the dismissal of the criminal charge against Joson on two different grounds.

Respondents counter that the instant case involves a money market placement in which an investor delivers money to an investment house for the purpose of investing it in different securities in the hope of realizing profit. Whatever stocks, certificate or other documents that may be issued from these transactions are merely evidence of the money market placement. The transaction partakes of the nature of a loan and therefore nonpayment thereof would not give rise to any criminal liability for *estafa* through misappropriation or conversion. Respondents add that petitioner has not adduced any evidence to show that they actually participated in any act of misappropriation or conversion constituting *estafa*. Respondents also maintain that the prohibition against second motions for reconsideration does not provide as an exception the inclusion of new or additional grounds.

The petition is partly meritorious.

In *Sesbreño v. Court of Appeals*,[21] Sesbreño made a money market placement of ₱300,000 with Philfinance for a term of 32 days at 20% interest. Philfinance then sold to him a share in Delta Motors Corporation Promissory No. 2731 which was payable to Philfinance but was in the custody of Pilipinas Bank. Unknown to Sesbreño, Philfinance and Delta agreed to set-off Promissory No. 2731 with Philfinance's Promissory Note No. 143-A which was payable to Delta. As a result, Delta's liability under Promissory No. 2731 was extinguished. Later, Philfinance failed to pay the maturity value of Sesbreño's investment when it became due. Sesbreño demanded payment from Delta and asked for the physical delivery of the promissory note from Pilipinas Bank. The two refused. Sesbreño then filed (1) a civil action for damages against Delta and Pilipinas

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[21] G.R. No. 89252, May 24, 1993, 222 SCRA 466.

Bank (1993 Sesbreño case),[22] and (2) a criminal case for *estafa* against the officers of Philfinance (1995 Sesbreño case).[23]

In the 1993 *Sesbreño* case, this Court ruled that Philfinance and Delta were mutually debtors and creditors of each other by virtue of the promissory notes they issued. But when they agreed to set-off the promissory notes, Philfinance stepped into the shoes of Delta and became Sesbreño's debtor. This Court also found that a fiduciary relationship was created between Sesbreño and Pilipinas Bank. Thus, Pilipinas Bank was obliged to return the promissory note upon Sesbreño's demand.

In the 1995 *Sesbreño* case, Sesbreño sought the return of his investment from Philfinance not in its capacity as middleman or dealer but as debtor. We cannot therefore sweepingly apply our pronouncement therein that a money market transaction partakes of the nature of a loan and that nonpayment thereof would not give rise to criminal liability for *estafa* through misappropriation or conversion[24] for the following reasons: *first*, the 1995 *Sesbreño* case involved a money market placement which dealt with a short-term credit instrument[25] and not long term commercial papers as in this case. *Second*, the 1995 *Sesbreño* case dealt with the liability of Philfinance not as middleman or dealer but as debtor unlike the liability of East Asia as middleman or dealer and custodian as obtaining here.

On the other hand, we conclude that a fiduciary relationship was created between petitioner and East Asia. For simultaneously acting as middleman or dealer and custodian, East Asia was obliged to turn-over the proceeds of the matured LTCPs and to deliver the outstanding LTCPs to petitioner, with interest payments accruing thereto.

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[22] *Id.* at 468-471.

[23] *Sesbreño v. Court of Appeals, supra* note 15, at 609.

[24] *Id.* at 613.

[25] *Cebu International Finance Corp. v. Court of Appeals*, G.R. No. 123031, October 12, 1999, 316 SCRA 488, 497; See *Perez v. Court of Appeals*, No. 56101, February 20, 1984, 127 SCRA 636, 645.

This notwithstanding, we find no reason to depart from the recommendations of the City Prosecutor of Makati and the Secretary of Justice, which were affirmed by the appellate court, to dismiss the criminal charge against respondents for lack of probable cause.

It bears stressing that the determination of probable cause for the filing of an information in court is an executive function which pertains at the first instance to the public prosecutor and then to the Secretary of Justice.[26] Courts are not empowered to substitute their own judgment for that of the executive branch.[27]

To be held liable for *estafa* under Article 315(1)(b) of the Revised Penal Code, the following elements must concur: (1) that money, goods, or other personal properties are received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same; (2) that there is a misappropriation or conversion of such money or property by the offender or denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another; and (4) that there is a demand made by the offended party on the offender.[28]

While East Asia acted as custodian of the LTCPs and was obliged to turn-over the proceeds of the matured LTCPs and to deliver the outstanding LTCPs to petitioner, with interest payments accruing thereto, there was no showing that respondents misappropriated or converted the same. East Asia periodically remitted the proceeds and interest payments to petitioner even before petitioner filed its complaint-affidavit. Moreover, apart

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[26] *Insular Life Assurance Company, Limited v. Serrano*, G.R. No. 163255, June 22, 2007, 525 SCRA 400, 405-406; *First Women's Credit Corporation v. Perez*, G.R. No. 169026, June 15, 2006, 490 SCRA 774, 777.

[27] *Baviera v. Paglinawan*, G.R. Nos. 168380 & 170602, February 8, 2007, 515 SCRA 170, 184; *Alcaraz v. Gonzalez*, G.R. No. 164715, September 20, 2006, 502 SCRA 518, 529.

[28] *Libuit v. People*, G.R. No. 154363, September 13, 2005, 469 SCRA 610, 616.

from its sweeping allegation that respondents misappropriated or converted its money placements, petitioner failed to establish the particular role or actual participation of each respondent in the criminal act. Neither was it shown that they assented to its commission. It is basic that only corporate officers shown to have participated in the alleged anomalous acts may be held criminally liable.

Finally, petitioner's motion for partial reconsideration was a second motion for reconsideration with regard to the dismissal of the criminal charge for *estafa* under Article 315(1)(b) against Joson. Although it assailed two different orders of two different judges, the matter being questioned was the same. We reiterate that the propriety or acceptability of a second motion for reconsideration is not contingent upon the averment of "*new*" grounds to assail the judgment.[29]

WHEREFORE, the Decision dated March 1, 2006 of the Court of Appeals in CA-G.R. SP Nos. 81518 and 81526 and its Resolution dated May 22, 2006, denying reconsideration, are *AFFIRMED*.

SO ORDERED.

Ynares-Santiago,[*] *Chico-Nazario,*[**] *Leonardo-de Castro,*[***] and *Brion, JJ.,* concur.

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[29] *Zarate v. Maybank Philippines, Inc.*, G.R. No. 160976, June 8, 2005, 459 SCRA 785, 795, citing *Ortigas and Company Limited Partnership v. Velasco*, G.R. Nos. 109645 & 112564, March 4, 1996, 254 SCRA 234, 240.

[*] 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 Special Order No. 658.

[***] Designated member of the Second Division per Special Order No. 635 in view of the retirement of Associate Dante O. Tinga.

THIRD DIVISION

[G.R. No. 172925. June 18, 2009]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **JAIME K. IBARRA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; MOTIONS; MOTION FOR ASSISTANCE TREATED AS MOTION FOR CLARIFICATION.— Ibarra filed this Motion for Assistance, asking the Court to direct the GSIS to pay him the correct total amount of permanent partial disability benefits he is entitled to under Presidential Decree No. 626, as amended. Since Ibarra has already toiled through the justice system for several years, the Court shall address his Motion for Assistance by treating the same as a Motion for Clarification.

2. LABOR AND SOCIAL LEGISLATIONS; PRESIDENTIAL DECREE NO. 626; A GOVERNMENT EMPLOYEE WHO SUFFERS COMPLETE AND PERMANENT LOSS OF SIGHT IN ONE EYE IS ENTITLED TO INCOME BENEFITS FOR THE PERIOD OF 25 MONTHS.— [A] government employee, who suffers complete and permanent loss of sight in one eye, is entitled to income benefit from the GSIS beginning the first month of said employee's disability, but no longer than the **maximum period of 25 months**. While it is true that the Court of Appeals Decision dated 15 November 2005, affirmed by this Court, subjects Ibarra's benefits under Presidential Decree No. 626, as amended, to set off of Ibarra's outstanding and unpaid loans with GSIS, the burden falls upon GSIS to establish that the amount of ₱77,634.50 it is paying Ibarra is all that remains after the permitted set-off. The utter failure of GSIS to state the basis or present the computation in support of the amount of benefits it is paying Ibarra for his permanent partial disability highlights the arbitrariness of the action of GSIS. That GSIS is paying Ibarra only two more months of income benefit for his permanent partial disability is clearly contrary to the ruling of the Court of Appeals and this Court.

APPEARANCES OF COUNSEL

Chief Legal Office (GSIS) for petitioner.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

This is to address incidents in the instant case which arose after the Court promulgated its Decision dated 19 October 2007 and Resolution dated 6 February 2008.

To recall, respondent Jaime K. Ibarra (Ibarra) worked for the Development Bank of the Philippines (DBP) as Clerical Aide, as Bank Attorney I, and later as Division Chief III. He claimed that from the inception of his work with the bank up to the present, his principal work has been to read and analyze voluminous documents.

During the course of his employment, Ibarra developed high blood pressure and cataracts on both eyes, which were eventually extracted on 23 January 1995.

In early 2000, Ibarra again experienced blurring of vision. After seeking medical help, he was diagnosed to be suffering from retinal detachment in his left eye. This retinal detachment was later improved by surgery. However, sometime before November 2001, Ibarra again suffered retinal detachment, this time in his right eye. This was, unfortunately, never corrected despite repeated surgery that spanned several years, leading eventually to the total blindness of said right eye.

Believing that his ailment was acquired because of his job, Ibarra filed with petitioner Government Service Insurance System (GSIS), a claim for compensation benefits under Presidential Decree No. 626, as amended. The GSIS denied Ibarra's claim, ruling that the latter's retinal detachment was a non-occupational disease.

Ibarra elevated the denial of his claim by the GSIS to the Employees' Compensation Commission (ECC). The ECC

affirmed the GSIS ruling, and dismissed Ibarra's claim for compensation benefits on the ground that the records did not show any proof that Ibarra suffered the injury to his right eye in the performance of his duty.

Ibarra then appealed to the Court of Appeals. The Court of Appeals, after finding that there was sufficient evidence to prove a probable work connection between Ibarra's hypertension and his retinal detachment, reversed the ECC decision. The dispositive portion of the Court of Appeals Decision dated 15 November 2005 reads:

> WHEREFORE, in light of the foregoing, the decision subject of the petition is ***REVERSED*** and ***SET ASIDE***. Accordingly, the **respondent GSIS is hereby ordered to pay the petitioner the appropriate benefits under PD 626, subject, however, to set-off of his outstanding and unpaid loans with GSIS**. (Emphasis ours.)

From the foregoing, the GSIS came before this Court via the present Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court. In its Decision dated 19 October 2007, the Court dismissed the Petition of GSIS and affirmed the judgment of the Court of Appeals. The Court of Appeals denied with finality the Motion for Reconsideration of the GSIS in a Resolution dated 6 February 2008.

Consequently, Ibarra wrote the GSIS on 8 April 2008, demanding the payment of his disability benefits pursuant to the 19 October 2007 Decision of this Court. However, the GSIS replied in a letter dated 25 April 2008 that it would pay Ibarra only 60 days of permanent partial disability benefits. And, in accordance with its letter, the GSIS issued to Ibarra a check dated 16 June 2008 in the amount of ₱ 77,634.50, which was equal to just two months of income benefits. The check was accompanied by a computer-generated letter categorically stating that there would be "NO MORE FORTHCOMING INCOME BENEFIT."

Ibarra filed this Motion for Assistance, asking the Court to direct the GSIS to pay him the correct total amount of permanent

partial disability benefits he is entitled to under Presidential Decree No. 626, as amended.

Since Ibarra has already toiled through the justice system for several years, the Court shall address his Motion for Assistance by treating the same as a Motion for Clarification.

It must be stressed that the Court of Appeals, in its Decision dated 15 November 2005, affirmed by this Court, plainly decreed that GSIS pay Ibarra the appropriate benefits under Presidential Decree No. 626, as amended. Rule XII of the Amended Rules on Employees' Compensation, in implementation of Presidential Decree No. 626, as amended, provides the following guidelines for cases of Permanent Partial Disability:

RULE XII
Permanent Partial Disability

Sec. 1. Conditions to Entitlement. — x x x.

Sec. 2. Period of Entitlement — (a) The income benefit shall be paid beginning on the first month of such disability, but not longer than the designated number of months in the following schedule:

Complete and permanent loss of the use of	No. of Months
One thumb	10
One index finger	8
One middle finger	6
One ring finger	5
One little finger	3
One big toe	6
Any toe	3
One arm	50

Complete and permanent loss of the use of	No. of Months
One hand	39
One foot	31
One leg	46
One ear	10

Both ears	20
Hearing of one ear	10
Hearing of both ears	50
Sight of one eye	**25**

(b) x x x. (Emphasis ours.)

Based on the afore-quoted provisions, a government employee, who suffers complete and permanent loss of sight in one eye, is entitled to income benefit from the GSIS beginning the first month of said employee's disability, but no longer than the **maximum period of 25 months**.

While it is true that the Court of Appeals Decision dated 15 November 2005, affirmed by this Court, subjects Ibarra's benefits under Presidential Decree No. 626, as amended, to set off of Ibarra's outstanding and unpaid loans with GSIS, the burden falls upon GSIS to establish that the amount of ₱77,634.50 it is paying Ibarra is all that remains after the permitted set-off. The utter failure of GSIS to state the basis or present the computation in support of the amount of benefits it is paying Ibarra for his permanent partial disability highlights the arbitrariness of the action of GSIS. That GSIS is paying Ibarra only two more months of income benefit for his permanent partial disability is clearly contrary to the ruling of the Court of Appeals and this Court.

IN VIEW OF THE FOREGOING, the Court hereby resolves to (1) *TREAT* Ibarra's Motion for Assistance as a Motion for Clarification; (2) *GRANT* Ibarra's Motion for Clarification; (3) *ORDER* GSIS to *PAY* Ibarra permanent partial disability benefits for the maximum period of twenty-five (25) months, subject only to the deduction of previous partial payments of said benefits and the set-off of Ibarra's outstanding and unpaid loans with the GSIS; and (4) further *ORDER* the GSIS to *SUBMIT* to this Court, within ninety (90) days from its receipt of this Resolution, proof of compliance with the directives herein.

SO ORDERED.

Ynares-Santiago (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

SECOND DIVISION

[G.R. No. 172931. June 18, 2009]

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR), *petitioner, vs.* **REGIONAL TRIAL COURT, BRANCH 18, ROXAS CITY, CAPIZ, RIZAL RECIO, TERESITA RECIO, PACIENCIA RECIO, and HEIR OF OSCAR RECIO, HARRIET VILLANUEVA *Vda. de* RECIO, and the REGISTER OF DEEDS, ROXAS CITY, CAPIZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; FAILURE TO PROVE THE INALIENABLE CHARACTER OF THE LAND; EFFECT.— [W]e ***disagree*** with petitioner that the subject land is inalienable. At the time of application for registration of the subject land by the Recios in 1977, the land was classified as alienable public land. The Recios presented a Certification dated November 8, 1976 from the then Bureau of Forest Development certifying that the subject land containing an area of 11,189 square meters and described as Lot No. 900, Pilar Cadastre is found to be within the alienable and disposable land block of LC Project No. 20 of Pilar, Capiz certified as such on September 28, 1960 per BFD Map LC-2401. In contrast, petitioner presented Jomento's report which stated that Lot No. 900 falls within forest lands for fishpond development of Project 20-A, established on ***January 17, 1986*** under Forestry Administrative Order No. 4-1777 per LC Map No. 3132. It is clear that at the time the Recios filed their application for registration of title in 1977 and at the time the RTC rendered its decision in 1984, the land was not inalienable forest land but was alienable land. Hence, the RTC had jurisdiction to adjudicate title to the land. x x x we agree with the Court of Appeals that petitioner failed to discharge the burden of establishing the inalienable character of the land. In an action to annul a judgment, the burden of proving the judgment's nullity rests upon the petitioner. The petitioner has to establish by clear and convincing evidence that the judgment being challenged is fatally defective.

2. ID.; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, WHEN CONFIRMED BY THE COURT OF APPEALS, ARE FINAL AND CONCLUSIVE.— The Court of Appeals ruled that petitioner failed to sufficiently prove its allegation that Lot No. 900 forms part of the forest lands of the public domain since its evidence consists only of the testimonies of two witnesses, a written report of Jomento, and a photocopy of the sketch plan of Lot No. 900. It ruled that a mere photocopy is without probative value and inadmissible in evidence and petitioner should have presented a land classification map indicating where Lot No. 900 lies to refute the Certification dated November 8, 1976 of the then Bureau of Forest Development. The ruling of the Court of Appeals, based on the abovementioned findings of fact, is upheld by this Court. The jurisdiction of this Court in cases brought before it from the Court of Appeals is limited to reviewing or revising errors of law. The findings of facts of the latter are conclusive for it is not the function of this Court to analyze and weigh such evidence all over again. Our jurisdiction is in principle limited to reviewing errors of law that might have been committed by the Court of Appeals. Factual findings of courts, when adopted and confirmed by the Court of Appeals, are final and conclusive on this Court unless these findings are not supported by the evidence on record. Finding no reason to deviate from the ruling of the Court of Appeals that petitioner failed to adduce sufficient evidence to prove its allegation that Lot No. 900 falls within forest lands, we affirm such ruling.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Rizal Recio for private respondents.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review on *certiorari*, filed by the Department of Environment and Natural Resources on behalf of the Republic of the Philippines (RP), seeks to annul and set aside the Decision[1]

[1] *Rollo*, pp. 37-44. Penned by Executive Justice Arsenio J. Magpale, with Associate Justices Vicente L. Yap and Apolinario D. Bruselas, Jr. concurring.

dated May 25, 2006 of the Court of Appeals, Cebu City, 18th Division, in CA-G.R. SP No. 72691. The Court of Appeals had dismissed RP's petition for annulment of judgment[2] of the Decision[3] dated September 14, 1984 of the Regional Trial Court (RTC) of Roxas City, Branch 18, which ordered the confirmation and registration of title to Lot No. 900 of the Pilar Cadastre, LRC Cadastral Record No. 50963 located at Marita, Pilar, Capiz in the names of the applicants and private respondents herein Rizal Recio, Teresita L. Recio, Paciencia L. Recio, and the only heir of Oscar L. Recio, his mother, Harriet Villanueva *Vda. de* Recio.

The undisputed facts are as follows:

On September 14, 1984, said RTC rendered a decision in Land Registration Case (LRC) No. N-785 granting the Application for Registration of Title[4] dated June 20, 1977 filed by Rizal Recio for himself and in behalf of his brother Oscar Recio and sisters Teresita Recio and Paciencia Recio. The RTC decreed:

> WHEREFORE, judgment is hereby rendered ordering the confirmation and registration of title to land, Lot No. 900 of Pilar Cadastre, LRC Cadastral Record No. 50963 situated in Marita, Municipality of Pilar, Province of Capiz, Island of Panay, described in the technical description (Exhibit "E") and the approved plan AP-06-000028 (Exhibit "X") in the names of the applicants Rizal Recio, of legal age, married to Alita B. Lañada, with residence in Loctugan Hills, Roxas City; Teresita L. Recio, of legal age, Filipino, married to Pio Acelentaba and a resident of Panay, Capiz; Paciencia L. Recio, of legal age, Filipino, married to Nestor Donado and a resident of Dayao, Roxas City, and to the only heir of Oscar L. Recio, his mother Harriet Villanueva *Vda. de* Recio, who is of legal age, Filipino, a widow and a resident of Roxas City, and a decree may issue after this decision shall have become final.
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> SO ORDERED.[5]

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[2] CA *rollo*, pp. 1-13.

[3] *Id.* at 34-37. Penned by Judge Jonas A. Abellar.

[4] Records, pp. 135-138.

[5] CA *rollo*, p. 19.

The abovementioned decision became final, and pursuant thereto, Original Certificate of Title (OCT) No. 0-2107[6] covering the 11,189-square meter piece of land, was issued in the Recios' names on April 17, 1985.

In 1997, a number of occupants of Lot No. 900, namely Joselito Alba, Virginia Bengora, Teodosia Alba, Celso Bullos, Elizabeth Barrosa, Noel Gallardo, Paquita Ducit and Arturo Borleo filed a protest before the DENR, Roxas City against the issuance of OCT No. 0-2107 on the ground that the land covered therein is within forest lands or timberlands, hence it cannot be the subject of private appropriation.

Acting on the protest, Lorna L. Jomento, Special Investigator II of the Lands Management Department (LMD), DENR, Region VI, Iloilo City conducted an ocular inspection and investigation on the status of Lot No. 900.

On January 19, 1998, Jomento rendered a written report[7] that Lot No. 900 falls within the forest lands of Project No. 20-A, established on January 17, 1986 under Forestry Administrative Order No. 4-1777, per Land Classification (LC) Map No. 3132.[8] Jomento recommended that an action be instituted in the proper court for the cancellation of OCT No. 0-2107.

On September 9, 2002, RP, represented by the DENR, through the Office of the Solicitor General (OSG), filed a petition for annulment of judgment before the Court of Appeals seeking to annul the Decision dated September 14, 1984 on the ground that the RTC had no jurisdiction to adjudicate title over the subject parcel of land which forms part of the public forest.[9] In the petition, the OSG cited Section 14[10] of Presidential Decree

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[6] *Id.* at 38-39.

[7] Records, pp. 237-238.

[8] *Id.* at 241.

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

[10] SEC. 14. *Who may apply*.— The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

No. 1529[11] which allows the court to adjudicate only alienable and disposable lands of the public domain in favor of those who have successfully acquired title to said lands by acquisitive prescription. The OSG argued that the trial court exceeded its jurisdiction when it adjudicated the subject land which is forest land and, accordingly, its decision is null and void.[12]

In their Answer to the Petition for Annulment of Judgment,[13] the Recios argued that the RTC of Roxas City, Branch 18 has jurisdiction over the case. They contended that petitioner hastily and negligently filed the petition without first examining the records of LRC No. N-785 and despite its knowledge of their duly approved Plan LRC-SWO-14402 for Lot No. 900 of the Pilar Cadastre. They pointed out that said approved plan clearly showed that Lot No. 900 was not within LC Project No. 20-A, but LC Project No. 20 which was duly certified as alienable and disposable on September 28, 1960 as per BFD Map LC-2401. They also argued that the Decision dated September 14, 1984, has been declared final and executory, and OCT No. 0-2107 has been issued on April 17, 1985, in their names. Hence, LRC No. N-785 is already a closed case and *res judicata* has set in.[14]

On September 24, 2003, the Court of Appeals issued a Resolution[15] directing the Executive Judge of the RTC in Roxas

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(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

(2) Those who have acquired ownership of private lands by prescription under the provisions of existing laws.

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[11] PROPERTY REGISTRATION DECREE, done on June 11, 1978.

[12] CA *rollo*, pp. 8-9.

[13] *Id.* at 22A-28.

[14] *Id.* at 25.

[15] Records, pp. 2-3. Penned by Associate Justice Edgardo F. Sundiam, with Associate Justices B.A. Adefuin Dela-Cruz and Marina L. Buzon concurring.

City to conduct a pre-trial conference and reception of evidence. However, since the Executive Judge presides in the same branch where the decision in LRC No. N-785 was rendered, the incident was assigned by raffle to another judge in the RTC of Roxas City.[16] In a Report and Recommendation[17] dated December 13, 2005, Judge Juliana C. Azarraga, RTC of Roxas City, Branch 15, recommended that the petition for annulment of judgment be dismissed.

Subsequently, on May 25, 2006, the Court of Appeals dismissed the petition for lack of sufficient evidence. The decision states:

> After going over the evidence offered by both parties, the Court finds it proper to dismiss the petition.
>
> Petitioner failed to sufficiently prove its allegation that Lot 900 forms part of the forest lands of the public domain. The evidence offered by the petitioner that Lot 900 falls within forest lands consists only of the testimonies of its two witnesses, the written report of Lorna Jomento (Exhibit A), and the ordinary photocopy of the sketch plan of Lot 900 (Exhibit E) and the verification (Exhibit E-1) appearing on it.
>
> The mere photocopy of the sketch plan of Lot 900 (Exhibit E) as well as the verification (Exhibit E-1) appearing thereon is without probative value and inadmissible in evidence pursuant to the best evidence rule. In *Philippine Banking Corporation vs. Court of Appeals*, the Supreme Court held:
>
> > "The Best Evidence Rule provides that the court shall not receive any evidence that is merely substitutionary in its nature, such as photocopies, as long as the original evidence can be had. Absent a clear showing that the original writing has been lost, destroyed or cannot be produced in court, the photocopy must be disregarded, being unworthy of any probative value and being an inadmissible evidence."
>
> The testimonies of petitioner's two witnesses and the written report of Lorna Jomento, a Special Investigator, stating that based on the

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[16] *Id.* at 5.

[17] *Id.* at 331-342.

records Lot 900 falls within the forest lands reserved for fishpond created under **Project 20-A** dated January 17, 1986 under Forestry Administrative Order No. 4-1777 **per Land Classification Map No. 3132** do not overcome the Certification (Exhibit 1-D for private respondents) dated November 8, 1976 of the then Bureau of Forest Development, Department of Natural Resources (now DENR, the representative of herein petitioner) certifying that Lot 900 falls within the alienable and disposable land Block **LC Project No. 20** of Pilar, Capiz certified as such on September 28, 1960 per **BFD Map LC-2401**. If, indeed, Lot 900 falls within the forest lands reserved for fishpond purposes created under Project 20-A dated January 17, 1986 under Forestry Administrative Order No. 4-1777 per Land Classification Map No. 3132, petitioner should have presented such land classification map indicating that Lot 900 lies therein and not in Block LC No. 20 of Pilar Cadastre per BFD Map LC-4201 as stated in the Certification dated November 8, 1976 of the then Bureau of Forest Development, Department of Natural Resources.

Thus, for failure of the petitioner to adduce sufficient evidence to prove its allegation that Lot 900 falls within the forest lands the petition has to be dismissed.

WHEREFORE, premises considered, the instant petition is hereby **DISMISSED**.

SO ORDERED.[18]

Hence, this petition.

Petitioner raises the following issues for our resolution:

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN DISMISSING THE PETITION FOR THE ANNULMENT OF JUDGMENT OF THE REGIONAL TRIAL COURT, BRANCH 18, IN ROXAS CITY BECAUSE:

A. SAID RTC JUDGMENT WAS ISSUED WITHOUT JURISDICTION AS IT ALLOWED THE REGISTRATION OF INALIENABLE LAND IN FAVOR OF PRIVATE INDIVIDUALS.

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[18] *Rollo,* pp. 42-44.

B. PETITIONER HAD … DISCHARGE[D] THE BURDEN OF ESTABLISHING THE INALIENABLE AND INDISPOSABLE CHARACTER OF SUBJECT PARCEL OF LAND BY THE QUANTUM OF EVIDENCE REQUIRED BY LAW.[19]

Simply stated, the issues raised are: (1) Did the RTC act without jurisdiction in allowing the registration of the subject land? And (2) Did petitioner fail to discharge the burden of establishing the inalienable character of the land?

Petitioner, through the OSG, contends in its Memorandum[20] that it is a well-entrenched rule that the classification of public lands is an exclusive prerogative of the executive department of the government and not of the courts.[21] In this case, it was ascertained in the investigation conducted by Special Investigator Jomento that the land in question falls within the forest land reserved for fishpond purposes created under Project No. 20-A dated January 17, 1986, under Forestry Administrative Order No. 4-1777 per Land Classification (LC) Map No. 3123 dated August 25, 1983. The land, therefore, is inalienable and indisposable and can never be subject to appropriation. The OSG reiterates that under Section 14 of P.D. No. 1529, the court is allowed to adjudicate only "alienable and disposable lands of the public domain" in favor of those who have successfully acquired title thereto by acquisitive prescription. In adjudicating forest land in favor of the private respondents, the RTC of Roxas City, Branch 18 exceeded its jurisdiction, and its decision confirming title to the subject land in favor of private respondents is null and void and should have been annulled by the Court of Appeals.[22] Petitioner also argues that the claim of private respondents that the present appeal is barred by *res judicata* is incorrect since the present petition ultimately seeks the nullification

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[19] *Id.* at 126-127.

[20] *Id.* at 116-140. Dated June 27, 2007.

[21] *Id.* at 127.

[22] *Id.* at 129-130.

of the decision of the RTC of Roxas City, Branch 18, allowing the registration of inalienable land in their favor.[23]

The OSG also argues that it had discharged the burden of establishing the inalienable character of the subject parcel of land by the quantum of evidence required. The actual presentation of LC Map No. 3132 is no longer necessary because the determination of the nature and character of public land in a land investigation conducted by government authorities on land classification is binding on the courts.[24] It further argues that Special Investigators Lorna L. Jomento and Eugenio B. Bernas were merely performing their official duties as special land investigators of the LMD, DENR, Region VI, in Iloilo City when they conducted an investigation on the land in question; hence, in the absence of any evidence showing that said special investigators were biased in favor of one party, their testimonies and the investigation report should be accorded the presumption of regularity in the performance of their duties as public officers.[25]

Private respondents, in their Memorandum[26] dated June 14, 2007, for their part maintain that the Decision dated September 14, 1984 had become final, the Land Registration Commission had issued a final decree of registration after one year and OCT No. 0-2017 was issued by the Register of Deeds of Capiz in their names on May 14, 1985. The decision in LRC No. N-785 has therefore become the law between RP, the applicants and the whole world, and is already a closed case that could no longer be revived in subsequent unnecessary litigations.[27]

As to the first issue, did the RTC act without jurisdiction in allowing the registration of inalienable land?

Petitioner contends that the RTC acted without jurisdiction in allowing the registration of the subject land because the land

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[23] *Id.* at 130.

[24] *Id.* at 132-133.

[25] *Id.* at 136.

[26] *Id.* at 78-85.

[27] *Id.* at 84.

is forest land and thus, inalienable. Verily, jurisprudence is replete with cases which iterate that forest lands or forest reserves are not capable of private appropriation, and possession thereof, however long, cannot convert them into private property.[28]

If indeed the subject land is forest land, then the decision of the RTC is void. A void judgment may be assailed or impugned at any time either directly or collaterally, by means of a petition filed in the same case or by means of a separate action, or by resisting such judgment in any action or proceeding wherein it is invoked.[29]

Moreover, an action for reversion filed by the State to recover property registered in favor of any party which is part of the public forest or of a forest reservation never prescribes. Verily, non-disposable public lands registered under the Land Registration Act may be recovered by the State at any time and the defense of *res judicata* would not apply as courts have no jurisdiction to dispose of such lands of the public domain.[30]

Under the facts and circumstances of this case, however, we ***disagree*** with petitioner that the subject land is inalienable.

At the time of application for registration of the subject land by the Recios in 1977, the land was classified as alienable public land. The Recios presented a Certification[31] dated November 8, 1976 from the then Bureau of Forest Development certifying that the subject land containing an area of 11,189 square meters and described as Lot No. 900, Pilar Cadastre is found to be within the alienable and disposable land block of LC Project No. 20 of Pilar, Capiz certified as such on September 28, 1960 per BFD Map LC-2401. In contrast, petitioner presented

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[28] *De la Cruz v. Court of Appeals*, G.R. No. 120652, February 11, 1998, 286 SCRA 230, 236.

[29] *Ang Lam v. Rosillosa and Santiago*, 86 Phil. 447, 452 (1950).

[30] *Heirs of the Late Spouses Pedro S. Palanca and Soterranea Rafols Vda. de Palanca v. Republic*, G.R. No. 151312, August 30, 2006, 500 SCRA 209, 220.

[31] Records, p. 139-A.

Jomento's report which stated that Lot No. 900 falls within forest lands for fishpond development of Project 20-A, established on ***January 17, 1986*** under Forestry Administrative Order No. 4-1777 per LC Map No. 3132.[32]

It is clear that at the time the Recios filed their application for registration of title in 1977 and at the time the RTC rendered its decision in 1984, the land was not inalienable forest land but was alienable land. Hence, the RTC had jurisdiction to adjudicate title to the land.

As to the second issue, we agree with the Court of Appeals that petitioner failed to discharge the burden of establishing the inalienable character of the land.

In an action to annul a judgment, the burden of proving the judgment's nullity rests upon the petitioner. The petitioner has to establish by clear and convincing evidence that the judgment being challenged is fatally defective.[33]

The Court of Appeals ruled that petitioner failed to sufficiently prove its allegation that Lot No. 900 forms part of the forest lands of the public domain since its evidence consists only of the testimonies of two witnesses, a written report of Jomento, and a photocopy of the sketch plan of Lot No. 900. It ruled that a mere photocopy is without probative value and inadmissible in evidence and petitioner should have presented a land classification map indicating where Lot No. 900 lies to refute the Certification dated November 8, 1976 of the then Bureau of Forest Development.

The ruling of the Court of Appeals, based on the abovementioned findings of fact, is upheld by this Court. The jurisdiction of this Court in cases brought before it from the Court of Appeals is limited to reviewing or revising errors of law. The findings of facts of the latter are conclusive for it is not the function of this Court to analyze and weigh such evidence

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[32] *Id.* at 237.

[33] *Heirs of the Late Spouses Pedro S. Palanca and Soterranea Rafols Vda. de Palanca v. Republic, supra* note 30, at 220.

all over again.[34] Our jurisdiction is in principle limited to reviewing errors of law that might have been committed by the Court of Appeals. Factual findings of courts, when adopted and confirmed by the Court of Appeals, are final and conclusive on this Court unless these findings are not supported by the evidence on record.[35]

Finding no reason to deviate from the ruling of the Court of Appeals that petitioner failed to adduce sufficient evidence to prove its allegation that Lot No. 900 falls within forest lands, we affirm such ruling.

WHEREFORE, the petition is *DENIED*. The Decision dated May 25, 2006 of the Court of Appeals, Cebu City, Eighteenth Division, in CA-G.R. SP No. 72691 is *AFFIRMED*.

No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago,[*] *Chico-Nazario,*[**] *Leonardo-de Castro,*[***] and *Brion, JJ.,* concur.

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[34] *Alipoon v. Court of Appeals*, G.R. No. 127523, March 22, 1999, 305 SCRA 118, 127.

[35] *Producers Bank of the Philippines v. Court of Appeals*, G.R. No. 115324, February 19, 2003, 397 SCRA 651, 658-659.

[*] 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 Special Order No. 658.

[***] Designated member of the Second Division per Special Order No. 635 in view of the retirement of Associate Dante O. Tinga.

SECOND DIVISION

[G.R. No. 176157. June 18, 2009]
(Formerly G.R. No. 155937)

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ELPIDIO IMPAS *y* POLBERA,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CHILD WITNESS; TESTIMONY OF THE CHILD-VICTIM GIVEN FULL WEIGHT AND CREDENCE.— A careful scrutiny of the records of this case would reveal that the aforesaid contention is bereft of merit. During her testimony, AAA explicitly said that the appellant raped her three times on different occasions and that the last one was committed sometime in November 1993. She had also tearfully recounted how the appellant pulled her towards the room of their house and how the appellant raped her for the third time. By the said categorical and straightforward testimony alone, it would have been sufficient to prove that the appellant indeed raped AAA sometime in November 1993. In the case of *People v. Bejic*, we had held that: It is a well-settled doctrine that the testimony of a child-victim is given full weight and credence considering that when a woman, especially a minor, says that she had been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are badges of truth and sincerity. [No] young woman, especially of tender age, would concoct a story of defloration at the hands of her own father, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. It is highly improbable that a girl of tender years, not yet exposed to the ways of the world, would impute to her own father a crime so serious as rape if what she claims is not true. This is more true in our society since reverence and respect for the elders is deeply rooted in Filipino children and is even recognized by law.

2. ID.; ID.; ID.; TESTIMONY OF THE CHILD WITNESS CORROBORATES THAT OF THE CHILD-VICTIM.—

[W]hatever doubt, if there is any, as to the testimony of AAA regarding the last rape incident would immediately be extinguished by BBB's testimony, which clearly corroborated the testimony of AAA. BBB said that the appellant pulled and dragged AAA inside the room of their house on three different occasions. She also testified seeing the appellant covering the door of the aforesaid room with a blanket and a mat after he was able to drag AAA inside it. She also recounted that she heard her sister shouting while inside the room.

3. CRIMINAL LAW; QUALIFIED RAPE, NOT A CASE OF; FAILURE TO PROVE THE QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP OF THE OFFENDER TO THE VICTIM.— To obtain a conviction for qualified rape, however, the *minority* of the victim and her *relationship to the offender* must be both alleged in the information and proved with certainty. In the case at bar, only the circumstance of minority was alleged in the information and the prosecution failed to show independent proof to establish the presence of the qualifying circumstances of minority and relationship. Thus, the RTC and the Court of Appeals correctly held that the appellant may only be convicted of simple rape and not qualified rape.

4. ID.; SIMPLE RAPE; CIVIL LIABILITY; AWARD OF CIVIL INDEMNITY AND MORAL DAMAGES, PROPER.— The civil indemnity and moral damages awarded by the Court of Appeals is proper. The award of civil indemnity is mandatory in rape convictions. A civil indemnity of ₱50,000 is automatically given to the offended party without need of further evidence other than the commission of rape. In accordance with prevailing jurisprudence, the amount of ₱50,000 for moral damages is likewise appropriate.

5. ID.; ID.; ID.; AWARD OF EXEMPLARY DAMAGES IS NOT PROPER WHEN NO AGGRAVATING CIRCUMSTANCE WAS SHOWN.— [W]e find it proper to delete the Court of Appeals' award of exemplary damages. Article 2230 of the Civil Code provides that "(i)n criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances." In this case, however, no aggravating circumstance was shown in the records concerning the commission of this particular crime of rape. Thus, the award of exemplary damages has no factual and legal basis.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

QUISUMBING, *J.*:

On appeal is the Decision[1] dated September 25, 2006, of the Court of Appeals in CA-G.R. CR-H.C. No. 01457, affirming with modification the Decision[2] dated July 5, 2002 of the Regional Trial Court (RTC) of Antipolo City, Branch 73, in Criminal Case No. 93-10413. The trial court had convicted appellant for raping AAA,[3] allegedly his daughter.

Appellant was charged under the following information:

That on or about the 7th day of November 1993, in the Municipality of Antipolo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, AAA, a minor, eleven (11)[4] years of age, against her will and consent.

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[1] CA *rollo*, pp. 88-95. Penned by Associate Justice Estela M. Perlas-Bernabe, with Associate Justices Renato C. Dacudao and Rosmari D. Carandang concurring.

[2] *Id.* at 12-17. Penned by Executive Judge Mauricio M. Rivera.

[3] See *People v. Ching*, G.R. No. 177150, November 22, 2007, 538 SCRA 117, 121. Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with the real names of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy (*People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 421-426).

[4] AAA stated that she was 12 years old in her sworn statement dated November 23, 1993. See Records, p. 3. AAA's birth certificate was not likewise presented as evidence during the trial of the case.

CONTRARY TO LAW.[5]

On arraignment, the appellant pleaded not guilty. Thereafter, trial on the merits ensued.

Based on the testimonies of AAA, the victim; BBB, the sister of AAA; and Dr. Jesusa Nieves-Vergara, Medico-Legal Officer of Philippine National Police Camp Crame Crime Laboratory, the prosecution established the following facts:

On November 7, 1993, around seven o'clock in the evening, AAA was inside their house. She was with appellant (allegedly her father), her sister BBB and her brothers CCC and DDD. BBB, CCC and DDD were nine, seven and five years old, respectively, at that time.[6]

While watching television with her siblings, AAA was suddenly pulled by the appellant towards the room of their house and was told to look for his shorts. AAA asked her brother to look for the shorts but the latter did not obey her, so she looked for them herself.[7]

After AAA found his shorts, appellant again pulled AAA towards the room, and this time, he took off AAA's shorts and panty. AAA cried and tried to resist appellant's advances. In response to AAA's resistance, appellant forced, boxed, and then pushed her towards the bed. Appellant then laid on top of her and inserted his penis into her private part while embracing her tightly. After completing his beastly act, appellant told AAA not to tell anyone what he did. AAA, however, confided to BBB that appellant raped her. AAA and BBB likewise reported the incident to their mother, EEE, when the latter arrived home later that evening.[8]

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[5] Records, p. 1.

[6] TSN, January 26, 1995, pp. 7-10.

[7] *Id.* at 10-15.

[8] *Id.* at 15-20.

EEE thereafter sought the help of FFF, AAA's aunt. A week after the incident, FFF accompanied AAA to the police station to file a complaint for rape against appellant.

AAA was examined on November 24, 1993 by Dr. Jesusa Nieves-Vergara. Dr. Vergara found that AAA had healed lacerations on her hymen and that AAA was eight to nine weeks pregnant.

For his part, appellant denied the charge against him and raised the defense of alibi. He alleged that on November 7, 1993, he was in Quiapo, Manila, as a stay-in plumber because he had a three-month contract to install water pipes. During the said three-month period, he went home one Saturday night and was arrested for a charge of rape. He attributed the charge to a misunderstanding regarding the financial needs of his wife's brothers and sisters. He also admitted that he was similarly charged and convicted for raping AAA before Branches 71 and 72 of the RTC of Antipolo City.[9]

After trial, the RTC convicted appellant for simple rape in its Decision dated July 5, 2002. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, accused ELPIDIO IMPAS y POLBERA is hereby found guilty beyond reasonable doubt for the crime of rape and is hereby sentenced the penalty of *reclusion perpetua* and to indemnify the victim in the amount of ₱50,000.00 pesos as moral damages. The period during which the accused undergoes preventive imprisonment shall be credited in his favor.
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> SO ORDERED.[10]

In convicting the appellant, the RTC relied on the testimonies of the three witnesses of the prosecution. The RTC found weak appellant's defenses of denial and alibi in light of the affirmative, categorical and consistent testimonies of AAA and BBB. The RTC also stated that the only consolation that appellant

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[9] TSN, March 1, 1996, pp. 3-6, 11-13.

[10] CA *rollo*, p. 17.

could get in this case is that since he had only been charged for simple rape, he could only be adjudged guilty and penalized for the same.[11]

In view of the RTC's imposition of the penalty of *reclusion perpetua* on appellant, the case was elevated to us for automatic review. However, we transferred and referred this case to the Court of Appeals, in line with *People v. Mateo*.[12]

In its decision dated September 25, 2006, the Court of Appeals affirmed with modification the RTC decision. The dispositive portion of the appellate court's decision reads:

> WHEREFORE, premises considered, the instant appeal is **DENIED**. The assailed Decision appealed from dated July 5, 2002 of the RTC of Antipolo City, Branch 73, is hereby **AFFIRMED** with modification with respect to the civil aspect, directing accused-appellant to pay the private complainant the amount of ₱50,000.00 as civil indemnity and ₱25,000.00 as exemplary damages, in addition to the ₱50,000.00 moral damages awarded by the court *a quo*.
>
> SO ORDERED.[13]

In his appeal, the appellant assigned a single error:

> THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED.[14]

Before us, the main issue now for resolution is whether appellant's guilt concerning the charge of rape has been proven beyond reasonable doubt.

Appellant contends that what AAA actually narrated before the court were the details of the alleged first rape incident, which was the subject of another case, and not the details of the alleged third rape incident which is the subject of this case. He contends that AAA's statements in court were the same as

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[11] *Id.* at 13-17.

[12] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 657.

[13] CA *rollo*, p. 94.

[14] *Id.* at 44.

her allegations in her Sworn Statement concerning the details of the first rape incident and that AAA even admitted during her cross examination that she referred to the first rape incident when she testified that appellant raped her while her two brothers and her sister were in the sala. Such being the case, appellant cannot be convicted of the crime charged, the evidence not being in conformity with the allegations in the information and the conviction being in violation of his right to be informed of the nature and cause of the accusation against him.

The appeal has no merit.

At the outset, it is worth noting that the appellant in his brief did not deny raping AAA on or about November 7, 1993. What he merely contended was that AAA exclusively testified on the details of her alleged first sexual encounter with the appellant and it did not allegedly touch on the last rape incident which is the subject of this case.[15]

A careful scrutiny of the records of this case would reveal that the aforesaid contention is bereft of merit. During her testimony, AAA explicitly said that the appellant raped her three times on different occasions and that the last one was committed sometime in November 1993. She had also tearfully recounted how the appellant pulled her towards the room of their house and how the appellant raped her for the third time.[16]

By the said categorical and straightforward testimony alone, it would have been sufficient to prove that the appellant indeed raped AAA sometime in November 1993.

In the case of *People v. Bejic*,[17] we had held that:

It is a well-settled doctrine that the testimony of a child-victim is given full weight and credence considering that when a woman, especially a minor, says that she had been raped, she says in effect

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[15] *Id.* at 48.

[16] TSN, January 26, 1995, pp. 3-9.

[17] G.R. No. 174060, June 25, 2007, 525 SCRA 488.

all that is necessary to show that rape was committed. Youth and immaturity are badges of truth and sincerity.

[No] young woman, especially of tender age, would concoct a story of defloration at the hands of her own father, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. It is highly improbable that a girl of tender years, not yet exposed to the ways of the world, would impute to her own father a crime so serious as rape if what she claims is not true. This is more true in our society since reverence and respect for the elders is deeply rooted in Filipino children and is even recognized by law.[18]

We had likewise stated in another case that:

Incestuous rape is not an ordinary crime that can be easily fabricated or manufactured. The very parties involved in it, let alone the psychological toll, social scandal and humiliation it is likely to generate, are already deterrent factors against its concoction. The victim, the perpetrator, nay, the entire family must deal with a crisis that goes to the very core of familial integrity. In fine, the Court has every reason to believe that in going to court, [the victim] is simply seeking justice for the bestial acts done to her even if the ax has to fall against her very own father.[19]

Moreover, whatever doubt, if there is any, as to the testimony of AAA regarding the last rape incident would immediately be extinguished by BBB's testimony, which clearly corroborated the testimony of AAA. BBB said that the appellant pulled and dragged AAA inside the room of their house on three different occasions. She also testified seeing the appellant covering the door of the aforesaid room with a blanket and a mat after he was able to drag AAA inside it. She also recounted that she heard her sister shouting while inside the room.[20]

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[18] *Id.* at 502-503.

[19] *People v. Gregorio, Jr.*, G.R. No. 174474, May 25, 2007, 523 SCRA 216, 228.

[20] CA *rollo*, p. 92.

Furthermore, in BBB's sworn statement,[21] which she had identified in her testimony, she had forthrightly stated among others the following:

x x x x x x x x x

T: Kailan mo sila huling nakita na hinahatak ang ate mo ng tatay mo?

S: Noon [S]abado po, Nobiembre 20, 1993, gabi po noon, alas-6:00 ng gabi, at wala po ang nanay ko sa amin.

T: Sa ikaliliwanag ng pagsisiyasat na ito, maari mo ba na sabihin sa akin ang iba pang nakita mo na ginagawa ng iyong tatay sa iyong ate?

S: Opo, noon [S]abado ng Nobiembre 1993, alas sais ng gabi, sa loob ng amin bahay ay inutusan si ate AAA ko na isarado ang pinto at bintana ng akin tatay, at nakita ko na hinihila si ate ng akin tatay na papunta sila sa loob ng amin kwarto, at nakarinig po ako ng kalampag ng kalampag na ingay galing sa loob ng amin kwarto, at sinabi ko sa nanay ko ang pangyayari kinabukasan.

T: Meron ka pa ba na sasabihin sa akin na idadagdag o babawasin sa iyong salaysay?

S: Opo.

T: Ano ang sasabihin mo na idadagdag sa iyong salaysay?

S: Lagot po si ate kung magsusumbong si ate kahit na kanino na narinig ko na sinabi ng akin tatay kay ate noon [S]abado.

T: Sa iyo at sa ibang kapatid mo ano naman ang sinabi sa iyo ng iyong tatay?

S: Papaluin niya ako pag ako (BBB) ay nagsumbong kay Nanay, at wala na po akong sasabihin.[22]

x x x x x x x x x

To obtain a conviction for qualified rape, however, the *minority* of the victim and her *relationship to the offender* must be both

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[21] Records, pp. 5-6.

[22] *Id.* at 5.

alleged in the information and proved with certainty.[23] In the case at bar, only the circumstance of minority was alleged in the information and the prosecution failed to show independent proof to establish the presence of the qualifying circumstances of minority and relationship. Thus, the RTC and the Court of Appeals correctly held that the appellant may only be convicted of simple rape and not qualified rape.

As regards the award of damages, however, we find a slight modification in order. The civil indemnity and moral damages awarded by the Court of Appeals is proper. The award of civil indemnity is mandatory in rape convictions. A civil indemnity of ₱50,000 is automatically given to the offended party without need of further evidence other than the commission of rape. In accordance with prevailing jurisprudence, the amount of ₱50,000 for moral damages is likewise appropriate.[24]

However, we find it proper to delete the Court of Appeals' award of exemplary damages. Article 2230 of the Civil Code provides that "(i)n criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances." In this case, however, no aggravating circumstance was shown in the records concerning the commission of this particular crime of rape. Thus, the award of exemplary damages has no factual and legal basis.[25]

WHEREFORE, the Decision dated September 25, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 01457 is hereby *AFFIRMED with the MODIFICATION* that the award of ₱25,000 as exemplary damages is *DELETED* for lack of factual and legal basis.

SO ORDERED.

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[23] *People v. Corpus*, G.R. No. 175836, January 30, 2009, pp. 7-8.

[24] *People v. Mahinay*, G.R. No. 179190, January 20, 2009, p. 9.

[25] *People v. Bang-ayan*, G.R. No. 172870, September 22, 2006, 502 SCRA 658, 671.

Ynares-Santiago,[*] *Chico-Nazario,*[**] *Leonardo-de Castro,*[***] and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 176380. June 18, 2009]

PILIPINAS SHELL PETROLEUM CORPORATION, *petitioner, vs.* **COMMISSIONER OF CUSTOMS,** *respondent.*

SYLLABUS

1. TAXATION; TARIFF AND CUSTOMS CODE; A TAX PROTEST CASE, EXPLAINED.— A tax protest case, under the TCCP, involves a protest of the liquidation of import entries. A liquidation is the final computation and ascertainment by the collector of the duties on imported merchandise, based on official reports as to the quantity, character, and value thereof, and the collector's own finding as to the applicable rate of duty; it is akin to an assessment of internal revenue taxes under the National Internal Revenue Code where the tax liability of the taxpayer is definitely determined.

2. ID.; ID.; PAYMENT.; ISSUES WHICH RESULTED FROM THE CANCELLATION OF TAX CREDIT CERTIFICATES USED IN THE PAYMENT OF TAX LIABILITIES ARE PAYMENT AND COLLECTION ISSUES, NOT TAX

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[*] 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 Special Order No. 658.

[***] Designated member of the Second Division per Special Order No. 635 in view of the retirement of Associate Dante O. Tinga.

PROTEST ISSUES WITHIN THE COURT OF TAX APPEALS' JURISDICTION TO RULE UPON.— In the present case, the facts reveal that Shell received three sets of letters: x x x None of these letters, however, can be considered as a liquidation or an assessment of Shell's import tax liabilities that can be the subject of an administrative tax protest proceeding before the respondent whose decision is appealable to the CTA. *Shell's import tax liabilities had long been computed and ascertained in the original assessments, and Shell paid these liabilities using the TCCs transferred to it as payment.* It is even an error to consider the letters as a "reassessment" because they refer to the same tax liabilities on the same importations covered by the original assessments. The letters merely ***reissued*** the original assessments that were previously settled by Shell with the use of the TCCs. However, on account of the cancellation of the TCCs, the tax liabilities of Shell under the original assessments were considered unpaid; hence, the letters and the *actions for collection*. When Shell went to the CTA, the issues it raised in its petition were all related to *the fact and efficacy of the payments made*, specifically the genuineness of the TCCs; the absence of due process in the enforcement of the decision to cancel the TCCs; the facts surrounding the fraud in originally securing the TCCs; and the application of estoppel. These are payment and collection issues, not tax protest issues within the CTA's jurisdiction to rule upon.

3. ID.; TAXPAYER REMEDIES; THE REMEDY OF A TAXPAYER WHOSE TAX CREDIT CERTIFICATES HAS BEEN CANCELLED BY THE ONE STOP SHOP INTER-AGENCY TAX CREDIT AND DUTY DRAWBACK CENTER SHOULD BE A *CERTIORARI* PETITION BEFORE THE REGULAR COURTS.— We note in this regard that Shell never protested the original assessments of its tax liabilities and in fact settled them using the TCCs. These original assessments, therefore, have become final, incontestable, and beyond any subsequent protest proceeding, administrative or judicial, to rule upon. To be very precise, Shell's petition before the CTA principally questioned the validity of the cancellation of the TCCs — a decision that was made not by the respondent, but by the Center. As the CTA has no jurisdiction over decisions of the Center, Shell's remedy against the cancellation should

have been a *certiorari* petition before the regular courts, not a tax protest case before the CTA. Records do not show that Shell ever availed of this remedy. Alternatively, as we held in *Shell v. Republic of the Philippines*, the appropriate forum for Shell under the circumstances of this case should be at the collection cases before the RTC where Shell can put up the fact of its payment as a defense.

APPEARANCES OF COUNSEL

Quiason Makalintal Barot Torres and Ibarra for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BRION, *J.*:

Before us is the Petition for Review on *Certiorari*[1] filed by petitioner Pilipinas Shell Petroleum Corporation (*Shell*) questioning the Decision[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 78564. The CA decision set aside the resolutions[3] issued by the Court of Tax Appeals (*CTA*) in CTA Case No. 6484, which in turn denied the respondent Commissioner of Customs' (*respondent*) Motion to Dismiss the petition for review Shell filed with the tax court. The CA decision effectively dismissed Shell's tax protest case.

BACKGROUND FACTS

Shell is a domestic corporation engaged, among others, in the importation of petroleum and its by-products into the country. For these importations, Shell was assessed and required to pay customs duties and internal revenue taxes.

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

[2] Dated May 3, 2006 and penned by Justice Eliezer R. De Los Santos, with Justice Jose C. Reyes and Justice Arturo G. Tayag concurring; *rollo*, pp. 38-53.

[3] Dated January 28, 2003 and June 2, 2003; *id.*, pp. 159-167 and pp. 196-201, respectively.

In 1997 and 1998, Shell settled its liabilities for customs duties and internal revenue taxes using tax credit certificates (*TCCs*) that were transferred to it for value by several Board of Investment (*BOI*)-registered companies. The transfers of the TCCs to Shell were processed by the transferors-BOI-registered companies and were eventually approved by the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (*the Center*). The Center is composed of the following government agencies: the Department of Finance (*DOF*), the Bureau of Internal Revenue (*BIR*), the Bureau of Customs (*BOC*), and the BOI. On the belief the TCCs were actually good and valid, both the BIR and the BOC accepted and allowed Shell to use them to pay and settle its tax liabilities.

In a letter dated November 3, 1999 (*Center's November 3 letter*), the Center, through the Secretary of the DOF, informed Shell that it was cancelling the TCCs transferred to and used as payment by the oil company, pursuant to its EXCOM Resolution No. 03-05-99. The Center claimed that after conducting a post-audit investigation, it discovered that the TCCs had been fraudulently secured by the original grantees who thereafter transferred them to Shell; no categorical finding was made regarding Shell's participation in the fraud. In view of the cancellation, the Center required Shell to pay the BIR and BOC the amounts corresponding to the TCCs Shell had used to settle its liabilities.

Shell objected to the cancellation of the TCCs claiming that it had been denied due process. Apparently, Shell had sent a letter to the Center on November 3, 1999 (*Shell's November 3 letter*) adducing reasons why the TCCs should not be cancelled; Shell claimed that the Center's November 3 letter cancelling the TCCs was issued without considering its letter of the same date.

The Center did not act on Shell's November 3 letter; instead, the respondent sent a letter dated November 19, 1999 (*respondent's November 19 letter*) to Shell requiring it to replace the amount equivalent to the amount of the cancelled TCCs used by Shell to satisfy its customs duties and taxes. The pertinent portion of the respondent's November 19 letter states:

In view of such cancellation, it becomes apparent that the Customs Official Receipts previously issued to [Shell] with the applications of the [TCCs] cited in said lists becomes null and void *ab initio*. In view thereof, your corporation must have to replace amount of ₱209,129,141.00 which is equivalent to the amount of the [TCCs] cancelled. The corresponding interest, surcharge and penalties thereof shall be relayed to you in due time after the recomputation.

Your immediate response to this demand letter shall be appreciated.

Shell submitted its reply letter dated December 23, 1999.[4] Shell maintained that the cancellation was improper since this was done without affording the corporation its right to due process. It further claimed that the existence of fraud in the issuance and transfer of the TCCs, or even Shell's participation in the alleged fraud, had not been sufficiently established.

Three years later, through letters dated February 15, February 20, and April 12, 2002 (*respondent's collection letters*), the respondent, through Atty. Gil Valera (*Atty. Valera*), Deputy Commissioner for Revenue Collections Monitoring Group, formally demanded from Shell payment of the amounts corresponding to the listed TCCs that the Center had previously cancelled. Except for the amount due, the respondent's collection letters were similarly worded, as follows:

In as much as the same [TCCs] were reported as having been utilized to pay your government obligations earlier, formal demand is hereby being made upon you to pay back the total amount of x x x within five (5) days from receipt thereof [*sic*]. Failure on your part to settle your obligation would constrain the Bureau of Customs to initiate legal action in the regular court.

Please consider this as our last and final demand.

As mentioned, all three letters were signed by Atty. Valera.

Shell replied to the respondent's February 15 and 20, 2002 collection letters *via* letters dated February 27 and March 4, 2002. Before it could reply to the respondent's April 12, 2002

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[4] Shell sent an earlier letter dated December 3, 1999 asking for an extension of time to file a reply to the respondent's November 19 letter.

collection letter, Shell received on April 23, 2002 the summons in one[5] of the three collection cases[6] filed by respondent against Shell before the Regional Trial Court (*RTC*) of Manila. In these collection cases, the respondent sought to recover the amounts covered by the cancelled TCCs; the complaints were all similarly worded except for the amount and TCCs involved, and were signed by Atty. Valera.

On May 23, 2002, Shell filed with the CTA a Petition for Review questioning the BOC collection efforts for lack of legal and factual basis. To quote the issues Shell submitted in its CTA petition:

1. Whether or not the TCCs subject of the instant petition for are genuine and authentic;
2. Whether or not petitioner's right to due process of law was violated by the issuance of the 1999 collection letter and/or the filing of the collection cases, both of which seek to enforce the Excom Resolution;
3. Whether or not attempts to collect unpaid duties and taxes, being based on the bare allegation that the TCCs were fraudulently issued and transferred, can be given any effect considering that fraud is never presumed but must be proven;
4. Assuming *arguendo* that fraud was present in the issuance of the original TCCs, whether or not such fraud can work to the prejudice of an innocent purchaser for value who is not a party to such fraud;
5. Whether or not the respondent and the DOF/Center are stopped from invalidating the TCCs and the transfers and utilizations thereof;
6. Whether or not the TCCs, having been utilized, are already *functus officio* and can no longer be cancelled.[7]

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[5] Docketed as Civil Case No. 02-103300; *rollo*, pp. 82-86.

[6] The two other collection cases filed with the RTC of Manila were docketed as Civil Case Nos. 02-103191 and 02-103192; summonses in these two cases were received by Shell on April 25 and 30, 2002; *id.*, pp. 88-99.

[7] *Id.*, pp. 108-109.

The respondent filed a motion to dismiss Shell's petition for review on the ground of prescription. The respondent claimed that Shell's petition was filed beyond the 30-day period provided by law for appeals of decisions of the Commissioner of Customs to the CTA. The respondent also contended that this 30-day period should be counted from the time Shell received the respondent's collection letters.

Shell countered by invoking the case of *Yabes v. Flojo*,[8] where this Court ruled, under the circumstances of that case, that a complaint for collection filed in court may be considered a final decision or assessment of the Commissioner[9] that opened the way for an appeal to the CTA. Applying that principle, Shell contends the 30-day reglementary period should be counted from the date it received the summons for one of the collection cases filed by respondent or, specifically, on April 23, 2002, not from the date that it received the respondent's collection letters. The petition for review, having been filed on May 23, 2002, was thus instituted within the period provided by law.

The CTA found the respondent's contentions unmeritorious, and thus denied his motion to dismiss in a Resolution dated January 28, 2003.[10] The tax court noted that the collection letters were issued and signed only by Atty. Valera, not by the respondent, so that Shell was justified in not heeding the demand. The CTA consequently declared that it is the filing of the collection cases in court that should instead be considered as the final decision of the respondent, and only then should the 30-day period to appeal commence. The respondent elevated the CTA decision to the CA after the CTA denied its motion for reconsideration.[11]

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[8] G.R. No. L-46954, July 20, 1982, 115 SCRA 278.

[9] Commissioner of Internal Revenue, as the assessment was under the National Internal Revenue Code, *supra* note 8, p. 286.

[10] *Rollo*, pp. 159-167.

[11] Respondent's Motion for Reconsideration was denied in the CTA Resolution dated June 2, 2003; *id.*, pp. 196-201.

The appellate court annulled and set aside the CTA rulings in its decision dated May 3, 2006.[12] It found the collection letters written by Atty. Valera "indicative of [respondent's] final rulings on the assessments concerning the spurious TCCs xxx which were then already appealable to the respondent CTA. Each letter carried a clear demand to pay within five (5) days from receipt, and each also carried a warning that '*this [is] our last and final demand.*'" On the authority of Atty. Valera to issue the collection letters, the appellate court pointed to Customs Memorandum Circular (*CMC*) No. 27-2001 that delegated the Commissioner's authority on matters relating to tax credit and transfers of tax credit to Atty. Valera, and to Customs Memorandum Order (*CMO*) No. 40-2001 that delegated the authority to sign, file, and prosecute civil complaints likewise to Atty. Valera.

Shell's attempt to have the CA decision reconsidered proved unsuccessful; hence, this petition.

THE PETITION

Shell insists, in this petition for review on *certiorari*, that its petition for review with the CTA was filed within the 30-day reglementary period that, it posits, should be counted from the date it received the summons for the collection cases filed by respondent against it before the regular court. Shell cites this Court's ruling in *Yabes v. Flojo*.[13]

On the assumption that the collection letters amounted to a decision on its protest, Shell submits that these are not "decision[s] of the *Commissioner of Customs*" appealable to the CTA under Section 7, Republic Act (*RA*) No. 1125, as amended by RA No. 9282.[14] *It maintains that it is the Commissioner's decision on the taxpayer's liability for customs duties and taxes*, not the decision of his subordinate, which is the proper subject of

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[12] *Supra* note 2.

[13] *Supra* note 8.

[14] *The Law Creating the Court of Tax Appeals, and For Other Purposes;* RA No. 1125 was amended by RA No. 9282 on March 30, 2004.

the appeal to the CTA, the delegation of authority under CMC No. 27-2001 and CMO No. 40-2001 notwithstanding. It additionally claims that Atty. Valera was prohibited from carrying out his delegated duties under the injunctive writ issued the RTC of Manila in its Order dated August 27, 2001, and the Temporary Restraining Order the CA issued on April 4, 2002.

THE COURT'S RULING

We resolve to DENY Shell's petition; the present case does not involve a tax protest case within the jurisdiction of the CTA to resolve.

The parties argue over which act serves as the decision of the respondent that, under the law, can be the subject of an appeal before the CTA, and from which act the 30-day period to appeal shall be reckoned. Shell insists it should be the filing of the collection suits as this was indicative of the finality of the respondent's action. The respondent, on the other hand, claims, it should be the earlier act of sending the collection letters where the respondent finally indicated his resolve to collect the duties due and demandable from Shell.

Section 7 of RA No. 1125, as amended, states:

> Sec. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal xxx;
>
> x x x x x x x x x
>
> 4. **Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges**, seizure, detention, or release or property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

These decisions of the respondent involving customs duties specifically refer to his decisions on *administrative tax protest cases*, as stated in Section 2402 of the Tariff and Customs Code of the Philippines (*TCCP*):

Section 2402. *Review by Court of Tax Appeals*. — **The party aggrieved by a ruling of the Commissioner in any matter brought before him upon protest** or by his action or ruling in any case of seizure **may appeal to the Court of Tax Appeals**, in the manner and within the period prescribed by law and regulations.

Unless an appeal is made to the Court of Tax Appeals in the manner and within the period prescribed by laws and regulations, the action or ruling of the Commissioner shall be final and conclusive. [Emphasis supplied.]

A tax protest case, under the TCCP, involves a protest of the liquidation of import entries. A liquidation is the final computation and ascertainment by the collector of the duties on imported merchandise, based on official reports as to the quantity, character, and value thereof, and the collector's own finding as to the applicable rate of duty; it is akin to an assessment of internal revenue taxes under the National Internal Revenue Code[15] where the tax liability of the taxpayer is definitely determined.

In the present case, the facts reveal that Shell received three sets of letters:

a. the Center's November 3 letter, signed by the Secretary of Finance, informing it of the cancellation of the TCCs;

b. the respondent's November 19 letter requiring it to replace the amount equivalent to the amount of the cancelled TCCs used by Shell; and

c. the respondent's collection letters issued through Atty. Valera, formally demanding the amount covered by the cancelled TCCs.

None of these letters, however, can be considered as a liquidation or an assessment of Shell's import tax liabilities that can be the subject of an administrative tax protest proceeding before the respondent whose decision is appealable to the CTA. *Shell's import tax liabilities had long been computed and ascertained*

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[15] NIRC, Section 228.

in the original assessments,[16] *and Shell paid these liabilities using the TCCs transferred to it as payment.* It is even an error to consider the letters as a "reassessment" because they refer to the same tax liabilities on the same importations covered by the original assessments. The letters merely ***reissued*** the original assessments that were previously settled by Shell with the use of the TCCs. However, on account of the cancellation of the TCCs, the tax liabilities of Shell under the original assessments were considered unpaid; hence, the letters and the *actions for collection*. When Shell went to the CTA, the issues it raised in its petition were all related to *the fact and efficacy of the payments made*, specifically the genuineness of the TCCs; the absence of due process in the enforcement of the decision to cancel the TCCs; the facts surrounding the fraud in originally securing the TCCs; and the application of estoppel. These are payment and collection issues, not tax protest issues within the CTA's jurisdiction to rule upon.

We note in this regard that Shell never protested the original assessments of its tax liabilities and in fact settled them using the TCCs. These original assessments, therefore, have become final, incontestable, and beyond any subsequent protest proceeding, administrative or judicial, to rule upon.

To be very precise, Shell's petition before the CTA principally questioned the validity of the cancellation of the TCCs — a decision that was made not by the respondent, but by the Center. As the CTA has no jurisdiction over decisions of the Center, Shell's remedy against the cancellation should have been a *certiorari* petition before the regular courts, not a tax protest case before the CTA. Records do not show that Shell ever availed of this remedy. Alternatively, as we held in *Shell v. Republic of the Philippines*,[17] the appropriate forum for Shell

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[16] The records did not disclose the exact dates when the liquidation of entries were made, but they most likely refer to importations made by Shell on or before 1997 and 1998, as payments using the TCCs were made in 1997 and 1998.

[17] G.R. No. 161953, March 6, 2008, 547 SCRA 701.

under the circumstances of this case should be at the collection cases before the RTC where Shell can put up the fact of its payment as a defense.

Parenthetically, our conclusions are fully in step with what we held in *Shell v. Republic*[18] that a case becomes ripe for filing with the RTC as a collection matter after the finality of the respondent's assessment. We hereby confirm that this assessment has long been final, and this *recognition* of finality removes all perceived hindrances, based on this case, to the continuation of the collection suits. In *Dayrit v. Cruz*,[19] we declared on the matter of collection that:

> [A] suit for the collection of internal revenue taxes, where the assessment has already become final and executory, the action to collect is akin to an action to enforce the judgment. No inquiry can be made therein as to the merits of the original case or the justness of the judgment relied upon.

In light of our conclusion that the present case does not involve a decision of the respondent on a matter brought to him as a tax protest, Atty. Valera's lack of authority to issue the collection letters and to institute the collection suits is irrelevant. For this same reason, the injunction against Atty. Valera cannot be invoked to enjoin the collection of unpaid taxes due from Shell.

WHEREFORE, we *DENY* Shell's petition for review on *certiorari* and *AFFIRM* the result of the Decision of the Court of Appeals dated May 3, 2006 in CA-G.R. SP No. 78564, based on the principles and conclusion laid down in this Decision. Shell's petition for review before the Court of Tax Appeals, docketed as CTA Case No. 6484, is *DISMISSED*.

SO ORDERED.

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[18] *Id*.

[19] G.R. No. L-39910, September 26, 1988, 165 SCRA 571.

Quisumbing (Chairperson), Ynares-Santiago,[*] *Chico-Nazario,*[**] and *Leonardo-de Castro,*[***] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 177549. June 18, 2009]

ANTHONY S. YU, ROSITA G. YU and JASON G. YU, *petitioners, vs.* **JOSEPH S. YUKAYGUAN, NANCY L. YUKAYGUAN, JERALD NERWIN L. YUKAYGUAN, and JILL NESLIE L. YUKAYGUAN, [on their own behalf and on behalf of] WINCHESTER INDUSTRIAL SUPPLY, INC.,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; DERIVATIVE SUIT, NATURE OF.— The general rule is that where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees. Nonetheless, an individual stockholder is permitted to institute a **derivative suit** on behalf of the corporation wherein he holds stocks in order to protect or vindicate corporate rights, whenever the officials of the corporation refuse to sue, or are the ones to be sued, or hold the control of the corporation. In such actions, the suing stockholder is regarded as a nominal party, with the corporation

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[*] Designated additional Member of the Second Division per Special Order No. 645 dated May 15, 2009.

[**] Designated additional Member of the Second Division effective June 3, 2009 per Special Order No. 658 dated June 3, 2009.

[***] Designated additional Member of the Second Division effective May 11, 2009, per Special Order No. 635 dated May 7, 2009.

as the real party in interest. A derivative action is a suit by a shareholder to enforce a corporate cause of action. The corporation is a necessary party to the suit. And the relief which is granted is a judgment against a third person in favor of the corporation. Similarly, if a corporation has a defense to an action against it and is not asserting it, a stockholder may intervene and defend on behalf of the corporation. By virtue of Republic Act No. 8799, otherwise known as the Securities Regulation Code, jurisdiction over intra-corporate disputes, including derivative suits, is now vested in the Regional Trial Courts designated by this Court pursuant to A.M. No. 00-11-03-SC promulgated on 21 November 2000.

2. ID.; ID.; CORPORATE LIQUIDATION, EXPLAINED.— **[L]iquidation** is a necessary consequence of the dissolution of a corporation. It is specifically governed by Section 122 of the Corporation Code, x x x Following the voluntary or involuntary dissolution of a corporation, liquidation is the process of settling the affairs of said corporation, which consists of adjusting the debts and claims, that is, of collecting all that is due the corporation, the settlement and adjustment of claims against it and the payment of its just debts. More particularly, it entails the following: Winding up the affairs of the corporation means the collection of all assets, the payment of all its creditors, and the distribution of the remaining assets, if any among the stockholders thereof in accordance with their contracts, or if there be no special contract, on the basis of their respective interests. The manner of liquidation or winding up may be provided for in the corporate by-laws and this would prevail unless it is inconsistent with law. It may be undertaken by the corporation itself, through its Board of Directors; or by trustees to whom all corporate assets are conveyed for liquidation; or by a receiver appointed by the SEC upon its decree dissolving the corporation.

3. ID.; ID.; A DERIVATIVE SUIT CANNOT BE CONVERTED INTO A LIQUIDATION PROCEEDING; CASE AT BAR.— [A] derivative suit is fundamentally distinct and independent from liquidation proceedings. They are neither part of each other nor the necessary consequence of the other. There is totally no justification for the Court of Appeals to convert what was supposedly a derivative suit instituted by respondents, on their own behalf and on behalf of Winchester, Inc. against

petitioners, to a proceeding for the liquidation of Winchester, Inc. While it may be true that the parties earlier reached an amicable settlement, in which they agreed to already distribute the assets of Winchester, Inc., and in effect liquidate said corporation, it must be pointed out that respondents themselves repudiated said amicable settlement before the RTC, even after the same had been partially implemented; and moved that their case be set for pre-trial. Attempts to again amicably settle the dispute between the parties before the Court of Appeals were unsuccessful. Moreover, the decree of the Court of Appeals to remand the case to the RTC for the "final settlement of corporate concerns" was solely grounded on respondents' allegation in its Position Paper that the parties had already filed before the SEC, and the SEC approved, the petition to dissolve Winchester, Inc. The Court notes, however, that there is absolute lack of evidence on record to prove said allegation. Respondents failed to submit copies of such petition for dissolution of Winchester, Inc. and the SEC Certification approving the same. It is a basic rule in evidence that each party must prove his affirmative allegation. Since it was respondents who alleged the voluntary dissolution of Winchester, Inc., respondents must, therefore, prove it. This respondents failed to do. Even assuming *arguendo* that the parties did submit a petition for the dissolution of Winchester, Inc. and the same was approved by the SEC, the Court of Appeals was still without jurisdiction to order the final settlement by the RTC of the remaining corporate concerns. It must be remembered that the Complaint filed by respondents before the RTC essentially prayed for the accounting and reimbursement by petitioners of the corporate funds and assets which they purportedly misappropriated for their personal use; surrender by the petitioners of the corporate books for the inspection of respondents; and payment by petitioners to respondents of damages. There was nothing in respondents' Complaint which sought the dissolution and liquidation of Winchester, Inc. Hence, the supposed dissolution of Winchester, Inc. could not have resulted in the conversion of respondents' derivative suit to a proceeding for the liquidation of said corporation, but only in the dismissal of the derivative suit based on either compromise agreement or mootness of the issues.

4. ID.; ID.; A STOCKHOLDER'S RIGHT TO INSTITUTE A DERIVATIVE SUIT, EXPLAINED.— The Court has recognized that a stockholder's right to institute a derivative suit is not based on any express provision of the Corporation Code, or even the Securities Regulation Code, but is impliedly recognized when the said laws make corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties. Hence, a stockholder may sue for mismanagement, waste or dissipation of corporate assets because of a special injury to him for **which he is otherwise without redress**. In effect, the suit is an action for specific performance of an obligation owed by the corporation to the stockholders to assist its rights of action when the corporation has been put in default by the wrongful refusal of the directors or management to make suitable measures for its protection. The basis of a stockholder's suit is always one in equity. However, it cannot prosper without first complying with the legal requisites for its institution.

5. ID.; ID.; INTERIM RULES OF PROCEDURE GOVERNING INTRA-CORPORATE CONTROVERSIES; NON-COMPLIANCE WITH THE REQUIREMENTS BEFORE FILING A DERIVATIVE SUIT.— The wordings of Section 1, Rule 8 of the Interim Rules of Procedure Governing Intra-Corporate Controversies are simple and do not leave room for statutory construction. The second paragraph thereof requires that the stockholder filing a derivative suit should have exerted **all reasonable efforts to exhaust all remedies available** under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires; and to **allege such fact with particularity** in the complaint. The obvious intent behind the rule is to make the derivative suit the final recourse of the stockholder, after all other remedies to obtain the relief sought had failed. The allegation of respondent Joseph in his Affidavit of his repeated attempts to talk to petitioner Anthony regarding their dispute hardly constitutes "all reasonable efforts to exhaust all remedies available." Respondents did not refer to or mention at all any other remedy under the articles of incorporation or by-laws of Winchester, Inc., available for dispute resolution among stockholders, which respondents unsuccessfully availed themselves of. And the Court is not prepared to conclude that

the articles of incorporation and by-laws of Winchester, Inc. absolutely failed to provide for such remedies. Neither can this Court accept the reasons proffered by respondents to excuse themselves from complying with the second requirement under Section 1, Rule 8 of the Interim Rules of Procedure Governing Intra-Corporate Controversies. They are flimsy and insufficient, compared to the seriousness of respondents' accusations of fraud, misappropriation, and falsification of corporate records against the petitioners. The fact that Winchester, Inc. is a family corporation should not in any way exempt respondents from complying with the clear requirements and formalities of the rules for filing a derivative suit. There is nothing in the pertinent laws or rules supporting the distinction between, and the difference in the requirements for, family corporations *vis-à-vis* other types of corporations, in the institution by a stockholder of a derivative suit. The Court further notes that, with respect to the third and fourth requirements of Section 1, Rule 8 of the Interim Rules of Procedure Governing Intra-Corporate Controversies, the respondents' Complaint failed to allege, explicitly or otherwise, the fact that there were no appraisal rights available for the acts of petitioners complained of, as well as a categorical statement that the suit was not a nuisance or a harassment suit.

6. ID.; ID.; ID.; ATTACHMENT OF AFFIDAVITS AND OTHER DOCUMENTARY EVIDENCE TO THE APPROPRIATE PLEADINGS OR TO THE PRE-TRIAL BRIEFS, REQUIRED; REASON.— According to the afore-quoted provision, the parties should attach the affidavits of witnesses and other documentary evidence to the appropriate pleading, which generally should mean the complaint for the plaintiff and the answer for the respondent. Affidavits and documentary evidence not so submitted must already be attached to the respective pre-trial briefs of the parties. That the parties should have already identified and submitted to the trial court the affidavits of their witnesses and documentary evidence by the time of pre-trial is strengthened by the fact that Section 1, Rule 4 of the Interim Rules of Procedure Governing Intra-Corporate Controversies require that the following matters should already be set forth in the parties' pre-trial briefs x x x. Also, according to Section 2, Rule 4 of the Interim Rules of Procedure Governing Intra-Corporate Controversies, it is the

duty of the court to ensure during the pre-trial conference that the parties consider in detail, among other things, objections to the admissibility of testimonial, documentary, and other evidence, as well as objections to the form or substance of any affidavit, or part thereof. Obviously, affidavits of witnesses and other documentary evidence are required to be attached to a party's pre-trial brief, at the very last instance, so that the opposite party is given the opportunity to object to the form and substance, or the admissibility thereof. This is, of course, to prevent unfair surprises and/or to avoid the granting of any undue advantage to the other party to the case.

7. ID.; ID.; ID.; SUPPLEMENTAL AFFIDAVITS AND ADDITIONAL DOCUMENTARY EVIDENCE APPENDED ONLY TO THE MEMORANDUM ARE INADMISSIBLE.— [T]he afore-quoted provision still requires, before the court makes a determination that it can render judgment before pre-trial, that the parties had submitted their pre-trial briefs and the court took into consideration the pleadings, affidavits and other evidence submitted by the parties. Hence, cases wherein the court can render judgment prior to pre-trial, do not depart from or constitute an exception to the requisite that affidavits of witnesses and documentary evidence should be submitted, at the latest, with the parties' pre-trial briefs. Taking further into account that under Section 4, Rule 4 of the Interim Rules of Procedure Governing Intra-Corporate Controversies parties are required to file their memoranda simultaneously, the same would mean that a party would no longer have any opportunity to dispute or rebut any new affidavit or evidence attached by the other party to its memorandum. To violate the above-quoted provision would, thus, irrefragably run afoul the former party's constitutional right to due process. In the instant case, therefore, respondent Joseph's Supplemental Affidavit and the additional documentary evidence, appended by respondents only to their Memorandum submitted to the RTC, were correctly adjudged as inadmissible by the Court of Appeals in its 15 February 2006 Decision for having been belatedly submitted. Respondents neither alleged nor proved that the documents in question fall under any of the three exceptions to the requirement that affidavits and documentary evidence should be attached to the appropriate pleading or pre-trial brief of the party, which is particularly recognized under Section 8, Rule 2 of the Interim Rules of Procedure Governing Intra-Corporate Controversies.

APPEARANCES OF COUNSEL

Mario Y. Cavada for petitioners.
Zosa & Quijano Law Office for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, which seeks to reverse and set aside the Resolutions dated 18 July 2006[2] and 19 April 2007[3] of the Court of Appeals in CA-G.R. SP No. 00185. Upon herein respondents' motion, the Court of Appeals rendered the assailed Resolution dated 18 July 2006, reconsidering its Decision[4] dated 15 February 2006; and remanding the case to the Regional Trial Court (RTC) of Cebu City, Branch 11, for necessary proceedings, in effect, reversing the Decision[5] dated 10 November 2004 of the RTC which dismissed respondents' Complaint in SRC Case No. 022-CEB. Herein petitioners' Motion for Reconsideration of the Resolution dated 18 July 2006 was denied by the appellate court in the other assailed Resolution dated 19 April 2007.

Herein petitioners are members of the Yu Family, particularly, the father, Anthony S. Yu (Anthony); the wife, Rosita G. Yu (Rosita); and their son, Jason G. Yu (Jason).

Herein respondents composed the Yukayguan Family, namely, the father, Joseph S. Yukayguan (Joseph); the wife, Nancy L.

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[1] *Rollo*, pp. 2-18.

[2] Penned by Associate Justice Vicente L. Yap with Associate Justices Arsenio J. Magpale and Apolinario D. Bruselas, Jr., concurring; *rollo*, pp. 20-23.

[3] Penned by Associate Justice Arsenio J. Magpale with Associate Justices Agustin S. Dizon and Francisco P. Acosta, concurring; *rollo*, pp. 25-26.

[4] *Rollo*, pp. 32-43.

[5] Penned by Judge Silvestre A. Maamo, Jr.; *rollo*, pp. 27-30.

Yukayguan (Nancy); and their children Jerald Nerwin L. Yukayguan (Jerald) and Jill Neslie Yukayguan (Jill).

Petitioner Anthony is the older half-brother of respondent Joseph.

Petitioners and the respondents were all stockholders of Winchester Industrial Supply, Inc. (Winchester, Inc.), a domestic corporation engaged in the operation of a general hardware and industrial supply and equipment business.

On 15 October 2002, respondents filed against petitioners a verified Complaint for Accounting, Inspection of Corporate Books and Damages through Embezzlement and Falsification of Corporate Records and Accounts[6] before the RTC of Cebu. The said Complaint was filed by respondents, in their own behalf and as a derivative suit on behalf of Winchester, Inc., and was docketed as SRC Case No. 022-CEB. The factual background of the Complaint was stated in the attached Affidavit executed by respondent Joseph.

According to respondents,[7] Winchester, Inc. was established and incorporated on 12 September 1977, with petitioner Anthony as one of the incorporators, holding 1,000 shares of stock worth ₱100,000.00.[8] Petitioner Anthony paid for the said shares of stock with respondent Joseph's money, thus, making the former

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[6] CA *rollo*, pp. 39-45.

[7] *Id.* at 46-48.

[8] The incorporators and their respective numbers of shares were as follows:

Name	No. of shares	Amount
Eugene Yutankin	3,000	₱ 300,000.00
Hao Bun Yam	3,000	₱ 300,000.00
Co To	2,000	₱ 200,000.00
Vicenta Lo Chiong	1,000	₱ 100,000.00
Anthony S. Yu	1,000	₱ 100,000.00
	10,000	₱1,000,000.00 (Records, p. 14.)

a mere trustee of the shares for the latter. On 14 November 1984, petitioner Anthony ceded 800 of his 1,000 shares of stock in Winchester, Inc. to respondent Joseph, as well as Yu Kay Guan,[9] Siao So Lan, and John S. Yu.[10] Petitioner Anthony remained as trustee for respondent Joseph of the 200 shares of stock in Winchester, Inc., still in petitioner Anthony's name.

Respondents then alleged that on 30 June 1985, Winchester, Inc. bought from its incorporators, excluding petitioner Anthony, their accumulated 8,500 shares in the corporation.[11] Subsequently, on 7 November 1995, Winchester, Inc. sold the same 8,500 shares to other persons, who included respondents Nancy, Jerald, and Jill; and petitioners Rosita and Jason.[12]

Respondents further averred that although respondent Joseph appeared as the Secretary and Treasurer in the corporate records of Winchester, Inc., petitioners actually controlled and ran the said corporation as if it were their own family business. Petitioner Rosita handled the money market placements of the corporation to the exclusion of respondent Joseph, the designated Treasurer

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[9] Father of petitioner Anthony and respondent Joseph.

[10] CA *rollo*, p. 78.

[11] In accordance with the recital of facts in the Complaint, if the 1,000 shares of Anthony Yu were to be subtracted from the total number of shares issued by Winchester, Inc., the other incorporators would have a total of 9,000 shares. However, according to the Deed of Sale dated 30 June 1985 (Records, p. 16), only 8,500 shares were sold to Winchester, Inc. by the following shareholders:

Name	No. of shares
Irinea Yutankin	3,000
Hao Bun Yam	3,000
Yu Kim Sing	1,500
Vicenta Lo Chiong	1,000
	8,500

[12] CA *rollo*, pp. 56-57.

of Winchester, Inc. Petitioners were also misappropriating the funds and properties of Winchester, Inc. by understating the sales, charging their personal and family expenses to the said corporation, and withdrawing stocks for their personal use without paying for the same. Respondents attached to the Complaint various receipts[13] to prove the personal and family expenses charged by petitioners to Winchester, Inc.

Respondents, therefore, prayed that respondent Joseph be declared the owner of the 200 shares of stock in petitioner Anthony's name. Respondents also prayed that petitioners be ordered to: (1) deposit the corporate books and records of Winchester, Inc. with the Branch Clerk of Court of the RTC for respondents' inspection; (2) render an accounting of all the funds of Winchester, Inc. which petitioners misappropriated; (3) reimburse the personal and family expenses which petitioners charged to Winchester, Inc., as well as the properties of the corporation which petitioners withheld without payment; and (4) pay respondents' attorney's fees and litigation expenses. In the meantime, respondents sought the appointment of a Management Committee and the freezing of all corporate funds by the trial court.

On 13 November 2002, petitioners filed an Answer with Compulsory Counterclaim,[14] attached to which was petitioner Anthony's Affidavit.[15] Petitioners vehemently denied the allegation that petitioner Anthony was a mere trustee for respondent Joseph of the 1,000 shares of stock in Winchester, Inc. in petitioner Anthony's name. For the incorporation of Winchester, Inc., petitioner Anthony contributed ₱25,000.00 paid-up capital, representing 25% of the total par value of the 1,000 shares he subscribed to, the said amount being paid out of petitioner Anthony's personal savings and petitioners Anthony and Rosita's conjugal funds. Winchester, Inc. was being co-managed by petitioners and respondents, and the attached receipts, allegedly

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[13] Annexes E to Q; CA *rollo*, pp. 60-77.

[14] CA *rollo*, pp. 79-86.

[15] *Id.* at 87-91.

evidencing petitioners' use of corporate funds for personal and family expenses, were in fact signed and approved by respondent Joseph.

By way of special and affirmative defenses, petitioners contended in their Answer with Compulsory Counterclaim that respondents had no cause of action against them. Respondents' Complaint was purely intended for harassment. It should be dismissed under Section 1(j), Rule 16[16] of the Rules of Court for failure to comply with conditions precedent before its filing. *First*, there was no allegation in respondents' Complaint that earnest efforts were exerted to settle the dispute between the parties. *Second*, since respondents' Complaint purportedly constituted a derivative suit, it noticeably failed to allege that respondents exerted effort to exhaust all available remedies in the Articles of Incorporation and By-Laws of Winchester, Inc., as well as in the Corporation Code. And *third*, given that respondents' Complaint was also for inspection of corporate books, it lacked the allegation that respondents made a previous demand upon petitioners to inspect the corporate books but petitioners refused. Prayed for by petitioners, in addition to the dismissal of respondents' Complaint, was payment of moral and exemplary damages, attorney's fees, litigation expenses, and cost of suit.

On 30 October 2002, the hearing on the application for the appointment of a Management Committee was commenced. Respondent Joseph submitted therein, as his direct testimony, the same Affidavit that he executed, which was attached to the respondents' Complaint. On 4 November 2002, respondent Joseph was cross-examined by the counsel for petitioners. Thereafter, the continuation of the hearing was set for 29 November

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[16] Rule 16, Section 1(j) of the Rules of Court provides:

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 x x x x x x

(j) That a condition precedent for filing the claim has not been complied with.

2002, in order for petitioners to adduce evidence in support of their opposition to the application for the appointment of a Management Committee.[17]

During the hearing on 29 November 2002, the parties manifested before the RTC that there was an ongoing mediation between them, and so the hearing on the appointment of a Management Committee was reset to another date.

In amicable settlement of their dispute, the petitioners and respondents agreed to a division of the stocks in trade,[18] the real properties, and the other assets of Winchester, Inc. In partial implementation of the afore-mentioned amicable settlement, the stocks in trade and real properties in the name of Winchester, Inc. were equally distributed among petitioners and respondents. As a result, the stockholders and members of the Board of Directors of Winchester, Inc. passed, on 4 January 2003, a unanimous Resolution[19] dissolving the corporation as of said date.

On 22 February 2004, respondents filed their pre-trial brief.[20]

On 25 June 2004, petitioners filed a Manifestation[21] informing the RTC of the existence of their amicable settlement with respondents. Respondents, however, made their own manifestation before the RTC that they were repudiating said settlement, in view of the failure of the parties thereto to divide the remaining assets of Winchester, Inc. Consequently, respondents moved to have SRC Case No. 022-CEB set for pre-trial.

On 23 August 2004, petitioners filed their pre-trial brief.[22]

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[17] Records, p. 52.

[18] The Court understood this term to refer to the inventories of the general hardware and industrial supply and equipment business.

[19] CA *rollo*, p. 214.

[20] Records, pp. 225-231.

[21] *Rollo*, pp. 55-56.

[22] Records, pp. 234-240.

On 26 August 2004, instead of holding a formal pre-trial conference and resuming the hearing on the application for the appointment of a Management Committee, petitioners and respondents agreed that the RTC may already render a judgment based on the pleadings. In accordance with the agreement of the parties, the RTC issued, on even date, an Order[23] which stated:

ORDER

During the pre-trial conference held on August 26, 2004, counsels of the parties manifested, agreed and suggested that a judgment may be rendered by the Court in this case based on the pleadings, affidavits, and other evidences on record, or to be submitted by them, pursuant to the provision of Rule 4, Section 4 of the Rule on Intra-Corporate Controversies. The suggestion of counsels was approved by the Court.

Accordingly, the Court hereby orders the counsels of the parties to file simultaneously their respective memoranda within a non-extendible period of twenty (20) days from notice hereof. Thereafter, the instant case will be deemed submitted for resolution.

x x x x x x x x x

Cebu City, August 26, 2004.

(signed)
SILVESTRE A. MAAMO, JR.
Acting Presiding Judge

Petitioners and respondents duly filed their respective Memoranda,[24] discussing the arguments already set forth in the pleadings they had previously submitted to the RTC. Respondents, though, attached to their Memorandum a Supplemental Affidavit[25] of respondent Joseph, containing assertions that refuted the allegations in petitioner Anthony's Affidavit, which was earlier submitted with petitioners' Answer with Compulsory Counterclaim. Respondents also appended to their Memorandum

[23] *Rollo*, p. 62.

[24] CA *rollo*, pp. 177-202, 94-106.

[25] *Id.* at 107-110.

additional documentary evidence,[26] consisting of original and duplicate cash invoices and cash disbursement receipts issued by Winchester, Inc., to further substantiate their claim that petitioners were understating sales and charging their personal expenses to the corporate funds.

The RTC subsequently promulgated its Decision on 10 November 2004 dismissing SRC Case No. 022-CEB. The dispositive portion of said Decision reads:

> WHEREFORE, in view of the foregoing premises and for lack of merit, this Court hereby renders judgment in this case **DISMISSING** the complaint filed by the [herein respondents].
>
> The Court also hereby dismisses the [herein petitioners'] counterclaim because it has not been indubitably shown that the filing by the [respondents] of the latter's complaint was done in bad faith and with malice.[27]

The RTC declared that respondents failed to show that they had complied with the essential requisites for filing a derivative suit as set forth in Rule 8 of the Interim Rules of Procedure Governing Intra-Corporate Controversies:

> (1) He was a stockholder or member at the time the acts or transactions subject of the action occurred and at the time the action was filed;
>
> (2) He exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires;
>
> (3) No appraisal rights are available for the act or acts complained of; and
>
> (4) The suit is not a nuisance or harassment suit.

As to respondents' prayer for the inspection of corporate books and records, the RTC adjudged that they had likewise

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[26] *Id.* at 111-128.

[27] *Rollo,* p. 30.

failed to comply with the requisites entitling them to the same. Section 2, Rule 7 of the Interim Rules of Procedure Governing Intra-Corporate Controversies requires that the complaint for inspection of corporate books or records must state that:

(1) The case is for the enforcement of plaintiff's right of inspection of corporate orders or records and/or to be furnished with financial statements under Sections 74 and 75 of the Corporation Code of the Philippines;

(2) A demand for inspection and copying of books and records and/or to be furnished with financial statements made by the plaintiff upon defendant;

(3) The refusal of defendant to grant the demands of the plaintiff and the reasons given for such refusals, if any; and

(4) The reasons why the refusal of defendant to grant the demands of the plaintiff is unjustified and illegal, stating the law and jurisprudence in support thereof.

The RTC further noted that respondent Joseph was the corporate secretary of Winchester, Inc. and, as such, he was supposed to be the custodian of the corporate books and records; therefore, a court order for respondents' inspection of the same was no longer necessary. The RTC similarly denied respondents' demand for accounting as it was clear that Winchester, Inc. had been engaging the services of an audit firm. Respondent Joseph himself described the audit firm as competent and independent, and believed that the audited financial statements the said audit firm prepared were true, faithful, and correct.

Finding the claims of the parties for damages against each other to be unsubstantiated, the RTC thereby dismissed the same.

Respondents challenged the foregoing RTC Decision before the Court of Appeals *via* a Petition for Review under Rule 43 of the Rules of Court, docketed as CA-G.R. SP No. 00185.

On 15 February 2006, the Court of Appeals rendered its Decision, affirming the 10 December 2004 Decision of the RTC. Said the appellate court:

After a careful and judicious scrutiny of the extant records of the case, together with the applicable laws and jurisprudence, WE see no reason or justification for granting the present appeal.

x x x x x x x x x

x x x [T]his Court sees that the instant petition would still fail taking into consideration all the pleadings and evidence of the parties except the supplemental affidavit of [herein respondent] Joseph and its corresponding annexes appended in [respondents'] memorandum before the Court *a quo*. The Court *a quo* have (sic) outrightly dismissed the complaint for its failure to comply with the mandatory provisions of the Interim Rules of Procedure for Intra-Corporate Controversies particularly Rule 2, Section 4(3), Rule 8, Section [1(2)] and Rule 7, Section 2 thereof, which reads as follows:

RULE 2
COMMENCEMENT OF ACTION AND PLEADINGS

Sec. 4. *Complaint.* — The complaint shall state or contain:

x x x x x x x x x

(3) the law, rule, or regulation relied upon, violated, or sought to be enforced;

x x x x x x x x x

RULE 8
DERIVATIVE SUITS

Sec. 1. *Derivative action.* — x x x

x x x x x x x x x

(2) He exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires.

x x x x x x x x x

RULE 7
INSPECTION OF CORPORATE BOOKS AND RECORDS

Sec. 2. *Complaint* — In addition to the requirements in Section 4, Rule 2 of these Rules, the complaint must state the following:

(1) The case is set (sic) for the enforcement of plaintiff's right of inspection of corporate orders or records and/or to be furnished with financial statements under Sections 74 and 75 of the Corporation Code of the Philippines;

(2) A demand for inspection and copying of books [and/or] to be furnished with financial statements made by the plaintiffs upon defendant;

(3) The refusal of the defendant to grant the demands of the plaintiff and the reasons given for such refusal, if any; and

(4) The reasons why the refusal of defendant to grant the demands of the plaintiff is unjustified and illegal, stating the law and jurisprudence in support thereof.

x x x x x x x x x

A perusal of the extant record shows that [herein respondents] have not complied with the above quoted provisions. [Respondents] should be mindful that in filing their complaint which, as admitted by them, is a derivative suit, should have first exhausted all available remedies under its (sic) Articles of Incorporation, or its by-laws, or any laws or rules governing the corporation. **The contention of [respondent Joseph] that he had indeed made several talks to (sic) his brother [herein petitioner Anthony] to settle their differences is not tantamount to exhaustion of remedies. What the law requires is to bring the grievance to the Board of Directors or Stockholders for the latter to take the opportunity to settle whatever problem in its regular meeting or special meeting called for that purpose which [respondents] failed to do.** x x x The requirements laid down by the Interim Rules of Procedure for Intra-Corporate Controversies are mandatory which cannot be dispensed with by any stockholder of a corporation before filing a derivative suit.[28] (Emphasis ours.)

The Court of Appeals likewise sustained the refusal by the RTC to consider respondent Joseph's Supplemental Affidavit and other additional evidence, which respondents belatedly submitted with their Memorandum to the said trial court. The appellate court ratiocinated that:

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

With regard to the claim of [herein respondents] that the supplemental affidavit of [respondent] Joseph and its annexes appended to their memorandum should have been taken into consideration by the Court *a quo* to support the reliefs prayed [for] in their complaint. (sic) This Court rules that **said supplemental affidavit and its annexes is** (sic) **inadmissible**.

A second hard look of (sic) the extant records show that during the pre-trial conference conducted on August 26, 2004, the parties through their respective counsels had come up with an agreement that the lower court would render judgment based on the pleadings and evidence submitted. This agreement is in accordance with Rule 4, Sec. 4 of the Interim Rules of Procedure for Intra-Corporate Controversies which explicitly states:

> SECTION. 4. Judgment before pre-trial. — If, after submission of the pre-trial briefs, the court determines that, **upon consideration of the pleadings, the affidavits and other evidence submitted by the parties**, a judgment may be rendered, the court may order the parties to file simultaneously their respective memoranda within a non-extendible period of twenty (20) days from receipt of the order. Thereafter, the court shall render judgment, either full or otherwise, not later than ninety (90) days from the expiration of the period to file the memoranda.
>
> x x x x x x x x x

Clearly, the supplemental affidavit and its appended documents which were submitted only upon the filing of the memorandum for the [respondents] were not submitted in the pre-trial briefs for the stipulation of the parties during the pre-trial, hence, it cannot be accepted pursuant to Rule 2, Sec. 8 of the same rules which reads as follows:

> SEC. 8. Affidavits, documentary and other evidence. — Affidavits shall be based on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify on the matters stated therein. The affidavits shall be in question and answer form, and shall comply with the rules on admissibility of evidence.
>
> Affidavits of witnesses as well as documentary and other evidence shall be attached to the appropriate pleading; Provided,

> however, that affidavits, documentary and other evidence not so submitted may be attached to the pre-trial brief required under these Rules. **Affidavits and other evidence not so submitted shall not be admitted in evidence**, except in the following cases:
>
> (1) Testimony of unwilling, hostile, or adverse party witnesses. A witness is presumed *prima facie* hostile if he fails or refuses to execute an affidavit after a written request therefor;
>
> (2) If the failure to submit the evidence is for meritorious and compelling reasons; and
>
> (3) Newly discovered evidence.
>
> In case of (2) and (3) above, the affidavit and evidence must be submitted not later than five (5) days prior to its introduction in evidence.

There is no showing in the case at bench that the supplemental affidavit and its annexes falls (sic) within one of the exceptions of the above quoted proviso, hence, inadmissible.

It must be noted that in the case at bench, like any other civil cases, "the party making an allegation in a civil case has the burden of proving it by preponderance of evidence." Differently stated, upon the plaintiff in [a] civil case, the burden of proof never parts. That is, appellants must adduce evidence that has greater weight or is more convincing that (sic) which is offered to oppose it. In the case at bar, no one should be blamed for the dismissal of the complaint but the [respondents] themselves for their lackadaisical attitude in setting forth and appending their defences belatedly. To admit them would be a denial of due process for the opposite party which this Court cannot allow.[29]

Ultimately, the Court of Appeals decreed:

WHEREFORE, judgment is hereby rendered **DISMISSING** the instant petition and the assailed Decision of the Regional Trial Court (RTC), 7th Judicial Region, Branch II, Cebu City, dated November 10, 2004, in SRC Case No. 022-CEB is **AFFIRMED *in toto***. Cost against the [herein respondents].[30]

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

[30] *Id.* at 43.

Unperturbed, respondents filed before the Court of Appeals, on 23 February 2006, a Motion for Reconsideration and Motion to Set for Oral Arguments the Motion for Reconsideration,[31] invoking the following grounds:

(1) The [herein respondents] have sufficiently exhausted all remedies before filing the present action; and

(2) [The] Honorable Court erred in holding that the supplemental affidavit and its annexes is (sic) inadmissible because the rules and the lower court expressly allowed the submission of the same in its order dated August 26, 2004 x x x.[32]

In a Resolution[33] dated 8 March 2006, the Court of Appeals granted respondents' Motion to Set for Oral Arguments the Motion for Reconsideration.

On 4 April 2006, the Court of Appeals issued a Resolution[34] setting forth the events that transpired during the oral arguments, which took place on 30 March 2006. Counsels for the parties manifested before the appellate court that they were submitting respondents' Motion for Reconsideration for resolution. Justice Magpale, however, still called on the parties to talk about the possible settlement of the case considering their familial relationship. Independent of the resolution of respondents' Motion for Reconsideration, the parties were agreeable to pursue a settlement for the dissolution of the corporation, which they had actually already started.

In a Resolution[35] dated 11 April 2006, the Court of Appeals ordered the parties to submit, within 10 days from notice, their intended amicable settlement, since the same would undeniably affect the resolution of respondents' pending Motion for Reconsideration. If the said period should lapse without the

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[31] *Id.* at 57-61.

[32] *Id.* at 57.

[33] CA *rollo*, pp. 434-435.

[34] *Rollo*, pp. 65-66.

[35] *Id.* at 67-68.

parties submitting an amicable settlement, then they were directed by the appellate court to file within 10 days thereafter their position papers instead.

On 5 May 2006, respondents submitted to the Court of Appeals their Position Paper,[36] stating that the parties did not reach an amicable settlement. Respondents informed the appellate court that prior to the filing with the Securities and Exchange Commission (SEC) of a petition for dissolution of Winchester, Inc., the parties already divided the stocks in trade and the real assets of the corporation among themselves. Respondents posited, though, that the afore-mentioned distribution of the assets of Winchester, Inc. among the parties was null and void, as it violated the last paragraph of Section 122 of the Corporation Code, which provides that, "[e]xcept by a decrease of capital stock and as otherwise allowed by the Corporation Code, no corporation shall distribute any of its assets or property except upon lawful dissolution and after payment of all its debts and liabilities." At the same time, however, respondents brought to the attention of the Court of Appeals that the parties did eventually file with the SEC a petition for dissolution of Winchester, Inc., which the SEC approved.[37]

Respondents no longer discussed in their Position Paper the grounds they previously invoked in their Motion for Reconsideration of the Court of Appeals Decision dated 15 February 2006, affirming *in toto* the RTC Decision dated 10 November 2004. They instead argued that the RTC Decision in question was null and void as it did not clearly state the facts and the law on which it was based. Respondents sought the remand of the case to the RTC for further proceedings on their derivative suit and completion of the dissolution of Winchester, Inc., including the legalization of the prior partial distribution among the parties of the assets of said corporation.

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[36] CA *rollo*, pp. 486-494.

[37] The certificate of dissolution of respondent Winchester, Inc. was not, however, made part of the records of the case before the Court of Appeals or this Court.

Petitioners filed their Position Paper[38] on 23 May 2006, wherein they accused respondents of attempting to incorporate extraneous matters into the latter's Motion for Reconsideration. Petitioners pointed out that the issue before the Court of Appeals was not the dissolution and division of assets of Winchester, Inc., thus, a remand of the case to the RTC was not necessary.

On 18 July 2006, the Court of Appeals rendered the assailed Resolution, granting respondents' Motion for Reconsideration. The Court of Appeals reasoned in this wise:

> After a second look and appreciation of the facts of the case, *vis-à-vis* the issues raised by the [herein respondents'] motion for reconsideration and in view of the formal dissolution of the corporation which leaves unresolved up to the present the settlement of the properties and assets which are now in danger of dissipation due to the unending litigation, this Court finds the need to remand the instant case to the lower court (commercial court) as the proper forum for the adjudication, disposition, conveyance and distribution of said properties and assets between and amongst its stockholders as final settlement pursuant to Sec. 122 of the Corporation Code after payment of all its debts and liabilities as provided for under the same proviso. This is in accord with the pronouncement of the Supreme Court in the case of ***Clemente, et. al vs. Court of Appeals, et al.*** where the high court ruled and which WE quote, *viz*:
>
> > "the corporation continues to be a body corporate for three (3) years after its dissolution for purposes of prosecuting and defending suits by and against it and for enabling it to settle and close its affairs, culminating in the disposition and distribution of its remaining assets. It may, during the three-year term, appoint a trustee or a receiver who may act beyond that period. The termination of the life of a juridical entity does not by itself cause the extinction or diminution of the rights and liabilities of such entity x x x nor those of its owners and creditors. If the three-year extended life has expired without a trustee or receiver having been expressly designated by the corporation within that period, the board of directors (or trustees) x x x may be permitted to so continue as "trustees" by legal implication to complete the corporate liquidation. Still

[38] CA *rollo*, pp. 497-504.

> in the absence of a board of directors or trustees, those having any pecuniary interest in the assets, including not only the shareholders but likewise the creditors of the corporation, acting for and in its behalf, **might make proper representation with the Securities and Exchange Commission, which has primary and sufficiently broad jurisdiction in matters of this nature, for working out a final settlement of the corporate concerns**."

In the absence of a trustee or board of director in the case at bar for purposes above mentioned, the lower court under Republic Act No. [8799] (otherwise known as the Securities and Exchange Commission) as implemented by A.M. No. 00-8-10-SC (Transfer of Cases from the Securities and Exchange Commission to the Regional Trial Courts) which took effect on October 1, 2001, is the proper forum for working out the final settlement of the corporate concern.[39]

Hence, the Court of Appeals ruled:

WHEREFORE, premises considered, the motion for reconsideration is **GRANTED**. The order dated February 15, 2006 is hereby **SET ASIDE** and the instant case is **REMANDED** to the lower court to take the necessary proceedings in resolving with deliberate dispatch any and all corporate concerns towards final settlement.[40]

Petitioners filed a Motion for Reconsideration[41] of the foregoing Resolution, but it was denied by the Court of Appeals in its other assailed Resolution dated 19 April 2007.

In the Petition at bar, petitioners raise the following issues:

I.

WHETHER OR NOT THE ASSAILED RESOLUTIONS[,] WHICH VIOLATED THE CONSTITUTION OF THE PHILIPPINES, JURISPRUDENCE AND THE LAW[,] ARE NULL AND VOID[.]

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[39] *Rollo,* pp. 21-22.

[40] *Id.* at 22.

[41] CA *rollo,* pp. 512-519.

II.

WHETHER OR NOT THE ASSAILED RESOLUTIONS WAS (sic) ISSUED WITHOUT JURISDICTION[.]

III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN REMANDING THIS CASE TO THE LOWER COURT FOR THE REASON CITED IN THE ASSAILED RESOLUTIONS, AND WITHOUT RESOLVING THE GROUNDS FOR THE [RESPONDENTS'] MOTION FOR RECONSIDERATION. (sic) INASMUCH AS [THE] REASON CITED WAS A NON-ISSUE IN THE CASE.

IV.

WHETHER OR NOT REMANDING THIS CASE TO THE REGIONAL TRIAL COURT VIOLATES THE SUMMARY PROCEDURE FOR INTRA-CORPORATE CASES.[42]

The crux of petitioners' contention is that the Court of Appeals committed grievous error in reconsidering its Decision dated 15 February 2006 on the basis of extraneous matters, which had not been previously raised in respondents' Complaint before the RTC, or in their Petition for Review and Motion for Reconsideration before the appellate court; *i.e.*, the adjudication, disposition, conveyance, and distribution of the properties and assets of Winchester, Inc. among its stockholders, allegedly pursuant to the amicable settlement of the parties. The fact that the parties were able to agree before the Court of Appeals to submit for resolution respondents' Motion for Reconsideration of the 15 February 2006 Decision of the same court, independently of any intended settlement between the parties as regards the dissolution of the corporation and distribution of its assets, only proves the distinction and independence of these matters from one another. Petitioners also contend that the assailed Resolution dated 18 July 2006 of the Court of Appeals, granting respondents' Motion for Reconsideration, failed to clearly and distinctly state the facts and the law on which it was based. Remanding the case to the RTC, petitioners maintain, will violate the very essence

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[42] *Rollo,* pp. 71-72.

of the summary nature of the Interim Rules of Procedure Governing Intra-Corporate Controversies, as this will just entail delay, protract litigation, and revert the case to square one.

The Court finds the instant Petition meritorious.

To recapitulate, the case at bar was initiated before the RTC by respondents as a **derivative suit**, on their own behalf and on behalf of Winchester, Inc., primarily in order to compel petitioners **to account for and reimburse to** the said corporation the corporate assets and funds which the latter allegedly misappropriated for their personal benefit. During the pendency of the proceedings before the court *a quo*, the parties were able to reach an **amicable settlement** wherein they agreed to **divide the assets** of Winchester, Inc. among themselves. This amicable settlement was already partially implemented by the parties, when respondents **repudiated** the same, for which reason the RTC proceeded with the case on its merits. On 10 November 2004, the RTC promulgated its Decision **dismissing** respondents' Complaint for failure to comply with essential pre-requisites before they could avail themselves of the remedies under the Interim Rules of Procedure Governing Intra-Corporate Controversies; and for inadequate substantiation of respondents' allegations in said Complaint after consideration of the pleadings and evidence on record.

In its Decision dated 15 February 2006, the Court of Appeals **affirmed**, on appeal, the findings of the RTC that respondents did not abide by the requirements for a derivative suit, nor were they able to prove their case by a preponderance of evidence. Respondents filed a **Motion for Reconsideration** of said judgment of the appellate court, insisting that they were able to meet all the conditions for filing a derivative suit. Pending resolution of respondents' Motion for Reconsideration, the Court of Appeals urged the parties to **again strive to reach an amicable settlement** of their dispute, but the parties were **unable to do so**. The parties were not able to submit to the appellate court, within the given period, any amicable settlement; and filed, instead, their **Position Papers**. This effectively meant that the parties opted to submit respondents' Motion for Reconsideration

of the 15 February 2006 Decision of the Court of Appeals, and petitioners' opposition to the same, for resolution by the appellate court on the merits.

It was at this point that the case took an unexpected turn.

In accordance with respondents' allegation in their Position Paper that the parties subsequently filed with the SEC, and the SEC already approved, a petition for dissolution of Winchester, Inc., the Court of Appeals **remanded** the case to the RTC so that all the corporate concerns between the parties regarding Winchester, Inc. could be resolved towards final settlement.

In one stroke, with the use of sweeping language, which utterly lacked support, the Court of Appeals converted the derivative suit between the parties into liquidation proceedings.

The general rule is that where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees. Nonetheless, an individual stockholder is permitted to institute a **derivative suit** on behalf of the corporation wherein he holds stocks in order to protect or vindicate corporate rights, whenever the officials of the corporation refuse to sue, or are the ones to be sued, or hold the control of the corporation. In such actions, the suing stockholder is regarded as a nominal party, with the corporation as the real party in interest. A derivative action is a suit by a shareholder to enforce a corporate cause of action. The corporation is a necessary party to the suit. And the relief which is granted is a judgment against a third person in favor of the corporation. Similarly, if a corporation has a defense to an action against it and is not asserting it, a stockholder may intervene and defend on behalf of the corporation.[43] By virtue of Republic Act No. 8799, otherwise known as the Securities Regulation Code, jurisdiction over intra-corporate disputes, including derivative suits, is now vested in the Regional Trial Courts designated by this Court pursuant to A.M. No. 00-11-03-SC promulgated on 21 November 2000.

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[43] *Chua v. Court of Appeals*, G.R. No. 150793, 19 November 2004, 443 SCRA 259, 266-267.

In contrast, **liquidation** is a necessary consequence of the dissolution of a corporation. It is specifically governed by Section 122 of the Corporation Code, which reads:

> SEC. 122. *Corporate liquidation.* — Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established.
>
> At any time during said three (3) years, said corporation is authorized and empowered to convey all of its property to trustees for the benefit of stockholders, members, creditors, and other persons in interest. From and after any such conveyance by the corporation of its property in trust for the benefit of its stockholders, members, creditors and others in interest, all interest which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the stockholders, members, creditors or other persons in interest.
>
> Upon winding up of the corporate affairs, any asset distributable to any creditor or stockholder or member who is unknown or cannot be found shall be escheated to the city or municipality where such assets are located.
>
> Except by decrease of capital stock and as otherwise allowed by this Code, no corporation shall distribute any of its assets or property except upon lawful dissolution and after payment of all its debts and liabilities.

Following the voluntary or involuntary dissolution of a corporation, liquidation is the process of settling the affairs of said corporation, which consists of adjusting the debts and claims, that is, of collecting all that is due the corporation, the settlement and adjustment of claims against it and the payment of its just debts.[44] More particularly, it entails the following:

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[44] See *China Banking Corp. v. M. Michelin & Cie,* 58 Phil. 261, 266 (1933).

> Winding up the affairs of the corporation means the collection of all assets, the payment of all its creditors, and the distribution of the remaining assets, if any among the stockholders thereof in accordance with their contracts, or if there be no special contract, on the basis of their respective interests. The manner of liquidation or winding up may be provided for in the corporate by-laws and this would prevail unless it is inconsistent with law.[45]

It may be undertaken by the corporation itself, through its Board of Directors; or by trustees to whom all corporate assets are conveyed for liquidation; or by a receiver appointed by the SEC upon its decree dissolving the corporation.[46]

Glaringly, a derivative suit is fundamentally distinct and independent from liquidation proceedings. They are neither part of each other nor the necessary consequence of the other. There is totally no justification for the Court of Appeals to convert what was supposedly a derivative suit instituted by respondents, on their own behalf and on behalf of Winchester, Inc. against petitioners, to a proceeding for the liquidation of Winchester, Inc.

While it may be true that the parties earlier reached an amicable settlement, in which they agreed to already distribute the assets of Winchester, Inc., and in effect liquidate said corporation, it must be pointed out that respondents themselves repudiated said amicable settlement before the RTC, even after the same had been partially implemented; and moved that their case be set for pre-trial. Attempts to again amicably settle the dispute between the parties before the Court of Appeals were unsuccessful.

Moreover, the decree of the Court of Appeals to remand the case to the RTC for the "final settlement of corporate concerns" was solely grounded on respondents' allegation in its Position Paper that the parties had already filed before the SEC, and the SEC approved, the petition to dissolve Winchester, Inc. The

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[45] Campos, *THE CORPORATION CODE: COMMENTS, NOTES AND SELECTED CASES* (Vol. 2, 1990 ed.), p. 415.

[46] *Id.* at 415-416.

Court notes, however, that there is absolute lack of evidence on record to prove said allegation. Respondents failed to submit copies of such petition for dissolution of Winchester, Inc. and the SEC Certification approving the same. It is a basic rule in evidence that each party must prove his affirmative allegation. Since it was respondents who alleged the voluntary dissolution of Winchester, Inc., respondents must, therefore, prove it.[47] This respondents failed to do.

Even assuming *arguendo* that the parties did submit a petition for the dissolution of Winchester, Inc. and the same was approved by the SEC, the Court of Appeals was still without jurisdiction to order the final settlement by the RTC of the remaining corporate concerns. It must be remembered that the Complaint filed by respondents before the RTC essentially prayed for the accounting and reimbursement by petitioners of the corporate funds and assets which they purportedly misappropriated for their personal use; surrender by the petitioners of the corporate books for the inspection of respondents; and payment by petitioners to respondents of damages. There was nothing in respondents' Complaint which sought the dissolution and liquidation of Winchester, Inc. Hence, the supposed dissolution of Winchester, Inc. could not have resulted in the conversion of respondents' derivative suit to a proceeding for the liquidation of said corporation, but only in the dismissal of the derivative suit based on either compromise agreement or mootness of the issues.

Clearly, in issuing its assailed Resolutions dated 18 July 2006 and 19 April 2007, the Court of Appeals already went beyond the issues raised in respondents' Motion for Reconsideration. Instead of focusing on whether it erred in affirming, in its 15 February 2006 Decision, the dismissal by the RTC of respondents' Complaint due to respondents' failure to comply with the requirements for a derivative suit and submit evidence to support their allegations, the Court of Appeals unduly concentrated on respondents' unsubstantiated allegation that Winchester, Inc.

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[47] See *Genuino Ice Co., Inc. v. Magpantay*, G.R. No. 147790, 27 June 2006, 493 SCRA 195, 205.

was already dissolved and speciously ordered the remand of the case to the RTC for proceedings so vitally different from that originally instituted by respondents.

Despite the foregoing, the Court still deems it appropriate to already look into the merits of respondents' Motion for Reconsideration of the 15 February 2006 Decision of the Court of Appeals, for the sake of finally putting an end to the case at bar.

In their said Motion for Reconsideration, respondents argued that: (1) they had sufficiently exhausted all remedies before filing the derivative suit; and (2) respondent Joseph's Supplemental Affidavit and its annexes should have been taken into consideration, since the submission thereof was allowed by the rules of procedure, as well as by the RTC in its Order dated 26 August 2004.

As regards the first ground of sufficient exhaustion by respondents of all remedies before filing a derivative suit, the Court subscribes to the ruling to the contrary of the Court of Appeals in its Decision dated 16 February 2006.

The Court has recognized that a stockholder's right to institute a derivative suit is not based on any express provision of the Corporation Code, or even the Securities Regulation Code, but is impliedly recognized when the said laws make corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties. Hence, a stockholder may sue for mismanagement, waste or dissipation of corporate assets because of a special injury to him for **which he is otherwise without redress**. In effect, the suit is an action for specific performance of an obligation owed by the corporation to the stockholders to assist its rights of action when the corporation has been put in default by the wrongful refusal of the directors or management to make suitable measures for its protection. The basis of a stockholder's suit is always one in equity. However, it cannot prosper without first complying with the legal requisites for its institution.[48]

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[48] *Bitong v. Court of Appeals*, 354 Phil. 516, 545 (1998).

Section 1, Rule 8 of the Interim Rules of Procedure Governing Intra-Corporate Controversies lays down the following requirements which a stockholder must comply with in filing a derivative suit:

> Sec. 1. *Derivative action*. — A stockholder or member may bring an action in the name of a corporation or association, as the case may be, provided, that:
>
> (1) He was a stockholder or member at the time the acts or transactions subject of the action occurred and at the time the action was filed;
>
> (2) He exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires;
>
> (3) No appraisal rights are available for the act or acts complained of; and
>
> (4) The suit is not a nuisance or harassment suit.

A perusal of respondents' Complaint before the RTC would reveal that the same did not allege with particularity that respondents exerted all reasonable efforts to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing Winchester, Inc. to obtain the relief they desire.

Respondents assert that their compliance with said requirement was contained in respondent Joseph's Affidavit, which was attached to respondents' Complaint. Respondent Joseph averred in his Affidavit that he tried for a number of times to talk to petitioner Anthony to settle their differences, but the latter would not listen. Respondents additionally claimed that taking further remedies within the corporation would have been idle ceremony, considering that Winchester, Inc. was a family corporation and it was impossible to expect petitioners to take action against themselves who were the ones accused of wrongdoing.

The Court is not persuaded.

The wordings of Section 1, Rule 8 of the Interim Rules of Procedure Governing Intra-Corporate Controversies are simple and do not leave room for statutory construction. The second paragraph thereof requires that the stockholder filing a derivative suit should have exerted **all reasonable efforts to exhaust all remedies available** under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires; and to **allege such fact with particularity** in the complaint. The obvious intent behind the rule is to make the derivative suit the final recourse of the stockholder, after all other remedies to obtain the relief sought had failed.

The allegation of respondent Joseph in his Affidavit of his repeated attempts to talk to petitioner Anthony regarding their dispute hardly constitutes "all reasonable efforts to exhaust all remedies available." Respondents did not refer to or mention at all any other remedy under the articles of incorporation or by-laws of Winchester, Inc., available for dispute resolution among stockholders, which respondents unsuccessfully availed themselves of. And the Court is not prepared to conclude that the articles of incorporation and by-laws of Winchester, Inc. absolutely failed to provide for such remedies.

Neither can this Court accept the reasons proffered by respondents to excuse themselves from complying with the second requirement under Section 1, Rule 8 of the Interim Rules of Procedure Governing Intra-Corporate Controversies. They are flimsy and insufficient, compared to the seriousness of respondents' accusations of fraud, misappropriation, and falsification of corporate records against the petitioners. The fact that Winchester, Inc. is a family corporation should not in any way exempt respondents from complying with the clear requirements and formalities of the rules for filing a derivative suit. There is nothing in the pertinent laws or rules supporting the distinction between, and the difference in the requirements for, family corporations *vis-à-vis* other types of corporations, in the institution by a stockholder of a derivative suit.

The Court further notes that, with respect to the third and fourth requirements of Section 1, Rule 8 of the Interim Rules of Procedure Governing Intra-Corporate Controversies, the

respondents' Complaint failed to allege, explicitly or otherwise, the fact that there were no appraisal rights available for the acts of petitioners complained of, as well as a categorical statement that the suit was not a nuisance or a harassment suit.

As to respondents' second ground in their Motion for Reconsideration, the Court agrees with the ruling of the Court of Appeals, in its 15 February 2006 Decision, that respondent Joseph's Supplemental Affidavit and additional evidence were inadmissible since they were only appended by respondents to their Memorandum before the RTC. Section 8, Rule 2 of the Interim Rules of Procedure Governing Intra-Corporate Controversies is crystal clear that:

> Sec. 8. *Affidavits, documentary and other evidence*. — Affidavits shall be based on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify on the matters stated therein. The affidavits shall be in question and answer form, and shall comply with the rules on admissibility of evidence.
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> **Affidavits of witnesses as well as documentary and other evidence shall be attached to the appropriate pleading**, Provided, however, that **affidavits, documentary and other evidence not so submitted may be attached to the pre-trial brief required under these Rules**. **Affidavits and other evidence not so submitted shall not be admitted in evidence**, except in the following cases:
>
> (1) Testimony of unwilling, hostile, or adverse party witnesses. A witness is presumed *prima facie* hostile if he fails or refuses to execute an affidavit after a written request therefor;
>
> (2) If the failure to submit the evidence is for meritorious and compelling reasons; and
>
> (3) Newly discovered evidence.
>
> In case of (2) and (3) above, the affidavit and evidence must be submitted not later than five (5) days prior to its introduction in evidence. (Emphasis ours.)

According to the afore-quoted provision, the parties should attach the affidavits of witnesses and other documentary evidence to the appropriate pleading, which generally should mean the

complaint for the plaintiff and the answer for the respondent. Affidavits and documentary evidence not so submitted must already be attached to the respective pre-trial briefs of the parties. That the parties should have already identified and submitted to the trial court the affidavits of their witnesses and documentary evidence by the time of pre-trial is strengthened by the fact that Section 1, Rule 4 of the Interim Rules of Procedure Governing Intra-Corporate Controversies require that the following matters should already be set forth in the parties' pre-trial briefs:

> Section 1. *Pre-trial conference, mandatory nature*. —Within five (5) days after the period for availment of, and compliance with, the modes of discovery prescribed in Rule 3 hereof, whichever comes later, the court shall issue and serve an order immediately setting the case for pre-trial conference, and directing the parties to submit their respective pre-trial briefs. The parties shall file with the court and furnish each other copies of their respective pre-trial brief in such manner as to ensure its receipt by the court and the other party at least five (5) days before the date set for the pre-trial.
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> The parties shall set forth in their pre-trial briefs, among other matters, the following:
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> x x x x x x x x x
>
> (4) Documents not specifically denied under oath by either or both parties;
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> x x x x x x x x x
>
> (7) Names of witnesses to be presented and the summary of their testimony as contained in their affidavits supporting their positions on each of the issues;
>
> (8) All other pieces of evidence, whether documentary or otherwise and their respective purposes.

Also, according to Section 2, Rule 4 of the Interim Rules of Procedure Governing Intra-Corporate Controversies,[49] it is the

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[49] Section 2, of Rule 4 provides:

> Sec. 2. *Nature and purpose of pre-trial conference*. — During the pre-trial conference, the court shall, with its active participation, ensure that the parties consider in detail all of the following:

duty of the court to ensure during the pre-trial conference that the parties consider in detail, among other things, objections to the admissibility of testimonial, documentary, and other evidence, as well as objections to the form or substance of any affidavit, or part thereof.

Obviously, affidavits of witnesses and other documentary evidence are required to be attached to a party's pre-trial brief, at the very last instance, so that the opposite party is given the opportunity to object to the form and substance, or the admissibility thereof. This is, of course, to prevent unfair surprises and/or to avoid the granting of any undue advantage to the other party to the case.

True, the parties in the present case agreed to submit the case for judgment by the RTC, even before pre-trial, in accordance with Section 4, Rule 4 of the Interim Rules of Procedure Governing Intra-Corporate Controversies:

> Sec. 4. *Judgment before pre-trial*. — If **after submission of the pre-trial briefs**, the court determines that, **upon consideration of the pleadings, the affidavits and other evidence submitted by the parties**, a judgment may be rendered, the court may order the parties **to file simultaneously their respective memoranda** within a non-extendible period of twenty (20) days from receipt of the order. Thereafter, the court shall render judgment, either full or otherwise, not later than ninety (90) days from the expiration of the period to file the memoranda.

Even then, the afore-quoted provision still requires, before the court makes a determination that it can render judgment before pre-trial, that the parties had submitted their pre-trial briefs and the court took into consideration the pleadings, affidavits and other evidence submitted by the parties. Hence, cases wherein the court can render judgment prior to pre-trial, do not depart from or constitute an exception to the requisite

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x x x x x x x x x

(6) Objections to the admissibility of testimonial, documentary and other evidence;

(7) Objections to the form or substance of any affidavit, or part thereof.

that affidavits of witnesses and documentary evidence should be submitted, at the latest, with the parties' pre-trial briefs. Taking further into account that under Section 4, Rule 4 of the Interim Rules of Procedure Governing Intra-Corporate Controversies parties are required to file their memoranda simultaneously, the same would mean that a party would no longer have any opportunity to dispute or rebut any new affidavit or evidence attached by the other party to its memorandum. To violate the above-quoted provision would, thus, irrefragably run afoul the former party's constitutional right to due process.

In the instant case, therefore, respondent Joseph's Supplemental Affidavit and the additional documentary evidence, appended by respondents only to their Memorandum submitted to the RTC, were correctly adjudged as inadmissible by the Court of Appeals in its 15 February 2006 Decision for having been belatedly submitted. Respondents neither alleged nor proved that the documents in question fall under any of the three exceptions to the requirement that affidavits and documentary evidence should be attached to the appropriate pleading or pre-trial brief of the party, which is particularly recognized under Section 8, Rule 2 of the Interim Rules of Procedure Governing Intra-Corporate Controversies.

WHEREFORE, premises considered, the Petition for Review under Rule 45 of the Rules of Court is hereby *GRANTED*. The assailed Resolutions dated 18 July 2006 and 19 April 2007 of the Court of Appeals in CA-G.R. SP No. 00185 are hereby *REVERSED AND SET ASIDE*. The Decision dated 15 February 2006 of the Court of Appeals is hereby *AFFIRMED*. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 184804. June 18, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RASHAMIA HERNANDEZ *y* SANTOS and GRACE KATIPUNAN *y* CRUZ,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CONSPIRACY, SUFFICIENTLY ESTABLISHED.— Conspiracy may be deduced from the mode, method, and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a joint purpose and design, concerted action, and community of interests. It is clear from the testimony of PO2 Dimacali that appellants were of one mind in selling *shabu* to him as shown by their series of overt acts during the transaction, to wit: (1) when PO2 Dimacali told appellant Katipunan that he would buy two hundred pesos worth of *shabu*, appellant Katipunan told appellant Hernandez to give her (appellant Katipunan) one sachet of *shabu*; (2) appellant Hernandez immediately brought out from her pocket one plastic sachet containing *shabu* and handed it to appellant Katipunan; (3) after receiving the plastic sachet of *shabu* from appellant Katipunan, PO2 Dimacali handed the buy-bust money to the former who, in turn, gave it to appellant Hernandez; (4) When PO2 Dimacali introduced himself as a police officer and announced the arrest, appellants tried to escape; and (5) the buy-bust money was recovered from the possession of appellant Hernandez. No other logical conclusion would follow from the appellants' concerted action except that they had a common purpose and community of interest. Conspiracy having been established, appellants are liable as co-principals regardless of their participation.

2. ID.; ID.; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT.— The rule is that the findings of the trial court on the credibility of witnesses are entitled to great respect, because trial courts have the advantage of observing the demeanor of the witnesses as they testify. This is more true if such findings were affirmed

by the appellate court. When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court.

3. ID.; ID.; DEFENSE OF DENIAL AND FRAME-UP, NOT ESTABLISHED.— To rebut the overwhelming evidence for the prosecution, appellants interposed the defense of denial and frame-up. Appellants denied they sold *shabu* to PO2 Dimacali during the buy-bust operation and claimed that the arresting officers tried to extort money from them in exchange for their freedom. The defense of denial and frame-up has been invariably viewed by this Court with disfavor, for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of the Dangerous Drugs Act. In order to prosper, the defense of denial and frame-up must be proved with strong and convincing evidence. In the case before us, appellants miserably failed to present any evidence in support of their claims. Aside from their self-serving assertions, no plausible proof was presented to bolster their allegations.

4. ID.; ID.; CREDIBILITY OF WITNESSES; MOTIVE, LACK OF.— Appellants admitted that they did not know PO2 Dimacali, PO2 Carandang and the rest of the back-up team prior to their arrest and could not state any reason why they were arrested and charged with selling *shabu*, hence negating any improper motive on the part of the arresting officers. When the police officers involved in the buy-bust operation have no ill motive to testify against the accused, the courts shall uphold the presumption that they have performed their duties regularly. Further, appellants have not filed a single complaint for frame-up or extortion against the arresting officers. This inaction clearly betrays appellants' claim of frame-up.

5. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); NON-COMPLIANCE WITH SECTION 21, ARTICLE II THEREOF IS NOT FATAL; THE PRESERVATION OF THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS IS OF UTMOST IMPORTANCE; APPLICATION.— [W]e have held in several cases that non-compliance with Section 21, Article II of Republic Act No. 9165 is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the

seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. In the case at bar, the integrity of the drug seized from appellants was preserved. The chain of custody of the drug subject matter of the instant case was shown not to have been broken. Records disclosed that after PO2 Dimacali confiscated the one transparent plastic sachet containing *shabu* from appellants, he immediately brought the same to the police station where he marked it "GKC" and turned it over to Inspector Tiu. The latter then forwarded the said plastic sachet of *shabu* marked "GKC" to the PNP Crime Laboratory of the Western Police District, U.N. Avenue, Ermita, Manila, for laboratory examination. After a qualitative examination conducted on the contents of the plastic sachet marked "GKC," PNP Forensic Chemist Macapagal found it to be positive for *methylamphetamine hydrochloride* or *shabu*. Upon being weighed, the plastic sachet was determined to be containing 0.047 gram of *shabu*. When the prosecution presented the plastic sachet of *shabu* marked "GKC," PO2 Dimacali positively identified it as the one he bought from appellants in the buy-bust operation. The plastic sachet containing 0.047 gram of *shabu* had the marking "GKC" as attested by PNP Forensic Chemist Macapagal in her chemistry report. The existence, due execution, and genuineness of the said chemistry report, as well as the qualifications of PNP Forensic Chemist Macapagal as an expert witness, were admitted by the defense. Further, PO2 Dimacali categorically declared during the trial that he put the "GKC" marking on the one transparent plastic sachet of *shabu* recovered from appellants. Clearly, the identity of the drug recovered from appellants has been duly preserved and established by the prosecution. Hence, there is no doubt that the plastic sachet marked "GKC" submitted for laboratory examination and later on found to be positive for *shabu* was the same one sold by appellants to PO2 Dimacali during the buy-bust operation. Besides, the integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Appellants in this case bear the burden of showing that the evidence was tampered or meddled with to overcome a presumption that there was regularity in the handling of exhibits by public officers, and that the latter properly discharged their duties. Appellants failed to produce convincing proof that the evidence submitted by the prosecution had been tampered with.

6. ID.; ID.; ID.; AS LONG AS THE UNBROKEN CHAIN OF CUSTODY OF THE SEIZED DRUG AND PROPER IDENTIFICATION THEREOF WERE ESTABLISHED, NOT EVERY PERSON WHO CAME INTO POSSESSION OF THE DRUGS SHOULD TESTIFY.— The fact that Inspector Tiu was not presented as a witness to corroborate PO2 Dimacali's testimony does not warrant appellants' acquittal of the crime charged. Not all people who came into contact with the seized drugs are required to testify in court. There is nothing in Republic Act No. 9165 or in any rule implementing the same that imposes such a requirement. As long as the chain of custody of the seized drug was clearly established to have not been broken and the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand. In *People v. Zeng Hua Dian*, we ruled: After a thorough review of the records of this case we find that the chain of custody of the seized substance was not broken and that the prosecution did not fail to identify properly the drugs seized in this case. The non-presentation as witnesses of other persons such as SPO1 Grafia, the evidence custodian, and PO3 Alamia, the officer on duty, is not a crucial point against the prosecution. The matter of presentation of witnesses by the prosecution is not for the court to decide. The prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses.

7. ID.; ID.; NON-RECORDING OF THE BUY-BUST OPERATION AND THE BUY-BUST MONEY IN THE POLICE BLOTTER IS NOT ESSENTIAL.— Appellants' assertion that the testimonies of the prosecution witnesses were fabricated because the alleged buy-bust operation and buy-bust money were not recorded in the police blotter is unmeritorious. The buy-bust operation conducted on appellants was duly recorded in the police blotter, as shown in the Pre-Operation/ Coordination Sheet made and signed by Inspector Tiu. With regard to the non-recording of the buy-bust money in the police blotter, suffice it to state that neither law nor jurisprudence requires that the buy-bust money be entered in the police blotter. At any rate, the non-recording of the buy-bust operation and buy-bust money in the police blotter is not essential, since they are not elements in the illegal sale of dangerous drugs.

As earlier discussed, the only elements necessary to consummate the crime is proof that the illicit transaction took place, coupled with the presentation in court of the dangerous drug seized as evidence. Both were satisfactorily proved in the present case.

8. ID.; ID.; PENALTY FOR UNAUTHORIZED SALE OF *SHABU*.— Under Section 5, Article II of Republic Act No. 9165, the unauthorized sale of *shabu*, regardless of its quantity and purity, carries with it the penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00). Pursuant, however, to the enactment of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," only life imprisonment and fine shall be imposed. Thus, the RTC and the Court of Appeals were correct in imposing the penalty of life imprisonment and fine of ₱500,000.00 on each of the appellants.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

CHICO-NAZARIO, *J.*:

For review is the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 02465, dated 26 May 2008, affirming *in toto* the Decision,[2] dated 14 August 2006, of the Manila Regional Trial Court (RTC), Branch 2, in Criminal Case No. 04-222804, finding accused-appellants Rashamia Hernandez *y* Santos and Grace Katipunan *y* Cruz guilty of illegal sale of *shabu* under Section 5, Article II of Republic Act No. 9165, otherwise known

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[1] Penned by Associate Justice Amelita G. Tolentino with Associate Justices Lucenito N. Tagle and Marlene B. Gonzales-Sison, concurring. *Rollo*, pp. 2-18.

[2] Penned by Judge Alejandro G. Bijasa. CA *rollo*, pp. 15-22.

as the Comprehensive Dangerous Drugs Act of 2002, and imposing upon them the penalty of life imprisonment.

The records of the case bear the following facts:

On 19 January 2004, an Information[3] was filed before the RTC against appellants for illegal sale of *shabu* under Section 5, Article II of Republic Act No. 9165. The accusatory portion of the information reads:

> The undersigned accuses RASHAMIA HERNANDEZ *y* SANTOS and GRACE KATIPUNAN *y* CRUZ of Violation of SEC. 5 Article II [of] Republic Act [No.] 9165, committed as follows:
>
> That on or about January 14, 2004, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, not being authorized by law to sell, trade, deliver, or give away any dangerous drug, did then and there willfully, unlawfully and knowingly sell or offer for sale One (1) heat sealed transparent plastic sachet containing ZERO POINT ZERO FOUR SEVEN (0.047) gram of white crystalline substance known as "*SHABU*" containing methylamphetamine hydrochloride, which is a dangerous drug.

When arraigned on 13 February 2004, appellants, assisted by counsel *de oficio*, pleaded "Not Guilty" to the charge. Trial on the merits thereafter ensued.

The prosecution presented as witnesses Police Officer 2 Gloybell Dimacali (PO2 Dimacali) and Police Officer 2 Joenardine Carandang (PO2 Carandang), both of whom are members of the Philippine National Police (PNP) and assigned at the Station Anti-Illegal Drugs Unit of Central Market, Sta. Cruz Manila Police Station 3. Their testimonies, taken together, produced the following narrative:

On 14 January 2004, at around 6:00 p.m., an informant went to the Station Anti-Illegal Drugs (SAID) Unit of Central Market, Sta. Cruz Manila Police Station 3 (police station) and reported to Police Chief Inspector Jimmy A. Tiu (Inspector Tiu), head of SAID, and PO2 Dimacali, the drug trafficking activities of a

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[3] Records, p. 1.

certain Larry and appellants in Callejon Flores, Solis Street, Tondo, Manila. Inspector Tiu formed a team and planned a buy-bust operation. The team agreed that PO2 Dimacali would act as the poseur-buyer, while PO2 Carandang, a certain PO2 Leonard Cipriano, PO2 Napoleon Osias and PO2 Marvin Flores would act as back-up during the buy-bust operation. Inspector Tiu gave PO2 Dimacali two one-hundred peso bills to be utilized as buy-bust money. PO2 Dimacali marked the monies with "SAID."[4]

At about 8:00 p.m., the team, together with the informant, went to the house of Larry at Callejon Flores, Solis Street, Tondo, Manila. Upon arriving thereat, PO2 Dimacali and the informant proceeded inside Larry's house while the rest of the team positioned themselves outside the house. PO2 Dimacali and the informant approached appellants who were then inside the house. PO2 Dimacali told appellant Katipunan that he would buy two hundred pesos worth of *shabu*. Appellant Katipunan told appellant Hernandez, *"Akin na ang natitira mong isa."* Appellant Hernandez brought out from her pocket one transparent plastic sachet containing *shabu* and handed it to appellant Katipunan. The latter then gave the plastic sachet to PO2 Dimacali. PO2 Dimacali handed the buy-bust money to appellant Katipunan who, in turn, gave it to appellant Hernandez. At this juncture, PO2 Dimacali removed his bull cap as a pre-arranged signal to his back-up team. PO2 Dimacali introduced himself as a police officer and held the hands of appellant Katipunan. Appellant Hernandez ran away but the back-up team chased and caught her, and recovered from her the buy-bust money.[5]

Appellants, as well as the transparent plastic sachet of *shabu* and the buy-bust money recovered from them, were immediately brought to the police station. Thereupon, the plastic sachet of *shabu* recovered from appellants was marked by PO2 Dimacali with "GKC" (initials for Grace Katipunan Cruz, the full name

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[4] TSN, 18 March 2005, pp. 2-4.

[5] *Id.* at 2-7.

of appellant Katipunan) and submitted it, together with the buy-bust money, to Inspector Tiu. The plastic sachet of *shabu* recovered from appellants was forwarded to the PNP Crime Laboratory of the Western Police District, U.N. Avenue, Ermita, Manila, for laboratory examination. PNP Forensic Chemist Judycel A. Macapagal found the contents thereof to be positive for *methylamphetamine hydrochloride* or *shabu*. Upon being weighed, the plastic sachet contained 0.047 gram of *shabu*.[6]

The prosecution also adduced documentary and object evidence to buttress the testimonies of its witnesses, to wit: (1) letter-request for laboratory examination (Exhibit A);[7] (2) one transparent plastic sachet of *shabu* (Exhibit B);[8] (3) chemistry report of PNP Forensic Chemist Macapagal (Exhibit C);[9] (4) buy-bust money (Exhibit D);[10] (5) affidavit of apprehension executed by PO2 Dimacali, PO2 Carandang and PO2 Cipriano (Exhibit E);[11] and (6) pre-operation/coordination sheet (Exhibit F).[12]

For its part, the defense proffered the testimonies of appellants and their corroborating witnesses — namely, Maria Victoria Hernandez (Victoria) and Marileth Jacob (Marileth) — to refute the foregoing accusations. Appellants denied any liability and claimed that they were framed.

Appellant Hernandez testified that she visited appellant Katipunan at the latter's house in Tondo, Manila, on the afternoon of 14 January 2004. Later that day, she fell asleep inside the said house. At around 8:00 p.m., she was awakened by a commotion inside the same house. She stood up and saw male persons inside the house arresting appellant Katipunan. She

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[6] *Id.* at 7-9.

[7] Records, p. 23; TSN, 30 August 2005, p. 12.

[8] *Id.*

[9] Records, p. 4.

[10] *Id.* at 2-3.

[11] *Id.* at 9.

[12] *Id.* at 10.

was also apprehended. When she asked the reason for their arrest, one of the male persons retorted, *"Huwag na lang kayong magmatapang, sumama na lang kayo."* The males introduced themselves as policemen. Subsequently, she, appellant Katipunan, and a certain Reynaldo Soriano (Soriano) — appellant Katipunans alleged uncle who was with them inside the house during the arrest — were brought to the police station. Soriano was beaten up by the policemen in the said station, but was released two days after the arrest.[13]

Appellant Katipunan declared she was in her house at 1022 Callejon Flores, Solis Street, Tondo Manila on 14 January 2004. At about 5:00 p.m., appellant Hernandez arrived at her house. At about 8:00 p.m., while watching television inside her house with Soriano, she saw four males destroying the window of her house. These persons entered through the window, ransacked the house, and told her that they were looking for Larry. Thereafter, she, appellant Hernandez and Soriano were arrested and forcibly brought to the police station. Soriano was subsequently released from detention, because he gave money and a television set to the police officers. The policemen demanded from her ₱50,000.00 in exchange for her freedom, but she refused to accede.[14]

Victoria, mother of appellant Hernandez, narrated that she lived in the same house with appellant Hernandez at 2109 Pista Street, Sta. Cruz, Manila; that on 14 January 2004, at about 4:00 p.m., she arrived home but could not find appellant Hernandez; that she looked for appellant Hernandez in her relatives' house and in the nightclub where the latter worked as Guest Relations Officer, but to no avail; that on the following day, she was informed by a friend that appellant Hernandez was arrested; that she went to the police station and found appellant Hernandez therein; and that appellant Hernandez was not a drug pusher.[15]

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[13] TSN, 20 September 2005, pp. 2-6.

[14] TSN, 21 November 2005, pp. 2-13.

[15] TSN, 7 August 2006, pp. 2-7.

Marileth, friend and neighbor of appellant Katipunan, stated that four males entered appellant Katipunan's house during the incident by destroying its window. She reported the incident to the police, but this was not blottered.[16]

After trial, the RTC rendered a Decision finding appellants guilty of violating Section 5, Article II of Republic Act No. 9165 and imposing upon them the penalty of life imprisonment. They were also ordered to pay a fine of ₱500,000.00. The dispositive portion of the RTC Decision reads:

> WHEREFORE, from the foregoing, judgment is hereby rendered, finding both accused, Rashamia Hernandez *y* Santos and Grace Katipunan *y* Cruz, **GUILTY** beyond reasonable doubt for violation of Sec. 5 Article II of Republic Act [No.] 9165, they are hereby sentenced each to life imprisonment and to pay a fine of ₱500,000.00 without subsidiary imprisonment in case of insolvency and to pay costs.
>
> The specimen is forfeited in favor of the government and the Branch Clerk of Court, accompanied by the Branch Sheriff, is directed to turn over with dispatch and upon proper receipt the said specimen to the Philippine Drug Enforcement Agency (PDEA) for proper disposal in accordance with the law and rules.[17]

Aggrieved, appellants appealed to the Court of Appeals. On 26 May 2008, the Court of Appeals promulgated its Decision affirming *in toto* the RTC Decision, thus:

> WHEREFORE, in the light of the foregoing, the appeal is ***DISMISSED*** for lack of merit. The assailed decision of the court *a quo* is ***AFFIRMED***.[18]

Appellants filed a Notice of Appeal on 11 June 2008.[19]

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[16] TSN, 22 May 2006, pp. 2-8.

[17] CA *rollo,* pp. 21-22.

[18] *Rollo,* p. 17.

[19] CA *rollo,* pp. 108-109.

In their Brief,[20] appellants assigned the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITY OF THE PROHIBITED DRUG CONSTITUTING THE *CORPUS DELICTI* OF THE OFFENSE.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

To secure a conviction for illegal sale of *shabu*, the following essential elements must be established: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment thereof. In prosecutions for illegal sale of *shabu*, what is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. In the case at bar, the prosecution was able to establish through testimonial, documentary and object evidence the said elements.[21]

PO2 Dimacali, the poseur-buyer, testified that appellants sold to him *shabu* during a legitimate buy-bust operation. His positive identification of appellants and direct account of the transaction are clear, thus:

Asst. Pros. Yap:

Police Officer Dimacali, what was your participation in this police operation against Rashamia Hernandez and Grace Katipunan?

Witness: I was the poseur-buyer in this operation, sir.

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[20] *Id.* at 33-48.

[21] *People v. Naquita*, G.R. No. 180511, 28 July 2008, 560 SCRA 430, 449; *People v. Del Monte*, G.R. No. 179940, 23 April 2008, 552 SCRA 627, 637-638; *People v. Santiago*, G.R. No. 175326, 28 November 2007, 539 SCRA 198, 212.

Q Now, when was (sic) this operation took (sic) place?

A On January 14, 2004 at 8:00 p.m., sir.

Q Where?

A Along Callejon Flores, Solis Street, Tondo, Manila.

Q Now, who was the target person of this operation?

A A certain Larry, Mia and Grace, sir.

Q Who furnished you of these particular names, these target persons?

A Our CI, sir.

Q When?

A Personally appeared in our office on January 14.

Q What time?

A At about 6:00 p.m., sir.

Q Aside from these names, what other details submitted by this informant?

A The informant gave information attended by our Chief, SAID regarding the illegal drug activities of certain Larry, Grace and Mia.

Q So, what was the response of this Police Commander?

A Major Tiu formed a team composed of PO1 Cipriano, PO1 Carandang, myself and I was given a specific assignment.

Q What was the assignment of these Cipriano and Carandang?

A Back up and arresting officers, sir.

Q What happened after the team was formed?

A We were briefed and we were tasked by Major Tiu, sir.

Q What were the tasks?

A Back up operatives and I was tasked as poseur-buyer, sir.

Q What happened next, Mr. Witness?

A We were given ₱200.00 by Major Tiu, sir.

Q When was that?

A Past 6:00 of January 14, sir.

Q What was that ₱200.00 bill for?

A For our buy bust operation, sir.

Q How were you able to identify that that is the same money bill used?

A I put marking on the buy-bust money describing the name of our office and have it xeroxed, sir.

Q In relation to that bill, what portion of the bill it was marked?

A Below the seal of the money, sir.

Q Now, you mentioned about a photocopy of the bill. Can you recognize that bill?

A Yes, sir.

Q Who made that machine copy?

A I, sir.

Q When?

A After the briefing made by Major Tiu, sir.

Q Where is the genuine money bill now?

A In my possession, sir.

Q Can you produce that, Mr. Witness?

A Yes, sir.

Q Tell us, why this evidence in your possession?

A I was subpoenaed so I got the records in our office.

Asst. Pros. Yap:

Your Honor, I ask counsel to stipulate the xerox copy with the genuine money if the same faithful reproduction.

Atty. Caing:

Admitted, your Honor.

Asst. Pros. Yap:

Show to us the marking of these two bills?

Witness:

Here, sir, below the seal Central Bank of the money.

Asst. Pros. Yap:

We ask to be marked as Exhibit E, faithful reproduction, and Exhibit E-1.

COURT:

Mark them.

Asst. Pros. Yap:

So, what happened next after receipt of the money?

Witness:

We waited till night and then we proceeded to the target area with the confidential informant.

Q How far is that from your station?

A It takes about 25 to 30 minutes, sir.

Q What means of transportation did you take?

A Revo car of Cipriano, sir.

Q So, upon reaching thereat, what exactly did you do?

A The confidential informant and I walked towards the house of a certain Larry.

Q What part? Describe to us the house of a certain Larry?

A It is made of wood and there is a (sic) stairs and composed of two small rooms, sir.

Q What happened when you arrived in that place?

A We approached a pregnant woman Grace and told her that we will buy shabu.

Q Now, who identified this pregnant woman by the name of Grace?

A The confidential informant told me that the person can be easily identified because she is pregnant and her name is Grace.

Q Where was the informant at that time?

A He was with me, sir.

Q What exactly did you do or say to her?

A Grace, *kukuha ako ng halagang dalawang piso*.

Q So, what was the response of Grace?

A Without replying, she told to a woman there by the name Mia that – *Akin na ang natitira mong isa*.

Q Who uttered that words?

A Grace, sir.

Q It was directed to whom?

A To Mia, sir.

Q Where was Mia at that time?

A She was halfway of the stairs, sir.

Q What happened when she said that to Mia?

A Mia brought out a sachet and handed it to Grace and Grace handed it to me, sir.

Q What was that given to Grace by Mia?

A A small transparent plastic sachet, sir.

Q What happened thereafter when Grace received the same?

A I gave a pre-arranged signal by removing my bull cap, sir.

x x x x x x x x x

Q How about the ₱200.00 bills? What happened to it?

A Cipriano recovered the money from Mia, sir.

Q Prior to your raising of bull cap, what happened to the ₱200.00 bill?

A It was recovered by PO2 Cipriano.

Q When?

A After the transaction, sir.

Q So, what did you do after that?

A I introduced myself as police officer. When Mia heard the word – *pulis*, they ran away and my co-police officers chased them.

Q How about you? What did you do?

A I already held Grace, sir.

Q How about Rashamia? What happened to her?

A Rashamia was arrested by Cipriano, sir.

Q So, what was recovered from Rashamia?

A The buy-bust money, sir.

Q How about Grace? What was recovered from her?

A None, sir, because the item that I bought from her was already in my possession.

Q Now, you mentioned about Grace. Can you identify her if she is in the Courtroom now?

A Yes, sir.

Q Please do so …?

A Yes, sir.

Clerk of Court:

Witness stepped down from the witness stand and approached to a woman inside the Courtroom and tapped her shoulder, when asked and answered the name of Grace Katipunan.

Asst. Pros. Yap:

How about Rashamia Hernandez?

Witness:

This one, sir. (also tapped her shoulder, when asked and gave her name Rashamia Hernandez, one of the accused in this case)

Q Now, where did you bring these two persons?

A We brought them to our station, sir.

Q How about the plastic sachet?

A The same, sir.

Q Where did you submit the same?

A In the office of Major Tiu, sir.

Q How about the buy-bust money?

A The same, sir.

Q Please tell us if you can recognize this transparent plastic sachet submitted to Major Tiu?

A Yes, sir.

Q What is your basis in telling us today?

A I put the marking the initial of Grace Katipunan, sir.

Q What is the initial?

A GKC, sir.

Q What is the meaning of that GKC?

A Grace Katipunan Cruz.

Q When did you put this marking?

A In our office, sir.

Q When?

A When we brought them to our station, sir.

Q After this marking, what happened to this plastic sachet?

A We made a request for laboratory examination, sir.

Q To your knowledge, what was the result?

A Gave positive result, sir.[22]

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[22] TSN, 18 March 2005, pp. 3-9.

PO2 Carandang corroborated the aforesaid testimony of PO2 Dimacali on relevant points.[23]

The foregoing testimonies are consistent with the documentary and object evidence submitted by the prosecution. The RTC and the Court of Appeals found the testimonies of PO2 Dimacali and PO2 Carandang to be credible. Both courts also found no ill motive on their part to testify against appellants.

The prosecution adduced as its documentary and object evidence the transparent plastic sachet of *shabu* sold by appellants to PO2 Dimacali during the buy-bust operation,[24] the chemistry report of PNP Forensic Chemist Macapagal confirming that the plastic sachet sold by appellants to PO2 Dimacali contained 0.047 gram of *shabu*,[25] and the marked money used during the buy-bust operation.[26]

Conspiracy may be deduced from the mode, method, and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a joint purpose and design, concerted action, and community of interests.[27] It is clear from the testimony of PO2 Dimacali that appellants were of one mind in selling *shabu* to him as shown by their series of overt acts during the transaction, to wit: (1) when PO2 Dimacali told appellant Katipunan that he would buy two hundred pesos worth of *shabu*, appellant Katipunan told appellant Hernandez to give her (appellant Katipunan) one sachet of *shabu*; (2) appellant Hernandez immediately brought out from her pocket one plastic sachet containing *shabu* and handed it to appellant Katipunan; (3) after receiving the plastic sachet of *shabu* from appellant Katipunan, PO2 Dimacali handed the buy-bust money to the former who, in turn, gave it to appellant

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[23] TSN, 30 August 2005, pp. 2-7.

[24] Records, p. 23.

[25] *Id.* at 4.

[26] *Id.* at 2-3.

[27] *Aquino v. Paiste*, G.R. No. 147782, 25 June 2008, 555 SCRA 255, 260.

Hernandez; (4) When PO2 Dimacali introduced himself as a police officer and announced the arrest, appellants tried to escape; and (5) the buy-bust money was recovered from the possession of appellant Hernandez.[28] No other logical conclusion would follow from the appellants' concerted action except that they had a common purpose and community of interest. Conspiracy having been established, appellants are liable as co-principals regardless of their participation.[29]

The rule is that the findings of the trial court on the credibility of witnesses are entitled to great respect, because trial courts have the advantage of observing the demeanor of the witnesses as they testify. This is more true if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court.[30]

To rebut the overwhelming evidence for the prosecution, appellants interposed the defense of denial and frame-up. Appellants denied they sold *shabu* to PO2 Dimacali during the buy-bust operation and claimed that the arresting officers tried to extort money from them in exchange for their freedom.

The defense of denial and frame-up has been invariably viewed by this Court with disfavor, for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of the Dangerous Drugs Act.[31] In order to prosper, the defense of denial and frame-up must be proved with strong and convincing evidence.[32] In the case before us, appellants

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[28] TSN, 18 March 2005, pp. 3-9.

[29] *People v. Santiago, supra* note 21 at 217.

[30] *People v. Naquita, supra* note 21 at 444; *People v. Santiago, supra* note 21 at 217; *People v. Concepcion,* G.R. No. 178876, 27 June 2008, 556 SCRA 421, 440.

[31] *People v. Naquita, id.* at 455; *People v. Santiago, id.* at 224; *People v. Concepcion, id.* at 443.

[32] *Id.*

miserably failed to present any evidence in support of their claims. Aside from their self-serving assertions, no plausible proof was presented to bolster their allegations.

Appellants admitted that they did not know PO2 Dimacali, PO2 Carandang and the rest of the back-up team prior to their arrest and could not state any reason why they were arrested and charged with selling *shabu*, hence negating any improper motive on the part of the arresting officers.[33] When the police officers involved in the buy-bust operation have no ill motive to testify against the accused, the courts shall uphold the presumption that they have performed their duties regularly.[34] Further, appellants have not filed a single complaint for frame-up or extortion against the arresting officers. This inaction clearly betrays appellants' claim of frame-up.

It is true that Victoria and Marileth testified in behalf of appellants. However, their testimonies refer only to peripheral matters and not to the actual buy-bust transaction itself. They were not present in the crime scene during the transaction. In short, they have no personal knowledge of what actually transpired during the actual buy-bust operation. Their testimonies, therefore, deserve scant consideration.

Given the foregoing circumstances, the positive and credible testimonies of the prosecution witnesses prevail over the defense of denial and frame-up of appellants.

Appellants, nonetheless, averred that the buy-bust team did not comply with the procedure in the custody of seized/confiscated dangerous drugs as provided under Section 21, Article II of Republic Act No. 9165, *viz*:

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[33] TSN, 20 September 2005, pp. 6-7; TSN, 21 November 2005, p. 13.

[34] *People v. Soriano*, G.R. No. 173795, 3 April 2007, 520 SCRA 458, 468-469; *People v. Nicolas*, G.R. No. 170234, 8 February 2007, 515 SCRA 187, 204; *People v. Villanueva*, G.R. No. 172116, 30 October 2006, 506 SCRA 280, 288.

ARTICLE II
UNLAWFUL ACTS AND PENALTIES

x x x x x x x x x

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. —*

x x x x x x x x x

(1) The apprehending team having initial custody of all dangerous drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

Appellants also contended that the prosecution failed to establish the identity of the prohibited drug allegedly seized from them based on the following reasons: (1) PO2 Dimacali, PO2 Carandang and the rest of the back-up team did not write their initials on the one transparent plastic sachet allegedly containing *shabu* immediately after recovering the same from appellants; (2) no inventory or identifying mark was made at the crime scene; (3) the confiscated drug was belatedly marked by PO2 Dimacali at the police station; and (4) Inspector Tiu was not presented as a witness to corroborate PO2 Dimacali's testimony that the latter turned over to the former the seized transparent plastic sachet of *shabu* after appellants' arrest. Thus, there is doubt on whether the specimen examined by PNP Forensic Chemist Macapagal and eventually submitted to the RTC was the same specimen recovered from appellants. Moreover, the alleged buy-bust operation and buy-bust money was not recorded in the police blotter.[35]

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[35] CA *rollo*, pp. 41-47.

It should be noted that appellants tried to raise the buy-bust team's alleged non-compliance with Section 21, Article II of Republic Act No. 9165 for the first time on appeal. This, they cannot do. It is too late in the day for them to do so. In *People v. Sta. Maria*,[36] in which the very same issue was raised, we held:

> The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the **police officers' alleged violations** of Sections 21 and 86 of Republic Act No. 9165 **were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal.** (Emphases supplied.)

Moreover, we have held in several cases[37] that non-compliance with Section 21, Article II of Republic Act No. 9165 is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[38] In the case at bar, the integrity of the drug seized from appellants was preserved. The chain of custody of the drug subject matter of the instant case was shown not to have been broken.

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[36] G.R. No. 171019, 23 February 2007, 516 SCRA 621, 633-634.

[37] *People v. Agulay*, G.R. No. 181747, 26 September 2008, 566 SCRA 571, 595; *People v. Naquita*, *supra* note 21 at 448; *People v. Concepcion*, *supra* note 30 at 436-437; *People v. Del Monte*, *supra* note 21 at 636.

[38] *Id*.

Records disclosed that after PO2 Dimacali confiscated the one transparent plastic sachet containing *shabu* from appellants, he immediately brought the same to the police station where he marked it "GKC" and turned it over to Inspector Tiu.[39] The latter then forwarded the said plastic sachet of *shabu* marked "GKC" to the PNP Crime Laboratory of the Western Police District, U.N. Avenue, Ermita, Manila, for laboratory examination.[40] After a qualitative examination conducted on the contents of the plastic sachet marked "GKC," PNP Forensic Chemist Macapagal found it to be positive for *methylamphetamine hydrochloride* or *shabu*.[41] Upon being weighed, the plastic sachet was determined to be containing 0.047 gram of *shabu*.[42]

When the prosecution presented the plastic sachet of *shabu* marked "GKC," PO2 Dimacali positively identified it as the one he bought from appellants in the buy-bust operation.[43] The plastic sachet containing 0.047 gram of *shabu* had the marking "GKC" as attested by PNP Forensic Chemist Macapagal in her chemistry report.[44] The existence, due execution, and genuineness of the said chemistry report, as well as the qualifications of PNP Forensic Chemist Macapagal as an expert witness, were admitted by the defense.[45] Further, PO2 Dimacali categorically declared during the trial that he put the "GKC" marking on the one transparent plastic sachet of *shabu* recovered from appellants.[46] Clearly, the identity of the drug recovered from appellants has been duly preserved and established by the prosecution. Hence, there is no doubt that the plastic sachet marked "GKC" submitted for laboratory examination and later on found to be positive for

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[39] TSN, 18 March 2005, pp. 7-8.

[40] Records, p. 4.

[41] *Id.* at 4 and 23; TSN, 30 August 2005, p. 12.

[42] *Id*.

[43] TSN, 18 March 2005, p. 8.

[44] Records, pp. 4 and 23; TSN, 30 August 2005, p. 12.

[45] *Id*. at 23.

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

shabu was the same one sold by appellants to PO2 Dimacali during the buy-bust operation.

Besides, the integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Appellants in this case bear the burden of showing that the evidence was tampered or meddled with to overcome a presumption that there was regularity in the handling of exhibits by public officers, and that the latter properly discharged their duties.[47] Appellants failed to produce convincing proof that the evidence submitted by the prosecution had been tampered with.

The fact that Inspector Tiu was not presented as a witness to corroborate PO2 Dimacali's testimony does not warrant appellants' acquittal of the crime charged. Not all people who came into contact with the seized drugs are required to testify in court. There is nothing in Republic Act No. 9165 or in any rule implementing the same that imposes such a requirement. As long as the chain of custody of the seized drug was clearly established to have not been broken and the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand. In *People v. Zeng Hua Dian*,[48] we ruled:

> After a thorough review of the records of this case we find that the chain of custody of the seized substance was not broken and that the prosecution did not fail to identify properly the drugs seized in this case. The non-presentation as witnesses of other persons such as SPO1 Grafia, the evidence custodian, and PO3 Alamia, the officer on duty, is not a crucial point against the prosecution. The matter of presentation of witnesses by the prosecution is not for the court to decide. The prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses.

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[47] *People v. Miranda*, G.R. No. 174773, 2 October 2007, 534 SCRA 552, 568-569.

[48] G.R. No. 145348, 14 June 2004, 432 SCRA 25, 32.

Appellants' assertion that the testimonies of the prosecution witnesses were fabricated because the alleged buy-bust operation and buy-bust money were not recorded in the police blotter is unmeritorious. The buy-bust operation conducted on appellants was duly recorded in the police blotter, as shown in the Pre-Operation/Coordination Sheet made and signed by Inspector Tiu.[49] With regard to the non-recording of the buy-bust money in the police blotter, suffice it to state that neither law nor jurisprudence requires that the buy-bust money be entered in the police blotter.[50] At any rate, the non-recording of the buy-bust operation and buy-bust money in the police blotter is not essential, since they are not elements in the illegal sale of dangerous drugs. As earlier discussed, the only elements necessary to consummate the crime is proof that the illicit transaction took place, coupled with the presentation in court of the dangerous drug seized as evidence. Both were satisfactorily proved in the present case.

Since appellants' violation of Section 5, Article II of Republic Act No. 9165 was duly established by the prosecution's evidence, we shall now ascertain the penalties imposable on them.

Under Section 5, Article II of Republic Act No. 9165, the unauthorized sale of *shabu*, regardless of its quantity and purity, carries with it the penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00).

Pursuant, however, to the enactment of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," only life imprisonment and fine shall be imposed. Thus, the RTC and the Court of Appeals were correct in imposing the penalty of life imprisonment and fine of ₱500,000.00 on each of the appellants.

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[49] Records, p. 10.

[50] *People v. Concepcion*, *supra* note 30 at 441; *People v. Santiago*, *supra* note 21 at 222.

WHEREFORE, after due deliberation, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02465, dated 26 May 2008, is hereby *AFFIRMED in toto*.

SO ORDERED.

Ynares-Santiago (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 185380. June 18, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROGELIO MARCOS,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; ELEMENTS OF STATUTORY RAPE.— Statutory rape, under Article 266-A, par. 1-d, is committed by having carnal knowledge of a woman "when the offended party is under 12 years of age." The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman was below 12 years of age. Sexual congress with a girl under 12 years old is always rape.

2. ID.; ID.; PROPER PENALTY FOR QUALIFIED RAPE.— The Court of Appeals reduced the penalty of death imposed by the RTC to *reclusion perpetua*, without possibility of parole pursuant to Republic Act No. 9346. Under Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, qualified rape is committed when, among others, "the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse

of the parent of the victim." In the instant case, the minority of the victim was alleged in the information and was duly proven during trial. Likewise, Rogelio admitted his relationship to the victim. However, with the effectivity of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines" on June 24, 2006, the imposition of the penalty of death has been prohibited. Thus, the proper penalty to be imposed on appellant as provided in Section 2, paragraph (a) of said law, is *reclusion perpetua*. Thus, this Court affirms the sentence imposed by the Court of Appeals.

3. ID.; ID.; CIVIL LIABILITY; AWARD OF CIVIL INDEMNITY, MORAL AND EXEMPLARY DAMAGES, PROPER.— Also affirmed is the award of damages imposed by the Court of Appeals, which fixed it at ₱75,000.00 for the civil indemnity and ₱75,000.00 for the moral damages. The award of civil indemnity in the said amount is the amount to be awarded if the crime is qualified by circumstances that warrant the imposition of the death penalty. In addition, the award of exemplary damages is in order because of the presence of the qualifying circumstance of minority of the victim and relationship. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱30,000.00 as exemplary damages is justified under Article 2230 of the New Civil Code. This kind of damage is intended to serve as deterrent to serious wrongdoings, as a vindication of undue sufferings and wanton invasion of the rights of an injured, or as punishment for those guilty of outrageous conduct.

4. REMEDIAL LAW; EVIDENCE; PRINCIPLES IN ASCERTAINING THE GUILT OR INNOCENCE OF THE ACCUSED IN RAPE CASES.— To ascertain the guilt or innocence of the accused in cases of rape, the courts have been traditionally guided by three settled principles, namely: (a) an accusation for rape is easy to make, difficult to prove and even more difficult to disprove; (b) in view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost caution; and (c) the evidence of the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence for the defense. Since the crime of rape is essentially one committed in relative isolation or even secrecy, it is usually only the victim who

can testify with regard to the fact of the forced *coitus*. In a prosecution for rape, therefore, the credibility of the victim is almost always the single and most important issue to deal with. If her testimony meets the test of credibility, the accused can justifiably be convicted on the basis thereof; otherwise, he should be acquitted of the crime.

5. ID.; ID.; CHILD WITNESSES; TESTIMONY OF A CHILD-VICTIM GIVEN FULL CREDIT.— The testimony of AAA, an eleven-year old child, adequately proved beyond reasonable doubt that she suffered from a bestial act committed by her stepfather on 13 July 2003. As a good daughter, AAA took care of her younger siblings. As an obedient daughter, she innocently followed Rogelio's order to go upstairs. She had no idea what would befall her from following her stepfather's orders. When she went upstairs, as ordered by stepfather, she was callously molested by him. The victim, who was only a naive eleven (11)-year-old child, regarded Rogelio as her true father. Deep in her heart, she was hoping that Rogelio would consider her as his true daughter and would protect her from harm and evil. This, after all, is a normal expectation of a fatherless child and a reasonable responsibility of a stepfather. Such expectation of AAA was shattered when the father whom she regarded as her own showed the beast in him. Far from being a safe refuge, Rogelio became the very evil that he should have shielded AAA from. Rogelio was the very same person who wrought malady upon her. It may appear odd that AAA did not run away from her tormentor. Her conduct of staying with her tormentor and her failure to prevent the repetition of the rape incident should not be interpreted against her. She was too disturbed and too young to totally comprehend the consequences of the dastardly acts inflicted on her by the appellant. Rape victims, especially child victims, should not be expected to act the way mature individuals would when placed in such a situation. It is not proper to judge the actions of children who have undergone traumatic experience by the norms of behavior expected from adults under similar circumstances. The range of emotions shown by rape victims is yet to be captured even by calculus. It is, thus, unrealistic to expect uniform reactions from rape victims. Certainly, the Court has not laid down any rule on how a rape victim should behave immediately after she has been violated. This experience is

relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted with any modicum of doubt. Indeed, different people act differently to a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience. It would be insensitive to expect the victim to act with equanimity and to have the courage and the intelligence to disregard the threat made by the appellant. When a rape victim is paralyzed with fear, she cannot be expected to think and act coherently. This is especially true in this case since AAA was repeatedly threatened by appellant if ever she would tell anybody about the rape incidents. The threat instilled enormous fear in her, such that she failed to take advantage of any opportunity to escape from the appellant. Besides, getting away from Rogelio was a task extremely difficult for an 11-year-old girl, because it would be tantamount to leaving her mother and her relatives, fending for herself and perishing in the process. In contradiction to the damning evidence adduced by the prosecution, what Rogelio could muster is only the defense that he and the victim were having oral sex. Between the self-serving testimony of Rogelio corroborated by his wife and the positive declaration of the victim who is of tender age, the latter deserves greater credence. x x x Considering the oft repeated truism that a woman of tender age is shy and ignorant of the sophistication of city life, by no stretch of imagination can we believe that AAA — with her innate modesty, humility and purity as a young Filipina - would have permitted herself to be the object of public ridicule, shame and obloquy as a victim of sexual assault or debauchery. It takes an extreme sense of moral depravity for an 11 year-old-stepdaughter to accuse her very own stepfather of a heinous crime, such as rape, and expose him to the perils attendant to a criminal conviction for no reason at all. As earlier held by the Court, a true Filipina would not go around in public unraveling facts and circumstances of her defloration for no reason, if such were not true.

6. ID.; ID.; WITNESSES; IMPROPER MOTIVE, ABSENCE OF.— Besides, Rogelio did not ascribe any credible motive to explain why a girl of tender age like AAA would concoct a story accusing him of rape. Thus, in indicting Rogelio, AAA was purely impelled by her legitimate desire to see that justice was done

for what she suffered. The absence of evidence as to improper motives actuating the principal witness for the prosecution strongly tends to sustain the conclusion that no such improper motives existed, and that her testimony is worthy of full faith and credit.

7. ID.; ID.; ID.; LAPSE OF TIME FROM THE TIME OF RAPE TO THE TIME THE SIGNS OF PREGNANCY BECAME OBVIOUS DOES NOT DISCREDIT VICTIM'S TESTIMONY.— Rogelio tries to discredit the victim's testimony by questioning the long interval, which was about 17 months from the time of the rape charged to the time the signs of AAA's pregnancy became obvious. Rogelio claims that it was improbable that he had carnal knowledge of the victim on 13 July 2003 and that such act would come into fruition only in December 2004, which lapse of time was beyond the normal gestation period of nine months. This fact would not in any way affect the victim's testimony that Rogelio raped her on the day in question. Rogelio must have forgotten that although he was charged only with one count of rape that was committed on 13 July 2003. AAA testified that she was ravished again by the former in the same month and every month thereafter, the last time being on 18 January 2005. This testimony alone would topple Rogelio's contention.

8. ID.; ID.; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT.— [T]he Court finds that the RTC, as well as the Court of Appeals, committed no error in giving credence to the evidence of the prosecution and finding appellant guilty of the charges. The Court has long adhered to the rule that findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect, unless it overlooked substantial facts and circumstances, which, if considered, would materially affect the result of the case. We find no reason not to apply the rule and to apply the exception.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CHICO-NAZARIO, *J.*:

For review is the Decision[1] of the Court of Appeals dated 30 June 2008, in CA-G.R. CR-H.C. No. 01919, which affirmed with modifications the Decision[2] of the Regional Trial Court (RTC) of Aparri, Cagayan, Branch 8, in Criminal Case No. 11-9436, finding accused-appellant Rogelio Marcos (Rogelio) guilty of Rape under Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353 or the Anti-Rape Law of 1997, in relation to Republic Act No. 7610.[3]

On 8 July 2005, Rogelio was charged before the RTC with Rape under Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, in relation to Republic Act No. 7610. The accusatory portion of the Information reads:

That **on or about JULY 13, 2003 and sometimes thereafter**, in the Municipality of Gattaran, province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by force, threat or intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the herein offended party his step-daughter, AAA[4], a minor, eleven (11) years of age, all against her will and consent, the sexual assault thereby gravely threatening and gravely endangering the survival and normal development of the child.[5]

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[1] Penned by Associate Justice Jose Catral Mendoza with Associate Justices Hakim S. Abdulwahid and Arturo G. Tayag, concurring; *rollo*, pp. 2-15.

[2] Penned by Judge Conrado F. Manauis.

[3] Otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, as Amended.

[4] Under Republic Act No. 9262 also known as "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 are withheld and fictitious initials are instead used to protect the victim's privacy.

[5] Records, p. 1.

When arraigned on 11 November 2004, Rogelio, with the assistance of his counsel *de parte*, pleaded not guilty to the charge.[6] Following the termination of the pre-trial conference, trial on the merits ensued.

The evidence of the prosecution, as culled from the testimonies of the victim (AAA), the victim's aunt (BBB), the investigating police, Senior Police Officer (SPO) I Dennis P. Aguilar, and Dr. Corazon Flor, and from the documentary evidence, are as follows:

The victim was 11 years old, having been born on 15 March 1992, when the alleged rape incident took place on the date in question.[7] AAA was then living with her mother and her stepfather Rogelio, and three younger siblings at XXX, Gattaran, Cagayan. On 13 July 2003, a little after lunch time and while taking care of her younger siblings, as her mother was away working in the farm, Rogelio ordered the victim to go upstairs. AAA obliged her stepfather's order. Rogelio immediately followed AAA. As soon as Rogelio was upstairs, he suddenly moved toward AAA and removed her dress, her short pants and panties and put her down. Rogelio undressed himself, mounted AAA and forcibly inserted his penis into her vagina. Rogelio then made a push and pull motion. As Rogelio was inserting his penis, AAA cried as she felt so much pain. AAA's wailing continued throughout the entire sexual episode. After Rogelio was done, he told AAA to wipe her tears, dress up, go downstairs, and take care of her younger siblings. AAA did as instructed. Moments later, Rogelio left the house.

After the first rape incident, and in the same month of July, 2003, AAA was again abused by Rogelio. This time, Rogelio did it at the back of the house at about 10:00 o'clock in the morning. The following months, she was subjected to sexual abuse three times every month. The last rape incident was on 18 July 2005.

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[6] *Id.* at 40.

[7] Exhibit D; Birth Certificate of AAA issued by the Municipal Civil Registrar of Gattaran, Cagayan. (Records, p. 9.)

Despite all these tormenting incidents, AAA did not report them because she was afraid of the threats made by Rogelio after every molestation that he would kill her and her mother if she reported the same to anybody.

On 19 January 2005, BBB, the victim's aunt, went to the victim's house for a visit. She noticed AAA's pregnancy, prompting her to confront the latter. It was then that AAA revealed what had happened to her. BBB assisted the victim in reporting the incidents to the police. SPO1 Aguilar conducted the interview of the victim. The police officer advised AAA to undergo a medical examination.

During the hearing, AAA admitted that the child she was carrying was the product of the sexual abuse perpetrated by Rogelio.

The defense, on the other hand, presented the oral testimonies of Rogelio and AAA's mother. The defense claimed that it was AAA who initiated the sexual congress.

Rogelio admitted that AAA is his step-daughter.[8] He testified that when he was upstairs, AAA followed, and kissed him. Rogelio reacted by kissing AAA. He then requested AAA to remove her short pants, and she acceded. Rogelio asked AAA to unzip his short pants, and the latter voluntarily complied. AAA knelt in front of Rogelio and the latter requested the former to suck his penis. AAA took out Rogelio's organ and did as requested. When he was about to ejaculate, Rogelio pulled his penis from AAA's mouth and let her play with it. AAA's mother suddenly caught them in such compromising situation. AAA rushed downstairs, while AAA's mother banged Rogelio's head against the wall and threatened to cut his neck should he repeat such act.

AAA's mother corroborated Rogelio's testimony that she caught him and AAA engaged in oral sex.

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[8] TSN, 15 November 2005, p. 4.

In a Decision dated 7 February 2006, the RTC rendered a guilty verdict against Rogelio. The supreme penalty of death was meted out to him. The decretal portion of the RTC decision reads:

> WHEREFORE, in the light of the foregoing ratiocination, the Court finds accused, **Rogelio Marcos**, "**Guilty**" beyond reasonable doubt of the crime of rape and sentences him to:
>
> a) suffer the supreme penalty of death;
>
> b) pay the victim AAA the amount of ₱50,000.00 as civil indemnity and ₱20,000.00 as moral damages; and
>
> c) pay the costs of litigation.[9]

The Court of Appeals, in a Decision dated 30 June 2008, affirmed the conviction of Rogelio, but modified the penalty of death to *reclusion perpetua* on the ground that the imposition of the death penalty was prohibited by Republic Act No. 9346.[10] The dispositive part of the Decision of the Court of Appeals states:

> WHEREFORE, the February 7, 2006 Decision of the Regional Trial Court, Branch 8, Aparri, Cagayan, in Criminal Case No. 11-9436, is MODIFIED to read as follows:
>
> x x x the Court hereby sentences him to suffer the penalty of *Reclusion Perpetua* without possibility of parole; and to pay the complainant the amount of ₱75,000.00 as moral damages and another ₱75,000.00 as civil indemnity.[11]

Hence, the instant recourse.

Rogelio contends that the RTC erred in convicting him of statutory rape, considering that the prosecution failed to present evidence to warrant a finding of conviction. Rogelio expresses a strong objection to the RTC's giving credence to the victim's testimony, which according to him is loaded with improbability.

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[9] *Id.* at 114.

[10] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[11] *Rollo*, p. 14.

Specifically, Rogelio pinpoints the substantial lapse of time from the date the victim was allegedly raped on 13 July 2003 to the date of the victim's pregnancy in December of 2004. Rogelio insists that if indeed he was responsible for the victim's pregnancy, then it would not have taken until December 2004 for the signs of pregnancy to become manifest.

Statutory rape, under Article 266-A, par. 1-d, is committed by having carnal knowledge of a woman "when the offended party is under 12 years of age." The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman was below 12 years of age. Sexual congress with a girl under 12 years old is always rape.[12]

In this case, the victim's age is undisputed. She was below 12 years old. Her Birth Certificate shows that she was born on 15 March 1992. Thus, on 13 July 2003, AAA was only eleven (11) years old. Hence, the remaining issue is whether Rogelio had carnal knowledge of the victim.

To ascertain the guilt or innocence of the accused in cases of rape, the courts have been traditionally guided by three settled principles, namely: (a) an accusation for rape is easy to make, difficult to prove and even more difficult to disprove; (b) in view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost caution; and (c) the evidence of the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence for the defense.[13]

Since the crime of rape is essentially one committed in relative isolation or even secrecy, it is usually only the victim who can testify with regard to the fact of the forced *coitus*.[14] In a prosecution for rape, therefore, the credibility of the victim is almost always the single and most important issue to deal with.[15]

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[12] *People v. Somodio*, 427 Phil. 363, 376 (2002).

[13] *People v. Orquina*, 439 Phil. 359, 365-366 (2002).

[14] *People v. Baylen*, 431 Phil. 106, 118 (2002).

[15] *People v. Quijada*, 378 Phil. 1040, 1047 (1999).

If her testimony meets the test of credibility, the accused can justifiably be convicted on the basis thereof; otherwise, he should be acquitted of the crime.[16]

In this case, after a painstaking assessment of the victim's testimony, the RTC found her credible, thus:

> The Court noticed that the victim while making public her horrifying, terrible and pyrhic (sic) ordeal from the hands of the accused, cried not once but twice, thus, bolstering the truthfulness of her statements as it was narrated with feelings and down to earth emotions.
>
> Thus, the Court believes, that, the victim cannot fabricate more so concoct nor weave a case so serious against her own step-father.[17]

This Court itself, in its effort to ferret out the truth based on the evidence on records has diligently examined the transcripts of stenographic notes of this case. Like the RTC, it finds the victim's testimony on the incident candid and straightforward, indicative of an unadulterated and realistic narration of what took place on that fateful day. She narrated the sexual abuse in this manner:

Q: On July 13, 2003 Madam witness, where were you then living?

A: I was living at XXX, Gattaran, Cagayan, sir.

Q: In whose house?

A: House of my grandfather, sir.

Q: Who were living with you in the house of your grandfather?

A: My step-father Rogelio Marcos, my mother, my siblings and I, sir.

x x x x x x x x x

Q: You said you were in the house of your grandfather on July 13, 2003 Madam witness, what were you then doing?

A: I was taking care of my siblings, sir.

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[16] *People v. Babera*, 388 Phil. 44, 53 (2000).

[17] Records, pp. 110-111.

x x x x x x x x x

Q: Why, where was your mother Madam witness?

A: She went to work, sir.

Q: Whereat?

A: She went to work as farm worker, sir.

Q: How about your step-father, where was he then?

A: He was at home, sir.

Q: What was he doing then?

A: None, sir.

Q: Now, what happened when you were taking care of your brothers and sister?

A: My step-father requested me to go upstairs, sir.

Q: Did you go upstairs as requested?

A: Yes, sir.

Q: Do you know the reason then why, you were let by your step-father to go upstairs?

A: I do not know yet at that time what was the reason why he let me go upstairs, sir.

Q: When you were already in the upstairs, what did your step-father do if any?

A: He also went upstairs, sir.

Q: And after that, what happen if any?

A: He came near me and suddenly removed my dress, sir.

Q: What happened next if any?

A: He came near me and suddenly removed my dress, sir.

Q: What happened next if any?

A: He removed my short pants, my panty and laid me down and after which he mounted on me, sir.

Q: And where did he lay you down?

A: On the floor, sir.

Q: Now you said that he mounted on you, was he in his dress at that time?

A: None sir, he also removed his dress.

Q: When he mounted at you, what did he do next?

A: He made the push and pull motion, sir.

Q: What happened when he did do that to you?

x x x x x x x x x

A: He forcibly inserted his penis into my vagina, sir.

Q: And what did you do, when he do that to you?

A: None sir, I just cried because I was afraid at that time.

Q: Why were you afraid?

A: After he inserted his penis into my vagina, I do not know what to do anymore because it was then painful at that time until he finished performing the sexual intercourse with me, sir.

Court: May we make it on record that as observed by the court, the witness is crying.

x x x x x x x x x

Q: Did you not say anything to him while he was doing the push and pull movement or did you not resist?

A: I did not do anything because I was afraid, sir.

Q: How long did he do the push and pull movement?

x x x x x x x x x

A: About five (5) minutes, sir.

Q: And after that, what did the accused do if any?

A: Before he went downstairs sir, he told me to wipe my tears and after saying that he ordered me to come downstairs to take care of my siblings,sir.

x x x x x x x x x

Q: Now after dressing yourself, did you go down as ordered to you by your step-father?

A: Yes, sir.[18]

The testimony of AAA, an eleven-year old child, adequately proved beyond reasonable doubt that she suffered from a bestial act committed by her stepfather on 13 July 2003. As a good daughter, AAA took care of her younger siblings. As an obedient daughter, she innocently followed Rogelio's order to go upstairs. She had no idea what would befall her from following her stepfather's orders. When she went upstairs, as ordered by stepfather, she was callously molested by him. The victim, who was only a naive eleven (11)-year-old child, regarded Rogelio as her true father. Deep in her heart, she was hoping that Rogelio would consider her as his true daughter and would protect her from harm and evil. This, after all, is a normal expectation of a fatherless child and a reasonable responsibility of a stepfather. Such expectation of AAA was shattered when the father whom she regarded as her own showed the beast in him. Far from being a safe refuge, Rogelio became the very evil that he should have shielded AAA from. Rogelio was the very same person who wrought malady upon her.

It may appear odd that AAA did not run away from her tormentor. Her conduct of staying with her tormentor and her failure to prevent the repetition of the rape incident should not be interpreted against her. She was too disturbed and too young to totally comprehend the consequences of the dastardly acts inflicted on her by the appellant. Rape victims, especially child victims, should not be expected to act the way mature individuals would when placed in such a situation.[19] It is not proper to judge the actions of children who have undergone traumatic experience by the norms of behavior expected from adults under similar circumstances.[20] The range of emotions shown by rape

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[18] TSN, 11 October 2005, pp. 5-9.

[19] *People v. Remoto*, 314 Phil. 432, 450 (1995).

[20] *Id*.

victims is yet to be captured even by calculus.[21] It is, thus, unrealistic to expect uniform reactions from rape victims. Certainly, the Court has not laid down any rule on how a rape victim should behave immediately after she has been violated.[22] This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted with any modicum of doubt. Indeed, different people act differently to a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience.[23] It would be insensitive to expect the victim to act with equanimity and to have the courage and the intelligence to disregard the threat made by the appellant. When a rape victim is paralyzed with fear, she cannot be expected to think and act coherently. This is especially true in this case since AAA was repeatedly threatened by appellant if ever she would tell anybody about the rape incidents. The threat instilled enormous fear in her, such that she failed to take advantage of any opportunity to escape from the appellant. Besides, getting away from Rogelio was a task extremely difficult for an 11-year-old girl, because it would be tantamount to leaving her mother and her relatives, fending for herself and perishing in the process.

In contradiction to the damning evidence adduced by the prosecution, what Rogelio could muster is only the defense that he and the victim were having oral sex. Between the self-serving testimony of Rogelio corroborated by his wife and the positive declaration of the victim who is of tender age, the latter deserves greater credence. As the RTC pointed out, Rogelio's claim that he merely asked AAA to suck his penis was a fabrication and meant to mitigate the crime committed. It is clear that the oral sex was a desperate attempt of Rogelio to be convicted only of a lighter offense defined under paragraph 2 of Article 266-A[24] of the Revised Penal Code, which is penalized

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[21] *Id*.

[22] *People v. Malones*, 469 Phil. 301, 326-327 (2004).

[23] *Id*.

[24] Records, p. 111.

by *prision mayor* only, much lighter than the penalty for the offense charged against Rogelio under subparagraph (d), paragraph 1, Article 266-A, which carries with it the maximum penalty of death. Considering the oft repeated truism that a woman of tender age is shy and ignorant of the sophistication of city life, by no stretch of imagination can we believe that AAA - with her innate modesty, humility and purity as a young Filipina - would have permitted herself to be the object of public ridicule, shame and obloquy as a victim of sexual assault or debauchery.[25] It takes an extreme sense of moral depravity for an 11 year-old-stepdaughter to accuse her very own stepfather of a heinous crime, such as rape, and expose him to the perils attendant to a criminal conviction for no reason at all. As earlier held by the Court, a true Filipina would not go around in public unraveling facts and circumstances of her defloration for no reason, if such were not true. Besides, Rogelio did not ascribe any credible motive to explain why a girl of tender age like AAA would concoct a story accusing him of rape. Thus, in indicting Rogelio, AAA was purely impelled by her legitimate desire to see that justice was done for what she suffered. The absence of evidence as to improper motives actuating the principal witness for the prosecution strongly tends to sustain the conclusion that no such improper motives existed, and that her testimony is worthy of full faith and credit.

Rogelio tries to discredit the victim's testimony by questioning the long interval, which was about 17 months from the time of the rape charged to the time the signs of AAA's pregnancy became obvious. Rogelio claims that it was improbable that he had carnal knowledge of the victim on 13 July 2003 and that such act would come into fruition only in December 2004, which lapse of time was beyond the normal gestation period of nine months.

This fact would not in any way affect the victim's testimony that Rogelio raped her on the day in question. Rogelio must have forgotten that although he was charged only with one count

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[25] *People v. Cana*, 431 Phil. 152, 164 (2002).

of rape that was committed on 13 July 2003. AAA testified that she was ravished again by the former in the same month and every month thereafter, the last time being on 18 January 2005. This testimony alone would topple Rogelio's contention.

Championing his cause, Rogelio protests that those rape incidents subsequent to the 13 July 2003 cannot be considered as evidence for the prosecution. He asserts that it would violate his right to due process.

This contention is not well-taken. While it is a basic constitutional precept that the accused in a criminal case should be informed of the nature of the offense with which he is charged before he is put on trial, and that the accused be convicted only of an offense alleged in the complaint or information, such principle finds no application to this case. Rogelio is not being tried for the rapes he committed subsequent to that alleged in the Information. The prosecution does not seek that he be punished for the rapes he perpetrated outside the date mentioned in the Information. The said principle becomes relevant if Rogelio were sought to be punished for the acts of rape he carried out other than the one stated in the Information. The prosecution adduced evidence that Rogelio raped the victim several times after the date in question, precisely to show that the pregnancy of AAA was authored by him and not to prove that he should be punished for such. Even assuming *arguendo* that the testimony on the successive molestations could not be considered as evidence for the prosecution, the cause of the prosecution is sufficiently proved by the credible testimony of AAA relating to the 13 July 2003 rape incident. This is an established proof. This alone can sustain the conviction of Rogelio.

In sum, the Court finds that the RTC, as well as the Court of Appeals, committed no error in giving credence to the evidence of the prosecution and finding appellant guilty of the charges. The Court has long adhered to the rule that findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect, unless it overlooked substantial facts and circumstances, which, if considered, would materially affect

the result of the case.[26] We find no reason not to apply the rule and to apply the exception.

The Court of Appeals reduced the penalty of death imposed by the RTC to *reclusion perpetua,* without possibility of parole pursuant to Republic Act No. 9346.

Under Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, qualified rape is committed when, among others, "the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim." In the instant case, the minority of the victim was alleged in the information and was duly proven during trial. Likewise, Rogelio admitted his relationship to the victim. However, with the effectivity of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines" on June 24, 2006, the imposition of the penalty of death has been prohibited. Thus, the proper penalty to be imposed on appellant as provided in Section 2, paragraph (a) of said law, is *reclusion perpetua*. Thus, this Court affirms the sentence imposed by the Court of Appeals.

Also affirmed is the award of damages imposed by the Court of Appeals, which fixed it at ₱75,000.00 for the civil indemnity and ₱75,000.00 for the moral damages. The award of civil indemnity in the said amount is the amount to be awarded if the crime is qualified by circumstances that warrant the imposition of the death penalty.

In addition, the award of exemplary damages is in order because of the presence of the qualifying circumstance of minority of the victim and relationship. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱30,000.00 as exemplary damages is justified under Article 2230 of the New Civil Code.[27] This kind of damage is

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[26] *People v. Dagpin*, 400 Phil. 728, 739 (2000); *People v. Valdez*, 401 Phil. 19, 34 (2000).

[27] *People v. Aguila*, G.R. No. 171017, 6 December 2006, 510 SCRA 642, 663.

intended to serve as deterrent to serious wrongdoings, as a vindication of undue sufferings and wanton invasion of the rights of an injured, or as punishment for those guilty of outrageous conduct.[28]

WHEREFORE, premises considered, the instant appeal is *DENIED*. The Decision of the Court of Appeals dated 30 June 2008 in CA-G.R. CR-H.C. No. 01919 finding accused-appellant Rogelio Marcos *GUILTY* beyond reasonable doubt of statutory rape, sentencing him to suffer the penalty of ***RECLUSION PERPETUA***, and ordering him to pay the victim ₱750,000.00 as civil indemnity and another ₱75,000.00 as moral damages, is *AFFIRMED* with the modification that Rogelio is also ordered to pay the victim ₱30,000.00 as exemplary damages.

SO ORDERED.

Ynares-Santiago (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

SECOND DIVISION

[G.R. No. 154717. June 19, 2009]

BONIFACIO M. MEJILLANO, *petitioner, vs.* **ENRIQUE LUCILLO, HON. GREGORIA B. CONSULTA, Presiding Judge of RTC, Legaspi City, Branch 4,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FILING OF AN APPEAL MEMORANDUM ON TIME IS MANDATORY; REASON;

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[28] *Id*.

CASE AT BAR.— The rule is clear. It is obligatory on the part of petitioner to file his memorandum on appeal within fifteen days from receipt of the notice to file the same; otherwise, his appeal will be dismissed. In *Enriquez v. Court of Appeals*, we ruled: x x x The use of the word "shall" in a statute or rule expresses what is mandatory and compulsory. Further, the Rule imposes upon an appellant the "duty" to submit his memorandum. A duty is a "legal or moral obligation, mandatory act, responsibility, charge, requirement, trust, chore, function, commission, debt, liability, assignment, role, pledge, dictate, office, (and) engagement." Thus, **under the express mandate of said Rule, the appellant is duty-bound to submit his memorandum on appeal. Such submission is not a matter of discretion on his part. His failure to comply with this mandate or to perform said duty will compel the RTC to dismiss his appeal**. In rules of procedure, an act which is jurisdictional, or of the essence of the proceedings, or is prescribed for the protection or benefit of the party affected is **mandatory**. The *raison d'être* for such necessity was equally clarified in the same case: in appeals from inferior courts to the RTC, the appellant's brief is **mandatory** since only errors specifically assigned and properly argued in the appeal memorandum will be considered in the decision on the merits. In this case, the fundamental cause of the dismissal of petitioner's appeal was his failure to file the obligatory appeal memorandum on time. Petitioner only filed his memorandum on appeal when the dismissal of his appeal had already been ordered. Resultantly, the trial court acted accordingly when it dismissed petitioner's appeal pursuant to the clear mandate of the Rules of Court.

2. ID.; APPEALS; RIGHT TO APPEAL IS PURELY STATUTORY.— [T]he right to appeal is neither a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. An appeal being a purely statutory right, an appealing party must strictly comply with the requisites laid down in the Rules of Court. In other words, he who seeks to avail of the right to appeal must play by the rules. This, the petitioner failed to do when he did not submit his memorandum on appeal.

3. ID.; RULES OF COURT; PROVISIONS ON REGLEMENTARY PERIODS ARE STRICTLY APPLIED.— [W]e cannot

> subscribe to petitioner's tenacious insistence to relax the application of the Rules of Court so as not to defeat his rights. Time and again, we have ruled that procedural rules do not exist for the convenience of the litigants. Rules of Procedure exist for a purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose. Procedural rules were established primarily to provide order to and enhance the efficiency of our judicial system. It has been jurisprudentially held that, while the rules of procedure are liberally construed, the provisions on reglementary periods are strictly applied, indispensable as they are to the prevention of needless delays, and are necessary to the orderly and speedy discharge of judicial business.

APPEARANCES OF COUNSEL

Manolo A. Flor for petitioner.
Joventino S. Sardaña for private respondent.

D E C I S I O N

QUISUMBING, *J.*:

Assailed in the present petition for review on *certiorari* are the Decision[1] dated March 14, 2002 and the Resolution[2] dated August 12, 2002 of the Court of Appeals in CA-G.R. SP No. 62322. The Court of Appeals had affirmed the Orders dated September 13, 2000[3] and October 23, 2000[4] of the Regional Trial Court (RTC) of Legaspi City, Branch 4, in Civil Case No. 9879, which dismissed petitioner's appeal from the Decision[5] dated July 5, 2000 of the Municipal Trial Court (MTC) of Daraga,

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[1] *Rollo*, pp. 103-110. Penned by Associate Justice Wenceslao I. Agnir, Jr. with Associate Justices B. A. Adefuin-De La Cruz and Josefina Guevara-Salonga concurring.

[2] *Id.* at 115-116.

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

[4] *Id.* at 70.

[5] *Id.* at 52-57. Penned by Judge William B. Volante.

Albay in Civil Case No. 945 and denied his motion for reconsideration.

The factual antecedents of this petition are as follows:

Faustino Loteriña died sometime in 1931 leaving two parcels of land, Lot No. 9007 which contains an area of 6,628 square meters, and Lot No. 9014 which contains an area of 4,904 square meters. During his lifetime, Faustino Loteriña begot six children. He sired three children by his first marriage to Ciriaca Luciñada, namely, Tranquilino, Antonia and Cipriano; and another three during his subsequent marriage to Francisca Monreal, namely, Julita, Felix and Hospicio.

On May 25, 1959, the surviving children of Faustino Loteriña with Ciriaca Luciñada, namely Tranquilino and Antonia, executed an Extrajudicial Settlement and Cession.[6] In said agreement, Tranquilino and Antonia divided Lot No. 9007 equally between them and Antonia ceded her one-half (½) share in the property to Tranquilino. On March 1, 1978, Tranquilino executed a Deed of Absolute Sale[7] of Lot No. 9007 in favor of Jesus Lorente. Soon after, he modified the agreement to include Lot No. 9014 in an Amended Deed of Absolute Sale[8] dated September 11, 1978.

The conflict arose when the children of Faustino with Francisca Monreal, namely Felix and Hospicio, claimed that Lot No. 9014 is their inheritance from their late father. Hence, Jesus Lorente could not have validly bought it from Tranquilino. The conflicting claims to occupy and use the disputed property led Jesus Lorente to file an action for recovery of possession with the RTC of Legaspi City. The RTC, in a Decision[9] dated September 20, 1985 in Civil Case No. 6005, dismissed the complaint and declared that Felix and Hospicio Loteriña are co-heirs or co-owners of Lot No. 9014. As such, they are entitled to the possession of

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

[7] *Id.* at 27.

[8] *Id.* at 28-29.

[9] *Id.* at 33-36. Penned by Judge Domingo Coronel Reyes.

the property, subject to the final determination of their rights as heirs of their late father.

Thereafter, the heirs of Hospicio sold to respondent Enrique Lucillo their one-half (½) share in Lot No. 9014 by way of an Extrajudicial Settlement and Sale[10] on April 28, 1995. The remaining one-half (½) portion was also sold to respondent Lucillo by Felix on August 7, 1995 by way of Deed of Absolute Sale.[11]

When respondent Lucillo was about to enter said property, however, he discovered that petitioner was occupying Lot No. 9014. Respondent Lucillo wrote petitioner a letter[12] requesting him to vacate said property, but petitioner refused to surrender possession thereof claiming that he is the owner of Lot No. 9007 and Lot No. 9014 by virtue of an Extrajudicial Partition and Sale executed in their favor by the heirs of Jesus Lorente. Hence, on September 18, 1995, respondent Lucillo filed an action for recovery of possession of real property against petitioner with the MTC of Daraga, Albay.[13]

In its Decision dated July 5, 2000 in Civil Case No. 945, the MTC decreed:

> WHEREFORE, judgment is hereby rendered orde[r]ing defendant Bonifacio Mejillano to relinquish possession of Lot No. 9014, situated at Pandan, Daraga, Albay, and to turn-over the peaceful possession thereof to plaintiff Enrique Lucillo. Costs against the defendant.
>
> SO ORDERED.[14]

Aggrieved, petitioner seasonably appealed the foregoing decision to the RTC, but failed to file an appeal memorandum. Consequently, respondent judge dismissed petitioner's appeal on September 13, 2000:

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

[11] *Id.* at 39.

[12] *Id.* at 71.

[13] *Id.* at 46-47.

[14] *Id.* at 57.

For failure of appellant to file a memorandum pursuant to the mandatory requirement … of Rule 40, Sec. 7(b) of the 1997 Rules of Civil Procedure, despite the lapse of the period therein given, the appeal is hereby ordered DISMISSED.

SO ORDERED.[15]

On October 9, 2000, petitioner, through new counsel, filed a motion for reconsideration attaching thereto the appeal memorandum. Petitioner alleged that his failure to file the required memorandum on time was due to ignorance, the untimely demise of his former counsel and the mistaken notion that what was needed in the appeal was merely a notice of appeal and nothing more.[16] In its Order[17] dated October 23, 2000, the RTC of Legaspi City, ruled:

x x x x x x x x x

The Court cannot accept … [petitioner's] claim of ignorance for the records will show that he personally made the Answer to the Complaint (Exp. pp. 9, 10, 11 & 12) and the Notice of Appeal (Exp. pp. 1-7).

Neither can the Court accept his claim of poverty because he chose to be represented by the late Atty. Delfin De Vera, a lawyer of no ordinary caliber and there is no indication on record that his services were for free. But even assuming that the entry of Atty. Delfin de Vera into the picture was financially excessive on him, why did he not seek the services of the PAO before which he subscribed and swore the Verification and Certification of his Answer on November 23, 1995?

In view of the foregoing, the Opposition to the Motion for Reconsideration stands to be meritorious.

SO ORDERED.

Petitioner went to the Court of Appeals on a petition for *certiorari*. In a Decision dated March 14, 2002, the Court of

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[15] *Id.* at 59. Penned by Judge Gregorio A. Consulta.

[16] *Id.* at 60.

[17] *Id.* at 70.

Appeals dismissed the petition, ruling that respondent judge did not act with grave abuse of discretion in dismissing the appeal. The *fallo* of said decision reads:

> WHEREFORE, premises considered, the petition is **DISMISSED** and the assailed orders are **AFFIRMED**.
>
> SO ORDERED.[18]

On August 12, 2002, the appellate court also denied his motion for reconsideration. Hence, the instant appeal. Petitioner now raises the following issues for our resolution:

> I.
>
> THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT CONSIDERING PETITIONER'S SUBSTANTIAL COMPLIANCE IN FILING HIS APPEAL MEMORANDUM WITH THE REGIONAL TRIAL COURT OF LEGASPI CITY IN THE INTEREST OF SUBSTANTIAL JUSTICE DESPITE THE FACT THAT THE RATHER BELATED FILING THEREOF BY PETITIONER WAS UNINTENTIONAL AS SHOWN IN HIS AFFIDA[V]IT OF MERIT.
>
> II.
>
> THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT CONSIDERING THE FACT THAT THE SALE OF SUBJECT LAND TO PRIVATE RESPONDENT IS NULL AND VOID.
>
> III.
>
> THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT CONSIDERING THE MERITORIOUS CAUSE OF ACTION OF PETITIONER AGAINST PRIVATE RESPONDENT.[19]

Stated simply, the issue for our resolution is whether the appellate court committed reversible error in affirming the order of the RTC dismissing petitioner's appeal for failure to file on time his memorandum on appeal.

Petitioner avers that his failure to file his memorandum on time was due to his lawyer's untimely death. He avers that he

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[18] *Rollo*, p. 109.

[19] *Id.* at 171.

received the notice to file his memorandum, but because he is not a lawyer, he did not fully understand the tenor of such notice. It was only later after he talked with a Public Attorney's Office district lawyer that he came to file, albeit belatedly, his appeal memorandum. He insists on a liberal application of the rules, arguing that in a long line of cases, this Court ruled that dismissals of appeals on purely technical grounds are frowned upon and that rules of procedure are used only to help secure not override substantial justice.

All circumstances in this case having been considered carefully, we now find the petition bereft of merit.

Section 7 (b), Rule 40 of the Revised Rules of Court expressly states:

> (b) Within fifteen (15) days from such notice, **it shall be the duty of the appellant to submit a memorandum which shall briefly discuss the errors imputed to the lower court**, a copy of which shall be furnished by him to the adverse party. Within fifteen (15) days from receipt of the appellant's memorandum, the appellee may file his memorandum. **Failure of the appellant to file a memorandum shall be a ground for dismissal of the appeal**. [Emphasis supplied.]

The rule is clear. It is obligatory on the part of petitioner to file his memorandum on appeal within fifteen days from receipt of the notice to file the same; otherwise, his appeal will be dismissed. In *Enriquez v. Court of Appeals*,[20] we ruled:

> x x x The use of the word "shall" in a statute or rule expresses what is mandatory and compulsory. Further, the Rule imposes upon an appellant the "duty" to submit his memorandum. A duty is a "legal or moral obligation, mandatory act, responsibility, charge, requirement, trust, chore, function, commission, debt, liability, assignment, role, pledge, dictate, office, (and) engagement." Thus, **under the express mandate of said Rule, the appellant is duty-bound to submit his memorandum on appeal. Such submission is not a matter of discretion on his part. His failure to comply**

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[20] G.R. No. 140473, January 28, 2003, 396 SCRA 377.

with this mandate or to perform said duty will compel the RTC to dismiss his appeal.

In rules of procedure, an act which is jurisdictional, or of the essence of the proceedings, or is prescribed for the protection or benefit of the party affected is **mandatory**.[21] [Emphasis supplied.]

The *raison d'être* for such necessity was equally clarified in the same case: in appeals from inferior courts to the RTC, the appellant's brief is **mandatory**[22] since only errors specifically assigned and properly argued in the appeal memorandum will be considered in the decision on the merits.[23]

In this case, the fundamental cause of the dismissal of petitioner's appeal was his failure to file the obligatory appeal memorandum on time. Petitioner only filed his memorandum on appeal when the dismissal of his appeal had already been ordered. Resultantly, the trial court acted accordingly when it dismissed petitioner's appeal pursuant to the clear mandate of the Rules of Court.

Further, we cannot subscribe to petitioner's tenacious insistence to relax the application of the Rules of Court so as not to defeat his rights.

Time and again, we have ruled that procedural rules do not exist for the convenience of the litigants.[24] Rules of Procedure exist for a purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose.[25] Procedural rules were established primarily to provide order to and enhance the efficiency of our judicial system.[26] It has been jurisprudentially

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[21] *Id.* at 384.

[22] *Id.*

[23] *Banting v. Maglapuz*, G.R. No. 158867, August 22, 2006, 499 SCRA 505, 518.

[24] *Ko v. Philippine National Bank*, G.R. Nos. 169131-32, January 20, 2006, 479 SCRA 298, 303.

[25] *Favila v. National Labor Relations Commission*, G.R. No. 126768, June 16, 1999, 308 SCRA 303, 313.

[26] *Ko v. Philippine National Bank, supra* at 303-304.

held that, while the rules of procedure are liberally construed, the provisions on reglementary periods are strictly applied, indispensable as they are to the prevention of needless delays, and are necessary to the orderly and speedy discharge of judicial business.[27]

Also, the right to appeal is neither a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law.[28] An appeal being a purely statutory right, an appealing party must strictly comply with the requisites laid down in the Rules of Court. In other words, he who seeks to avail of the right to appeal must play by the rules.[29] This, the petitioner failed to do when he did not submit his memorandum on appeal.

All told, we find that the Court of Appeals committed no reversible error in upholding the order of dismissal of the RTC in Civil Case No. 9879 dated September 13, 2000 and its Order dated October 23, 2000 denying the motion for reconsideration.

WHEREFORE, the instant petition is *DENIED.* The assailed Decision dated March 14, 2002 and Resolution dated August 12, 2002 of the Court of Appeals in CA-G.R. SP No. 62322 are *AFFIRMED.*

SO ORDERED.

Ynares-Santiago,[*] *Chico-Nazario,*[**] *Leonardo-de Castro,*[***] and *Brion, JJ.,* concur.

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[27] *Moneytrend Lending Corporation v. Court of Appeals*, G.R. No. 165580, February 20, 2006, 482 SCRA 705, 714.

[28] *Producers Bank of the Philippines v. Court of Appeals*, G.R. No. 126620, April 17, 2002, 381 SCRA 185, 197.

[29] *Enriquez v. Court of Appeals*, *supra* note 20, at 385.

[*] 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 Special Order No. 658.

[***] Designated member of the Second Division per Special Order No. 635 in view of the retirement of Associate Dante O. Tinga.

FIRST DIVISION

[G.R. No. 160080. June 19, 2009]

NATIONAL POWER CORPORATION, *petitioner, vs.* **CARLOS VILLAMOR,** *respondent.*

SYLLABUS

POLITICAL LAW; CONSTITUTIONAL LAW; EMINENT DOMAIN; FACTORS IN DETERMINING JUST COMPENSATION FOR EASEMENT OF RIGHT OF WAY; FINDINGS OF THE TRIAL AND APPELLATE COURTS, UPHELD.— Petitioner's reliance on Section 3A of RA 6395 has been struck down by this Court in a number of cases. Easement of right of way falls within the purview of the power of eminent domain. In installing the 230 KV Talisay-Compostela transmission lines which traverse respondent's lands, a permanent limitation is imposed by petitioner against the use of the lands for an indefinite period. This deprives respondent of the normal use of the lands. In fact, not only are the affected areas of the lands traversed by petitioner's transmission lines but a portion is used as the site of its transmission tower. Because of the danger to life and limbs that may be caused beneath the high-tension live wires, the landowner will not be able to use the lands for farming or any agricultural purposes. Further, the trial and appellate courts fixed the valuation of the lands at ₱450 per square meter. The courts considered not only the Commissioners' Report and the opinion values of different agencies submitted to the trial court but also the several deeds of absolute sale and compromise agreements entered into by petitioner with landowners adjacent to respondent's lands. x x x Moreover, petitioner entered into two compromise agreements dated 26 May 1999, duly approved by the trial court, which fixed the valuation of the lands at ₱420 per square meter based on the previous valuation fixed and approved by petitioner and the trial court on three other expropriation cases: (1) DNA-426 entitled "*National Power Corporation v. Francisco Villamor, Sr.*"; (2) DNA-389 entitled "*National Power Corporation v. Carlos Villamor*"; and (3) DNA-373 entitled "*National Power Corporation v. Francisco Camara, et al.*" These compromise agreements consisted of

an 11,700 square meter parcel of land situated in Baring and Cantipay, Carmen, Cebu and a 1,675.80 square meter land situated in Cantipay, Carmen. Thus, we see no reason to disturb the findings of the trial and appellate courts. Indeed, respondent is entitled to just compensation or the just and complete equivalent of the loss which the owner of the thing expropriated has to suffer by reason of the expropriation. Since the determination of just compensation in expropriation proceedings is essentially a judicial function, this Court finds the amount of ₱450 per square meter to be just and reasonable compensation for the expropriated lands of respondent.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Eliseo A. Danoit for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the Decision[2] dated 19 August 2002 and Resolution[3] dated 28 August 2003 of the Court of Appeals in CA-G.R. CV No. 61749.

The Facts

Petitioner National Power Corporation (NPC) is a government-owned and controlled corporation created and existing by virtue of Republic Act No. 6395 (RA 6395),[4] as amended by Presidential

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

[2] *Rollo*, pp. 64-71. Penned by Justice Perlita J. Tria Tirona with Justices Buenaventura J. Guerrero and Rodrigo V. Cosico, concurring.

[3] *Id.* at 73-74.

[4] An Act Revising the Charter of the National Power Corporation. Made effective on 10 September 1971.

Decree No. 938.[5] The main objective of NPC is the development of hydro-electric generation power and the production of power from any other source. Its charter grants to NPC the power, among others, to exercise the right of eminent domain.[6]

Due to its Leyte-Cebu Interconnection Project, NPC's 230 KV Talisay-Compostela transmission lines and towers have to pass parcels of land in the City of Danao and Municipality of Carmen, both situated in the province of Cebu. Two of these lands situated in Cantipay, Carmen, Cebu are owned by respondent Carlos Villamor (Villamor). On these lands stand fruit-bearing trees, such as mango, coconut, avocado, soursop or *guyabano*, jackfruit, tamarind, breadfruit, sugar apple or *atis*, Spanish plum or *siniguelas* and banana; and non-fruit bearing trees, such as mahogany and gemilina.

On 22 July 1996, NPC filed with the Regional Trial Court, Branch 25, Danao City, Cebu (trial court), a complaint for eminent domain of Villamor's lands, docketed as Civil Case No. DNA-389. The lands were identified as Lot 3, 6191 Cad. 1046-D with a total area of 5,590.76 square meters and covered by Transfer Certificate of Title (TCT) No. 11970 and Lot 4, 6191 Cad. 1046-D with a total area of 3,134.53 square meters and covered by TCT No. 15-12045.[7]

NPC deposited with the Philippine National Bank, Fuenta Osmeña branch, ₱23,115.70, representing the assessed value on the tax declaration of the lands. The trial court, in its Order

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[5] An Act Further Amending Certain Sections of Republic Act Numbered Sixty-Three Hundred Ninety-Five entitled, 'An Act Revising the Charter of the National Power Corporation,' as amended by Presidential Decree Nos. 380, 395 and 758. Effective on 27 May 1976.

[6] Sec. 3. Powers and General Functions of the Corporation. The powers, functions, rights and activities of the Corporation shall be the following:

x x x x x x x x x

(j) To exercise the right of eminent domain for the purpose of this Act in the manner provided by law for instituting condemnation proceedings by the national, provincial and municipal governments; x x x

[7] Records, p. 105.

dated 14 July 1997,[8] ordered the issuance of the corresponding writ of possession in favor of NPC.

In the course of the proceedings, several parties intervened, namely Teodolo Villamor, Teofilo Villamor and Nunila Abellar. They were allegedly the siblings of respondent Villamor and the heirs of the late spouses Jose and Dolores Villamor. The intervenors claimed that NPC violated their legal rights in negotiating only with Villamor, who is just one of seven heirs. Villamor was allegedly not authorized by the other legal heirs to negotiate and receive payment for the land sought to be expropriated.

The only issue between NPC and Villamor involves the reasonableness and adequacy of the just compensation of the properties.

The trial court created a board of three commissioners to determine the just compensation for the lands and improvements. As approved by the trial court, the following formed the board of commissioners: Sebastian C. Ocon, the Right-of-Way Supervisor of NPC; Nicolas Capoy, a collection agent of the Bureau of Internal Revenue; and Fortunato C. Ligutom (Ligutom), the Municipal Assessor of Carmen, Cebu. Ligutom was appointed as Chairman.

In the Joint Commissioners' Report[9] submitted to the trial court, the board of commissioners recommended the amount of ₱433 per square meter as the fair market value of Villamor's lands. The board based the formulation on the following: (1) the inspection report made by representatives of the court, (2) list of documentary exhibits, (3) opinion values of the different agencies submitted to the Provincial Appraisal Committee, (4) certification from the different government agencies, and (5) the owner's proposal. The amount of ₱290 per square meter was the average value submitted by the (1) Regional Investors, Inc., (2) Fil-Asia Agent, (3) International Exchange

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[8] *Id.* at 182.

[9] *Id.* at 402-407.

Bank, (4) Rural Bank of Carmen, (5) Municipal Assessor of Carmen, and (6) the owner's proposal. Also, the proposed fair market value of ₱350 per square meter was taken into consideration since the affected lands were identified as part of the industrial zone per Regional Development Council Resolution No. 38, series of 1993[10] dated 17 September 1993. Likewise included in the report were the respective values of the fruit bearing and non-fruit bearing trees planted on Lots 3 and 4.

On 24 November 1997, Villamor filed his Comment to the Commissioners' Report.[11] Villamor exhibited a similar expropriation case, Civil Case No. DNA-426, filed by NPC against Francisco Villamor, involving a lot, designated as Lot 2 of 6191, Cad. 1046-D, adjoining the lands of Villamor. In said case, the trial court rendered a decision fixing the just compensation at ₱600 per square meter. However, upon motion of NPC, the amount was reduced to ₱450.[12] Villamor prayed that the trial court consider the same amount of just compensation as that awarded to the landowner adjacent to his lands. Further, Villamor stated that a small portion of Lot 4 consisting of an area of 15.23 square meters had been separated from the remaining unaffected portion of the total area and would not be used by Villamor for any productive purposes. Thus, Villamor prayed that such small portion be included as part of the total area that should be compensated by NPC.

On 22 December 1997, the trial court rendered a decision in favor of Villamor.[13] The dispositive portion states:

> WHEREFORE, facts and law considered, the Court hereby renders judgment condemning property subject of expropriation in favor of plaintiff; declaring in favor of the defendants for plaintiff to pay the fair market value of the portions of the lots condemned by this expropriation proceedings at ₱450.00 per square meter and to pay to defendant Carlos Villamor, the following amounts:

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[10] *Id.* at 383.

[11] *Id.* at 219- 223.

[12] *Id.* at 225.

[13] *Id.* at 228-234.

1. ₱2,515,842.00 for the 5,590.76 sq. mts. as the total affected area of Lot 3 of 6191, Cad. 1046-D;

2. ₱1,410,538.50 for the 3,134.53 sq. mts. as the total affected area of Lot 4 of 6191, Cad. 1046-D;

or the total amount of Three Million Nine Hundred Twenty-Six Thousand Three Hundred Eighty Pesos and 50/100 (₱3,926,380.50);

Declaring that the fair market value of all the improvements inside the affected lots to be in the amounts recommended in the Commissioners' Unit Base Market Value of the Land and Improvements Owned by Carlos Villamor attached to the Commissioners' Report and ordering the Plaintiff National Power Corporation to pay to the defendant Carlos Villamor the following amounts:

1. ₱648,932.00 for the total fair market value of the improvements in Lot 3, of 6191, Cad. 1046-D;

2. ₱372,968.00 for the total fair market value of the improvements in Lot 4, of 6191, Cad. 1046-D.

or the total amount of One Million Twenty-One Thousand Nine Hundred Pesos (₱1,021,900.00).

Ordering the amount of One Million Seven Hundred Eighty-Three Thousand Five Hundred Six Pesos and 50/100 (₱1,783,506.50) representing just compensation of Lot 4 and improvements described in the Amended Complaint, to be divided among the Hrs. of Jose and Dolores Villamor, or to be awarded solely to defendant Carlos Villamor, whichever is favored by the decision of the case pending litigation and under appeal with the Court of Appeals.

SO ORDERED.

Villamor filed a Motion for Reconsideration praying that the trial court's decision be reviewed by ordering NPC to likewise pay for the small isolated portion of Lot 4, consisting of 15.23 square meters.[14]

On 22 January 1998, the trial court, acting on Villamor's motion, rendered a Resolution amending its earlier decision.[15] The dispositive portion of the resolution states:

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[14] *Id.* at 235-237.

[15] *Id.* at 240-241.

WHEREFORE, Motion for Reconsideration is given due course.

Let therefore the dispositive portion of the Decision in the last paragraph be amended by adding the following:

Ordering the plaintiff to pay the sum of ₱6,853.50 to defendant Carlos Villamor, same amount to be included in the deposit for valid claimants as proceeds of Lot 4, described in the complaint.

SO ORDERED.[16]

NPC filed an appeal with the Court of Appeals, docketed as CA-G.R. CV No. 61749.

The Ruling of the Court of Appeals

On 19 August 2002, the Court of Appeals dismissed the petition and affirmed the decision of the trial court.[17] The relevant portions of the decision state:

A perusal of the decision rendered by the trial court will show that before the trial court arrived at the amount of ₱450.00 per square meter as just compensation for the expropriated property, the court *a quo* considered the following factors:

> "The Committee on Appraisal through its Chairman, Mr. Fortunato Ligutom, submitted the Commissioner's Report.
>
> Based on the opinion values of the different agencies, namely, Regional Investors, Inc., Fil Asia Agent, International Exchange Bank, Rural Bank of Carmen, Municipal Assessor of Carmen and Owner's Proposal, the Committee in computing the average value per square meter appraised ₱290.00 per square meter. Pursuant however to RDC Res. No. 38, s. 1993, the area under expropriation is covered by the industrial zone to which the proposed market value of the land per square meter is ₱350.00 more or less.
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> Opinion values submitted by the different agencies, namely, the Municipal Agriculturist Officer of Sogod, Cebu of Carmen, Cebu, Mandaue City, and the new schedule of market values

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[16] *Id.* at 241.

[17] *Rollo,* pp. 64-71.

> from Provincial Assessor of Cebu, for mango trees and coconut trees, the Committee reached by average computation per tree at ₱22,756.00 for mango tree and ₱2,310 per coconut tree. The land on which the improvements grow is classified as first class, it being a fertile land and trees growing thereon produce plenty of fruits.
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> x x x x x x x x x
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> The Commissioner's Report did not consider the fact that in expropriating that portion of Lot 4 of 6191, Cad. 1046-D, a small dangling portion of the said lot consisting of 15.23 square meters is left out and separated from the remaining portion of said Lot 4. Considering that the 15.23 square meters cannot anymore be used by defendant Carlos Villamor for any productive purposes and the same will cease to have commercial value to the defendant Carlos Villamor, said dangling area should also be paid by plaintiff NPC.

Moreover, appellee has shown to this Court that in other expropriation proceedings filed by appellant, involving lands which are likewise affected by the transmission lines of NPC's Leyte-Cebu Interconnection Project, National Power Corporation executed several Deeds of Absolute Sale with the respective owners of the lots expropriated where NPC agreed to pay the owners of the lands ₱450.00 per square meter as just compensation. And two Compromise Agreements were likewise entered into by NPC with the respective owners of the lands where NPC agreed to pay ₱420.00 as just compensation for the lots expropriated. In all these cases, National Power Corporation did not invoke Sec. 3-A of the Revised Charter of the National Power Corporation.

WHEREFORE, in view of the foregoing, the instant appeal is hereby DISMISSED. The decision dated 22 December 1997 rendered by the Regional Trial Court of Danao City, Branch 25, is hereby AFFIRMED.

SO ORDERED.[18]

NPC filed a Motion for Reconsideration. This was denied by the appellate court in a Resolution dated 28 August 2003.[19]

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[18] *Id.* at 70-71.

[19] *Id.* at 73-74.

Hence, this petition.

The Issue

The issue for our resolution is whether the fair market value awarded by the trial court may be reduced taking into account that petitioner is allegedly acquiring only an easement of right of way and that the lands affected are classified as agricultural.

The Court's Ruling

The petition lacks merit.

Petitioner contends that under Section 3A of its charter, RA 6395, where private property will be traversed by transmission lines, NPC shall only acquire an easement of right of way since the landowner retains ownership of the property and can devote the land to farming and other agricultural purposes. Moreover, in the present case, since the lands are agricultural with no sign of commercial activity, the amount of ₱450 per square meter awarded by the trial court as market value of the property is excessive and unreasonable.

Respondent, on the other hand, maintains that the affected portions of the lands are not only traversed by petitioner's transmission lines but a portion is also used as the site of its transmission tower. He asserts that petitioner cannot hide behind the provisions of Section 3A and claim that it may only pay landowners an easement fee not exceeding 10% of the market value of the property. Further, respondent points out that other landowners similarly affected by the Leyte-Cebu Interconnection Project were compensated in the amount of ₱420 to ₱450 per square meter as shown by deeds of absolute sale[20] and compromise agreements[21] executed by petitioner in other expropriation cases.

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[20] CA *rollo*, pp. 60-70.

[21] *Id.* at 71-76.

Petitioner's reliance on Section 3A[22] of RA 6395 has been struck down by this Court in a number of cases.[23] Easement of right of way falls within the purview of the power of eminent

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[22] **Sec. 3A. In acquiring private property or private property rights through expropriation proceedings where the land or portion thereof will be traversed by the transmission lines, only a right-of-way easement thereon shall be acquired when the principal purpose for which such land is actually devoted will not be impaired, and where the land itself or portion thereof will be needed for the projects or works, such land or portion thereof as necessary shall be acquired.**

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

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

With respect to the acquired right-of-way easement over the land or portion thereof, not to exceed ten percent (10%) of the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower.

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

[23] *National Power Corporation v. Tiangco*, G.R. No. 170846, 6 February 2007, 514 SCRA 674; *National Power Corporation v. San Pedro*, G.R. No. 170945, 26 September 2006, 503 SCRA 333; *Didipio Earth-Savers' Multi-Purpose Association, Inc. (DESAMA) v. Gozun*, G.R. No. 157882, 30 March 2006, 485 SCRA 586; *National Power Corporation v. Aguirre-Paderanga*, G.R. No. 155065, 28 July 2005, 464 SCRA 481; *National Power*

domain. In installing the 230 KV Talisay-Compostela transmission lines which traverse respondent's lands, a permanent limitation is imposed by petitioner against the use of the lands for an indefinite period. This deprives respondent of the normal use of the lands. In fact, not only are the affected areas of the lands traversed by petitioner's transmission lines but a portion is used as the site of its transmission tower. Because of the danger to life and limbs that may be caused beneath the high-tension live wires, the landowner will not be able to use the lands for farming or any agricultural purposes.

Further, the trial and appellate courts fixed the valuation of the lands at ₱450 per square meter. The courts considered not only the Commissioners' Report and the opinion values of different agencies submitted to the trial court but also the several deeds of absolute sale and compromise agreements entered into by petitioner with landowners adjacent to respondent's lands.

As shown in the records of the case, petitioner freely and voluntarily entered into several deeds of absolute sale with other landowners affected by the Leyte-Cebu Interconnection Project for a ₱450 per square meter selling price from the years 1996 to 1997. These deeds were identified as: (1) a 3,659 square meter parcel of land (Lot No. 4387-A) situated in Barangay Tuburan Sur, Danao City, Cebu sold on 15 September 1997 pursuant to Resolution No. 02-97 dated 1 March 1997 of the Danao City Appraisal Committee;[24] (2) a 1,607.13 square meter parcel of land (Lot No. 3527-A) situated in Maslog, Danao City sold on 10 November 1997 pursuant to Resolution No. 09-96, series of 1996 dated 28 August 1996 of the Danao City Appraisal Committee;[25] (3) a 3,350 square meter parcel of land (Lot No. 3525, Case 4, Cad. 681-D), 1,391.33 square meter land (Lot No. 3813-A), 4,905.22 square meter land (Lot No.

Corporation v. Chiong, 452 Phil. 649 (2000); *Camarines Norte Electric Cooperative, Inc. (CANORECO) v. Court of Appeals*, 398 Phil. 886 (2000); *National Power Corporation v. Gutierrez*, G.R. No. 60077, 18 January 1991, 193 SCRA 1.

[24] CA *rollo*, pp. 60-61.

[25] *Id.* at 62-63.

3164-A), and 222.81 square meter land (Lot No. 3165-A), all situated in Maslog, Danao City, sold in 1996 pursuant to Resolution No. 07-96 dated 23 October 1996 of the Danao City Appraisal Committee;[26] (4) a 2,898.72 square meter parcel of land (Lot No. 6609-A) situated in Barangay Taboc, Danao City sold on 20 January 1997 pursuant to Resolution No. 09-97 dated 1 August 1997 of the Danao City Appraisal Committee;[27] and (5) a 4,354 square meter parcel of land (Lot No. 4139-A) situated in Barangay Tuburan Sur, Danao City sold on 12 September 1997 pursuant to Resolution No. 08-97 dated 11 July 1997 of the Danao City Appraisal Committee.[28]

Moreover, petitioner entered into two compromise agreements[29] dated 26 May 1999, duly approved by the trial court, which fixed the valuation of the lands at ₱420 per square meter based on the previous valuation fixed and approved by petitioner and the trial court on three other expropriation cases: (1) DNA-426 entitled "*National Power Corporation v. Francisco Villamor, Sr.*"; (2) DNA-389 entitled "*National Power Corporation v. Carlos Villamor*"; and (3) DNA-373 entitled "*National Power Corporation v. Francisco Camara, et al.*" These compromise agreements consisted of an 11,700 square meter parcel of land situated in Baring and Cantipay, Carmen, Cebu and a 1,675.80 square meter land situated in Cantipay, Carmen.

Thus, we see no reason to disturb the findings of the trial and appellate courts. Indeed, respondent is entitled to just compensation or the just and complete equivalent of the loss which the owner of the thing expropriated has to suffer by reason of the expropriation.[30] Since the determination of just compensation in expropriation proceedings is essentially a judicial function, this Court finds the amount of ₱450 per square meter

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[26] *Id.* at 64-66.

[27] *Id.* at 67-68.

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

[29] *Id.* at 71-76.

[30] *The Province of Tayabas v. Perez*, 66 Phil. 467 (1938).

to be just and reasonable compensation for the expropriated lands of respondent.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 19 August 2002 Decision and 28 August 2003 Resolution of the Court of Appeals in CA-G.R. CV No. 61749.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 162103. June 19, 2009]

MARYLOU B. TOLENTINO, M.D., *petitioner, vs.* **SHENTON REALTY CORP.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; VERIFICATION OF A PLEADING; SUBSEQUENT SUBSTANTIAL COMPLIANCE RULE, APPLIED.— The corporate powers of a corporation, including the power to sue and be sued in its corporate name, are exercised by the board of directors. The physical acts of the corporation, like the signing of documents such as verification and certification of non-forum shopping, can only be performed by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors. In this case, although Virgilio Sintos, Jr. initially failed to show that he was authorized to sign the verification for the *Ex-Parte* Motion for Issuance of Writ of Possession, respondent submitted a Secretary's Certificate to the Court confirming that Virgilio Sintos, Jr. was indeed

authorized by the board of directors. In the interest of justice, the Court may allow the relaxation of procedural rules where there is subsequent substantial compliance.

2. CIVIL LAW; MORTGAGE; REDEMPTION; A DEBTOR CANNOT BE GRANTED POSSESSION OF THE PROPERTY BY MERE FILING OF AN ACTION FOR JUDICIAL REDEMPTION WITHOUT PAYING OR CONSIGNING THE REDEMPTION PRICE WITH THE COURT.— [T]he debtor may redeem his property sold at an auction sale in an extrajudicial foreclosure of mortgage within one year from the date of registration of the certificate of sale. Under Article 13 of the Civil Code, a year consists of 365 days. Since the certificate of sale was annotated on the certificate of title (TCT No. 11637) only on 7 February 2001, petitioner could exercise her right to redeem the property until 7 February 2002. Although petitioner filed a complaint for judicial redemption on 6 February 2002, the records are bereft of any indication that petitioner ever paid or consigned with the trial court the redemption price. Furthermore, in all her pleadings, petitioner never indicated that she has already paid or consigned with the trial court the redemption price. x x x Considering the lack of consignation of the redemption price since the petitioner's filing of the action for judicial redemption on 6 February 2002, it would be unfair to deny respondent the possession of the property which it bought for ₱3,958,539.92 in a public auction on 24 September 1999. Between petitioner who has not paid or consigned with the trial court the redemption price, and respondent who bought the property as the highest bidder in the auction sale, the latter is more entitled to have possession of the property. Petitioner cannot be granted possession of the property by the mere expediency of filing an action for judicial redemption without ever paying or consigning the redemption price with the trial court.

APPEARANCES OF COUNSEL

Conrado C. Marquez for petitioner.

Felipe Atienza De Lumen Coloma & Associates for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the Resolution dated 28 October 2003 and the Order dated 29 January 2004 of the Regional Trial Court of Mandaluyong City, Branch 213, in LRC Case No. MC-03-237.

The Facts

On 27 November 1996, petitioner obtained a ₱3,700,000 loan from the Bank of Southeast Asia, secured by a real estate mortgage over petitioner's property (property) covered by TCT No. 11637.[2] Upon petitioner's default in the payment of her obligation, the bank instituted extra-judicial foreclosure of real estate mortgage under Act 3135,[3] as amended by Act 4118.[4] During the public auction on 24 September 1999, the property was sold for ₱3,958,539.92 to respondent as the highest bidder. On 5 October 1999, respondent was issued a Certificate of Sale, which was annotated on the transfer certificate of title (TCT No. 11637) on 7 February 2001.

Meanwhile, on 6 February 2002, petitioner filed with the Regional Trial Court of Mandaluyong City, Branch 212, Civil Case No. MC-02-1736[5] against Bank of Southeast Asia (now merged with BPI Family Bank), Atty. Jimmy D. Lacebal, and the Register of Deeds of Mandaluyong City for Judicial Redemption, Equity on Accounting, Damages with Prayer for

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

[2] *Rollo,* pp. 36-37.

[3] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES. Approved on 6 March 1924.

[4] Approved on 7 December 1933.

[5] Records, pp. 72-80.

a Temporary Restraining Order or a Writ of Preliminary Injunction. Petitioner subsequently amended her complaint to implead respondent and BPI Family Bank.[6]

On 18 November 2002, respondent executed an Affidavit of Consolidation of Ownership.[7] Respondent then filed an *Ex-Parte* Motion for Issuance of Writ of Possession on 10 March 2003. LRC Case No. MC-03-237 was raffled to the Regional Trial Court of Mandaluyong City, Branch 213 (trial court).

On 3 June 2003, petitioner filed with the trial court a Motion with Leave to Intervene. In a Resolution dated 28 October 2003, the trial court denied the motion for lack of merit, holding that:

> This Court holds that intervention is not proper when there is no pending litigation. x x x [I]ntervention contemplates a suit, and is therefore, exercisable during a trial and, is one which envisions the introduction of evidence by the parties, leading to the rendition of the decision in the case. This concept is not contemplated by Section 7 of Act 3135, whereby under settled jurisprudence, the judge has to order the immediate issuance of a writ of possession (1) upon the filing of the proper motion and (2) the approval of the corresponding bond. The rationale for the mandate is to allow the purchaser to have possession of the foreclosed property without delay, such possession being founded on his right of ownership. A trial which entails delay is obviously out of the question.
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> x x x x x x x x x
>
> Therefore, the order for a writ of possession issues as a matter of course upon the filing of the proper motion, no discretion is left to the court and any question regarding the equity in accounting (and subsequent cancellation of the writ) is left to be determined in a separate action x x x.[8]

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[6] *Id.* at 144-152.

[7] *Rollo,* pp. 51-52.

[8] *Id.* at 22-24.

Petitioner filed a motion for reconsideration, which the trial court denied in its Order dated 29 January 2004. The trial court also ordered the issuance of the writ of possession.

On 2 March 2004, petitioner filed this petition for review. Meanwhile, the trial court, acting on the *ex-parte* manifestation of respondent praying for immediate possession of the property, issued an Order[9] dated 19 May 2004 directing the immediate issuance of a writ of possession. On 24 May 2004, the writ of possession was issued commanding the trial court Sheriff to place respondent in possession of the property.

On 26 May 2004, petitioner filed a motion for the issuance of a temporary restraining order or writ of preliminary injunction. In a Resolution[10] dated 31 May 2004, the Court issued a temporary restraining order enjoining the trial court from implementing the Order dated 19 May 2004 in LRC Case No. MC-03-237, upon petitioner's filing of a bond in the amount of ₱20,000. Upon receipt of the Court's Resolution, petitioner posted the ₱20,000 cash bond on 7 June 2004.[11] On 14 June 2004, the Court approved the bond and issued the temporary restraining order.[12]

However, it appears that on 2 June 2004, the Sheriff already conducted an inventory and turned over the property to respondent. In his comment,[13] the Sheriff stated that the trial court received a copy of the Court's Resolution dated 31 May 2004 only on 3 June 2004, a day after the writ of possession was implemented.

The Issue

Petitioner alleges that the trial court erred in issuing the writ of possession despite the defective *ex-parte* motion for issuance

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[9] *Id.* at 65.

[10] *Id.* at 69-71.

[11] *Id.* at 72.

[12] *Id.* at 80.

[13] *Id.* at 127-136.

of writ of possession and the lack of bond as mandated under Act 3135.

The Ruling of the Court

We find the petition without merit.

Authority of Corporate Officer to File the Petition for Writ of Possession

Petitioner alleges that Virgilio Sintos, Jr., who signed the verification for the *Ex-Parte* Motion for Issuance of Writ of Possession, failed to show that he was duly authorized to represent respondent. Virgilio Sintos, Jr. was the Assistant Vice President of BPI Family Savings Bank, Inc. and the Attorney-in-Fact of respondent. Respondent claims that Virgilio Sintos, Jr. was duly authorized by the board of directors as shown by the Secretary's Certificate[14] dated 25 November 2002, which respondent attached to its memorandum submitted to the Court.

The corporate powers of a corporation, including the power to sue and be sued in its corporate name, are exercised by the board of directors.[15] The physical acts of the corporation, like the signing of documents such as verification and certification of non-forum shopping, can only be performed by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors.[16]

In this case, although Virgilio Sintos, Jr. initially failed to show that he was authorized to sign the verification for the *Ex-Parte* Motion for Issuance of Writ of Possession, respondent submitted a Secretary's Certificate to the Court confirming that Virgilio Sintos, Jr. was indeed authorized by the board of directors. In the interest of justice, the Court may allow the

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[14] *Id.* at 225. It stated that Virgilio Sintos, Jr. is the Vice President of Shenton Realty Corp.

[15] See Sections 23 and 36 of the Corporation Code.

[16] *Spouses Firme v. Bukal Enterprises & Devt. Corp.*, 460 Phil. 321 (2003).

relaxation of procedural rules where there is subsequent substantial compliance.[17]

Judicial Redemption Without Consignation of Redemption Price

In extrajudicial foreclosures, the requisites for a valid redemption are provided under Section 6 of Act 3135, as amended, thus:

> SEC. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure [now Rule 39, Section 28 of the 1997 Rules of Civil Procedure], in so far as as these are not inconsistent with the provisions of this Act.

Section 28, Rule 39 of the 1997 Rules of Civil Procedure 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 at the same rate**; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest. (Emphasis supplied)

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[17] *Pasricha v. Don Luis Dison Realty, Inc.*, G.R. No. 136409, 14 March 2008, 548 SCRA 273; *Novelty Phils., Inc. v. Court of Appeals*, 458 Phil. 36 (2003).

Thus, the debtor may redeem his property sold at an auction sale in an extrajudicial foreclosure of mortgage within one year from the date of registration of the certificate of sale. Under Article 13 of the Civil Code, a year consists of 365 days. Since the certificate of sale was annotated on the certificate of title (TCT No. 11637) only on 7 February 2001, petitioner could exercise her right to redeem the property until 7 February 2002.

Although petitioner filed a complaint for judicial redemption on 6 February 2002, the records are bereft of any indication that petitioner ever paid or consigned with the trial court the redemption price. Furthermore, in all her pleadings, petitioner never indicated that she has already paid or consigned with the trial court the redemption price. In *Tolentino v. Court of Appeals*,[18] the Court held:

> It should, however, be noted that in *Hi-Yield Realty, Inc. v. Court of Appeals*, we held that the action for judicial redemption should be filed on time and in good faith, the redemption price is finally determined and paid within a reasonable time, and the rights of the parties are respected. Stated otherwise, the foregoing interpretation has three critical dimensions: (1) timely redemption or redemption by expiration date; (2) good faith as always, meaning, the filing of the action must have been for the sole purpose of determining the redemption price and not to stretch the redemptive period indefinitely; and (3) **once the redemption price is determined within a reasonable time, the redemptioner must make prompt payment in full**.[19] (Emphasis supplied)

Considering the lack of consignation of the redemption price since the petitioner's filing of the action for judicial redemption on 6 February 2002, it would be unfair to deny respondent the possession of the property which it bought for ₱3,958,539.92 in a public auction on 24 September 1999. Between petitioner who has not paid or consigned with the trial court the redemption price, and respondent who bought the property as the highest bidder in the auction sale, the latter is more entitled to have

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[18] G.R. No. 171354, 7 March 2007, 517 SCRA 732.

[19] *Id.* at 744-745.

possession of the property. Petitioner cannot be granted possession of the property by the mere expediency of filing an action for judicial redemption without ever paying or consigning the redemption price with the trial court.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

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

SPECIAL THIRD DIVISION

[G.R. No. 164648. June 19, 2009]

ERIC L. LEE, *petitioner, vs.* **HON. HENRY J. TROCINO, Presiding Judge of the Regional Trial Court, Sixth Judicial Region, Branch 62, Bago City, THE OFFICE OF THE *EX-OFFICIO* SHERIFF of the Regional Trial Court, Sixth Judicial Region, Branch 62, Bago City, and MAGDALENO M. PEÑA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; EFFECT OF AN AMENDED DECISION; AMENDED AND SUPPLEMENTAL JUDGMENT, DISTINGUISHED.— The August 18, 2000 Amended Decision is an entirely new decision which superseded and extinguished the original January 12, 2000 decision. There is a difference between an amended judgment and a supplemental judgment. In an amended and clarified judgment, the lower court makes a thorough study of the original judgment and renders

the amended and clarified judgment only after considering all the factual and legal issues. **The amended and clarified decision is an entirely new decision which supersedes the original decision.** Following the Court's differentiation of a supplemental pleading from an amending pleading, it can be said that a supplemental decision does not take the place or extinguish the existence of the original. As its very name denotes, it only serves to bolster or adds something to the primary decision. A supplement exists side by side with the original. It does not replace that which it supplements.

2. ID.; ID.; EXECUTION PENDING APPEAL; POSTING OF AN INDEMNITY BOND IS NOT REQUIRED BEFORE A WRIT OF EXECUTION PENDING APPEAL MAY ISSUE.— [P]etitioner argues that execution pending appeal is not possible in the absence of an indemnity bond that was subsequently required of the judgment creditor. This argument is without basis, because the Rules do not require the posting of an indemnity bond before execution pending appeal may be made. We need not review in length the justification of the Court of Appeals in allowing execution pending appeal. The standard set under Section 2(a), Rule 39 merely requires "good reasons," a "special order," and "due hearing." Due hearing would not require a hearing in open court, but simply the right to be heard, which SIDDCOR availed of when it filed its opposition to the motion for immediate execution. The *Resolution* dated 16 October 1998 satisfies the "special order" requirement, and it does enumerate at length the "good reasons" for allowing execution pending appeal. As to the appreciation of "good reasons," we simply note that the advanced age alone of Sandoval would have sufficiently justified execution pending appeal, pursuant to the well-settled jurisprudential rule. The wrongfulness of the attachment, and the length of time respondents have been deprived of their money by reason of the wrongful attachment further justifies execution pending appeal under these circumstances. Moreover, petitioner's argument that a bond must first be posted before the writ of execution pending appeal may issue, is without merit because there may be good reasons allowing execution pending appeal that have a direct bearing on the prevailing party's ability and capacity to post a bond. Petitioner's posture would limit the

courts' ability to determine what are good and compelling reasons that would allow a writ of execution pending appeal, since the prevailing party's ability to post a bond would be the primary consideration in the grant or denial of the writ, and not the good and compelling reasons attendant to the case. Finally, just as we have held that the mere filing of a bond alone does not constitute the "good reason" envisioned by the Rules, then neither may the failure of the court to require the posting of a bond automatically render the execution pending appeal irregular.

3. ID.; ID.; EXECUTION SALE; EFFECTS OF THE SALE OF SHARES OF STOCKS TO THE BUYERS.— What petitioner appears to do is to attempt to evade the effects of the sale of his shares of stock to the buyers at the execution sale, which sale immediately transferred title thereto to the buyers. It should be restated that since there is no right to redeem personal property, the rights of ownership are vested to the purchaser at the foreclosure (or execution) sale and are not entangled in any suspensive condition that is implicit in a redemptive period. Besides, the Resolution of the First Division of the Court dated November 13, 2002 refers to or affects only real and personal property, specifically, the Makati Sports Club, Inc. shares of stock belonging to Urban Bank; it cannot extend to the property or shares of stock subject of the present petition, which are nowhere mentioned in the said Resolution. Thus said, we find no valid reason why the buyers at execution sale of petitioner's shares of stock should be prevented from obtaining title to the same. The pendency of a case involving the petitioner and Peña does not affect the registrability of the shares of stock bought at execution sale, although the registration is *without prejudice* to the proceedings to determine the liability of the parties as against each other, specifically between Urban Bank, its directors and officers (which includes petitioner), and Peña.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes & Manalastas for petitioner.
Roberto Demigillo for private respondent.

RESOLUTION

YNARES-SANTIAGO, *J.*:

For resolution are the petitioner's Motion for Reconsideration[1] and Supplement to Motion for Reconsideration[2] of the August 6, 2008 Decision disposing as follows:

> WHEREFORE, the petition is DENIED for lack of merit. The March 19, 2004 Decision of the Court of Appeals in CA-G.R. SP No. 65023, dismissing the petition for indirect contempt and the petition for prohibition and *certiorari* instituted to enjoin the Regional Trial Court of Bago City, Branch 62, from further proceeding with Civil Case Nos. 754 and 1088, as well as the July 27, 2004 Resolution denying the motion for reconsideration, are AFFIRMED.
>
> SO ORDERED.[3]

On October 13, 2008, petitioner filed an Urgent Motion for Consolidation seeking that the instant case be consolidated with the following petitions pending with the other Divisions of the Court, notably:

> 1. G.R. No. 145817 (*Urban Bank, Inc. v. Peña*), where the First Division of the Court resolved, on November 13, 2002, to suspend or stay the running of Urban Bank's one-year period to redeem its properties sold at the public auction held on October 4, 11 and 25, 2001, as well as the consolidation of the titles thereto in favor of the buyers at auction. In said case, Makati Sports Club, Inc. was prohibited from transferring Urban Bank's club shares therein to the winning bidders in the October 11, 2001 execution sale;
>
> 2. G.R. No. 145822 (*Gonzales, Jr. v. Peña*), which is a petition for review of the decision in CA-G.R. SP No. 55667, and which specifically assails the validity of the October 29, 1999 Special Order and Writ of Execution, and prays to set aside the levies, garnishments and auction sales conducted pursuant to said order

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[1] Dated September 12, 2008.

[2] Dated October 13, 2008.

[3] *Rollo*, p. 714.

and writ. The November 13, 2002 Resolution of the First Division of the Court covers this case as well; and

3. G.R. No. 162562 (*Peña v. Urban Bank*), which is a petition for review on *certiorari* of the November 6, 2003 Decision in CA-G.R. CV No. 65756 declaring the absence of an agency relationship between Urban Bank and Peña, but granting to the latter — on equitable considerations — damages in the amount of ₱3,000,000.00 for his efforts at settling the ejectment case.

Petitioner argues that there are good and compelling grounds to allow the consolidation of the instant case with the above-mentioned cases because they involve the same material facts and circumstances; consolidation would prevent any unwitting or unwarranted interference by one Division with the issues pending in or being resolved by the others; it would forestall "chaos that results from conflicting or divergent appreciation of facts, application of law and pronouncements by the different divisions" of the Court; and certain pronouncements in the August 6, 2008 Decision pre-empt the result of the other pending petitions, specifically on the following concerns:

1. Our ruling that Urban Bank is liable under an agency agreement. Petitioner claims that the issue is subject of the November 6, 2003 decision of the Court of Appeals in CA- G.R. CV No. 65756 and pending in this Court via G.R. No. 162562. Petitioner posits that since the judgment of the trial court in Civil Case No. 754 – which forms the basis for the grant of execution pending appeal – was reversed in CA-G.R. CV No. 65756, it is premature for us to declare Peña as the owner of the shares subject of the present petition, because there remains the possibility that the judgment in CA-G.R. CV No. 65756 could be affirmed or that respondent therein could be exonerated entirely from liability in G.R. No. 162562;

2. Our pronouncement that there was good ground to allow execution pending appeal. Petitioner asserts that the propriety of the trial court's grant of execution pending appeal is the issue sought to be resolved in the petition in G.R. No. 145822;

3. Our pronouncement that Civil Case No. 1088 is not considered as part of the execution proceedings in Civil Case No. 754 which would otherwise pose an obstacle to the transfer of title over EQLPI, Manila Polo Club, Manila Golf and Country Club,

Sta. Elena Golf and Country Club and Tagaytay Highlands International Golf Club stock in favor of the buyers at auction thereof, which petitioner asserts, is contrary to the November 13, 2002 disposition of the Court's First Division in G.R. Nos. 145817 and 145822, which resolved as follows:

> WHEREFORE, the Court hereby RESOLVES to clarify that, as a consequence of its approval of the supersedeas bond, the running of the one-year period for petitioner Urban Bank to redeem the properties sold at the public auctions held on October 4, 11 and 25, 2001, as well as the consolidation of the titles in favor of the buyers, is SUSPENDED OR STAYED. MSCI (Makati Sports Club, Inc.) is also prohibited from transferring petitioner Urban Bank's MSCI club shares to the winning bidders in the execution sale held on October 11, 2001.
>
> SO ORDERED.

According to petitioner, the above Resolution of the First Division suspended or stayed the transfer or consolidation of titles in favor of buyers "at any prior execution sale," which includes buyers of petitioner's shares of stock at the execution proceedings in issue here.

On January 12, 2009, the Court issued a Resolution denying for lack of merit petitioner's Urgent Motion for Consolidation.

Petitioner's motion for reconsideration and the supplement thereto essentially assert the same arguments contained in his petition, to wit: that the August 18, 2000 Amended Decision of the Court of Appeals did not vacate the January 12, 2000 Decision and therefore the Special Order and Writ of Execution must unavoidably remain annulled and set aside, and the enjoining of the writ of execution and lifting of the garnishment and levy made pursuant thereto must necessarily subsist. This reiteration, of course, remains manifestly unsound. The August 18, 2000 Amended Decision[4] is an entirely new decision which

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[4] WHEREFORE, the instant petition is GRANTED. The Special Order and writ of execution both dated October 29, 1999, are ANNULLED and SET ASIDE.

superseded and extinguished the original January 12, 2000 decision.[5]

There is a difference between an amended judgment and a supplemental judgment. In an amended and clarified judgment, the lower court makes a thorough study of the original judgment and renders the amended and clarified judgment only after considering all the factual and legal issues. **The amended and clarified decision is an entirely new decision which supersedes the original decision.** Following the Court's differentiation of a supplemental pleading from an amending pleading, it can be said that a supplemental decision does not take the place or extinguish the existence of the original. As its very name denotes, it only serves to bolster or adds something to the primary decision. A supplement exists side by side with the original. It does not replace that which it supplements.[6] (Emphasis supplied)

Next, petitioner argues that execution pending appeal is not possible in the absence of an indemnity bond that was subsequently required of the judgment creditor. This argument is without basis, because the Rules do not require the posting of an indemnity bond before execution pending appeal may be made.

We need not review in length the justification of the Court of Appeals in allowing execution pending appeal. The standard set under Section 2(a), Rule 39 merely requires "good reasons," a "special order," and "due hearing." Due hearing would not require a hearing in open court, but simply the right to be heard, which SIDDCOR availed of when it filed its opposition to the motion for immediate execution. The *Resolution* dated 16 October 1998 satisfies the "special order" requirement, and it does enumerate at length the

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Respondents are directed to desist from further implementing the writ of execution and to lift the garnishment and levy made pursuant thereto.

SO ORDERED. (*Rollo*, p. 697)

[5] WHEREFORE, the motion for reconsideration of respondent Magdaleno M. Peña is GRANTED. Accordingly, this Court's decision dated January 12, 2000 is RECONSIDERED and SET ASIDE and another rendered DENYING the petition.

SO ORDERED. (*Rollo*, p. 697)

[6] *Esquivel v. Alegre*, G.R. No. 79425, April 17, 1989, 172 SCRA 315, 325.

"good reasons" for allowing execution pending appeal. As to the appreciation of "good reasons," we simply note that the advanced age alone of Sandoval would have sufficiently justified execution pending appeal, pursuant to the well-settled jurisprudential rule. The wrongfulness of the attachment, and the length of time respondents have been deprived of their money by reason of the wrongful attachment further justifies execution pending appeal under these circumstances.[7]

Moreover, petitioner's argument that a bond must first be posted before the writ of execution pending appeal may issue, is without merit because there may be good reasons allowing execution pending appeal that have a direct bearing on the prevailing party's ability and capacity to post a bond. Petitioner's posture would limit the courts' ability to determine what are good and compelling reasons that would allow a writ of execution pending appeal, since the prevailing party's ability to post a bond would be the primary consideration in the grant or denial of the writ, and not the good and compelling reasons attendant to the case. Finally, just as we have held that the mere filing of a bond alone does not constitute the "good reason" envisioned by the Rules,[8] then neither may the failure of the court to require the posting of a bond automatically render the execution pending appeal irregular.

What petitioner appears to do is to attempt to evade the effects of the sale of his shares of stock to the buyers at the execution sale, which sale immediately transferred title thereto to the buyers. It should be restated that since there is no right to redeem personal property, the rights of ownership are vested to the purchaser at the foreclosure (or execution) sale and are not entangled in any suspensive condition that is implicit in a redemptive period.[9] Besides, the Resolution of the First Division

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[7] *Carlos v. Sandoval*, G.R. No. 135830, September 30, 2005, 471 SCRA 266, 304-305.

[8] *Heirs of Macabangkit Sangkay v. National Power Corporation*, G.R. No. 141447, May 4, 2006, 489 SCRA 401.

[9] *Paray v. Rodriguez*, G.R. No. 132287, January 24, 2006, 479 SCRA 571, 580.

of the Court dated November 13, 2002 refers to or affects only real and personal property, specifically, the Makati Sports Club, Inc. shares of stock belonging to Urban Bank; it cannot extend to the property or shares of stock subject of the present petition, which are nowhere mentioned in the said Resolution.

Thus said, we find no valid reason why the buyers at execution sale of petitioner's shares of stock should be prevented from obtaining title to the same. The pendency of a case involving the petitioner and Peña does not affect the registrability of the shares of stock bought at execution sale, although the registration is *without prejudice* to the proceedings to determine the liability of the parties as against each other, specifically between Urban Bank, its directors and officers (which includes petitioner), and Peña. As we have ruled before,

> Respondent SEC correctly ruled in favor of the registering of the shares of stock in question in private respondent's names. Such ruling finds support under Section 63 of the Corporation Code, to wit:
>
> > "SEC. 63. x x x Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation x x x."
>
> In the case of *Fleisher vs. Botica Nolasco*, 47 Phil. 583, the Court interpreted Sec. 63 in this wise:
>
> > "Said Section (Sec. 35 of Act 1459, [now Sec. 63 of the Corporation Code]) contemplates no restriction as to whom the stocks may be transferred. It does not suggest that any discrimination may be created by the corporation in favor of, or against a certain purchaser. The owner of shares, as owner of personal property, is at liberty, under said section to dispose them in favor of whomever he pleases, without limitation in this respect, than the general provisions of law. x x x"
>
> The only limitation imposed by Section 63 of the Corporation Code is when the corporation holds any unpaid claim against the shares intended to be transferred, which is absent here.

A corporation, either by its board, its by-laws, or the act of its officers, cannot create restrictions in stock transfers, because:

> "x x x Restrictions in the traffic of stock must have their source in legislative enactment, as the corporation itself cannotcreate such impediment. By-laws are intended merely for the protection of the corporation, and prescribe regulation, not restriction; they are always subject to the charter of the corporation. The corporation, in the absence of such power, cannot ordinarily inquire into or pass upon the legality of the transactions by which its stock passes from one person to another, nor can it question the consideration upon which a sale is based. x x x"

The right of a transferee/assignee to have stocks transferred to his name is an inherent right flowing from his ownership of the stocks. Thus:

> "Whenever a corporation refuses to transfer and register stock in cases like the present, *mandamus* will lie to compel the officers of the corporation to transfer said stock in the books of the corporation."

The corporation's obligation to register is ministerial.

> "In transferring stock, the secretary of a corporation acts in purely ministerial capacity, and does not try to decide the question of ownership."

> "The duty of the corporation to transfer is a ministerial one and if it refuses to make such transaction without good cause, it may be compelled to do so by *mandamus*."

For the petitioner Rural Bank of Salinas to refuse registration of the transferred shares in its stock and transfer book, which duty is ministerial on its part, is to render nugatory and ineffectual the spirit and intent of Section 63 of the Corporation Code. Thus, respondent Court of Appeals did not err in upholding the Decision of respondent SEC affirming the Decision of its Hearing Officer directing the registration of the 473 shares in the stock and transfer book in the names of private respondents. **At all events, the registration is without prejudice to the proceedings in court to determine the**

validity of the Deeds of Assignment of the shares of stock in question.[10] (Emphasis supplied)

Petitioner faults us for making pronouncements that are beyond the issues raised in his petition; yet it is clear that by raising these issues, petitioner has placed the whole execution process into question. Thus, apart from claiming that respondents acted contumaciously *during* proceedings in the Court of Appeals, petitioner questioned as well the proceedings in the lower court *prior* to the proceedings in the appellate court. In his petition, petitioner squarely raised the issue that the trial court had no jurisdiction to issue the Special Order and the Writ of Execution, and therefore it should be made accountable for nonetheless issuing them — thereby placing the proceedings leading to the issuance of the order and writ effectively under our scrutiny.

Nevertheless, in the interest of an orderly and judicious administration of justice, we resolve to amend specific portions of our Decision which do not affect in any significant manner the integrity of our original disposition of the case. Thus, with regard to whether or not there exists an agency relationship between Urban Bank and Peña, the matter should be left to the final determination of the Court in G.R. No. 162562. Anent the soundness of the lower court's grant of execution pending appeal, which necessarily settles the validity of the Special Order and Writ of Execution, the decision in G.R. No. 145822 must be awaited. Accordingly, our original dispositions regarding Urban Bank's liability to Peña and finding good reasons for execution pending appeal are hereby withdrawn in order to make way for their resolution in the other petitions pending with the Court.

As far as the instant petition is concerned, we continue to fail to appreciate how the lower court, its sheriff, and respondent Peña's actions and conduct may be characterized as contemptuous.

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[10] *Rural Bank of Salinas, Inc. v. Court of Appeals*, G.R. No. 96674, June 26, 1992, 210 SCRA 510, 514-516.

WHEREFORE, petitioner's Motion for Reconsideration and the Supplement thereto are hereby *DENIED* for lack of merit.

SO ORDERED.

Corona,[*] *Chico-Nazario, Nachura,* and *Peralta,*[**] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 166036. June 19, 2009]

NENA A. CARIÑO, *petitioner, vs.* **ESTRELLA M. ESPINOZA, represented by her attorney-in-fact MANUEL P. MEJIA, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; A CLIENT IS BOUND BY THE ACTS OF HIS COUNSEL; EXCEPTIONS THERETO NOT APPLICABLE.— The general rule is that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique. There are exceptions to this rule, such as when the reckless or gross negligence of counsel deprives the client of due process of law, or when the application of the general rule results in the outright deprivation of one's property through a technicality. However, in this case, we find no reason to exempt petitioner from the general rule.

2. REMEDIAL LAW; APPEALS; APPELLANT'S BRIEF; WHEN BELATED SUBMISSION THEREOF WAS NOT JUSTIFIED.— Petitioner's counsel alleges that the cause of the delay in filing the appellant's brief was his sickness. In his Urgent *Ex-Parte* Motion to Admit Appellant's Brief,

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[*] Designated as additional member of the Special Third Division per raffle dated May 18, 2009.

[**] Designated as additional member of the Special Third Division per raffle dated March 4, 2009.

petitioner's counsel claimed that he suffered an "attack of acute hypertension necessitating a day of close observation in a clinic for possible confinement, and close medical attention for about a month." Petitioner's counsel further claimed that "by reason of said illness and upon strict advice of his attending physician to refrain from indulging in stressful activities, [he] was forced to lay aside all his pending assignments for about a month." However, the Urgent *Ex-Parte* Motion to Admit Appellant's Brief shows that the hypertension attack happened on 8 February 2003. The appellant's brief was belatedly submitted only on 15 October 2003. The Court further notes that the medical certificate was issued only on 13 October 2003. We find that petitioner's reason did not fully justify the failure to comply with the Rules. Petitioner's counsel did not act for seven months from the expiration of the time given him by the Court of Appeals within which to file the appellant's brief. We cannot deem petitioner's belated submission of the appellant's brief, which was made only after respondent's Manifestation and Motion to the Court of Appeals, as substantial compliance with the Rules. Rules of procedure must be used to facilitate, not to frustrate, justice. However, the right to appeal is not a natural right but is a statutory privilege, and it may be exercised only in the manner and in accordance with the provisions of the law.

APPEARANCES OF COUNSEL

Cesar M. Carino for petitioner.
Orlalyn F. Suarez-Fetesio for private respondent.

R E S O L U T I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review assailing the 30 October 2003[1] and 2 November 2004[2] Resolutions of the Court of Appeals in CA-G.R. CV No. 73034.

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[1] *Rollo*, p. 60. Penned by Associate Justice Perlita J. Tria Tirona with Associate Justices Portia Aliño-Hormachuelos and Rosalinda Asuncion-Vicente, concurring.

[2] *Id*. at 68-69.

The Antecedent Facts

The case originated from an action for Legal Redemption and Damages with Writ of Preliminary Injunction filed by Estrella M. Espinoza (respondent), represented by her attorney-in-fact Manuel P. Mejia, Jr., against Nena A. Cariño (petitioner) and Modesto Penullar (Penullar).

Respondent was the co-owner, to the extent of 2/4 share, of a parcel of land, known as Lot 422 of the Mangaldan Cadastre, located in Poblacion, Mangaldan, Pangasinan. Penullar was the owner of ¼ share of the land. However, the land remained undivided.

In 1988, respondent heard a rumor that Penullar was selling his share of the land. She inquired from both Penullar and petitioner if the rumor was true but they both denied it. On 25 July 1989, respondent learned that Penullar executed a deed of absolute sale in favor of petitioner.

Penullar alleged that he informed respondent of his intention to sell the land. Petitioner also claimed that the land was first offered to respondent but she was not interested in buying it.

The Regional Trial Court of Dagupan City, Branch 44 (trial court) ruled in favor of respondent. The trial court ruled that respondent was not notified of the sale of Penullar's share of the land. The trial court found that upon learning of the sale, respondent promptly filed the complaint and deposited the amount of redemption price. The dispositive portion of the trial court's Decision reads:

> WHEREFORE, judgment is rendered in favor of Estrella Mejia Espinoza and against defendants Nena Cariño and Modesto Penullar, as follows:
>
> 1. The defendants are ordered to allow the plaintiff to redeem the ¼ share/interest [that] defendant Modesto Penullar has over the land in question, Lot 422 of the Mangaldan Cadastre;
>
> 2. The defendants are ordered to execute the corresponding deed of redemption in favor of the plaintiff; and

3. The defendants are ordered jointly and severally to pay attorney's fee in the amount of ₱15,000.00 plus ₱500.00 for each day of hearing and actual litigation expenses of ₱5,000.00 plus costs of this suit.

The writ of preliminary injunction which the Court issued on November 22, 1996 enjoining the defendants and/or their agents or any other person acting in their [behalf] from continuing with the construction going on in the premises in question, is hereby made permanent.

Furnish copies of this Decision to Atty. Pedro M. Surdilla and Atty. Fernando P. Cabrera.

SO ORDERED.[3]

Petitioner appealed from the trial court's Decision.

In its 30 October 2003 Resolution, the Court of Appeals dismissed the appeal for petitioner's failure to file the appellant's brief. The Court of Appeals deemed that petitioner abandoned the appeal.

Petitioner filed a motion for reconsideration. In its 2 November 2004 Resolution, the Court of Appeals denied the motion.

Hence, the petition before this Court.

The Issue

The sole issue in this case is whether the Court of Appeals committed a reversible error in dismissing the appeal for failure of petitioner to file the appellant's brief.

The Ruling of this Court

The petition has no merit.

Petitioner alleges that the failure to file appellant's brief was not deliberate but was due to an exceptional reason, the illness of her counsel, which was supported by a medical certificate. Petitioner alleges that Section 1, Rule 50 of the 1997 Rules of Civil Procedure is merely directory and it is not the ministerial

[3] *Id*. at 40.

duty of the Court to dismiss the appeal. Petitioner alleges that the appellant's brief was submitted prior to the issuance of the 30 October 2003 Resolution and hence, there was substantial compliance with the Rules.

Section 1(e), Rule 50 of the 1997 Rules of Civil Procedure states:

> SECTION 1. *Grounds for dismissal of appeal.* — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:
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> x x x x x x x x x
>
> (e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules;

In its Order dated 16 January 2003, the Court of Appeals granted petitioner "another extension of forty five (45) days from January 15, 2003 or until March 1, 2003 within which to file brief with stern warning that no further extension shall be entertained."[4] The Judicial Records Division submitted a report dated 8 September 2003 that no appellant's brief was filed within the extended period granted by the Court.

In a Manifestation with Motion[5] dated 11 September 2003, respondent's counsel prayed that for failure to file the brief within the extended period, petitioner be deemed to have waived the right to submit the appellant's brief. It was only on 15 October 2003, after receipt of respondent's Manifestation and Motion, that petitioner's counsel filed the Urgent *Ex-Parte* Motion to Admit Appellant's Brief and the appellant's brief.

The general rule is that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique.[6] There are exceptions to this rule, such as when the reckless or gross negligence of counsel deprives the client of due process

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

[5] *Id*. at 11-12.

[6] *Estate of Macadangdang v. Gaviola*, G.R. No. 156809, 4 March 2009.

of law, or when the application of the general rule results in the outright deprivation of one's property through a technicality.[7] However, in this case, we find no reason to exempt petitioner from the general rule.

Petitioner's counsel alleges that the cause of the delay in filing the appellant's brief was his sickness. In his Urgent *Ex-Parte* Motion to Admit Appellant's Brief, petitioner's counsel claimed that he suffered an "attack of acute hypertension necessitating a day of close observation in a clinic for possible confinement, and close medical attention for about a month."[8] Petitioner's counsel further claimed that "by reason of said illness and upon strict advice of his attending physician to refrain from indulging in stressful activities, [he] was forced to lay aside all his pending assignments for about a month."[9] However, the Urgent *Ex-Parte* Motion to Admit Appellant's Brief shows that the hypertension attack happened on 8 February 2003. The appellant's brief was belatedly submitted only on 15 October 2003. The Court further notes that the medical certificate[10] was issued only on 13 October 2003.

We find that petitioner's reason did not fully justify the failure to comply with the Rules. Petitioner's counsel did not act for seven months from the expiration of the time given him by the Court of Appeals within which to file the appellant's brief. We cannot deem petitioner's belated submission of the appellant's brief, which was made only after respondent's Manifestation and Motion to the Court of Appeals, as substantial compliance with the Rules.

Rules of procedure must be used to facilitate, not to frustrate, justice.[11] However, the right to appeal is not a natural right but

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[7] *Id*.

[8] CA *rollo*, p. 15.

[9] *Id*.

[10] *Rollo*, p. 44.

[11] *Canton v. City of Cebu*, G.R. No. 152898, 12 February 2007, 515 SCRA 441.

is a statutory privilege, and it may be exercised only in the manner and in accordance with the provisions of the law.[12]

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 30 October 2003 and 2 November 2004 Resolutions of the Court of Appeals in CA-G.R. CV No. 73034.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 168332. June 19, 2009]

ANA MARIA A. KORUGA, *petitioner, vs.* **TEODORO O. ARCENAS, JR., ALBERT C. AGUIRRE, CESAR S. PAGUIO, FRANCISCO A. RIVERA, and THE HONORABLE COURT OF APPEALS, THIRD DIVISION,** *respondents.*

[G.R. No. 169053. June 19, 2009]

TEODORO O. ARCENAS, JR., ALBERT C. AGUIRRE, CESAR S. PAGUIO, and FRANCISCO A. RIVERA, *petitioners, vs.* **HON. SIXTO MARELLA, JR., Presiding Judge, Branch 138, Regional Trial Court of Makati City, and ANA MARIA A. KORUGA,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; GENERAL BANKING LAW; BANK, DEFINED; BANKING BUSINESS, EXPLAINED.— It is clear that the acts complained of pertain to the conduct of Banco Filipino's banking business. A bank, as defined in the

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[12] *Id*.

General Banking Law, refers to an entity engaged in the lending of funds obtained in the form of deposits. The banking business is properly subject to reasonable regulation under the police power of the state because of its nature and relation to the fiscal affairs of the people and the revenues of the state. Banks are affected with public interest because they receive funds from the general public in the form of deposits. It is the Government's responsibility to see to it that the financial interests of those who deal with banks and banking institutions, as depositors or otherwise, are protected. In this country, that task is delegated to the BSP, which pursuant to its Charter, is authorized to administer the monetary, banking, and credit system of the Philippines. It is further authorized to take the necessary steps against any banking institution if its continued operation would cause prejudice to its depositors, creditors and the general public as well.

2. ID.; NEW CENTRAL BANK ACT; THE MONETARY BOARD HAS THE EXCLUSIVE JURISDICTION OVER PROCEEDINGS FOR RECEIVERSHIP OF BANKS.— Koruga's invocation of the provisions of the Corporation Code is misplaced. In an earlier case with similar antecedents, we ruled that: The Corporation Code, however, is a general law applying to all types of corporations, while the New Central Bank Act regulates specifically banks and other financial institutions, including the dissolution and liquidation thereof. As between a general and special law, the latter shall prevail — *generalia specialibus non derogant*. Consequently, it is not the Interim Rules of Procedure on Intra-Corporate Controversies, or Rule 59 of the Rules of Civil Procedure on Receivership, that would apply to this case. Instead, Sections 29 and 30 of the *New Central Bank Act* should be followed x x x it is the Monetary Board that exercises exclusive jurisdiction over proceedings for receivership of banks. Crystal clear in Section 30 is the provision that says the "appointment of a receiver under this section shall be vested exclusively with the Monetary Board." The term "exclusively" connotes that only the Monetary Board can resolve the issue of whether a bank is to be placed under receivership and, upon an affirmative finding, it also has authority to appoint a receiver. This is further affirmed by the fact that the law allows the Monetary Board to take action "summarily and without need for prior hearing." And, as a clincher, the law explicitly provides that

"actions of the Monetary Board taken under this section or under Section 29 of this Act shall be final and executory, and may not be restrained or set aside by the court except on a petition for *certiorari* on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction." From the foregoing disquisition, there is no doubt that the RTC has no jurisdiction to hear and decide a suit that seeks to place Banco Filipino under receivership.

3. ID.; ID.; A MINORITY STOCKHOLDER OF A BANK HAS NO STANDING TO QUESTION THE MONETARY BOARD'S ACTION.— [T]here is one other reason why Koruga's complaint before the RTC cannot prosper. Given her own admission — and the same is likewise supported by evidence — that she is merely a minority stockholder of Banco Filipino, she would not have the standing to question the Monetary Board's action. Section 30 of the New Central Bank Act provides: The petition for *certiorari* may only be filed by the stockholders of record representing the majority of the capital stock within ten (10) days from receipt by the board of directors of the institution of the order directing receivership, liquidation or conservatorship.

APPEARANCES OF COUNSEL

Bernas Law Office for Ana Maria A. Koruga.

Filemon L. Fernandez & Francisco A. Rivera for Teodoro O. Arcenans, Jr., *et al.*

Abelardo L. Aportadera, Jr. for Dr. Conrado P. Banzo & Gen. Ramon E. Montano.

Morales Rojas & Risos-Vidal for Orlando O. Samson and Jovito N. Hernandez.

D E C I S I O N

NACHURA, *J.*:

Before this Court are two petitions that originated from a Complaint filed by Ana Maria A. Koruga (Koruga) before the Regional Trial Court (RTC) of Makati City against the Board of Directors of Banco Filipino and the Members of the Monetary

Board of the Bangko Sentral ng Pilipinas (BSP) for violation of the Corporation Code, for inspection of records of a corporation by a stockholder, for receivership, and for the creation of a management committee.

G.R. No. 168332

The first is a Petition for *Certiorari* under Rule 65 of the Rules of Court, docketed as G.R. No. 168332, praying for the annulment of the Court of Appeals (CA) Resolution[1] in CA-G.R. SP No. 88422 dated April 18, 2005 granting the prayer for a Writ of Preliminary Injunction of therein petitioners Teodoro O. Arcenas, Jr., Albert C. Aguirre, Cesar S. Paguio, and Francisco A. Rivera (Arcenas, *et al.*).

Koruga is a minority stockholder of Banco Filipino Savings and Mortgage Bank. On August 20, 2003, she filed a complaint before the Makati RTC which was raffled to Branch 138, presided over by Judge Sixto Marella, Jr.[2] Koruga's complaint alleged:

> 10.1 Violation of Sections 31 to 34 of the Corporation Code *("Code")* which prohibit self-dealing and conflicts of interest of directors and officers, thus:
>
> (a) For engaging in unsafe, unsound, and fraudulent banking practices that have jeopardized the welfare of the Bank, its shareholders, who includes among others, the Petitioner, and depositors. (sic)
>
> (b) For granting and approving loans and/or "loaned" sums of money to six (6) "dummy" borrower corporations *("Borrower Corporations")* which, at the time of loan approval, had no financial capacity to justify the loans. (sic)
>
> (c) For approving and accepting a *dacion en pago*, or payment of loans with property instead of cash, resulting to a diminished future cumulative interest income by the Bank and a decline in its liquidity position. (sic)
>
> (d) For knowingly giving "favorable treatment" to the Borrower Corporations in which some or most of them have

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[1] *Rollo* (G.R. No. 168332), pp. 48-49.

[2] Now a Justice of the Court of Appeals.

interests, *i.e.* interlocking directors/officers thereof, interlocking ownerships. (sic)

(e) For employing their respective offices and functions as the Bank's officers and directors, or omitting to perform their functions and duties, with negligence, unfaithfulness or abuse of confidence of fiduciary duty, misappropriated or misapplied or ratified by inaction the misappropriation or misappropriations, of (sic) almost ₱1.6 Billion Pesos (sic) constituting the Bank's funds placed under their trust and administration, by unlawfully releasing loans to the Borrower Corporations or refusing or failing to impugn these, knowing before the loans were released or thereafter that the Bank's cash resources would be dissipated thereby, to the prejudice of the Petitioner, other Banco Filipino depositors, and the public.

10.2 Right of a stockholder to inspect the records of a corporation (including financial statements) under Sections 74 and 75 of the Code, as implemented by the Interim Rules;

(a) Unlawful refusal to allow the Petitioner from inspecting or otherwise accessing the corporate records of the bank despite repeated demand in writing, where she is a stockholder. (sic)

10.3 Receivership and Creation of a Management Committee pursuant to:

(a) Rule 59 of the 1997 Rules of Civil Procedure *("Rules")*;

(b) Section 5.2 of R.A. No. 8799;

(c) Rule 1, Section 1(a)(1) of the *Interim Rules*;

(d) Rule 1, Section 1(a)(2) of the Interim Rules;

(e) Rule 7 of the Interim Rules;

(f) Rule 9 of the Interim Rules; and

(g) The General Banking Law of 2000 and the New Central Bank Act.[3]

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[3] *Rollo* (G.R. No. 168332), pp. 7-9.

On September 12, 2003, Arcenas, *et al*. filed their Answer raising, among others, the trial court's lack of jurisdiction to take cognizance of the case. They also filed a Manifestation and Motion seeking the dismissal of the case on the following grounds: (a) lack of jurisdiction over the subject matter; (b) lack of jurisdiction over the persons of the defendants; (c) forum-shopping; and (d) for being a nuisance/harassment suit. They then moved that the trial court rule on their affirmative defenses, dismiss the intra-corporate case, and set the case for preliminary hearing.

In an Order dated October 18, 2004, the trial court denied the Manifestation and Motion, ruling thus:

> The result of the procedure sought by defendants Arcenas, *et al*. (sic) is for the Court to conduct a preliminary hearing on the affirmative defenses raised by them in their Answer. This [is] proscribed by the Interim Rules of Procedure on Intracorporate (sic) Controversies because when a preliminary hearing is conducted it is "as if a Motion to Dismiss was filed" (Rule 16, Section 6, 1997 Rules of Civil Procedure). A Motion to Dismiss is a prohibited pleading under the Interim Rules, for which reason, no favorable consideration can be given to the Manifestation and Motion of defendants, Arcenas, *et al*.
>
> The Court finds no merit to (sic) the claim that the instant case is a nuisance or harassment suit.
>
> WHEREFORE, the Court defers resolution of the affirmative defenses raised by the defendants Arcenas, *et al*.[4]

Arcenas, *et al*. moved for reconsideration[5] but, on January 18, 2005, the RTC denied the motion.[6] This prompted Arcenas, *et al*. to file before the CA a Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court with a prayer for the issuance of a writ of preliminary injunction and a temporary restraining order (TRO).[7]

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

[5] *Id.* at 52-60.

[6] *Id.* at 50.

[7] *Id.* at 2-47.

On February 9, 2005, the CA issued a 60-day TRO enjoining Judge Marella from conducting further proceedings in the case.[8]

On February 22, 2005, the RTC issued a Notice of Pre-trial[9] setting the case for pre-trial on June 2 and 9, 2005. Arcenas, *et al*. filed a Manifestation and Motion[10] before the CA, reiterating their application for a writ of preliminary injunction. Thus, on April 18, 2005, the CA issued the assailed Resolution, which reads in part:

> (C)onsidering that the Temporary Restraining Order issued by this Court on February 9, 2005 expired on April 10, 2005, it is necessary that a writ of preliminary injunction be issued in order not to render ineffectual whatever final resolution this Court may render in this case, after the petitioners shall have posted a bond in the amount of FIVE HUNDRED THOUSAND (₱500,000.00) PESOS.
>
> SO ORDERED.[11]

Dissatisfied, Koruga filed this Petition for *Certiorari* under Rule 65 of the Rules of Court. Koruga alleged that the CA effectively gave due course to Arcenas, *et al*.'s petition when it issued a writ of preliminary injunction without factual or legal basis, either in the April 18, 2005 Resolution itself or in the records of the case. She prayed that this Court restrain the CA from implementing the writ of preliminary injunction and, after due proceedings, make the injunction against the assailed CA Resolution permanent.[12]

In their Comment, Arcenas, *et al*. raised several procedural and substantive issues. They alleged that the Verification and Certification against Forum-Shopping attached to the Petition was not executed in the manner prescribed by Philippine law since, as admitted by Koruga's counsel himself, the same was only a facsimile.

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[8] *Id.* at 95-97.

[9] *Rollo* (G.R. No. 168332), p. 196.

[10] *Id.* at 197-198.

[11] *Id.* at 49.

[12] *Id.* at 40.

They also averred that Koruga had admitted in the Petition that she never asked for reconsideration of the CA's April 18, 2005 Resolution, contending that the Petition did not raise pure questions of law as to constitute an exception to the requirement of filing a Motion for Reconsideration before a Petition for *Certiorari* is filed.

They, likewise, alleged that the Petition may have already been rendered moot and academic by the July 20, 2005 CA Decision,[13] which denied their Petition, and held that the RTC did not commit grave abuse of discretion in issuing the assailed orders, and thus ordered the RTC to proceed with the trial of the case.

Meanwhile, on March 13, 2006, this Court issued a Resolution granting the prayer for a TRO and enjoining the Presiding Judge of Makati RTC, Branch 138, from proceeding with the hearing of the case upon the filing by Arcenas, *et al*. of a ₱50,000.00 bond. Koruga filed a motion to lift the TRO, which this Court denied on July 5, 2006.

On the other hand, respondents Dr. Conrado P. Banzon and Gen. Ramon Montaño also filed their Comment on Koruga's Petition, raising substantially the same arguments as Arcenas, *et al*.

G.R. No. 169053

G.R. No. 169053 is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, with prayer for the issuance of a TRO and a writ of preliminary injunction filed by Arcenas, *et al*.

In their Petition, Arcenas, *et al*. asked the Court to set aside the Decision[14] dated July 20, 2005 of the CA in CA-G.R. SP No. 88422, which denied their petition, having found no grave

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[13] Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Eliezer R. delos Santos and Arturo D. Brion (now a member of this Court), concurring; *id.* at 259-277.

[14] *Rollo* (G.R. No. 169053), pp. 58-76.

abuse of discretion on the part of the Makati RTC. The CA said that the RTC Orders were interlocutory in nature and, thus, may be assailed by *certiorari* or prohibition only when it is shown that the court acted without or in excess of jurisdiction or with grave abuse of discretion. It added that the Supreme Court frowns upon resort to remedial measures against interlocutory orders.

Arcenas, *et al*. anchored their prayer on the following grounds: that, in their Answer before the RTC, they had raised the issue of failure of the court to acquire jurisdiction over them due to improper service of summons; that the Koruga action is a nuisance or harassment suit; that there is another case involving the same parties for the same cause pending before the Monetary Board of the BSP, and this constituted forum-shopping; and that jurisdiction over the subject matter of the case is vested by law in the BSP.[15]

Arcenas, *et al*. assign the following errors:

I. THE COURT OF APPEALS, IN "FINDING NO GRAVE ABUSE OF DISCRETION COMMITTED BY PUBLIC RESPONDENT REGIONAL TRIAL COURT OF MAKATI, BRANCH 138, IN ISSUING THE ASSAILED ORDERS," FAILED TO CONSIDER AND MERELY GLOSSED OVER THE MORE TRANSCENDENT ISSUES OF THE LACK OF JURISDICTION ON THE PART OF SAID PUBLIC RESPONDENT OVER THE SUBJECT MATTER OF THE CASE BEFORE IT, *LITIS PENDENTIA* AND FORUM SHOPPING, AND THE CASE BELOW BEING A NUISANCE OR HARASSMENT SUIT, EITHER ONE AND ALL OF WHICH GOES/GO TO RENDER THE ISSUANCE BY PUBLIC RESPONDENT OF THE ASSAILED ORDERS A GRAVE ABUSE OF DISCRETION.

II. THE FINDING OF THE COURT OF APPEALS OF "NO GRAVE ABUSE OF DISCRETION COMMITTED BY PUBLIC RESPONDENT REGIONAL TRIAL COURT OF MAKATI, BRANCH 138, IN ISSUING THE ASSAILED ORDERS," IS NOT IN ACCORD WITH LAW OR WITH

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

THE APPLICABLE DECISIONS OF THIS HONORABLE COURT.[16]

Meanwhile, in a Manifestation and Motion filed on August 31, 2005, Koruga prayed for, among others, the consolidation of her Petition with the Petition for Review on *Certiorari* under Rule 45 filed by Arcenas, *et al*., docketed as G.R. No. 169053. The motion was granted by this Court in a Resolution dated September 26, 2005.

Our Ruling

Initially, we will discuss the procedural issue.

Arcenas, *et al*. argue that Koruga's petition should be dismissed for its defective Verification and Certification Against Forum-Shopping, since only a facsimile of the same was attached to the Petition. They also claim that the Verification and Certification Against Forum-Shopping, allegedly executed in Seattle, Washington, was not authenticated in the manner prescribed by Philippine law and not certified by the Philippine Consulate in the United States.

This contention deserves scant consideration.

On the last page of the Petition in G.R. No. 168332, Koruga's counsel executed an Undertaking, which reads as follows:

> In view of that fact that the Petitioner is currently in the United States, undersigned counsel is attaching a facsimile copy of the Verification and Certification Against Forum-Shopping duly signed by the Petitioner and notarized by Stephanie N. Goggin, a Notary Public for the Sate (sic) of Washington. Upon arrival of the original copy of the Verification and Certification as certified by the Office of the Philippine Consul, the undersigned counsel shall immediately provide duplicate copies thereof to the Honorable Court.[17]

Thus, in a Compliance[18] filed with the Court on September 5, 2005, petitioner submitted the original copy of the duly notarized

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

[17] *Rollo* (G.R. No. 168332), p. 44.

[18] *Id.* at 286-288.

and authenticated Verification and Certification Against Forum-Shopping she had executed.[19] This Court noted and considered the Compliance satisfactory in its Resolution dated November 16, 2005. There is, therefore, no need to further belabor this issue.

We now discuss the substantive issues in this case.

First, we resolve the prayer to nullify the CA's April 18, 2005 Resolution.

We hold that the Petition in G.R. No. 168332 has become moot and academic. The writ of preliminary injunction being questioned had effectively been dissolved by the CA's July 20, 2005 Decision. The dispositive portion of the Decision reads in part:

> The case is REMANDED to the court ***a quo*** for further proceedings and to resolve with deliberate dispatch the intra-corporate controversies and determine whether there was actually a valid service of summons. If, after hearing, such service is found to have been improper, then new summons should be served forthwith.[20]

Accordingly, there is no necessity to restrain the implementation of the writ of preliminary injunction issued by the CA on April 18, 2005, since it no longer exists.

However, this Court finds that the CA erred in upholding the jurisdiction of, and remanding the case to, the RTC.

The resolution of these petitions rests mainly on the determination of one fundamental issue: Which body has jurisdiction over the Koruga Complaint, the RTC or the BSP?

We hold that it is the BSP that has jurisdiction over the case.

A reexamination of the Complaint is in order.

Koruga's Complaint charged defendants with violation of Sections 31 to 34 of the Corporation Code, prohibiting self-

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[19] *Id.* at 290-292.

[20] *Rollo* (G.R. No. 169053), p. 75.

dealing and conflict of interest of directors and officers; invoked her right to inspect the corporation's records under Sections 74 and 75 of the Corporation Code; and prayed for Receivership and Creation of a Management Committee, pursuant to Rule 59 of the Rules of Civil Procedure, the Securities Regulation Code, the Interim Rules of Procedure Governing Intra-Corporate Controversies, the General Banking Law of 2000, and the New Central Bank Act. She accused the directors and officers of Banco Filipino of engaging in unsafe, unsound, and fraudulent banking practices, more particularly, acts that violate the prohibition on self-dealing.

It is clear that the acts complained of pertain to the conduct of Banco Filipino's banking business. A bank, as defined in the *General Banking Law*,[21] refers to an entity engaged in the lending of funds obtained in the form of deposits.[22] The banking business is properly subject to reasonable regulation under the police power of the state because of its nature and relation to the fiscal affairs of the people and the revenues of the state. Banks are affected with public interest because they receive funds from the general public in the form of deposits. It is the Government's responsibility to see to it that the financial interests of those who deal with banks and banking institutions, as depositors or otherwise, are protected. In this country, that task is delegated to the BSP, which pursuant to its Charter, is authorized to administer the monetary, banking, and credit system of the Philippines. It is further authorized to take the necessary steps against any banking institution if its continued operation would cause prejudice to its depositors, creditors and the general public as well.[23]

The law vests in the BSP the supervision over operations and activities of banks. The *New Central Bank Act* provides:

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[21] Republic Act (R.A.) No. 8791.

[22] R.A. No. 8791, Sec. 3 (3.1).

[23] *Central Bank of the Philippines v. Court of Appeals*, G.R. No. 88353, May 8, 1992, 208 SCRA 652, 684-685.

Section 25. *Supervision and Examination.* — The Bangko Sentral shall have supervision over, and conduct periodic or special examinations of, banking institutions and quasi-banks, including their subsidiaries and affiliates engaged in allied activities.[24]

Specifically, the BSP's supervisory and regulatory powers include:

4.1 The issuance of rules of conduct or the establishment of standards of operation for uniform application to all institutions or functions covered, taking into consideration the distinctive character of the operations of institutions and the substantive similarities of specific functions to which such rules, modes or standards are to be applied;

4.2 The **conduct of examination to determine compliance with laws and regulations if the circumstances so warrant as determined by the Monetary Board**;

4.3 **Overseeing to ascertain that laws and Regulations are complied with**;

4.4 **Regular investigation which shall not be oftener than once a year from the last date of examination to determine whether an institution is conducting its business on a safe or sound basis**: *Provided,* That the deficiencies/irregularities found by or discovered by an audit shall be immediately addressed;

4.5 **Inquiring into the solvency and liquidity of the institution** (2-D); or

4.6 Enforcing prompt corrective action.[25]

Koruga alleges that "the dispute in the trial court involves the manner with which the Directors' (sic) have handled the Bank's affairs, specifically the fraudulent loans and *dacion en pago* authorized by the Directors in favor of several dummy corporations known to have close ties and are indirectly controlled by the Directors."[26] Her allegations, then, call for the examination

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[24] R.A. No. 7653.

[25] R.A. No. 8791, Sec. 4. (Emphasis supplied.)

[26] Memorandum, *rollo* (G.R. No. 169053), p. 717.

of the allegedly questionable loans. Whether these loans are covered by the prohibition on self-dealing is a matter for the BSP to determine. These are not ordinary intra-corporate matters; rather, they involve banking activities which are, by law, regulated and supervised by the BSP. As the Court has previously held:

> It is well-settled in both law and jurisprudence that the Central Monetary Authority, through the Monetary Board, is vested with exclusive authority to assess, evaluate and determine the condition of any bank, and finding such condition to be one of insolvency, or that its continuance in business would involve a probable loss to its depositors or creditors, forbid bank or non-bank financial institution to do business in the Philippines; and shall designate an official of the BSP or other competent person as receiver to immediately take charge of its assets and liabilities.[27]

Correlatively, the *General Banking Law of 2000* specifically deals with loans contracted by bank directors or officers, thus:

> **SECTION 36. Restriction on Bank Exposure to Directors, Officers, Stockholders and Their Related Interests.** — No director or officer of any bank shall, directly or indirectly, for himself or as the representative or agent of others, borrow from such bank nor shall he become a guarantor, indorser or surety for loans from such bank to others, or in any manner be an obligor or incur any contractual liability to the bank except with the written approval of the majority of all the directors of the bank, excluding the director concerned: Provided, That such written approval shall not be required for loans, other credit accommodations and advances granted to officers under a fringe benefit plan approved by the Bangko Sentral. The required approval shall be entered upon the records of the bank and a copy of such entry shall be transmitted forthwith to the appropriate supervising and examining department of the Bangko Sentral.
>
> Dealings of a bank with any of its directors, officers or stockholders and their related interests shall be upon terms not less favorable to the bank than those offered to others.
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> After due notice to the board of directors of the bank, the office of any bank director or officer who violates the provisions of this

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[27] *Miranda v. Philippine Deposit Insurance Corporation*, G.R. No. 169334, September 8, 2006, 501 SCRA 288, 298.

Section may be declared vacant and the director or officer shall be subject to the penal provisions of the New Central Bank Act.

The Monetary Board may regulate the amount of loans, credit accommodations and guarantees that may be extended, directly or indirectly, by a bank to its directors, officers, stockholders and their related interests, as well as investments of such bank in enterprises owned or controlled by said directors, officers, stockholders and their related interests. However, the outstanding loans, credit accommodations and guarantees which a bank may extend to each of its stockholders, directors, or officers and their related interests, shall be limited to an amount equivalent to their respective unencumbered deposits and book value of their paid-in capital contribution in the bank: Provided, however, That loans, credit accommodations and guarantees secured by assets considered as non-risk by the Monetary Board shall be excluded from such limit: Provided, further, That loans, credit accommodations and advances to officers in the form of fringe benefits granted in accordance with rules as may be prescribed by the Monetary Board shall not be subject to the individual limit.

The Monetary Board shall define the term "related interests."

The limit on loans, credit accommodations and guarantees prescribed herein shall not apply to loans, credit accommodations and guarantees extended by a cooperative bank to its cooperative shareholders.[28]

Furthermore, the authority to determine whether a bank is conducting business in an unsafe or unsound manner is also vested in the Monetary Board. The *General Banking Law of 2000* provides:

SECTION 56. Conducting Business in an Unsafe or Unsound Manner. — In determining whether a particular act or omission, which is not otherwise prohibited by any law, rule or regulation affecting banks, quasi-banks or trust entities, may be deemed as conducting business in an unsafe or unsound manner for purposes of this Section, the Monetary Board shall consider any of the following circumstances:

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[28] Emphasis supplied.

56.1. The act or omission has resulted or may result in material loss or damage, or abnormal risk or danger to the safety, stability, liquidity or solvency of the institution;

56.2. The act or omission has resulted or may result in material loss or damage or abnormal risk to the institution's depositors, creditors, investors, stockholders or to the Bangko Sentral or to the public in general;

56.3. The act or omission has caused any undue injury, or has given any unwarranted benefits, advantage or preference to the bank or any party in the discharge by the director or officer of his duties and responsibilities through manifest partiality, evident bad faith or gross inexcusable negligence; or

56.4. The act or omission involves entering into any contract or transaction manifestly and grossly disadvantageous to the bank, quasi-bank or trust entity, whether or not the director or officer profited or will profit thereby.

Whenever a bank, quasi-bank or trust entity persists in conducting its business in an unsafe or unsound manner, the Monetary Board may, without prejudice to the administrative sanctions provided in Section 37 of the New Central Bank Act, take action under Section 30 of the same Act and/or immediately exclude the erring bank from clearing, the provisions of law to the contrary notwithstanding.

Finally, the *New Central Bank Act* grants the Monetary Board the power to impose administrative sanctions on the erring bank:

Section 37. *Administrative Sanctions on Banks and Quasi-banks.* — Without prejudice to the criminal sanctions against the culpable persons provided in Sections 34, 35, and 36 of this Act, **the Monetary Board may**, **at its discretion, impose upon any bank or quasi-bank, their directors and/or officers**, for any willful violation of its charter or by-laws, willful delay in the submission of reports or publications thereof as required by law, rules and regulations; any refusal to permit examination into the affairs of the institution; any willful making of a false or misleading statement to the Board or the appropriate supervising and examining department or its examiners; any willful failure or refusal to comply with, or violation of, any banking law or any order, instruction or regulation issued by the Monetary Board, or any order, instruction or ruling by the Governor;

or any commission of irregularities, and/or conducting business in an unsafe or unsound manner as may be determined by the Monetary Board, the following administrative sanctions, whenever applicable:

(a) fines in amounts as may be determined by the Monetary Board to be appropriate, but in no case to exceed Thirty thousand pesos (₱30,000) a day for each violation, taking into consideration the attendant circumstances, such as the nature and gravity of the violation or irregularity and the size of the bank or quasi-bank;

(b) suspension of rediscounting privileges or access to Bangko Sentral credit facilities;

(c) suspension of lending or foreign exchange operations or authority to accept new deposits or make new investments;

(d) suspension of interbank clearing privileges; and/or

(e) revocation of quasi-banking license.

Resignation or termination from office shall not exempt such director or officer from administrative or criminal sanctions.

The Monetary Board may, whenever warranted by circumstances, preventively suspend any director or officer of a bank or quasi-bank pending an investigation: Provided, That should the case be not finally decided by the Bangko Sentral within a period of one hundred twenty (120) days after the date of suspension, said director or officer shall be reinstated in his position: Provided, further, That when the delay in the disposition of the case is due to the fault, negligence or petition of the director or officer, the period of delay shall not be counted in computing the period of suspension herein provided.

The above administrative sanctions need not be applied in the order of their severity.

Whether or not there is an administrative proceeding, if the institution and/or the directors and/or officers concerned continue with or otherwise persist in the commission of the indicated practice or violation, the Monetary Board may issue an order requiring the institution and/or the directors and/or officers concerned to cease and desist from the indicated practice or violation, and may further order that immediate action be taken to correct the conditions resulting from such practice or violation. The cease and desist order shall be immediately effective upon service on the respondents.

The respondents shall be afforded an opportunity to defend their action in a hearing before the Monetary Board or any committee chaired by any Monetary Board member created for the purpose, upon request made by the respondents within five (5) days from their receipt of the order. If no such hearing is requested within said period, the order shall be final. If a hearing is conducted, all issues shall be determined on the basis of records, after which the Monetary Board may either reconsider or make final its order.

The Governor is hereby authorized, at his discretion, to impose upon banking institutions, for any failure to comply with the requirements of law, Monetary Board regulations and policies, and/or instructions issued by the Monetary Board or by the Governor, fines not in excess of Ten thousand pesos (₱10,000) a day for each violation, the imposition of which shall be final and executory until reversed, modified or lifted by the Monetary Board on appeal.[29]

Koruga also accused Arcenas, *et al*. of violation of the Corporation Code's provisions on self-dealing and conflict of interest. She invoked Section 31 of the Corporation Code, which defines the liability of directors, trustees, or officers of a corporation for, among others, acquiring any personal or pecuniary interest in conflict with their duty as directors or trustees, and Section 32, which prescribes the conditions under which a contract of the corporation with one or more of its directors or trustees — the so-called "self-dealing directors"[30] — would be valid. She also alleged that Banco Filipino's directors violated Sections 33 and 34 in approving the loans of corporations with interlocking ownerships, *i.e.*, owned, directed, or managed by close associates of Albert C. Aguirre.

Sections 31 to 34 of the Corporation Code provide:

Section 31. *Liability of directors, trustees or officers.* — Directors or trustees who wilfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their

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[29] Emphasis supplied.

[30] *See Prime White Cement Corporation v. Honorable Intermediate Appellate Court, et al.,* G.R. No. 68555, March 19, 1993, 220 SCRA 103.

duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

Section 32. *Dealings of directors, trustees or officers with the corporation***.** — A contract of the corporation with one or more of its directors or trustees or officers is voidable, at the option of such corporation, unless all the following conditions are present:

1. That the presence of such director or trustee in the board meeting in which the contract was approved was not necessary to constitute a quorum for such meeting;

2. That the vote of such director or trustee was not necessary for the approval of the contract;

3. That the contract is fair and reasonable under the circumstances; and

4. That in case of an officer, the contract has been previously authorized by the board of directors.

Where any of the first two conditions set forth in the preceding paragraph is absent, in the case of a contract with a director or trustee, such contract may be ratified by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock or of at least two-thirds (2/3) of the members in a meeting called for the purpose: Provided, That full disclosure of the adverse interest of the directors or trustees involved is made at such meeting: Provided, however, That the contract is fair and reasonable under the circumstances.

Section 33. *Contracts between corporations with interlocking directors*. — Except in cases of fraud, and provided the contract is fair and reasonable under the circumstances, a contract between two or more corporations having interlocking directors shall not be invalidated on that ground alone: Provided, That if the interest of the interlocking director in one corporation is substantial and his

interest in the other corporation or corporations is merely nominal, he shall be subject to the provisions of the preceding section insofar as the latter corporation or corporations are concerned.

Stockholdings exceeding twenty (20%) percent of the outstanding capital stock shall be considered substantial for purposes of interlocking directors.

Section 34. *Disloyalty of a director.* — Where a director, by virtue of his office, acquires for himself a business opportunity which should belong to the corporation, thereby obtaining profits to the prejudice of such corporation, he must account to the latter for all such profits by refunding the same, unless his act has been ratified by a vote of the stockholders owning or representing at least two-thirds (2/3) of the outstanding capital stock. This provision shall be applicable, notwithstanding the fact that the director risked his own funds in the venture.

Koruga's invocation of the provisions of the Corporation Code is misplaced. In an earlier case with similar antecedents, we ruled that:

The Corporation Code, however, is a general law applying to all types of corporations, while the New Central Bank Act regulates specifically banks and other financial institutions, including the dissolution and liquidation thereof. As between a general and special law, the latter shall prevail — *generalia specialibus non derogant*.[31]

Consequently, it is not the Interim Rules of Procedure on Intra-Corporate Controversies,[32] or Rule 59 of the Rules of Civil Procedure on Receivership, that would apply to this case. Instead, Sections 29 and 30 of the *New Central Bank Act* should be followed, *viz.*:

Section 29. *Appointment of Conservator.* — Whenever, on the basis of a report submitted by the appropriate supervising or examining department, the Monetary Board finds that a bank or a quasi-bank is

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[31] *In Re: Petition for Assistance in the Liquidation of the Rural Bank of Bokod (Benguet), Inc., PDIC v. Bureau of Internal Revenue*, G.R. No. 158261, December 18, 2006, 511 SCRA 123, 141, citing *Laureano v. Court of Appeals*, 381 Phil. 403, 411-412 (2000).

[32] A.M. No. 01-2-04-SC dated April 1, 2001.

in a state of continuing inability or unwillingness to maintain a condition of liquidity deemed adequate to protect the interest of depositors and creditors, the Monetary Board may appoint a conservator with such powers as the Monetary Board shall deem necessary to take charge of the assets, liabilities, and the management thereof, reorganize the management, collect all monies and debts due said institution, and exercise all powers necessary to restore its viability. The conservator shall report and be responsible to the Monetary Board and shall have the power to overrule or revoke the actions of the previous management and board of directors of the bank or quasi-bank.

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The Monetary Board shall terminate the conservatorship when it is satisfied that the institution can continue to operate on its own and the conservatorship is no longer necessary. The conservatorship shall likewise be terminated should the Monetary Board, on the basis of the report of the conservator or of its own findings, determine that the continuance in business of the institution would involve probable loss to its depositors or creditors, in which case the provisions of Section 30 shall apply.

Section 30. *Proceedings in Receivership and Liquidation.*— Whenever, upon report of the head of the supervising or examining department, the Monetary Board finds that a bank or quasi-bank:

(a) is unable to pay its liabilities as they become due in the ordinary course of business: Provided, That this shall not include inability to pay caused by extraordinary demands induced by financial panic in the banking community;

(b) has insufficient realizable assets, as determined by the Bangko Sentral, to meet its liabilities; or

(c) cannot continue in business without involving probable losses to its depositors or creditors; or

(d) has willfully violated a cease and desist order under Section 37 that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution; in which cases, **the Monetary Board may summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as receiver of the banking institution.**

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The **actions of the Monetary Board taken under this section or under Section 29 of this Act shall be final and executory, and may not be restrained or set aside by the court except on petition for *certiorari* on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction**. The petition for *certiorari* may only be filed by the stockholders of record representing the majority of the capital stock within ten (10) days from receipt by the board of directors of the institution of the order directing receivership, liquidation or conservatorship.

The designation of a conservator under Section 29 of this Act or **the appointment of a receiver under this section shall be vested exclusively with the Monetary Board**. Furthermore, the designation of a conservator is not a precondition to the designation of a receiver.[33]

On the strength of these provisions, it is the Monetary Board that exercises exclusive jurisdiction over proceedings for receivership of banks.

Crystal clear in Section 30 is the provision that says the "appointment of a receiver under this section shall be vested exclusively with the Monetary Board." The term "exclusively" connotes that only the Monetary Board can resolve the issue of whether a bank is to be placed under receivership and, upon an affirmative finding, it also has authority to appoint a receiver. This is further affirmed by the fact that the law allows the Monetary Board to take action "summarily and without need for prior hearing."

And, as a clincher, the law explicitly provides that "actions of the Monetary Board taken under this section or under Section 29 of this Act shall be final and executory, and may not be restrained or set aside by the court except on a petition for *certiorari* on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction."

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[33] Emphasis supplied.

From the foregoing disquisition, there is no doubt that the RTC has no jurisdiction to hear and decide a suit that seeks to place Banco Filipino under receivership.

Koruga herself recognizes the BSP's power over the allegedly unlawful acts of Banco Filipino's directors. The records of this case bear out that Koruga, through her legal counsel, wrote the Monetary Board[34] on April 21, 2003 to bring to its attention the acts she had enumerated in her complaint before the RTC. The letter reads in part:

> Banco Filipino and the current members of its Board of Directors should be placed under investigation for violations of banking laws, the commission of irregularities, and for conducting business in an unsafe or unsound manner. They should likewise be placed under preventive suspension by virtue of the powers granted to the Monetary Board under Section 37 of the Central Bank Act. These blatant violations of banking laws should not go by without penalty. They have put Banco Filipino, its depositors and stockholders, and the entire banking system (sic) in jeopardy.
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> x x x x x x x x x
>
> We urge you to look into the matter in your capacity as regulators. Our clients, a minority stockholders, (sic) and many depositors of Banco Filipino are prejudiced by a failure to regulate, and taxpayers are prejudiced by accommodations granted by the BSP to Banco Filipino[35]

In a letter dated May 6, 2003, BSP Supervision and Examination Department III Director Candon B. Guerrero referred Koruga's letter to Arcenas for comment.[36] On June 6, 2003, Banco Filipino's then Executive Vice President and Corporate Secretary Francisco A. Rivera submitted the bank's comments essentially arguing that Koruga's accusations lacked legal and factual bases.[37]

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[34] *Rollo* (G.R. No. 169053), pp. 266-272.

[35] *Id.* at 271-272. (Citations omitted.)

[36] *Id.* at p.457.

[37] *Id.* at pp. 459-462.

On the other hand, the BSP, in its Answer before the RTC, said that it had been looking into Banco Filipino's activities. An October 2002 Report of Examination (ROE) prepared by the Supervision and Examination Department (SED) noted certain *dacion* payments, out-of-the-ordinary expenses, among other dealings. On July 24, 2003, the Monetary Board passed Resolution No. 1034 furnishing Banco Filipino a copy of the ROE with instructions for the bank to file its comment or explanation within 30 to 90 days under threat of being fined or of being subjected to other remedial actions. The ROE, the BSP said, covers substantially the same matters raised in Koruga's complaint. At the time of the filing of Koruga's complaint on August 20, 2003, the period for Banco Filipino to submit its explanation had not yet expired.[38]

Thus, the court's jurisdiction could only have been invoked after the Monetary Board had taken action on the matter and only on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction.

Finally, there is one other reason why Koruga's complaint before the RTC cannot prosper. Given her own admission — and the same is likewise supported by evidence — that she is merely a minority stockholder of Banco Filipino, she would not have the standing to question the Monetary Board's action. Section 30 of the New Central Bank Act provides:

> The petition for *certiorari* may only be filed by the stockholders of record representing the majority of the capital stock within ten (10) days from receipt by the board of directors of the institution of the order directing receivership, liquidation or conservatorship.

All the foregoing discussion yields the inevitable conclusion that the CA erred in upholding the jurisdiction of, and remanding the case to, the RTC. Given that the RTC does not have jurisdiction over the subject matter of the case, its refusal to dismiss the case on that ground amounted to grave abuse of discretion.

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[38] CA *rollo*, p. 460.

WHEREFORE, the foregoing premises considered, the Petition in G.R. No. 168332 is *DISMISSED*, while the Petition in G.R. No. 169053 is *GRANTED*. The Decision of the Court of Appeals dated July 20, 2005 in CA-G.R. SP No. 88422 is hereby *SET ASIDE*. The Temporary Restraining Order issued by this Court on March 13, 2006 is made *PERMANENT*. Consequently, Civil Case No. 03-985, pending before the Regional Trial Court of Makati City, is *DISMISSED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Velasco, Jr., and *Peralta, JJ.,* concur.

EN BANC

[G.R. No. 168693. June 19, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JESSIE MARIANO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; MERE TOUCHING OF THE LABIA SUFFICIENT TO CONSUMMATE RAPE.— We find that the medical findings of Dr. Bandonil are not incompatible with the victim's claim of rape. He categorically declared that the possible cause for the swelling of the victim's hymen could be the male organ which would connote that accused-appellant's penis indeed touched the labia of AAA's organ. The mere touching by the male organ of the labia of the pudendum of the woman's private part is sufficient to consummate rape. The fact that there was no deep penetration of the victim's vagina and that her hymen was intact does not negate rape, since this crime is committed even with the slightest penetration of a woman's sex organ. Significantly, in a number of cases, we

held that where penetration was not fully established, the Court had anchored its conclusion that the rape was nevertheless committed on the victim's testimony that she felt pain. Here, AAA repeatedly testified that accused-appellant inserted his penis into her vagina as a consequence of which she felt pain. Her testimony has established without a doubt that accused-appellant's penis managed to come into contact with her vagina. This, at least, could be nothing but the result of the penile penetration sufficient to constitute rape.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT.— An examination of AAA's testimony shows that she testified in a categorical, straightforward, spontaneous and frank manner. Despite the grueling and intensive cross-examination by counsel of accused-appellant, AAA remained intractable and consistent as she unfolded to the court how she was ravished by accused-appellant. AAA remained steadfast even as the trial court noted that she cried more than once during her testimony as she vividly recalled the harrowing experiences she had to endure x x x. The crying of the victim during her testimony is evidence of the credibility of the rape charge with the verity born out of human nature and experience. Indeed, recalling and relating the heartrending past will trigger copious tears as a consequence. AAA's account of how accused-appellant defiled her was so replete with details that the Court finds accused-appellant's assertion that AAA merely fabricated a story of rape highly improbable, if not incredible. A rape victim who testifies in a categorical, straightforward, spontaneous and frank manner, and remains consistent, is a credible witness. Here, the trial court made the following observations: x x x. The testimony of the offended girl was given in a straightforward manner unimpaired by material discrepancies and contradictions and consistent with ordinary human experience. Her testimony under the grueling examination by the prosecution as well as the defense undoubtedly bears the imprint of truth and therefore must be accepted. We have time and again said that the findings of the trial court pertaining to the credibility of witnesses are entitled to great respect since it has the opportunity to examine their demeanor on the witness stand. For this reason, the trial court's findings are accorded finality, unless there appears in the record

some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case. We find nothing on record that would compel us to deviate from such well-entrenched rule so as to overturn the trial court's assessment of the credibility of the victim AAA.

3. CRIMINAL LAW; RAPE; NOT NEGATED BY THE FACT THAT IT HAPPENED IN THE SAME ROOM WHERE THE RAPIST'S SPOUSE AND OTHER PERSONS WERE SLEEPING.— Accused-appellant's contention that the rape could not have happened because he and AAA were sleeping with other persons, including AAA's mother, in the same room when the alleged rape incidents took place does not hold water. The crime of rape may be committed even when the rapist and the victim are not alone. Rape may take only a short time to consummate, given the anxiety of its discovery, especially when committed near sleeping persons oblivious to the goings on. Thus, the Court has held that rape is not impossible even if committed in the same room while the rapist's spouse is sleeping or in a small room where other family members also sleep.

4. ID.; ID.; RAPE IS NOT NEGATED BY THE VICTIM'S FAILURE TO SHOUT FOR HELP.— It is of no moment that AAA failed to shout for help when she was being sexually assaulted while her mother was sleeping beside her in the same room. The behavior and reaction of every person cannot be predicted with accuracy. It is an accepted maxim that different people react differently to a given situation or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling experience. Not every rape victim can be expected to act conformably to the usual expectations of everyone. Some may shout; some may faint; and some be shocked into insensibility, while others may openly welcome the intrusion. Behavioral psychology teaches us that people react to similar situations dissimilarly. There is no standard form of behavior when one is confronted by a shocking incident. The workings of the human mind when placed under emotional stress are unpredictable. This is true specially in this case where the victim is a child of tender age under the moral ascendancy of the perpetrator of the crime.

5. ID.; ID.; VICTIM'S SILENCE DOES NOT NEGATE RAPE.— AAA was merely 10 years old at the time the rape incidents took place. Considering her age, innocence and lack of experience, AAA's actions were nothing unusual or abnormal. Moreover, the accused-appellant was the common-law husband of the victim's mother. The victim lived under the same roof with accused-appellant. Accused-appellant's constant presence was thus enough to cow AAA into silence. Furthermore, it is not proper to judge the action of children, like AAA, who have undergone traumatic experiences, by the norms of behavior expected of mature individuals under the same circumstances. Their reactions to harrowing incidents may not be uniform. This Court indeed has not laid down any rule on how a rape victim should behave immediately after she has been abused. This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted by any modicum of doubt.

6. REMEDIAL LAW; EVIDENCE; WITNESSES; WHEN THE INCONSISTENCIES IN THE TESTIMONY OF THE WITNESS ARE TOO TRIVIAL TO MERIT CONSIDERATION.— Accused-appellant then resorts to pointing out inconsistencies in the testimony of AAA, such as her testimony that the room was lit by moonlight which enabled her to see the time despite the fact that the windows made of galvanized iron as well as the door were closed. Accused-appellant maintained that it would be impossible for the moonlight to filter through the opaque windows and door which were both closed. These inconsistencies alluded to are too trivial to merit consideration, as they refer to minor and irrelevant matters. For sure, it is of little or no significance at all as to what was the exact time when the rape incidents happened. It is too petty, as well, to quibble over the possibility of the moonlight passing through the opaque windows. What is important is that AAA was able to positively identify accused-appellant as her abuser. AAA could not have erred in identifying her mother's live-in partner because of the proximity of their relationship and their familiarity with one another. Inconsistencies in the testimonies of prosecution witnesses with respect to minor details and collateral matters do not affect either the substance of their declarations, their veracity, or the weight of their testimonies. Such minor flaws may even

enhance the worth of a testimony, for they guard against memorized falsities. Besides, a rape victim cannot be expected to recall vividly all the sordid details of the violation committed against her virtue.

7. ID.; ID.; ID.; ABSENCE OF IMPROPER MOTIVE TO TESTIFY.— Well-settled is the rule that testimonies of young victims of rape deserve full credence and should not be so easily dismissed as a mere fabrication. The Court's attention has not been called to any dubious reason or improper motive on the part of AAA that would have impelled her to falsely charge accused-appellant with a heinous crime as rape. Accused-appellant even unabashedly admitted that private complainant had no ill or devious motive for charging him with rape. Where no compelling and cogent reason is established that would explain why the complainant was so driven as to blindly implicate an accused, the testimony of a young girl of having been the victim of a sexual assault cannot be discarded.

8. CRIMINAL LAW; RAPE; PENALTY WHEN COMMITTED WITH QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP.— To justify the imposition of the death penalty, the information must specifically allege the qualifying circumstances of minority and relationship. Moreover, the prosecution must prove during the trial the presence of these qualifying circumstances with the same certainty as the crime itself. The Informations alleged that accused-appellant is the common-law husband of BBB who is AAA's mother. They also alleged that AAA was below 12 years old when accused-appellant raped her. During the trial, the prosecution proved AAA's minority by presenting in evidence her birth certificate. The document clearly states that AAA was born on February 24, 1987. AAA was thus 10 years old when accused-appellant raped her on September 6 and 13 and October 5, 1997. Accused-appellant and BBB categorically admitted in their testimonies that they are live-in partners. Thus, the trial court and the CA did not err in sentencing accused-appellant to death. In view, however, of the passage of *R.A. No. 9346*, otherwise known as the Anti-Death Penalty Law, which prohibits the imposition of death penalty, the penalty of *reclusion perpetua* without eligibility for parole should instead be imposed. Accordingly, accused-appellant shall be

sentenced to *reclusion perpetua* without eligibility for parole in lieu of the penalty of death.

9. ID.; ID.; CIVIL LIABILITY; AWARD OF CIVIL INDEMNITY IS PROPER WHEN RAPE IS PERPETRATED WITH A QUALIFYING AGGRAVATING CIRCUMSTANCE; AWARD OF MORAL AND EXEMPLARY DAMAGES.— As to the damages, we have held that if the rape is perpetrated with any of the attending qualifying aggravating circumstances that require the imposition of the death penalty, the civil indemnity for the victim shall be ₱75,000.00. Thus, the award of ₱75,000.00 as civil indemnity made by the courts *a quo* is in line with existing case law. Also, in rape cases, moral damages are awarded without need of proof other than the fact of rape, because it is assumed that the victim has suffered moral injuries entitling her to such an award. However, the moral damages awarded in the instant case should be increased from ₱50,000.00 to ₱75,000.00 pursuant to current jurisprudence on qualified rape. Lastly, exemplary damages in the amount of ₱30,000 is also called for, by way of public example, and to protect the young from sexual abuse.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Molintas & Partners Law Offices for accused-appellant.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

For automatic review is the decision[1] dated June 6, 2005 of the Court of Appeals (CA) in *CA-G.R. CR-H.C. No. 00922* which affirmed an earlier decision[2] of the Regional Trial Court (RTC) of La Trinidad, Benguet, Branch 9 in Criminal Cases

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[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Roberto A. Barrios (ret.) and Amelita G. Tolentino, concurring; *rollo*, pp. 3-37.

[2] CA *rollo*, pp. 24-35.

Nos. 98-CR-3081, 98-CR-3082 and 98-CR-3083, finding accused-appellant guilty beyond reasonable doubt of three counts of **Rape** and sentencing him to suffer the extreme penalty of death.

Pursuant to our pronouncement in *People v. Mateo*[3] — which modified the provisions of the Rules of Court insofar as they provide for direct appeals from the RTC to this Court in cases where the penalty imposed by the trial court is death, *reclusion perpetua* or life imprisonment — the aforesaid criminal cases which were elevated to this Court in G.R. Nos. 154995 to 154997 were earlier referred to the CA for appropriate action and disposition.[4] The cases were docketed as *CA-G.R. CR-H.C. No. 00922.*

Consistent with our decision in *People v. Cabalquinto*,[5] the real name of the rape victim in this case is withheld and instead fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, are not disclosed in this decision.

In three separate Informations, accused-appellant Jessie Mariano was charged in Criminal Case Nos. 98-CR-3081, 98-CR-3082 and 98-CR-3083, with three (3) counts of rape allegedly committed on September 6 and 13, 1997 and October 5, 1997, respectively, against the ten-year old daughter of his common-law wife.

The Informations were similarly worded, except as to the dates of the commission of the crime, as follows:

That on or about the 6th day of September, 1997 (13th day of September, 1997 and 5th day of October, 1997), at Taloy Sur, Municipality of Tuba, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused,

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[3] G.R. Nos. 147678-87, July 4, 2004, 433 SCRA 640.

[4] In our Resolution of August 24, 2004, *rollo*, p. 2.

[5] G.R. No. 167693, September 19, 2006, 502 SCRA 419.

did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA**,** a girl below 12 years of age.

That in the commission of the crime, the aggravating circumstance is present as the accused is the common-law husband of the mother of the victim.

CONTRARY TO LAW.

On his arraignment on May 13, 1999,[6] accused-appellant, assisted by his counsel, pleaded "Not Guilty" to the crime charged. During the trial on the merits, the prosecution presented the oral testimonies of the victim AAA; AAA's mother BBB; and Dr. Ronald Bandonil, medico-legal officer of the National Bureau of Investigation (NBI), Baguio City.

For its part, the defense presented accused-appellant himself as its lone witness.

The prosecution's version of the incidents is succinctly summarized by the Office of the Solicitor General (OSG) in its Appellee's Brief,[7] which was quoted by the CA in its decision as follows:

Private complainant AAA was born on February 24, 1987. She was just ten (10) years old and a Grade 4 pupil of the University of Baguio at the time she encountered her harrowing experience with the accused-appellant Jessie Mariano *y* Isla on September 6, 13 and October 5, 1997. She was born out of wedlock by BBB. AAA had no relation with accused-appellant aside from the fact that he was the live-in partner of her natural mother. Since July 1997, she lived with her mother (BBB) and accused-appellant in a rented house located at Taloy Sur, Tuba, Benguet. The house is a one-room affair where they sleep, cook and eat. It has an area of about five (5) by four (4) meters, with only one (1) window and with no electricity. On weekdays, she lived at her aunt's (sister of BBB) house at No. 31 Holy Ghost Proper, Sumulong Street, Baguio City where her school is nearly situated. On Saturdays and Sundays, she lived with her mother and accused-appellant.

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[6] Records, Vol. II, p. 44.

[7] CA *rollo*, pp. 89-111.

On the other hand, accused-appellant Jessie Mariano was the common-law husband of BBB (natural mother of minor AAA). In July 1996, the two (2) went to Manila and stayed there as live-in partners. Minor AAA, in the meantime, lived in Baguio City where she attended her school.

Sometime in 1997, accused-appellant and BBB returned to Taloy Sur, Tuba, Benguet and decided to stay together as common-law husband and wife.

On September 6, 1997, in their rented house at Taloy Sur, Tuba, Benguet, BBB, accused-appellant, AAA and her younger cousin slept together. AAA laid with her cousin on her right side, while accused-appellant was on her left side with the three of them in the mattress. AAA was then on the other side of accused-appellant. While they were asleep, around 11:00 o'clock that night, AAA was suddenly awakened when she felt that her pants and panty were slowly being lowered by someone. As she opened her eyes, she vividly saw accused-appellant who was seated beside her, putting down her pants and panty.

When accused-appellant noticed that AAA had awakened, he immediately held her hands behind her back as they were facing each other. As AAA's pants and panty were removed, accused-appellant slowly lifted her left leg, held his penis and thereupon forces his penis into her ***'pipit'*** (vernacular term of 'vagina' in the Ilocano dialect). Upon insertion of the penis, AAA immediately grimaced in pain albeit accused-appellant continued to pump his penis into her vagina. After around five (5) minutes, she felt as if water came out from the penis.

Satiated, accused-appellant pulled out his penis from AAA's vagina and carefully put back her panty and pants, with a warning not to tell what happened to her mother, *"Haan mo nga ibagbaga ti inaramid ko ti sabali!'* ("Do not tell what I did to anyone!"). Accused-appellant just laid down in bed. Without remorse, he easily fell asleep as if nothing had happened. Meanwhile, AAA felt so helpless. She simply cried herself to sleep. The next day, her mother accompanied her to school but she could not disclose the incident for fear of the accused-appellant.

On September 13, 1997 - - which was a Friday - - accused-appellant fetched AAA in her school around 4:30 o'clock in the afternoon. AAA was initially reluctant but when he told her that her mother (BBB) would tell her something at their house, she eventually decided to go with him. Before they went home, they first proceeded to her

Auntie's house, located at 31-B Holy Ghost Proper, Sumulong Street, Baguio City, to get her clothes. Thereafter, the two (2) proceeded to Taloy Sur, Tuba, Benguet. When they reached home, her mother never told her anything contrary to what accused-appellant told her in school.

On the night of that particular day, when they went to sleep, AAA lay with her mother on her right side, her younger cousin on her left side while accused-appellant was positioned on the other side of BBB. Around 12:00 o'clock of that night, AAA was again awakened when the accused-appellant surreptitiously carried her and laid her down on the floor about one (1) meter away from her mother and cousin. AAA was laid on her side facing accused-appellant who, after carefully removing her short pants and panty, lifted her left leg. Wasting no time, accused-appellant inserted his penis into her vagina. Again, as he rhythmically pumped his penis into her vagina, AAA silently bore and endured the grimacing pain. After satisfying his lust, accused-appellant slowly pulled out his penis and carefully put back AAA's panty and short pants. Thereafter, he carried her back to the bed to lay beside her mother. Indeed, AAA was unable to resist accused-appellant's sexual assault due to the latter's strength and, of course, for fear of her life. As in the first experience, she just cried.

On the night of October 5, 1997, at Taloy Sur, Tuba, Benguet — which was a Sunday, AAA had the third sexual encounter. On that night, AAA went to sleep, with accused-appellant and BBB in bed. She slept between the latter two (2). While asleep, she was again awakened when someone was slowly pulling and carrying her away from the mattress at a distance of one (1) meter. She vividly saw accused-appellant laying her down on the floor. Accused-appellant hurriedly pulled down her short pants and panty, and in an instant, pulled out his penis and forced it into her vagina. She cannot recall how long he inserted his penis into her vagina, as she was grimacing in pain. At one instance, though, she managed to pinch her mother (BBB) who just moved, without noticing what was then transpiring. Nonetheless, accused-appellant put up AAA's panty and pants, and carefully carried and brought her back in bed with her mother. Thereafter, AAA silently cried in the darkness of the night. Accused-appellant, on the other hand, proceeded to the bedpan and urinated.

On October 6, 1997, AAA stayed at her aunt's house at No. 31 Holy Ghost Proper, Sumulong Street, Baguio City. She continuously stayed in that place until October 29, 1997. During that period, she

never told her aunt or anybody about the harrowing experience because she was afraid of accused-appellant and she was mindful of the humiliation she would hear from her relatives.

In the afternoon of October 29, 1997, BBB fetched AAA at her aunt's house. BBB asked her daughter why she refused to go with accused-appellant when he fetched her. It was then that AAA mustered enough courage to disclose to her mother the sexual assaults committed against her on September 6, 13 and October 5, 1997. BBB was shocked and angry about what happened to her daughter. She, then, immediately wrote a letter to her sister to accompany AAA for a medical check-up.

On October 30, 1997, AAA's uncles and aunt accompanied her to the National Bureau of Investigation in Baguio City for medical examination.

On November 3, 1997, at the National Bureau of Investigation in Baguio City, Dr. Ronald Bandonil, a medico-legal officer, conducted a physical and genital examination on AAA. The minor was accompanied by a representative of the Department of Social Welfare and Development-Cordillera Autonomous Region (DSWD-CAR), together with the minor's aunt and uncles. Upon examination, Dr. Ronald Bandonil found and concluded (**Exhibit 'D'**) that the minor's *labia majoria* and *labia minora* were both coaptated, which means that the liplike structures at the outside of the vaginal area were in close contact with each other. Moreover, the area that surrounded her vaginal opening was inflamed, congested or swollen as it was reddish which is a reaction to a trauma caused by a hard, rigid instrument which may be a finger or the penis of a male. Likewise, there is a possible attempt on penetration by an instrument and if it is a male erect penis, it must be the size of a fully grown adult finger.

On the other hand, the defense' version is hinged mainly on the testimony of its lone witness, accused-appellant himself. The gist of his testimony as culled by the CA from the decision of the trial court is quoted hereunder:

Accused Jessie Isla Mariano in his defense testified that he is 47 years old, married and a resident of Gerona, Tarlac which is also his birthplace. In 1996, he was then employed as a hauler driver by the Saturn Cement Marketing Corporation which hauls cement from the

Northern Cement Corporation in Sison, Pangasinan. In the same year, he met BBB who works as a waitress in one of the drinking places at Sison, Pangasinan. He then stopped thereat for a drink of beer and he was served by BBB. He then invited BBB for a drink and to join him which she did. After becoming familiar with each other, they agreed to live-in together. He was dismissed from his job but he was able to get another job along Marcos Highway, so that in 1997, he and BBB rented a house in Taloy, Sur, Tuba, Benguet where he, BBB and her daughter, AAA, lived together. He denied the accusations of AAA that he raped her on September 6 and 13, 1997 because he was sleeping and woke up only in the morning. On October 5, 1997 he testified that he and BBB were the only ones who slept together because AAA went to her grandparents to stay there and in fact in the afternoon of October 5, 1997, he, BBB and AAA went to the house of the latter's grandparents to get vegetables which are grown by BBB's brothers and they left AAA there. He also denied the sleeping arrangement testified to by AAA because he always slept beside BBB. He however stated that he cannot exactly remember if it was on October 5, 1997 that AAA was in her grandparents' house or who were his companions when he slept on the night of October 5, 1997. He admits fetching AAA from the house of her aunt in Holy Ghost, Baguio City and that he has been fetching AAA from school about five times whenever BBB or her sisters are unable. He knows Denver and Karen Omorfe and remembers that they at one time slept with them at Taloy, Sur, Tuba, Benguet. He left the house in Taloy Sur between February and March 1998. [H]e does not know why AAA filed these cases against him. He and AAA do not talk much with each other nor did he quarrel with her, although he may have had serious quarrels and misunderstandings with BBB. He does not also know either (sic) AAA was telling the truth or lying.[8]

On July 2, 2001, the trial court rendered its decision[9] convicting accused-appellant of three counts of rape and sentencing him as follows:

WHEREFORE, the Court finds **Jessie Mariano *y* Isla "GUILTY"** beyond reasonable doubt of the crime of rape in three (3) counts as

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[8] *Id*. at 142-143.

[9] *Supra* note 2.

charged in the three (3) Informations, aggravated by the fact that Jessie Mariano *y* Isla is the common-law husband of the mother of the victim and sentences him to suffer the penalty of DEATH for each of rape as charged; to indemnify AAA, the victim the amount of Seventy Five Thousand (₱75,000.00) Pesos for each count of rape and to pay AAA the sum of Fifty Thousand (₱50,000.00) Pesos for each count of rape as moral damages.

Pursuant to Adm. Circular No. 92-A of the Office of the Court Administrator, the Provincial Jail Warden of Benguet Province is directed to transfer the said accused Jessie Mariano *y* Isla to the custody of the Bureau of Corrections, City of Muntinlupa, Metro Manila.

In relation to Section 1, Rule 111 of the Rules of Court, the corresponding filing fee for the amount of Fifty Thousand (₱50,000.00) herein awarded as moral damages for each count of rape shall constitute a first lien on this judgment.

Furnish a copy of this Decision to the Provincial Jail Warden of Benguet Province for his information and guidance.

Let the records of these cases be transmitted to the Supreme Court for automatic review and judgment within the period provided by law.

SO ORDERED.

In its decision dated June 6, 2005 in CA-G.R. CR-H.C. No. 00922, the CA affirmed the judgment of conviction against accused-appellant. From the CA, the said case was elevated to this Court for automatic review. In its Resolution of August 16, 2005, the Court resolved to require the parties to submit their respective supplemental briefs, if they so desire.

In a Manifestation[10] dated October 17, 2005, plaintiff-appellee, through the OSG, informed the Court that it would no longer file a supplemental brief, as its position in the present case has been thoroughly expounded in its Appellee's Brief filed with the CA. For his part, accused-appellant opted not to file any Supplemental Brief or Manifestation. Thus, this case was

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[10] *Rollo,* pp. 39-40.

submitted for decision on the basis of the Appellant's Brief and Appellee's Brief filed with the CA.

In his Appellant's Brief[11] before the CA, accused-appellant raised the following arguments:

1. WHETHER OR NOT THE PROSECUTION FAILED TO OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE OF THE ACCUSED AND/OR FAILED TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT FOR INSUFFICIENCY OF EVIDENCE.

2. WHETHER OR NOT THE TESTIMONY OF THE VICTIM IS TAINTED WITH MATERIAL CONTRADICTIONS AND INCONSISTENCIES BELYING THE TRUTHFULNESS OF HER TESTIMONY AND INDUBITABLY AFFECTING HER CREDIBILTY.

Accused-appellant insists that the prosecution failed to prove his guilt beyond reasonable doubt for the crime of rape. He assails the credibility of AAA, branding her testimony as inconsistent and contradictory with that of Dr. Bandonil, the medico-legal expert. According to the accused-appellant, no penetration took place, as the medico-legal findings showed that the swelling of her hymen was caused most probably by a small, hard and rigid instrument like a finger and not a male organ, and nothing in AAA's testimony would suggest that his finger was inserted in her vagina. He also contends that AAA merely fabricated a story of rape and describes AAA's account of how the sexual assault was committed as highly improbable and contrary to common human experience.

The appeal must fail.

Accused-appellant draws attention to the fact that based on the medico-legal findings,[12] there is no showing that AAA's hymen was penetrated. In claiming that the testimony of Dr. Bandonil was favorable to him, accused-appellant capitalized on the doctor's testimony that a normal erect Filipino male

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[11] CA *rollo*, pp. 48-63.

[12] Records, Vol. 3, p. 12.

organ could not possibly be the instrument that caused the swelling of the hymen but most probably a small, hard rigid instrument like a finger. However, Dr. Bandonil also did not rule out the possibility of a penis coming into contact with the vagina of the victim that resulted in the redness and swelling of the hymen, thus:

COURT:

> The Court would like to know from you, doctor, when you said a while ago that the labia majora and labia minora are coaptated and you also said there were some swelling and redness on the hymen?

A: Yes, your Honor.

x x x x x x x x x

Q: And you stated awhile ago that there was swelling of the hymen and redness which might have been caused by a hard, rigid object?
A: Yes, sir.

Q: Which you claim may also have been, which might refer to a sex organ of a male?
A: Yes, your Honor.

Q: Possibly the penis, are you referring to the penis?
A: That is a possibility, your Honor.

x x x x x x x x x

Q: So you are telling that there was a possible attempt on penetration but it only did not reach the vaginal canal, it only reached the hymen?
A: If it is a male, fully erected human male adult organ, it would not be the instrument. It would be more of a smaller, hard, rigid instrument like a finger. The male organ will not be the probable instrument in this examination.

x x x x x x x x x

PROSECUTOR PATARAS:

Q: Doctor, suppose that the male erect penis is too small, could it cause the injury you have found?

A: If it is a small organ, it is possible as long as the organ is as large as a fully grown adult finger.[13]

We find that the medical findings of Dr. Bandonil are not incompatible with the victim's claim of rape. He categorically declared that the possible cause for the swelling of the victim's hymen could be the male organ which would connote that accused-appellant's penis indeed touched the labia of AAA's organ. The mere touching by the male organ of the labia of the pudendum of the woman's private part is sufficient to consummate rape.[14] The fact that there was no deep penetration of the victim's vagina and that her hymen was intact does not negate rape, since this crime is committed even with the slightest penetration of a woman's sex organ.[15] Significantly, in a number of cases, we held that where penetration was not fully established, the Court had anchored its conclusion that the rape was nevertheless committed on the victim's testimony that she felt pain.[16] Here, AAA repeatedly testified that accused-appellant inserted his penis into her vagina as a consequence of which she felt pain.[17] Her testimony has established without a doubt that accused-appellant's penis managed to come into contact with her vagina. This, at least, could be nothing but the result of the penile penetration sufficient to constitute rape.

An examination of AAA's testimony shows that she testified in a categorical, straightforward, spontaneous and frank manner. Despite the grueling and intensive cross-examination by counsel of accused-appellant, AAA remained intractable and consistent as she unfolded to the court how she was ravished by accused-appellant. AAA remained steadfast even as the trial court noted

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[13] TSN, July 4, 2000, pp. 8-10.

[14] *People v. Mahinay*, G.R. No. 122485, February 1, 1999, 302 SCRA 455, 479.

[15] *People v. Gabayron*, G.R. No. 102018, August 21, 1997, 278 SCRA 78, 93.

[16] *People v. Tampos*, G.R. No. 142740, August 6, 2003, 408 SCRA 403, 415.

[17] TSN, September 13, 1999, pp. 8-10, 16-17.

that she cried more than once during her testimony as she vividly recalled the harrowing experiences she had to endure:

COURT:

> Take note that witness appears to be covering her face and appears to be shedding tears.

PROSECUTOR PATARAS:

> May we make of record that the complainant-witness is crying while pointing to the accused in this case.

ATTY. SANTOS:

> May we also put on record that the already cried while she started testifying, not only when she pointed to the witness, your Honor.

PROSECUTOR PATARAS:

> We join that manifestation, your Honor.

COURT:

> Make it of record that after pointing to Jessie Mariano, the witness cried as manifested by counsel for accused.[18]

The crying of the victim during her testimony is evidence of the credibility of the rape charge with the verity born out of human nature and experience.[19] Indeed, recalling and relating the heartrending past will trigger copious tears as a consequence. AAA's account of how accused-appellant defiled her was so replete with details that the Court finds accused-appellant's assertion that AAA merely fabricated a story of rape highly improbable, if not incredible. A rape victim who testifies in a categorical, straightforward, spontaneous and frank manner, and remains consistent, is a credible witness.[20]

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[18] TSN, December 9, 1999, pp. 3, 6.

[19] *People v. Gecomo*, G.R. Nos. 115035-36, February 23, 1996, 254 SCRA 82, 96.

[20] *People v. Madraga*, G.R. No. 129299, November 15, 2000, 344 SCRA 628, 639.

Here, the trial court made the following observations:

> x x x. The testimony of the offended girl was given in a straightforward manner unimpaired by material discrepancies and contradictions and consistent with ordinary human experience. Her testimony under the grueling examination by the prosecution as well as the defense undoubtedly bears the imprint of truth and therefore must be accepted.[21]

We have time and again said that the findings of the trial court pertaining to the credibility of witnesses are entitled to great respect since it has the opportunity to examine their demeanor on the witness stand.[22] For this reason, the trial court's findings are accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case.[23] We find nothing on record that would compel us to deviate from such well-entrenched rule so as to overturn the trial court's assessment of the credibility of the victim AAA.

Accused-appellant's contention that the rape could not have happened because he and AAA were sleeping with other persons, including AAA's mother, in the same room when the alleged rape incidents took place does not hold water. The crime of rape may be committed even when the rapist and the victim are not alone. Rape may take only a short time to consummate, given the anxiety of its discovery, especially when committed near sleeping persons oblivious to the goings on. Thus, the Court has held that rape is not impossible even if committed in the same room while the rapist's spouse is sleeping or in a small room where other family members also sleep.[24]

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[21] *Rollo*, p. 33.

[22] *People v. Ulgasan*, G.R. Nos. 131824-26, July 11, 2000, 335 SCRA 441, 449.

[23] *People v. Suarez*, G.R. Nos. 153573-76, April 15, 2005, 456 SCRA 333, 345.

[24] *People v. Manuel*, G.R. Nos. 107732-33, September 19, 1994, 236 SCRA 545, 554.

Accused-appellant next argues that AAA could have easily summoned help and assistance as her shouts could have been heard by other people who were sleeping with them. He then concludes that her failure to shout for help is contrary to human nature and negates the existence of rape. This Court finds his argument specious and hardly credible.

It is of no moment that AAA failed to shout for help when she was being sexually assaulted while her mother was sleeping beside her in the same room. The behavior and reaction of every person cannot be predicted with accuracy. It is an accepted maxim that different people react differently to a given situation or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling experience. Not every rape victim can be expected to act conformably to the usual expectations of everyone. Some may shout; some may faint; and some be shocked into insensibility, while others may openly welcome the intrusion. Behavioral psychology teaches us that people react to similar situations dissimilarly. There is no standard form of behavior when one is confronted by a shocking incident. The workings of the human mind when placed under emotional stress are unpredictable.[25] This is true specially in this case where the victim is a child of tender age under the moral ascendancy of the perpetrator of the crime.

To further impugn the credibility of the victim, accused-appellant cites her failure to immediately disclose the incident to anyone, as in fact she told her mother about the incidents only on October 29, 1997 while the alleged rape first happened as early as September 6, 1997.

AAA was merely 10 years old at the time the rape incidents took place. Considering her age, innocence and lack of experience, AAA's actions were nothing unusual or abnormal. Moreover, the accused-appellant was the common-law husband of the victim's mother. The victim lived under the same roof with accused-

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[25] *People v. Aspuria*, G.R. Nos. 139240-43, November 12, 2002, 391 SCRA 404, 411.

appellant. Accused-appellant's constant presence was thus enough to cow AAA into silence. Furthermore, it is not proper to judge the action of children, like AAA, who have undergone traumatic experiences, by the norms of behavior expected of mature individuals under the same circumstances. Their reactions to harrowing incidents may not be uniform.[26] This Court indeed has not laid down any rule on how a rape victim should behave immediately after she has been abused. This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted by any modicum of doubt.[27]

Accused-appellant then resorts to pointing out inconsistencies in the testimony of AAA, such as her testimony that the room was lit by moonlight which enabled her to see the time despite the fact that the windows made of galvanized iron as well as the door were closed. Accused-appellant maintained that it would be impossible for the moonlight to filter through the opaque windows and door which were both closed.[28] These inconsistencies alluded to are too trivial to merit consideration, as they refer to minor and irrelevant matters. For sure, it is of little or no significance at all as to what was the exact time when the rape incidents happened. It is too petty, as well, to quibble over the possibility of the moonlight passing through the opaque windows. What is important is that AAA was able to positively identify accused-appellant as her abuser. AAA could not have erred in identifying her mother's live-in partner because of the proximity of their relationship and their familiarity with one another.

Inconsistencies in the testimonies of prosecution witnesses with respect to minor details and collateral matters do not affect either the substance of their declarations, their veracity, or the weight of their testimonies. Such minor flaws may even enhance the worth of a testimony, for they guard against memorized

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[26] *People v. Alimon*, G.R. No. 87758, June 28, 1996, 257 SCRA 658, 674.

[27] *People v. Aspuria*, *supra* note 26.

[28] CA *rollo*, p. 61.

falsities. Besides, a rape victim cannot be expected to recall vividly all the sordid details of the violation committed against her virtue.[29]

Well-settled is the rule that testimonies of young victims of rape deserve full credence and should not be so easily dismissed as a mere fabrication.[30] The Court's attention has not been called to any dubious reason or improper motive on the part of AAA that would have impelled her to falsely charge accused-appellant with a heinous crime as rape. Accused-appellant even unabashedly admitted that private complainant had no ill or devious motive for charging him with rape. Where no compelling and cogent reason is established that would explain why the complainant was so driven as to blindly implicate an accused, the testimony of a young girl of having been the victim of a sexual assault cannot be discarded.[31]

On all these premises, we are impelled to affirm the trial court's and the CA's conviction of accused-appellant for the rape of AAA.

We note that the rape incidents in this case occurred prior to the effectivity of Republic Act No. 8353 (The Anti-Rape Law of 1997) which took effect on October 22, 1997 and classified the crime of rape as a crime against persons. Applicable then is the old provision — Section 11 of R.A. No. 7659 (The Death Penalty Law) — which reads as follows:

SEC. 11. Article 335 of the same Code is hereby amended to read as follows:

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The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

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[29] *People v. Nardo*, G.R. No. 133888, March 1, 2001, 353 SCRA 339, 356.

[30] *People v. Sabardan*, G.R. No. 132135, May 21, 2004, 429 SCRA 9, 27.

[31] *People v. Hermanes*, G.R. No. 139416, March 12, 2002, 379 SCRA 170, 175.

1. when the **victim is under eighteen (18) years of age and the offender is a** parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the **common-law-spouse** of the parent of the victim.

To justify the imposition of the death penalty, the information must specifically allege the qualifying circumstances of minority and relationship. Moreover, the prosecution must prove during the trial the presence of these qualifying circumstances with the same certainty as the crime itself.[32]

The Informations alleged that accused-appellant is the common-law husband of BBB who is AAA's mother. They also alleged that AAA was below 12 years old when accused-appellant raped her. During the trial, the prosecution proved AAA's minority by presenting in evidence her birth certificate. The document clearly states that AAA was born on February 24, 1987.[33] AAA was thus 10 years old when accused-appellant raped her on September 6 and 13 and October 5, 1997. Accused-appellant and BBB categorically admitted in their testimonies that they are live-in partners.[34] Thus, the trial court and the CA did not err in sentencing accused-appellant to death.

In view, however, of the passage of *R.A. No. 9346*,[35] otherwise known as the Anti-Death Penalty Law, which prohibits the imposition of death penalty, the penalty of *reclusion perpetua* without eligibility for parole should instead be imposed.[36] Accordingly, accused-appellant shall be sentenced to *reclusion perpetua* without eligibility for parole in lieu of the penalty of death.

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[32] *People v. Boromeo*, G.R. No. 150501, June 3, 2004, 430 SCRA 533, 552.

[33] Records, Vol. 1, p. 32

[34] TSN, February 29, 2000, p. 3; November 14, 2000, p. 3.

[35] Approved on June 24, 2006.

[36] *Supra* note 5.

As to the damages, we have held that if the rape is perpetrated with any of the attending qualifying aggravating circumstances that require the imposition of the death penalty, the civil indemnity for the victim shall be ₱75,000.00. Thus, the award of ₱75,000.00 as civil indemnity made by the courts *a quo* is in line with existing case law. Also, in rape cases, moral damages are awarded without need of proof other than the fact of rape, because it is assumed that the victim has suffered moral injuries entitling her to such an award. However, the moral damages awarded in the instant case should be increased from ₱50,000.00 to ₱75,000.00 pursuant to current jurisprudence on qualified rape.[37] Lastly, exemplary damages in the amount of ₱30,000 is also called for,[38] by way of public example, and to protect the young from sexual abuse.[39]

WHEREFORE, the decision dated June 6, 2005 of the CA is hereby *AFFIRMED* with the following *MODIFICATIONS*:

(1) Accused-appellant Jessie Mariano is sentenced to *reclusion perpetua* for each count of rape, conformably with *R.A. No. 9346*, without eligibility for parole; and

(2) He is ordered to indemnify the heirs of AAA for each count of rape as follows: (a) ₱75,000.00 as civil indemnity; (b) ₱75,000.00 as moral damages; and (c) ₱30,000.00 as exemplary damages.

Costs *de oficio*.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Chico-Nazario, Velasco, Jr., Nachura, Brion, Peralta, and *Bersamin, JJ.,* concur.

Carpio Morales, on official leave.

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[37] *People v. Sambrano*, G.R. No. 143708, February 24, 2003, 398 SCRA 106, 117.

[38] *People v. Ramon Regalario, et al.*, G.R. No. 174483, March 31, 2009.

[39] *Supra* note 37.

SECOND DIVISION

[G.R. No. 171188. June 19, 2009]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **JESSIE B. CASTILLO and FELICITO R. MEJIA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; TWO KINDS OF DETERMINATION OF PROBABLE CAUSE, EXPLAINED.— There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, *i.e.*, whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon. The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant. Corollary to the principle that a judge cannot be compelled to issue a warrant of arrest if he or she deems that there is no probable cause for doing so, the judge in turn should not override the public prosecutor's determination of probable cause to hold an accused for trial on the ground that the evidence presented to substantiate the issuance of an arrest warrant was insufficient. It must be stressed that in our criminal justice system, the public prosecutor exercises a wide

latitude of discretion in determining whether a criminal case should be filed in court, and that courts **must respect** the exercise of such discretion when the information filed against the person charged is valid on its face, and that no manifest error or grave abuse of discretion can be imputed to the public prosecutor. Thus, absent a finding that an information is invalid on its face or that the prosecutor committed manifest error or grave abuse of discretion, a judge's determination of probable cause is limited only to the judicial kind or for the purpose of deciding whether the arrest warrants should be issued against the accused.

2. ID.; ID.; ID.; WHEN THE INFORMATION IS VALID ON ITS FACE AND THERE IS NO MANIFEST ERROR OR ARBITRARINESS ON THE PART OF THE OMBUDSMAN, THE SANDIGANBAYAN CANNOT OVERTURN THE OMBUDSMAN'S OWN DETERMINATION OF PROBABLE CAUSE.— [T]here is no question that both the original and amended Informations were valid on their face because they complied with Section 6, Rule 110 of the Rules of Court. Also, a scrutiny of the Resolution dated August 22, 2002 of the Ombudsman which precipitated the filing of the original Information and the subsequent Memorandum dated August 4, 2004 recommending the amendment of the Information would likewise show that the finding of probable cause against the respondents were sufficiently supported by substantial evidence. As a matter of fact, in the Resolution dated August 22, 2002, the Ombudsman took pains to mention each element of the crime of violation of Section 3(e) of Rep. Act No. 3019 and then one by one adequately explained how and why those elements were satisfied. Hence, as the amended Information was valid on its face and there is no manifest error or arbitrariness on the part of the Ombudsman, the Sandiganbayan erred in making an executive determination of probable cause when it overturned the Ombudsman's own determination. And this is true even if the Sandiganbayan was no longer satisfied with the evidence presented to sustain the effectivity of the arrest warrants previously issued for the original Information. The Sandiganbayan could have just revoked the previously issued arrest warrants and required the Ombudsman to submit additional evidence for the purpose of issuing the arrest warrants based on the amended Information. Moreover, it was clearly premature

on the part of the Sandiganbayan to make a determinative finding prior to the parties' presentation of their respective evidence that there was no bad faith and manifest partiality on the respondents' part and undue injury on the part of the complainant. In *Go v. Fifth Division, Sandiganbayan*, we held that "it is well established that the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be best passed upon after a full-blown trial on the merits." Also, it would be unfair to expect the prosecution to present all the evidence needed to secure the conviction of the accused upon the filing of the information against the latter. The reason is found in the nature and objective of a preliminary investigation. Here, the public prosecutors do not decide whether there is evidence beyond reasonable doubt of the guilt of the person charged; they merely determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof, and should be held for trial.

3. POLITICAL LAW; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; NON-INTERFERENCE OF ALL COURTS IN THE OMBUDSMAN'S EXERCISE OF ITS CONSTITUTIONALLY MANDATED POWERS.— The Sandiganbayan and all courts for that matter should always remember the judiciary's standing policy on non-interference in the Office of the Ombudsman's exercise of its constitutionally mandated powers. This policy is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well, considering that otherwise, the functions of the courts will be grievously hampered by innumerable petitions regarding complaints filed before it, and in much the same way that the courts would be extremely swamped if they were to be compelled to review the exercise of discretion on the part of the prosecutors each time they decide to file an information in court or dismiss a complaint by a private complainant.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Benjamin C. Santos & Ray Montri C. Santos Law Offices for respondents.

D E C I S I O N

QUISUMBING, *J.*:

This petition seeks a review of the Resolution[1] dated October 10, 2005 of the Sandiganbayan in Criminal Case No. 27789, dismissing the criminal complaint against the respondents, and its Resolution[2] dated January 18, 2006 denying petitioner's motion for reconsideration.

The facts are as follows:

Complainant Cesar Sarino is one of the registered owners of a piece of land covered by Transfer Certificate of Title No. T-450278[3] of the Registry of Deeds of Cavite, located in front of SM Bacoor, Cavite. The property is leased to Pepito B. Aquino and Adriano G. Samoy who are in turn subleasing it to several stallholders.

In September 1999, respondent Felicito R. Mejia, Municipal Building Official of Bacoor, sent to the stallholders Notices of Violation[4] of the National Building Code on the grounds that the structures they were occupying were erected without building permits and occupied by them without the necessary certificates of occupancy having been first secured.

On January 17, 2000, Mejia's office sent letters[5] dated January 10, 2000 to the stallholders informing them that because of their repeated failure to comply with the National Building Code and its implementing rules and regulations and the Business Permit and Licensing Office Requirements, their stalls will be closed down on January 24, 2000.

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[1] *Rollo*, pp. 14-22.

[2] *Id.* at 30-32.

[3] *Id.* at 160.

[4] Records, Vol. II, pp. 72-93, 95-127.

[5] *Id.* at 70-71.

On February 16, 2000, a task force from the Bacoor Municipal Hall effected the closure of the stalls through the installation of galvanized iron fences.

Lessees Aquino and Samoy thereafter filed before the Office of the Ombudsman a complaint against respondent Jessie B. Castillo, in his capacity as Bacoor Municipal Mayor, respondent Mejia and two other municipal officials for violation of Section 3(e) and (f) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended.[6] The case was docketed as OMB-1-00-0537.

On October 20, 2000, the Office of the Ombudsman dismissed OMB-1-00-0537, ruling that the respondent local officials acted in good faith in effecting the closure of the stalls.[7]

On September 6, 2001, Sarino filed a Complaint[8] against respondents Castillo and Mejia before the Office of the Ombudsman charging them criminally for violation of Section

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[6] *Section 3. Corrupt practices of public officers*.—In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

(f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

x x x x x x x x x

[7] Records, Vol. I, pp. 118-122.

[8] *Id.* at 11-16.

3(e) and (f) of Rep. Act No. 3019 and Rep. Act No. 6713,[9] and administratively for oppression, grave misconduct and for committing acts contrary to law. According to Sarino, the construction of the galvanized fence in February 2000 is tantamount to an unlawful taking of their property causing them undue injury and that despite his verbal and written demands, respondents refused to remove said fence.

Respondents countered that Sarino's complaint was anchored on the same set of facts that had been the subject of OMB-1-00-0537 that was dismissed by the Ombudsman.

On March 10, 2003, the Ombudsman dismissed the administrative complaint for being moot and academic due to Castillo's re-election as mayor in the May 2001 elections and pursuant to Section 20 of Rep. Act No. 6770[10] because the act

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[9] 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, approved on February 20, 1989.

[10] AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN AND FOR OTHER PURPOSES.

x x x x x x x x x

SEC. 20. *Exceptions*.—The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

(1) The complainant has an adequate remedy in another judicial or quasi-judicial body;
(2) The complaint pertains to a matter outside the jurisdiction of the Office of the Ombudsman;
(3) The complaint is trivial, frivolous, vexatious or made in bad faith;
(4) The complainant has no sufficient personal interest in the subject matter of the grievance; or
(5) The complaint was filed after one year from the occurrence of the act or omission complained of.

complained of happened more than one year before the complaint was filed.[11]

On May 7, 2003, the Office of the Ombudsman, through the Office of the Special Prosecutor, filed an Information[12] against respondents for violation of Section 3(e) of Rep. Act No. 3019 before the Sandiganbayan. The case was docketed as Criminal Case No. 27789. The Information reads:

> That in or about February 2000, and for sometime prior or subsequent thereto, in Bacoor, Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, JESSIE B. CASTILLO, a high ranking public officer, being the Municipal Mayor, and FELICITO R. MEJIA, the Municipal Building Official, of Bacoor, Cavite, as such taking advantage of their positions and committing the offense in relation to office, conspiring and confederating together, with evident bad faith and manifest partiality, or gross inexcusable negligence, did then and there willfully, unlawfully and criminally cause undue injury to one CESAR SARINO by blocking and fencing off the latter's property by installing and erecting a galvanized iron sheet fence on the front portion of the said property facing the SM Bacoor thereby depriving him of the full use and enjoyment of his property, and despite repeated demands from the said land owner, the accused, without valid justification, refuse to remove the said fence to the damage and prejudice of said Cesar Sarino in the amount of Seven Hundred Ninety Thousand and Nine Hundred Twenty Pesos (Php790,920.00), more or less, representing lost income from the rentals of the stalls and parking fees derived therefrom.
>
> CONTRARY TO LAW.[13]

In a Resolution[14] dated August 15, 2003, the Sandiganbayan declared that probable cause exists against respondents for violation of Section 3(e). Accordingly, it directed the issuance of the corresponding warrants of arrest and hold departure orders against respondents.

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[11] Records, Vol. I, pp. 114-117.

[12] *Id.* at 1-3.

[13] *Id.* at 1-2.

[14] *Id.* at 76-77.

On August 20, 2003, respondents voluntarily surrendered to the Sandiganbayan and posted their respective bonds for their provisional liberty.[15] Respondents moved for the reinvestigation of the case which the Sandiganbayan gave due course.

After the reinvestigation, the Office of the Special Prosecutor, upon approval of the Ombudsman, filed a Motion for Leave to Admit Attached Amended Information.[16] The respondents then filed a Comment thereon with Motion for Judicial Determination of Probable Cause.[17]

In a Resolution[18] dated November 3, 2004, the Sandiganbayan admitted the Amended Information which reads:

That in or about February 2000, and for sometime prior or subsequent thereto, in Bacoor, Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, JESSIE B. CASTILLO, a high ranking public officer, being the Municipal Mayor, and FELICITO R. MEJIA, the Municipal Building Official, of Bacoor, Cavite, as such taking advantage of their positions and committing the offense in relation to office, conspiring and confederating together, with evident bad faith and manifest partiality, or gross inexcusable negligence, did then and there wilfully, unlawfully and criminally cause undue injury to CESAR N. SARINO, EVELYN S. MANIQUIS, FLORA JANET S. GARCIA, CLAUDETTE N. SARINO, STEPHEN N. SARINO and PRISCILLA N. SARINO, by blocking and fencing off their property described in Transfer Certificate of Title No. T-450278, which was then being leased by PEPITO B. AQUINO and ADRIANO G. SAMOY for TWELVE THOUSAND PESOS (₱12,000.00) a month, by installing and erecting a galvanized iron fence on the front portion of the said property facing the SM Bacoor, thereby depriving them of the full use and enjoyment of their property and effectively decreasing its value for commercial purposes, and despite lawful demand from CESAR N. SARINO, the accused, without valid justification, refuse to remove the said fence to the undue damage and prejudice of said landowners

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[15] *Id.* at 83-90.

[16] *Rollo*, pp. 278-283.

[17] Records, Vol. I, pp. 345-373.

[18] *Id.* at 442-443.

in the amount of SEVEN HUNDRED NINETY THOUSAND and NINE HUNDRED TWENTY PESOS (Php 790,920.00), more or less, representing (1) lost rentals of said property, (2) unpaid compensation for the portion of the property on which the fence was installed, and (3) the decrease in value of the property for commercial purposes.

CONTRARY TO LAW.[19]

In a Resolution[20] dated May 9, 2005, the Sandiganbayan denied the respondents' Motion for Judicial Determination of Probable Cause.

On October 10, 2005, the Sandiganbayan, upon motion for reconsideration filed by respondents, reversed its May 9, 2005 Resolution and dismissed the case. The Sandiganbayan likewise set aside the arrest warrants it previously issued. It held that the instant criminal case is a mere rehash of the previously dismissed criminal case filed by complainant's lessees against respondents. It also ruled that there was no evident bad faith, manifest partiality or inexcusable negligence that can be attributed to respondents. Neither did complainant's claim of undue injury have any leg to stand on.

The Office of the Special Prosecutor filed a motion for reconsideration, but it was denied on January 18, 2006. Hence this petition, with the following issues:

I.

[WHETHER OR NOT] THE HONORABLE SANDIGANBAYAN GRAVELY ERRED AND DECIDED A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH LAW AND JURISPRUDENCE IN CONDUCTING A SECOND JUDICIAL DETERMINATION OF PROBABLE CAUSE IN CRIMINAL CASE NO. 27789, LONG AFTER IT ISSUED THE WARRANTS OF ARREST AGAINST THE RESPONDENTS.

II.

[WHETHER OR NOT] THE HONORABLE SANDIGANBAYAN GRAVELY ERRED AND DECIDED A QUESTION OF SUBSTANCE

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[19] *Rollo*, pp. 303-305.

[20] Records, Vol. II, pp. 11-19.

IN A MANNER NOT IN ACCORD WITH LAW AND JURISPRUDENCE WHEN IT CONSIDERED EVIDENTIARY MATTERS SUPPORTING RESPONDENTS' DEFENSE WHEN IT CONDUCTED THE SECOND JUDICIAL DETERMINATION OF PROBABLE CAUSE.

III.

[WHETHER OR NOT] THE HONORABLE SANDIGANBAYAN GRAVELY ERRED AND DECIDED A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH LAW AND JURISPRUDENCE WHEN IT RULED THAT THE RESPONDENTS ACTED IN GOOD FAITH WHEN IN TRUTH RESPONDENTS HAD NO LEGAL BASIS IN FENCING OFF THE PRIVATE PROPERTY OF THE COMPLAINANT AND HIS SIBLINGS.

IV.

[WHETHER OR NOT] THE HONORABLE SANDIGANBAYAN GRAVELY ERRED AND DECIDED A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH LAW AND JURISPRUDENCE WHEN IT IGNORED AND DID NOT DISCUSS IN ITS RESOLUTIONS OF OCTOBER 10, 2005 AND JANUARY 18, 2006 THE ISSUE RAISED BY THE PROSECUTION THAT COMPLAINANT AND HIS SIBLINGS SUFFERED UNDUE INJURY BECAUSE, AMONG OTHERS, A PORTION OF THEIR PROPERTY WAS EFFECTIVELY TAKEN BY THE RESPONDENTS WITHOUT JUST COMPENSATION AND THE VALUE OF THE SUBJECT PROPERTY FOR PURPOSES OF COMMERCE WAS GREATLY REDUCED IN VIEW OF THE HIGH GALVANIZED IRON FENCE THAT COVERED AND HID THE PROPERTY FROM THE HIGHWAY AND THE PUBLIC.[21]

The foregoing issues simply boil down to whether the Sandiganbayan erred in overturning the Ombudsman's determination of probable cause resulting in the dismissal of the case against respondents.

Petitioner contends that after the Sandiganbayan issued the arrest warrants against respondents, the responsibility of making a new determination of probable cause shifted back to the

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[21] *Rollo,* pp. 67-69.

Ombudsman as prosecutor when respondents moved for the reinvestigation of the case and such motion was granted by the court. The Ombudsman must then decide whether respondents shall continue to be held for trial in light of any additional evidence presented during reinvestigation. This responsibility, petitioner submits, belongs to the Ombudsman alone and the court is bereft of authority to overturn the former's findings as the judicial determination of probable cause is only for the purpose of determining whether the arrest warrant should be issued. Petitioner further argues that there are only two instances when the court can intervene in the Ombudsman's action — first, when the Ombudsman acted with grave abuse of discretion; and second, when the prosecution makes substantial amendments to the information — both of which are wanting in the instant case.

Respondents counter that the amendments made to the information are substantial in nature and not merely formal as they pertain to the inclusion of additional injured parties and specification of the amount of damages. And even assuming the amendments were merely formal, the Sandiganbayan was correct in exercising its judicial prerogative when it determined for itself the existence of probable cause considering the inconsistency of the positions taken by the Ombudsman in OMB-1-00-0537 and the instant case.

After seriously considering the submission of the parties, we are in agreement that the petition is meritorious.

There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court.[22] Whether

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[22] *Paderanga v. Drilon*, G.R. No. 96080, April 19, 1991, 196 SCRA 86, 90.

or not that function has been correctly discharged by the public prosecutor, *i.e.*, whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.[23]

The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice.[24] If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.[25]

Corollary to the principle that a judge cannot be compelled to issue a warrant of arrest if he or she deems that there is no probable cause for doing so, the judge in turn should not override the public prosecutor's determination of probable cause to hold an accused for trial on the ground that the evidence presented to substantiate the issuance of an arrest warrant was insufficient. It must be stressed that in our criminal justice system, the public prosecutor exercises a wide latitude of discretion in determining whether a criminal case should be filed in court, and that courts **must respect** the exercise of such discretion when the information filed against the person charged is valid on its face, and that no manifest error or grave abuse of discretion can be imputed to the public prosecutor.[26]

Thus, absent a finding that an information is invalid on its face or that the prosecutor committed manifest error or grave abuse of discretion, a judge's determination of probable cause

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[23] *Roberts, Jr. v. Court of Appeals*, G.R. No. 113930, March 5, 1996, 254 SCRA 307, 350.

[24] *Ho v. People*, G.R. Nos. 106632 & 106678, October 9, 1997, 280 SCRA 365, 380.

[25] *People v. Court of Appeals*, G.R. No. 126005, January 21, 1999, 301 SCRA 475, 488.

[26] *Schroeder v. Saldevar*, G.R. No. 163656, April 27, 2007, 522 SCRA 624, 628-629.

is limited only to the judicial kind or for the purpose of deciding whether the arrest warrants should be issued against the accused.

In the instant case, there is no question that both the original[27] and amended[28] Informations were valid on their face because they complied with Section 6,[29] Rule 110 of the Rules of Court. Also, a scrutiny of the Resolution[30] dated August 22, 2002 of the Ombudsman which precipitated the filing of the original Information and the subsequent Memorandum dated August 4, 2004 recommending the amendment of the Information would likewise show that the finding of probable cause against the respondents were sufficiently supported by substantial evidence. As a matter of fact, in the Resolution dated August 22, 2002, the Ombudsman took pains to mention each element of the crime of violation of Section 3(e) of Rep. Act No. 3019 and then one by one adequately explained how and why those elements were satisfied. Hence, as the amended Information was valid on its face and there is no manifest error or arbitrariness on the part of the Ombudsman, the Sandiganbayan erred in making an executive determination of probable cause when it overturned the Ombudsman's own determination. And this is true even if the Sandiganbayan was no longer satisfied with the evidence presented to sustain the effectivity of the arrest warrants previously issued for the original Information. The Sandiganbayan could have just revoked the previously issued arrest warrants and required the Ombudsman to submit additional evidence for the purpose of issuing the arrest warrants based on the amended Information.

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[27] *Rollo,* pp. 207-209.

[28] *Id.* at 303-305.

[29] SEC. 6. *Sufficiency of complaint or information.*—A complaint or information is sufficient if it states the name of the accused; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense, and the place wherein the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information.

[30] *Rollo,* pp. 199-205.

Moreover, it was clearly premature on the part of the Sandiganbayan to make a determinative finding prior to the parties' presentation of their respective evidence that there was no bad faith and manifest partiality on the respondents' part and undue injury on the part of the complainant. In *Go v. Fifth Division, Sandiganbayan*,[31] we held that "it is well established that the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be best passed upon after a full-blown trial on the merits."[32] Also, it would be unfair to expect the prosecution to present all the evidence needed to secure the conviction of the accused upon the filing of the information against the latter. The reason is found in the nature and objective of a preliminary investigation. Here, the public prosecutors do not decide whether there is evidence beyond reasonable doubt of the guilt of the person charged; they merely determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof, and should be held for trial.[33]

The Sandiganbayan and all courts for that matter should always remember the judiciary's standing policy on non-interference in the Office of the Ombudsman's exercise of its constitutionally mandated powers. This policy is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well, considering that otherwise, the functions of the courts will be grievously hampered by innumerable petitions regarding complaints filed before it, and in much the same way that the courts would be extremely swamped if they were to be compelled to review the exercise of discretion on the part of the prosecutors each time they decide to file an information in court or dismiss a complaint by a private complainant.[34]

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[31] G.R. No. 172602, April 13, 2007, 521 SCRA 270.

[32] *Id.* at 289. See also *Andres v. Cuevas*, G.R. No. 150869, June 9, 2005, 460 SCRA 38, 52.

[33] *People v. Court of Appeals*, *supra* note 25.

[34] *Go v. Fifth Division, Sandiganbayan, supra* note 31, at 293; *Andres v. Cuevas*, *supra* note 32.

WHEREFORE, the petition is *GRANTED*. The Sandiganbayan's challenged Resolutions dated October 10, 2005 and January 18, 2006 are *REVERSED* and *SET ASIDE*. The Information against the respondents is hereby *REINSTATED*. Let the records of this case be *REMANDED* to the Sandiganbayan for further proceedings.

SO ORDERED.

Ynares-Santiago,[*] *Chico-Nazario,*[**] *Leonardo-de Castro,*[***] and *Brion, JJ.,* concur.

EN BANC

[G.R. No. 177795. June 19, 2009]

LEAH M. NAZARENO, CARLO M. CUAL, ROGELIO B. CLAMONTE, FLORECITA M. LLOSA, ROGELIO S. VILLARUBIA, RICARDO M. GONZALES, JR., ROSSEL MARIE G. GUTIERREZ, NICANOR F. VILLAROSA, JR., MARIE SUE F. CUAL, MIRAMICHI MAJELLA B. MARIOT, ALMA F. RAMIREZ, ANTOLIN D. ZAMAR, JR., MARIO S. ALILING, TEODULO SALVORO, JR., PHILIP JANSON ALTAMARINO, ANTONIETTA PADURA, ADOLFO R. CORNELIA, IAN RYAN PATULA, WILLIAM TANOY, VICTOR ARBAS, JEANITH CUAL, BRAULIO SAYSON, DAWN M. VILLAROSA,

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[*] 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 Special Order No. 658.

[***] Designated member of the Second Division per Special Order No. 635 in view of the retirement of Associate Dante O. Tinga.

AGUSTIN A. RENDOQUE, ENRIQUETA TUMONGHA, LIONEL P. BANOGON, ROSALITO VERGANTINOS, MARIO T. CUAL, JR., ELAINE MAY TUMONGHA, NORMAN F. VILLAROSA, RICARDO C. PATULA, RACHEL BANAGUA, RODOLFO A. CALUGCUGAN, PERGENTINO CUAL, BERNARD J. OZOA, ROGER JOHN AROMIN, CHERYL E. NOCETE, MARIVIC SANCHEZ, CRISPIN DURAN, REBCO LINGCONG, ANNA LEE ESTRABELA, MELCHOR B. MAQUILING, RAUL MOLAS, OSCAR KINIKITO, DARWIN B. CONEJOS, ROMEL CUAL, ROQUETA AMOR, DIOSDADO LAJATO, PAUL PINO, LITO PINERO, RODULFO ZOSA, JR. and JORGE ARBOLADO, *petitioners, vs.* **CITY OF DUMAGUETE, represented by CITY MAYOR AGUSTIN PERDICES, DOMINADOR DUMALAG, JR., ERLINDA TUMONGHA, JOSEPHINE MAE FLORES and ARACELI CAMPOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45 DISTINGUISHED FROM A PETITION FOR *CERTIORARI* UNDER RULE 65.— The Petition was confusingly denominated as a "Petition for *Certiorari* under Rule 45 of the Rules of Court, as amended." Rule 45 of the Revised Rules of Court governs petitions for review on *certiorari*, while Rule 65 of the same covers petitions for *certiorari*. These are two distinct remedies. A petition for review under Rule 45 of the Revised Rules of Court is generally limited only to questions of law or errors of judgment. On the other hand, the petition for *certiorari* under Rule 65 may be availed of to correct errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction. Considering that the instant Petition (1) raises supposed errors of judgment committed by the RTC; (2) does not contain any categorical assertion of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC that rendered the assailed judgment; and (3) states that it is a Petition under Rule 45 of the Revised

Rules of Court, the Court shall treat the present Petition as a Petition for Review. Counsel for petitioners, however, is cautioned to be more circumspect in properly identifying the remedy his clients are availing themselves of so as to avoid confusion.

2. ID.; ID.; ID.; DIFFERENT MODES OF APPEALING REGIONAL TRIAL COURT (RTC) DECISIONS, DISTINGUISHED.— In *Five Star Marketing, Co., Inc. v. Booc,* this Court distinguished the different modes of appealing RTC decisions, to wit: The Court, in *Murillo v. Consul*, *Suarez v. Villarama, Jr.* and *Velayo-Fong v. Velayo*, had the occasion to clarify the three modes of appeal from decisions of the RTC, namely: a) ordinary appeal or appeal by writ of error, where judgment was rendered in a civil or criminal action by the RTC in the exercise of its original jurisdiction; b) petition for review, where judgment was rendered by the RTC in the exercise of its appellate jurisdiction; and c) petition for review to this Court. The first mode of appeal is governed by Rule 41, and is taken to the CA on questions of fact or mixed questions of fact and law. The second mode, covered by Rule 42, is brought to the CA on questions of fact, of law, or mixed questions of fact and law. **The third mode, provided for by Rule 45, is elevated to this Court only on questions of law**. A **question of law** arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a questions (sic) to be one of law, the same **must not involve an examination of the probative value of the evidence** presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. x x x **Section 4 of Circular 2-90 in effect provides that an appeal taken either to this Court or to the CA by the wrong mode or inappropriate mode shall be dismissed. This rule is now incorporated in Section 5, Rule 56 of the Rules of Court. Moreover, the filing of the case directly with this Court departs from the hierarchy of courts. Normally, direct resort from the lower courts to this Court will not be entertained unless the appropriate remedy cannot be obtained in the lower tribunals.**

3. ID.; ID.; ID.; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; ONLY QUESTIONS OF LAW MAY BE RAISED;

CASE AT BAR.— x x x [W]hen a party appeals from a decision of the RTC directly to this Court via a Petition for Review under Rule 45, it must only raise questions of law; otherwise, its appeal shall be dismissed. A cursory reading of the three issues raised by petitioners herein, would readily reveal that the second one – on whether the RTC erred in holding that petitioners were not entitled to their claim for damages, since they failed to prove bad faith on the part of Mayor Perdices – is a question of fact, since it involves an examination of the probative value of the evidence presented by the parties. Petitioners, therefore, availed themselves of the wrong or inappropriate mode of appeal. On this score alone, the present Petition could have been outrightly dismissed. However, the procedural flaws notwithstanding, the Court deems it judicious to take cognizance of the substantive questions herein, if only to put petitioners' mind to rest.

4. ID.; SPECIAL CIVIL ACTIONS; *MANDAMUS*; ELUCIDATED.— *Mandamus* is a command issuing from a court of competent jurisdiction, in the name of the state or the sovereign, directed to some inferior court, tribunal or board, or to some corporation or person requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed, or from operation of law. A writ of *mandamus* may issue when any tribunal, corporation board, officer or person unlawfully: (1) neglects the performance of an act that the law specifically enjoins as a duty resulting from an office, trust, or station; or (2) excludes another from the use and enjoyment of a right or office to which the other is entitled.

5. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; APPOINTMENTS; AS A RULE, APPOINTMENTS SHALL TAKE EFFECT IMMEDIATELY AND UPON ASSUMPTION OF THE DUTIES OF THEIR POSITIONS, APPOINTEES ARE ENTITLED TO RECEIVE THEIR SALARIES AT ONCE.— The general rule, therefore, is that appointments shall take effect immediately; and should the appointees already assume the duties of their positions, they shall be **entitled to receive their salaries at once**. There is no need to wait for the approval of the appointments by the CSC. The **appointments shall be effective until disapproved by the CSC**. The CSC, in carrying

out its powers and functions, has a three-tiered organizational structure, *i.e.*, the CSC-FO, the CSC-RO, and the CSC Proper acting as a collegial body. The appointing authority or the appointees themselves may file a motion for reconsideration or an appeal of the disapproval of appointments by the CSC-FO to the CSC-RO, and by the CSC-RO to the CSC Proper. Until the disapproval of the appointments by the CSC-FO and CSC-RO is affirmed by the CSC Proper, it shall not be considered final and executory. Stated differently, the appointments shall remain effective until they are disapproved by the CSC Proper. In the meantime, there shall be no obstacle to the concerned appointees continuing to render public service; and to receiving salary for the actual services they have rendered during the period, based on the "no work, no pay" policy.

6. ID.; ID.; ID.; ID.; WHEN THE APPOINTMENT WAS DISAPPROVED FOR VIOLATION OF PERTINENT LAWS, THE APPOINTING AUTHORITY SHALL BE PERSONALLY LIABLE FOR THE SALARY OF THE APPOINTEE.— What happens then if the appointment was disapproved for violation of civil service law? In such a situation, **Section 4, Rule VI** of the Revised Omnibus Rules on Appointments and Other Personnel Action applies. It states: Sec. 4. The appointing authority shall be personally liable for the salary of appointees whose appointments have been disapproved for violation of pertinent laws such as the publication requirement pursuant to RA 7041. It is clear from the afore-quoted provision that when the appointment was disapproved for **violation of pertinent laws**, the **appointing authority shall be personally liable** for the salary of the appointee. This is in complete accord with the Section 65, Chapter 10, Book V, of Executive Order No. 292, otherwise known as the Administrative Code of 1987, to wit: Section 65. *Liability of appointing authority*. – No person employed in the Civil Service in violation of Civil Service law and rules shall be entitled to receive pay from the government, but the appointing authority responsible for such unlawful employment shall be personally liable for the pay that would have accrued had the employment been lawful, and the disbursing officials shall make payment to the employee of such amount from the salary of the officers so liable. To recall, petitioners' appointments were invalidated and revoked by CSC-FO Director Abucejo, in a letter dated 1 August 2001, on the ground that

said appointments were made by former Mayor Remollo **in violation of Items No. 3(d) and 4 of CSC Resolution No. 010988 dated 4 June 2001,** which prohibit the outgoing chief executive from making mass appointments after elections. The rules laid down by the CSC in CSC Resolution No. 010988, dated 4 June 2001, are deemed included in the "civil service law," it having the force and effect of law.

7. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; WILL NOT ISSUE TO ESTABLISH A RIGHT, BUT ONLY TO ENFORCE ONE THAT IS ALREADY ESTABLISHED; EXPLAINED.— Upon disapproval by CSC-FO Director Abucejo of petitioners' appointments on 1 August 2001, for being in violation of civil service law, petitioners may no longer claim entitlement to the payment of their salaries from the government. There is no doubt that, pending their appeals before the CSC-RO, then the CSC Proper, petitioners' appointments remained effective. They could still continue reporting for work and rendering service, but there already arose the question as to who shall be liable for their salaries during the period, *i.e.*, whether it was the City Government of Dumaguete (under Section 3, Rule VI of the Revised Omnibus Rules on Appointments and Other Personnel Action) or former Mayor Remollo who appointed them (under Section 4, Rule VI of the same Revised Omnibus Rules). Hence, petitioners' right to their salaries cannot be firmly anchored as of yet on Section 3, Rule VI of the Revised Omnibus Rules on Appointments and Other Personnel Action. Neither can the unnumbered CSC Memorandum Circular dated 6 December 2001 invoked by petitioners support their case. Its avowed intention is to put a stop to the practice of some appointing authorities/heads of agencies in the government of immediately replacing their predecessors' appointees after the latter's appointments have been disapproved by the CSC-FO or CSC-RO, notwithstanding the pendency of an appeal with the CSC Proper. The CSC issuance requires the strict observance of the rule that until the disapproval of the appointment by the CSC-FO or CSC-RO is affirmed by the CSC Proper, the new appointing authority/head of agency cannot issue appointments to replace the appointees whose appointments were disapproved by the CSC-FO or CSC-RO; and any appointment in violation of this rule should be disapproved by the CSC-FO or CSC-RO. There is nothing in the CSC Memorandum Circular dated 6 December

2001 providing for the payment of the salaries of the appointees whose appointments were disapproved by the CSC-FO or the CSC-RO, while their appeals are pending before the CSC Proper. Since petitioners' right to the payment of their salaries by the City Government of Dumaguete is still unsettled at this point, the Court cannot issue a writ of *mandamus* against respondents to make such payment. *Mandamus* applies only when the petitioner's right is founded clearly on law and not when it is doubtful. The writ will not issue to compel an official to give to the applicant anything to which he is not entitled by law. *Mandamus* will not issue to establish a right, but only to enforce one that is already established.

8. ID.; ID.; ID.; ID.; AVAILABLE ONLY TO COMPEL THE PERFORMANCE OF A MINISTERIAL DUTY; MINISTERIAL AND DISCRETIONARY ACT, DISTINGUISHED.— The remedy of *mandamus* is available only to compel the performance of a ministerial duty. The distinction between a ministerial and a discretionary act is well delineated. A purely ministerial act or duty is one that an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires the exercise neither of official discretion nor or of judgment.

9. ID.; ID.; ID.; ID.; MINISTERIAL DUTY OF THE GOVERNMENT TO PAY THE APPOINTEES' SALARIES PENDING APPEAL OF THE DISAPPROVAL OF THEIR APPOINMENTS IS APPLICABLE ONLY WHEN THE DISAPPROVAL IS ANCHORED ON VIOLATION OF CIVIL SERVICE LAW; INAPPLICABLE IN CASE AT BAR.— While it is true that it is the ministerial duty of the government to pay for the appointees' salaries while the latter's appeal of the disapproval of their appointments by CSC-FO and/or CSC-RO is still pending before the CSC Proper, this applies only when the said appointments have been disapproved on grounds which do not constitute a violation of civil service law. Such is clearly not the case in the instant Petition. The factual

circumstances that would have made it the ministerial duty of the City Government of Dumaguete to pay petitioners' salaries have not yet been established. Until this Court resolves the Petition in G.R. No. 181559, reversing the disapproval of petitioners' appointments or at the very least declaring that the disapproval of the same was not on grounds that constitute violation of civil service law, this Court cannot rule in the instant Petition that it was the ministerial duty of the City Government of Dumaguete to pay petitioners' salaries during the pendency — before the CSC-RO, then the CSC Proper — of petitioners' appeal of the disapproval of their appointments by CSC-FO Director Abucejo. Thus, there is yet no ministerial duty compellable by a writ of *mandamus*.

10. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; PETITION THEREFOR CAN BE GIVEN DUE COURSE ONLY IF THERE IS NO OTHER PLAIN, SPEEDY AND ADEQUATE REMEDY AVAILABLE IN THE COURSE OF THE LAW; NOT APPLICABLE IN CASE AT BAR.— x x x Section 3, Rule 65 of the Revised Rules of Court also prescribes that a petition for *mandamus* can be given due course only if there is no other plain, speedy and adequate remedy available in the course of law. In this case, petitioners already availed themselves of administrative remedies by appealing CSC-FO Director Abucejo's disapproval of their appointments to the CSC-RO, and thereafter, to the CSC Proper. When even the CSC Proper disapproved their appointments, petitioners appealed to the Court of Appeals in CEB-S.P. No. 00665. And when they were again unsuccessful in the latter recourse, they appealed once more to this Court in G.R. No. 181559. After all the administrative, as well as judicial remedies, that petitioners actually availed themselves of, they cannot persuade this Court that there was no other plain, speedy and adequate remedy available to them in the course of law to justify the issuance herein of a writ of *mandamus* in their favor.

11. CIVIL LAW; DAMAGES; AWARD OF MORAL DAMAGES; ELEMENTS.— Moral damages are awarded if the following elements exist in the case: (1) an injury clearly sustained by the claimant; (2) a culpable act or omission factually established; (3) a wrongful act or omission by the defendant as the proximate cause of the injury sustained by the claimant; and (4) the award of damages predicated on any of the cases stated in

Article 2219 of the Civil Code. In addition, the person claiming moral damages must prove the existence of bad faith by clear and convincing evidence, for the law always presumes good faith. It is not enough that one merely suffered sleepless nights, mental anguish, and serious anxiety as the result of the actuations of the other party. Invariably, such action must be shown to have been willfully done in bad faith or with ill motive. Bad faith, under the law, does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, or a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud.

12. ID.; ID.; ID.; ID.; EXISTENCE OF BAD FAITH NOT HAVING BEEN PROVED BY CLEAR AND CONVINCING EVIDENCE, AWARD OF MORAL DAMAGES IS NOT PROPER IN CASE AT BAR.— x x x Mayor Perdices' refusal to re-appoint them were merely in the exercise of the former's discretion and cannot be construed as illegal or, by itself, proof of bad faith or ill-motive. While petitioners might have been embarrassed by Mayor Perdices' announcement before the other city employees on 2 July 2001, they did not adduce any evidence that said announcement was made with the specific and malicious design to humiliate them, rather than the expression by Mayor Perdices of an earnest intent to right a perceived wrong committed by his predecessor. The fact that Mayor Perdices publicly announced his course of action as regards petitioners' appointments is not conclusive of any malevolent intent on his part in doing so. The "mass appointments" made by Mayor Perdices himself by the end of his term in 1998 are likewise insufficient proof of bad faith or ill motive on his part. CSC Resolution No. 010988 providing the guidelines on appointments by local chief executives immediately before and after elections was issued only on 4 June 2001. It cannot be applied retroactively. Moreover, even assuming *arguendo* that CSC Resolution No. 010988 could be applied to the appointments made by Mayor Perdices in 1998, these appointments were not necessarily in violation of said CSC issuance. CSC Resolution No. 010988 does not totally proscribe the local chief executives making any appointment immediately before and after elections. The same Resolution provides that the validity of an appointment issued immediately before and after elections by an outgoing local chief executive

is to be determined on the basis of the nature, character, and merit of the individual appointment and the particular circumstances surrounding the same. The Court cannot simply assume that the appointments made by Mayor Perdices in 1998 and those made by Mayor Remollo in 2001 (which included those of petitioners) were identical in their natures, characters, merits, and surrounding circumstances, so that they should have been dealt with in the same manner. And even if this Court does make such an assumption, Mayor Perdices' refusal to honor the appointments made in 2001 by then outgoing Mayor Remollo, after the former had made similar appointments by the end of his mayoralty term in 1998, may expose Mayor Perdices' hypocrisy, but, again, not necessarily his malice, bad faith, or ill-motive against petitioners. Mayor Perdices' appointments, made between 2001 to 2006, to fill four out of the 52 posts to which petitioners herein were appointed by former Mayor Remollo, may have indeed constituted a violation of the Revised Omnibus Rules on Appointments and Other Personnel Action and the unnumbered CSC Memorandum Circular dated 6 December 2001. Thus, petitioners could have sought from the CSC the disapproval of said appointments. However, any challenge to Mayor Perdices' appointments to fill in the contested posts, grounded on petitioners' pending appeal before the CSC Proper, had been rendered moot, given that the CSC Proper has already denied petitioners' appeal and affirmed the disapproval of their appointments. Furthermore, petitioners fail to convince this Court that Mayor Perdices' appointments to four of the 52 contested posts, made from 2001 to 2006, was not only made in bad faith or with ill-motive, but that these were the proximate cause of their financial difficulties and humiliation. The number of the appointments (filling in only four out of the 52 contested posts) and the length of period in which such appointments were made (spread between 2001 to 2006, or a period of five years) are inconsistent with any supposed malicious motive on the part of Mayor Perdices to immediately replace petitioners with his own people. Additionally, as the Court previously ruled herein, the alleged financial difficulties and humiliation petitioners have suffered — for which they now claim moral damages — resulted from the disapproval by the CSC of their appointments, not from the aforementioned appointments made by Mayor Perdices.

13. ID.; ID.; AWARD OF EXEMPLARY DAMAGES; NOT PROPER IN CASE AT BAR.— x x x [T]here is no basis to award petitioners exemplary damages. Similar to moral damages, exemplary damages may only be awarded if it has been shown that the wrongful act was accompanied by bad faith; or done in a wanton, fraudulent and reckless or malevolent manner. Exemplary damages are allowed only in addition to moral damages, such that no exemplary damage can be awarded unless the claimant first establishes his clear right to moral damages. As moral damages are improper in the present case, so is the award of exemplary damages.

14. ID.; ID.; ATTORNEY'S FEES AND LEGAL COSTS; AWARD THEREOF DEMANDS FACTUAL, LEGAL AND EQUITABLE JUSTIFICATION; ITS BASIS CANNOT BE LEFT TO SPECULATION OR CONJECTURE.— x x x [P]etitioners have failed to state the ground on which they base their claim for attorney's fees and legal costs, much less submitted evidence in support thereof. Article 2208 of the Civil Code identifies specific circumstances when attorney's fees and expenses of litigation may be recovered. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal and equitable justification. Its basis cannot be left to speculation or conjecture. Given the dearth of petitioners' allegations, arguments and, most importantly, evidence on the matter, the Court does not find any basis to award petitioners attorney's fees and legal costs.

15. REMEDIAL LAW; CIVIL PROCEDURE; FORUM-SHOPPING; ABSENT IN CASE AT BAR; EXPLAINED.— For forum-shopping to exists, both actions should involve a common transaction with essentially the same facts and circumstances and raise identical causes of action, subject matters and issues. Although much of the factual antecedents of the Petition herein and those in G.R. No. 168484 are the same, a closer study would disclose that they involve different subject matters and issues. In must be borne in mind that petitioners filed with the RTC their Petition for *Mandamus* with Injunction and Damages, docketed as **Civil Case No. 13013**, on 1 August 2001, to challenge **respondents' refusal to recognize petitioners' appointments and to pay petitioners' salaries, salary adjustments, and other emoluments**. It is

the judgment of the RTC therein, dismissing petitioners' Petition insofar as it concerns their applications for the issuance of a writ of *mandamus* and for the award of damages, that is assailed in the Petition at bar. **G.R. No. 181559**, meanwhile, involves petitioners' appeal of the **invalidation and revocation of their appointments by CSC-FO Director Abucejo** in his letter dated 1 August 2001, affirmed by the CSC-RO, CSC Proper, and the Court of Appeals. Since CSC-FO Director Abucejo ruled on the validity of petitioners' appointments only in his letter dated 1 August 2001, and petitioners had yet to receive notice of said letter, it cannot be expected that the same was already included in and made the subject of Civil Case No. 13013, which petitioners instituted also on 1 August 2001. Even though Mayor Perdices later invoked CSC-FO Director Abucejo's letter dated 1 August 2001 in seeking the dismissal of Civil Case No. 13013, it cannot be denied that said letter was drafted and issued only subsequent to Mayor Perdices' announcement on 2 July 2001 that he would not honor petitioners' appointments. True, the present Petition and the one in G.R. No. 181559 are interrelated, but they are not necessarily the same for this Court to adjudge that the filing of both by petitioners constitutes forum shopping. In G.R. No. 181559, the Court will resolve whether or not the petitioners' appointments are valid. In the present petitions, petitioners are claiming a right to the salaries, salary adjustments and other emoluments during the pendency of the administrative cases, regardless of how the CSC decided the validity of their appointments. It is only herein that the court has been able to settle that petitioners' right to salaries, salary adjustments and other emoluments require a finding in G.R. No. 181559 that (1) petitioners' appointments were valid; or that (2) if the appointments were invalid, the reasons for the invalidity were not in violation of civil service laws. The Court emphasizes that it only rules therein that, **at present**, there is still no clear right for it to compel the respondents, by writ of *mandamus*, to pay petitioners' salaries, salary adjustments, and emoluments until the resolution of G.R. No. 181559. In fact, the RTC dismissed the Petition in Civil Case No. 13013 **without prejudice** to further hearings on the payment of petitioners' salaries, salary adjustments, and emoluments, if warranted by subsequent events.

APPEARANCES OF COUNSEL

Manuel R. Arbon for petitioners.
Lluvert M. Mercado & Neil Ray M. Lagahit for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This Petition assails the Decision[1] dated 27 March 2007 and Order dated 26 April 2007 of Branch 41 of the Regional Trial Court (RTC) of Dumaguete City, Negros Oriental, dismissing Civil Case No. 13013.

Petitioners were all *bona fide* employees of the City Government of Dumaguete. They were appointed to various positions by City Mayor Felipe Antonio B. Remollo, Jr. (Remollo) sometime in June 2001, shortly before the end of his term. The details on petitioners' appointments are summarized below:[2]

Name of Appointee	Previous Position	Present Position	Date of Appointment
1. Leah M. Nazareno	Legal Researcher	Asst. Dept. Head I	June 7, 2001
2. Carlo M. Cual	Legislative Staff Officer I	Legislative Staff Officer III	June 5, 2001
3. Rogelio B. Clamonte	Public Services	Supply Officer IV	June 5, 2001
4. Florecita Llosa	Supply Officer I	Records Officer II	June 11, 2001
5. Rogelio S. Villarubia	Agriculturist II	Agriculturist III	June 5, 2001
6. Rossel Marie G. Gutierrez	Casual/Plantilla	Supervising Environmental Management Specialist	June 5, 2001
7. Nicanor F. Villarosa, Jr.	Casual/Plantilla	Dentist II	June 5, 2001

[1] Penned by Judge Araceli S. Alafriz; *rollo*, pp. 51-61.

[2] *Id.* at 10-11.

8. Marie Sue Cual	Casual/Plantilla	Social Welfare Officer I	June 7, 2001
9. Miramichi Majella B. Mariot	Casual/Plantilla	Records Officer II	June 7, 2001
10. Alma F. Ramirez	Casual/Plantilla	Clerk IV	June 7, 2001
11. Antolin D. Zamar, Jr.	Casual/Plantilla	Metro Aide II	June 11, 2001
12. Mario S. Aliling	Casual/Plantilla	Driver II	June 5, 2001
13. Teodulo Salvoro, Jr.	Casual/Plantilla	Metro Aide II	June 5, 2001
14. Philip Janson Altamarino	Casual/Plantilla	Clerk I	June 5, 2001
15. Antonieta Padura	Casual/Plantilla	Metro Aide II	June 11, 2001
16. Adolfo Cornelia	Casual/Plantilla	Metro Aide II	June 11, 2001
17. Ian Ryan Patula	Casual/Plantilla	Metro Aide II	June 7, 2001
18. William Tanoy	Casual/Plantilla	Metro Aide II	June 5, 2001
19. Victor Arbas	Casual/Plantilla	Public Services Foreman	June 7, 2001
20. Jeanith Cual	Casual/Plantilla	Utility Worker II	June 5, 2001
21. Braulio Sayson	Casual/Plantilla	Mechanical Plant Supervisor	June 7, 2001
22. Dawn Villarosa	Casual/Plantilla	Clerk I	June 7, 2001
23. Agustin Rendoque	Casual/Plantilla	Utility Worker I	June 7, 2001
24. Enriqueta Tumongha	Casual/Plantilla	Utility Worker II	June 5, 2001
25. Lionel Banogon	Casual/Plantilla	Clerk II	June 5, 2001
26. Rosalito Vergantinos	Casual/Plantilla	Pest Control Worker II	June 5, 2001
27. Mario Cual, Jr.	Casual/Plantilla	Utility Foreman	June 7, 2001
28. Elaine Tumongha	Casual/Plantilla	Registration Officer I	June 11, 2001
29. Norman Villarosa	Casual/Plantilla	Utility Worker I	June 5, 2001
30. Ricardo C. Patula	Casual/Plantilla	Revenue Collection Clerk I	June 5, 2001
31. Rachel Banagua	Casual/Plantilla	Utility Worker I	June 5, 2001
32. Rodolfo Calugcugan	Job Order	Driver I	June 7, 2001
33. Pergentino Cual	Job Order	Metro Aide II	June 11, 2001

34. Bernard Ozoa	Job Order	Utility Worker I	June 7, 2001
35. Roger J. Aromin	Job Order	Utility Worker I	June 7, 2001
36. Cheryl Nocete	Job Order	Utility Worker I	June 11, 2001
37. Marivic Sanchez	Job Order	Utility Worker I	June 11, 2001
38. Crispin Duran	Job Order	Metro Aide II	June 11, 2001
39. Rebeco Lingcong	Job Order	Metro Aide II	June 5, 2001
40. Anna Lee Estrabela	Job Order	Cash Clerk III	June 5, 2001
41. Melchor Maquiling	Job Order	Engineer I	June 7, 2001
42. Raul Molas	Job Order	Construction and Maintenance Foreman	June 7, 2001
43. Oscar Kinikito	Job Order	Electrician II	June 7, 2001
44. Darwin Conejos	Job Order	Engineering Aide	June 7, 2001
45. Romel Cual	Job Order	Metro Aide II	June 11, 2001
46. Roqueta Amor	Job Order	Dental Aide	June 5, 2001
47. Diosdado Lajato	Job Order	Pest Control Worker II	June 5, 2001
48. Paul Pino	Job Order	Utility Worker I	June 5, 2001
49. Lito Piñero	Job Order	Metro Aide II	June 11, 2001
50. Rodulfo Zosa, Jr.	Job Order	Metro Aide II	June 11, 2001
51. Jorge Arbolado	Job Order	Traffic Aide I	June 5, 2001
52. Ricardo M. Gonzales, Jr.	OIC-General Services Officer	Asst. Dept. Head I	June 5, 2001

On 2 July 2001, newly elected City Mayor Agustin Perdices (Perdices) announced during the flag ceremony held at the City Hall that he was not recognizing the appointments made by former Mayor Remollo. Thereafter, (1) City Administrator Dominador Dumalag, Jr. (Dumalag) issued a Memorandum dated 2 July 2001 directing Assistant City Treasurer Erlinda Tumongha (Tumongha) to "refrain from making any disbursements, particularly payments for salary differential[s]" to those given promotional appointments by former Mayor Remollo, which included several of the petitioners; (2) several of the petitioners,

who were engaged on "casual basis" or "job order basis," prior to their appointment to permanent positions by former Mayor Remollo, were not given salary differentials and salaries for June and July 2001, respectively; (3) several of the petitioners who were assigned to the slaughterhouse were told not to report for work effective 1 August 2001; and (4) petitioners' names were deleted from the list of employees of the City Government of Dumaguete.

Thus, petitioners were constrained to file with the RTC on 1 August 2001 a Petition for *Mandamus* with Injunction and Damages with Prayer for a Temporary Restraining Order and Preliminary Injunction against respondents City Mayor Perdices and City Officers Dumalag, Tumongha, Josephine Mae Flores (Flores), and Araceli Campos (Campos), representing the City of Dumaguete.[3] The Petition was docketed as **Civil Case No. 13013.**

Also on 1 August 2001, the same day petitioners instituted Civil Case No. 13013, Director II Fabio Abucejo (Abucejo) of the **Civil Service Commission Field Office (CSC-FO)**, pursuant to CSC Memorandum No. 001374, invalidated and revoked the appointments made by former Mayor Remollo in June 2001. He relayed his findings to Mayor Perdices in a letter dated 1 August 2001. Pertinent portions of the 1 August 2001 letter of CSC-FO Director Abucejo reads:[4]

1. There was a total of 15 promotional appointments and 74 original appointments issued as reflected in the submitted ROPA for the month of June 2001.

2. There was only one (1) *en banc* meeting of the City Personnel Selection Board (PSB) held on June 5, 2001 to consider the number of appointments thus issued, and there was no other call for PSB meeting certified by the City HRMO.

3. There were no minutes available on the deliberation of the PSB of the 89 appointments listed in the ROPA as certified by the HRMO.

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[3] *Id.* at 11.

[4] *Id.* at 13 and 207-208.

4. There were no PSB statements certifying that there was actual screening and evaluation done on all candidates for each position.

5. The appointing officer of the 89 appointments was an outgoing local official who lost during the May 14, 2001 elections for City Mayor of Dumaguete City.

6. The 89 appointments were all issued after the election and when the new mayor was about to assume office.

In view of all the foregoing and since all the appointments involved indicated in the attached ROPA Audit Results, were issued in clear violation of the guidelines of CSC MC No. 010988, this CSC Field Office has decided to invalidate as it hereby invalidates and revokes these appointments mentioned therein led by Ms. Dolores Buncalan, Rev. Collection Clerk I and 14 others for the promotional appointments and Ms. Donna P. Aguilar as Clerk I and 73 others for the original appointments.

From the foregoing facts, several different cases arose.

The 1 August 2001 letter of CSC-FO Director II Abucejo

When petitioners were furnished with a copy of CSC-FO Director Abucejo's letter dated 1 August 2001, they filed on 4 September 2001 with the **CSC Regional Office (CSC-RO) No. VII, Cebu City**, a Motion for Reconsideration of the same. The CSC-RO promulgated a Decision on 21 September 2001 dismissing petitioners' Motion on the grounds that it should have been filed with the CSC-FO, that rendered the judgment sought to be reconsidered. Petitioners filed a Motion for Reconsideration of the Decision dated 21 September 2001 of the CSC-RO, requesting that petitioners' earlier Motion for Reconsideration be treated as an appeal of CSC-FO Director Abucejo's letter dated 1 August 2001. In a Decision dated 14 February 2002, the CSC-RO dismissed petitioners' appeal and affirmed the invalidation of petitioners' appointments.[5]

Petitioners elevated their case to the **CSC Proper**. On 23 August 2004, the CSC issued Resolution No. 040932 dismissing

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[5] *Id.* at 141-142.

petitioners' appeal. The CSC acknowledged that generally, appeal of invalidated appointments should be made by the appointing authority. However, since the term of Mayor Remollo, who actually appointed petitioners, already ended, and there was a new incumbent Mayor, there could be no other person to file such an appeal except the appointees themselves. The CSC held that a relaxation of the rules was proper in this case. Nevertheless, the CSC considered petitioners' appointments as "mass appointments" unnecessarily made by an outgoing chief executive, which should be disapproved or invalidated, under Item No. 3 of CSC Resolution No. 010988. Petitioners filed a Motion for Reconsideration of CSC Resolution No. 040932, but the same was denied by the CSC in Resolution No. 050473 issued on 11 April 2005.[6]

Thereafter, petitioners filed with the Court of Appeals a Petition for Review under Rule 43 of the Revised Rules of Court, docketed as **CA-G.R. CEB-S.P. No. 00665**.[7] In a Decision dated 28 August 2007, the Court of Appeals affirmed CSC Resolutions No. 040932 and No. 050473, dated 23 August 2004 and 11 April 2005, respectively, being in accordance with CSC Resolution No. 010988, which provided rules and guidelines geared towards preventing the nefarious practices of outgoing chief executives of making appointments before, during, and/or after the regular local elections for ulterior partisan motives. The Court of Appeals found that petitioners were appointed by outgoing Mayor Remollo after the results of the May 2001 elections were already known, without any showing that there was a need for the issuance of these appointments. Thus, the appellate court agreed with the CSC that Mayor Remollo approved the questioned appointments in bad faith and in violation of CSC Resolution No. 010988.[8]

Petitioners next filed an appeal before this Court, docketed as **G.R. No. 181559**, raising the issue of whether petitioners' appointments were valid.[9]

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[6] *Id.* at 142.

[7] *Id.* at 135.

[8] *Id.* at 134-149.

[9] *Id.* at 35.

Writ of preliminary injunction

In their Petition in Civil Case No. 13013, petitioners applied for the issuance by the RTC of a writ of preliminary injunction to enjoin respondents from further doing acts or issuing orders nullifying petitioners' appointments.[10]

After hearing the parties, the RTC issued an Order[11] dated 3 August 2001 granting the issuance of a writ of preliminary injunction against respondents.

Respondents filed an Urgent Motion for Reconsideration of the 3 August 2001 Order of the RTC, invoking CSC-FO Director Abucejo's letter dated 1 August 2001 which invalidated and revoked petitioners' appointments.

On 15 August 2001, the RTC denied respondents' Urgent Motion for Reconsideration of its 3 August 2001 Order, granting the writ of preliminary injunction in petitioners' favor. The RTC upheld petitioners' position that their appointments should continue to remain effective since the afore-mentioned letter dated 1 August 2001 of CSC-FO Director Abucejo had not yet become final and executory. Mayor Perdices, the appointing authority, still had 15 days to file a motion for reconsideration of the said letter.[12]

Subsequently, respondents filed with the RTC an Urgent Motion to Dismiss Civil Case No. 13013, asserting that CSC-FO Director Abucejo's letter dated 1 August 2001, which invalidated and revoked petitioners' appointments, already attained finality on 16 August 2001, without Mayor Perdices filing any motion for reconsideration of the same.[13]

Petitioners vehemently opposed respondents' Urgent Motion to Dismiss, arguing that former Mayor Remollo should be considered the appointing authority, and since he had not received

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[10] *Id.* at 11.

[11] *Id.* at 63-64.

[12] *Id*.

[13] *Id*.

a copy of the 1 August 2001 letter of CSC-FO Director Abucejo, the 15-day reglementary period for filing a motion for reconsideration of the same did not commence. They also contended that CSC-FO Director Abucejo's recommendations on the appointments in question have not been approved by the CSC Proper.[14]

On 26 September 2001, the RTC issued an Order permanently lifting the writ of preliminary injunction it earlier issued against the respondents. It held that the "appointing power" who had personality to file a motion for reconsideration of the 1 August 2001 letter of CSC-FO Director Abucejo was incumbent Mayor Perdices. Since Mayor Perdices did not file any such motion for reconsideration, CSC-FO Director Abucejo's letter dated 1 August 2001, invalidating and revoking petitioners' appointments, had become final and executory, thus, rendering the writ of preliminary injunction moot. Petitioners' Motion for Reconsideration of the RTC Order dated 26 September 2001 was denied by the said trial court in another Order dated 17 January 2002.[15]

Petitioners assailed RTC Orders dated 26 September 2001 and 17 January 2002 before the Court of Appeals, in a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court, docketed as **CA-G.R. SP No. 70254**.

In the meantime, on 18 January 2002, the RTC ordered a contingent suspension of the proceedings in Civil Case No. 13013 until after the Court of Appeals has resolved CA-G.R. SP No. 70254.

In a Decision dated 30 January 2004, the Court of Appeals denied petitioners' Petition in CA-G.R. SP No. 70254 and affirmed that Mayor Perdices alone had the *locus standi* to elevate the matter of petitioners' appointment to the CSC Proper. Since he failed to exercise this prerogative by 16 August 2001, or 15 days after he received a copy of CSC-FO Director Abucejos'

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[14] *Id.* at 13-14.

[15] *Id*.

letter dated 1 August 2001, the said letter became final and executory. Thus, the RTC did not act with grave abuse of discretion when it permanently lifted the writ of injunction against the respondents.[16] The appellate court denied petitioners' Motion for Reconsideration in a Resolution dated 6 May 2005.

Unsatisfied, petitioners filed with this Court a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, questioning the Decision and Resolution dated 30 January 2004 and 6 May 2005, respectively, of the Court of Appeals in CA-G.R. SP No. 70254. The Petition was docketed as **G.R. No. 168484**. In a Decision dated 12 July 2007, the Court also affirmed the lifting by the RTC of the writ of preliminary injunction, but on grounds different from those relied upon by the Court of Appeals. The Court ruled that petitioners, as the appointees, are real parties-in-interest who can appeal the invalidation of their appointments. The Court noted that petitioners had, in fact, availed themselves of this remedy by successively appealing the invalidation and revocation of their appointments by CSC-FO Director Abucejo to the CSC-RO, the CSC Proper, and the Court of Appeals in CA-G.R. CEB-S.P. No. 00665. Thus, petitioners were given by law adequate remedies to protect their interests without need for the remedy of injunction. Petitioners specifically prayed for in their Petition in CA-G.R. CEB-S.P. No. 00665 that the invalidation of their appointments be stayed in the interest of justice and equity, which was the same purpose to be served by the writ of preliminary injunction sought by petitioners in Civil Case No. 13013. The Court cannot allow petitioners to seek the same relief in two forums, for it would constitute forum shopping which is proscribed by the Rules of Court.[17]

Motion to declare respondents in default

On 2 October 2002, petitioners filed with the RTC in Civil Case No. 13013, a Manifestation and Motion *Ad Cautelam*

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[16] *Id.* at 76-82.

[17] *Id.* at 112-126; *Nazareno v. City of Dumaguete*, G.R. No. 168484, 12 July 2007, 527 SCRA 508.

seeking the resumption of the trial on their main Petition and the declaration that respondents were already in default for failure to file an Answer. On 5 November 2002, respondents finally filed their Answer to the Petition in Civil Case No. 13013. In an Order dated 19 November 2002, the RTC denied petitioners' motion to declare respondents in default and admitted respondents' Answer. Petitioners' Motion for Reconsideration of said Order was denied by the RTC in the subsequent Order dated 10 February 2003.[18]

Petitioners again sought recourse with the Court of Appeals by filing a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court, docketed as **CA-G.R. SP No. 77133**. In a Decision dated 18 November 2003, the appellate court reversed the RTC Orders dated 19 November 2002 and 10 February 2003, and declared respondents in default since their Answer was filed 15 months after the issuance by the RTC of summons.[19]

Main Case for mandamus, injunction, and damages

Given that the Court of Appeals, in its Decision dated 18 November 2003 in CA-G.R. SP No. 77133, found respondents to be in default in Civil Case No. 13013, the RTC allowed petitioners, in the proceedings *a quo*, to present their evidence *ex-parte* on the issues of *mandamus* and damages which, petitioners insisted, were not covered by their appeals in the other cases.

Petitioners adduced evidence to prove that former Mayor Remollo appointed them only after a list of vacant positions in the City Government of Dumaguete was published in the *Negros* News on 4 March 2001. The Personnel Selection Board held a meeting on 14 May 2001, during which, a CSC representative, together with various city officials, were present to assess the qualifications of the applicants. Only after these requirements were complied with were petitioners appointed sometime in June

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[18] *Rollo,* p. 14.

[19] *Id.* at 68-73.

2001.[20] Current Mayor Perdices' announcement during the flag ceremony on 2 July 2001 that he refused to recognize petitioners' appointments resulted in the latter's humiliation before their peers. Petitioners' termination from work resulted in hardship and their inability to support their families. It also caused petitioners psychological depression. Therefore, they should be entitled to their unpaid salaries, as well as the award of moral and exemplary damages.[21]

In a Manifestation dated 22 February 2005, Atty. Neil Ray M. Lagahit, counsel for the respondents, informed the RTC that petitioners were paid their salaries for the period covered by 1 July 2001 to 27 September 2001.[22] Still, petitioners sought the issuance by the RTC of an order directing respondents to release petitioners' salaries, salary differentials, and/or other legal emoluments from 28 September 2001 until the present, since petitioners' appointments were to be considered valid until the Supreme Court has finally resolved otherwise.

As regards their claims for damages, petitioners originally sought the award of ₱300,000.00 as moral damages, ₱200,000.00 as exemplary damages, ₱15,000.00 as costs of litigation, and attorneys fees of ₱50,000.00 and an additional ₱3,000.00 for every appearance in court. However, during the hearing of Civil Case No. 13013, petitioners asserted that, as the case was pending for three years, they were already entitled to ₱1,500,000.00 as moral damages and ₱1,000,000.00 as exemplary damages.[23]

In a Decision dated 27 March 2007 in Civil Case No. 13013, the RTC dismissed petitioners' Petition insofar as it concerned their prayers for the issuance of a writ of *mandamus* and for the award of damages, without prejudice to a hearing on their prayers in the same Petition for the issuance of a writ of injunction

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[20] *Id.* at 16.

[21] *Id.* at 16-17.

[22] *Id.* at 16.

[23] *Id.* at 17.

and for payment of their salaries, if warranted. The RTC took note that the invalidation of petitioners' appointments by the CSC Proper was then a pending appeal before the Court of Appeals in CA-G.R. CEB-S.P. No. 00665; and unless it was reversed, petitioners' right to the salaries, salary adjustments, and other emoluments claimed, were doubtful. Thus, *mandamus* would not lie against respondents when petitioners' rights to the positions and the corresponding benefits thereof remained unclear. The RTC further reasoned that damages could only be recovered when a termination constituted an act oppressive to labor, or was attended by bad faith or fraud; or was done in a manner contrary to morals, good customs, or policy.[24] And since the Decision of the CSC Proper invalidating petitioners' appointments has not yet become final and executory, their claims for damages were premature.[25]

On 10 April 2007, petitioners filed a Motion for Reconsideration of the foregoing Decision, which the RTC denied in an Order dated 26 April 2007.[26]

Unsatisfied with the judgment of the RTC, petitioners filed this "Petition for *Certiorari* under Rule 45 of the Rules of Court, as amended" raising the following issues:[27]

I

WHETHER OR NOT THE MARCH 27, 2007 DECISION (AND THE APRIL 24, 2007 [sic] ORDER) OF THE HONORABLE RTC BRANCH 41 THAT PETITIONERS' "RIGHT TO THEIR RESPECTIVE POSITIONS IS STILL UNCLEAR", IS CONTRARY TO LAW, JUSTICE AND THE RULES OF COURT, ESPECIALLY BECAUSE AT THAT TIME (UNTIL THIS DATE), THE ISSUE OF THE INVALIDITY OR VALIDITY OF THE APPOINTMENTS REMAINS UNRESOLVED;

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[24] *Id.* at 18. After making such statement, the RTC failed to discuss whether or not petitioners failed to prove these attendant circumstances and instead proceeded to discuss a different matter.

[25] *Id.* at 17-19.

[26] *Id.* at 62.

[27] *Id.* at 188.

II

WHETHER OR NOT THE APPEALED DECISION AND ORDER OF THE HONORABLE RTC BRANCH 41 ARE CONTRARY TO LAW AND JURISPRUDENCE FOR HOLDING THAT PETITIONERS ARE NOT ENTITLED TO THEIR CLAIM FOR DAMAGES AND FOR THEIR FAILURE TO PROVE "BAD FAITH" ON THE PART OF RESPODENT (sic) CITY MAYOR PERDICES; and

III

WHETHER OR NOT THE PETITIONERS ARE FORUM-SHOPPING IN INSTITUTING THE PRESENT PETITION.

Before proceeding to resolve the issues raised in the instant Petition, the Court shall first address several procedural matters that caught its notice.

The Petition was confusingly denominated as a "Petition for *Certiorari* under Rule 45 of the Rules of Court, as amended." Rule 45 of the Revised Rules of Court governs petitions for review on *certiorari*, while Rule 65 of the same covers petitions for *certiorari*. These are two distinct remedies. A petition for review under Rule 45 of the Revised Rules of Court is generally limited only to questions of law or errors of judgment. On the other hand, the petition for *certiorari* under Rule 65 may be availed of to correct errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction.[28] Considering that the instant Petition (1) raises supposed errors of judgment committed by the RTC; (2) does not contain any categorical assertion of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC that rendered the assailed judgment; and (3) states that it is a Petition under Rule 45 of the Revised Rules of Court, the Court shall treat the present Petition as a Petition for Review. Counsel for petitioners, however, is cautioned to be more circumspect in properly identifying the remedy his clients are availing themselves of so as to avoid confusion.

Even if it is settled that the Court shall treat this as a Petition for Review under Rule 45 of the Revised Rules of Court, it

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[28] *Bacelonia v. Court of Appeals*, 445 Phil. 300, 307 (2003).

faces another obstacle to being given due course since petitioners erroneously filed the appeal directly with this Court.

In *Five Star Marketing, Co., Inc. v. Booc*,[29] this Court distinguished the different modes of appealing RTC decisions, to wit:

> The Court, in *Murillo v. Consul*, *Suarez v. Villarama, Jr.* and *Velayo-Fong v. Velayo*, had the occasion to clarify the three modes of appeal from decisions of the RTC, namely: a) ordinary appeal or appeal by writ of error, where judgment was rendered in a civil or criminal action by the RTC in the exercise of its original jurisdiction; b) petition for review, where judgment was rendered by the RTC in the exercise of its appellate jurisdiction; and c) petition for review to this Court. The first mode of appeal is governed by Rule 41, and is taken to the CA on questions of fact or mixed questions of fact and law. The second mode, covered by Rule 42, is brought to the CA on questions of fact, of law, or mixed questions of fact and law. **The third mode, provided for by Rule 45, is elevated to this Court only on questions of law**.
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> A **question of law** arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a questions (sic) to be one of law, the same **must not involve an examination of the probative value of the evidence** presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances.
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> x x x x x x x x x
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> **Section 4 of Circular 2-90 in effect provides that an appeal taken either to this Court or to the CA by the wrong mode or inappropriate mode shall be dismissed. This rule is now incorporated in Section 5, Rule 56 of the Rules of Court. Moreover, the filing of the case directly with this Court departs from the hierarchy of courts. Normally, direct resort from the lower courts to this Court will not be entertained unless the appropriate remedy cannot be obtained in the lower tribunals.**

Thus, when a party appeals from a decision of the RTC directly to this Court via a Petition for Review under Rule 45,

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[29] G.R. No. 143331, 5 October 2007, 535 SCRA 28, 41-43.

it must only raise questions of law; otherwise, its appeal shall be dismissed.

A cursory reading of the three issues raised by petitioners herein, would readily reveal that the second one – on whether the RTC erred in holding that petitioners were not entitled to their claim for damages since they failed to prove bad faith on the part of Mayor Perdices — is a question of fact, since it involves an examination of the probative value of the evidence presented by the parties.[30] Petitioners, therefore, availed themselves of the wrong or inappropriate mode of appeal. On this score alone, the present Petition could have been outrightly dismissed. However, the procedural flaws notwithstanding, the Court deems it judicious to take cognizance of the substantive questions herein, if only to put petitioners' mind to rest.[31]

This Petition raises two main issues: (1) whether petitioners are entitled to the issuance of a writ of *mandamus* ordering respondents to pay petitioners' salaries, salary adjustments, and other emoluments, from 28 September 2001 until this Court finally resolves the issue of the validity of petitioners' appointments; and (2) whether petitioners are entitled to an award for damages resulting from the invalidation of their appointments.

The Court answers both in the negative.

Mandamus is a command issuing from a court of competent jurisdiction, in the name of the state or the sovereign, directed to some inferior court, tribunal or board, or to some corporation or person requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed, or from operation of law. A writ of *mandamus* may issue when any tribunal, corporation board, officer or person unlawfully: (1) neglects the performance

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[30] *Central Bank of the Philippines v. Court of Appeals*, 193 Phil. 338, 352 (1981).

[31] *Metropolitan Manila Development Authority v. Jancom Environmental Corporation,* 452 Phil. 961, 974-975 (2002); *Añonuevo, Jr. v. Court of Appeals*, 458 Phil. 532, 540 (2003).

of an act that the law specifically enjoins as a duty resulting from an office, trust, or station; or (2) excludes another from the use and enjoyment of a right or office to which the other is entitled.[32]

Petitioners insist that they are entitled to salaries, salary adjustments, and other emoluments, arising from their June 2001 appointments by former Mayor Remollo, despite the invalidation of the same by the CSC-FO. They cite an unnumbered CSC Memorandum Circular, issued on 6 December 2001, with the subject matter: "Reiteration of the Strict Implementation of Section 1, Rule IV and Section 3, Rules VI, both of Memorandum Circular No. 40, s. 1998, otherwise known as the *Revised Omnibus Rules on Appointments and Other Personnel Actions*."

The CSC Memorandum Circular dated 6 December 2001 referred to Section 1, Rule IV of the Revised Omnibus Rules on Appointments and Other Personnel Actions, which reads:

> Section 1. An appointment issued in accordance with pertinent laws and rules shall take effect immediately upon its issuance by the appointing authority, and if the appointee has assumed the duties of the position, he shall be entitled to receive his salary at once without awaiting the approval of his appointment by the Commission. The appointment shall remain effective until disapproved by the Commission. x x x.

The same CSC Memorandum Circular recited Section 3, Rule VI, also of the Revised Omnibus Rules on Appointments and Other Personnel Actions, which provides:

> Section 3. When an appointment is disapproved, the services of the appointee shall be immediately terminated, unless a motion for reconsideration or appeal is seasonably filed.
>
> Services rendered by a person for the duration of his disapproved appointment shall not be credited as government service for whatever purpose.

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[32] Section 3, Rule 65 of the Rules of Court; *Professional Regulation Commission v. De Guzman*, G.R. No. 144681, 21 June 2004, 432 SCRA 505, 518-519.

If the appointment was disapproved on grounds which do not constitute a violation of civil service law, such as failure of the appointee to meet the Qualification Standards (QS) prescribed for the position, the same is considered effective until disapproved by the Commission or any of its regional or field offices. The appointee is meanwhile entitled to payment of salaries from the government.

If a motion for reconsideration or an appeal from the disapproval is seasonably filed with the proper office, the appointment is still considered to be effective. The disapproval becomes final only after the same is affirmed by the Commission.

In relation to the afore-quoted provisions, the CSC Memorandum Circular dated 6 December 2001 gives the following reminder:

The Commission observed that there are some appointing authorities/heads of agencies in the government who immediately replace their predecessors' appointees after the appointments of the latter have been disapproved by the Field Office or Regional Office of this Commission, notwithstanding the pendency of an appeal with the Collegial Commission. Said appointing authorities/heads of agencies construe the disapproval by the CSCFO or CSCRO of the subject appointments as final and executory.

x x x x x x x x x

In this regard, it is hereby emphasized that the aforequoted provisions of CSC MC No. 40, s. 1998 should be strictly observed such that the disapproval by either the CSCFO or CSCRO of the appointments issued by the predecessor of the incumbent appointing authority/head of agency shall not be considered as final and executory unless and until the Collegial Commission has finally decided on the matter. It is only after the Collegial Commission has finally affirmed the disapproval of the appointment that the new appointing authority/head of agency could issue appointments to replace appointees whose appointments were disapproved. Hence, the appointment of the replacement of the incumbent whose appointment has been disapproved shall also be disapproved by the CSCFO or CSCRO unless the appeal has been finally resolved by the Collegial Commission.

The general rule, therefore, is that appointments shall take effect immediately; and should the appointees already assume

the duties of their positions, they shall be **entitled to receive their salary at once**. There is no need to wait for the approval of the appointments by the CSC. The **appointments shall be effective until disapproved by the CSC**.

The CSC, in carrying out its powers and functions, has a three-tiered organizational structure, *i.e.*, the CSC-FO, the CSC-RO, and the CSC Proper acting as a collegial body. The appointing authority[33] or the appointees themselves[34] may file a motion for reconsideration or an appeal of the disapproval of appointments by the CSC-FO to the CSC-RO, and by the CSC-RO to the CSC Proper. Until the disapproval of the appointments by the CSC-FO and CSC-RO is affirmed by the CSC Proper, it shall not be considered final and executory. Stated differently, the appointments shall remain effective until they are disapproved by the CSC Proper. In the meantime, there shall be no obstacle to the concerned appointees continuing to render public service; and to receiving salary for the actual services they have rendered during the period, based on the "no work, no pay" policy.[35]

Nevertheless, the aforementioned general rules cannot be simply applied to the case at bar given its peculiar circumstances.

The Court stresses that **Section 3, Rule VI** of the Revised Omnibus Rules on Appointments and Other Personnel Actions only categorically recognizes the right of the appointee to payment of salaries **from the government**, during the pendency of his motion for reconsideration or appeal of the disapproval of his appointment by the CSC-FO and/or CSC-RO before the CSC Proper, "[i]f the appointment was disapproved **on grounds which do not constitute a violation of civil service law**, such as failure of the appointee to meet the Qualification Standards (QS) prescribed for the position."

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[33] Section 2, Rule VI of the Revised Omnibus Rules on Appointments and Other Personnel Actions.

[34] *Abella, Jr. v. Civil Service Commission*, G.R. No. 152574, 17 November 2004, 442 SCRA 507, 518.

[35] *Bunsay v. Civil Service Commission*, G.R. No. 153188, 14 August 2007, 530 SCRA 68, 77-78.

What happens then if the appointment was disapproved for violation of civil service law? In such a situation, **Section 4, Rule VI** of the Revised Omnibus Rules on Appointments and Other Personnel Action applies. It states:

> Sec. 4. The appointing authority shall be personally liable for the salary of appointees whose appointments have been disapproved for violation of pertinent laws such as the publication requirement pursuant to RA 7041.

It is clear from the afore-quoted provision that when the appointment was disapproved for **violation of pertinent laws**, the **appointing authority shall be personally liable** for the salary of the appointee. This is in complete accord with the Section 65, Chapter 10, Book V, of Executive Order No. 292, otherwise known as the Administrative Code of 1987, to wit:

> Section 65. *Liability of appointing authority*. — No person employed in the Civil Service in violation of Civil Service law and rules shall be entitled to receive pay from the government, but the appointing authority responsible for such unlawful employment shall be personally liable for the pay that would have accrued had the employment been lawful, and the disbursing officials shall make payment to the employee of such amount from the salary of the officers so liable.

To recall, petitioners' appointments were invalidated and revoked by CSC-FO Director Abucejo, in a letter dated 1 August 2001, on the ground that said appointments were made by former Mayor Remollo **in violation of Items No. 3(d) and 4 of CSC Resolution No. 010988 dated 4 June 2001,** which prohibit the outgoing chief executive from making mass appointments[36] after elections. The rules laid down by the CSC in CSC Resolution No. 010988, dated 4 June 2001, are deemed included in the "civil service law," it having the force and effect of law.[37]

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[36] The term "mass appointments" refers to those issued in bulk or in large number after the elections by an outgoing local chief executive and there is no apparent need for their immediate issuance.

[37] See *Jardeleza v. People*, G.R. No. 165265, 6 February 2006, 481 SCRA 638, 661.

Upon disapproval by CSC-FO Director Abucejo of petitioners' appointments on 1 August 2001, for being in violation of civil service law, petitioners may no longer claim entitlement to the payment of their salaries from the government. There is no doubt that, pending their appeals before the CSC-RO, then the CSC Proper, petitioners' appointments remained effective. They could still continue reporting for work and rendering service, but there already arose the question as to who shall be liable for their salaries during the period, *i.e.*, whether it is the City Government of Dumaguete (under Section 3, Rule VI of the Revised Omnibus Rules on Appointments and Other Personnel Action) or former Mayor Remollo who appointed them (under Section 4, Rule VI of the same Revised Omnibus Rules). Hence, petitioners' right to their salaries cannot be firmly anchored as of yet on Section 3, Rule VI of the Revised Omnibus Rules on Appointments and Other Personnel Action.

Neither can the unnumbered CSC Memorandum Circular dated 6 December 2001 invoked by petitioners support their case. Its avowed intention is to put a stop to the practice of some appointing authorities/heads of agencies in the government of immediately replacing their predecessors' appointees after the latter's appointments have been disapproved by the CSC-FO or CSC-RO, notwithstanding the pendency of an appeal with the CSC Proper. The CSC issuance requires the strict observance of the rule that until the disapproval of the appointment by the CSC-FO or CSC-RO is affirmed by the CSC Proper, the new appointing authority/head of agency cannot issue appointments to replace the appointees whose appointments were disapproved by the CSC-FO or CSC-RO; and any appointment in violation of this rule should be disapproved by the CSC-FO or CSC-RO. There is nothing in the CSC Memorandum Circular dated 6 December 2001 providing for the payment of the salaries of the appointees whose appointments were disapproved by the CSC-FO or the CSC-RO, while their appeals are pending before the CSC Proper.

Since petitioners' right to the payment of their salaries by the City Government of Dumaguete is still unsettled at this point, the Court cannot issue a writ of *mandamus* against

respondents to make such payment. *Mandamus* applies only where the petitioner's right is founded clearly on law and not when it is doubtful.[38] The writ will not issue to compel an official to give to the applicant anything to which he is not entitled by law.[39] *Mandamus* will not issue to establish a right, but only to enforce one that is already established.[40]

The recent case of *Bunsay v. Civil Service Commission*[41] is not on all fours with this case. In *Bunsay*, the Court readily recognized the right of therein petitioners to be paid compensation by the government for services actually rendered by them while the disapproval of their appointments by the CSC-FO and CSC-RO was pending appeal before the CSC Proper. It must be emphasized, however, that in said case, the CSC Proper had already reversed the initial disapproval and, instead, upheld the validity of therein petitioners' appointments. The approval by the CSC Proper of therein petitioners' appointments was no longer in dispute; and since such appointments were already deemed made in accordance with law, then the there was no question that therein petitioners' backwages, if they indeed continued to report for work during the pendency of their appeal before the CSC Proper,[42] should be paid by the government.

In contrast, CSC-FO Director Abucejo's letter dated 1 August 2001 disapproving herein petitioners' appointments for being in violation of CSC Resolution No. 010988 dated 4 June 2001 was affirmed not only by the CSC-RO in a Decision dated 14 February 2002, but, more importantly, by the CSC Proper in CSC Resolutions No. 040932 and No. 050473, dated 23 August 2004 and 11 April 2005, respectively. To stress, the CSC Proper

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[38] *Garces v. Court of Appeals*, 328 Phil. 403, 409 (1996).

[39] *Lamb v. Phipps*, 22 Phil. 456, 488 (1912).

[40] *Lim Tay v. Court of Appeals*, 355 Phil. 381, 397-398 (1998).

[41] *Supra* note 35.

[42] The Court, in *Bunsay*, ultimately remanded the case to the Court of Appeals for further proceedings with due regard to the rules on payment of backwages as defined in the text of said Decision, and to the factual questions noted by the Court therein.

itself already disapproved petitioners' appointments since they violated civil service law. Petitioners then challenged the aforementioned CSC Resolutions before the Court of Appeals in CA-G.R. CEB-S.P. No. 00665, but the appellate court affirmed the same in its Decision dated 28 August 2007. Petitioners' appeal of the judgment of the appellate court in CA-G.R. CEB-S.P. No. 00665 is now pending before this Court in G.R. No. 181559.

It is irrefragable that the issue of whether the City Government of Dumaguete or former Mayor Remollo is liable to pay for petitioners' salaries, during the pendency of their appeal with the CSC-RO, and then the CSC Proper, of the disapproval of their appointments by CSC-FO Director Abucejo is inextricably intertwined with the issue in G.R. No. 181559 of whether petitioners' appointments should be disapproved for having been made in violation of CSC Resolution No. 010988 dated 4 June 2001. Only if this Court finally rules in G.R. No. 181559 that petitioners' appointments did not violate any civil service law is petitioners' right to payment of their salaries by the City Government of Dumaguete, during the given period, indisputably established.

The remedy of *mandamus* is available only to compel the performance of a ministerial duty.[43] The distinction between a ministerial and discretionary act is well delineated. A purely ministerial act or duty is one that an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires the exercise neither of official discretion nor of judgment.[44]

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[43] *Torregoza v. Civil Service Commission*, G.R. No. 101526, 3 July 1992, 211 SCRA 230, 234.

[44] *Codilla, Sr. v. Hon. De Venecia*, 442 Phil. 139, 189 (2002).

While it is true that it is the ministerial duty of the government to pay for the appointees' salaries while the latter's appeal of the disapproval of their appointments by CSC-FO and/or CSC-RO is still pending before the CSC Proper, this applies only when the said appointments have been disapproved on grounds which do not constitute a violation of civil service law. Such is clearly not the case in the instant Petition. The factual circumstances that would have made it the ministerial duty of the City Government of Dumaguete to pay petitioners' salaries have not yet been established. Until this Court resolves the Petition in G.R. No. 181559, reversing the disapproval of petitioners' appointments or, at the very least, declaring that the disapproval of the same was not on grounds that constitute violation of civil service law, this Court cannot rule in the instant Petition that it was the ministerial duty of the City Government of Dumaguete to pay petitioners' salaries during the pendency — before the CSC-RO, then the CSC Proper — of petitioners' appeal of the disapproval of their appointments by CSC-FO Director Abucejo. Thus, there is yet no ministerial duty compellable by a writ of *mandamus*.

Respondents manifested, and petitioners did not controvert, that the City Government of Dumaguete had already paid petitioners their salaries, salary adjustments, and other emoluments from **June 2001**, when they assumed office immediately upon their appointment; **until 27 September 2001**, almost two months after 1 August 2001, when their appointments were disapproved by CSC-FO Director Abucejo for being in violation of CSC Resolution No. 010988 dated 4 June 2001. Petitioners, however, still want this Court to compel by *mandamus* the payment, by the City Government of Dumaguete, of their salaries, salary adjustments, and other emoluments from 28 September 2001 until the Court finally resolves the issue of the validity of petitioners' appointments in G.R. No. 181559. Given that the Court already ruled herein that petitioners do not have a clear and established right to the payment of their salaries by the City Government of Dumaguete **while** their appeal of CSC-FO Director Abucejo's disapproval of their appointments was pending before the CSC-RO and the CSC Proper, then there is even

less reason or justification for the payment by the City Government of Dumaguete of petitioners' salaries **after** the CSC Proper already affirmed the disapproval of petitioners' appointments.

Furthermore, Section 3, Rule 65 of the Revised Rules of Court also prescribes that a petition for *mandamus* can be given due course only if there is no other plain, speedy and adequate remedy available in the course of law.[45] In this case, petitioners already availed themselves of administrative remedies by appealing CSC-FO Director Abucejo's disapproval of their appointments to the CSC-RO, and thereafter, to the CSC Proper. When even the CSC Proper disapproved their appointments, petitioners appealed to the Court of Appeals in CEB-S.P. No. 00665, and when they were again unsuccessful in the latter recourse, they appealed once more to this Court in G.R. No. 181559. After all the administrative, as well as judicial remedies that petitioners actually availed themselves of, they cannot persuade this Court that there was no other plain, speedy and adequate remedy available to them in the course of law to justify the issuance herein of a writ of *mandamus* in their favor.

Similarly unfounded is petitioners' claims for moral and exemplary damages, as well as attorney's fees and costs of suit.

Moral damages are awarded if the following elements exist in the case: (1) an injury clearly sustained by the claimant; (2) a culpable act or omission factually established; (3) a wrongful act or omission by the defendant as the proximate cause of the injury sustained by the claimant; and (4) the award of damages predicated on any of the cases stated Article 2219 of the Civil Code.[46] In addition, the person claiming moral damages must

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[45] *Lamb v. Phipps*, *supra* note 39 at 490.

[46] Articles 2217 and 2219 of the Civil Code provide that:

Art. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith. It is not enough that one merely suffered sleepless nights, mental anguish, and serious anxiety as the result of the actuations of the other party. Invariably such action must be shown to have been willfully done in bad faith or with ill motive.[47] Bad faith, under the law, does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, or a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud.[48]

Petitioners enucleate that Mayor Perdices — in announcing during the flag ceremony at the City Hall on 2 July 2001 that he would not honor the mass appointments made by his predecessor, former Mayor Remollo, even before CSC-FO Director Abucejo invalidated and revoked petitioners' appointments in a letter dated 1 August 2001 — evidenced bad faith, especially since Mayor Perdices himself made 36 appointments at the end of his term in 1998. Mayor Perdices' subsequent appointments to fill four of the contested positions sometime in 2001 to 2006 likewise amounted to bad faith. As a result of these acts, petitioners purportedly endured economic difficulties and humiliation before their peers. These arguments are untenable.

Art. 2219. Moral damages may be recovered in the following analogous cases:

(1) A criminal offense resulting in physical injuries;
(2) Quasi-delicts causing physical injuries;
(3) Seduction, abduction, rape, or other lascivious act;
(4) Adultery or concubinage;
(5) Illegal or arbitrary detention or arrest;
(6) Illegal search;
(7) Libel, slander or any other form of defamation;
(8) Malicious prosecution;
(9) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

[47] *Capili v. Cardaña*, G.R. No. 157906, 2 November 2006, 506 SCRA 569, 578; *Ace Haulers Corporation v. Court of Appeals*, 393 Phil. 220, 230 (2000).

[48] *Bank of the Philippine Islands v. Casa Montessori Internationale*, G.R. Nos. 149454 and 149507, 28 May 2004, 430 SCRA 261, 294.

The announcement made by Mayor Perdices on 2 July 2001 cannot be deemed the proximate cause for petitioners' financial and emotional suffering. The validity of petitioners' appointments did not depend on Mayor Perdices honoring or rejecting said appointments, but on the CSC approving or disapproving the same. CSC-FO Director Abucejo did release a letter dated 1 August 2001 invalidating and revoking petitioners' appointments on the ground that they were "mass appointments," in violation of CSC Resolution No. 010988 dated 4 June 2001. Said letter was subsequently affirmed by the CSC-RO and the CSC Proper. Therefore, the invalidation and revocation of petitioners' appointments, as well as the non-payment of their salaries, salary adjustments, and emoluments, did not result from Mayor Perdices' announcement, but from the official acts of the CSC on petitioners' appointments.

Although Mayor Perdices could have re-appointed petitioners despite the disapproval by the CSC of petitioners' appointments, he chose not to do so. Mayor Perdices' previous announcement that he will not honor petitioners' appointments already indirectly revealed his lack of intention to re-appoint petitioners. Mayor Perdices' refusal to re-appoint them was merely in the exercise of the former's discretion and cannot be construed as illegal or, by itself, proof of bad faith or ill-motive. While petitioners might have been embarrassed by Mayor Perdices' announcement before the other city employees on 2 July 2001, they did not adduce any evidence that said announcement was made with the specific and malicious design to humiliate them, rather than the expression by Mayor Perdices of an earnest intent to right a perceived wrong committed by his predecessor. The fact that Mayor Perdices publicly announced his course of action as regards petitioners' appointments is not conclusive of any malevolent intent on his part in doing so.

The "mass appointments" made by Mayor Perdices himself by the end of his term in 1998 are likewise insufficient proof of bad faith or ill motive on his part. CSC Resolution No. 010988 providing the guidelines on appointments by local chief executives immediately before and after elections was issued only on 4

June 2001. It cannot be applied retroactively.[49] Moreover, even assuming *arguendo* that CSC Resolution No. 010988 could be applied to the appointments made by Mayor Perdices in 1998, these appointments were not necessarily in violation of said CSC issuance. CSC Resolution No. 010988 does not totally proscribe the local chief executives making any appointment immediately before and after elections. The same Resolution provides that the validity of an appointment issued immediately before and after elections by an outgoing local chief executive is to be determined on the basis of the nature, character, and merit of the individual appointment and the particular circumstances surrounding the same. The Court cannot simply assume that the appointments made by Mayor Perdices in 1998 and those made by Mayor Remollo in 2001 (which included those of petitioners) were identical in their natures, characters, merits, and surrounding circumstances, so that they should have been dealt with in the same manner. And even if this Court does make such an assumption, Mayor Perdices' refusal to honor the appointments made in 2001 by then outgoing Mayor Remollo, after the former made similar appointments by the end of his mayoralty term in 1998, may expose Mayor Perdices' hypocrisy, but, again, not necessarily his malice, bad faith, or ill-motive against petitioners.

Mayor Perdices' appointments, made between 2001 to 2006, to fill four out of the 52 posts to which petitioners herein were appointed by former Mayor Remollo, may have indeed constituted a violation of the Revised Omnibus Rules on Appointments and Other Personnel Action and the unnumbered CSC Memorandum Circular dated 6 December 2001. Thus, petitioners could have sought from the CSC the disapproval of said appointments. However, any challenge to Mayor Perdices' appointments to fill in the contested posts, grounded on petitioners' pending appeal before the CSC Proper, had been rendered moot, given that the CSC Proper already denied petitioners' appeal and affirmed the disapproval of their appointments. Furthermore, petitioners fail to convince this Court that Mayor Perdices'

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[49] *Quirog v. Aumentado*, G.R. No. 163443, 11 November 2008.

appointments to four of the 52 contested posts, made from 2001 to 2006, was not only made in bad faith or with ill-motive, but that these were the proximate cause of their financial difficulties and humiliation. The number of the appointments (filling in only four out of the 52 contested posts) and the length of period in which such appointments were made (spread between 2001 and 2006, or a period of five years) are inconsistent with any supposed malicious motive on the part of Mayor Perdices to immediately replace petitioners with his own people. Additionally, as the Court previously ruled herein, the alleged financial difficulties and humiliation petitioners have suffered — for which they now claim moral damages — resulted from the disapproval by the CSC of their appointments, not from the afore-mentioned appointments made by Mayor Perdices.

For the same reasons discussed above, there is no basis to award petitioners exemplary damages. Similar to moral damages, exemplary damages may only be awarded if it has been shown that the wrongful act was accompanied by bad faith; or done in a wanton, fraudulent and reckless or malevolent manner. Exemplary damages are allowed only in addition to moral damages, such that no exemplary damage can be awarded unless the claimant first establishes his clear right to moral damages. As moral damages are improper in the present case, so is the award of exemplary damages.[50]

Finally, petitioners have failed to state the ground on which they base their claim for attorney's fees and legal costs, much less submitted evidence in support thereof. Article 2208 of the Civil Code[51] identifies specific circumstances when attorney's

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[50] *Trinidad v. Acapulco*, G.R. No. 147477, 27 June 2006, 493 SCRA 179, 194; *Bank of the Philippine Islands v. Casa Montessori Internationale*, *supra* note 48 at 295-296.

[51] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

fees and expenses of litigation may be recovered. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal and equitable justification. Its basis cannot be left to speculation or conjecture.[52] Given the dearth of petitioners' allegations, arguments, and most importantly, evidence on the matter, the Court does not find any basis to award petitioners attorney's fees and legal costs.

Considering the foregoing procedural and substantive reasons for dismissing/denying the instant Petition, the Court is addressing the third issue on forum shopping succinctly.

For forum-shopping to exists, both actions should involve a common transaction with essentially the same facts and circumstances and raise identical causes of action, subject matter and issues. Although much of the factual antecedents of the Petition herein and those in G.R. No. 168484 are the same, a closer study would disclose that they involve different subject matters and issues.

In must be borne in mind that petitioners filed with the RTC their Petition for *Mandamus* with Injunction and Damages,

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(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[52] *Pimentel v. Court of Appeals*, 366 Phil. 494, 503 (1999).

docketed as **Civil Case No. 13013**, on 1 August 2001, to challenge **respondents' refusal to recognize petitioners' appointments and to pay petitioners' salaries, salary adjustments, and other emoluments**. It is the judgment of the RTC therein, dismissing petitioners' Petition insofar as it concerns their applications for the issuance of a writ of *mandamus* and for the award of damages, which is assailed in the Petition at bar.

G.R. No. 181559, meanwhile, involves petitioners' appeal of the **invalidation and revocation of their appointments by CSC-FO Director Abucejo** in his letter dated 1 August 2001, affirmed by the CSC-RO, CSC Proper, and the Court of Appeals. Since CSC-FO Director Abucejo ruled on the validity of petitioners' appointments only in his letter dated 1 August 2001, and petitioners had yet to receive notice of said letter, it cannot be expected that the same was already included in and made the subject of Civil Case No. 13013, which petitioners instituted also on 1 August 2001. Even though Mayor Perdices later invoked CSC-FO Director Abucejo's letter dated 1 August 2001 in seeking the dismissal of Civil Case No. 13013, it cannot be denied that said letter was drafted and issued only subsequent to Mayor Perdices' announcement on 2 July 2001 that he would not honor petitioners' appointments.

True, the present Petition and the one in G.R. No. 181559 are interrelated, but they are not necessarily the same for this Court to adjudge that the filing of both by petitioners constitutes forum shopping. In G.R. No. 181559, the Court will resolve whether or not the petitioners' appointments are valid. In the present petitions, petitioners are claiming a right to the salaries, salary adjustments and other emoluments during the pendency of the administrative cases, regardless of how the CSC decided the validity of their appointments. It is only herein that the court has been able to settle that petitioners' right to salaries, salary adjustments and other emoluments require a finding in G.R. No. 181559 that (1) petitioners' appointments were valid or that (2) if the appointments were invalid, the reasons for the invalidity were not in violation of civil service laws. The Court emphasizes that it only rules herein that, **at present**, there is still no clear right for it to compel the respondents, by

writ of *mandamus*, to pay petitioners' salaries, salary adjustments, and emoluments until the resolution of G.R. No. 181559. In fact, the RTC dismissed the Petition in Civil Case No. 13013 **without prejudice** to further hearings on the payment of petitioners' salaries, salary adjustments, and emoluments, if warranted by subsequent events.

IN VIEW OF THE FOREGOING, the instant Petition is *DENIED* and the Decision dated 27 March 2007 and Order dated 26 April 2007 of Branch 41 of the Regional Trial Court of Dumaguete City, Negros Oriental, in Civil Case No. 13013 are *AFFIRMED*. No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, and *Bersamin, JJ.,* concur.

Carpio Morales, J.,on official leave.

EN BANC

[G.R. No. 180048. June 19, 2009]

ROSELLER DE GUZMAN, *petitioner, vs.* **COMMISSION ON ELECTIONS and ANGELINA DG. DELA CRUZ,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; MOOT ISSUE, DEFINED; INAPPLICABLE IN CASE AT BAR.— An issue becomes moot when it ceases to present a justifiable controversy so that a determination thereof would be without

practical use and value. In this case, the pendency of petitioner's election protest assailing the results of the election did not render moot the motion for reconsideration which he filed assailing his disqualification. Stated otherwise, the issue of petitioner's citizenship did not become moot; the resolution of the issue remained relevant because it could significantly affect the outcome of the election protest. Philippine citizenship is an indispensable requirement for holding an elective office. As mandated by law: "An elective local official must be a citizen of the Philippines." It bears stressing that the Regional Trial Court later ruled in favor of petitioner in the election protest and declared him the winner. In view thereof, a definitive ruling on the issue of petitioner's citizenship was clearly necessary. Hence, the COMELEC committed grave abuse of discretion in dismissing petitioner's motion for reconsideration solely on the ground that the same was rendered moot because he lost to private respondent.

2. ID.; ID.; CITIZENSHIP; REPUBLIC ACT NO. 9225 (CITIZENSHIP RETENTION AND RE-ACQUISITION ACT OF 2003); COVERAGE.— R.A. No. 9225 was enacted to allow re-acquisition and retention of Philippine citizenship for: 1) natural-born citizens who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country; and 2) natural-born citizens of the Philippines who, after the effectivity of the law, become citizens of a foreign country. The law provides that they are deemed to have re-acquired or retained their Philippine citizenship upon taking the oath of allegiance.

3. ID.; ID.; ID.; REQUIRES THE TWIN REQUIREMENTS OF SWEARING TO AN OATH OF ALLEGIANCE AND EXECUTING A RENUNCIATION OF FOREIGN CITIZENSHIP FOR NATURAL-BORN FILIPINOS WHO REACQUIRED OR RETAINED PHILIPPINE CITIZENSHIP AND SEEK ELECTIVE PUBLIC OFFICE.— Petitioner falls under the first category, being a natural-born citizen who lost his Philippine citizenship upon his naturalization as an American citizen. In the instant case, there is no question that petitioner re-acquired his Philippine citizenship after taking the oath of allegiance on September 6, 2006. However, it must be emphasized that R.A. No. 9225 imposes an additional

requirement on those who wish to seek elective public office, as follows: Section 5. Civil and Political Rights and Liabilities. — Those who retain or re-acquire Philippine Citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions: x x x (2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath. Contrary to petitioner's claims, the filing of a certificate of candidacy does not *ipso facto* amount to a renunciation of his foreign citizenship under R.A. No. 9225. Our rulings in the cases of *Frivaldo* and *Mercado* are not applicable to the instant case because R.A. No. 9225 provides for more requirements. Thus, in *Japzon v. COMELEC*, the Court held that Section 5(2) of R.A. No. 9225 requires the twin requirements of swearing to an Oath of Allegiance **and** executing a Renunciation of Foreign Citizenship, *viz*: Breaking down the afore-quoted provision, for a natural born Filipino, who reacquired or retained his Philippine citizenship under Republic Act No. 9225, to run for public office, he must: (1) meet the qualifications for holding such public office as required by the Constitution and existing laws; and (2) make a personal and sworn renunciation of any and all foreign citizenships before any public officer authorized to administer an oath. Further, in *Jacot v. Dal and COMELEC*, the Court ruled that a candidate's oath of allegiance to the Republic of the Philippines and his Certificate of Candidacy do not substantially comply with the requirement of a personal and sworn renunciation of foreign citizenship.

APPEARANCES OF COUNSEL

Bryan B. De Peralta for petitioner.

The Solicitor General for public respondent.

Brillantes Navarro Jumamil Arcilla Escolin Martinez and Vivero Law Offices for private respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition[1] for *certiorari* with prayer for preliminary injunction and temporary restraining order assails the June 15, 2007 Resolution[2] of the First Division of the Commission on Elections (COMELEC) in SPA No. 07-211, disqualifying petitioner Roseller De Guzman from running as vice-mayor in the May 14, 2007 Synchronized National and Local Elections. Also assailed is the October 9, 2007 Resolution[3] of the COMELEC *En Banc* denying petitioner's motion for reconsideration.

Petitioner De Guzman and private respondent Angelina DG. Dela Cruz were candidates for vice-mayor of Guimba, Nueva Ecija in the May 14, 2007 elections. On April 3, 2007, private respondent filed against petitioner a petition[4] for disqualification docketed as SPA No. 07-211, alleging that petitioner is not a citizen of the Philippines, but an immigrant and resident of the United States of America.

In his answer, petitioner admitted that he was a naturalized American. However, on January 25, 2006, he applied for dual citizenship under Republic Act No. 9225 (R.A. No. 9225), otherwise known as the Citizenship Retention and Re-Acquisition Act of 2003.[5] Upon approval of his application, he took his oath of allegiance to the Republic of the Philippines on September

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[1] *Rollo,* pp. 3-21.

[2] *Id*. at 22-25. Penned by Commissioner Resurreccion Z. Borra and concurred in by Commissioner Romeo A. Brawner.

[3] *Id*. at 50-51. Penned by Commissioner Florentino A. Tuason, Jr. and concurred in by then Acting Chairman Resurreccion Z. Borra, Commissioners Romeo A. Brawner, Rene V. Sarmiento, and Nicodemo T. Ferrer.

[4] *Id*. at 52-55.

[5] AN ACT MAKING THE CITIZENSHIP OF PHILIPPINE CITIZENS WHO ACQUIRE FOREIGN CITIZENSHIP PERMANENT. AMENDING FOR THE PURPOSE COMMONWEALTH ACT NO. 63, AS AMENDED AND FOR OTHER PURPOSES. Enacted August 29, 2003.

6, 2006. He argued that, having re-acquired Philippine citizenship, he is entitled to exercise full civil and political rights. As such, he is qualified to run as Vice-Mayor of Guimba, Nueva Ecija.

During the May 14, 2007 elections, private respondent won as Vice-Mayor. Petitioner filed an election protest on grounds of irregularities and massive cheating. The case was filed before Branch 31 of the Regional Trial Court of Guimba, Nueva Ecija and was docketed as Election Protest No. 07-01.

Meanwhile, in SPA No. 07-211, the COMELEC First Division rendered its June 15, 2007 Resolution disqualifying petitioner, which reads as follows:

Section 3 of R.A. No. 9225 states:

"*Retention of Philippine Citizenship. — Natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have reacquired Philippine citizenship upon taking the following oath of allegiance to the Republic: x x x*"

Hence, under the provisions of the aforementioned law, respondent has validly reacquired Filipino citizenship. By taking this Oath of Allegiance to the Republic of the Philippines on September 6, 2006 before Mary Jo Bernardo Aragon, Deputy Consul General at the Philippine Consulate General, Los Angeles, California respondent was deemed a dual citizen, possessing both Filipino and American citizenship.

However, subparagraph (2), Section 5 of the aforementioned Act also provides:

Section 5. Civil and Political Rights and Liabilities — Those who retain or re-acquire Philippine Citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

x x x *x x x* *x x x*

(2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn

renunciation of any and all foreign citizenship before any public officer authorized to administer an oath.

As can be gleaned from the above cited provision, respondent [herein petitioner] should have renounced his American citizenship before he can run for any public elective position. This respondent did not do. The Oath of Allegiance taken by respondent was for the purpose of re-acquiring Philippine citizenship. It did not, at the same time, mean that respondent has renounced his American citizenship. Thus, at the time respondent filed his certificate of candidacy for the position of Vice-Mayor of Guimba, Nueva Ecija he was, and still is, a dual citizen, possessing both Philippine and American citizenship. For this reason alone, respondent is disqualified to run for the abovementioned elective position.

WHEREFORE, premises considered, the Commission (First Division) RESOLVED, as it hereby RESOLVES, to GRANT the instant petition finding it IMBUED WITH MERIT. Hence, respondent (petitioner herein) Roseller T. De Guzman is disqualified to run as Vice-Mayor of Guimba, Nueva Ecija in the May 14, 2007 Synchronized National and Local Elections.[6]

Petitioner filed a motion for reconsideration but it was dismissed on October 9, 2007 by the COMELEC *En Banc* for having been rendered moot in view of private respondent's victory.

Thereafter, the trial court in Election Protest No. 07-01 rendered a Decision,[7] dated November 26, 2007, declaring petitioner as the winner for the Vice-Mayoralty position. It held:

WHEREFORE, judgment is hereby rendered declaring protestant ROSELLER T. DE GUZMAN, as the winner for the Vice-Mayoralty position with a plurality of 776 votes over the protestee, ANGELINA D.G. DELA CRUZ, in the May 14, 2007 Local Elections in Guimba, Nueva Ecija. With costs against the protestee.

There being no evidence presented as to the damages by both parties, the same are hereby denied.

SO ORDERED.[8]

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[6] *Rollo,* pp. 24-25.

[7] *Id*. at 84-99.

[8] *Id*. at 99.

Petitioner filed the instant petition for *certiorari*, alleging that the COMELEC acted with grave abuse of discretion in disqualifying him from running as Vice-Mayor because of his failure to renounce his American citizenship, and in dismissing the motion for reconsideration for being moot.

Petitioner invokes the rulings in *Frivaldo v. Commission on Elections*[9] and *Mercado v. Manzano*,[10] that the filing by a person with dual citizenship of a certificate of candidacy, containing an oath of allegiance, constituted as a renunciation of his foreign citizenship. Moreover, he claims that the COMELEC *En Banc* prematurely dismissed the motion for reconsideration because at that time, there was a pending election protest which was later decided in his favor.

Meanwhile, private respondent claims that the passage of R.A. No. 9225 effectively abandoned the Court's rulings in *Frivaldo* and *Mercado*; that the current law requires a personal and sworn renunciation of any and all foreign citizenship; and that petitioner, having failed to renounce his American citizenship, remains a dual citizen and is therefore disqualified from running for an elective public position under Section 40[11] of Republic Act No. 7160, otherwise known as the Local Government Code of 1991 (LGC).

The issues for resolution are: 1) whether the COMELEC gravely abused its discretion in dismissing petitioner's motion for reconsideration for being moot; and 2) whether petitioner is disqualified from running for vice-mayor of Guimba, Nueva Ecija in the May 14, 2007 elections for having failed to renounce his American citizenship in accordance with R.A. No. 9225.

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[9] G.R. Nos. 120295 and 123755, June 28, 1996, 257 SCRA 727.

[10] 367 Phil. 132 (1999).

[11] SEC. 40. Disqualifications. The following persons are disqualified from running for any elective local position:

x x x x x x x x x

(d) Those with dual citizenship;

x x x x x x x x x

An issue becomes moot when it ceases to present a justifiable controversy so that a determination thereof would be without practical use and value.[12] In this case, the pendency of petitioner's election protest assailing the results of the election did not render moot the motion for reconsideration which he filed assailing his disqualification. Stated otherwise, the issue of petitioner's citizenship did not become moot; the resolution of the issue remained relevant because it could significantly affect the outcome of the election protest. Philippine citizenship is an indispensable requirement for holding an elective office. As mandated by law: "An elective local official must be a citizen of the Philippines."[13] It bears stressing that the Regional Trial Court later ruled in favor of petitioner in the election protest and declared him the winner. In view thereof, a definitive ruling on the issue of petitioner's citizenship was clearly necessary. Hence, the COMELEC committed grave abuse of discretion in dismissing petitioner's motion for reconsideration solely on the ground that the same was rendered moot because he lost to private respondent.

Anent the second issue, we find that petitioner is disqualified from running for public office in view of his failure to renounce his American citizenship.

R.A. No. 9225 was enacted to allow re-acquisition and retention of Philippine citizenship for: 1) natural-born citizens who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country; and 2) natural-born citizens of the Philippines who, after the effectivity of the law, become citizens of a foreign country. The law provides that they are deemed to have re-acquired or retained their Philippine citizenship upon taking the oath of allegiance.[14]

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[12] *Olanolan v. COMELEC*, G.R. No. 165491, March 31, 2005, 454 SCRA 807, 816.

[13] *Labo, Jr. v. COMELEC*, G.R. Nos. 105111 and 105384, July 3, 1992, 211 SCRA 297, 308.

[14] Section 3. Retention of Philippine Citizenship. - Any provision of law to the contrary notwithstanding, natural-born citizens by reason of their

Petitioner falls under the first category, being a natural-born citizen who lost his Philippine citizenship upon his naturalization as an American citizen. In the instant case, there is no question that petitioner re-acquired his Philippine citizenship after taking the oath of allegiance on September 6, 2006. However, it must be emphasized that R.A. No. 9225 imposes an additional requirement on those who wish to seek elective public office, as follows:

> Section 5. Civil and Political Rights and Liabilities. — Those who retain or re-acquire Philippine Citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:
>
> x x x x x x x x x
>
> (2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath.

Contrary to petitioner's claims, the filing of a certificate of candidacy does not *ipso facto* amount to a renunciation of his foreign citizenship under R.A. No. 9225. Our rulings in the

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naturalization as citizens of a foreign country are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

> "I _____, solemny swear (or affrim) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I imposed this obligation upon myself voluntarily without mental reservation or purpose of evasion."
>
> Natural born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.

cases of *Frivaldo* and *Mercado* are not applicable to the instant case because R.A. No. 9225 provides for more requirements.

Thus, in *Japzon v. COMELEC*,[15] the Court held that Section 5(2) of R.A. No. 9225 requires the twin requirements of swearing to an Oath of Allegiance **and** executing a Renunciation of Foreign Citizenship, *viz*:

> Breaking down the afore-quoted provision, for a natural born Filipino, who reacquired or retained his Philippine citizenship under Republic Act No. 9225, to run for public office, he must: (1) meet the qualifications for holding such public office as required by the Constitution and existing laws; and (2) make a personal and sworn renunciation of any and all foreign citizenships before any public officer authorized to administer an oath.

Further, in *Jacot v. Dal and COMELEC*,[16] the Court ruled that a candidate's oath of allegiance to the Republic of the Philippines and his Certificate of Candidacy do not substantially comply with the requirement of a personal and sworn renunciation of foreign citizenship. Thus:

> The law categorically requires persons seeking elective public office, who either retained their Philippine citizenship or those who reacquired it, to make a personal and sworn renunciation of any and all foreign citizenship before a public officer authorized to administer an oath simultaneous with or before the filing of the certificate of candidacy.

Hence, **Section 5(2) of Republic Act No. 9225** compels **natural-born Filipinos, who have been naturalized as citizens of a foreign country, but who reacquired or retained their Philippine citizenship (1) to take the oath of allegiance under Section 3 of Republic Act No. 9225, and (2) for those seeking elective public offices in the Philippines**, to additionally execute a **personal and sworn renunciation** of any and all foreign citizenship before an authorized public officer prior or simultaneous to the filing of their certificates of candidacy, **to qualify as candidates in Philippine elections**.

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[15] G.R. No. 180088, January 19, 2009.

[16] G.R. No. 179848, November 29, 2008.

Clearly Section 5(2) of Republic Act No. 9225 (on the making of a personal and sworn renunciation of any and all foreign citizenship) requires of the Filipinos availing themselves of the benefits under the said Act to accomplish an undertaking other than that which they have presumably complied with under Section 3 thereof (oath of allegiance to the Republic of the Philippines). This is made clear in the discussion of the Bicameral Conference Committee on Disagreeing Provisions of House Bill No. 4720 and Senate Bill No. 2130 held on 18 August 2003 (precursors of Republic Act No. 9225), where the Hon. Chairman Franklin Drilon and Hon. Representative Arthur Defensor explained to Hon. Representative Exequiel Javier that the oath of allegiance is different from the renunciation of foreign citizenship:

> *CHAIRMAN DRILON. Okay. So, No. 2. "Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath." I think it's very good, ha? No problem?*
>
> *REP. JAVIER. …* ***I think it's already covered by the oath.***
>
> *CHAIRMAN DRILON. Renouncing foreign citizenship.*
>
> *REP. JAVIER.* ***Ah… but he has taken his oath already.***
>
> *CHAIRMAN DRILON.* ***No…no, renouncing foreign citizenship.***
>
> *x x x x x x x x x*
>
> *CHAIRMAN DRILON. Can I go back to No. 2. What's your problem, Boy?* ***Those seeking elective office in the Philippines.***
>
> *REP. JAVIER. They are trying to make him renounce his citizenship thinking that ano…*
>
> *CHAIRMAN DRILON. His American citizenship.*
>
> *REP. JAVIER. To discourage him from running?*
>
> *CHAIRMAN DRILON. No.*

REP. A.D. DEFENSOR. No. ***When he runs he will only have one citizenship. When he runs for office, he will have only one.*** *(Emphasis ours.)*

There is little doubt, therefore, that the intent of the legislators was not only for Filipinos reacquiring or retaining their Philippine citizenship under Republic Act No. 9225 to take their oath of allegiance to the Republic of the Philippines, but also to explicitly renounce their foreign citizenship if they wish to run for elective posts in the Philippines. To qualify as a candidate in Philippine elections, Filipinos must only have one citizenship, namely, Philippine citizenship.

By the same token, the oath of allegiance contained in the Certificate of Candidacy, which is substantially similar to the one contained in Section 3 of Republic Act No. 9225, does not constitute the personal and sworn renunciation sought under Section 5(2) of Republic Act No. 9225. It bears to emphasize that the said oath of allegiance is a general requirement for all those who wish to run as candidates in Philippine elections; while the renunciation of foreign citizenship is an additional requisite only for those who have retained or reacquired Philippine citizenship under Republic Act No. 9225 and who seek elective public posts, considering their special circumstance of having more than one citizenship.

In the instant case, petitioner's Oath of Allegiance and Certificate of Candidacy did not comply with Section 5(2) of R.A. No. 9225 which further requires those seeking elective public office in the Philippines to make a personal and sworn renunciation of foreign citizenship. Petitioner failed to renounce his American citizenship; as such, he is disqualified from running for Vice-Mayor of Guimba, Nueva Ecija in the May 14, 2007 elections.

WHEREFORE, the petition is *DISMISSED*. Petitioner is declared *DISQUALIFIED* from running for Vice-Mayor of Guimba, Nueva Ecija in the May 14, 2007 elections because of his failure to renounce his foreign citizenship pursuant to Section 5(2) of R.A. No. 9225.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Corona, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, and *Bersamin, JJ.,* concur.

Carpio Morales, J., on leave.

THIRD DIVISION

[G.R. No. 180755. June 19, 2009]

PEDIATRICA, INC., *petitioner, vs.* **JOSELITO T. RAFAELES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION; ABSENT IN CASE AT BAR.— The CA correctly affirmed the NLRC's Resolution dismissing petitioner's appeal for non-perfection thereof. There was no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC. It was well within the NLRC's prerogative to dismiss the appeal for failure of the petitioner to comply with the requirements under the NLRC Rules of Procedure.

2. ID.; CIVIL PROCEDURE; ; APPEALS; MUST BE EXERCISED STRICTLY IN ACCORDANCE WITH THE PROVISIONS SET BY LAW; ELUCIDATED.— Appeal is not a constitutional right but a mere statutory privilege. It must be exercised strictly in accordance with the provisions set by law. The perfection of an appeal in the manner and within the period permitted by law is not only mandatory, but also jurisdictional. Failure to perfect the appeal renders the judgment of the court final and executory.

3. ID.; ID.; AS A RULE, PROCEDURAL LAWS MUST BE FOLLOWED; RELAXATION OF THE RULES NOT

WARRANTED IN CASE AT BAR.— Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they must be followed except only, for the most persuasive of reasons, when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. Indeed, this Court had, on numerous occasions, veered away from the general rule and relaxed the application of technical rules when, in its assessment, the appeal on its face appeared absolutely meritorious. Truly, the Court had, in a number of instances, relaxed procedural rules in order to serve and achieve substantial justice. However, we find that the circumstances in this case do not warrant the relaxation of the rules. The Certification issued by the notary public will not save the day for petitioner. The same is merely a belated attempt to comply with the requirements under the NLRC Rules of Procedure and the Notarial Rules. Petitioner failed to explain how, if indeed the Unilab representatives and their legal counsel appeared before the Notary Public together with the bonding company representative, they failed to indicate their CTC numbers on the document knowing fully well – the legal counsel most especially – that the same is required by law. To allow such certification to "cure" the procedural lapse made by petitioner would undermine the integrity of notarized documents.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo Law Offices for petitioner.

Mark Philipp H. Opada and *Marilyn C. Armero-Almocera* for respondent.

R E S O L U T I O N

NACHURA, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking the annulment of the June 26, 2007 Decision and November 13, 2007 Resolution of the Court of Appeals (CA) in CA-G.R. CEB SP No. 02058.

Respondent Joselito Rafaeles was employed by petitioner Pediatrica, Inc. as a Professional Service Representative (PSR), more commonly known as a medical representative. As a PSR, he was responsible for detailing petitioner's products to doctors. During the period material to this case, he was assigned at Cebu City.[1]

In the course of his work, he was required to accomplish a Call Report Slip.[2] This document is a record of, among others, the doctors' names, when the PSR called upon said doctor, and the items or products (physician's samples) issued to those doctors. As a matter of strict policy, the company requires that the integrity and accuracy of the Call Report Slip be maintained at all times since it contains valuable information to aid in the company's operations and administration of its personnel.[3] Thus, petitioner considers as a serious offense the submission of an inaccurate Call Report Slip or one that contains false information or forged doctors' signatures.[4]

On February 27, 2004, petitioner issued a Memorandum to respondent asking him to explain certain discrepancies in some of the Call Report Slips he had submitted; in particular, those where some of the doctors' signatures did not appear to be genuine. As evidence, petitioner attached several disclaimers written by the doctors to the effect that they did not sign the subject Call Report Slips.[5]

In his written explanation, respondent alleged that he did not defraud petitioner of cash, stocks, and other properties, and that he did not falsify records, furnish false data, or commit dishonesty with deliberate intent to defraud the company. He claimed that, in their absence, the doctors authorized their respective clinic personnel to receive the samples. He also argued

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[1] *Rollo*, p. 5.

[2] *Id.*

[3] *Id.* at 6.

[4] *Id.* at 7.

[5] *Id.* at 10-11.

that since the disclaimers were not authenticated, these cannot be given credence.[6] During the hearing that followed, respondent claimed that when doctors were in a hurry, or did not want to talk to a PSR, he would just leave the samples in the doctor's cabinet and the secretaries would sign on the doctor's behalf.[7]

Subsequently, petitioner's Operations Director, Virgilio Marfori, personally inquired into the accuracy of respondent's claim that doctors often allowed their secretaries to sign the Call Report Slips, and he allegedly found that the doctors did not allow their nurses or secretaries to sign for them. One of the doctors, Dr. Limchiu, issued an affidavit to that effect.[8]

On April 29, 2004, respondent submitted a letter stating that he never said that the doctors allowed or instructed their secretaries or nurses to sign for them. He simply claimed that the secretaries or nurses signed for the doctors as proof that the doctors received the samples meant for them. He added that the doctors' denials did not negate the fact that their secretaries or nurses signed the Call Report Slips acknowledging receipt of the samples.

In a Memorandum dated May 8, 2004, petitioner advised respondent that it was terminating his employment for violation of the provisions of the Company Handbook and for loss of confidence.[9]

Respondent filed a complaint for illegal dismissal, damages, and money claims against petitioner before the National Labor Relations Commission (NLRC), Regional Arbitration Branch No. VII, Cebu City.[10] The Executive Labor Arbiter rendered a decision[11] finding that respondent was illegally dismissed and

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[6] *Id.* at 11.

[7] *Id.* at 12.

[8] *Id.*

[9] *Id.* at 13.

[10] *Id.* at 87-88.

[11] *Id.* at 194-208.

ordered petitioner to reinstate complainant and pay him backwages and his money claims.

Petitioner appealed the decision. On January 25, 2006, the NLRC issued an Order[12] dismissing the appeal on the ground that the same was not perfected because it appeared that of the three joint declarants (the employer, its counsel, and the bonding company) in support of the appeal bond, only one of them — the bonding company representative — swore before the notary public.

Petitioner filed a motion for reconsideration.[13] It alleged that all three joint declarants swore before the notary public attaching, as proof thereof, a Certification from Notary Public Rogel R. Atienza that the representatives from Unilab (petitioner's parent company) and its counsel likewise appeared before the notary public and exhibited their respective Community Tax Certificates (CTC). The NLRC denied the motion saying that the *jurat* of the Joint Declaration indicated that only one exhibited his CTC before the notary public, confirming that the others did not so appear before the notary public.[14]

Petitioner filed a special civil action for *certiorari* before the CA. On July 25, 2007, the CA issued the assailed Decision.[15] It denied the petition and affirmed the NLRC decision. It ruled that petitioner did not comply with the requisites for appeal before the NLRC. The CA found that the Joint Declaration petitioner submitted was defective because the *jurat* portion did not contain the CTC numbers of the Unilab representatives and its counsel. Moreover, it found that the Joint Declaration was executed by Unilab, not by petitioner itself, which has a separate juridical personality. The CA brushed aside petitioner's contention that since Unilab was its parent company, the latter could post the bond on its behalf.

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[12] *Id.* at 307-308.

[13] *Id.* at 309-312.

[14] *Id.* at 313-314.

[15] *Id.* at 48-61.

Petitioner's motion for reconsideration was denied in a Resolution dated November 13, 2007.[16] It then filed this Petition for Review seeking the reversal of the questioned CA Decision. It argues that the CA ruled contrary to law and jurisprudence when it upheld the NLRC's dismissal of its appeal on a perceived fatal technical error. Likewise, petitioner avers that the CA erred in affirming the NLRC, thus perpetuating the error and grave abuse of discretion committed by the Labor Arbiter in declaring the illegal dismissal of respondent, considering that the termination was for valid and just cause.

In support of its prayer for a Temporary Restraining Order (TRO) or Writ of Preliminary Injunction, petitioner contends that the CA's Decision is patently null and void for being contrary to law and jurisprudence and for being issued with grave abuse of discretion amounting to lack or excess of jurisdiction. It further argues that without the TRO or injunctive writ, it will suffer grave and irreparable damage and prejudice, since it will be forced to pay respondent's money claim to which he is not entitled. Thus petitioner will be deprived of the use of the fruits of its resources and the damages arising therefrom may not be indemnified. It also says that it will post the necessary bond in the amount this Court deems just and reasonable.

Acting on the Petition, this Court resolves to deny the same for failing to show that the CA, in issuing the assailed Decision and Resolution, committed reversible error.

The CA correctly affirmed the NLRC's Resolution dismissing petitioner's appeal for non-perfection thereof. There was no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC. It was well within the NLRC's prerogative to dismiss the appeal for failure of the petitioner to comply with the requirements under the NLRC Rules of Procedure.

Appeal is not a constitutional right but a mere statutory privilege. It must be exercised strictly in accordance with the provisions

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[16] *Id.* at 63-64.

set by law.[17] The perfection of an appeal in the manner and within the period permitted by law is not only mandatory, but also jurisdictional. Failure to perfect the appeal renders the judgment of the court final and executory.[18]

Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they must be followed except only, for the most persuasive of reasons, when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[19]

Indeed, this Court had, on numerous occasions, veered away from the general rule and relaxed the application of technical rules when, in its assessment, the appeal on its face appeared absolutely meritorious. Truly, the Court had, in a number of instances, relaxed procedural rules in order to serve and achieve substantial justice.[20]

However, we find that the circumstances in this case do not warrant the relaxation of the rules. The Certification issued by the notary public will not save the day for petitioner. The same is merely a belated attempt to comply with the requirements under the NLRC Rules of Procedure and the Notarial Rules. Petitioner failed to explain how, if indeed the Unilab representatives and their legal counsel appeared before the Notary Public together with the bonding company representative, they failed to indicate their CTC numbers on the document knowing fully well — the legal counsel most especially — that the same is required by law. To allow such certification to "cure" the

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[17] *Spouses Manalili v. Spouses De Leon*, 422 Phil. 214, 220 (2001).

[18] *Cuevas v. Bais Steel Corporation, et al.*, 439 Phil. 793, 805 (2002).

[19] *Land Bank of the Philippines v. Ascot Holdings and Equities, Inc.*, G.R. No. 175163, October 19, 2007, 537 SCRA 396, 406 citing *Lazaro v. Court of Appeals*, G.R. No. 137761, April 6, 2000, 330 SCRA 208.

[20] *Air France Philippines v. The Honorable Judge Emilio L. Leachon*, G.R. No. 134113, October 12, 2005, 472 SCRA 439, 443.

procedural lapse made by petitioner would undermine the integrity of notarized documents.

WHEREFORE, the foregoing premises considered, the Petition is *DENIED* and the June 26, 2007 Decision and November 13, 2007 Resolution of the Court of Appeals in CA-G.R. CEB SP No. 02058 are *AFFIRMED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Velasco, Jr., and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 183753. June 19, 2009]

ARCHINET INTERNATIONAL, INC. and SEOKWHAN HAHN, *petitioners, vs.* **BECCO PHILIPPINES, INC. and BECCOMAX PROPERTY AND DEVELOPMENT CORP.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; ELUCIDATED; ABSENT IN CASE AT BAR.— Grave abuse of discretion exists where an act is performed with a capricious or whimsical exercise of judgment equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility. In the instant case, the trial court acted within its discretion in granting petitioners' motion for discretionary execution on grounds that Becco is in dissolution and Beccomax is in imminent danger of insolvency.

2. ID.; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; DISCRETIONARY EXECUTION; EXECUTION OF A JUDGMENT OR A FINAL ORDER PENDING APPEAL; REQUISITES.— Section 2 (a), Rule 39 of the Rules of Court allows execution pending appeal, as follows: Discretionary Execution. — (a) Execution of a judgment or a final order pending appeal. — On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal. After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court. Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing. In *Manacop v. Equitable Banking Corporation*, we held that discretionary execution of appealed judgments may be allowed upon concurrence of the following requisites: (a) there must be a motion by the prevailing party with notice to the adverse party; (b) there must be a good reason for execution pending appeal; and (c) the good reason must be stated in a special order.

3. ID.; ID.; ID.; ID.; ID.; GOOD REASONS; DEFINED.— Good reasons consist of compelling circumstances justifying immediate execution lest judgment becomes illusory, or the prevailing party after the lapse of time be unable to enjoy it, considering the tactics of the adverse party who may have apparently no cause but to delay. Such reasons must constitute superior circumstances demanding urgency which will outweigh the injury or damages should the losing party secure a reversal of the judgment. Execution of a judgment pending appeal is an exception to the general rule that only a final judgment may be executed. Thus, the existence of "good reasons" is essential for it is what confers discretionary power on a court to issue a writ of execution pending appeal.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ADMISSION OF EVIDENCE IS NOT ALLOWED.— It is noteworthy that the Secretary's Certificate was executed on August 9, 2005, well before the order for discretionary execution was issued. Indeed, while respondents had every opportunity to present it,

they failed to do so and no explanation for such failure has been offered to date. The same can be said with respect to the Owners' Agreement dated September 7, 2001, between Beccomax and Somerset Hospitality Holdings (Phils.) Inc. That respondents presented the documents for the first time before the Court of Appeals is lamentable considering that the admission of evidence is outside the sphere of the appellate court's *certiorari* jurisdiction.

5. ID.; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; DISCRETIONARY EXECUTION; EXECUTION OF A JUDGMENT OR A FINAL ORDER PENDING APPEAL; GOOD REASONS; CIRCUMSTANCES WHICH CONSTITUTE GOOD REASONS.— It bears stressing that imminent danger of insolvency of the defeated party has been held to be a good reason to justify discretionary execution. In *Philippine Bank of Communications v. Court of Appeals*, we enumerated circumstances that would constitute good reasons under the Rules, as follows: A long line of jurisprudence indicates what constitute good reasons as contemplated by the Rules, the following being merely representative of the same: 1. When in an intestate proceeding which has been pending for almost 29 years, one group of heirs has not yet received the inheritance due them when the others have already received theirs, or are about to do so (*Borja vs. Encarnacion*, 89 Phil. 239 (1951); 2. The advanced age of the prevailing party (*Borja vs. Court of Appeal*s, 196 SCRA 847 [1991]; *De Leon vs. Soriano, supra*); 3. **When the defeated party is in imminent danger of insolvency** (*Hacienda Navarro vs. Sabrador*, 65 Phil. 536 [1938]; *Lao vs. Mencias*, 21 SCRA 1021 [1967]; *Santos vs. Mojica*, 26 SCRA 607 [1969]; *City of Manila vs. Court of Appeals*, 72 SCRA 98 [1976]; *De los Reyes vs. Capulong*, 122 SCRA 631 [1983]; *PVTA vs. Lucero*, 125 SCRA 337 [1983]); 4. When the appeal is dilatory and the losing party intends to incumber and/or dispose of the property subject of the case during the pendency of the appeal in order to defraud or deprive the plaintiff of proprietary rights and defeat the ends of justice (*Home Insurance Company vs. Court of Appeals*, 184 SCRA 318 [1990]; and 5. Deterioration of commodities subject to litigation (*Federation of United Namarco Distributors, Inc. vs. National Marketing Corp.*, 4 SCRA 867 [1962]). The above ruling was reiterated in *Philippine Nails and Wires Corporation v. Malayan Insurance Company*,

Inc. where we stated that execution pending appeal may only be allowed upon a showing of good reasons, such as impending insolvency of the adverse party.

6. ID.; ID.; ID.; ID.; ID.; DOES NOT BAR THE CONTINUANCE OF THE APPEAL ON THE MERITS; EFFECT OF REVERSAL OF EXECUTED JUDGMENT.— x x x [E]xecution pending appeal does not bar the continuance of the appeal on the merits and respondents are not left without relief in the event of reversal of the judgment against it. Section 5, Rule 39 of the Rules of Court specifically provides that where the executed judgment is reversed totally or partially, or annulled, on appeal or otherwise, the trial court may, on motion, issue such orders of restitution or reparation of damages as equity and justice may warrant under the circumstances.

7. CIVIL LAW; LAND TITLES AND DEEDS; PRESIDENTIAL DECREE NO. 1529; IN IMPLEMENTING THE INVOLUNTARY TRANSFER OF TITLE OF REAL PROPERTY LEVIED AND SOLD ON EXECUTION, THE EXECUTING PARTY MUST FILE A PETITION IN COURT FOR THE ISSUANCE OF NEW TITLES; RULES.— In *Padilla, Jr. v. Philippine Producers' Cooperative Marketing Association, Inc.*, we categorically declared that in implementing the involuntary transfer of title of real property levied and sold on execution, it is not enough for the executing party to file a motion with the court which rendered judgment. The proper course of action is to file a petition in court, rather than merely move, for the issuance of new titles. In so ruling, we cited Sections 75 and 107 of Presidential Decree No. 1529, which provide: **Section 75. Application for new certificate upon expiration of redemption period.** Upon the expiration of the time, if any, allowed by law for redemption after registered land has been sold on execution taken or sold for the enforcement of a lien of any description, except a mortgage lien, the purchaser at such sale or anyone claiming under him may petition the court for the entry of a new certificate of title to him. Before the entry of a new certificate of title, the registered owner may pursue all legal and equitable remedies to impeach or annul such proceedings. x x x x **Section 107. Surrender of withheld duplicate certificates**. Where it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of the registered

owner against his consent or where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title, the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds. The court, after hearing, may order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate or memorandum upon such surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if not any reason the outstanding owner's duplicate certificate cannot be delivered, the court may order the annulment of the same as well as the issuance of a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate. The above law provides for due process to a registered landowner and prevents the fraudulent or mistaken conveyance of land, the value of which may exceed the judgment obligation. Thus, while there are good reasons justifying an execution pending appeal, the trial court erred in ordering the cancellation of CCTs and ordering the issuance of new titles by mere motion. The proper course of action was to file a petition in court. At any rate, as in the case of *Padilla, Jr.*, we note that petitioners can still file the proper petition for the issuance of new titles in its name.

APPEARANCES OF COUNSEL

Dario Reyes Hocson & Viado for petitioners.
Suarez & Narvasa Law Firm for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Assailed in this petition for review on *certiorari* is the January 25, 2008 Decision[1] of the Court of Appeals in CA-G.R. SP No. 96030 which set aside the July 10, 2006, August 18, 2006,

[1] *Rollo*, pp. 729-746. Penned by Associate Justice Noel S. Tijam and concurred in by Associate Justices Martin S. Villarama, Jr. and Sesinando E. Villon.

October 22, 2007, and November 19, 2007 Orders of Branch 56 of the Regional Trial Court of Makati City in Civil Case No. 02-722. The Court of Appeals found no good reasons to justify discretionary execution pending appeal; thus, it ordered the reinstatement of Condominium Certificates of Title (CCTs) to 12 condominium units in the name of respondent Beccomax Property and Development Corporation (Beccomax). Likewise assailed is the July 11, 2008 Resolution[2] denying petitioners' motion for reconsideration.

The facts are as follows:

Respondent Beccomax was the owner and developer of The Infinity Tower, later renamed as The Stamford Court-Salcedo, Makati. On June 14, 1995, Beccomax engaged the services of its sister company, respondent Becco Philippines, Inc. (Becco), as general contractor for the construction of the said building. In turn, Becco entered into contracts with several sub-contractors, one of which was petitioner Archinet International, Inc. (Archinet), which is engaged in the business of construction and providing architectural and interior design services. Petitioner Seokwhan Hahn is its Chairman and President.

On July 25, 1997, Becco and Archinet entered into contract for the construction of the interior portions of 24 floors of The Infinity Tower. Subsequently, they entered into another contract for the supply and provision of materials to be used in the interior portions, and additional works on the lobby, the 6th Floor common areas, and the penthouse. By March 2000, the construction of The Infinity Tower was completed.

However, respondents allegedly failed to make timely payments despite demands. Thus, petitioners filed on June 21, 2002 a complaint[3] for breach of contract, sum of money and damages with an application *ex-parte* for a writ of preliminary attachment/ garnishment. The case was raffled to Branch 56 of the Regional Trial Court of Makati City and docketed as Civil Case No. 02-722.

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[2] *Id.* at 818-826.

[3] *Id.* at 73-93.

Petitioners alleged that as a result of Becco's delayed payments, Archinet suffered delays in settling its own obligations, incurred higher interest charges and exchange rate costs in its bank financing arrangements, manpower employment, overhead, purchases from suppliers, transportation and shipping costs and charges.[4] Petitioners also contended that respondents are liable for the costs of additional construction works on The Infinity Tower, as well as the contract price for the designs and drawings for respondents' another condominium project known as Uptown 21.

On July 17, 2002, the trial court ordered the issuance of a writ of preliminary attachment against the properties of respondents after petitioners posted an injunctive bond in the amount of Php33,781,741.17.[5]

On July 24, 2002, the trial court issued a writ of attachment.[6] Consequently, 10 condominium units of the Stamford Court-Salcedo were attached, namely unit nos. 2701 to 2707 and 2801 to 2803, which are under the name of Beccomax and covered by CCT Nos. 74067 to 74076.

On May 24, 2006,[7] the trial court found in favor of petitioners and awarded them a total sum of Php56,697,741.92 representing various money claims. Respondents filed a motion for reconsideration on June 23, 2006.

Meanwhile, on June 9, 2006, petitioners filed a Motion for Discretionary Execution[8] pursuant to Section 2 (a), Rule 39 of the Rules of Court. Petitioners alleged that there are good reasons which warrant execution pending appeal, to wit: a) respondents' President, Chan Shik Kim, is a fugitive from justice and has not returned to the Philippines since October 25, 2002; b) Becco caused its corporate dissolution by shortening its

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[4] *Id.* at 76-77.

[5] *Id.* at 94-95.

[6] *Id.* at 96.

[7] *Id.* at 248-266. Penned by Hon. Reinato G. Quilala.

[8] *Id.* at 267-273.

corporate term effective October 31, 2002; and c) Beccomax is in imminent danger of insolvency.

On July 10, 2006, the trial court issued an Omnibus Order[9] denying the motion for reconsideration filed by respondents while granting discretionary execution prayed for by petitioners, to wit:

> In view thereof, and coupled with the failure of the said defendant to present any proof that it has already recovered from such a shaky business operation, it can safely be concluded that indeed it is in "imminent danger of insolvency."
>
> Surely, such fact of the dissolution of defendant Becco Philippines, Inc. on October 31, 2002, while the instant case was still pending, and the other defendant Beccomax Property and Development Corporation's being in imminent danger of insolvency will serve as good reasons which would warrant the issuance of this Special Order directing the execution of the decision of this Court dated May 24, 2006 even before the expiration of the period of appeal.
>
> x x x x x x x x x
>
> One of the good reasons to be stated in a special order on which the Court, in its discretion, may order execution even before the judgment has become executory and before appeal has been perfected is where the judgment debtor is in imminent danger of insolvency (*Santos vs. Mojica*, L-24266, Jan. 24, 1969) or is actually insolvent (*Padilla, et al. vs. CA, et al.*, L-31569, Sept. 28, 1973).
>
> WHEREFORE, premises considered, the Court rules as follows:
>
> 1. Denying defendants' [herein respondents] motion for reconsideration of the decision of this Court dated May 24, 2006, for lack of merit; and
>
> 2. Ordering the execution of the aforesaid Court's decision dated May 24, 2006, pending appeal; and
>
> 3. Directing the issuance of the corresponding Writ of Execution to enforce the decision against the properties of the defendants.

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[9] *Id.* at 354-358.

SO ORDERED.[10]

Respondents appealed[11] the May 24, 2006 Decision of the RTC of Makati, Branch 56 to the Court of Appeals. Likewise, they filed a motion for partial reconsideration[12] of the July 10, 2006 Omnibus Order before the trial court insofar as it allowed discretionary execution.

On July 27, 2006, respondents' personal properties were auctioned where petitioners and Mr. Jong Woo Chung emerged as the highest bidders for the total amount of Php103,620.00.[13] On August 31, 2006, another auction sale was held where 12 condominium units under the name of Beccomax and covered by CCT Nos. 74069, 74071, 74072, 74076 to 74079, 74085, 74086, 74090, 74092, and 74093 were sold to petitioners as the highest bidders for the total amount of Php18,600,000.00.[14] The Sheriff issued in favor of petitioners a Certificate of Sale[15] dated August 31, 2006, which was subsequently annotated on each of the CCTs on September 4, 2006.

In an Order dated August 18, 2006,[16] the trial court denied respondents' motion for partial reconsideration of the July 10, 2006 Omnibus Order allowing discretionary execution.

On September 8, 2006, respondents filed a petition for *certiorari* with application for a temporary restraining order and/or writ of preliminary injunction[17] before the Court of Appeals assailing the July 10, 2006 and August 18, 2006 Orders of the trial court which granted discretionary execution and denied

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[10] *Id.* at 357-358.

[11] *Id.* at 361-363.

[12] *Id.* at 369-374.

[13] *Id.* at 365-366.

[14] *Id.* at 396.

[15] *Id.* at 399-400.

[16] *Id.* at 381-382.

[17] CA Records, pp. 6-31.

respondents' motion for partial reconsideration, respectively. The case was docketed as CA-G.R. SP No. 96030.

Pending resolution of the aforementioned case, the Sheriff conducted another auction sale of respondents' personal properties on September 15, 2006 where petitioners were the highest bidders for the amount of Php1,257,500.00.[18] On even date, the Court of Appeals issued a temporary restraining order[19] holding in abeyance the effects of the August 31, 2006 sale and setting aside the September 15, 2006 auction sale.

On November 29, 2006, the Court of Appeals issued a resolution advising the parties "*to observe judicial courtesy and maintain the status quo so as not to render moot and academic the outcome of the case*."[20] However, no writ of preliminary injunction was issued by the appellate court. On December 18, 2006, the petition for *certiorari* with application for the issuance of a writ of preliminary injunction was deemed submitted for resolution/decision.[21]

Petitioners subsequently filed three (3) motions for early resolution[22] and two (2) motions[23] to resolve respondents' application for injunction with the Court of Appeals, but to no avail.

Meanwhile, on September 17, 2007, petitioners filed with the trial court a "*Motion to Order Defendants (herein respondents) to Surrender the Owner's Duplicate Copies of the CCTs Issued*

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[18] *Rollo*, p. 438.

[19] *Id.* at 467-470.

[20] *Id.* at 976-977.

[21] CA Records, p. 706.

[22] *Id.* at 707-713, Motion for Early Resolution filed on February 8, 2007; at 741-742, Second Motion for Early Resolution filed on April 12, 2007; and at 763-764, *Ex Parte* Third Motion for Early Resolution filed on October 5, 2007.

[23] *Id.* at 744-749, Urgent Motion to Resolve Petitioners' Application for Injunction filed on May 25, 2007; and at 751-752, *Ex-Parte* Reiterated Motion to Resolve Petitioners' Application for Injunction filed on June 15, 2007.

in the name of defendant Beccomax for the Twelve (12) Condominium Units Sold on Execution."[24] They alleged that more than one year has lapsed without respondents having redeemed the 12 condominium units which were sold in the August 31, 2006 auction sale, and that all the requisite taxes and charges have been paid to effect the registration of the final sale.

On October 22, 2007, the trial court granted petitioners' motion.[25] Respondents moved for reconsideration but was denied in an order dated November 19, 2007. At the same time, the trial court directed the issuance of new titles in the name of Archinet.[26] Accordingly, the Register of Deeds of Makati City cancelled the CCTs under the name of Beccomax and issued new ones in lieu thereof in the name of Archinet.

On November 26, 2007, respondents filed a motion for leave to file a supplemental petition[27] with the Court of Appeals. In the supplemental petition,[28] respondents prayed that the October 22, 2007 and November 19, 2007 Orders of the trial court be nullified for having been issued in grave abuse of discretion. They argued that the trial court has lost jurisdiction over the case; that the issuance of new titles is outside the coverage of the execution process; that judicial courtesy must be observed as the legality of the execution pending appeal is being questioned in CA-G.R. SP No. 96030; and that the period to redeem the subject properties has not lapsed. Moreover, respondents moved that petitioners and the trial court be cited in contempt for disregarding the November 29, 2006 *status quo* order.

On January 25, 2008, the Court of Appeals rendered the assailed decision admitting respondents' supplemental petition and finding that the trial court committed grave abuse of discretion

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[24] *Rollo*, pp. 666-670.

[25] *Id.* at 671-672.

[26] *Id.* at 675-676.

[27] CA Records, pp. 802-807.

[28] *Id.* at 808-835.

amounting to lack or excess of jurisdiction. Meanwhile, respondents' motion for contempt was denied.

The Court of Appeals found no good reasons to justify discretionary execution and that the existing preliminary attachment on 10 of respondents' condominium units sufficed as security for the satisfaction of a judgment in favor of Archinet, *viz:*

> We disagree that the grounds relied upon by the RTC constitute "good reasons" for discretionary execution to issue.
>
> "Good reasons" has been held to consist of compelling circumstances justifying the immediate execution lest judgment becomes illusory. Such reasons must constitute superior circumstances demanding urgency which will outweigh the injury or damages should the losing party secure a reversal of the judgment. The rules do not specify the "good reasons" to justify execution pending appeal, thus, it is the discretion of the court to determine what may be considered as such.
>
> A review of the evidence on record convinces this Court that the case at bar does not demonstrate superior circumstances demanding urgency.
>
> We agree with the petitioners [herein respondents] that the preliminary attachment on their 10 condominium units obviate the supposed compelling circumstance of petitioners' alleged financial uncertainty and even impending insolvency which may render ineffectual any judgment favorable to private respondents [herein petitioners].
>
> x x x x x x x x x
>
> Consequently, the existence of a preliminary attachment, the validity and effectivity of which is not challenged in this case, provides private respondents the necessary security for the satisfaction of any favorable judgment. We, thus, find no urgency in immediate execution pending appeal in this case based on petitioner Becco's state of liquidation/ dissolution and petitioner Beccomax's financial condition as a "material uncertainty."[29]

The Court of Appeals also noted that on January 5, 2005, the Board of Directors of Becco issued a Resolution withdrawing

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[29] *Rollo,* pp. 739-741.

its "*Application for Liquidation Proceedings and/or Notice of Cessation of Operations*."[30]

Further, the Court of Appeals held that the orders allowing execution pending appeal were issued without jurisdiction and are therefore void. It ruled that the October 22, 1997 and November 19, 1997 Orders of the trial court are likewise void for being issued in furtherance of the orders allowing discretionary execution.[31] Thus —

> WHEREFORE, the petition for *certiorari* is GRANTED. The Orders dated July 10, 2006, August 18, 2006, October 22, 2007 and November 19, 2007, of the Regional Trial Court of Makati City are hereby declared NULL AND VOID for having been rendered in excess of jurisdiction. Accordingly, these Orders, the execution sales conducted pursuant thereto and the transfer of the subject condominium titles are hereby SET ASIDE. The Register of Deeds of Makati is, thus, ORDERED to:
>
> 1) CANCEL Condominium Certificate of Title Nos. 104939, 104940, 104941, 104942, 104943, 104944, 104945, 104946, 104947, 104948, 104949, and 104950 in the names of Archinet International, Inc. and Seokwhan Hahn; and,
>
> 2) REINSTATE Condominium Certificate of Title Nos. 74069, 74071, 74072, 74076, 74077, 74078, 74079, 74085, 74086, 74090, 74092, and 74093 in the name of Beccomax Property and Development Corporation.
>
> SO ORDERED.[32]

Petitioners' motion for reconsideration was denied, hence, this petition.

Petitioners argue that the existing preliminary attachment on 10 condominium units is not enough to satisfy any judgment in its favor, and that there are good reasons for execution pending appeal because Becco is in liquidation and Beccomax is in imminent danger of insolvency.

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[30] *Id.* at 742.

[31] *Id.* at 743.

[32] *Id.* at 746; CA Records, pp. 1105-1106.

On the other hand, respondents maintain that any judgment in favor of petitioners is secured by the preliminary attachment, and that there are no good and justifiable reasons to allow execution pending appeal as the alleged imminence of insolvency is not supported by facts.

The issues for resolution are: 1) whether the trial court committed grave abuse of discretion in allowing execution pending appeal in Civil Case No. 02-722; and 2) whether the trial court gravely abused its discretion in allowing the issuance of new CCTs in favor of petitioners.

The petition is partially meritorious.

Grave abuse of discretion exists where an act is performed with a capricious or whimsical exercise of judgment equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[33]

In the instant case, the trial court acted within its discretion in granting petitioners' motion for discretionary execution on grounds that Becco is in dissolution and Beccomax is in imminent danger of insolvency.

Section 2 (a), Rule 39 of the Rules of Court allows execution pending appeal, as follows:

Discretionary Execution. —

(a) Execution of a judgment or a final order pending appeal. — On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

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[33] *Casent Realty & Development Corporation v. Premiere Development Bank*, G.R. No. 163902, January 27, 2006, 480 SCRA 426, 434.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

In *Manacop v. Equitable Banking Corporation*,[34] we held that discretionary execution of appealed judgments may be allowed upon concurrence of the following requisites: (a) there must be a motion by the prevailing party with notice to the adverse party; (b) there must be a good reason for execution pending appeal; and (c) the good reason must be stated in a special order.[35]

Good reasons consist of compelling circumstances justifying immediate execution lest judgment becomes illusory, or the prevailing party after the lapse of time be unable to enjoy it, considering the tactics of the adverse party who may have apparently no cause but to delay. Such reasons must constitute superior circumstances demanding urgency which will outweigh the injury or damages should the losing party secure a reversal of the judgment.[36] Execution of a judgment pending appeal is an exception to the general rule that only a final judgment may be executed. Thus, the existence of "good reasons" is essential for it is what confers discretionary power on a court to issue a writ of execution pending appeal.[37]

The records show that petitioners submitted documentary evidence in support of its prayer for discretionary execution. Petitioners submitted a warrant of arrest[38] against Chan Shik Kim, President of Becco and Beccomax, to prove that the latter has not returned to the country since October 25, 2002; a Director's

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[34] G.R. Nos. 162814-17, August 25, 2005, 468 SCRA 256.

[35] *Id.* at 275-276.

[36] *Villamor v. National Power Corporation*, G.R. No. 146735, October 25, 2004, 441 SCRA 329, 342.

[37] *Intramuros Tennis Club v. Philippine Tourism Authority*, 395 Phil. 278, 295-296 (2000).

[38] *Rollo*, p. 274.

Certificate[39] dated October 7, 2002, showing that Becco's Board of Directors authorized its dissolution effective October 31, 2002; and certified machine copies from the Securities and Exchange Commission (SEC) of Reports of Independent Auditors with accompanying audited financial statements[40] of Becco and Beccomax to demonstrate that the former is in a state of liquidation while the latter is in imminent danger of insolvency.

It was on the basis of the foregoing facts and evidence that the trial court issued the order granting execution pending appeal. Notably, respondents in their Comment/Opposition failed to refute the evidence submitted by petitioners. Except for the bare allegation that they "*are never in imminent danger of becoming insolvent*,"[41] respondents did not present any proof to controvert petitioners' claims.

The October 7, 2002 Director's Certificate as well as the Report of Independent Auditors prepared by Sycip Gorres Velayo & Co. (SGV) clearly state that Becco shortened its corporate term effective October 31, 2002 and is in liquidation.[42] As regards Beccomax, SGV declared:

> Without qualifying our opinion, we draw attention to Note 1 to the financial statements. The Company sustained net losses of Php64.8 million and Php65.2 million for the years ended December 31, 2004 and 2003, and as of those dates, the Company's deficit amounted to Php988.4 million and Php845.7 million, respectively. These conditions, along with matters as set forth in Note 1, indicate the existence of a material uncertainty, which may cast significant doubt about the Company's ability to continue as a going concern.[43]

In finding that the trial court gravely abused its discretion, the Court of Appeals relied on a Secretary's Certificate[44] which

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[39] *Id.* at 275.

[40] *Id.* at 276-324.

[41] *Id.* at 326.

[42] *Id.* at 277.

[43] *Id.* at 297.

[44] *Id.* at 851.

certifies that Becco's Board of Directors resolved on January 5, 2005 to withdraw its "*Application for Liquidation Proceedings and/or Notice of Cessation of Operations*." However, respondents did not present the Secretary's Certificate at the time the motion for discretionary execution was pending before the trial court. Notwithstanding the import to their case, respondents submitted it only when they filed a Memorandum[45] before the Court of Appeals on December 8, 2006 or almost five months after the order granting discretionary execution was issued on July 10, 2006.

It is noteworthy that the Secretary's Certificate was executed on August 9, 2005, well before the order for discretionary execution was issued. Indeed, while respondents had every opportunity to present it, they failed to do so and no explanation for such failure has been offered to date. The same can be said with respect to the Owners' Agreement[46] dated September 7, 2001, between Beccomax and Somerset Hospitality Holdings (Phils.) Inc. That respondents presented the documents for the first time before the Court of Appeals is lamentable considering that the admission of evidence is outside the sphere of the appellate court's *certiorari* jurisdiction.[47]

Nonetheless, even assuming *arguendo* that the foregoing documents were submitted to the trial court, we sustain the trial court's finding that there are good reasons for execution pending appeal. The withdrawal of the application for liquidation and notice of cessation of operations on January 5, 2005 does not necessarily mean that Becco has been removed from imminent danger of insolvency. The Report of Independent Auditors states that Becco had a net liability of Php2.12 billion as of December 31, 2004 and has defaulted on interest payment obligations since 1998, *viz*:

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[45] CA Records, pp. 549-625.

[46] *Id.* at 518-618; *Rollo*, pp. 931-962.

[47] *Danzas Intercontinental, Inc. v. Daguman*, G.R. No. 154368, April 15, 2005, 456 SCRA 382, 394-395.

The Company has suffered substantial operating losses for the years ended December 31, 2004 and 2003 and has a net liability of ₱2.12 billion as of December 31, 2004. In addition, the Company has defaulted on its interest payment obligations since 1998. In 1999, the Company ceased construction activities of its own project, the 'Uptown 21 (Uptown)' (the Project), due to severe pressure on cash flows (see Note 4).[48]

Likewise, the Owner's Agreement proves only the existence of a business arrangement but not that Beccomax has recovered from millions in net losses and deficits during the years 2003 and 2004 — conditions which, according to SGV, "*indicate the existence of a material uncertainty which may cast significant doubt about the Company's ability to continue as a going concern*."[49]

It is well to remember that respondents never refuted the veracity of the Report of Independent Auditors and the audited financial statements or the accuracy of the figures contained therein. Hence, to our mind, the said documents constitute sufficient basis for the trial court to conclude that both respondents are in imminent danger of insolvency.

The Court of Appeals cited *Flexo Manufacturing Corporation v. Columbus Foods, Incorporated*[50] where we held that when there are two or more defendants and one is not insolvent, the insolvency of a co-defendant is not a good reason to justify execution pending appeal if their liability under the judgment is either subsidiary or solidary.[51] However, our ruling in *Flexo* finds no application here where both respondents are shown to be in imminent danger of insolvency.

It bears stressing that imminent danger of insolvency of the defeated party has been held to be a good reason to justify discretionary execution. In *Philippine Bank of Communications*

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[48] *Rollo*, p. 281.

[49] *Supra* note 43.

[50] G.R. No. 164857, April 11, 2005, 455 SCRA 272.

[51] *Id.* at 279.

v. Court of Appeals,[52] we enumerated circumstances that would constitute good reasons under the Rules, as follows:

> A long line of jurisprudence indicates what constitute good reasons as contemplated by the Rules, the following being merely representative of the same:
>
> 1. When in an intestate proceeding which has been pending for almost 29 years, one group of heirs has not yet received the inheritance due them when the others have already received theirs, or are about to do so (*Borja vs. Encarnacion*, 89 Phil. 239 (1951);
>
> 2. The advanced age of the prevailing party (*Borja vs. Court of Appeals*, 196 SCRA 847 [1991]; *De Leon vs. Soriano, supra*);
>
> 3. **When the defeated party is in imminent danger of insolvency** *(Hacienda Navarro vs. Sabrador*, 65 Phil. 536 [1938]; *Lao vs. Mencias*, 21 SCRA 1021 [1967]; *Santos vs. Mojica*, 26 SCRA 607 [1969]; *City of Manila vs. Court of Appeals*, 72 SCRA 98 [1976]; *De los Reyes vs. Capulong*, 122 SCRA 631 [1983]; *PVTA vs. Lucero*, 125 SCRA 337 [1983]);
>
> 4. When the appeal is dilatory and the losing party intends to incumber and/or dispose of the property subject of the case during the pendency of the appeal in order to defraud or deprive the plaintiff of proprietary rights and defeat the ends of justice (*Home Insurance Company vs. Court of Appeals*, 184 SCRA 318 [1990]; and
>
> 5. Deterioration of commodities subject to litigation (*Federation of United Namarco Distributors, Inc. vs. National Marketing Corp.*, 4 SCRA 867 [1962]).[53]

The above ruling was reiterated in *Philippine Nails and Wires Corporation v. Malayan Insurance Company, Inc.*[54] where we stated that execution pending appeal may only be allowed upon a showing of good reasons, such as impending insolvency of the adverse party.[55]

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[52] G.R. No. 126158, September 23, 1997, 279 SCRA 364.

[53] *Id.* at 372.

[54] G.R. No. 143933, February 14, 2003, 397 SCRA 431.

[55] *Id.* at 439.

From the foregoing, it is clear that the trial court adhered to jurisprudential pronouncements of this Court. Therefore, in the absence of any showing of grave abuse of discretion, we find no cogent reason to set aside the order granting discretionary execution.

In any event, execution pending appeal does not bar the continuance of the appeal on the merits[56] and respondents are not left without relief in the event of reversal of the judgment against it. Section 5, Rule 39 of the Rules of Court specifically provides that where the executed judgment is reversed totally or partially, or annulled, on appeal or otherwise, the trial court may, on motion, issue such orders of restitution or reparation of damages as equity and justice may warrant under the circumstances.

Having ruled on the validity of the order for discretionary execution, we now turn to the October 22, 1997 and November 19, 1997 Orders of the trial court which paved the way for the issuance of new titles to the 12 condominium units in favor of petitioners.

We agree with the Court of Appeals that the foregoing orders are void, not because they were issued in furtherance of the order for discretionary execution but for an entirely different reason.

In *Padilla, Jr. v. Philippine Producers' Cooperative Marketing Association, Inc.*,[57] we categorically declared that in implementing the involuntary transfer of title of real property levied and sold on execution, it is not enough for the executing party to file a motion with the court which rendered judgment. The proper course of action is to file a petition in court, rather than merely move, for the issuance of new titles.[58] In so ruling, we cited Sections 75 and 107 of Presidential Decree No. 1529,[59] which provide:

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[56] *Legaspi v. Ong*, G.R. No. 141311, May 26, 2005, 459 SCRA 122, 145.

[57] G.R. No. 141256, July 15, 2005, 463 SCRA 480.

[58] *Id.* at 487.

[59] AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES.

Section 75. Application for new certificate upon expiration of redemption period. Upon the expiration of the time, if any, allowed by law for redemption after registered land has been sold on execution taken or sold for the enforcement of a lien of any description, except a mortgage lien, the purchaser at such sale or anyone claiming under him may petition the court for the entry of a new certificate of title to him.

Before the entry of a new certificate of title, the registered owner may pursue all legal and equitable remedies to impeach or annul such proceedings.

x x x x x x x x x

Section 107. Surrender of withheld duplicate certificates. Where it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of the registered owner against his consent or where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title, the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds. The court, after hearing, may order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate or memorandum upon such surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if not any reason the outstanding owner's duplicate certificate cannot be delivered, the court may order the annulment of the same as well as the issuance of a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.

The above law provides for due process to a registered landowner and prevents the fraudulent or mistaken conveyance of land, the value of which may exceed the judgment obligation.[60] Thus, while there are good reasons justifying an execution pending appeal, the trial court erred in ordering the cancellation of CCTs and ordering the issuance of new titles by mere motion. The proper course of action was to file a petition in court. At any rate, as in the case of *Padilla, Jr.*, we note that petitioners can

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[60] *Supra* note 57 at 488.

still file the proper petition for the issuance of new titles in its name.[61]

WHEREFORE, the petition is *PARTIALLY GRANTED*. The July 10, 2006 and August 18, 2006 Orders of Branch 56 of the Regional Trial Court of Makati City in Civil Case No. 02-722 granting discretionary execution are hereby *REINSTATED*. However, the October 22, 2007, and November 19, 2007 Orders of Branch 56 of the Regional Trial Court of Makati City directing the Register of Deeds of Makati City to issue new certificates of title in favor of petitioners are *ANNULLED*.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 184081. June 19, 2009]

GLOBAL HOLIDAY OWNERSHIP CORPORATION, *petitioner, vs.* **METROPOLITAN BANK & TRUST COMPANY,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; ACT 3135 (REAL ESTATE MORTGAGE LAW); EXTRAJUDICIAL FORECLOSURE; PERSONAL NOTICE TO THE MORTGAGOR IN EXTRAJUDICIAL FORECLOSURE PROCEEDINGS IS NOT NECESSARY, UNLESS STIPULATED; EFFECT OF NON-OBSERVANCE THEREOF.— x x x [T]hat personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary, *unless stipulated*. x x x [T]hat **in addition** to Section 3 of Act 3135,

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[61] *Id*.

the parties may stipulate that personal notice of foreclosure proceedings may be required. Act 3135 remains the controlling law, but the parties may agree, in addition to posting and publication, to include personal notice to the mortgagor, the non-observance of which renders the foreclosure proceedings null and void, since the foreclosure proceedings become an illegal attempt by the mortgagee to appropriate the property for itself. Thus, we restate: the **general rule is that personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary, and posting and publication will suffice.** Sec. 3 of Act 3135 governing extra-judicial foreclosure of real estate mortgages, as amended by Act 4118, requires only posting of the notice of sale in three public places and the publication of that notice in a newspaper of general circulation. The **exception is when the parties stipulate that personal notice is additionally required to be given the mortgagor**. Failure to abide by the general rule, or its exception, renders the foreclosure proceedings null and void. Global's right to be furnished with personal notice of the extrajudicial foreclosure proceedings has been established. Thus, to continue with the extrajudicial sale without proper notice would render the proceedings null and void.

2. ID.; ID.; NOTICE OF SALE; OBJECTIVE.— x x x [T]he principal object of a notice of sale in a foreclosure of mortgage is not so much to notify the mortgagor as to inform the public generally of the nature and condition of the property to be sold, and of the time, place, and terms of the sale. Notices are given to secure bidders and prevent a sacrifice of the property. Clearly, the statutory requirements of posting and publication are mandated, not for the mortgagor's benefit, but for the public or third persons.

3. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; GROUND EXISTS FOR THE ISSUANCE OF A WRIT THEREOF.— x x x [I]njunction is proper to protect Global's rights and to prevent unnecessary injury that would result from the conduct of an irregular sale. It is beyond question that a writ of preliminary injunction is issued to prevent an extrajudicial foreclosure, upon a clear showing of a violation of the mortgagor's unmistakable right. The trial court was thus correct in granting an injunction.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; OBLIGATIONS; THE TERM "DEMAND," HOW CONSTRUED IN CASE AT BAR.— Under the parties' Debt Settlement Agreement, Global's obligation was reduced (Metrobank waived the penalties incurred), but the agreement carried a proviso that if such reduced obligation was not timely settled and Global defaulted on two consecutive amortizations, Metrobank shall be entitled to treat Global's obligation as outstanding, impose a penalty at the rate of 18% *per annum*, and/or foreclose on the real estate mortgage, *without need of demand*. According to Metrobank, this provision in the Debt Settlement Agreement resulted in a waiver by Global of the required personal notice under Paragraph 14 of the mortgage contract. We disagree. Demand here relates to the principal obligation, which shall become due and demandable and shall incur interest and penalties without need of informing Global, were the conditions of the Debt Settlement Agreement not observed. It does not relieve Metrobank of its obligation under Paragraph 14 of the Mortgage Contract, which is a *separate* agreement, *distinct* and *apart* from the Debt Settlement Agreement.

5. REMEDIAL LAW; CIVIL PROCEDURE; PARTS OF A PLEADING; VERIFICATION AND CERTIFICATION; RELAXATION OF THE RULES THEREON WARRANTED IN CASE AT BAR.— Given the merits of the case, we are not at this point inclined to dismiss the petition, on respondent's argument that there was a defective verification and certification accompanying the present petition. We can simply require petitioner to submit proof of its President Pedro P. Diomampo's authority to sign the petition in its behalf, but we no longer see the need to do the same at this late stage. Under the parties' mortgage agreement, Global was formerly named Diomampo Industries, Inc.; certainly, we have been equally less rigid in previous cases.

6. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; EFFECT OF GRANT THEREOF.— x x x [T]he granting of the writ of preliminary injunction would not in effect dispose of the main case without trial. The granting of the writ would only enjoin the foreclosure of the mortgage for lack of personal notice, and the *status quo* would be maintained. It does not prevent Metrobank from foreclosing on the mortgage *after*

giving personal notice. The only lesson to be learned from the present case is that the law must be followed to the letter; no shortcuts are allowed.

APPEARANCES OF COUNSEL

Abelardo G. Luzano Law Office for petitioner.
Perez Calima Suratos Maynigo & Roque Law Offices for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for review on *certiorari* assails the March 31, 2008 Decision[1] of the Court of Appeals in CA-G.R. SP No. 97287, which annulled and set aside the July 26, 2006 and October 6, 2006 Orders of the Regional Trial Court of Makati, Branch 146, granting petitioner's prayer for a writ of preliminary injunction in Civil Case No. 06-549 and directed the judge to dissolve the said writ. Also assailed is the August 7, 2008 Resolution[2] denying the motion for reconsideration.

The facts as found by the appellate court are as follows:

Global Holiday Ownership Corporation (Global for short) obtained on various dates several loans from x x x Metrobank in the total principal amount of ₱5,700,000.00 secured by a real estate mortgage over a condominium unit under Condominium Certificate of Title No. 29774 of the Registry of Deeds for Makati City. Upon default in the payment of the loan, x x x Global requested for a restructuring of its loan in the total principal amount of ₱6,375,000.00 as of September 3, 2001. (Metrobank) acceded to its request.

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[1] *Rollo*, pp. 50-69; penned by Associate Justice Lucenito N. Tagle and concurred in by Associate Justices Amelita G. Tolentino and Marlene Gonzales-Sison.

[2] *Id.* at 71-72; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ramon R. Garcia and Marlene Gonzales-Sison.

As x x x Global defaulted anew in the payment of its loan, it requested for another restructuring which was likewise granted by the bank. Hence, a Debt Settlement Agreement was executed by the parties on November 15, 2001 detailing a schedule of payment of the principal obligation of ₱6,375,000.00 within a 3-year period up to August 19, 2004 as well (sic) the interest on the principal, payable quarterly based on the prevailing market rates beginning December 2, 2001 and every 90 days thereafter, without need of notice or demand, the full payment of which shall be on or before August 29, 2002.

x x x x x x x x x

Global failed to comply with the terms and conditions of the Debt Settlement Agreement. Despite demands made upon it for payment on December 22, 2005 and May 18, 2006, it still failed and refused to pay (Metrobank) the loans which are all past due.

Thus on May 22, 2006, (Metrobank) requested the Clerk of Court of the RTC of Makati City to cause the sale at public auction of CCT No. 29774 pursuant to Act 3135 as amended. The sale was scheduled on July 10, 2006 at 10:00 a.m. per notice of sheriff's sale.

Four (4) days before the date of the auction sale or on July 6, 2006, x x x Global filed the instant complaint for annulment of extrajudicial foreclosure proceedings, damages and injunction with application for TRO and/or writ of preliminary injunction. Respondent judge granted Global's application for temporary restraining order on July 7, 2006 and set the prayer for a writ of preliminary injunction for hearing on July 14, 2006. After hearing, respondent judge issued an Order on July 26, 2006 granting Global's application for a writ of preliminary injunction. (Metrobank) moved to reconsider this Order but respondent judge denied the motion in the Order dated October 6, 2006.[3]

Metrobank filed a petition for *certiorari* before the Court of Appeals arguing that Global is not entitled to injunctive relief because it has not shown that it had a legal right that must be protected. Metrobank thus prayed that the trial court's issuances dated July 26, 2006 and October 6, 2006 be annulled and set aside.

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[3] *Id.* at 51-54.

(Metrobank) stresses that in view of x x x Global's admission that it failed to pay its loan, the latter has definitely no right *in esse* to be protected as it was clearly provided in the deed of real estate mortgage and in the Debt Settlement Agreement that the mortgage can be foreclosed by (Metrobank) in case of default.

(Metrobank) contends that x x x Global's claim of not having been notified of the foreclosure proceedings is debunked by the Certification issued by the Makati Central Post Office dated August 2, 2006 stating that a copy of the notice of sheriff sale was sent to Global and was received by it on June 23, 2006. Moreover, (Metrobank's) several demand letters to x x x Global urging it to pay its overdue account with a warning that in case of failure to do, actions to protect the bank's interests will be initiated, more than satisfies the requirement of notice. Additionally, (Metrobank) emphasizes that Sec. 14 of the real estate mortgage was already superseded by Sec. 5 of the Debt Settlement Agreement whereby Global waived its right to be personally notified in case of default.

(Metrobank) argues that no personal notice of the extrajudicial foreclosure is even required as said proceeding is an action *in rem* where only notice by publication and posting is necessary to bind the interested parties, citing *Bobanan vs. Court of Appeals*, G.R. No. 111654, April 18, 1996. The law itself, Act No. 3135, does not require personal notice to the mortgagor. Only notice by publication and posting are required. Likewise, (Metrobank) points to Administrative Matter No. 99-10-05-0 dated February 26, 2002 (Re: Procedure in the Extrajudicial Foreclosure of Mortgage) wherein the Supreme Court acknowledged that personal notice to the debtor-mortgagor in case of extrajudicial foreclosure of real estate mortgage is not required by Act No. 3135 as the addition of such requirement can only make the proceedings cumbersome.

For its part, x x x Global avers that after it defaulted in its quarterly payment under the Debt Settlement Agreement, (Metrobank) informed it on May 30, 2003 that its account is being considered for transfer to a Special Purpose Vehicle under the SPV Act of 2002. Within the period given to signify its conformity to the plan, x x x Global wrote (Metrobank) on July 4, 2003 informing (Metrobank) that it is (sic) amenable to its proposal to transfer the loan to a special purpose vehicle company. Instead of transferring its account to a SPV Company, (Metrobank) decided to proceed with the extrajudicial foreclosure of the mortgaged property with the sheriff setting the auction sale on July 10, 2006. Such being the case, there is nothing

that can be ascribed in the July 26, 2006 Order of respondent judge that could be considered whimsical, capricious, arbitrary and despotic, x x x Global asserts.

Mere failure to pay a secured obligation, according to Global, does not give the mortgagee bank the unbridled right to foreclose the mortgage, more so in this case when the interest rate on a loan is unilaterally imposed or increased by (Metrobank) without Global's consent, in violation of mutuality of contract. Besides, there is already a perfected contract between (Metrobank) and x x x Global to transfer the latter's account to a special purpose vehicle company.

Finally, x x x Global claimed that it has not waived its right to be notified of the foreclosure when it executed the Debt Settlement Agreement. The statement "without need of demand" in the debt settlement agreement refers to the payment of the principal and interest, which is different from notice of extrajudicial foreclosure that is required to be given to a mortgagor.[4]

In the assailed March 31, 2008 Decision, the Court of Appeals granted Metrobank's petition and set aside the July 26, 2006 and October 6, 2006 orders of the trial court, with a directive to dissolve the writ of preliminary injunction it issued. The appellate court found that Global had no legal right to an injunction; that Metrobank had the undeniable right to foreclose on the real estate mortgage in view of Global's default in the settlement of its obligation to the bank; that Global had not shown any legal justification to enjoin it from enforcing this right; that it is not required that Global be personally informed of the foreclosure of its mortgaged property, since personal notice is not necessary; the applicable law — Act 3135[5] — requires only notice by publication and posting; that under Administrative Matter No. 99-10-05-0[6] in relation to Act 3135, as amended, personal notice to the debtor-mortgagor in case of extrajudicial foreclosure

[4] *Id.* at 55-59.

[5] Entitled "An Act To Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real-Estate Mortgages," it was approved on March 6, 1924, and amended by Act 4118.

[6] Procedure in Extra-Judicial Foreclosure of Mortgage, effective January 15, 2000, which was further amended on March 1, 2001, and on August 7, 2001.

of real estate mortgage is not required; and that by declaring that the foreclosure proceedings were defective and null and void, the trial court's issuances granting Global's prayer for a writ of preliminary injunction constituted a premature disposition of the case on its merits, a pre-judgment that went beyond the nature of the proceeding then being taken, which was merely for the issuance of a writ of preliminary injunction.[7]

Global moved to reconsider the decision, however, it was denied by the Court of Appeals in the assailed August 7, 2008 Resolution.

Hence, this petition by Global raising the following as errors:

First Assigned Error:

The Honorable Court of Appeals (erred in) ruling x x x that personal notice to the debtor-mortgagor of the extrajudicial foreclosure is not necessary despite the parties' stipulation in their Real Estate Mortgage contract requiring personal notice thereof x x x.

Second Assigned Error:

The Honorable Court of Appeals seriously erred in its interpretation and application of Supreme Court Administrative Matter No. 99-10-05-0 dated February 26, 2002 that in extrajudicial foreclosure of real estate mortgage, personal notice to the debtor-mortgagor is not necessary.

Third Assigned Error:

The Honorable Court of Appeals erred in applying the superseded case of *Cortez v. Intermediate Appellate Court* (G.R. No. 73678, July 21, 1989) in support of its ruling that the parties' stipulation in their Real Estate Mortgage contract requiring all correspondence relative to the mortgage to be sent at the mortgagor's given address is a mere expression of "general intent" which cannot prevail over the parties' "specific intent" to apply the provisions of Act 3135 in the extrajudicial foreclosure of the mortgage as the same is contrary to subsequent rulings of the Supreme Court.

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[7] According to the Court of Appeals, "(t)his prejudgment violates the well-entrenched principle that courts should avoid issuing a writ of preliminary injunction which in effect disposes of the main case without trial." (*Rollo*, p. 67; citing *Medina v. Greenfield Dev. Corp.*, 443 SCRA 150)

Fourth Assigned Error:

The Honorable Court of Appeals erred in relying on the cases of *BPI Family Savings Bank, Inc. v. Veloso*, 436 SCRA 1; *China Banking Corporation v. CA*, 265 SCRA 327; and *Selegna Mgnt. & Devt. Corp. v. UCPB*, G.R. No. 165662, May 3, 2006, to support its findings that petitioner has no clear legal right to be protected, since the trial court's issuance of the injunctive writ was founded on the mortgagee's non-compliance with the stipulated personal notice to the mortgagor.

Fifth Assigned Error:

The Honorable Court of Appeals' ruling that there was no perfected contract to transfer petitioner's account to a Special Purpose Vehicle despite its finding that respondent MBTC made a proposal thereon to GHOC is contrary to the provision of Article 1319 of the Civil Code of the Philippines since there was unqualified acceptance of the proposal.

Sixth Assigned Error:

The Honorable Court of Appeals erroneously ruled that petitioner was personally notified of the foreclosure proceedings as evidenced by the Certification of the Clerk of Court of Makati RTC when such Certification is non-existent in the records of the case.

Seventh Assigned Error:

The Honorable Court of Appeals erred in denying petitioner's Motion for Reconsideration despite the apparent falsified Certification submitted by respondent thru its Comment to the motion.

Eighth Assigned Error:

The Honorable Court of Appeals seriously erred in finding that the grant by the trial court of the injunctive writ is completely without justification and in grave abuse of its discretion.

The issues for resolution are: whether Metrobank's failure to serve personal notice upon Global of the foreclosure proceedings renders the same null and void; and whether the trial court properly issued a writ of injunction to prevent Metrobank from proceeding with the scheduled auction sale of Global's condominium unit.

We grant the petition.

Paragraph 14 of the real estate mortgage contract states that:

> All correspondence relative to this mortgage, including demand letters, summonses, subpoenas or notifications of any judicial or extra-judicial actions shall be sent to the Mortgagor at the address hereinabove given or at the address that may hereafter be given in writing by the Mortgagor to the Mortgagee, and the mere act of sending any correspondence by mail or by personal delivery to the said address shall be valid and effective notice to the Mortgagor for all legal purposes, and the fact that any communication is not actually received by the Mortgagor, or that it has been returned unclaimed to the Mortgagee, or that no person was found at the address given, or that the address is fictitious, or cannot be located, shall not excuse or relieve the Mortgagor from the effect of such notice.[8]

This specific provision in the parties' real estate mortgage agreement is the **same** provision involved in the case of *Metropolitan Bank and Trust Company v. Wong*,[9] where the Court made the following pronouncement:

> It is bad enough that the mortgagor has no choice but to yield his property in a foreclosure proceeding. It is infinitely worse, if prior thereto, he was denied of his basic right to be informed of the impending loss of his property. This is another instance when law and morals echo the same sentiment.
>
> x x x x x x x x x

Thus, disregarding all factual issues which petitioner interjected in his petition, the only crucial *legal queries* in this case are: *first*, is personal notice to respondent a condition *sine qua non* to the validity of the foreclosure proceedings? and, *second*, is petitioner's non-compliance with the posting requirement under Section 3, Act No. 3135 fatal to the validity of the foreclosure proceedings?

In resolving the first query, we resort to the fundamental principle that a contract is the law between the parties and, that absent any showing that its provisions are wholly or in part contrary to law, morals, good customs, public order, or public policy, it shall be enforced to the letter by the courts. Section 3, Act No. 3135 reads:

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[8] *Rollo*, p. 90.

[9] G.R. No. 120859, June 26, 2001, 359 SCRA 608.

> "Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality and city."

The Act only requires (1) the posting of notices of sale in three public places, and (2) the publication of the same in a newspaper of general circulation. Personal notice to the mortgagor is not necessary. **Nevertheless, the parties to the mortgage contract are not precluded from exacting additional requirements. In this case, petitioner and respondent in entering into a contract of real estate mortgage, agreed *inter alia*:**

> "all correspondence relative to this mortgage, including demand letters, summonses, subpoenas, or notifications of any judicial or extra-judicial action shall be sent to the MORTGAGOR at 40-42 Aldeguer St., Iloilo City, or at the address that may hereafter be given in writing by the MORTGAGOR to the MORTGAGEE."

Precisely, the purpose of the foregoing stipulation is to apprise respondent of any action which petitioner might take on the subject property, thus according him the opportunity to safeguard his rights. When petitioner failed to send the notice of foreclosure sale to respondent, he committed a contractual breach sufficient to render the foreclosure sale on November 23, 1981 null and void.[10] (Emphasis supplied)

We do not see how a different outcome could have been expected in the present case which involves the same contractual provision as that in the above-mentioned case — not to mention the same mortgagee. In cases subsequent to *Wong*, we sustained the same principle: that personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary, *unless stipulated*.[11]

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[10] *Id.* at 610, 614-615.

[11] *Union Bank v. Court of Appeals*, G.R. No. 164910, September 30, 2005, 471 SCRA 751; *Ouano v. Court of Appeals*, G.R. No. 129279, March 4,

If respondent wanted to rid itself of the effects of the Court's pronouncement in *Wong*, considering that it was a party to the case and knows firsthand about the Court's disposition, it should have caused the deletion of Paragraph 14 from all its subsequent standard form real estate mortgage agreements, or if not, modified the provision or the contracts accordingly. A modification of the mortgage contract on this point, with respect to Global, would not have been difficult; an addendum would have sufficed.

Taking from *Wong*, we must interpret Paragraph 14 of the parties' mortgage contract as one having been made for the benefit of the mortgagor, and one which Metrobank knowingly incorporated into the agreement. Having been in the business of banking since 1962 — or for more than forty years now — it certainly had the knowledge, experience and the resources to correct any perceived oversight it was guilty of making in the past with respect to its contracts. Although we do not view Paragraph 14 to be one such oversight; as we have declared in *Wong*, the purpose of said stipulation is benign: to apprise the mortgagor of any action which Metrobank might take on the subject property, thus according him the opportunity to safeguard his rights. We cannot allow Metrobank to disavow its solemn covenant with Global, to turn its back on a contract which it prepared on its own, without the intervention of the other party. A party should not, after having its opportunity to enjoy the benefits of an agreement, be allowed to later disown the arrangement when the terms thereof ultimately would prove to operate against its hopeful expectations.[12]

2003, 398 SCRA 525; *Philippine National Bank v. Nepomuceno Productions, Inc*., G.R. No. 139479, December 27, 2002, 394 SCRA 405;. See also earlier cases: *Philippine National Bank v. Rabat*, G.R. No. 134406, November 15, 2000, 344 SCRA 706; *Concepcion v. Court of Appeals*, G.R. No. 122079, June 27, 1997, 274 SCRA 614; and *Fortune Motors (Phils.), Inc. v. Metropolitan Bank and Trust Company*, G.R. No. 115068, November 28, 1996, 265 SCRA 72; *Olizon v. Court of Appeals*, G.R. No. 107075, September 1, 1994, 236 SCRA 148.

[12] *Dela Cruz v. Court of Appeals*, G.R. No. 151298, November 17, 2004, 442 SCRA 492, citing *Philippine Aluminum Wheels, Inc. v. FASGI Enterprises, Inc*., G.R. No. 137378, October 12, 2000, 342 SCRA 722.

The business of banking is imbued with public interest. It carries with it a fiduciary duty that requires high standards of integrity and performance.[13] Our decision in *Wong* was not a mere declaration of what the law is on a given point; its underlying message is our acknowledgment that banks must play a compassionate role amidst these changing times. That in the wake of huge profits being made from their operations, all that is required is for them to inform the borrower of the impending loss of his property when their covenants require it. This is a valid argument when viewed within the context of the principle that any attempt to vest ownership of the encumbered property in the mortgagee without proper observance of the requirements of law is against public policy.[14]

Paragraph 14 is clear that "**all correspondence relative to this mortgage**, **including** demand letters, summonses, subpoenas or **notifications of any** judicial or **extrajudicial actions shall be sent to the mortgagor** at the address hereinabove given or at the address that may hereafter be given in writing by (it)." It must be recalled that the principal object of a notice of sale in a foreclosure of mortgage is not so much to notify the mortgagor as to inform the public generally of the nature and condition of the property to be sold, and of the time, place, and terms of the sale. Notices are given to secure bidders and prevent a sacrifice of the property. Clearly, the statutory requirements of posting and publication are mandated, not for the mortgagor's benefit, but for the public or third persons.[15] Taking this into context, the stipulation in the mortgage agreement requiring notice to the mortgagor of extrajudicial actions to be taken operates as a

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[13] *The Consolidated Bank and Trust Corporation v. Court of Appeals*, G.R. No.138569, September 11, 2003, 410 SCRA 562.

[14] Under Article 2088 of the Civil Code:

> The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and vo*id.*

[15] *Philippine National Bank v. Nepomuceno Productions Inc.*, *supra* note 11 at 411.

contractual undertaking for the latter's sole benefit, such that the mortgagee is mandated to strictly abide by the same.

Metrobank claims that *Cortes v. Intermediate Appellate Court*[16] should be applied in the resolution of the present controversy. In said case, the Court held:

> But in pleading their case, petitioners invoke paragraph 10 of the Deed of Mortgage (*vide*, p. 28, *Rollo*) which provides:
>
> > "10. All correspondence relative to this mortgage, including demand letters, summons, subpoenas, or notification of any judicial or extrajudicial action, shall be sent to the Mortgagor at _____ or at the address that may hereafter be given in writing by the Mortgagor to the Mortgagee."
>
> While the above stipulation points to a place (which, notably was clearly stated) where all correspondence relative to the mortgage are to be sent, it does not specifically require that personal notice of foreclosure sale be given to petitioner. The said paragraph 10 presumes that a specific correspondence is made but does not definitely require which correspondence must be made. It would, therefore, be erroneous to say that notice of extrajudicial foreclosure to the petitioners is required for such is not the clear intention of the parties, and, thus, may not be pursued. (Rule 130, Section 10).
>
> **But even if the contrary were true, the sending of "All correspondence relative to this mortgage . . ." to the petitioners may only be deemed, at the most, as an expression of a general intent. As such, it may not prevail against the parties' specific intent that Act No. 3135 be the controlling law between them**. This is so since "a particular intent will control a general one that is inconsistent with it." (Rule 130, Sec. 10). It is clear from the Deed of Mortgage that the Mortgagee Bank (DBP) may, under any of the specific circumstances enumerated, proceed to "foreclose this mortgage . . . extrajudicially under Act No. 3135, as amended." (p. 28, *Rollo*). Having invoked the said Act, it shall "govern the manner in which the sale and redemption shall be effected" (Sec. 1, Act 3135). And as already shown earlier Act 3135 does not require personal notice of the foreclosure sale to the mortgagor. Incidentally, it was found by the trial court that notices of the foreclosure sale were

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[16] G.R. No. 73678, July 21, 1989, 175 SCRA 545.

duly posted and published in accordance with law. As such, petitioners are in estoppel; they cannot now deny that they were not informed of the said sale.[17] (Emphasis supplied)

But what is stated in *Cortes* no longer applies in light of the Court's rulings in *Wong* and all the subsequent cases, which have been consistent. *Cortes* has never been cited in subsequent rulings of the Court, nor has the doctrine therein ever been reiterated. Its doctrinal value has been diminished by the policy enunciated in *Wong* and the subsequent cases; that is, that **in addition** to Section 3 of Act 3135, the parties may stipulate that personal notice of foreclosure proceedings may be required. Act 3135 remains the controlling law, but the parties may agree, in addition to posting and publication, to include personal notice to the mortgagor, the non-observance of which renders the foreclosure proceedings null and void, since the foreclosure proceedings become an illegal attempt by the mortgagee to appropriate the property for itself.

Thus, we restate: the **general rule is that personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary, and posting and publication will suffice.** Sec. 3 of Act 3135 governing extra-judicial foreclosure of real estate mortgages, as amended by Act 4118, requires only posting of the notice of sale in three public places and the publication of that notice in a newspaper of general circulation. The **exception is when the parties stipulate that personal notice is additionally required to be given the mortgagor**. Failure to abide by the general rule, or its exception, renders the foreclosure proceedings null and void.[18]

Global's right to be furnished with personal notice of the extrajudicial foreclosure proceedings has been established. Thus,

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[17] *Id.* at 548-549.

[18] *Development Bank of the Philippines v. Court of Appeals*, G.R. No. 125838, June 10, 2003, 403 SCRA 460; *Ouano v. Court of Appeals*, *supra* note 11; *Lucena v. Court of Appeals*, G.R. No. 77468, August 25, 1999, 313 SCRA 47; *Roxas v. Court of Appeals*, 221 SCRA 729; *Metropolitan Bank and Trust Company v. Wong*, *supra* note 9.

to continue with the extrajudicial sale without proper notice would render the proceedings null and void; injunction is proper to protect Global's rights and to prevent unnecessary injury that would result from the conduct of an irregular sale. It is beyond question that a writ of preliminary injunction is issued to prevent an extrajudicial foreclosure, upon a clear showing of a violation of the mortgagor's unmistakable right.[19] The trial court was thus correct in granting an injunction.

Metrobank's reliance on *Ardiente v. Provincial Sheriff* [20] is misplaced. The cited case is merely a reiteration of the **general** rule, since the parties therein did not stipulate in their mortgage agreement that personal notice of judicial or extrajudicial actions shall be furnished the mortgagor.

Neither can the circumstance that Global received a notice of sheriff's sale from the Office of the Clerk of Court of the Regional Trial Court of Makati City cure the defect occasioned by Metrobank's violation of its covenant under the mortgage agreement. As already stated, the object of a notice of sale in a foreclosure of mortgage is not for the mortgagor's benefit, but for the public or third persons; on the other hand, the undertaking in a mortgage deed to notify the mortgagor of all judicial or extrajudicial actions relative to the mortgage is especially for the mortgagor's benefit, so that he may safeguard his rights.

Under the parties' Debt Settlement Agreement,[21] Global's obligation was reduced (Metrobank waived the penalties incurred), but the agreement carried a proviso that if such reduced obligation was not timely settled and Global defaulted on two consecutive amortizations, Metrobank shall be entitled to treat Global's obligation as outstanding, impose a penalty at the rate of 18% *per annum*, and/or foreclose on the real estate mortgage, *without need of demand*. According to Metrobank, this provision in the Debt Settlement Agreement resulted in a waiver by Global

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[19] *Selegna Management & Development Corp. v. United Coconut Planters Bank*, G.R. No. 165662, May 3, 2006, 489 SCRA 125, 127.

[20] G.R. No. 148448, August 17, 2004, 436 SCRA 655.

[21] *Rollo*, pp. 188-191.

of the required personal notice under Paragraph 14 of the mortgage contract.

We disagree. Demand here relates to the principal obligation, which shall become due and demandable and shall incur interest and penalties without need of informing Global, were the conditions of the Debt Settlement Agreement not observed. It does not relieve Metrobank of its obligation under Paragraph 14 of the Mortgage Contract, which is a *separate* agreement, *distinct* and *apart* from the Debt Settlement Agreement. As we have said, only an addendum or modification of the mortgage agreement can relieve Metrobank of the adverse effects of Paragraph 14.

Given the merits of the case, we are not at this point inclined to dismiss the petition, on respondent's argument that there was a defective verification and certification accompanying the present petition. We can simply require petitioner to submit proof of its President Pedro P. Diomampo's authority to sign the petition in its behalf, but we no longer see the need to do the same at this late stage. Under the parties' mortgage agreement, Global was formerly named Diomampo Industries, Inc.;[22] certainly, we have been equally less rigid in previous cases.[23]

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[22] *Id.* at 87, 185.

[23] *Shipside, Inc. v. Court of Appeals*, G.R. No. 143377, February 20, 2001, 352 SCRA 334, and cited cases, where we held that:

> In the instant case, the merits of petitioner's case should be considered special circumstances or compelling reasons that justify tempering the requirement in regard to the certificate of non-forum shopping. Moreover, in *Loyola*, *Roadway*, and *Uy*, the Court excused non-compliance with the requirement as to the certificate of non-forum shopping. **With more reason should we allow the instant petition since petitioner herein did submit a certification on non-forum shopping, failing only to show proof that the signatory was authorized to do so**. That petitioner subsequently submitted a secretary's certificate attesting that Balbin was authorized to file an action on behalf of petitioner likewise mitigates this oversight. (at 346-347) (Emphasis and underscoring supplied)

In *Estribillo v. Department of Agrarian Reform*, G.R. No. 159674, June 30, 2006, 494 SCRA 218, we reiterated the principle, in the following wise:

> In *Uy v. Land Bank of the Philippines*, we, likewise, considered the apparent merits of the substantive aspect of the case as a special

We agree with the appellate court that Metrobank had every right to choose whether to foreclose on the mortgage or to transfer Global's account to a special purpose vehicle. In this respect, Global has no right to interfere. Besides, what Metrobank conveyed to Global about transferring the latter's account to a special purpose vehicle was that it was merely considering such move; eventually, it wrote Global of its decision not to exercise the option, and proceed with foreclosure of the mortgage instead. In the first place, whether Global's account could qualify for transfer to a special purpose vehicle is not for the latter to determine; under the Special Purpose Vehicle Act of 2002,[24] the decision belongs to the appropriate regulatory authority.

Penultimately, we do not subscribe to Metrobank's argument that the foreclosure proceedings should continue, since Global is not without adequate protective remedy, like annotation of *lis pendens*, participating in the auction sale, or redemption. Annotation of *lis pendens* is unnecessary, since the issue may now be resolved at this point; participating in null and void foreclosure proceedings is no valid option, just as well as redeeming the property following a void auction sale.

Finally, the granting of the writ of preliminary injunction would not in effect dispose of the main case without trial. The granting of the writ would only enjoin the foreclosure of the mortgage for lack of personal notice, and the *status quo* would be maintained. It does not prevent Metrobank from foreclosing on the mortgage *after* giving personal notice. The only lesson to be learned from the present case is that the law must be followed to the letter; no shortcuts are allowed.[25]

WHEREFORE, the petition is *GRANTED*. The March 31, 2008 Decision and August 7, 2008 Resolution of the Court of

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circumstance or compelling reason for the reinstatement of the case, and invoked our power to suspend our rules to serve the ends of justice. (at 233)

[24] Republic Act No. 9182.

[25] *Gabriel v. Secretary of Labor*, G.R. No. 115949, March 16, 2000, 328 SCRA 247.

Appeals in CA-G.R. SP No. 97287 are hereby *ANNULLED and SET ASIDE*. The July 26, 2006 and October 6, 2006 Orders of the Regional Trial Court of Makati, Branch 146 are *REINSTATED and AFFIRMED*.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

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Appointment — Shall take effect immediately and upon assumption of the duties of their positions. (Nazareno *vs*. City of Dumaguete G.R. No. 177795, June 19, 2009) p. 768

— When the appointment was disapproved for violation of pertinent laws, the appointing authority shall be personally liable for the salary of the appointee. *(Id.)*

Appointment and promotion — Discretion should be granted to those entrusted with the responsibility of administering the office concerned. (Chairman Chavez *vs*. Ronidel, G.R. No. 180941, June 11, 2009) p. 76

Dishonesty — Imposable penalty. (Llamasares *vs*. Pablico, A.M. No. P-08-2434-A, June 16, 2009) p. 100

Legal right to a position — When acquired. (Chairman Chavez *vs*. Ronidel, G.R. No. 180941, June 11, 2009) p. 76

Ministerial duty — Distinguished from discretionary duty. (Nazareno *vs*. City of Dumaguete G.R. No. 177795, June 19, 2009) p. 768

Public office — Oath of office is a qualifying requirement thereof. (Chairman Chavez *vs*. Ronidel, G.R. No. 180941, June 11, 2009) p. 76

Reportorial requirement — When rule may be relaxed. (Chairman Chavez *vs*. Ronidel, G.R. No. 180941, June 11, 2009) p. 76

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Assessment — The term relevant supporting document should be understood as those documents necessary to support the legal basis in disputing an assessment as determined by the taxpayer; rationale. (Commissioner of Internal Revenue *vs*. First Express Pawnshop Co., Inc., G.R. Nos. 172045-46, June 16, 2009) p. 227

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— Issues which resulted from the cancellation of tax credit certificates used in the payment of tax liabilities are payment and collection issues and not tax protest issues. *(Id.)*

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